**Schedule 10 (Performance Levels)**

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

|  |  |
| --- | --- |
| **"Critical KPI Failure"** | has the meaning given to it in the Award Form; |
| **"KPI Failure"** | a failure to meet the KPI Performance Measure in respect of a Key Performance Indicator; |
| **"KPI Performance Measure"** | shall be as set out against the relevant Key Performance Indicator in the Annex to Part A of this Schedule; |
| **"KPI Threshold"** | shall be as set out against the relevant Key Performance Indicator in the Annex to Part A of this Schedule; |
| **“Measurement Period”** | in relation to a Key Performance Indicator, the period over which the Supplier’s performance is measured as set out against the relevant Key Performance Indicator in the Annex to Part A of this Schedule; |
| **"Performance Monitoring Reports"** | has the meaning given in Paragraph 1.2 of Part B of this Schedule; |
| **"Performance Review Meetings"** | has the meaning given in Paragraph 1.3 of Part B of this Schedule; |
| **"Service Credits"** | any service credits specified in the Annex to Part A of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Key Performance Indicators; and |
| **"Service Credit Cap"** | has the meaning given to it in the Award Form. |

1. What happens if you don’t meet the Key Performance Indicators
   1. The Supplier shall at all times provide the Deliverables to meet or exceed the KPI Performance Measure for each Key Performance Indicator.
   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 Service Credits and that any Service 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.
   3. The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule to enable the Buyer to assess the Supplier’s performance against each Key Performance Indicator in each Measurement Period.
   4. A Service Credit shall be the Buyer’s exclusive financial remedy for a KPI Failure except where:
      1. the Supplier has over the previous twelve (12) Month period exceeded the Service Credit Cap; and/or
      2. the KPI Failure:
         1. exceeds the relevant KPI Threshold;
         2. has arisen due to a wilful Default by the Supplier;
         3. results in the corruption or loss of any Government Data (in which case the indemnity in Clause 18.6.4 and any or all of the other provisions of Clauses 18.4 and 18.5 and/or Clause 18.6 of the Core Terms may apply); and/or
         4. results in the Buyer being required to make a compensation payment to one or more third parties; and/or
         5. the Buyer is also entitled to or does terminate this Contract pursuant to Clause 14.4 of the Core Terms *(When the Buyer can end the contract)*.
2. Critical KPI Failure

On the occurrence of a Critical KPI Failure:

* 1. any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
  2. the Buyer shall (subject to the Service Credit Cap) 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 Critical 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: Key Performance Indicators and Service Credits**

1. Key Performance Indicators

If the level of performance of the Supplier:

* 1. is likely to or fails to meet any KPI Performance Measure; or
  2. is likely to cause or causes a Critical 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. require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a KPI Failure or Critical KPI Failure from taking place or recurring;
    2. instruct the Supplier to comply with the Rectification Plan Process;
    3. if a KPI Failure has occurred, deduct the applicable Service Credits payable by the Supplier to the Buyer; and/or
    4. if a Critical KPI Failure has occurred, exercise its right to Compensation for Critical KPI Failure (including the right to terminate for Material Default and the consequences of termination in Clause 14.5.1 shall apply).

1. Service Credits
   1. The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.
   2. Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Schedule.

**Annex to Part A: Key Performance Indicators and Service Credits Table**

| **Key Performance Indicators (KPIs)** | | | | | |
| --- | --- | --- | --- | --- | --- |
| **KPI details** | | | | | |
| **Key Performance Indicator Performance Criterion** | **Key Indicator** | **KPI Performance Measure** | **KPI Threshold** | **Service Credit for each Service Period** | **Measurement Period** |
| Accurate data input into modelling tools, accurate modelling output and final reports | Accuracy | At least 97% at all times | No errors in data inputs or outputs reported to the Buyer | 1% Service Credit gained for each percentage under the specified KPI Performance Measure | Annually |
| Achievement of deadlines and milestones | Timeliness | At least 97% at all times | Deadlines and milestones agreed in project plans met with 3 business days grace unless extensions are agreed with the Buyer | 1% Service Credit gained for each percentage under the specified KPI Performance Measure | Annually |
| Availability of qualified personnel and responsiveness to queries | Availability/Responsiveness | At least 97% at all times | Qualified personnel engage with the Buyer at stages specified in project plans. Queries from the Buyer replied to within 3 business days unless alternative timelines are agreed by the Buyer | 1% Service Credit gained for each percentage under the specified KPI Performance Measure | Annually |
| Social Value KPIs | N/A | N/A | N/A | N/A | N/A |

The Service Credits shall be calculated on the basis of the following formula:

|  |  |  |
| --- | --- | --- |
| Formula: 97% (KPI Performance Measure requirement for accuracy) - x% (actual Key Performance Indicator performance for accuracy) + 97% (KPI Performance Measure requirement for timeliness – x% (actual Key Performance Indicator for timeliness) + 97% (KPI Performance Measure requirement for availability and responsiveness) – x% (actual Key Performance Indicator for availability and responsiveness) | = | x% of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer |
|  |  |  |

### Mapping of levels of performance under the KPI Performance Measures to ratings under regulation 39(5) of the Procurement Regulations 2024

| **Regulation 39(5) Rating** | **Level of performance against the KPI Performance Measure** |
| --- | --- |
| Good | KPI Performance Measure |
| Approaching Target | 0.01% to 1% below the KPI Performance Measure |
| Requires Improvement | 1% to 2% below the KPI Performance Measure |
| Inadequate | 2% or more below the KPI Performance Measure |
| Other | NA |

**Part** **B: Performance Monitoring**

1. Performance Monitoring and Performance Review
   1. Within twenty (20) Working Days of the Effective Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Key Performance Indicators will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
   2. The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process agreed pursuant to Paragraph 1.1 of Part B of this Schedule and with such frequency as shall be agreed between the Parties pursuant to Paragraph 1.1 to enable the Buyer to assess the Supplier’s performance against each Key Performance Indicator in each Measurement Period. The Performance Monitoring Reports shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
      1. for each Key Performance Indicator, the actual performance achieved against the KPI Performance Measure for the relevant Service Period and, where a Measurement Period has ended in the period covered by the Performance Monitoring Report, the most recently ended Measurement Period;
      2. a summary of all failures to achieve Key Performance Indicators that occurred during that Service Period;
      3. details of any Critical KPI Failures;
      4. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
      5. the Service Credits to be applied in respect of the relevant period indicating the failures and Key Performance Indicators to which the Service Credits relate; and
      6. such other details as the Buyer may reasonably require from time to time.
   3. The Parties shall attend meetings to discuss Performance Monitoring Reports on a Quarterly basis as part of the Operational Board process described in Schedule 13 (Contract Management).
   4. The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.
   5. The relevant table in the Annex to Part A of this Schedule describes how the levels of performance under the KPI Performance Measures will be mapped to the performance ratings prescribed under regulation 38(5) of the Procurement Regulations 2024. The mapping set out in that table will be applied by the Buyer when publishing relevant Transparency Information relating to the Performance Indicators and/or the Supplier's performance against the relevant KPIs pursuant to Section 52(3) and/or Section 71(2) of the Procurement Act 2023 and the associated Regulations.
   6. The Supplier acknowledges and agrees that, each time the Buyer conducts an assessment of the Supplier’s performance against a Key Performance Indicator, the Buyer may publish information as required by Law in relation to that assessment.
2. Satisfaction Surveys

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.