

**PERFORMANCE MECHANISM****SCHEDULE 12****PART 1 : PREAMBLE****1 Overview**

- 1.1 This Schedule 12 describes how Contractor performance under this Contract will be managed.
- 1.2 The Audit Criteria critical to successful performance of this Contract are listed at Schedule 13 (Audit Criteria).
- 1.3 The Parties have agreed that the Audit Criteria represent those key elements of the Training Services, which underpin satisfactory delivery of the Training Services. The Audit Criteria are designed to effectively incentivise the Contractor to properly perform its obligations under this Contract and, where the delivery of the Training Services has fallen below the standard expected of the Contractor as measured against the Audit Criteria in accordance with the provisions of this Schedule 12, 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.
- 1.4 The Audit Criteria listed at Schedule 13 (Audit Criteria) specify how the Contractor's performance of the Training Services is to be measured and what level of Contractor performance the Authority requires to demonstrate a level of Satisfactory Performance against this Contract.
- 1.5 Any Unsatisfactory Performance shall entitle the Authority to make a deduction 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 Schedule 13 (Authority Audit) to be deducted from amounts due to the Contractor in accordance with paragraphs 5 and 7.
- 1.6 The amount payable to the Contractor each month in accordance with Schedule 9 (Payment Mechanism) shall be adjusted to account for the making of any deduction 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.
- 1.7 Where an Unsatisfactory Performance has occurred against more than one Audit Criteria, the Authority will make deductions as appropriate for each Audit Criteria.
- 1.8 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 66 (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 deduction.

**PART 2 : CONTRACTOR PERFORMANCE****2 Assessment of Contractor Performance.**

2.1 The levels of Contractor performance are defined as follows:

2.1.1 Satisfactory Performance means a level of Contractor performance which meets the minimum level of zero non-conformities.

2.1.2 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 2.1.3; and

2.1.3 Performance Failure (Level 1) means either an extended Sub-Standard Performance (Level 2) of 3 months or more, or more than 5 Sub-Standard Performances (Level 2) in any Audit, pursuant to paragraph 7.

**3 Unsatisfactory Performance.**

3.1 In the event that the Contractor's performance is determined to be Unsatisfactory Performance after being assessed against the relevant Audit Criteria at Schedule 13 (Authority Audit) in accordance with paragraph 10.1, the Parties shall comply with the provisions and requirements of this Schedule 12.

**4 Sub-Standard Performance (Level 2) Approach**

4.1 The Contractor shall immediately notify the Level 3 Chairman of any Sub-Standard Performance (Level 2). The Contractor shall within 3 Business Days of the Sub-Standard Performance (Level 2) submit a draft Remedy Plan to the Level 3 Chairman setting out the reasons for the Sub-Standard Performance (Level 2) and its proposals for restoring Satisfactory Performance. Both Parties shall work together in good faith to agree the final Remedy Plan no later than 10 Business Days after notification of the Sub-Standard Performance (Level 2).

4.2 In the event the Parties are unable to agree the Remedy Plan, the Parties shall escalate the matter in accordance with Schedule 3 (Governance and Contract Management).

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

4.4 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.

4.5 The Authority reserves the right to notify the Contractor via the Level 3 Chairman of a Sub-Standard Performance (Level 2) in the event of the Contractor not recognising any such Sub-Standard Performance (Level 2).

**5 Sub-Standard Performance (Level 2) Payment Deduction**

5.1 In the event that the Contractor's performance against an Audit Criteria is a Sub-Standard Performance (Level 2), the Authority shall be entitled to deduct 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 Audit Criteria, an

amount equal to that identified against the relevant Audit Criteria in the “**Level 2 Deduction**” column in Schedule 13 (Authority Audit) Tables 1 and 2. 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.

5.2 Following return to Satisfactory Performance, the Authority shall discontinue deductions.

## **6 Performance Failure (Level 1) Approach**

6.1 The Contractor shall immediately notify the Level 2 Chairman of any Performance Failure (Level 1). The Contractor shall, within 3 Business Days of the Performance Failure (Level 1) submit a draft Remedy Plan to the Level 2 Chairman setting out the reasons for the Performance Failure (Level 1) and its proposals for restoring Satisfactory Performance. Both Parties shall work together in good faith to agree the final Remedy Plan no later than 10 Business Days after notification of the Performance Failure (Level 1).

6.2 In the event that the Parties are unable to agree the Remedy Plan, the Parties shall escalate the matter in accordance with Schedule 3 (Governance and Contract Management).

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

6.4 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.

6.5 The Authority 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).

## **7 Performance Failure (Level 1) Payment Deduction Calculation**

7.1 In the event that Contractor’s performance against an Audit Criteria 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 Audit Criteria is Satisfactory Performance, an amount identified in the Performance Deduction (Level 1) column in Schedule 13 (Authority Audit). 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.

7.2 In the event that a Performance Failure (Level 1) is triggered by five or more Sub-Standard Performances (Level 2) in accordance with 2.1.3. the sum deducted will increase to the amount of the greatest Performance Failure (Level 1) deduction in respect of the five Sub-Standard Performances.

7.3 Following return to Satisfactory Performance, the Authority shall discontinue deductions.

## **8 Performance Failure (Level 1) Leading to Contractor Default**

8.1 If the total number of Performance Failures (Level 1) in a single quarter’s Audit is three or more, this shall be considered a Performance Failure (Level 1) Default (“**Performance Failure (Level 1) Default**”) and therefore deemed to be a Contractor Default for the purposes of clause 66 (Failure of Performance).

8.2 The Authority shall be entitled to determine the Contract in accordance with clause 66 (Failure of Performance) or step-in in accordance with clause 89 (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 Audit Criteria 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).

## 9 **Commencement of any Pecuniary Action**

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

## 10 **Contract Management and Monitoring**

10.1 The management of the Contractor's performance shall be undertaken by the Parties in accordance with Schedule 3 (Governance and Contract Management). The Contractor shall monitor performance in accordance with the Contractor's Performance Monitoring System at PART 3 to this Schedule 12 but noting the Authority's 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.

## 11 **Claim for Relief**

11.1 In the event that the Contractor's performance against the Audit Criteria is Unsatisfactory Performance, the Contractor shall be entitled to claim relief from the application of any deduction calculated in accordance with this Schedule 12 as a consequence of such assessment in the following events:

11.1.1 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

11.1.2 a Force Majeure Event occurring under clause 71 (Force Majeure).

11.2 Relief claims shall be presented as part of the Level 3 Monthly Performance Report at the PCWG.

11.3 In the event that the Parties are unable to agree the relief claim, the Parties shall escalate the matter in accordance with Schedule 3 (Governance and Contract Management).

**PART 3 PERFORMANCE MONITORING SYSTEM****13 Principles and Background.**

13.1 This PART 3 describes the Contractor's Performance Monitoring System (PMS) to be implemented by the Contractor when measuring and reporting its performance against the Contract to the Authority and within its own organisation.

**14 Audit Criteria**

14.1 The Audit Criteria used to measure the Contractor's performance in this Contract are detailed at Schedule 13 (Authority Audit). The Contractor shall use the PMS to:

14.1.1 evidence Satisfactory Performance against the Audit Criteria;

14.1.2 record Unsatisfactory performance against the Audit Criteria; and

14.1.3 monitor and demonstrate recovery of performance against Remedy Plans

14.2 The performance data held on the PMS will be recorded in accordance with paragraphs 19.1 and 20.1 and summarised in the Level 3 Monthly Reports and Level 2 Quarterly Reports in accordance with Schedule 3 (Governance and Change Management).

**15 Key Performance Indicators (KPIs)**

15.1 During the Implementation Phase and as part of this Schedule 12, the Parties shall agree KPIs against the Training Services (including the procedures detailed against the Audit Criterion in Schedule 13 (Authority Audit)) in this Contract. These KPIs will provide the Parties with management information against the Training Services in the following areas of Schedule 2 (Statement of Requirements):

15.1.1 Annex A Training Delivery Service

15.1.2 Annex B Training Delivery Support Service

15.1.3 Annex C Training Support Services

15.1.4 Annex D Training Equipment Availability Service

15.1.5 Annex E Business Information Service

15.1.6 Annex F Education Services

15.1.7 Annex G Training Optimisation

15.1.8 Annex H Fast Inshore Attack Craft

15.2 The KPIs will also provide early indication of any potential Unsatisfactory Performance.

15.3 In the event that the Parties are unable to agree the KPIs, the Authority, at SCD will state the KPIs to be used in managing the Contractor's performance as part of this Schedule 12.

15.4 The KPIs, agreed by the Parties in accordance with paragraph 15.1 or otherwise stated

by the Authority in accordance with paragraph 15.3, shall be held on the Contractor's PMS and shall be reviewed as part of the PMS review in paragraph 18.1 below.

## 16 **Performance Indicators (PIs)**

16.1 As part of its internal governance procedure, the Contractor shall on at least a monthly basis, define and measure appropriate PIs to:

16.1.1 provide management information that will enable the Authority to assess whether the standard of the Training Services continues to meet the requirements of Schedule 2 (Statement of Requirements);

16.1.2 provide management information for Training Optimisation; and

16.1.3 provide early indications of an impending Sub-Standard Performance (Level 2);

## 17 **Extension Performance Indicators (EPIs)**

17.1 The Contractor's performance against EPIs detailed in Schedule 10 (Options to Extend) will be considered as part of the First Review and, if relevant, the Second Review which will help to inform the Authority's decision to extend the Contract Period.

17.2 The PMS will be used to record the Contractor's performance against the EPIs which will be presented to the Authority as supporting documentation at the First Review and, if relevant, the Second Review.

## 18 **PMS Review**

18.1 The Contractor will review its PMS on at least a quarterly basis, making recommendations of any amendments to the KPIs to the Level 3 Chairman via the PCWG.

## 19 **Measuring Performance against the Indicators**

19.1 The Contractor shall be responsible for collecting, analysing and recording performance data in support of the PMS in accordance with Annex E to Schedule 2 (Statement of Requirements). Source data for performance measurement shall be obtained principally from Authority systems to maximise use of data that is already produced and available.

19.2 The data collection system shall allow the Authority's Representatives to record their individual comments on the delivery of the Training Services, either on request from the Contractor as part of a customer evaluation process, or through feedback passed to a service desk. Service desk records shall be available for inspection by the Authority.

19.3 The Contractor shall, where possible use electronic processes for storing and distributing performance data. Where data is stored manually, its location will be referenced on the electronic system.

## 20 **Managing Performance Shortfalls**

20.1 The Contractor shall maintain a Performance Register that tracks the Contractor's performance on a monthly basis. The Contractor shall use the Performance Register to record its performance against PIs, KPIs and Audits.

- 20.2 When a Performance Failure (Level 1) or Sub Standard Performance (Level 2) is identified, the Contractor shall record the deficiency in the Performance Register.
- 20.3 The Performance Register shall record progress against Remedy Plans and a summary of progress shall be included in the Level 2 Quarterly Report and Level 3 Monthly Report, and informally when requested by the Level 3 Chairman.
- 20.4 The Performance Register will also identify PIs and KPIs where an operational fluctuation has been noted by the Contractor that could lead to an Unsatisfactory Performance in the future. The Contractor shall identify required action or areas that require on-going monitoring. Identified PIs and KPIs shall then be reviewed during the next Audit of this Contract (in accordance with Schedule 13 (Authority Audit)) and could lead to an Audit Observation such that early remedial action can be taken to avoid Unsatisfactory Performance.
- 20.5 If, in the judgement of the Contractor, performance against a PI or KPI is likely to escalate quickly to an Unsatisfactory Performance, the Contractor shall inform the Level 3 Chairman as expediently as possible, and in advance of the PCWG, advising on the Contractor's intended measures to overcome the situation.
- 20.6 The Authority will have visibility of the Performance Register via the Level 3 Monthly Reports presented at the PCWG, or informally when requested by the Level 3 or Level 2 Chairman.