

## Call-Off Schedule 14 (Performance Levels)

Call-Off Ref:

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# Call-Off Schedule 14 (Performance Levels)

## 1. Definitions

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

<b>"Critical KPI Failure"</b>	has the meaning given to it in the Order Form;
<b>"KPI Failure"</b>	a failure to meet the KPI Performance Measure in respect of a Key Performance Indicator;
<b>"KPI Performance Measure"</b>	shall be as set out against the relevant Key Performance Indicator in the Annex to Part A of this Schedule;
<b>"KPI Threshold"</b>	shall be as set out against the relevant Key Performance Indicators in the Annex to Part A of this Schedule;
<b>"Measurement Period"</b>	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;
<b>"Performance Monitoring Reports"</b>	has the meaning given in Paragraph 1.2 of Part B of this Schedule; and
<b>"Performance Review Meetings"</b>	has the meaning given in Paragraph 1.3 of Part B of this Schedule;
<b>"Service Credits"</b>	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
<b>"Service Credit Cap"</b>	has the meaning given to it in the Order Form;

## 2. What happens if you don't meet the Key Performance Indicators

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

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 Service Credits and that any Service Credit is a price adjustment and not

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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 which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 2.4 A Service Credit shall be the Buyer's exclusive financial remedy for a KPI Failure except where:
- 2.4.1 the Supplier has over the previous twelve (12) Month period exceeded the Service Credit Cap; and/or
- 2.4.2 the KPI Failure:
- (a) exceeds the relevant KPI Threshold;
  - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier;
  - (c) results in the corruption or loss of any Government Data (in which case the indemnity in Clause 17.6.4 of the General Terms and any or all of the other provisions of Clause 17.4 and 17.5 and/or 17.6 of the General Terms may apply); and/or
  - (d) results in the Buyer being required to make a compensation payment to one or more third parties; and/or
- 2.4.3 the Buyer is also entitled to or does terminate the Contract pursuant to Clause 13.3 (*When CCS and the Buyer can end a contract*) of the General Terms.

### 3. Critical KPI Failure

On the occurrence of a Critical KPI Failure:

- 3.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
- 3.2 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 the Contract and/or to claim damages from the Supplier for Material Default.

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# Part A: Key Performance Indicators and Service Credits

## 1. Key Performance Indicators

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 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:

1.2.1 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;

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 Service Credits payable by the Supplier to the Buyer; and/or

1.2.4 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 13.4.1 of the General Terms shall apply).

## 2. Service Credits

2.1 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.

2.2 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 A to Part A: Key Performance Indicators and Service Credits Table

**[Buyer Guidance: The following table and calculation are included by way of example only. Procurement-specific Key Performance Indicators (or KPIs) and formulae, including Key Performance Indicators relating to Social Value, should be incorporated. In line with the Sourcing Playbook, it is HMG's intention to publish the top Key Performance Indicators for the Government's most important contracts. Where this publication requirement applies to this Contract, the Buyer must select at least three Key Performance Indicators which shall be publishable and must also select the single most important Social Value KPI, which shall also be publishable (four Key Performance Indicators in total). Buyers can indicate which are publishable in the table below.]**

**[Guidance: The table and calculation below are included by way of example only.]**

### **Key Performance Indicators ("KPIs") and the Procurement Act 2023**

**The Procurement Act 2023 and the Procurement Regulations 2024 set out important provisions for contracts with an estimated value of more than £5 million as follows:**

- **Section 52(1) of the Procurement Act 2023 requires a Buyer to set at least 3 KPIs unless it considers that KPIs will not appropriately assess a supplier's performance.**
- **Section 52(3) of the Procurement Act 2023 requires Buyers to publish all of the KPIs set under section 52(1). In most cases, Buyers will satisfy this by complying with the obligation in section 53(3) of the of the Procurement Act 2023 which says they must publish a copy of any contract with an estimated value of more than £5 million.**
- **In respect of contract details notices under the Procurement Regulations 2024:**
  - **Regulation 32(2)(r) and regulation 35(2)(a) provides that a Buyer must include a description of the 3 KPIs the Buyer regards, at the time the contract details notice is published, as most material to performance of the contract obligations.**
  - **Regulation 32(2)(s) and regulation 35(2)(a) instructs Buyers who have deemed KPIs not appropriate for assessing the performance of their contract, to explain why. Section 71(2) of the Procurement Act 2023 requires a Buyer to assess and publish performance against the KPIs at least once in every period of twelve months throughout the life of the contract, and on termination of the contract.**

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- **In respect of contract performance notices under the Procurement Regulations 2024:**
  - **Regulation 39(4)(d) and (e) provide that a Buyer must include a description of the 3 KPIs that it regards as most material to performance of the contract obligations at the time the contract performance notice is published and a statement that the notice is being used to set out the Buyer's assessment of performance against those 3 KPIs.**
- **It is worth noting that a Social Value KPI may be one included as one of these 3 KPIs reported in the contract detail notice, and contract performance notices, should a Buyer regard it as most material to performance of the contract at the time.**

**It is possible that the KPIs selected as the top 3 may change throughout the life of the contract, meaning that those appearing in future contract performance notices may be different to those published at the time of contract award and within the contract details notice.**

**Buyers should note the exemptions in sections 94 and 99 of the Procurement Act 2023. If a Buyer withholds information under section 94 of the Procurement Act 2023, it must publish the fact that the information is being withheld and which sub-section of section 94 it is being withheld under.**

**These obligations (and applicable exemptions) on publishing KPIs have been incorporated into the defined term of "Transparency Information" within this contract, and it is expected that performance against any KPIs set under the contract can be published. Buyers should refer to the KPI guidance published on Gov.uk (<https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-manage-phase/guidance-key-performance-indicators-html>) for further information.**

### **Commercial Playbooks and KPIs**

**The Procurement Act 2023 expands the current KPI reporting requirement policy for Central Government Buyers and associated Arm's Length Bodies ("ALBs"). The requirements in the Procurement Act are in addition to (and so do not replace) those set out in the Commercial Playbooks. Please refer to the extra notes below the example table.**

**For example, where a Buyer is a Central Government Department or ALB, they must:**

- **in line with the Sourcing Playbook, publish the top 3 operational KPIs for the Government's most important contracts on a quarterly basis; and**
- **where the Digital, Data and Technology Playbook (DDAT) (<https://www.gov.uk/government/publications/the-digital-data-and-technology-playbook>) applies to the Contract, comply with the DDAT policy requirements to publish 4 mandatory DDAT KPIs on a regular basis.**

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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 and timely billing of Buyer	Accuracy /Timeline s	at least 98% at all times	[ ]	0.5% Service Credit gained for each percentage under the specified KPI Performance Measure	[Insert assessment frequency. See guidance above on frequencies of assessment (and therefore publication) under the Procurement Act 2024, the Sourcing Playbook, and DDaT Playbook. See also para 1.7 of Part B below on publication]
Access to Buyer support	Availability	at least 98% at all times	[ ]	0.5% Service Credit gained for each percentage	[See above]

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				ge under the specified KPI Performance Measure	
[Social Value KPI 1]	[ ]	[ ]	[ ]	<b>[Note: Where appropriate (see guidance above), this can be set at 0%]</b>	[See above]
[Social Value KPI 2]	[ ]	[ ]	[ ]	[ ]	[See above]
[Social Value KPI 3]	[ ]	[ ]	[ ]	[ ]	[See above]

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

### **[Example:**

Formula:  $x\%$  (KPI Performance Measure) -  $y\%$  (actual KPI performance) =  $z\%$  of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer

Worked example: 98% (e.g. KPI Performance Measure requirement for accurate and timely billing Key Performance Indicator) - 75% (e.g. actual performance achieved against this Key Performance Indicator in a Service Period) = 23% 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

**[Guidance: The following table provides space to set out how the performance ratings set out in Regulation 39(5) of the Procurement Regulations 2024 are to be mapped against the performance ratings used for the purposes of this Contract. For example:**

**Good = KPI Performance Measure**

**Approaching Target = [0.01]% - [1.00]% below the KPI Performance Measure**

**Requires Improvement = [1.01]% - [2.00]% below the KPI Performance Measure**

**Inadequate = [2.01]% - [3.00]% below the KPI Performance Measure, or below the KPI Threshold ([•]%)**

**Other = where performance of the Supplier cannot be described as 'Good', 'Approaching Target', 'Requires Improvement' or 'Inadequate' due to any other factor(s).**

**These are indicative only and will vary depending on the nature of the procurement and contract to be entered into. Buyers should therefore carefully consider the appropriate performance metrics to be used on a case-by-case basis]**

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<b>Regulation 39(5) Rating</b>	<b>Level of performance against the KPI Performance Measure</b>
Good	[ ]
Approaching Target	[ ]
Requires Improvement	[ ]
Inadequate	[ ]
Other	[ ]

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# Part B: Performance Monitoring

## 1. Performance Monitoring and Performance Review

- 1.1 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.
- 1.2 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:
  - 1.2.1 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;
  - 1.2.2 a summary of all failures to achieve Key Performance Indicators that occurred during that Service Period;
  - 1.2.3 details of any Critical KPI Failures;
  - 1.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 1.2.5 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
  - 1.2.6 such other details as the Buyer may reasonably require from time to time.
- 1.3 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:
  - 1.3.1 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;
  - 1.3.2 be attended by the Supplier's Representative and the Buyer's Representative; and

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- 1.3.3 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.
- 1.4 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.
- 1.5 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.
- 1.6 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 39(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 Key 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.
- 1.7 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 the Contract.