ICT SERVICES AGREEMENT SCHEDULES

SCHEDULE 5.1

SOFTWARE

CONTENTS

Section A

Product Description

1.   PRODUCT TITLE

ICT Services Agreement - Schedule 5.1 (Software).

2.   PURPOSE OF PRODUCT

The schedule lists the software to be provided as part of the solution and provision of the Services so as to:

- Categorise software with respect to IPR, licensing and exit provisions

- Identify software that may be placed in escrow

- Identify the software components of the Contractor Solution

3.   COMPOSITION

The software is set out under the following categories:

- Specially Written Software

- Contractor's Software

- Third Party Software

4.   DERIVATION

- Authority Requirements

- Guidance Note 1 (Key Commercial Principles), section 1 - 7 (Intellectual Property Rights)

- Guidance Note 3 (Ownership and Licensing of Intellectual Property)

- OGC Guidance on IPR Ownership at:

  http://www.ogc.gov.uk/sdtoolkit/reference/ogc_library/procurement/owner_ipr.html

5.   **RELATED CLAUSES & SCHEDULES**

    Clauses: Guidance to section G (Intellectual Property, Data and Confidentiality)

                        34 (Intellectual Property Rights)

                        35 (Licences Granted by the Contractor)

                        36 (Licences Granted by the Authority)

                        37 (Assignment of IPR on databases)

                        38 (Project Specific IPR and Specially Written Software)

                        51 (IPR Indemnity)

    Guidance: Guidance Note 1 (Key Commercial Principles), - Section 1 - 7 (Intellectual Property Rights) and 8 (Source Code Deposit and Delivery)

                        Guidance Note 2 (Payment, Affordability and Asset Ownership)

                        Guidance Note 3 (Ownership and Licensing of Intellectual Property)

    Schedules: Schedule 5.2 (Licence Terms)

                        Schedule 5.3 (Escrow Terms)

6.   **ALLOCATION**

The Authority should issue a pro-forma schedule to bidders for completion during contract development stage of the procurement (see Pro-forma/Example Schedule). The Authority should carefully consider the proposed schedule during the dialogue phase of the procurement.

7.   **QUALITY / REVIEW**

- Authority to review and agree the bidder's proposed schedule.

- Authority expertise: procurement, technical, commercial, legal.

Sections B and C

Pro-Forma/Example Schedule and Guidance

1.   INTRODUCTION

1.1   This schedule details the various elements of the Software and categorises them into Specially Written Software, Contractor's Software and Third Party Software. This schedule also lists which elements of the Software are to be are placed into escrow as Deposited Software.

1.2   Ideally the creation and maintenance of complete lists for each type of software, as suggested by this schedule, should be an obligation on the Contractor. A complete and up to date asset register will be of particular value to the Authority on exit from the Agreement. It is recognised however that in some applications the maintenance of complete and accurate lists may be an extremely onerous activity. In such cases the Authority must judge whether a relaxation of this obligation is justifiable.

1.3   The Software is licensed in accordance with the provisions of Section G of the Agreement.

1.4   The parties agree that they will update this schedule periodically to record any software subsequently acquired from third parties or developed for the delivery of the Services.

2. SPECIALLY WRITTEN SOFTWARE

[Guidance: this category of "Specially Written Software" may not be required depending on the licence arrangements. If the Authority is licensing an entire software solution pursuant to one licence it may not be concerned by the composition of the software solution. However, if there is any possibility that it may be required at some point, the provisions should be included]

2.1 The Specially Written Software shall consist of any programs, codes and software written by or on behalf of the Contractor for use by the Contractor specifically in the provision of the Services (including any modifications or enhancements made to such software during the Term) and including (but not limited to) the following items:

Software	Supplier (if Affiliate of the Contractor)	Purpose	To be deposited in Escrow (Deposited Software)?
			Yes / No
			Yes / No
			Yes / No
			Yes / No

[Guidance: It may not always be possible or practical to list the elements of the Special Written Software by name and alternative ways of documenting what is included may need to be considered, provided that it is clear what is included. One potential way of resolving the problems of identifying particular lines of bespoke code or modules would be for the Contractor to use its or a mutually acceptable convention for identifying Specially Written Software and Contractor Software. An additional column could be added to record this numbering system. The Authority must be comfortable that it understands the numbering/version control systems adopted by the Contractor.]

2.2 The Contractor will develop Software to meet the Authority's requirements. The following components will be modified to create the Specially Written Software:

[Guidance: List the components to be modified to create Specify Specially Written Software]

[Guidance: A Contractor's solution will often comprise a mix of component software and Specially Written Software, which is then integrated with existing Contractor Software. This may create additional Specially Written Software which will need to be integrated into the final solution. To track Specially Written Software developed in this way it should be listed above.]

3. CONTRACTOR SOFTWARE

The Contractor Software comprises the following items*:*

Software	Supplier (if Affiliate of the Contractor)	Purpose	[Number of Licences]	[Restrictions]	[Number of Copies]	[Other]	To be deposited in Escrow (Deposited Software)?
							Yes / No
							Yes / No
							Yes / No
							Yes / No
							Yes / No
							Yes / No
							Yes / No
							Yes / No

4. THIRD PARTY SOFTWARE

The Third Party Software shall [include] [consist of] the following items:

Third Party Software	Supplier	Purpose	[Number of Licences]	[Restrictions]	Number of Copies]	[Other]	To be deposited in Escrow (Deposited Software)?
							Yes / No
							Yes / No
							Yes / No
							Yes / No
							Yes / No
							Yes / No
							Yes / No

5. DEPOSITED SOFTWARE

The Contractor shall deposit the Software [identified in paragraphs 2, 3 and 4 above] as Deposited Software into escrow in accordance with the provisions of clause 39 (Escrow):

Category (Specially Written Software, Contractor Software or Third Party Software)	Supplier	Description	Restrictions	Date Deposited