

## SCHEDULE 4

### PAYMENT, PERFORMANCE AND INCENTIVISATION MECHANISM

#### 1 DEFINITIONS

Term	Definition
AAR Guidance	means the guidance with respect to costs incurred by contractors providing services to the Authority, to determine categories of costs that are " <i>appropriate</i> ", " <i>attributable to the contract</i> " and " <i>reasonable in the circumstances</i> ", pursuant to the Single Source Contract Regulations 2014.
Annual Charge or AC	means the amount payable in each Contract Year in consideration for the Contractor's delivery of the Services, as calculated in accordance with Paragraph 2.3 ( <i>Calculation of the Total Annual Charge for each Contract Year</i> ).
Annual Charge Pricing Table or AC Pricing Table	means the pricing table set out in Paragraph 2.5 (a) ( <i>Annual Charge Pricing Table</i> ).
Earn-Back Mechanism	has the meaning given to it in Paragraph 4.3 ( <i>Earn-Back Mechanism</i> ).
Effective Margin	means the actual outturn Profit Margin in any Contract Year prior to the application of the Profit Share Mechanism.
Excess Margin	means the amount by which the Effective Margin exceeds the Profit Share Thresholds.
Final Retention	has the meaning given to it in Paragraph 4.5(a) ( <i>Retentions in the Final Two Months of the Contract Term</i> ).
Firm Price Period	means the period from the Base Date until the final day of the first Contract Year.
Fixed Price Period	means the period from the expiry of the Firm Price Period until the end of the Contract Term.
Foreign Currency	means any currency other than GBP.
Fuel Charge	means the pass through charge for fuel consumed in the provision of the Services, without mark-up or any other costs applied by the Contractor, as further set out in Paragraph 2.6 ( <i>Use of Fuel</i> ).
Fuel Deduction	means the amount which the Authority may deduct from the MC in any Month pursuant to Paragraph 2.6(e) ( <i>Use of Fuel</i> ).
Governance Meetings	means the meetings set out in Part 1.3 of Schedule 6 ( <i>Governance, Management Information, Reports, Records and Audit</i> ).

Meeting Attendance Criteria	has the meaning given to it in Paragraph 3.6 ( <i>Management Information KPI (KPI 2) - Definition and Measurement</i> ).
Management Information KPI or KPI 2	means the performance indicators with respect to Management Information described in Paragraph 3.6 ( <i>Management Information KPI (KPI 2) - Definition and Measurement</i> ).
Minor Non-Performance	<p>means any Non-Performance:</p> <ul style="list-style-type: none"> <li>(a) where the failure relates to the Timing Criteria and the Contractor has agreed in writing with the relevant End User that the training outcomes of the relevant Task were achieved, and has provided such confirmation in the relevant Monthly Performance and Activity Report; and</li> <li>(b) where the failures relates to the Quality Criteria and the Contractor has agreed in writing with the End User that the training outcomes of the relevant Task have been achieved and has provided such confirmation in the relevant Monthly Performance and Activity Report,</li> </ul> <p>provided that no Minor Non-Performance may apply in respect of a failure relating to the Quality Criteria and/or the Safety Criteria.</p>
Mitigated Non-Performance	has the meaning given to it in Paragraph 3.5 ( <i>Failure Against KPI 1 and NPPs</i> ).
Month M	means a month in respect of which the Monthly Payment is to be calculated.
Month M-1	means, with respect to any Month M, the Month falling one (1) Month prior to Month M.
Monthly Charge or MC	means the amount payable by the Authority to the Contractor for its delivery of the Services in a given Month of any Contract Year, to be calculated as set out in Paragraph 2.3 ( <i>Calculation of the Total Annual Charge for each Contract Year</i> ).
Monthly Performance and Activity Report	means the monthly report to be submitted by the Contractor to the Authority setting out the information required by Schedule 6 ( <i>Governance and Management Information, Reports, Records and Audit</i> ).
Non-Performance	means the occurrence of the events or circumstances set out in Paragraph 3.5 ( <i>Failure Against KPI 1 and NPPs</i> ) with respect to KPI 1 or Paragraph 3.7 ( <i>Failure Against KPI 2 and NPPs</i> ) with respect to KPI 2 and, with respect to KPI 1 only, means either:

	<p>(a) a Significant Non-Performance; or</p> <p>(b) a Minor Non-Performance.</p>
Non-Performance Points or NPPs	means points accrued for Non-Performances against KPI 1 and / or KPI 2, as set out in Paragraph 3.5 ( <i>Failure against KPI 1 and NPPs</i> ) and Paragraph 3.7 ( <i>Failure against KPI 2 and NPPs</i> ), respectively.
Non-Performance Point Band or NPP Band	means the band in which performance falls in any month which shall determine the Service Credit applied against the SMC, as set out in the Non-Performance Points Deduction Table.
Non-Performance Points Deduction Table	means the table set out in Paragraph 4.2(c) ( <i>NPPs Accrual</i> ).
On Time in Full or OTIF	has the meaning given to it in Paragraph 3.2(a) ( <i>Services Availability KPI (KPI 1) – Definition and Measurement</i> ).
Potential Termination Triggers	has the meaning given to it in Paragraph 6.4 ( <i>Persistent Non-Performance leading to Termination KPI 1 and KPI 2 Potential Termination Triggers</i> ).
Profit Margin	has the meaning given to it in the Annual Outturn Financial Model.
Profit Share	means any amount due to the Authority as a result of the Profit Share Mechanism.
Profit Share Mechanism	means the mechanism pursuant to which Excess Margin is to be shared between the Authority and the Contractor as described in Paragraph 7.1 ( <i>Profit Share Mechanism</i> ).
Profit Share Percentages	means the profit share percentages which will determine the Profit Share under the Profit Share Mechanism.
Profit Share Table	means the table setting out the Profit Share Thresholds and Profit Share Percentages as set out in Paragraph 7.3 ( <i>Profit Thresholds</i> ).
Profit Share Thresholds	means the amounts set out in the table in Paragraph 7.3 ( <i>Profit Thresholds</i> ).
Quality Criteria	<p>means that the Contractor:</p> <p>(a) completes Tasks in accordance with the Quality Management Plan;</p> <p>(b) completes Tasks in accordance with the Tasking Procedures; and</p> <p>(c) complies with its obligations under Paragraph 3.3(c) (<i>Feedback from End Users</i>).</p>

Quality Element	has the meaning given to it in Paragraph 3.6 ( <i>Management Information KPI (KPI 2) - Definition and Measurement</i> ) .
Safety Criteria	<p>means, with respect to any Task, that:</p> <ul style="list-style-type: none"> <li>(a) it is completed in accordance with the Health, Safety and Environmental Protection Management Plan;</li> <li>(b) it is completed in accordance with the applicable Laws and Standards; and</li> <li>(c) it is completed in accordance with the Safety Management System.</li> </ul>
Service Credit	means the retention or financial deduction applied to the MC in Month M as a result of Total NPPs incurred in Month M-1, in accordance with the calculation set out in Paragraph 2.1 ( <i>Payment</i> ).
Service Credit Retention Release	means the amounts due to the Contractor from the Authority following the application of the Earn-Back Mechanism.
Services Availability KPI or KPI 1	has the meaning given to it in Paragraph 3.2 ( <i>Services Availability (KPI 1) – Definition and Measurement</i> ).
Significant Non-Performance (SNP)	means any Non-Performance arising out of a Task not being completed On Time in Full, unless it qualifies as a Minor Non-Performance.
Task End Time	means the time by which a Task must be completed, as set out in the relevant Tasking Procedures.
Task Start Time	means the time at which a Task must commence, as set out in the relevant Tasking Procedures.
Time Element	has the meaning given to it in Paragraph 3.6 ( <i>Management Information KPI (KPI 2) - Definition and Measurement</i> ).
Timing Criteria	<p>means, with respect to a Task, that:</p> <ul style="list-style-type: none"> <li>(a) the Task commences at the Task Start Time; and</li> <li>(b) the Task is completed in accordance with the agreed timescales and by the Task End Time.</li> </ul>
Total Monthly Payment	has the meaning given to it in Paragraph 2.1 ( <i>Payment</i> ).
Total Non-Performance Points	means the sum of all Non-Performance Points in any given Month across all KPIs.

## 2 PAYMENT FOR SERVICES

### 2.1 Payment

- (a) In consideration for its delivery of the Services and in accordance with the remainder of this Schedule 4 and the Contract, the Authority shall pay the Total Monthly Payment to the Contractor.
- (b) The "**Total Monthly Payment**" shall be calculated as follows:

- (i) MC for Month M;
- (ii) Service Credit Retention Release triggered in Month M-1; and
- (iii) Fuel Charge for Month M-1;

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- (iv) Fuel Deduction from Month M-1;
- (v) Service Credits for Month M-1; and
- (vi) Profit Share for Month M-1.

with the payment for Month M to be made by the Authority following receipt of a valid invoice in accordance with Clause 20 (*Payment and Recovery of Sums Due*) of the Contract.

### 2.2 Annual Charge

- (a) The Authority shall, from the Service Commencement Date, pay the AC to the Contractor for its delivery of the Services.

### 2.3 Calculation of the Total Annual Charge for each Contract Year

- (a) The AC for each Contract Year shall be calculated on the basis of the following formula:

$$AC_x = AC_{F,x} + AC_{FX,x} + \left( AC_{FI,x} \times \frac{HQT I_x}{HQT I_0} \right)$$

Where:

$AC_{F,x}$  = That component in GBP during the Firm Price Period for the Contract Year  $x$  taken from the Annual Charge Pricing Table that is not subject to indexation

$AC_{FX,x}$  = That component in GBP during the Fixed Price Period for the relevant Contract Year taken from the Annual Charge Pricing Table that is not subject to indexation

$AC_{FI,x}$ =	That component in GBP during the Fixed Price Period for the relevant Contract Year taken from the Annual Charge Pricing Table that is subject to indexation
$CPI_x$ =	the D7BTI Index as published by ONS for the July prior to the commencement of Contract Year $X$ for which the AC is being calculated
$CPI_0$ =	the D7BT Index as published by ONS at the Base Date ( $X = 0$ )

- (b) The Contractor shall calculate and submit to the Authority the AC for each forthcoming Contract Year no later than ten (10) days prior to the end of the previous Contract Year.

## 2.4 Calculation of the MC

- (a) For each Month within Contract Year  $x$ , the MC shall be calculated on the basis of the following formula:

$$MC_x = \frac{AC_x}{m_x}$$

Where  $m_x$  is the number of months in contract year  $X$

## 2.5 Annual Charge Pricing Table

- (a) The Annual Charge (in real terms) for the delivery of the Services is set out in the table below:

### Annual Charge Pricing Table

[illegible]

## 2.6 Use of Fuel

- (a) Fuel consumed by the Contractor in the delivery of the Services will be recovered by the Contractor as a pass through cost by way of the Fuel Charge.
- (b) The Contractor shall submit the Fuel Usage Report to the Authority in accordance with the timelines set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*).
- (c) If the Contractor, in its delivery of the Services, purchases Fuel in a Foreign Currency, it shall provide to the Authority:
  - (i) an invoice for the Fuel paid for in Foreign Currency; and
  - (ii) evidence of the date on which the invoice for such Fuel was paid.
- (d) Provided that it is satisfied (acting reasonably) with the items provided by the Contractor pursuant to paragraphs (b) (i) and (ii) above, the Authority shall apply the rate for conversion of the relevant Foreign Currency into GBP published by Defence Economics which applied on the date that the invoice was paid by the Contractor, and this amount shall form part of the Fuel Charge for the relevant Month.
- (e) The Authority shall apply the AAR Guidance to its review of the Fuel Usage Report, and shall be entitled to apply the Fuel Deduction from the relevant Total Monthly Payment for Month M if it determines that the Contractor's use of Fuel during Month M-1 was not in compliance with the AAR Guidance. The Parties shall resolve any dispute with respect to the AAR Guidance and / or the Authority's application of the same in accordance with the Dispute Resolution Procedure.

## 3 PERFORMANCE

### 3.1 KPIs

- (a) The Contractor's delivery of the Services shall be measured and adjusted against the KPIs.
- (b) The Authority may, at any time during the Contract Term, amend the KPIs or recalibrate the basis on which they are measured in accordance with the Change Control Procedure.

### 3.2 Services Availability KPI (KPI 1) - Definition and Measurement

- (a) The "**Services Availability KPI**" or "**KPI 1**" shall be assessed on the basis of the completion of the Task as set out in the Tasking Procedures on an On Time In Full basis, where "**On Time In Full**" means completed in accordance with:
  - (i) the Timing Criteria;
  - (ii) the Quality Criteria; and



- (iii) the Safety Criteria.

### **3.3 Feedback from End Users**

- (a) In relation to the application of the Quality Criteria for KPI 1, the Contractor shall, for all Services delivered and Tasks completed under the Contract:
  - (i) collect feedback from a minimum of fifty per cent (50%) of End Users by means of the End User Questionnaire in the form set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*);
  - (ii) collect feedback from End Users on an ad-hoc basis; and
  - (iii) include in the Monthly Performance and Activity Report, the results of any responses to End User Questionnaires and any ad hoc feedback for the relevant Month.
- (b) The Contractor shall, within five (5) days of the completion of each Task, issue the End User Questionnaire to the relevant End User.
- (c) If an End User does not respond to an End User Questionnaire from the Contractor within thirty (30) days of the date on which it was issued by the Contractor in accordance with Paragraph (c) and (b) above, the Contractor shall, within a period of a further ten (10) days, issue a further request for feedback to the relevant End User. If, within a further ten (10) days after the further request for feedback, no feedback has been provided, the Contractor shall be entitled to assume that no issues have arisen in respect of the relevant Task.

### **3.4 Audit Rights and Feedback from End Users for KPI 1**

- (a) The Contractor's performance against KPI 1 shall be subject to Part E (*Audit*) of Schedule 6 (*Governance, Management Information, Reports, Records and Audit*) and feedback from End Users. The Contractor shall provide data in respect of such audits, End User feedback and its performance against KPI 1, as well as the results of any audits performed pursuant Schedule 6 (*Governance, Management Information, Reports, Records and Audit*), as part of the Monthly Performance and Activity Report.
- (b) Where any audit process performed pursuant to Part E (*Audit*) of Schedule 6 (*Governance, Management Information, Reports, Records and Audit*), or the results of any such audit process, is recorded in the Monthly Performance and Activity Report and identifies an issue with respect to the Contractor's performance against KPI 1, the Contractor shall, within ten (10) Business Days of being notified of such an issue, provide to the Authority:
  - (i) details of the issue(s) identified; and

- (ii) a Quality Rectification Plan for rectification of the relevant issue(s) in accordance with Schedule 6 (*Governance, Management Information, Reports, Records and Audit*).
- (c) The QRP shall set out the methods by which the Contractor intends to rectify the issue(s) and the timescales in which the Contractor will perform such rectification.
- (d) The Authority will review the QRP and shall, within ten (10) Business Days of its receipt thereof, notify the Contractor whether:
  - (i) it approves the QRP; or
  - (ii) it requires the QRP to be amended.
- (e) Where the Authority does not agree the QRP, the Contractor shall submit a revised QRP within five (5) Business Days (where an amended QRP is not agreed by the Authority, the Contractor shall repeat this step until such time as the QRP is agreed).
- (f) The Contractor shall implement the agreed QRP in accordance with the outcomes and timescales set out in the QRP.
- (g) If the Contractor does not comply with the QRP, then the Contractor shall submit an amended QRP within five (5) Business Days of such non-compliance for review by with the Authority (where an amended QRP is not agreed by the Authority, the Contractor shall repeat this step until such time as the QRP is agreed).
- (h) A failure against Quality Criteria for KPI 1 shall occur where the Contractor:
  - (i) fails to issue (or re-issue, as applicable) an End User Questionnaire to any End User as required by Paragraph 3.3 (*Feedback from End Users*) above; and / or
  - (ii) fails to submit a QRP to the Authority within ten (10) Business Days of the issue first being identified, with a failure occurring on the 11<sup>th</sup> day and each day thereafter until the QRP is submitted; and / or
  - (iii) fails to submit a revised QRP (or amended QRP) to the Authority within five (5) Business Days of the revised QRP (or amended QRP) being required by the Authority, with a failure occurring on the sixth day and each day thereafter until the revised (or amended) QRP is submitted; and / or
  - (iv) fails to comply with the agreed QRP or amended QRP, with a failure occurring on each day that the Contractor fails to comply.
- (i) Each failure shall count as one (1) failure and apply in the month the failure arises, and NPPs shall apply for each failure at a rate of 26 NPPs per single failure.

- (j) Where the Contractor does not deliver a Task as a result of its failure to comply with KPI 1, that failure shall be captured by, and lead to the accrual of NPPs with respect to KPI 1, as well as its failure and accrual of NPPs for failure to comply with or submit a QRP.

### 3.5 Failure against KPI 1 and NPPs

- (a) A failure to perform a Task On Time In Full against KPI 1 shall constitute a Significant Non-Performance, unless it qualifies as a Minor Non-Performance.
- (b) If the Authority determines that a Task was not completed On Time In Full because of a Relief Event and/or Compensation Event, this shall constitute "**Mitigated Non-Performance**", and this shall be recorded in the relevant Monthly Performance and Activity Report as a non-performance but no NPPs shall apply to such Mitigated Non-Performance.
- (c) Where a Task is not completed On Time In Full for the purposes of KPI 1, the Authority shall be entitled to apply Non-Performance Points on the following basis:

Task	Significant Non-Performance	Minor Non-Performance	Relevant timeframe
Line Item 4.6.2 (Specialist Military Unit)	700	70	Per event (as defined in the Statement of Requirement) on which the Task is not completed On Time In Full
All other Tasks	350	70	For each 24-hour period (such period beginning at 00.00 hours) that the Task is not completed On Time In Full

### 3.6 Management Information KPI (KPI 2) - Definition and Measurement

- (a) The "**Management Information KPI**" or "**KPI 2**" shall be assessed on the basis of the provision of information which is identified as Management Information in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*) in accordance with the following elements:
- (i) the Contractor provides all Management Information to the Authority on time as set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*) (the "**Time Element**");

- (ii) the Contractor provides all Management Information in accordance with the form and content set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*), with such compliance (or lack thereof) to be confirmed in writing by the Authority within five (5) days of their delivery (the "**Quality Element**");
- (iii) the personnel identified in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*) (or personnel with delegated authority attending in place of any such personnel) attend Governance Meetings as required by Schedule 6 (*Governance, Management Information, Reports, Records and Audit*); and
- (iv) the Contractor provides minutes of such Governance Meetings within five (5) days of such meeting,

limbs (iii) – (iv) above the "**Meeting Attendance Criteria**".

### 3.7 Failure against KPI 2 and NPPs

- (a) A failure against KPI 2 shall occur where the Contractor:
  - (i) with respect to the Timing Element, fails to submit any Management Information by the date set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*);
  - (ii) with respect to the Quality Element, fails to submit any Management Information compliant with the quality requirements set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*);
  - (iii) with respect to the Meeting Attendance Criteria, fails to:
    - (A) attend any Governance Meeting with the personnel of required seniority and expertise (or personnel with delegated authority) who are appropriately empowered to make decisions on behalf of the Contractor as set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*); and
    - (B) provide any minutes of Governance Meetings in accordance with the timelines set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*).
- (b) Each failure referred to in Paragraph 3.7(a) above shall count as a single failure and NPPs shall accrue from the relevant dates as set out below;
  - (i) with respect to the Timing Element;

- (A) 50 NPPs if the relevant Management Information is one (1) or two (2) days late as against the date set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*);
  - (B) 80 NPPs if the relevant Management Information is three (3) or four (4) days late as against the date set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*); and
  - (C) 120 NPPs if the relevant Management Information is five (5) or more days late as against the date set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*), with 24 NPPs accruing on each day after day five (5) on which the Management Information is late;
- (ii) with respect to the Quality Element:
- (A) 50 NPPs if the relevant Management Information is not of satisfactory quality for one (1) or two (2) days after the required date for submission of the Management Information set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*), until it complies with the requirements of the Quality Element;
  - (B) 80 NPPs if the relevant Management Information is not of satisfactory quality for three (3) or four (4) days after the required date for submission of the Management Information set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*) until it complies with the requirements of the Quality Element; and
  - (C) 120 NPPs if the relevant Management Information is not of satisfactory quality for five (5) or more days after the required date for submission of the Management Information set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*), with 24 NPPs accruing for each day until it complies with the requirements of the Quality Element; and
- (iii) with respect to the Meeting Attendance Criteria:
- (A) 120 NPPs if Contractor personnel of the required seniority and expertise who are appropriately empowered to make decisions on behalf of the Contractor do not attend any governance meeting;
  - (B) If the Contractor fails to provide minutes of governance meetings within five (5) days of the meeting:
    - 1) 50 NPPs if the meeting minutes are one (1) or two (2) days late as against the date set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*);

- 2) 80 NPPs if the meeting minutes are three (3) or four (4) days late as against the date set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*); and
- 3) 120 NPPs if the meeting minutes are five (5) or more days late as against the date set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*), with 24 NPPs accruing on each day after day five (5) on which the meeting minutes are late.

### 3.8 Failure to respond to Change Notices and Deductions

- (a) If the Contractor fails to respond to any Change Notice in accordance with the timescales set out in Clause 28 (*Change*) and Schedule 19 (*Change Control Procedure*) of the Contract, this shall constitute a failure against the Timing Element of KPI 2, and NPPs shall accrue for such failure in the same manner.

## 4 NON-PERFORMANCE POINTS AND SERVICE CREDITS – KPI 1 AND KPI 2

### 4.1 Recording of Non-Performances

- (a) All Non-Performances shall be recorded by the Contractor in the relevant Monthly Performance and Activity Report.

### 4.2 NPPs Accrual

- (a) At the end of Month M, the Total NPPs accrued across KPI 1 and KPI 2,  $NPP_M$  shall be calculated as follows:

$$NPP_M = NPP_{KPI_1,M} + NPP_{KPI_2,M}$$

Where,  $NPP_{KPI_1,M}$  and  $NPP_{KPI_2,M}$  are the number of non-performance points accrued, after any applicable adjustments in accordance with Paragraph 6, against KPIs 1 and 2 respectively in month M.

- (b) The Total NPPs accrued during that Month shall, following the calculation set out in Paragraph 4.2(a) above, be recorded in the Performance and Activity Report following the decision of the Monthly Performance Review Board as set out in Schedule 6 (*Governance, Management Information, Reports, Records and Audit*).

### Non-Performance Points Deduction Table

- (c) The Service Credit for the Contractor's performance in Month M-2 shall be applied as a deduction against the Total Monthly Payment in Month M, following calculation in accordance with the Non-Performance Points Deduction Table.

		<b>Service Credit</b>
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NPP Band	Total Non-Performance Points for the Month	Retention or Deduction	% MC Retained or Deducted
0	0	None	None
1	from 1 to 210	None	None
2	211 to 350	Retention	1% of the MC
3	351 to 410	Retention	2% of the MC
4	411 to 560	Retention	3% of the MC
5	561 to 660	Permanent deduction	3.5% of the MC
6	661 to 810	Permanent deduction	4.5% of the MC
7	811 to 950	Permanent deduction	6% of the MC
8	951 to 1350	Permanent deduction	8% of the MC
9	1351 and above	Permanent deduction	10% of the MC

#### 4.3 Earn-Back Mechanism

- (a) If, in any Month (month M), the Contractor's accrued combined total of KPI 1 and KPI 2 NPPs falls within NPP Band 2 – 4, the Authority shall be entitled to retain the portion of the MC corresponding to the relevant NPP Band as set out in the Non-Performance Points Deduction Table against the Monthly Charge in the following month.
- (b) If, in the Month (month M) following a retention of MC as outlined in paragraph 4.3(a), the Contractor's accrued combined total of KPI 1 and KPI 2 NPPs falls within Bands 0 or 1, such retentions shall be earned back and the Authority shall return the sums previously retained for the preceding Months, M-1 to the Contractor with the Monthly Charge in month M+1.
- (c) If, in any Month (month M), the Contractor's accrued combined total of KPI 1 and KPI 2 NPPs fall within NPP Band 5 or higher, the Authority shall be entitled to apply a permanent deduction against the MC corresponding to the relevant NPP Band as set out in the Non-Performance Points Deduction Table against the Monthly Charge in M+1. The Contractor shall have no ability to earn such deduction back.
- (d) If the Contractor fails to earn back a retention in accordance with (b) above then such retention shall become a permanent deduction and will no longer be capable of being earned back.
- (e) The process set out in Paragraph 4.3(b) above shall be known as the "**Earn-Back Mechanism**".

#### 4.4 NPPs on Expiry or Termination

- (a) On termination or expiry of the Contract, all retentions that have been levied as a result of NPPs that have not been released to the Contractor as a result of the Earn-Back Mechanism shall be:
- (i) released to the Contractor in the event of termination of this Contract pursuant to Clause 57 (*Termination for Authority Default*) or Clause 59 (*Authority Voluntary Termination Right*) and Schedule 20 (*Compensation on Termination*);
  - (ii) retained by the Authority in the event of termination of this Contract pursuant to Clause 56 (*Termination for Contractor Default*) or Clause 58 (*Termination for Prohibited Acts*) and Schedule 20 (*Compensation on Termination*); or
  - (iii) retained in an amount equal to fifty per cent (50%) by the Authority, with the remaining fifty per cent (50%) released to the Contractor in the event of termination of this Contract pursuant to Clause 54.7 (*Force Majeure*), at the Expiry Date.
- (b) The provisions of this Paragraph 4.4 shall not apply to any deductions made by the Authority against the MC in accordance with the Non-Performance Points Deduction Table, and such deductions shall be permanent.

#### **4.5 Retentions in the final two Months of the Contract Term**

- (a) For the penultimate and final Months of the Contract Term, the Authority shall retain an amount equal to ten per cent (10%) of the MC (the "**Final Retention**") and, once the Contractor's delivery of the Services in those Months and any corresponding NPPs have been measured in accordance with Paragraph 4.2 (*NPPs Accrual*), the Authority shall:
- (i) with respect to the penultimate Month of the Contract Term:
    - 1) if the Contractor incurs fewer than 411 NPPs, shall return to the Contractor an amount equal to the difference between the Final Retention and the amount due to be retained as a result of the Contractor's actual accrual of NPPs in the penultimate Month, on the final Business Day of the month immediately after the expiry of the Contract Term; and
  - (C) if the Contractor incurs between 411 and 660 NPPs, retain the Final Retention permanently; and
  - (ii) with respect to the final Month of the Contract Term:
    - (D) if the Contractor incurs fewer than 411 NPPs, shall return to the Contractor an amount equal to the difference between the Final Retention and the amount due to be retained as a result of the Contractor's actual accrual of NPPs in the final Month, on the final



Business Day of the second month immediately after the expiry of the Contract Term; and

- (E) if the Contractor incurs between 411 and 660 NPPs, retain the Final Retention permanently.

## **5 MONTHLY PERFORMANCE AND ACTIVITY REPORT**

### **5.1 Reporting of Non-Performance – all KPIs**

- (a) The Contractor shall report its delivery of the Services against each KPI by way of the Monthly Performance and Activity Report and in accordance with the process set out in Schedule 6 (*Governance and Management Information, Reports, Records and Audit*).
- (b) The Contractor shall apply the decision of the Monthly Performance Review Board (including whether any reported Minor Non-Performances are confirmed as such by the Monthly Performance Review Board and the impact of Non-Performances in the relevant Month against the Contractor's compliance with the KPIs) with respect to its impact on the Total Monthly Payment for the Month falling two (2) Months after the Month in which the relevant Tasks were performed.
- (c) If the Contractor and the Authority do not agree any Monthly Performance and Activity Report, they shall follow the Dispute Resolution Procedure to resolve the disagreement. Any deductions and / or retentions made against any Total Monthly Payment relating to disputed Non-Performances shall remain unless and until such dispute is concluded.

## **6 PERSISTENT NON-PERFORMANCE AND RATCHET MECHANISM**

### **6.1 Persistent Non-Performance against KPI 1 in the same Month**

- (a) If 3 – 4 Non-Performances against KPI 1 occur in the same Month against the same Task, the NPPs accrued for failures against KPI 1 in that month shall be multiplied by 1.1.
- (b) If 5 – 6 Non-Performances against KPI 1 occur in the same Month against the same Task, the NPPs accrued for failures against KPI 1 in that Month shall be multiplied by 1.15.
- (c) If 7 – 8 Non-Performances against KPI 1 occur in the same Month against the same Task, the NPPs accrued for failures against KPI 1 in that Month shall be multiplied by 1.2.
- (d) If 9 or more Non-Performances against KPI 1 occur in the same Month against the same Task, the NPPs accrued for failures against KPI 1 in that Month shall be multiplied by 1.25.

### **6.2 Persistent Non-Performance of the Services against KPI 1 in consecutive Months**

- (a) If 7 –8 Non-Performances against KPI 1 occur against the same Task instructed in accordance with the Statement of Requirement in consecutive Months, the NPPs accrued for failures against KPI 1 for the second Month shall be multiplied by 1.2, and a further 0.2 shall be added to this multiplier for each Month after the second Month in which 7 –8 Non-Performances with respect to KPI 1 continue to occur against the same Task.
- (b) If 9 or more Non-Performances against KPI 1 occur against the same Task instructed in accordance with the Statement of Requirement in consecutive Months, the NPPs accrued for failures against KPI 1 for the second month shall be multiplied by 1.25 and a further 0.2 shall be added to such multiplier for each Month after the second Month in which 9 or more Non-Performances with respect to KPI 1 continue to occur against the same Task.

### 6.3 Persistent Non-Performance against KPI 2 in consecutive Months

- (a) With respect to KPI 2 if, in consecutive months, the Contractor accrues NPPs in relation to the same failure under:
  - (i) the Timing Element;
  - (ii) the Quality Element; and / or
  - (iii) the Meeting Attendance Criteria:
    - (A) in the first Month, the NPPs set out in Paragraph 3.7 (*Failure Against KPI 2 and NPPs*) shall apply for each failure; and
    - (B) in each subsequent Month, the NPPs set out in Paragraph 3.7 (*Failure Against KPI 2 and NPPs*) shall apply and be multiplied by 1.5 for each failure.

### 6.4 Persistent Non-Performance leading to Termination

#### KPI 1 and KPI 2 Potential Termination Triggers

- (a) The following scenarios shall, with respect to either or both of KPI 1 and KPI 2, constitute "**Potential Termination Triggers**".
  - (i) the Contractor's accrual of NPPs is in NPP Band 5 or greater for eight (8) Months, whether consecutive or not, out of twelve (12) months;
  - (ii) the Contractor's accrual of NPPs is in NPP Band 7 or greater for seven (7) Months, whether consecutive or not, out of twelve (12) Months; and/or
  - (iii) the Contractor's accrual of NPPs is in NPP Band 9 for 6 Months, whether consecutive or not, out of twelve (12) Months.

- (b) The occurrence of any Potential Termination Trigger under this Schedule 4 shall constitute a Default and the provisions of Clause 49 (*Contractor Default and Rectification Plan*) of the Contract shall apply.
- (c) NPPs, Service Credits and the multiplier mechanisms set out in this Paragraph 6 shall continue to apply during the period for which the process set out in Clause 49 (*Contractor Default and Rectification Plan*) continues.

## **7 PROFIT SHARE**

### **7.1 Profit Share Mechanism**

- (a) If and to the extent that the Contractor is able to increase its Effective Margin under the Contract for the delivery of the Services (as calculated in accordance with the Monthly Financial Model provided as part of the Annual Financial Report), the Authority shall, subject to the provisions of this Paragraph 7, be entitled to share in any Excess Margin enjoyed by the Contractor by way of the Profit Share Mechanism.

### **7.2 Annual Financial Report**

- (a) The Annual Financial Report shall be prepared and submitted in the form set out in, and contain the information required by, Schedule 6 (*Governance and Management Information, Reports, Records and Audit*) and Schedule 31 (*Financial Models*), and shall be subject to Part E (*Audit*) of Schedule 6 (*Governance and Management Information, Reports, Records and Audit*).
- (b) Where the Effective Margin exceeds the agreed Profit Share Thresholds, any Excess Margin shall be shared between the Contractor and Authority in accordance with the agreed Profit Share Percentages set out in Paragraph 7.3 (*Profit Share Thresholds*) below.
- (c) Any resultant Profit Share shall be reported in the Annual Financial Report.
- (d) Where the Contractor's actual costs of performing the Services exceed those forecast in the latest Updated Baseline Financial Model (or, the Baseline Financial Model, if such model has not been updated in accordance with the provisions of Schedule 31 (*Financial Models*)) and the Contractor's Effective Margin is less than the forecast Profit Margin, no adjustment shall be made and the Authority shall continue to pay the AC to the Contractor.
- (e) The Contractor shall, within three (3) Months after its submission to the Authority of the required information in accordance with Schedule 6 (*Governance, Management Information, Reports, Records and Audit*) and having applied the mechanism set out in this Paragraph 7, notify the Authority of any Effective Margin in excess of the Profit Share Thresholds in Paragraph 7.3 (*Profit Share Thresholds*) below and the percentage of Excess Margin which the Contractor considers the Authority is entitled to. The Authority shall, within five (5) days of the Contractor's notification, inform the Contractor whether:

- (i) it agrees with the Contractor's findings (in which case the Authority shall be entitled to deduct the Profit Share against the Monthly Payment for the following Month in accordance with Paragraph 2.12.1(b) (*Payment*)); or
  - (ii) it disagrees with the Contractor's findings (in which case the Authority and the Parties shall follow the Dispute Resolution Procedure to resolve the matter.
- (f) The Authority shall be entitled to deduct any undisputed portion of the Profit Share against the Monthly Payment for the following Month in accordance with Paragraph 2.1(b) (*Payment*).

### 7.3 Profit Share Thresholds

- (a) Where the Effective Margin exceeds the agreed Profit Share Thresholds, any Excess Margin shall be shared between the Contractor and Authority in accordance with the agreed Profit Share Percentages, as set out in the table below:

Band	Profit Share Threshold	Profit Share
1	Redacted under FOIA section 43: Trade secrets and prejudice to Commercial Interests	Redacted under FOIA section 43: Trade secrets and prejudice to Commercial Interests
2	Redacted under FOIA section 43: Trade secrets and prejudice to Commercial Interests	Redacted under FOIA section 43: Trade secrets and prejudice to Commercial Interests
3	Redacted under FOIA section 43: Trade secrets and prejudice to Commercial Interests	Redacted under FOIA section 43: Trade secrets and prejudice to Commercial Interests