

Version Control

Version Number	Release Date	Comments
v 1.0	28/10/17	Baseline
v 1.1	12/11/2017	Amends to reflect call with CCS on 8/11 and to capture CCS actions that will allow this schedule to be finalised
v 1.2	13/11/17	CCS Policy consistency with the ITT
<u>v1.3</u>	<u>15/11/17</u>	<u>DLAP amends</u>
<u>V1.4</u>	<u>16/11/17</u>	<u>CCS Policy consistency with Core Terms</u>

CROWN COMMERCIAL SERVICE

AND

SUPPLIER

FACILITIES MANAGEMENT SERVICES FRAMEWORK AGREEMENT

AGREEMENT REF: RM[~~1~~3830

Ref: RM [1]3830

FM Project Version: 1.31

Project

Owner:

<Name>

<Department>

CALL-OFF SCHEDULE 10 (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 %"	means six (6) ¹ percent;
"At Risk Amount"	means in respect of a Service Period, the amount calculated in accordance with paragraph 5.1 of Part A of this Schedule;
"Critical KPI Failure"	means the Supplier's actual performance against the Service Levels falls to or below the standard to which paragraph 6 of Part A of this Schedule refers;²
"Earnback"	shall have the meaning in Part A of this Schedule;
"Earn Back %"	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 Earnback;
"KPI"	means any key performance indicator applicable to the provision of the Deliverables under the Call Off Contract [insert definition from Joint Schedule 1]
"KPI Model"	means the model comprised in the Excel worksheet [insert details], version [insert details], date [insert details] [and attached in the Annex to Part A of this Schedule] to be used for calculating any adjustments to the [Service Period Charge] as a result of the operation of the KPI regime in this Schedule; ³
4	
"KPI At Risk Amount"	means in relation to a KPI in respect of a Service Period, the amount calculated in accordance with paragraph 5.3 of Part A of this Schedule;
"KPI Category"	means each of the ten (10) categories in the column headed ['KPI Name'] in Table 2 of the 'Performance Criteria and Results' tab of the KPI Model;
"KPI Category At Risk"	means in relation to a KPI Category in respect of a Service

1 As per the call on 8/11, we understand the 6% figure is one that will be prescribed in the framework, rather than by the Buyer in a Call-Off contract

2 ~~CCS - to provide details of what will constitute "Critical KPI Failure" - see our comments in paragraph 8.1.1 of Part A for some relevant considerations~~

3 CCS - we have assumed all the (currently 2) relevant Worksheets will be consolidated into one Worksheet that we can call the KPI Adjustment Model - please would you do that and circulate it to DLA so we can align it to this schedule

4 The CCS model renders the KPI Credit Cap concept redundant because it is self-capping - ie it will be up to 12% (the At Risk Amount plus a maximum Ratchet multiplier of 2). As a result we have deleted the KPI Credit Cap regime from the schedule.

Amount"	Period, the amount calculated in accordance with paragraph 5.2 of Part A of this Schedule;
"KPI Failure"	means a failure to meet the KPI Performance Measure in respect of a KPI;
"KPI Performance Measure"	shall be 100%; and
	5
"Performance Monitoring Reports"	shall have the meaning in Part B of this Schedule;
"Performance Review Meetings"	shall have the meaning in Part B of this Schedule;
<u>"Persistent KPI Failure"</u>	<u>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;</u> ⁶
"Ratchet"	shall have the meaning in Part A of this Schedule; and
"Service Period Charge"	means in respect of a Service Period, the [cross reference/definition required to Payment Mechanism for the actual monthly charge for that month (pre-Deductions)] ⁷ for that Service Period. ⁵

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

⁵ Assumed not to be required, pending CCS response as to what will constitute a "~~Critical~~Persistent KPI Failure"

⁶ CCS - to provide details of what will constitute "~~Critical~~Persistent KPI Failure" - see our comments in paragraph 8.1.1 of Part A for some relevant considerations

⁷ Jon/Ian to provide

- (c) results in the Buyer being required to make a compensation payment to one or more third parties; and/or

2.4.2 [a ~~PersistentCritical~~ KPI Failure occurs and/or] the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 (~~CCS and Buyer Termination Rights~~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. ~~PERSISTENTCRITICAL~~ KPI FAILURE

On the occurrence of a ~~PersistentCritical~~ 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 ~~PersistentCritical~~ 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:

- 3.3 is likely to or fails to meet any KPI Performance Measure; or
- 3.4 is likely to cause or causes a PersistentCritical 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:
 - 3.4.1 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 PersistentCritical KPI Failure from taking place or recurring;
 - 3.4.2 instruct the Supplier to comply with the Rectification Plan Process;
 - 3.4.3 if a KPI Failure has occurred, deduct the applicable KPI Credits payable by the Supplier to the Buyer; and/or
 - 3.4.4 if a PersistentCritical KPI Failure has occurred, exercise its right to Compensation for PersistentCritical KPI Failure (including the right to terminate for material Default).

4. KPI CREDITS

- 4.1 The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of calculate the KPI Credits, if any, applicable to each Service Period. ~~The Buyer shall use the KPI Model to make such calculation.~~
- 4.2 KPI 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 KPI Credits against the appropriate invoice in accordance with Framework Schedule F3 (Framework Prices)⁸.

5. KPI CREDIT CALCULATION

At Risk Amount

- 5.1 For a Service Period, the At Risk Amount shall be calculated as the product of:
 - 5.1.1 the At Risk %; and
 - 5.1.2 the Service Period Charge.

KPI Category At Risk Amount

- 5.2 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 Category Weighting'] in [Table 2] of the 'Performance Criteria and Results' tab of the KPI Model.

KPI At Risk Amount

- 5.3 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

⁸ Ensure alignment with Ian/Jon's Payment Mech

[Measure Weighting] in [Table 3] of the 'Performance Criteria and Results' tab of the KPI Model.

KPI Credit

5.4 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:

5.4.1 deducting from 100% the actual standard of performance (as a percentage) achieved by the Supplier against the KPI Performance Measure in that Service Period; and ~~multiplying the resultant percentage by~~

5.4.2 ~~multiplying the resultant percentage by~~ the KPI At Risk Amount.

6. KPI CREDIT RATCHET

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

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

6.2.1 KPI Failures occur in relation to the same KPI⁹ in consecutive Service Periods; and

6.2.2 non-consecutive KPI Failures occur in relation to the same KPI in any one or more of the immediately preceding twelve (12) Service Periods.

6.3 The value of the Ratchet and when it is to be applied pursuant to paragraph 6.2, is set out in Table 1 of the 'Performance Deduction Calc' tab of the KPI Model.

6.4 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:

6.4.1 if a Service Failure in respect of the same KPI occurs in two (2) consecutive Service Periods, the KPI Credits in the second of such Service Periods will be 1.5 times the KPI Credit payable for the initial KPI Failure; and

6.4.2 if a Service Failure in respect of the same KPI occurs in any four (4) non-consecutive Service Periods in the immediately preceding ~~twelve (12)~~ Service Periods, the KPI Credits in that fourth Service Period will be 1.75 times the KPI Credit payable for the initial KPI Failure.

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

7. KPI CREDIT EARN BACK

7.1 If:

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

⁹ CCS - your drafting suggests this is the same KPI but it could equally apply on a KPI Category basis. Which did you intend (bear in mind whichever you pick the Supplier may argue it should also apply to Earnback)?

- 7.1.2 in the next Service Period, the Supplier meets or exceeds the KPI Performance Measure in relation to the same KPI that was the subject of such KPI Failure in the previous Service Period,

the Supplier shall be entitled to recover a proportion of such KPI Credit ("Earnback").

- 7.2 The amount of the Earnback shall be calculated as the product of the KPI Credit paid in the previous Service Period and the Earnback %.

- 7.3 The Supplier shall recover any Earnback to which it is entitled under this paragraph 6 as an addition to the next appropriate invoice in accordance with [Framework Schedule F3 \(Framework Prices\)](#).¹⁰

- 7.4 [For the avoidance of doubt, the Supplier shall not be entitled to any Earnback other than as a result of the occurrence of both of the events in paragraphs 7.1.1 and 7.1.2, and accordingly, shall not be entitled to any Earnback:

- 7.4.1 if no KPI Credit has been paid by the Supplier in the previous Service Period;

- 7.4.2 if in a Service Period the Supplier achieves the KPI Performance Measure for a KPI which is a different KPI to that in respect of which a KPI Credit was paid in the previous Service Period.]¹¹

8. ~~PERSISTENT~~ CRITICAL KPI FAILURE

- 8.1 A ~~Persistent~~ Critical KPI Failure shall arise when one or both of the following takes place:

- 8.1.1 [a Service Failure in respect of [any/the same] KPI occurs in [five (5)] consecutive Service Periods;

- 8.1.2 a Service Failure in respect of [any/the same] KPI occurs in any [seven (7)] Service Periods in the immediately preceding twelve (12) Service Periods. [CCS to insert details - this should cover (i) one off material failures of such significance as should warrant termination; (ii) persistent under-performance which may not be material in its own right but which in aggregate and/or over sufficient time is serious enough to warrant termination]¹²

- 8.2 A ~~Persistent~~ Critical KPI Failure shall constitute a material Default of this Contract by the Supplier.

¹⁰ [Ensure alignment with Ian/Jon's Payment Mech](#)

¹¹ CCS - not strictly necessary as para 7.1 provides for this but we noted in your drafting that you wanted to make some of the aspects covered in this paragraph clear for the avoidance of doubt. Let us know if you want to retain or delete this please

¹² CCS - please provide details for insertion here

[ANNEX TO PART A: KPI MODEL]¹³

¹³ Discuss with CCS where the KPI Adjustment Model will reside

Ref: RM [H3830](#)

FM Project Version: 1.[31](#)

Project

Owner:

<Name>

<Department>

PART B: PERFORMANCE MONITORING

1. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 8.3** Within twenty (20) Working Days of the Start Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of KPIs will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 8.4** The Supplier shall provide the Buyer with accurate and complete performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 8.3 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
- 8.4.1** for each KPI, the actual performance achieved in respect of that KPI over the relevant Service Period;
 - 8.4.2** a summary of all KPI Failures that occurred during that Service Period;
 - 8.4.3** details of any ~~PersistentCritical~~ KPI Failures;
 - 8.4.4** for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence; ~~and~~
 - 8.4.5** the KPI Credits to be applied in respect of the relevant Service Period, indicating the KPI Failures to which the KPI Credits relate; and¹⁴
 - 8.4.6** such other details as the Buyer may reasonably require from time to time.
- 8.5** 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:
- 8.5.1** 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;
 - 8.5.2** be attended by the Supplier's Representative and the Buyer's Representative; and
 - 8.5.3** 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.
- 8.6** 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.
- 8.7** 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.

¹⁴ ~~CCS – on the 8/11 call you said the Buyer would be calculating the KPI Credits (and to accommodate this we have amended the text in Part A). Presumably this is no longer required (and if it is, it is probably already covered by para 8.4.6 and 8.7 anyway)~~

9. SATISFACTION SURVEYS

- 9.1 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.