# PICTS Contract

# Initial Draft - Schedule 6

# Performance Management

**This document is included in the Agreement as a draft solely for the purposes set out in Clause 7.4 of the Terms and Conditions of the Agreement and the Parties agree that this document will be updated and formally included into the Agreement through the Change Control Procedures in accordance with those terms.**

**Document Info**

**Version #: 1.0**

**Date: 14 December 2016**

**Revision History**

| Version | Date | Details of Changes | Author |
|---|---|---|---|
| 0.3 | 22/11/16 | First draft for review | Sopra Steria |
| 0.4 | 1/12/16 | Final tidy up for submission to review with Authority | Sopra Steria |
| 0.5 | 12/12/16 | Review | Sharpe Pritchard LLP |
| 0.6 | 12/12/16 | Review/response | Sopra Steria |
| 0.7 | 12/12/16 | Joint workshop review | MoJ & Sopra Steria |
| 0.8 | 14/12/16 | Update to Annex 6C | Sopra Steria |
| 1.0 | 14/12/16 | Final version for completion | Sharpe Pritchard |

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## SCHEDULE 6

## Performance Management

### 1. Introduction

1.1 This Schedule:

1.1.1 identifies the Performance Measures that the Parties have agreed shall be used to measure the proper performance of the Services; and

1.1.2 those Performance Measures which have been identified as of particular importance to the AUTHORITY which will attract Service Credits. Such subset of Performance Measures are set out in **Annex 6A** to this Schedule and shall be known in this Agreement as the "**Key Performance Indicators**"; and

1.1.3 sets out the mechanism for calculating **Service Credits** and the **Total Service Credit Amount** (as defined in **paragraph 3.8** of this Schedule).

1.2 Each Performance Measure will have a minimum service level which the PROVIDER must meet or exceed referred to as the "**Target Level"** in **Annex 6A (for Key Performance Indicators)** and **Annex 6B (for Performance Indicators)**. Failure to achieve the Target Level for Key Performance Indicators will trigger the accrual of Service Credits in the manner described in **paragraph 3** below.

1.3 Services that do not have a Key Performance Indicator shall remain an integral part of this Agreement and the PROVIDER agrees to meet any Performance Indicators for those services regardless of the fact that no Service Credits apply in the event of failure to achieve them.

1.4 Any changes to this Schedule and/or the Performance Measures will be made in accordance with the Change Control Procedures.

1.5 The Parties agree that further Performance Measures will be introduced to **Annex 6A** after the Commencement Date through the Change Control Procedures as a result of the completion of specific Technology Refresh Projects (as detailed in Schedule 16). A baselining period as set out in Clause 7.4 of the Terms and Conditions shall apply to any such new Performance Measures introduced, during which those Performance Measures will be included in the reporting detailed in **paragraph 2** below but will not be included in the calculation of Service Credits.

1.6 Service Credits are a reduction of the Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received.

### 2. Reporting of Performance Measures

2.1 With effect from the Commencement Date (and subject to the agreed baselining period described in **paragraphs 1.5 and 3.17**), the PROVIDER will measure and record its performance of the Services using appropriate measurement and monitoring tools against each Performance Measure, on a Monthly basis.

2.2 The PROVIDER will within ten (10) Working Days of the end of each Contract Month provide the AUTHORITY with a report (the "**Service Level Report**") to a level of detail sufficient to verify compliance or non-compliance of the Performance Measures with the Target Levels.

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2.3 The Service Level Report will detail the performance of all Performance Measures, including:

2.3.1 for each Performance Measure, the actual performance achieved during the Contract Month, and the performance achieved during the past 3 Contract Months;

2.3.2 any failures to meet any Target Level;

2.3.3 all Service Credits accruing to the AUTHORITY;

2.3.4 steps being taken by the PROVIDER (and the PROVIDER's Sub-Contractors) pursuant to **Clause 8 (Service Levels and Additional Resources)** as a result of failures to meet the Target Levels;

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

2.3.6 such other details as the Authority may reasonably require from time to time,

and will be discussed at the relevant Service Management Board as specified in **Schedule 9 (Governance )**.

2.4 Subject to **Clause 30 (Force Majeure)**, if, for any reason, it is not possible to measure or record a Performance Measure during a given Month or the PROVIDER does not provide the Service Level Report or report upon a Performance Measure in the Service Level Report, without prejudice to any other rights that the AUTHORITY may have:

2.4.1 the PROVIDER will be deemed to have failed to meet the Target Level in respect of that Performance Measure in that Month; and

2.4.2 if the Performance Measure is a Key Performance Indicator, the maximum number of Service Credit Points that may accrue in respect of that Performance Measure pursuant to **paragraph 3.1** shall be deemed to accrue to the PROVIDER,

unless the PROVIDER can demonstrate to the reasonable satisfaction of the AUTHORITY within ten (10) Working Days immediately following the end of that Month that the Target Levels were fulfilled.

2.5 Without prejudice to the AUTHORITY's rights pursuant to **Clause 36 (Audit Access)**, the PROVIDER will, on request, provide to the AUTHORITY such further information as the AUTHORITY may reasonably require in order to understand or verify the contents and accuracy of any Service Level Report.

## 3. Calculation and Payment of Service Credits

3.1 Subject to **paragraphs 3.14** to **3.17,** if the level of performance of the PROVIDER during any Month is in breach of the Target Level in respect of a KPI, Service Credit Points shall accrue in respect of that KPI failure as set out in **Annex 6A**.

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3.2 The **Basic Service Credit Points** that have accrued for each KPI failure in each Month will be added together to calculate the "**Total Basic Service Credit Points**" for that Month. At the end of each Month:

3.2.1 the **Total Basic Service Credit Points** shall be multiplied by the Basic Service Credit Value (as defined in **paragraph 3.6** below) and, subject to **paragraph 3.7.1**, the resulting figure will be known as the "**Basic Service Credit Amount**"; and

3.2.2 subject to **paragraph 3.7.2**, in respect of a particular KPI, the part of the **Basic Service Credit Amount** that relates to that KPI shall be calculated by multiplying the Service Credit Points accrued in respect of that KPI by the Basic Service Credit Value, and the resulting figure will be known as the "**Basic Service Credit**" that has accrued in respect of that KPI during the relevant Month.

3.3 The basis for calculating Service Credits shall be the Parties' reasonable expectation of the average monthly spend of the AUTHORITY on the Monthly Core Services Charge as set out in **Annex 1 of Schedule 5 (Payment Mechanism)** (the "**Service Credit Baseline**"). The initial, agreed figure for the Service Credit Baseline as of the Commencement Date is set out in **Annex 6D (Service Credit Model).** The Parties shall review and agree the Service Credit Baseline every 6 Months following the Commencement Date. The value of the Service Credit Baseline shall also be reviewed in the event of (and to coincide with) any significant change to the AUTHORITY's expected monthly spend (up or down) on the Core Services. In the event of any such review, the values set out in the table in **Annex 6D (Service Credit Model)** shall be updated to reflect any change in the Service Credit Baseline and used for all related calculations thereafter. Where the Parties are unable to agree (each acting reasonably and in good faith) on a revised Service Credit Baseline in accordance with this **paragraph 3.4**, the matter shall be dealt with in accordance with the Dispute Escalation procedure in Clause 40. For the avoidance of doubt, there shall be no assumed or deemed relaxation in the requirement of the PROVIDER to provide the Services and/or meet the Target Levels during any Month of review of the Service Credit Baseline pursuant to this **paragraph 3.3**.

3.4 The "**At Risk Amount"** in each Month shall be calculated as 12.5% of the Service Credit Baseline.

3.5 The "**Basic Service Credit Cap"** in each Month shall be calculated as 12.5% of the Service Credit Baseline.

3.6 The "**Basic Service Credit Value**" shall be calculated as the At Risk Amount divided by the sum of the number of Basic Service Credit Points in **column 6-A9** of the table in **Annex 6A** ("**Maximum Service Credit Points**" or "**MSCP**").

3.7 The maximum total monetary value of the Basic Service Credit Amount in a Month shall not exceed the Basic Service Credit Cap. For the avoidance of doubt, in the event that the Basic Service Credit Amount in any Month would otherwise exceed the Basic Service Credit Cap:

3.7.1 the Basic Service Credit Amount shall be reduced such that the Basic Service Credit Amount in that Month does not cause the Basic Service Credit Cap to be exceeded; and

3.7.2 the Basic Service Credit Amount that has accrued in relation to any KPI in that Month shall be reduced in proportion to the amount by which the Basic Service Credit Amount has been reduced pursuant to **paragraph 3.7.1**.

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3.8 The "**Total Service Credit Amount**" shall be the Basic Service Credit Amount. The Total Service Credit Amount or the Basic Service Credit Amount (as applicable) shall be the "**Service Credits**" for the purposes of this Agreement.

3.9 Not used.

3.10 Without prejudice to the AUTHORITY's other rights and remedies, the PROVIDER shall deduct from the Charges payable by the AUTHORITY an amount equal to the Total Service Credit Amount. The Total Service Credit Amount will be deducted from the Charges invoiced in the Month following the Month in respect of which the Total Service Credit Amount was accrued.

3.11 Without prejudice to **paragraph 3.10**, upon expiry or termination of this Agreement any accrued Total Service Credit Amounts which have not already been deducted from the Charges shall be deducted from any Charges payable by the AUTHORITY in respect of the final invoice issued by the PROVIDER. If there is no such final invoice (or if for any reason such deduction (whether in whole or in part) is not made from it or exceeds the amount of the final invoice), a sum equal to such Total Service Credit Amounts will be paid by the PROVIDER to the AUTHORITY within thirty (30) days and shall be recoverable by the AUTHORITY as a debt.

3.12 Service Credits shall be the AUTHORITY's exclusive financial remedy in respect of a KPI failure except where:

3.12.1 the Basic Service Credit Amount has reached the level of the Basic Service Credit Cap; or

3.12.2 the KPI failure results in the corruption or loss of any AUTHORITY's Data; or

3.12.3 the AUTHORITY is otherwise entitled to terminate the Agreement.

In the event that the AUTHORITY is entitled to receive damages pursuant to this **paragraph 3.12**, the Parties shall deduct from any such claim an amount equivalent to that part of the Service Credits paid by the PROVIDER that relate to the KPI failure(s) giving rise to the claim.

3.13 If the Parties do not agree on the Total Service Credit Amount to be deducted from any Charges either Party may refer the dispute to the Dispute Escalation procedure and pending resolution of such dispute an amount equal to the Total Service Credit Amount that the AUTHORITY claims is due will be deducted from the relevant Charges. Any sums due to the AUTHORITY or the PROVIDER following resolution of such dispute will be deducted from or added to Charges related to the Month following resolution of the dispute and, if no such Charges are due, will be paid as a debt due within thirty (30) days of the resolution of the dispute.

**Exclusions**

3.14 The Parties shall exclude from the calculation of the PROVIDER's performance of its obligations pursuant to this **Schedule 6 (Performance Management)** (including determining whether the PROVIDER has met any Target Level, and / or Elevated Target Level):

3.14.1 Incidents related to (or delays in resolving Incidents as a result of) interfaces between the PROVIDER's System and any other systems or networks connected via those interfaces except to the extent caused by (directly or indirectly) an act or omission by the PROVIDER or any Sub-Contractor;

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3.14.2 Incidents resulting directly or indirectly from changes to the System implemented by Third Party Suppliers of the AUTHORITY or by the AUTHORITY (in either case) without following the agreed Change Management process as set out in **Paragraph 19** of **Schedule 3 (Solution)**;

3.14.3 Incidents related to failures, which are not caused by the PROVIDER (directly or indirectly), in the AUTHORITY's own information technology systems or of such systems of the AUTHORITY's Users, other service providers or business partners in each case which are not part of the Services;

3.14.4 Incidents (or delays in resolving Incidents) resulting from issues related to the provision of electrical power at the AUTHORITY's Premises or the provision of data network performance that is outside the scope of the Services except to the extent caused by (directly or indirectly) an act or omission by the PROVIDER or a Sub-Contractor;

3.14.5 Incidents where the resolution is delayed (or prevented outright) due to the absence of manufacturer warranty or other support contracts or services with third parties that are not the responsibility of the PROVIDER;

3.14.6 Incidents to the extent caused directly or indirectly by issues or defects in Third Party Software recognised by the manufacturer of such software (at the operating system level, application level or hardware level), for which the relevant manufacturer confirms that an applicable fix or workaround is not available;

3.14.7 Incidents that occur during a Disaster Recovery Period (to the extent that (i) the Incident relates to services impacted by the Disaster; and/or (ii) the Resolution of such Incidents is adversely affected by the Disaster);

provided that, in each case:

3.14.7.1 the PROVIDER can demonstrate the validity of such exclusions to the reasonable satisfaction of the AUTHORITY;

3.14.7.2 the PROVIDER has notified the AUTHORITY of the exclusion in writing as soon as it becomes aware of the need to rely on an exclusion; and

3.14.7.3 the PROVIDER has used all reasonable endeavours to minimise the impact on the System and delivery of the Services to Users.

The PROVIDER shall include details of any exclusion on which it relies pursuant to **paragraph 3.14** in its Service Level Report to a level of detail sufficient to verify the application of the exclusion. Where reasonably requested to do so by the AUTHORITY, the PROVIDER shall include comparator data as part of the Service Level Report detailing the performance of the Services if the exclusion pursuant to **paragraph 3.14** had not been made. In the event that the AUTHORITY requires such comparator data to form part of the regular reporting then this change to reporting shall be agreed pursuant to the Change Control Procedures.

3.15 **Stop the Clock**

3.15.1 The PROVIDER shall exclude from its calculation of the PROVIDER's performance against the relevant Performance

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Measure (including calculation of any Target Level, and/or Elevated Target Level) (referred to in this Agreement as "**Stop the Clock**") the following:

3.15.1.1 the time that elapses between the point at which the PROVIDER reasonably requests information from a User or the AUTHORITY and the point at which the User or the AUTHORITY provides the information request;

3.15.1.2 where the PROVIDER has referred an Incident to a Third Party Supplier of the AUTHORITY :

(a) the time that elapses between the point at which the PROVIDER has referred an Incident or a request to such Third Party Supplier for resolution or fulfilment and the point at which such Third Party Supplier Resolves the Incident or fulfils the request and informs the PROVIDER that it has done so using the agreed channels of communication; and/or

(b) the time that elapses between the point at which the PROVIDER has reasonably requested input and/or information from such Third Party Supplier in order to progress or Resolve an Incident or request and the point at which such Third Party Supplier provides the requested input and/or information,

(as applicable);

3.15.2 Where a "***Stop the Clock***" exemption applies and where a relevant User, AUTHORITY, or Third Party Supplier does not respond to the PROVIDER's request within a reasonable timeframe (such timeframe to be agreed by the Parties):

(a) the PROVIDER shall notify the AUTHORITY in line with the agreed process;

(b) the PROVIDER shall follow up the request with the relevant recipient at reasonable intervals; and

(c) the PROVIDER shall use reasonable endeavours to minimise the impact on the System and delivery of the Services to Users.

3.16 In the event that the PROVIDER is in breach of more than one KPI as a result of a single Incident then Service Credit Points shall accrue in respect of the KPI failure that would otherwise incur the highest number of Service Credit Points and no Service Credit Points shall accrue in respect of the other Key Performance Indicators that have been breached as a result of that Incident.

3.17 Without prejudice to any other provisions of the Agreement including the accrual of Service Credit Points under this Schedule, the PROVIDER will not be subject to Service Credits until 1st April 2017. The period between the Commencement Date and this date will be used to baseline any Performance Measures agreed as at the Commencement Date and to identify and agree any additional Performance Measures that should be added to this Schedule as a result of the Technology Refresh Projects.

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## 4. Service Windows

4.1 Any scheduled downtime will be agreed as required but shall take place outside of Core Hours and shall not exceed 60 hours in any Month unless agreed with the AUTHORITY. Where the PROVIDER will need to provide maintenance for any of the Services, such maintenance will only take place during a scheduled downtime. Scheduled downtime will be removed from any availability calculations.

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# ANNEX 6A (KEY PERFORMANCE INDICATORS – TO BE COMPLETED)

1. The table below lists the Key Performance Indicators which the PROVIDER shall meet which are subject to Service Credits ("**Key Performance Indicators**").

| Column Ref > | 3A – 1 | 3A – 2 | 3A – 3 | 3A – 4 | 3A – 5 | 3A – 7 | 3A – 8 | 3A – 9 |
|---|---|---|---|---|---|---|---|---|
| Row Ref \/ | Unique Ref | Service Level Title | Measure / Calculation | Applicable Service Window | Service Level | Target Service Level | Elevated Service Level | Service Credit Points |
| | | Service Desk | | | | | | |
| 1. | | | | | | | | |
| 2. | | | | | | | | |
| 3. | | | | | | | | |
| 4. | | | | | | | | |
| 5. | | | | | | | | |

## ANNEX 6B (PERFORMANCE INDICATORS – TO BE COMPLETED)

2. The table below lists the Performance Measures which the PROVIDER shall meet which are not subject to any Service Credits ("**Performance Indicators**").

3. The PROVIDER will report on its performance against these Performance Indicators as part of its monthly service reporting.

| Column Ref > | 3B – 1 | 3B – 2 | 3B – 3 | 3B – 4 | 3B – 5 | 3B - 6 |
|---|---|---|---|---|---|---|
| Row Ref \/ | Unique Ref: | Service Level Title | Measure / Calculation | Applicable Service Window | Service Level | Target Service Level |
| | | | | | | |
| 1. | | | | | | |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. | | | | | | |
| 6. | | | | | | |
| 7. | | | | | | |
| 8. | | | | | | |
| 9. | | | | | | |
| 10. | | | | | | |
| 11. | | | | | | |
| 12. | | | | | | |
| 13. | | | | | | |
| 14. | | | | | | |
| 15. | | | | | | |

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## ANNEX 6C (INCIDENT SEVERITY LEVEL DEFINITION)

For the purposes of this Schedule 6 (Performance Management), each Incident shall have a Severity Level determined in accordance with the definitions below:

| Severity Level | Definition |
|---|---|
| Level 1 | Severity Level 1 Incidents are defined as problems which:<br>• prevent a User doing any work and for which no sensible workaround exists (e.g. RAS User has no access to the System); and/or<br>• seriously degrade the performance of more than 10 Users (i.e. where the Users at that time, are experiencing Performance Measures below the targets in KPIs TBC).<br><br>Excludes problems as a result of any elements of the Services that have exited either under this Agreement or the Previous Contract. |
| Level 2 | Severity Level 2 Incidents are defined as problems which:<br>• prevent a User doing any work and for which a temporary workaround exists; and/or<br>• seriously degrade the performance of between 1 and 10 Users (i.e. where the Users at that time, are experiencing Service below the targets in KPIs TBC).<br><br>Non-exhaustive examples:<br>• Slow response from Domino system such that it is causing a business impact<br>• Slow response from the Data Services such that it is causing a business impact;<br>• Slow response to all End Users at any AUTHORITY Location.<br><br>Excludes problems as a result of any elements of the Services that have exited either under this Agreement or the Previous Contract. |
| Level 3 | Severity Level 3 Incidents are defined as problems which:<br>• cause a User operational difficulties in accessing one or more services from their Workstation (excludes Severity Level 1 & 2 Incidents).<br><br>Non-exhaustive examples:<br>• User unable to access a 'whitelisted' website<br><br>Excludes problems as a result of any elements of the Services that have exited either under this Agreement or the Previous Contract. |
| Level 4 | Severity Level 4 Incidents are defined as problems which are: |

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|---|---|
| | • requests for assistance<br>• minor problems which do not affect the User's ability to do useful work<br><br>Non-exhaustive examples:<br>• Request for assistance |

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# ANNEX 6D (SERVICE CREDIT MODEL – TO BE COMPLETED)

**Service Credits: Basis for Calculations**

The table below shows the workings for the calculations for the Service Credit Value as at the Commencement Date based on the Service Credit Baseline of TBC and the Maximum Service Credit Points being TBC.

The Parties agree to follow the same methodology for the calculations of the Service Credit Value following each Annual Review.

| | **Name** | *Calculation* | **Value** |
|---|---|---|---|
| *MSCP* | **Maximum Service Credit Points** | the sum of the number of Service Credit Points in the final column of the table in Annex 6A | |
| *SCB* | **Service Credit Baseline** | *(Ave Spend/month)* | |
| *ARA* | **At Risk Amount (12.5%)** | *(12.5% of SCB)* | |
| *SCC* | **Service Credit Cap (12.5%)** | *(12.5% of SCB)* | |
| *SCV* | **Service Credit Value** | *(ARA/ MSCP)* | |

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