

SCHEDULE 10 - PERFORMANCE MECHANISM**1 Definitions**

1.1 Without prejudice to Schedule 1 (Definitions and Interpretations), for the purposes of this Schedule 10, the following terms shall have the following meanings.

Term	Definition
Assessment Period	Means: (1) for a KPI which is measured monthly, a rolling period of six months, the last month of which is the most recent Review Period; and (2) for a KPI which is measured quarterly a rolling period of one year; and (3) for a KPI which is measured annually, one Contract Year;
Continuous Improvement	Has the meaning set out in Schedule 14 (Continuous Improvement Plan);
Deduction Sum	Means the sum detailed in Annex A which may be withheld by the Authority in respect of Performance Failure (Level 1);
Key Performance Indicator ("KPI")	Means the high level performance metric and its associated method of measurement(s) to be used to assess the Contractor's overall performance of the Contract as set out in Annex A to this Schedule 10;
Level 1 Chairman	Has the meaning set out in Schedule 4 (Governance and Contract Management);
Level 2 Chairman	Has the meaning set out in Schedule 4 (Governance and Contract Management);
Level 2 Meeting	Has the meaning set out in Schedule 4 (Governance and Contract Management);
Level 2 Progress Report	Has the meaning set out in Schedule 4 (Governance and Contract Management);
Level 2 Representative	Has the meaning set out in Schedule 4 (Governance and Contract Management);
Level 3 Chairman	Has the meaning set out in Schedule 4 (Governance and Contract Management);
Level 3 Meeting	Has the meaning set out in Schedule 4 (Governance and Contract Management);
Level 3 Progress Report	Has the meaning set out in Schedule 4 (Governance and Contract Management);

Performance Failure (Level 1)	Means the level of Contractor performance as defined in paragraph 3.1c of this Schedule 10
Performance Indicators (“ PI ”)	Means the Contractor’s performance metrics and measures used to monitor and assess its own performance against the delivery of the Services;
Performance Monitoring System (“ PMS ”)	Means the Contractor’s self monitoring system used to monitor its performance against the Contract as described at Annex B to this Schedule 10;
Performance Register	Means a document maintained by the Contractor and used to record key performance measurements against PIs and KPIs;
Remedy Plan	Means the Contractor’s proposal to correct Performance Failure (Level 1) containing the information set out in paragraph 8.2 of this Schedule 10;
Retention Sum	Means the sum detailed in Annex A which may be withheld by the Authority in respect of Sub-Standard Performance (Level 2);
Review Period	Means the frequency that an assessment against a KPI is undertaken (as set out in Annex A to this Schedule 10) within the Assessment Period;
Satisfactory Performance	Means the level of Contractor performance as defined in paragraph 3.1a of this Schedule 10;
Service Recovery Plan	Means the Contractor’s proposal to correct a Sub-Standard Performance (Level 2), which will include: <ul style="list-style-type: none"> • required actions to return to Satisfactory Performance; and • timetable to achieve Satisfactory Performance;
Sub-Standard Performance (Level 2)	Means the level of Contractor performance as defined at paragraph 3.1b of this Schedule 10;
Unsatisfactory Performance	Means the assessment of the Contractor’s performance which falls below Satisfactory Performance and is categorised as either a Performance Failure (Level 1) or Sub Standard Performance (Level 2).

2 Introduction

2.1 Contractor performance under this Contract will be managed in accordance with this Schedule 10.

- 2.2 The KPIs critical to successful performance of the Contract are listed at Annex A to this Schedule 10.
- 2.3 The Parties have agreed that the KPIs represent those key elements of the Services which underpin satisfactory delivery of the Services. The KPIs are designed to effectively incentivise the Contractor to properly perform its obligations under this Contract and, where the delivery of the Services has fallen below the standard expected of the Contractor as measured against the KPIs in accordance with the provisions of this Schedule 10, to compensate the Authority appropriately. In such circumstance, the Contractor's obligation is then to recover the level of performance at no additional cost to the Authority, such that the Authority only pays for the receipt of Satisfactory Performance and is appropriately compensated for Unsatisfactory Performance.
- 2.4 The KPIs listed at Annex A specify how the Contractor's performance of the Services is to be measured and what level of Contractor performance the Authority requires to demonstrate a level of Satisfactory Performance against the Contract.
- 2.5 Any Unsatisfactory Performance shall entitle the Authority to make a retention in respect of any Sub-Standard Performance (Level 2), or a deduction in respect of any Performance Failure (Level 1), such amounts as specified in Annex A to be withheld or deducted from amounts due to the Contractor in accordance with paragraphs 6 and 9.
- 2.6 The amount payable to the Contractor each month in accordance with Schedule 3 (Contract Price and Payment) shall be adjusted to account for the making of any retention or release of any retention made in respect of any Sub-Standard Performance (Level 2) and for any deduction made in respect of a Performance Failure (Level 1) occurring in the month to which the invoice recording the retention or deduction relates.
- 2.7 Where an Unsatisfactory Performance has occurred that is capable of being classed as a failure under more than one KPI, the Authority is only entitled to make a single retention or deduction as applicable. In such circumstances, the Authority shall be entitled to make a retention or deduction in respect of the KPI carrying the highest value withholding or deduction.
- 2.8 Retentions or deductions made by the Authority in respect of an Unsatisfactory Performance shall be the sole remedy of the Authority in respect of such performance failure other than in circumstances where the Authority exercises its rights under clause 51 (Failure of Performance), in which case any damages or other amount claimed by the Authority in respect of exercising such rights shall be reduced by the amount of any such retention or deduction.

Contractor Performance

3 Assessment of Contractor Performance

- 3.1 The levels of Contractor performance are defined as follows:
- a Satisfactory Performance means a level of Contractor performance which meets or exceeds the minimum levels of performance as determined by reference to the indicators and thresholds set out at Annex A to this Schedule 10;

- b Sub-Standard Performance (Level 2) means a failure by the Contractor to meet the minimum levels of Satisfactory Performance but where performance remains above the standard of a Performance Failure (Level 1) as determined by reference to the indicators and thresholds set out at Annex A to this Schedule 10; and
- c Performance Failure (Level 1) means either an extended Sub-Standard Performance (Level 2), as determined pursuant to paragraph 7, or the Performance Failure (Level 1) indicators and thresholds specified at Annex A have been reached.

4 Unsatisfactory Performance

- 4.1 In the event that the Contractor's performance is determined to be Unsatisfactory Performance after being assessed against the relevant KPIs at Annex A within the Review Period in accordance with paragraph 12.1 the Parties shall comply with the provisions and requirements of this Schedule 10.

5 Sub-Standard Performance (Level 2) Approach

- 5.1 The Level 3 Progress Report delivered by the Contractor at the Level 3 Meetings will detail any Sub-Standard Performance (Level 2) which has occurred and contain a Service Recovery Plan outlining the steps the Contractor intends to take to avoid further Sub-Standard Performance (Level 2).
- 5.2 The Authority or any representative reserves the right to notify the Contractor via the relevant Level 3 Chairman of a Sub-Standard Performance (Level 2) as described at Annex A in the event of the Contractor not recognising any such Sub-Standard Performance (Level 2).

6 Sub-Standard Performance (Level 2) Payment Retention Calculation

- 6.1 In the event that the Contractor's performance against a KPI is a Sub-Standard Performance (Level 2), the Authority shall be entitled to withhold from the next Monthly Sum due to the Contractor, and those thereafter, until the Contractor's performance is returned to Satisfactory Performance in respect of such KPI, an amount equal to that identified against the relevant KPI in the "Retention Sum" column in Annex A to this Schedule 10. For the avoidance of doubt, the decision as to whether Satisfactory Performance is achieved shall be at the sole discretion of the Level 3 Chairman.
- 6.2 Following return to Satisfactory Performance, the Authority shall pay to the Contractor the withheld amount as part of the next Monthly Sum due to the Contractor in accordance with Schedule 3 (Contract Price and Payment).

7 Performance Failure (Level 1) Trigger Point

- 7.1 In the event that the total number of Sub-Standard Performances (Level 2) under a particular KPI in an Assessment Period is three, the most recent Sub-Standard Performance (Level 2) shall be deemed a Performance Failure (Level 1). The Authority shall be entitled to permanently retain all sums previously withheld in respect of the Sub-Standard Performance (Level 2) and to deduct a further amount (if any) by which the applicable Performance Failure (Level 1) deduction in respect of such KPI exceeds the amounts retained in respect of the Sub-Standard Performance (Level 2).

- 7.2 In the event that the total number of Sub-Standard Performances (Level 2) is recorded across the KPIs for Input and Output Services as detailed at Annex A is 6 or more the Authority considers that the Contractor's overall performance to be seriously deficient and the Sub-Standard Performance (Level 2) assessment for each of the Sub-Standard KPIs will be raised to Performance Failure (Level 1).

8 Performance Failure (Level 1) Approach

- 8.1 The Contractor shall immediately notify the Level 2 Chairman of any Performance Failure (Level 1). The Authority or any representative reserves the right to notify the Contractor via the Level 2 Chairman of a Performance Failure (Level 1) in the event of the Contractor not recognising any such Performance Failure (Level 1).
- 8.2 The Contractor shall submit, no later than five Business Days after notification of the Performance Failure (Level 1) to the Level 2 Chairman, a Remedy Plan setting out the reasons for the Performance Failure (Level 1) and its proposals for restoring Satisfactory Performance, and including, as a minimum, the following criteria:
- a required actions to return to Satisfactory Performance;
 - b key recovery milestone dates and timetable to achieve Satisfactory Performance;
 - c resources required;
 - d methods/processes;
 - e financial implications (if applicable);
 - f monitoring/progress reporting;
 - g recommendations to prevent re-occurrence;
 - h lessons learnt to be applied to other services;
 - i how the Contractor intends to demonstrate to the Level 2 Chairman the achievement of Satisfactory Performance; and
 - j the date by which Satisfactory Performance will be achieved.
- 8.3 The Level 2 Chairman shall review the Remedy Plan proposed by the Contractor and either accept the proposed Remedy Plan or provide comments on the proposed Remedy Plan within five Business Days of its receipt. Where the Authority provides comments on the Remedy Plan, the Level 2 Chairman shall clearly outline to the Contractor the reasoning behind such comments. The Contractor shall, within a further five Business Days, amend the Remedy Plan so as to accommodate the Authority's comments insofar as reasonably practicable. The Parties shall, within two Business Days of the Contractor submitting the amended proposed Remedy Plan, meet to discuss and agree the Remedy Plan.
- 8.4 In the event the Parties are unable to agree the Remedy Plan, the Parties shall escalate the matter in accordance with Schedule 4 (Governance and Contract Management).

8.5 On agreement of the Remedy Plan, the Contractor shall implement it immediately to restore Satisfactory Performance.

8.6 For the avoidance of doubt, the decision as to whether Satisfactory Performance is achieved shall be at the sole discretion of the Level 2 Chairman.

9 Performance Failure (Level 1) Payment Deduction Calculation

9.1 In the event that Contractor's performance against a KPI is a Performance Failure (Level 1), the Authority shall be entitled to deduct from the next Monthly Sum due to the Contractor, and those thereafter until the Contractor's performance against such KPI is Satisfactory Performance, an amount identified in the Performance "Deduction Sum" (Level 1) column in Annex A to this Schedule 10.

10 Persistent Breach Trigger Point

10.1 If the total number of Performance Failures (Level 1) under a particular KPI in an Assessment Period in the case of a KPI having:

- a a monthly Review Period, is three or more, this shall be deemed a Persistent Breach for the purposes of clause 51 (Failure of Performance);
or
- b a quarterly Review Period, is two or more, this shall be deemed a Persistent Breach for the purposes of clause 51 (Failure of Performance);
or
- c the total number of Performance Failures (Level 1) in an Assessment Period is more than 6;

the Authority shall be entitled to determine the Contract in accordance with clause 51 (Failure of Performance) or step-in in accordance with clause 67 (Authority Step-In). Save that any such right to terminate shall be suspended whilst the Contractor is in the course of implementing an agreed Remedy Plan in respect of the earliest of such Performance Failures (Level 1) and may only be exercised where the agreed Remedy Plan fails to return the Contractor to Satisfactory Performance in respect of such KPI in accordance with the timescales set out in the Remedy Plan. For the avoidance of doubt, the suspension of any termination right does not prevent the Authority from making deductions for any such Performance Failure (Level 1).

11 Commencement of any Pecuniary Action

11.1 The sums to be retained or deducted shall be calculated from the date on which the Sub-Standard Performance (Level 2) or Performance Failure (Level 1) occurs.

12 Contract Management and Monitoring

12.1 The management of the Contractor's performance will be undertaken by the Parties in accordance with Schedule 4 (Governance and Contract Management). The Contractor shall monitor performance in accordance with the Contractor's Performance Monitoring System at Annex B but noting the Authority's or any representatives' right to independently identify and raise performance

shortcomings with the Contractor via the relevant Level 3 Chairman or the Level 2 Chairman, as the case may be.

13 Claim for Relief

13.1 In the event that the Contractor's performance against a KPI or KPIs is Unsatisfactory Performance, the Contractor shall be entitled to claim relief from the application of any retention or deduction calculated in accordance with this Schedule 10 as a consequence of such assessment in the following events:

- a the Unsatisfactory Performance is the direct consequence of an act or omission of the Authority or any representative, employee, contractor (other than the Contractor) or agents of the Authority, which has directly impacted on the Contractor's ability to meet its obligations under the Contract; or
- b a Force Majeure Event occurring under Clause 54 (Force Majeure).

13.2 Relief claims shall be presented as part of the Level 3 Progress Report at the Level 3 Meetings.

13.3 In the event that the Parties are unable to agree the relief claim, the Parties shall escalate the matter in accordance with Schedule 4 (Governance and Contract Management).