

DEPARTMENT OF HEALTH AND SOCIAL CARE

AND

MITIE FACILITIES MANAGEMENT LTD

DHSC COVID19 - FM SERVICES TESTING SITES CONTRACT

RM3830/L1C FACILITIES MANAGEMENT

CONTRACT REFERENCE: CCZI20A17

CALL-OFF SCHEDULE 14 (OPTIONAL)

KEY PERFORMANCE INDICATORS

1. DEFINITIONS

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"At Risk %"	1	means the percentage figure identified as such in the Order Form;
"At Risk Amount"	2	means in respect of a Service Period, the amount calculated in accordance with Paragraph 3.1 of Part A of this Schedule;
"Earn back"	3	shall have the meaning in Part A of this Schedule;
"Earn Back %"	4	means the percentage figure identified as such in the Order Form and which shall be used determine the proportion of a KPI Credit which may be the subject of any Earn back;
"KPI Model"	5	means the model comprised in the Excel worksheet - KPI Model, and attached in the Annex A to Part A of this Schedule to be used for calculating any adjustments to the Charges as a result of the operation of the KPI regime in this Schedule;
"KPI At Risk Amount"	6	means in relation to a KPI in respect of a Service Period, the amount calculated in accordance with Paragraph 3.3 of Part A of this Schedule;
"KPI Category"	7	means each of the categories in the column headed KPI Name in the Performance Criteria tab of the KPI Model;
"KPI Category At Risk Amount"	8	means in relation to a KPI Category in respect of a Service Period, the amount calculated in accordance with Paragraph 3.2 of Part A of this Schedule;
"KPI Failure"	9	means a failure to meet the KPI Performance Measure in respect of a KPI;
"KPI Performance Measure"	10	shall be 100%;
"Performance Monitoring Reports"	11	shall have the meaning in Part B of this Schedule;
"Performance Review Meetings"	12	shall have the meaning in Part B of this Schedule;
"Persistent KPI Failure"	13	means the Supplier's actual performance against the KPIs falls to or below the standard to which Paragraph 6 of Part A of this Schedule refers; and
"Ratchet"	14	shall have the meaning in Part A of this Schedule.

2. KPI AGREEMENT

2.1 The Supplier shall at all times provide the Deliverables to meet or exceed the KPI Performance Measure for each KPI.

2.2 The Supplier acknowledges that any KPI Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any KPI Credits and that any KPI Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any KPI Performance Measure.

2.3 The Supplier shall send Performance Monitoring Reports to the Buyer (detailing the level of service performance which was actually achieved by the Supplier) in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.

2.4 A KPI Credit shall be the Buyer's exclusive financial remedy for a KPI Failure except where:

2.4.1 the KPI Failure:

- (a) has arisen due to a Prohibited Act or wilful Default by the Supplier;
- (b) results in the corruption or loss of any Government Data; and/or
- (c) results in the Buyer being required to make a compensation payment to one or more third parties; and/or

2.4.2 a Persistent KPI Failure occurs and/or the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 (When CCS or the Buyer can end this contract).

2.5 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of the KPI Performance Measure in respect of one or more KPIs and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:

2.5.1 the total number of KPIs for which the weighting is to be changed does not exceed the number applicable as at the Start Date; and

2.5.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and

2.5.3 there is no change to the At Risk %.

3. PERSISTENT KPI FAILURE

On the occurrence of a Persistent KPI Failure:

3.1 any KPI Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

3.2 the Buyer shall be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Persistent KPI Failure**"),

Provided that the operation of this Paragraph 3 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default.

PART A: KPIS AND KPI CREDITS

1. KPIS

If the level of performance of the Supplier:

1.1 is likely to or fails to meet any KPI Performance Measure; or

1.2 is likely to cause or causes a Persistent KPI Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

1.2.1 require the Supplier to immediately take all preventative and/or remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a KPI Failure or Persistent KPI Failure from taking place or recurring;

1.2.2 instruct the Supplier to comply with the Rectification Plan Process;

1.2.3 if a KPI Failure has occurred, deduct the applicable KPI Credits payable by the Supplier to the Buyer; and/or

1.2.4 if a Persistent KPI Failure has occurred, exercise its right to Compensation for Persistent KPI Failure (including the right to terminate for material Default).

2. KPI CREDITS

2.1 The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the KPI Credits, if any, applicable to each Service Period.

2.2 KPI Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Buyer shall recover the value of any KPI Credits in accordance with Call-Off Schedule 5 (Call-Off Pricing).

3. KPI CREDIT CALCULATION

At Risk Amount

3.1 For a Service Period, the At Risk Amount shall be calculated in accordance with Section 2 - Calculation of Monthly Value at Risk, of the Paymech Calc Overview tab of the Payment Mechanism.

KPI Category At Risk Amount

3.2 The KPI Category At Risk Amount shall be calculated as follows: for each KPI Category, the At Risk Amount shall be apportioned to it in accordance with the KPI Category Weightings in the column headed KPI Weighting in the KPI Table 2 of the Performance Criteria tab of the KPI Model.

KPI At Risk Amount

3.3 The KPI At Risk Amount shall be calculated as follows: the KPI Category At Risk Amount that applies to the KPI Category in which the relevant KPI resides, shall be further apportioned in accordance with the KPI Measure Weightings in the column headed KPI Weighting in [the Measures - Table 3 of the Performance Criteria tab of the KPI Model.

KPI Credit

3.4 The KPI Credit to be applied to a KPI in a Service Period for a KPI Failure shall be calculated in accordance with the Measures tab of the KPI Model by:

3.4.1 deducting from 100% the actual standard of performance (as a percentage, calculated using the Scoring Scales tab of the KPI Model) achieved by the Supplier against the KPI Performance Measure in that Service Period; and

3.4.2 multiplying the resultant percentage by the KPI At Risk Amount.

4. KPI CREDIT RATCHET

4.1 A ratchet will apply to the calculation of KPI Credits for frequent and repeated KPI Failures ("Ratchet").

4.2 The Ratchet will be applied to the calculation of KPI Credits if one or both of the following circumstances occur:

4.2.1 KPI Failures occur in relation to any one or more of the KPIs comprised in the same KPI Category in consecutive Service Periods; and

4.2.2 KPI Failures occur in relation to any one or more of the KPIs comprised in the same KPI Category in any four (4) or more of the immediately preceding twelve (12) Service Periods.

4.3 The value of the Ratchet and when it is to be applied pursuant to Paragraph 4.2, is set out in the Performance Deduction Calc tab of the Payment Mechanism.

4.4 When the Ratchet is to be applied, the relevant KPI Credit shall be the number of KPI Credits that would normally accrue for an initial KPI Failure multiplied by the value of the Ratchet, for example:

4.4.1 if a KPI Failure in respect of any one or more KPIs comprised in the same KPI Category occurs in two (2) consecutive Service Periods, the KPI Credits for each of the KPI Failures in the second of such Service Periods will be 1.5 times the KPI Credit that would have been applicable to them for an initial KPI Failure; and

4.4.2 if a KPI Failure in respect of any one or more KPIs comprised in the same KPI Category occurs in any four (4) Service Periods in the immediately preceding twelve (12) Service Periods, the KPI Credits for each of the KPI Failures in that fourth Service Period will be 1.75 times the KPI Credit that would have been applicable to them for an initial KPI Failure.

4.5 If more than one Ratchet applies to a KPI Failure in the same Service Period, the Ratchet resulting in the higher KPI Credit will be used.

5. KPI CREDIT EARN BACK

5.1 If:

5.1.1 in respect of a Service Period the Supplier has been liable to pay (and has paid) a KPI Credit in relation to a KPI Category; and

5.1.2 in the next Service Period, the Supplier is not liable to pay a KPI Credit in relation to the same KPI Category that was the subject of such KPI Credits in the previous Service Period,

The Supplier shall be entitled to recover a proportion of such KPI Credit ("Earn back").

5.2 The amount of the Earn back shall be calculated as the product of the KPI Credit paid in the previous Service Period in relation to the relevant KPI Category and the Earn back %.

5.3 The Supplier shall recover any Earn back to which it is entitled under this Paragraph 5 in accordance with Call-Off Schedule 5 (Call-Off Pricing).

6. PERSISTENT KPI FAILURE

6.1 A Persistent KPI Failure shall arise when one or both of the following takes place:

6.1.1 a KPI Failure in respect of any one or more of the KPIs comprised in the same KPI Category occurs in two (2) consecutive Service Periods;

6.1.2 a KPI Failure in respect of any one or more of the KPIs comprised in the same KPI Category occurs in any three (3) Service Periods in the immediately preceding twelve (12) Service Periods.

6.2 A Persistent KPI Failure shall constitute a material Default of this Contract by the Supplier.

ANNEXES TO PART A:

ANNEX – A - KPI MODEL

REDACTED FOIA Section 43, Commercial Interests

ANNEX – B – PAYMENT MECHANISM

REDACTED FOIA Section 43, Commercial Interests

PART B: PERFORMANCE MONITORING

1. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

1.1 The Supplier shall provide the Buyer with accurate and complete performance monitoring reports in the same format as that in the KPI Model ("**Performance Monitoring Reports**") which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:

1.1.1 for each KPI, the actual performance achieved in respect of that KPI over the relevant Service Period;

1.1.2 a summary of all KPI Failures that occurred during that Service Period;

1.1.3 details of any Persistent KPI Failures;

1.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;

1.1.5 the KPI Credits to be applied in respect of the relevant Service Period, indicating the KPI Failures to which the KPI Credits relate; and

1.1.6 such other details as the Buyer may reasonably require from time to time.

1.2 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:

1.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require;

1.2.2 be attended by the Supplier's Representative and the Buyer's Representative; and

1.2.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.

1.3 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.

1.4 The Supplier shall provide to the Buyer such documentation and information as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and to calculate the amount of KPI Credits for any specified Service Period.

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2. SATISFACTION SURVEYS

2.1 The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.