

ATTACHMENT C
BENCHMARKING

1. Definitions

- a. **Adjustment Date** is defined in Section 8(b) herein.
- b. **Benchmark** means an analytical study to compare the cost and quality of specific processes with respect to services received by a customer with those of selected Comparators.
- c. **Benchmark Commencement Date** is defined in Section 8(a) herein.
- d. **Benchmarked Service(s)** means the Services that the Client elects to include in the Benchmark Process. The scope of Benchmark Services shall be determined by the Client, and may include any subset of the Services (including any Service Area or a more granular subset of Services).
- e. **Benchmarker** means the independent third party appointed by the Client, pursuant to Section 2, to conduct the Benchmark Process.
- f. **Benchmark Notice Date** is defined in Section 8(a) herein.
- g. **Benchmark Process** means the objective measurement and comparison process and methodology used by the Benchmarker to conduct the Benchmark.
- h. **Benchmark Report** means the Benchmarker's written report of the results of the Benchmark Process, including any appropriate supporting documentation.
- i. **Comparators** means the other outsourced organizations (including, without limitation, private companies, public entities, NGOs and entities that may be customers of Vendor as well as customers of other third party outsourcing service providers) receiving services that are similar to the Services under the Agreement, and which are used as comparison points for the purposes of the Benchmark.
- j. **Upper Third** means the highest fees charged to the Comparators within the sixty-sixth and 2/3rd percentile (i.e., top thirty-three and 1/3rd percent (33.33%)) for services that are similar to the Services received by the Client under this Agreement.

2. Appointment of Benchmarker

The Client shall have the right to conduct (or have conducted) a Benchmark under this Agreement to ensure that the Fees and/or Services (including Service Level Requirements) are competitive with those charged or provided to the Comparators.

The Client shall have the right to appoint a third party Benchmarker that is independent, qualified and objective. The Parties shall confer in good faith regarding the selection of the Benchmarker; provided, however, that the Benchmarker shall be selected pursuant to Client's procurement processes and Vendor shall not unreasonably withhold its approval of the selected Benchmarker. In no event shall a direct competitor of Vendor in the IT services industry, that provides services similar to the Benchmark Services set forth in this Agreement, be selected as a Benchmarker.

3. Scope of Benchmark

- a. **Benchmark of Fees.** The Client may request a Benchmark for all or any portion of the Fees charged by Vendor for all or any portion of the scope of Services under this Agreement.

b. Benchmark of Services. The Client may request a Benchmark for all or any portion of the Services used by the Client under the Agreement. Furthermore, the Client may define the scope of the Benchmarked Services to include any Service Area, or any other granular subset of the Services.

4. Timing and Frequency of Benchmark

During the Term, the Client shall have the right to conduct a Benchmark of each Service Area on an annual basis, but no more than one time per each rolling twelve (12) month cycle.

5. Benchmarking Methodology

The Benchmarker will normalize all data to obtain relevant comparisons with respect to the Comparators for purposes of the Benchmark. The Parties shall rely on the Benchmarker's standard Benchmark Process and methodology, including standard normalization criteria, which shall include, but not be limited to, the following:

- (a) data from a statistically significant sample of the Comparators;
- (b) geographic scope for the Fees and/or Service Level Requirements that are the subject of the Benchmark;
- (c) the nature, type and volume of the services received and the respective service environments, including the hardware or software used to provide the subject Benchmarked Services; and
- (d) relevant contractual terms and conditions.

Each Party may provide reasonable suggestions to the Benchmarker regarding normalization and other relevant Benchmarking criteria that may comprise the Benchmark Process; provided, however, that the Client shall have the final right of approval for all Benchmarking criteria to be used by the Benchmarker; and provided further that Benchmark Commencement Date shall not be adjusted or delayed unless the Client has agreed in writing.

6. Cooperation with Benchmarker

Vendor agrees that it shall act in good faith and comply fully and promptly with requests by the Benchmarker relating to the Benchmarking Process, including requests for information, reports, data and access to personnel. Vendor shall not delay, impede, obstruct or otherwise frustrate or prevent the Benchmarker from obtaining the information required to complete the analysis.

7. Costs of Benchmark

The Client and the Vendor shall equally split all fees and charges owed to the Benchmarker. Vendor shall participate and cooperate fully and promptly with the Benchmarker and shall pay its own costs, including without limitation the use of Vendor and Vendor's Subcontractors' labor, associated with such participation and cooperation.

8. Benchmark Process

(a) Client may not conduct a Benchmark during the first Contract Year of the Agreement. Following the first Contract Year, if the Client elects to conduct a Benchmark, the Client shall notify the Benchmarking Process and Vendor in writing, and the date of such written notice shall be known as the "Benchmark Notice Date". The Benchmarking Process shall commence the Benchmarking Process within thirty (30) days following the Benchmark Notice Date ("Benchmark Commencement Date"). The Benchmarking Process shall notify the Client and Vendor upon the completion of the Benchmark Report, and the Parties shall meet to discuss such report within ten (10) business days following its completion.

(b) If the Benchmark Report indicates that the Fees charged to the Client are more than the highest fees charged to Comparators within the Upper Third then the Client shall be entitled to an automatic adjustment of its Fees to a price point that is within the Upper Third. Such adjustment of Fees shall be made within thirty (30) days following the completion of the Benchmark Report, and shall be made effective on a date that shall be no later than three (3) months following the Benchmark Notice Date (hereinafter the "Adjustment Date").

(c) If the Benchmark Report indicates that the Benchmarked Services (including SLRs) provided to the Client do not meet the standard for the Comparators (e.g., the absence of SLRs that are standard for the Comparators, or SLR targets that are below the average threshold for the Comparators receiving similar Services), then the Parties shall discuss and agree upon an adjustment to the scope of Services (including the addition of SLRs or adjustment to SLR targets), and such adjustment shall be made within thirty (30) days following the completion of the Benchmark Report, and shall be made effective as of the Adjustment Date.

For clarity, if the Benchmark is not concluded and/or the Parties do not reach agreement on an adjustment to Fees and/or scope of Services (including SLRs) until after Adjustment Date, all such changes shall be made retroactive to the Adjustment Date.

9. Remedies

(a) Failure to Cooperate with Benchmarking Process. If the Vendor fails to cooperate with the Benchmarking Process, including, without limitation, a failure to provide requested information, reports, data or access to personnel, and such acts or omissions result in a delay of the completion of the Benchmark that exceeds ninety (90) days following the Adjustment Date, the Vendor shall be deemed to be in material default of the Agreement, and the Client shall, at its option, be entitled to (i) an automatic reduction in the Fees of ten percent (10%), which change shall be made retroactively effective to the Adjustment Date; or (ii) terminate the Agreement, either in whole or in part, or the affected scope of Services, in whole or in part, without liability and without the payment of any termination fees.

(b) Failure to Agree to Fees or SLR Adjustment. If, following the completion of the Benchmark Report, Vendor refuses to make adjustments to Fees and/or Services (including SLRs), or fails to reach agreement with the Client on such adjustments within ninety (90) days following the Adjustment Date, the Client shall be entitled to terminate the Agreement for convenience, either in whole or in part, or the affected scope of Services, in whole or in part, but without liability and without the payment of any termination fees.