

Schedule 6

Payment Mechanism

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Part I - Definitions

1 In this Schedule, unless the context otherwise requires, the following words and expressions shall have the following meanings:

"Accommodation"

the station, training centres, head quarter buildings, technical centres and other ancillary buildings

"Annual Target Date"

the target date for undertaking the testing of a key performance indicator that is defined as requiring an Annual Test;

"Annual Unitary Charge"

the annual amount as stated in the Schedule of Charges for the year in question, as amended from time to time through the implementation of Authority Change or the Benchmarking Exercise;

"Annual Utilities Adjustment"

the annual utilities adjustment to be made (if any) pursuant to paragraph 9.4 of this Schedule 6;

"Area"

any part of any Accommodation which is the subject of an Area Data Sheet and/or accommodation schedule as set out in Part [] of the Authority's Requirements;

"Area Data Sheets"

the data sheets relating to each Area within a relevant Accommodation;

"Area Failure Deduction"

the area rate as set out in Part XIII¹ of this Schedule 6 and adjusted in accordance with this Agreement;

"Authority Service Performance Shortfall Notice"

a notice given in accordance with paragraph 4.2.1;

"Authority Unavailability Notice"

a notice given in accordance with paragraph 3.2.1;

"Available"

any Area which is not Unavailable and **"Availability"** will be construed accordingly;

"Availability Criteria"

minimum requirements to be met by the Contractor under this Agreement so as to ensure that an Area is Available, as detailed in Part X of this Schedule, together with any such criteria specific to an Area which shall be identified on the Area Data Sheet for that Area;

"Availability Date"

the Services Availability Date;

"Base Annual Fixed Element"

the element of the Annual Unitary Charge in percentage terms, other than the Base Annual Variable Element that is not subjected to indexation;

"Base Annual Variable Element"

the element of the Annual Unitary Charge initially set at 30% that is subject to indexation to be adjusted from time to time pursuant to the terms of this Agreement;

"Base Date"

the fixed date in the financial model at which the base Unitary Charge is stated in real terms and from which point indexation applies on the anniversary of the Base Date for the term of the contract;

"Consequential Unavailability"

Unavailability in respect of an Area which is Consequentially Unavailable;

"Consumption Target"

has the meaning given to it in paragraphs 9.6 to 9.12 of Schedule 6;

"Consumption Target Adjustment"

the annual consumption target adjustment to be made (if any) pursuant to paragraph 9.13 to 9.15 of Schedule 6;

"Contractor Unavailability Notice"

a notice given by the Contractor to the Helpdesk under paragraph 3.2.2 of this Schedule 6;

"Contractor Service Performance Shortfall Notice"

a notice given by the Contractor to the Helpdesk under paragraph 4.2.1 of this Schedule 6;

"Deduction Period"

the period during which Unavailability or a Service Performance Shortfall occurs pursuant to this Schedule 6;

"Deductions"

any or all (as the case may be) of Unavailability Deductions and Service Failure Deductions;

"Deduction Threshold"

has the meaning given to it in paragraph 5.2.1 of this Schedule 6;

"Deductions Deposit"

has the meaning given to it in paragraph 2.6.1 of this Schedule 6;

"Default Interest Rate"

this is equal to the Bank of England Base Rate plus a margin of [2%];

"Direct Unavailability"

has the meaning given to it in paragraph 3.2.3 of this Schedule 6;

"External Area"

those external areas identified in the Area Data Sheets;

"Hard FM Services"

means services provided by the Contractor pursuant to this Agreement that include some or all of building maintenance, mechanical services, electrical services, fixtures and fittings maintenance and renewal, energy management;

"Health and Safety Regime" means the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act 1990, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;

"Helpdesk"

the helpdesk to be provided by the Contractor in accordance with Part 2 of the Services Specification;

"High Impact KPI"

means a key performance indicator that has been identified in the Services Specification as being High Impact on account of there being a significant degradation of operational capability as a result of Service Performance Shortfall;

"Initial Phase"

means in relation to any accommodation, the period from and including the Services Availability Date for a period of three years;

"Logged Failure Time"

the time at which Unavailability or a Service Performance Shortfall (as the case may be) was notified to the Helpdesk in accordance with paragraphs 3.2.3 or 4.2.4 of this Schedule 6 as appropriate;

"Logged Rectification Time"

the time at which the temporary or permanent remedy of any Unavailability was notified to the Helpdesk in accordance with paragraph 3.2.16 of this Schedule 6, or the remedy of a Service Performance Shortfall was effected in accordance with paragraph 4.2.9 of this Schedule 6;

"Monthly Unitary Charge"

means the Annual Unitary Charge as stated in the Schedule of Charges relevant to the year in which the Payment Period falls, part of which is indexed to current prices in accordance with Project Agreement and divided by 12.

"Monthly Unitary Payment"

the monthly payment calculated in accordance with paragraph 2.1.2 of this Schedule 6;

"Monthly Utilities Payment" or "MUP"

the monthly utilities payment calculated in accordance with paragraph 9.3 of this Schedule 6 and forming part of the Monthly Unitary Payment;

"Operational Day"

means a day on which or such other period as is agreed during which the accommodation is required for operational use;²

"Pass Through Costs" or "PCT"

means payments made by the Contractor in relation to the accommodation that are not recovered through the Monthly Unitary Payment or the Monthly Utilities Payment and which the Authority has agreed to reimburse on a pass through basis including but not limited to:

- (i) Council tax rates levied in respect of the Accommodations;
- (ii) telecoms (save to the extent attributable to the use of the telecoms by the Contractor or a Contractor Related Party);³

"Payment Period"

means each month during the Contract Period;

"Performance Deduction Points"

has the meaning given to it in paragraph 4.4.1 of this Schedule 6;

"Performance Deduction Point Value "

is £3 for each Performance Deduction Point awarded to the Contractor;]

"Performance Standard"

minimum standards of service provision relating to each Specific Requirement as set out in the Services Specification;

"Permanent Rectification"

rectification measures taken by the Contractor to remedy, as appropriate, either a breach or breaches of the Availability Criteria in respect of an Area(s) such that, following rectification, the affected Area(s) meet(s) all relevant Availability Criteria, or a Service Performance Shortfall so that the relevant Service is performed to the relevant Performance Standards;

"Permanent Rectification Period"

- (i) the period set out in Part XIV⁴ to this Schedule 6, which elapses from the relevant Logged Failure Time and during which the Contractor must rectify fully Unavailability in order to avoid incurring an Area Failure Deduction; or
- (ii) the period set out in Part XV⁵ to this Schedule 6, which elapses from the relevant Logged Failure Time and during which the Contractor must rectify fully a Service Performance Shortfall in order to avoid incurring a Service Performance Deduction;

"Principal Function"

use as a station or fire and rescue services station;

"Ratchet"

the multiple applied to the Unavailability Deduction, Unavailable but Used Deduction or Service Performance Deduction in accordance with paragraphs 5.1 and 5.2 of this Schedule 6;

"Rectification Period"

a Temporary Rectification Period or a Permanent Rectification Period as appropriate;

³ These are examples of likely Pass Through Costs. Definition to be finalised for each Project.

"Rectification Priority Category"

the categories set out in Part XV⁶ of this Schedule 6 describing the Rectification Periods to be established for any Service Performance Shortfall in accordance with paragraph 4.2;

"Relocation Date"

the date and time, notified by the Contractor to the Authority in accordance with paragraph 3.6.1, on which it is intended by the parties that the Authority may resume occupation of the Area or Areas for which any Temporary Alternative Accommodation is a replacement;

"Relocation Plan"

a plan, in relation to Temporary Alternative Accommodation, provided by the Contractor to the Authority in accordance with paragraphs 3.6.1;

"Repetition Deduction"

has the meaning given to it in paragraph 5.1.1 of this Schedule 6;

"RPI" means the Retail Price Index all items excluding mortgage interest payments as provided monthly by the Office for National Statistics, Consumer Prices and General Inflation Division;

"Schedule of Charges"

means the table of charges relating to the accommodation set out in Schedule [X];

"Service Failure Deduction"

the financial deduction specified in Part XVI⁷ of this Schedule 6 and adjusted in accordance with this Agreement;

"Service Performance Deduction" or "SPD"

the deduction (if any) made to the Monthly Unitary Charge as a result of Service Performance Shortfalls in accordance with Part IV of this Schedule 6 (including, for the avoidance of doubt, any Ratchet incurred pursuant to paragraph 5.2 of this Schedule 6);

"Service Performance Shortfall"

a failure of the Contractor to provide a Service in accordance with the Performance Standards relating to a relevant Service Requirement which includes any of the Specific Requirements relating to the relevant Service Requirement;

"Service Performance Shortfall Notice"

means the notice provided to the Helpdesk either verbally or in writing by the Authority or the Contractor of a Service Performance Shortfall;

"Service Requirement"

the services required to be provided by the Contractor to the Authority under this Agreement as set out in the Services Specification;

"Soft FM Services"

means services provided by the Contractor pursuant to this Agreement that include some or all of caretaking, portering, janitorial, site supervisory, site security, health and safety, pest control, cleaning and waste management, grounds maintenance, catering, window cleaning, furniture maintenance and renewal and contract management;

"Specific Requirement"

the specific requirements relating to each Service Requirement as set out in the Services Specification;

"Standing Charge Adjustment"

means the annual standing charge adjustment to be made (if any) pursuant to paragraph 9.16 of this Schedule 6

"Temporary Alternative Accommodation"

Temporary Alternative Accommodation offered by the Contractor to the Authority in accordance with paragraph 3.6 of this Schedule 6;

"Temporary Rectification"

rectification measures taken by the Contractor which ensure that the affected Area(s) can continue to be used without risk to the health and safety of users do not secure Permanent Rectification;

"Temporary Rectification Period"

the period from the relevant Logged Failure Time as agreed based on Part XIV of this Schedule 6 (as appropriate) within which the Contractor must effect a Temporary Rectification to the Unavailability in order to avoid incurring an Area Failure Deduction, or to the Service Performance Shortfall in order to avoid incurring a Service Performance Deduction, till such time as Permanent Rectification is carried out;

"Third Party Revenue"

means any income earned by the Contractor from third parties pursuant to this Agreement that is required to be shared with or paid over in full to the Authority in accordance with the terms of this Agreement;

"Total Availability Weighting"

has the meaning given to it in paragraph 3.5.3 of this Schedule 6;

"Total Deductions"

the sum of all Unavailability Deductions and Service Failure Deductions;

"Unavailability Criterion"

the criteria set out in Part X which if satisfied deems an Area at any Station to be Unavailable;

"Unavailability Deductions" or "UD"

the deductions (if any) made to the Monthly Unitary Charge as a result of Areas being Unavailable in accordance with Part III of this Schedule 6 where the Logged Rectification Time has not occurred within the relevant Rectification Period (including, for the avoidance of doubt any Ratchet incurred pursuant to paragraph 5.2 of this Schedule 6 and any Consequential Unavailability);

"Unavailability Notice"

means the notice provided to the Helpdesk either verbally or in writing by the Authority or the Contractor of Unavailability of an Area;

"Unavailability Override"

has the meaning given to it in paragraph 4.2.7 of this Schedule 6;

"Unavailable"

any Area which does not meet all applicable Availability Criteria [or any Area which is Consequentially Unavailable], or is otherwise deemed to be Unavailable in accordance with the terms of this Schedule 6, and “Unavailability” shall be construed accordingly;

"Unavailable but Used"

an Area which is Unavailable but used in accordance with paragraph 3.5.2;

"Utility"

means any of gas, electricity and water supplies (including foul water and surface drainage services) or such other utility provided at the accommodation, and “Utilities” will be construed accordingly;

"Utility Period"

a period of one Contract Year, or such other period in the case of:

- (a) the Initial Phase;
- (b) the period immediately following the Initial Phase, which shall be the period referred to in paragraph 8.3.2 of this Schedule 6 to which the second Annual Utilities Services Consumption Target will apply; and
- (c) a Best Value Change in Law;
- (d) a General Change in Law which comes into effect during the Service Period and which involves Capital Expenditure;

"Utility Service Cost"

means in respect of any Utility the cost per unit of consumption of that Utility;

"Utility Service Cost Adjustment"

means the annual utility service cost adjustment to be made (if any) pursuant to paragraph 9.5 of this Schedule 6;

"Weighting Factor"

means the weighting factor applied to an Area as indicated in the Services Specification for that Area, for the purposes of calculating the Unavailability Deduction;

"Zone"

means a specified number of coterminous Areas that together make a defined zone;

"Zone 1"

means critical Areas with the highest weighting factors when calculating the Area Rate. The sum of these Areas is referred to as Zone 1.

Part II - The Unitary Charge

2

2.1 The Monthly Unitary Payment

2.1.1 Subject to the terms of the Project Agreement, the Contractor will be entitled to payment for the provision of the Services under this Agreement, calculated in accordance with paragraph 2.1.2.

2.1.2 The Monthly Unitary Payment in respect of a Payment Period, being Payment Period (m), shall be calculated by deducting the Unavailability Deductions for Payment Period ($m-1$) and the Service Failure Deductions in respect of Payment Period ($m-1$) from the Monthly Unitary Payment for Payment Period (m) and by adding the Monthly Utilities Payment for Payment Period (m), adding or deducting (as the case may be) the Annual Utilities Adjustment and adding the Payment Adjustment for Payment Period (m), in accordance with the following formula:

$$UP_m = (UC_m - UD_{m-1} - PD_{m-1}) + MUP_m +/- AUA + PA_m$$

where:

UP_m = the Monthly Unitary Payment in respect of Payment Period (m)

UC_m = the Monthly Unitary Charge in respect of Payment Period (m) which is the Annual Unitary Charge (AP_y) as stated in the Schedule of Charges relevant to the year in which the Payment Period (m) falls and divided by 12.

UD_{m-1} = the Unavailability Deductions for Payment Period ($m-1$)

PD_{m-1} = the Service Failure Deductions in respect of Payment Period ($m-1$)

MUP_m = the Monthly Utilities Payment in respect of Payment Period (m)

AUA_m = any Annual Utilities Adjustment as may be applicable in respect of the previous Contract Year

PA_m = any other payment adjustments relevant to the Payment Period (m).⁸

2.2 The time lag for calculating the Unavailability and Service Failure Deductions means no Deductions will be payable in the first Payment Period and Deductions incurred in the first Payment Period will be accounted for in the calculation of the Monthly

⁸ These could include regular Pass Through Costs for additional services outside the Annual Unitary Charge based on Authority requests or ad hoc payments arising from Third Party Revenue, Refinancing Gains, or adjustments arising through application of the Dispute Resolution Procedure or change implemented under clause 60 (Authority and Contractor Changes).

Service Payment for the second Payment Period and so on throughout the Contract Period.⁹

2.3 Phased Unitary Charge

2.3.1 Where accommodation is introduced on a phased basis the following revenue phasing formula will be applied:

$$UC_m = \left(\frac{AP_y}{12} \right) x \sum_{a=1}^x RP$$

Where:

UC_m = the Monthly Unitary Charge (see above at 2.1.2);

AP_y = the Annual Unitary Charge;

RP = the revenue phasing for the accommodation that is introduced, being the percentage of the total Annual Unitary Charge that is payable based on the introduction of accommodation on a phased basis. The total accommodation represents 100% and each accommodation will be given a weighting out of the 100% that will apply in determining the revenue phasing calculation.

$\sum_{a=1}^x$ = sum of the weightings from 1 to x that become available for each accommodation.

2.3.2 The revenue phasing for an individual accommodation will be zero up to and including the month in which the Services Availability commences for that accommodation. Each accommodation must have full Services Availability before the revenue phasing is applied at the 100% rate

2.4 Invoicing and Payment Terms

2.4.1 The Contractor shall not be entitled to receive any Monthly Unitary Payment for accommodation until the issue of the Acceptance Certificate for the accommodation.

2.4.2 No sum shall be due to the Contractor under the Project Agreement unless the Authority has received a valid invoice. All invoices shall be prepared monthly in arrears and shall be in such form as requested by the Authority as set out in the pro-forma invoice in Part XII and in line with the Project Agreement [Part 5, clause 37]. The Contractor shall raise an invoice within ten (10) Business Days of the end of the Contract Month and present it to the Authority within this period as one of the conditions of it being a valid invoice¹⁰. Additionally each invoice issued by the Contractor under the Project Agreement shall include clear details on it of:

⁹ The aspiration in the mechanism however is for Contractors to provide an integrated Helpdesk that can collate the performance and availability information to enable this lag to be removed which 4Ps considers to be best practice.

¹⁰ The 4Ps consider that a backstop date for valid invoices ensures their timely presentation, however it is recognised that Contractors may price a risk in this regard and the value for money of an appropriate cut-off period should therefore be sought in conjunction with the Contractor.

- (i) the reference number of the Project Agreement and of the invoice (in each case using any reasonable methodology notified to the Contractor as agreed between the Authority and the Contractor);
 - (ii) reference to the specific provisions of the Project Agreement which entitle the Contractor to the amount claimed;
 - (iii) any data which has been relied upon in calculating the value of the invoice (including all performance and availability data).¹¹
- 2.4.3 A pro-forma invoice is provided in Part XII setting out the required format and minimum detail required on the face of the invoice for it to be accepted as valid.
- 2.4.4 The Contractor shall provide to the Authority all other supporting information as may reasonably be required by the Authority in relation to invoices issued by the Contractor under the Project Agreement.
- 2.4.5 Payment shall be made within thirty (30) days of receipt of a correct and valid invoice in accordance with this Schedule 6. An invoice shall not become valid until all criteria for payment specified within the Project Agreement (Part 5, clause 37) has been satisfied. Receipt of an invoice shall not be measured from a date earlier than the date of satisfaction of these payment criteria. The Authority shall confirm acceptance of a valid invoice within five Business Days of receipt of the invoice.
- 2.4.6 All payments under the Project Agreement shall be made in pounds sterling by BACS (Bank Account Clearing System) to the bank account of the recipient (located in the United Kingdom) specified in the relevant invoice, quoting the invoice number against which payment is made.
- 2.4.7 Each party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made pursuant to the terms of the Project Agreement on the due date calculated at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment.
- 2.4.8 The details relating to any amount of payment that is disputed and the rights to set off are set out in the Project Agreement under the payment provisions at clause 37. In all instances the undisputed element shall be paid by the Authority and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure if there is a failure to agree between the Authority and the Contractor following notification by the Authority of the disputed element.

¹¹ If the Authority removes the one month lag in calculating and applying performance and availability deductions it must ensure that when invoices are prepared at the end of the Contract Month for which Services have been provided, they must include performance and availability data for that same month. This means there will be no one month lag in the production of this data. To facilitate this arrangement, a cut-off date of two Business Days before the end of the Contract Month to enable the consolidation of performance and availability data for the Contract Month is acceptable, if required.

2.5 **Part Months**

Where the Availability Date, the Expiry Date or a Termination Date falls part way through a Payment Period, the Monthly Unitary Payment (UPm) will be calculated on a pro rata basis to reflect the relevant number of days within the Payment Period.

2.6 **Adjustments in respect of the Final Month**

2.6.1 ***Where a one month time lag is required in the application of the Unavailability and Service Failure Deductions, then the following mechanisms shall apply for recovering any Deductions that are earned or adjustments that are due in the final month of the Contract Period:***

- [(a) In respect of the penultimate Contract Month of the Service Period, the Authority shall make Deductions (if any) from the Unitary Charge that are calculated in accordance with this payment mechanism and, in addition, shall deduct the Deductions Deposit;
- (b) The Deductions Deposit is the sum of the Deductions for the current Contract Month and the five previous Contract Months, divided by six;
- (c) If the amount of the Deductions in the final month is less than the Deductions Deposit, the Authority shall pay the difference between the two amounts to the Contractor within thirty (30) days of the expiry of the Project Agreement;
- (d) If the amount of the Deductions in the final month is more than the Deductions Deposit, the Contractor shall pay the difference between the two amounts to the Authority within thirty (30) days of notification by the Authority of the amount due;
- (e) If the amount of the Deductions in the final month is equal to the Deductions Deposit, no payment shall be made by either party.]

or

2.6.1 ***Where the Authority is able to remove the need for a time-lag, then the following mechanisms shall apply:***

- [(a) In relation to Service Failure Deductions and Unavailability Deductions the Contractor has a cut-off of two Business Days before the end of the Contract Month to collate and check the Deductions for inclusion in the monthly invoice. For each subsequent Contract Month following the first Contract Month after commencement of the Service the Contractor is required to include two Business Days from the prior month when calculating Deductions and adjustments. This means that the calculation of Service Failure Deductions and Unavailability Deductions is on a monthly basis with a lag of two Business Days.
- (b) In the final month the Contractor must include a calculation of Deductions for the full Contract Month based on the cut-off of two

(2) Business Days being removed. The final month will therefore include Deductions for that Contract Month along with Deductions for the two (2) Business Days not included on the previous Contract Month's invoice, where this is appropriate.]

2.7 Calculation of Indexation of Monthly Unitary Charge

2.7.1 The Annual Unitary Charge relevant to the Payment Period (AP_y) is calculated by applying indexation to the Base Annual Variable Element (VE_b) on the Base Date by reference to changes in RPI(X) in accordance with the following formula:

$$AP_y = FE_b + \left(VE_b \times \left(\frac{RPI(X)_y}{RPI(X)_b} \right) \right)$$

Where:

AP_y = the Annual Unitary Charge relevant to the Contract Year (y);

VE_b = the Base Annual Variable Element for the year relevant to the Payment Period (m) that is provided in the Schedule of Charges in the Project Agreement (taken as 30% of AP_y)¹², stated at price levels pertaining to the Base Date;

FE_b the Base Annual Fixed Element of the UP that is not indexed (taken as 70% of AP_y)¹³ for illustrative purposes) for the year relevant to the Payment Period (y) that is provided in the Schedule of Charges in the Project Agreement, stated at price levels pertaining to the Base Date;

RPI(X)_y = the value of the RPI excluding mortgage repayments (RPI(X)) as at the date when the indexation is to be given effect;

RPI(X)_b = the value of RPI(X) in respect of the Base Date.

2.7.2 The relevant index to be applied is the Retail Price Index all items excluding mortgage interest payments (RPI(X)). RPI(X) statistics are provided by the Office for National Statistics, Consumer Prices and General Inflation Division and are released monthly (Table RP05 – National Statistics).

2.7.3 Indexation will be applied annually on the anniversary of the Base Date to the relevant base Annual Unitary Charge contained in the Schedule of Charges as amended from time to time through a Benchmarking Exercise or through change implemented under clause 60 (Authority and Contractor Changes).

2.7.4 If the Schedule of Charges is amended through a Benchmarking Exercise or through change implemented under clause 60 (Authority and Contractor Changes), all Base Date in-year figures shall be re-based to the Base Date using the RPI(X) indices as a deflator. The restated base figure shall then be

¹² 30% is based on an assumed value of services which may change depending on what the actual service value is within the financial model.

¹³ 70% is based on an assumed value of services which may change depending on what the actual service value is within the financial model.

used to determine the on-going Unitary Charge following the Benchmarking or Change which may arise as a result of Compensation Events, Qualifying Changes in Law, Refinancing and Variations.

2.7.5 If the RPI(X) for any month in which part of the Annual Unitary Charge is required to be indexed has not yet been published, then the indexation of such part of the Annual Unitary Charge for the relevant Contract Year shall be based on the most recently published available RPI(X) figure prior to the month required. The indexation will be calculated in accordance with paragraph 2.7.1. Such indexation will take effect from the anniversary of the Base Date with any under or overpayment of the Annual Unitary Charge by the Authority accruing because of the indexation in accordance with paragraph 2.7.1 to be included as an adjustment to the Monthly Unitary Payment in the subsequent monthly invoice.

2.7.6 For the avoidance of doubt, the cost of non-domestic rates and Utilities is not included in the Annual Unitary Charge for the purpose of calculating the indexation. The payment of Utilities is dealt with in Part IX of this Schedule.

2.7.7 **Changes to the Index**

(a) If there is a material change in the nature or basis of any index required for this Part II, or if any index is discontinued, the Parties shall agree upon an alternative index which as closely replicates RPI(X) as is possible. Any consequential changes shall be made to the indexation calculations provided for in this Part II as are necessary to ensure that all payments [to be made pursuant to this Agreement] shall be the same as if such change had not occurred. Any dispute regarding changes in the index or changes to the calculations may be referred by either party to the Dispute Resolution Procedure.

(b) If there is any error or mistake in the published figures for RPI(X) or in the subsequently agreed index, ("**Incorrect Figures**") which have been used at any time in any calculation in this Schedule 6 or any amount required to be indexed in accordance with this Agreement which is subsequently duly acknowledged and corrected ("**Correct Figures**") by the Office of National Statistics, Consumer Prices and General Inflation Division then the Authority and the Contractor agree that any calculations on which the Incorrect Figures were based for the adjustments of any part or parts or the Unitary Charge shall be recalculated based upon the Correct Figures. Any overpayment or underpayment by either party to the other which has occurred as a result of the Incorrect Figures shall be paid or repaid by the party to the other within thirty (30) Business Days of the recalculation being agreed or determined. Any dispute in relation to this clause may be referred at the request by either party to the Dispute Resolution Procedure.

2.8 **Reporting**

Within five (5) Business Days following the end of the Payment Period, the Contractor shall submit a report to the Authority containing in respect of the Payment Period just ended:

- 2.8.1 a summary assessment of all notifications of circumstances constituting Unavailability together with a detailed description of all events of Unavailability, including:
 - (a) the Areas affected by Unavailability;
 - (b) the total duration of each event of Unavailability (including the time and date upon which the same commenced and, where relevant, ceased) and in relation to any continuing Unavailability, the expected end date for that Unavailability; and
 - (c) any other factors that the Contractor acting reasonably shall consider relevant
- 2.8.2 any Unavailability Deductions which shall fall to be made in accordance with this Schedule 6
- 2.8.3 a summary assessment of the performance of the Services together with a list of all Service Performance Shortfalls that occurred and a description of each Service Performance Shortfall
- 2.8.4 any Service Failure Deductions which shall fall to be made in accordance with this Schedule 6
- 2.9 The Authority shall notify the Contractor in writing within ten (10) Business Days of receipt by the Authority of the relevant report if there is any part of that report which the Authority disputes and shall submit to the Contractor such supporting evidence as the Authority may have.
- 2.10 The parties shall endeavour to resolve any dispute identified pursuant to paragraph 2.9 before the end of the month in which it arises. Clause 37 of this Agreement shall then apply.

Part III - Unavailability

3

3.1 Authority’s right to make Deductions

In the event that an Area becomes Unavailable, the Authority may make Deductions from the Monthly Unitary Charge in accordance with this Schedule 6. For the purposes of this Part III, reference to Unavailable or Unavailability shall be taken to include references to Unavailable but Used or Consequentially Unavailable or Consequential Unavailability where appropriate.

3.2 Notice of Unavailability

3.2.1 The Authority and the Contractor may provide notification of Unavailability if either party believes an Area is Unavailable (based on the Availability Criteria set out in Part (IX)).

3.2.2 If the Authority, the Contractor, the Authority’s Representative, the Contractor’s Representative, or other nominated officer believes that an Area may be or may have been Unavailable, then that party must give notice to the Helpdesk, which shall contain the following information:

- (a) details of the relevant fault;
- (b) the Area believed to be Unavailable as a result of the relevant fault; and
- (c) the reasons why such Areas are believed to be Unavailable.

3.2.3 The earlier of the time of receipt of an Unavailability Notice by the Authority or by the Contractor will constitute the Logged Failure Time.

3.2.4 At the time the call is placed, or written notice is provided, to the Helpdesk there shall be two types of potential Unavailability that can be reported:

- (a) Direct Unavailability: this is where a specified Area or combination of Areas (making a Zone) within the accommodation have failed to meet any one of the Availability Criteria set out in Part IX;
- (b) Consequential Unavailability: occurs where an Area that would otherwise be Available is rendered Unavailable because its principal use is dependent on an adjacent Area that has become Unavailable. This could, for example, occur where an entrance to an otherwise usable Area is impeded by an adjacent Area that has become Unavailable.

3.2.5 Where certain Areas are reported as being Unavailable this may automatically trigger Consequential Unavailability in adjacent Areas and these Areas will automatically be deemed Unavailable until Availability has been restored in the Area causing the Consequential Unavailability.¹⁴

¹⁴ Schedule of consequential unavailability to be pre-determined on a case by case basis according to design

- 3.2.6 Where the Authority Unavailability Notice is provided directly to the Helpdesk, then the time of such notification shall constitute the Logged Failure Time in relation to such Unavailability. Where the same failure is recorded by the Authority and the Contractor, the earlier time will constitute the Logged Failure Time.
- 3.2.7 If, prior to the provision of an Authority Unavailability Notice in relation to an Area, the Contractor believes that any Area is Unavailable the Contractor shall give notice to the Helpdesk which shall contain the information referred to in paragraph 3.2.2. The time of such notification will constitute the Logged Failure Time in relation to such Unavailability and the Helpdesk shall notify the Authority's Representative, promptly after its receipt of a Contractor Unavailability Notice, of the Contractor Unavailability Notice and of the details contained within it.
- 3.2.8 The Authority Unavailability Notice, or the Contractor Unavailability Notice, shall be given to the Helpdesk either orally or in writing. The Contractor shall, as soon as reasonably practicable (and without prejudice to the expiry of the relevant Rectification Period) confirm orally or in writing to the Authority's Representative whether it agrees that such fault has given rise to Unavailability. If the Contractor's Representative agrees then paragraph 3.2.11 below shall apply. If the Contractor's Representative does not agree then paragraph 3.2.12 below shall apply.

Responding to Notification of Unavailability

- 3.2.9 Once an Unavailability Notice has been provided, the Contractor shall be responsible for verifying, responding and rectifying the Unavailability. From the point of the Logged Failure Time the Contractor shall be responsible for mobilising a resource to confirm the details or the effective response to the Unavailability Notice, and to estimate the work required and potential time required to rectify the Unavailability.
- 3.2.10 The Contractor shall, within one hour of the relevant Logged Failure Time (and without prejudice to the expiry of the relevant Rectification Period), assess the Unavailability which has been notified to the Helpdesk in accordance with paragraph 3.2.1, paragraph 3.2.5 or paragraph 3.2.7 and issue the Authority with a verbal notice via the Helpdesk specifying (to the extent that each of the following can be determined by the Contractor using all reasonable endeavours):
- (a) the cause of the Unavailability; and
 - (b) the Contractor's plans for rectifying any Unavailability and the estimated period in which the Unavailability will be temporarily and/or permanently remedied.
- 3.2.11 If the Contractor in reviewing the Unavailability Notice finds that any of the reported details are incorrect the Contractor must set out whether the error still results in the Area being Unavailable, or not. If the Contractor finds that the Area is Available then the Unavailability Notice shall be removed with the Authority confirming that no Unavailability has occurred.

- 3.2.12 The Contractor shall provide the Authority:
- (a) on a daily basis, for so long as such Area remains Unavailable, with an update on the progress made in rectifying such Unavailability, together with any revised estimate as to when such Unavailability will be made safe, temporarily and permanently rectified; and
 - (b) promptly on becoming aware of any change to the information provided to the Authority pursuant to paragraph 3.2.9, with details of any such change; and
 - (c) on a monthly basis, with a report of all events of Unavailability reported in the preceding calendar month together with confirmation of the time between the Logged Failure Time and the Logged Rectification Time.
- 3.2.13 Should the Authority and Contractor disagree over whether an incident of Unavailability has arisen, or whether an Unavailable but Used Deduction applies in respect of the relevant Unavailability, then the Authority's decision shall prevail for the purposes of calculating Unavailability Deductions under this Schedule 6. The Contractor may refer the matter to the dispute resolution procedure under clause 67 (Dispute Resolution).

Commencement and Duration of Unavailability

- 3.2.14 The Contractor shall notify the Helpdesk when an instance of Unavailability has been remedied by either:
- a Temporary Rectification; or
 - a Permanent Rectification
- 3.2.15 If the Unavailability notified to the Helpdesk in accordance with paragraph 3.2.2, or paragraph 3.2.7 has been made safe and temporarily (or permanently) remedied by the end of the Temporary Rectification Period and permanently remedied by the end of the Permanent Rectification Period, then it will be deemed that no Unavailability of that Area occurred on that occasion for the purposes of the calculation of Unavailability Deductions.
- 3.2.16 Once the Helpdesk receives this notification it shall constitute the Logged Rectification Time. This shall provide the end time for calculating the period of Unavailability. As soon as is reasonably practicable after notification by the Contractor that Unavailability has been rectified, the Contractor must inform the Authority that the failure has been rectified and the Area is once again ready for use. In the case where the Area is Unavailable but Used the rectification time for the original failure will continue from the point at which the Area becomes vacant, enabling the Contractor to remedy the Unavailability.
- 3.2.17 If the Unavailability Notice provided to the Helpdesk has not been corrected by the end of the relevant Rectification Period then Unavailability shall commence from the relevant end of the Logged Rectification Time through to the time that the Unavailability is logged as being remedied by the Contractor.

- 3.2.18 If the Authority is still making operational use of the Unavailable Area, the Contractor shall still be required to rectify the Unavailability. If the Rectification Period for the Area is not met the Contractor shall only incur deductions at 50% of the rate that would otherwise apply. If the Contractor's ability to rectify the Unavailability is impeded by the operational use of the Area, the Contractor must, within the first two hours of the Logged Failure Time, notify the Authority of this in writing and if the Authority continues to use the Area whilst it is Unavailable, this shall excuse the Contractor from Deductions during the period that the Area is being used. The Authority must also notify the Contractor when the affected Areas is no longer in use.
- 3.2.19 Where the Contractor has reasonably demonstrated that its attempts to remedy the relevant Unavailability are frustrated by the Authority failing to grant the Contractor access to an Unavailable Area [(or Adjoining Area where the Contractor reasonably needs access to that Adjoining Area to remedy the relevant Unavailability)] for at least two (2) hours in aggregate], this will be classed as an exception to a Deduction until that point where access is made available when the original rectification notice will apply. [Where the Contractor reasonably needs access to an Area or Adjoining Area to remedy the relevant Unavailability, the Authority shall not withhold unreasonably such access, subject to the need for the Authority to deliver [Fire & Rescue] [Police] Services at the Accommodations].

3.3 Temporary Rectification

- 3.3.1 Where the Contractor has discontinued the Unavailability by carrying out a Temporary Rectification, the Contractor shall carry out such additional measures as are necessary to achieve Permanent Rectification within the agreed Permanent Rectification Period.
- 3.3.2 On achieving Permanent Rectification, the Contractor shall issue a second notification to the Helpdesk in relation to those Areas where the initial status was one of Temporary Rectification stating that Permanent Rectification has occurred.
- 3.3.3 Where the initial status was one of Temporary Rectification and the period between notification to the Helpdesk of Temporary Rectification and the notification to the Helpdesk of Permanent Rectification is greater than either:
- (a) 5 (five) Operational Days or a shorter target Rectification Period agreed on a case by case basis with the Contract Manager (inclusive of the Operational Day on which notification of Temporary Rectification was made to the Helpdesk); or
 - (b) Such longer period as the Contractor may reasonably request (provided that such request is made within 2 (two) Business Days of the date on which the notification of Temporary Rectification was made or, where the Authority has approved a longer period under this paragraph, prior to expiry of such longer period) and in respect of which request the Authority acting reasonably gives approval;

then a full Unavailability Deduction will be incurred as if the Area was Unavailable for the period commencing from the end of the relevant Logged Rectification Time to the point at which the Permanent Rectification is notified to the Helpdesk.

3.4 Cessation of Unavailability

- 3.4.1 The Contractor shall immediately notify the Helpdesk when it believes that any Unavailability has been made safe and temporarily or permanently remedied and that the Area is once again ready for use. The time of such notification will, subject to paragraph 3.3.2, constitute the Logged Rectification Time in relation to such Unavailability and the Helpdesk shall, as soon as is reasonably practicable after such notification by the Contractor, and in any event within 24 hours, notify the Authority’s Representative that the relevant Unavailability has been remedied.
- 3.4.2 The Authority’s Representative, or other nominated officer shall be entitled to inspect the Area where such Unavailability has been made safe and temporarily or permanently remedied. If the Authority’s Representative does not agree that such Unavailability has been so remedied then it shall promptly notify the Contractor of the same. The Authority’s decision will prevail for the purposes of determining whether the relevant Unavailability has been remedied. The Contractor may refer the matter to dispute resolution under Clause 67 (Dispute Resolution).
- 3.4.3 Subject to paragraphs 3.2.6 - 3.2.8, Unavailability will continue from the Logged Failure Time until (and including) the Logged Rectification Time.

3.5 Unavailability Deduction

- 3.5.1 Unavailability Deductions will be calculated with reference to the following formula. The calculation is carried out on a monthly basis according to all the Unavailability events during that month.
- 3.5.2 The Unavailability Deduction shall be calculated as follows:

$$UD_n = AR_n \times WF_n \times DP_n \times UU_n \times RD_{mx-3}$$

where:

UD_n = the Unavailability Deduction for Area_n

AR_n = the Area Rate for Area_n

WF_n = the Weighting Factor for Area_n

DP_n = the number of Deduction Periods for Area_n

UU_n = Unavailable but Used. This is equal to one if the Area is Unavailable and not used and is equal to 0.50 if the Area is Unavailable but Used

RD_{mx-3} = Repetition Deduction. This is equal to 1.5 if the same Availability Criteria has failed more than four times in a

month for an Area, and is equal to 2 if the same Unavailability Criterion has failed more than eight times during the same month. In all other instances it is equal to one.

3.5.3 Area Rate

The Area Rate for each year will be calculated in accordance with the following:

$$AR_n = \frac{AP_y \times 200\%}{TAW}$$

where:

AP_y = the Annual Unitary Charge for the relevant year indexed in accordance with paragraph 2.7

$$TAW = \sum_{AllAccommodation} \left(\sum_{AllAreas} (WF_n \times DPO_n \times 365) \right)$$

Where:

WF_n the Weighting Factor for Area (n)

DPO_n the number of Deduction Periods for Area (n)

3.6 Temporary Alternative Accommodation

3.6.1 In order to offer Temporary Alternative Accommodation to the Authority the Contractor shall deliver to the Authority a written proposal for Temporary Alternative Accommodation setting out the following:

- (a) full details of the proposed Temporary Alternative Accommodation (including, without limitation, the location and the extent to which it complies with the Authority’s Requirements for the relevant Area. The Contractor must also provide details of any other impact on the Services arising from the Unavailability Deductions use of the Temporary Alternative Accommodation including the logistical or other arrangements that the Contractor will put in place to enable the Authority to continue to deliver the operational service;
- (b) the Relocation Plan that will set out a Relocation Date by which time the Authority will be returned to the main accommodation. This will provide the end date for use of the Temporary Alternative Accommodation and be based on the Contractor’s assessment of how soon it can remedy the Unavailability and return the Authority to the original accommodation.

For the avoidance of doubt, if the Relocation Plan is not delivered within the relevant Rectification Period, the Area will be considered to be Unavailable until such time as the Relocation Plan is provided.

- 3.6.2 If such a proposal is provided and accepted by the Authority then no Unavailability Deduction shall be made by the Authority in respect of the Area from when the Temporary Alternative Accommodation is accepted by the Authority until the Relocation Date occurs.
- 3.6.3 The Authority shall not be obliged to accept any Alternative Accommodation but shall act reasonably in considering the proposals for Alternative Accommodation and shall notify the Contractor promptly of its decision whether or not such proposed Temporary Alternative Accommodation is acceptable.
- 3.6.4 The performance regime under this Schedule 6 shall apply to any Temporary Alternative Accommodation accepted by the Authority so that the Authority shall be entitled to make Unavailability, Unavailable but Used and Service Failure Deductions in respect of that Temporary Alternative Accommodation in accordance with this Schedule 6.
- 3.6.5 The Contractor shall bear any costs incurred by it, and all costs incurred by the Authority arising directly or indirectly as a result of the provision or occupation of any such Temporary Alternative Accommodation including, without limitation any costs incurred by the Authority in decanting to the Temporary Alternative Accommodation.
- 3.6.6 If at any time such Temporary Alternative Accommodation falls below the standard which was acceptable to the Authority under paragraph 3.9.5 the Authority may reject such Temporary Alternative Accommodation and shall notify the Contractor of its decision to do so. Unavailability Deductions shall apply in respect of the Area which is Unavailable (for which the Temporary Alternative Accommodation is a replacement) from such notification until such Area ceases to be Unavailable.
- 3.6.7 If the Contractor has not made available to the Authority the Area for which Temporary Alternative Accommodation is a replacement (such Area being in compliance with all applicable Availability Criteria) by the Relocation Date, or the Temporary Alternative Accommodation is rejected by the Authority under paragraph 3.9.8, then the Authority may:
- (a) vacate some or all of the Temporary Alternative Accommodation, and make Unavailability Deductions from the end of the Relocation Date in respect of the Area for which the Temporary Alternative Accommodation so vacated is a replacement; or
 - (b) continue to occupy the Temporary Alternative Accommodation and make Unavailability Deductions from the Relocation Date in respect of the Area for which the Temporary Alternative Accommodation has been provided as a replacement. In this instance the Temporary Alternative Accommodation shall be treated as Unavailable but used and deductions shall apply in relation to the Unavailability of the original accommodation at 50% of the normal rate.
- 3.6.8 The Contractor and the Authority may, for the avoidance of doubt, agree to any new Relocation Date (suggested by either Party) in which case the

provisions of this paragraph 3.6 shall apply mutatis mutandis to such revised Relocation Date.

- 3.6.9 If there is any dispute relating to the provision of Temporary Alternative Accommodation under this paragraph 3.6, either party may refer the matter to dispute resolution under clause 67 (Dispute Resolution) and until the resolution of such dispute the decision of the Authority shall prevail.

3.7 Deemed Unavailability

- 3.7.1 If more than two Areas within Zone 1 of an Accommodation are Unavailable at the same time, then every Area within Zone 1 will be deemed to be Unavailable for the purposes of paragraph 3.5.1. If there is only one Area within Zone 1 and that Area is Unavailable, then 50% of all other Areas in the Accommodation affected by the Unavailability shall be deemed Unavailable.

Part IV - Performance Deductions

4

4.1 Authority's right to make deductions

4.1.1 In the event of a Service Performance Shortfall, the Authority may make deductions from the Monthly Unitary Charge in accordance with this Schedule 6.

4.2 Notice of a Service Performance Shortfall

4.2.1 If the Authority or the Contractor or the Authority's Representative believes that a Service Performance Shortfall may have, or has occurred, then that party must give notice to the Helpdesk, which shall contain the following information:

- (a) details of the Area where the Service Performance Shortfall occurred;
- (b) details of the relevant fault including, where applicable, the relevant Rectification Priority Category believed to be applicable to the relevant Service Performance Shortfall; and
- (c) where relevant, the Service believed to be subject to the Service Performance Shortfall.

4.2.2 At the time the call is placed, or written notice is provided, to the Helpdesk the potential Service Performance shortfall shall be categorised as one of two types:

- Service Performance Shortfall where a Rectification Period is specified;
- Service Performance Shortfall where the Services fail to meet the required qualitative standards or KPIs as tested by the Authority or Contractor in line with the performance monitoring and testing regime and there is no Rectification Period.

4.2.3 Should the Authority and Contractor disagree as to whether a Service Performance Shortfall has occurred, an Unavailability Override applies, or any of the limitations on Deductions are applicable, then the Authority's decision shall prevail for the purposes of calculating Service Failure Deductions. The Contractor may refer the matter to the Dispute Resolution Procedure.

4.2.4 Where the Authority Service Performance Shortfall Notice is provided directly to the Helpdesk, then the time of such notification shall constitute the Logged Failure Time in relation to such Service Performance Shortfall. Where the same failure is reported more than once, the earliest reported time shall constitute the Logged Failure Time.

4.2.5 If, prior to the provision of an Authority Service Performance Shortfall Notice in relation to a Service Performance Shortfall, the Contractor believes that a Service Performance Shortfall has occurred then it shall give

notice to the Helpdesk which shall contain the information referred to in paragraph 4.2.1. The time of such notification will constitute the Logged Failure Time in relation to such Service Performance Shortfall and the Helpdesk shall notify the Authority's Representative promptly after its receipt of a Contractor Service Performance Shortfall Notice and of the details contained within it.

- 4.2.6 The Authority Service Performance Shortfall Notice or the Contractor Service Performance Shortfall Notice shall be given to the Helpdesk either orally or in writing. The Contractor shall, within one hour of the relevant Logged Failure Time (and without prejudice to the expiry of the relevant Rectification Period) confirm orally or in writing to the Authority's Representative whether it agrees that such fault has given rise to a Service Performance Shortfall. If the Contractor's Representative does not agree then paragraph 4.2.7 shall apply.

Unavailability Override

- 4.2.7 If an Area is Unavailable at the same time as a Service Performance shortfall relating to that Area has occurred, then the Unavailability Deduction mechanism shall take precedence over the Service Performance Deduction mechanism. The Contractor shall not be simultaneously subjected to Unavailability Deductions and Service Failure Deductions for an Area. This applies whether or not the cause of the Unavailability is related to a particular Service Performance Shortfall.

Responding to Notice of Service Performance Shortfall

- 4.2.8 The Contractor shall, within one hour of the relevant Logged Failure Time (and without prejudice to the expiry of the relevant Rectification Period), assess the Service Performance Shortfall which has been notified to the Helpdesk in accordance with paragraph 4.2.1, paragraph 4.2.4 or paragraph 4.2.6 and issue the Authority with a notice specifying:
- (a) the cause (to the extent that this can be determined by the Contractor using all reasonable endeavours) of the Service Performance Shortfall; and
 - (b) whether the Service Performance Shortfall qualifies for a Rectification Period in accordance with the Services Specification, and where a Rectification Period is allowed, the proposed Rectification Priority Category applicable to the Service Performance Shortfall; and
 - (c) the Contractor's plans for rectifying the Service Performance Shortfall and the estimated period in which the Service Performance Shortfall will be permanently remedied; and
 - (d) whether any of the provisions detailed in paragraph 4.5.3 are applicable in respect of the relevant Service Performance Shortfall.
- 4.2.9 Should the Authority and Contractor disagree over whether a Service Performance Shortfall has occurred, or the Rectification Priority Category proposed in accordance with paragraph 4.2.6(b) or whether any of the

provisions detailed in paragraph 4.5.3 are applicable in respect of the relevant Service Performance Shortfalls, then the Authority's decision shall prevail for the purposes of calculating Service Failure Deductions under this Schedule 6. The Contractor may refer the matter to the dispute resolution procedure under Clause 67 (Dispute Resolution).

4.3 Duration of a Service Performance Deduction

4.3.1 The Contractor shall notify the Helpdesk when Temporary Rectification or Permanent Rectification of the Service Performance Shortfall has occurred. Once the Helpdesk receives this notification, it shall constitute the Logged Rectification Time. This shall provide the end time for calculating the Service Performance Deduction.

4.3.2 Where a Rectification Period is allowed

- (a) If a Service Performance Shortfall notified to the Helpdesk in accordance with paragraph 4.2.1, paragraph 4.2.4 or paragraph 4.2.6 has been made safe and temporarily (or permanently) remedied within the Temporary Rectification Period and permanently remedied within the Permanent Rectification Period (where applicable and as set out in the Services Specification), then it will be deemed that no Service Performance Shortfall occurred on that occasion for the purpose of calculating Service Failure Deductions.
- (b) If the Service Performance Shortfall notified to the Helpdesk in accordance with paragraph 4.2.1, paragraph 4.2.4 or paragraph 4.2.6 has been made safe and temporarily remedied within the Temporary Rectification Period but has not been permanently remedied within the Permanent Rectification Period, then it will be deemed that the Service Performance Shortfall occurred from the end of the Temporary Rectification Period. A Service Performance Deduction shall be made in respect of the period from the expiry of the Temporary Rectification Period up to the Logged Rectification Time.
- (c) If the Service Performance Shortfall notified to the Helpdesk in accordance with paragraph 4.2.1, paragraph 4.2.4 or paragraph 4.2.6 has not been made safe and either permanently or temporarily remedied within the Temporary Rectification Period but has been permanently remedied within the Permanent Rectification Period, then it will be deemed that the relevant Service Performance Shortfall shall have subsisted from the Logged Failure Time. A Service Performance Deduction shall be made from the Logged Failure Time up to the Logged Rectification Time. For the avoidance of doubt the Permanent Rectification Period shall commence at the Logged Failure Time and not on expiry of the Temporary Rectification Period; or
- (d) If the Service Performance Shortfall notified to the Helpdesk in accordance with paragraph 4.2.1, paragraph 4.2.4 or paragraph 4.2.6 has not been made safe and temporarily remedied by the end of the Temporary Rectification Period and has not been permanently remedied by the end of the Permanent Rectification Period, then it will be deemed that the Service Performance Shortfall shall have

subsisted from the Logged Failure Time. A Service Performance Deduction shall be made from the Logged Failure Time up to the Logged Rectification Time. For the avoidance of doubt the Permanent Rectification Period shall commence at the Logged Failure Time and not on expiry of the Temporary Rectification Period; or

- (e) Where the Contractor has reasonably demonstrated that its attempts to remedy the relevant Service Performance Shortfall are frustrated by the Authority failing to grant the Contractor access to an Area where the Contractor reasonably needs access to that Area to remedy the relevant Service Performance Shortfall for at least two (2) hours in aggregate this will be classed as an exception to deduction until that point where access is made available when the original rectification notice will apply. ;
- (f) Where the Contractor reasonably needs access to an Area to remedy the relevant Service Performance Shortfall, the Authority shall not withhold unreasonably such access, subject to the need for the Authority to deliver [Fire and Rescue] [Police] Services at the Accommodations.

4.3.3 Where no rectification is allowed as set out in the Services Specification, the Service Performance Deduction will be awarded against the Contractor for each instance of the Service Performance Shortfall. This shall be carried out based on whether the test of an individual Key Performance Indicator has either been passed or failed.

4.3.4 The Contractor will not be able to recover Performance Deduction Points once awarded. Performance Deduction Points will not be carried forward from one month to the next.

4.4 Calculation of Performance Deductions

4.4.1 Performance Deduction Points will be awarded against the Contractor for each Service Performance Shortfall. The number of Performance Deduction Points attributable to the Service Performance Shortfall will be as set out in the Services Specification.

4.4.2 For the avoidance of doubt when awarding Performance Deduction Points, where a further Service Performance Shortfall is deemed to have occurred because Rectification is not carried out within the relevant Rectification Period, the appropriate number of Performance Deduction Points will be awarded in respect of each Service Performance shortfall that has not been rectified within the Rectification Period even though they arise from the same circumstances.

4.4.3 Performance Deduction Points will be awarded against the Contractor and a new Service Performance Shortfall will be automatically logged. The Logged Failure time for this new Service Performance Shortfall shall be the time of expiry of the previous Permanent Rectification Period. Performance Deduction Points shall continue to accrue in this manner until the Service Performance Shortfall has been permanently rectified.

4.4.4 Where the total Performance Deduction Points incurred by the Contractor in any Payment Period exceeds 20 Performance Deduction Points on an accommodation by accommodation basis in respect of that Payment Period, Performance Deduction Points shall be calculated using the following formula.¹⁵

$$PD_m = \left(\sum_{e=1}^{allevents} DP_{em} \right) \times R \times PV_y$$

Where:

PD_m = the Service Failure Deductions calculated in respect of the current month;

DP_{em} = the Performance Deduction Points awarded to the Contractor in respect of a Service Performance Shortfall event (e) occurring in month (m);

R = the Ratchet which may be applied, where applicable, pursuant to paragraph 5.2 based on a banded approach to the number of Performance Deduction Points incurred in the Month;

PV_y = the Performance Deduction Point Value in £ sterling, indexed as required, for year (y), in accordance with paragraph 4.4.2 below.

4.4.5 Subject to Paragraph 5.3 the categories of Performance Point set out in the following table shall attract the number of Performance Points listed next to them. This represents the relative importance of the KPI in relation to determining the amount of potential deduction that applies to the Contractor for failure to perform.

| Performance Point Category | Number of Performance Points |
|-----------------------------------|-------------------------------------|
| Category 1 – Low Points | 1 |
| Category 2 – Medium Points | 3 |
| Category 3 – High Points | 5 |

4.4.6 The Performance Deduction Point Value will be £3 for each Performance Deduction Point awarded to the Contractor. The Performance Deduction Point Value will be subject to indexation on the anniversary of the Base Date for each Contract Year in accordance with the following formula and subject to the indexation provisions contained within paragraph 2.2.1 of this Schedule.

4.4.7 The Performance Deduction Point Value shall be indexed using the following formula:

$$PV_y = PV_b \times \frac{RPIX_y}{RPIX_b}$$

Where:

¹⁵ This calculation will need to be carried out for each service failure during the month and then calculated in total for the month to determine whether deductions apply, based on the number of points incurred above the threshold

- PV_y = the Performance Deduction Point Value in £ sterling, indexed as required, for month (m);
- PV_b = the Performance Deduction Point Value in £ sterling, at the Base Date (taken as [£3]);
- $RPI(X)_y$ = the value of the RPI excluding mortgage repayments (RPI(X)) as at the date when the indexation is to be given effect;
- $RPI(X)_b$ = the value of RPI(X) in respect of the Base Date.

Indexation will be applied annually on the anniversary of the Base Date.

4.5 **Limitations on Service Failure Deductions**

- 4.5.1 The calculation of Service Failure Deductions shall be made only once in respect of a particular Service Performance Shortfall occurring in a particular Area at a particular time, notwithstanding that more than one report may have been received by the Help Desk of the relevant Accommodation.
- 4.5.2 Where a failure is such that it can be classified as a failure to meet more than one Specific Requirement in an Area then the Authority shall only be entitled to make Service Failure Deductions in respect of that failure by reference to one such Specific Requirement and not to each such Specific Requirement but shall be entitled to make Service Failure Deductions by reference to such Specific Requirement as attracts the greatest Service Failure Deduction.
- 4.5.3 No Service Failure Deduction may be made in relation to any Service if an Unavailability Deduction is made by the Authority in respect of an Area affected by the Service Performance Shortfall for the same service provided that Service Failure Deductions may be made for a Service Performance Shortfall if such Area:
- (a) is Unavailable but Used (but only to the extent that it is practicable to provide the relevant Services in such Unavailable but Used Area); or
 - (b) is occupied by the Authority as Temporary Alternative Accommodation in accordance with paragraph 3.8 of this Schedule 6. Service Failure Deductions may be made by the Authority in respect of such Temporary Alternative Accommodation by applying this Schedule 6 and Schedule 1 (Authority's Requirements), mutatis mutandis, to such Temporary Alternative Accommodation in respect of all applicable Service Requirements.

Part V - Other Deductions

5 This Part V of Schedule 6 shall not apply where the relevant Unavailability or Service Performance Shortfall was caused directly by a Relief Event or Force Majeure Event.

5.1 Repetition Deduction – Unavailability

5.1.1 If Unavailability Deductions occur on four or more occasions for the same Area of the accommodation due to the same failure of an Availability Criterion during any Contract Month then from the fourth failure thereafter up to seven failures the Unavailability Deduction for that Area will be multiplied by a factor of 1.5 being the Repetition Deduction for that Area. From the eighth failure thereafter the Unavailability Deduction for that Area will be multiplied by a factor of 2 being the Repetition Deduction for the Area.

5.2 Ratchet – Service Performance Shortfalls

5.2.1 Each accommodation will have a Deduction Threshold of 20 points. If Performance Deduction Points accrue at a level less than or equal to the Deduction Threshold there will be no deduction from the Monthly Unitary Charge on an accommodation by accommodation basis in the Contract Month. Only Performance Deduction Points incurred in excess of the Deduction Threshold will be used to calculate the deduction from the Monthly Unitary Charge.

5.2.2 The number of Performance Deduction Points that are accrued within a Payment Period for each Accommodation will trigger an escalation in the Performance Deduction Points awarded based on a banding mechanism, as shown below:

| | | | |
|--------|--------------------|------------|-----|
| Band 1 | 21 to 100 points | Multiplier | 1.0 |
| Band 2 | 101 to 200 points | Multiplier | 1.2 |
| Band 3 | 201 points upwards | Multiplier | 1.5 |

The bands shown above will partly depend on the number of KPIs and the number of instances of possible failure in a month.

5.2.3 The following example assumes a per point value of £[3] and shows how the escalator for Performance Deduction Points applies in calculating the deduction from the Monthly Unitary Charge:

PV_y = the Performance Deduction Point Value of £3

Deduction Threshold = 20 points in any one month.

Assume that within a single month, the number of points across all KPIs at Accommodation 1 accrued totals 120. The deduction to be applied would therefore be:

| | Points | Multiplier | Effective value per point | Deduction |
|------------------|---------------|-------------------|----------------------------------|------------------|
| First 20 points | 20 | n/a | Nil | Nil |
| Points in Band 1 | 80 | 1.0 | £3 | £240 |
| Points in Band 2 | 20 | 1.2 | £3.6 | £72 |
| Points in Band 3 | Nil | 1.5 | £4.5 | Nil |
| Total Deduction | | | | £312 |

This calculation would then be repeated for each Accommodation to determine the total Service Failure Deductions that apply in a month.

High Impact KPIs

- 5.3 If the Contractor fails a High Impact KPI, 20 Performance Points will be incurred in relation to the accommodation where the Service Performance Shortfall occurred.¹⁶

¹⁶ These are to be in line with the Deduction Threshold that applies for each accommodation.

Part VI - Limitations On Deductions

6

6.1 Cash Flow Cap

The Authority may not, in respect of any Payment Period, make Total Deductions which are greater than the Monthly Unitary Charge. Deductions which, but for this clause, could have been made by the Authority will be permanently disregarded for the purposes of this Schedule 6.

6.2 Cap on Service Failure Deductions

The Authority may not, in respect of any Payment Period, make Service Failure Deductions which are greater than 30%¹⁷ of the total Monthly Unitary Charge. Deductions which, but for this clause, could have been made by the Authority will be permanently disregarded for the purposes of this Schedule 6.

¹⁷ *Figure to be decided on a project by project basis with reference to the cost of the services within the financial model*

Part VII

7 Performance Measurement and Monitoring

- 7.1 The Contractor is required to operate a system to support the Agreement that enables:
- the Service Performance Standards in the Services Specification to be monitored and reported on¹⁸;
 - Unavailability Deductions and Service Failure Deductions to be calculated in line with the formulas set out in this payment mechanism;
 - the management information and reporting requirements to be met based on the production of monthly reporting information and ad-hoc reports as may be required.

Audit access

- 7.2 The Contractor is required to put in place arrangements for self-monitoring of the contract at their expense as part of the overall provision of the Services. This must include:
- details of scheduled testing in line with planned maintenance and works programmes for all Hard FM services;
 - details of random and reactive checks of Service Performance Standards by the Contractor as part of the contract management. In relation to Hard FM, this may include a sampling approach to testing to determine whether, for example, reactive maintenance has been completed within the required Rectification Period. For Soft FM Services a random testing regime accompanied by the ability for the Contractor or Authority to report Service Performance Shortfalls to the Helpdesk.
- 7.3 The Authority requires that all records available to the Authority are also available to authorised third parties required to carry out an audit of the Services. This includes the National Audit Office, the Audit Commission and all auditors on the framework that the Audit Commission operates to carry out its role, such as District Audit.

Access Rights

- 7.4 The Contractor must provide the Authority with read only access points to the Contractor's system that can be accessed on-line in real time to review the information that is recorded. This access must be available at all times between 8.00am and 5.30pm on Business Days.

¹⁸ The Authority should refer to Sections 7.9.5 and 7.9.6 of the SoPC which contains new guidance on how user satisfaction surveys might play a role in measuring Contractor performance and how unfavourable responses to such surveys might impact on the payment mechanism.

Helpdesk

7.5 The Helpdesk forms a key part of providing an integrated system to support the monitoring and reporting of performance. To achieve this the Helpdesk must operate 24 hours a day 7 days a week. To ensure the Helpdesk is capable of supporting the payment mechanism the Helpdesk operatives must be able to record:

- each potential instance of Unavailability and Service Performance Shortfall in a log;
- a unique identifier on a sequential basis for each record in the log;
- the identity or staff number of the individual notifying the Helpdesk;
- a description of the problem that has been reported to the Helpdesk;
- whether in the Contractor’s assessment the reported service failure has resulted in an instance of Unavailability or Service Performance Shortfall;
- the location of the Unavailability or Service Performance Shortfall;
- the required action that the Contractor is taking to rectify the Unavailability or Service Performance Shortfall;
- the Logged Rectification Time;
- details of notifications provided and communication with the contract management team (or other authorised Authority representatives) about resolution of service failures;
- instances where Temporary Alternative Accommodation has been offered where the Contractor cannot reasonably in the circumstances remedy the Unavailability or Service Performance Shortfall within the required timescales;
- the Contractor’s plans for remedying the Unavailability or Service Performance Shortfall and the estimated time that either Temporary Rectification or Permanent Rectification will be achieved;
- any other information necessary to meet the monitoring and reporting requirements.

Testing Regimes

7.6 The Contractor shall carry out tests in line with the agreed Testing Schedules according to the frequency of testing required for each key performance indicator. The frequency of tests and their application is described below:

- Daily Test – where the Authority’s requirements specify that a test is to be carried out daily then one test by the Contractor for each day of the Contract Month must be carried out based on a consistent interval of time appropriate to the test. For example testing whether the reception area is clean at 08.45 after the morning clean at 08.00;

- Weekly Test – where the Authority’s requirements specify that a test is to be carried out weekly then the Contractor must provide a Testing Schedule showing the operational day each week that the test will be carried out and the time interval. For example a weekly fire alarm test at 11.00am every Tuesday;
- Monthly Test – where the Authority’s requirements specify that a test is to be carried out monthly the Contractor must provide a Testing Schedule showing the scheduled tests. The Contractor must comply with a minimum interval of twenty one days between two consecutive Monthly Tests;
- Annual Test – where the Authority’s requirements specify that a test is to be carried out annually the Contractor must ensure the test is completed within twelve Business Days of the Annual Target Date for carrying out the test.

If a test is incapable of being carried out at a time when the Contractor proposed to carry out the test as a result of an Area being Unavailable the Contractor shall endeavour to carry out the test at the earliest opportunity following the relevant Area becoming Available or at an alternative Area relevant to the test that is available.

Part VIII - Exceptions to Deductions

8 Exceptions to Deductions

- 8.1 If the following events or circumstances or the consequences of them lead to a Service Performance Shortfall or Unavailability, then the Contractor will be exempt from the Service Performance Points/Deductions or Unavailability Deductions that have been caused by these events or circumstances.
- (a) any event before the Services Availability Date for the relevant Area unless this results directly or indirectly from any act or omission of the Contractor or any Contractor Related Party prior to the Services Availability Date; or
 - (b) any breach, omission or default by the Authority of its obligations under this Agreement, provided that such breach does not arise directly or indirectly as a result of any act or omission of the Contractor or a Contractor Related Party; or
 - (c) malicious or wilful damage or damage arising from misuse or negligent use (excluding fair wear and tear) by the Authority or an Authority Related Party; or
 - (d) the carrying out by the Contractor or any Contractor Related Party of maintenance operations in respect of an Area in accordance with and for the duration applicable to such maintenance, as specified in the Schedule of Programmed Maintenance, or the acceleration or deferral of any Programmed Maintenance or where the Authority instructs the Contractor not to carry out any [Planned or Reactive Maintenance] in accordance with the terms of this Agreement; or
 - (f) any interruption in the supply of water, telephone, gas or electricity by a third party supplier provided that such interruption is not attributable to any act, omission or default of the Contractor or any of its officers, employees, agents or contractors (of any tier) and further provided that all reasonable measures (without being required to incur material additional expenditure) are being taken by the Contractor to minimise the impact of such act, omission or default on the Authority or any Authority Related Party and on the performance of the Contractor's obligations under this Agreement; or
 - (g) a Compensation Event; or
 - (h) the Contractor undertaking an Authority Change or having to undertake works to comply with a Qualifying Change in Law in each case in accordance with the provisions of this Agreement; or
 - (i) exercise of Authority Step-In; or
 - (j) any instruction in writing from the Authority to the Contractor not to provide the Services in the Area to which the Service Performance Shortfall or Unavailability relates because of a strike, industrial action or protester action provided that in each case the Contractor has used and continues to

use all reasonable endeavours to minimise the extent of the failure to meet the Availability Criteria or Service Performance Standards and provided further that the strike, industrial action or protestor action does not occur as a result of the act, omission or default of the Contractor or any Contractor Related Party.

Part IX - Utilities Management

9

Responsibility for Supply of Utilities

9.1 The Contractor shall from the Services Availability Date until the Expiry Date purchase and supply to each Accommodation, Utilities on the economically most advantageous terms reasonably available having regard to the Contractor’s obligations under this Agreement and pay for all consumption of Utilities following receipt of an invoice or demand from the relevant supplier in accordance with the terms of such invoice or demand. In order to ensure continuing compliance with this obligation, the Utility Services shall be tested for value for money annually by the Contractor.

Rates and Telecoms

9.2 The Authority shall pay rates in relation to each of the Accommodations and shall pay the cost of telecoms at each of the Accommodations save to the extent attributable to the use of telecoms by the Contractor or a Contractor Related Party.

Reimbursement of Utilities Costs

9.3 The Authority will pay to the Contractor the Monthly Utilities Payment in respect of the month concerned. This will be calculated as follows:

$$MUP_m = \frac{\sum_{u=1}^{all\ utilities} (USC_u \times CT_u) + SC_u}{12}$$

Where:

MUP_m = the Monthly Utilities Payment calculated in respect of the current month;

USC_u = the estimated unit Utility Service Cost (u) at the start of the Contract Year (including all relevant taxes and levies);

CT_u = the annual utility Consumption Target for the Utility Service (u) for that Contract Year;

SC_u = the expected standing charge and any other fixed costs/charges for the Utility Service (u) for that Contract Year.

Annual Utilities Adjustment

9.4 No Annual Consumption Target Adjustment will be made in respect of any Initial Phase.

9.5 For Contract Years where Monthly Utilities Payments are made, an Annual Utilities Adjustment will be calculated as follows:

$$AUA_{m=12} = CTA \pm SCA \pm USA$$

Where:

AUAm = The Annual Utilities Adjustment to be applied in the relevant month of the Contract Year;

CTA = The annual Consumption Target Adjustment;

SCA = The annual Standing Charge Adjustment;

USA = The annual unit Utility Service Cost Adjustment. Including any changes to the taxes or levies that have arisen during the year.

The Annual Utilities Adjustment will be applied to the Monthly Unitary Payment in the second Payment Period of the Contract Year following the Contract Year to which the adjustment relates.

Consumption Target

- 9.6 An annual Consumption Target for the relevant accommodation will be set for each Utility as contained in the Consumption Target Table set out in Part XVII. The Consumption Targets will be expressed in volume terms.
- 9.7 These Consumption Targets for each Utility will apply during the Initial Phase for each accommodation and will be derived from the bidder's proposals at Financial Close.
- 9.8 The Consumption Target for each Utility from the expiry of the Initial Phase will be derived from the lowest of:
- the average annual recorded consumption of that Utility Service over the previous 3 Utility Periods;
 - consumption based on current relevant benchmarks;
 - any agreed improved operating efficiency targets after account has been taken of any annual adjustments as detailed in paragraph 9.15.
- 9.9 The Consumption Target for each Utility will be harmonised and re-set on 1 April following the Contract Year in which the Initial Phase expires for the last accommodation to reach its Services Availability Date. Thereafter, Utility Periods will last 1 year, with the Consumption Targets for those periods agreed or determined at the start of each period.
- 9.10 Not less than three (3) Payment Periods prior to the end of the current Utility Period, the Contractor shall submit to the Authority its proposed new Consumption Targets for each Utility for the next Utility Period, together with documentation supporting its proposals. The documentation will include:

- i. logs of consumption in the current Utility Period;
- ii. calculations on which the new targets are based;
- iii. the carbon emission ratings associated with the new targets;
- iv. details of any consumption that may not have been recorded by main utilities meters, e.g. where some energy demand has been met by on site renewable generation or some of the water requirements has been met by recycling.

The proposals may take account of any annual adjustments that may be made as part of the arrangements detailed in paragraph 9.12.

9.11 Not more than one Payment Period following receipt by the Authority of the Contractor's proposals for the new Consumption Targets, the parties will meet to discuss those proposals and agree the Consumption Targets for the next Utility Period. Any failure to agree the Consumption Targets will be referred to the Dispute Resolution Procedure.

9.12 Adjustments to the Consumption Targets will be made annually on a fair and reasonable basis where the following has occurred:

- i. there has been a material change in respect of the utilisation of the accommodation which has led to an increase or decrease in consumption levels where such can be demonstrated with reference to the "utilisation and/or consumption records from the previous Utility Period"
- ii. additional equipment having a material impact on utility consumption being introduced or existing equipment being removed by the Authority or the Contractor;
- iii. a variation has been issued in respect of which it can be demonstrated that the usual consumption levels relating to any Utility will change or has changed;
- iv. one Utility is replaced by a different Utility;
- v. a period of extreme weather (summer or winter temperatures) has occurred outside of the normal range of variations. Adjustments to the agreed Consumption Targets may be agreed by reference to the relevant published degree day values.

Consumption Target Adjustment

9.13 For each Contract Year (or part Contract Year) following the expiry of the Initial Phase, the actual consumption of each Utility over the previous Contract Year (or part year) will be calculated and compared to the relevant Consumption Target for that Contract Year (or part year). The relevant Consumption Target in respect of a part Contract Year will be an agreed target that makes allowance for normal seasonal energy usage for the months that comprise that part Contract Year.

- 9.14 The Contractor will bear all costs associated with the actual consumption being up to 10% greater than the annual Consumption Target (or the agreed target for a part Contract Year) and will retain any benefit resulting from the actual consumption being up to 10% below the relevant target.
- 9.15 Where actual consumption in the previous Contract Year (or part Contract Year) for a Utility was more than 10% greater than, or more than 10% lower than, the annual Consumption Target (or agreed target for a part Contract Year), the Consumption Target Adjustment will be calculated as follows:

$$CTA = \frac{\sum_{u=1}^{utilities > 10\%} (USCa_u \times (Ca_u - (CT_u \times 1.1))) - \sum_{u=1}^{utilities < 10\%} (USCa_u \times ((CT_u \times 0.9) - Ca_u)) \pm SCA}{2}$$

Where:

- CTA = The annual Consumption Target Adjustment;
- USCa_u = the actual unit Utility Service Cost (u) over the Contract Year;
- Ca_u = the actual consumption for the Utility (u) for that Contract Year (or part Contract Year);
- CT_u = the annual utility Consumption Target for the Utility (u) for that Contract Year (or agreed target for a part Contract Year).

Standing Charge Adjustment

- 9.16 Each Contract Year, a Standing Charge Adjustment (SCA) will be made to reflect the difference between the actual standing charge paid by the Contractor (by reference to Utility invoices) for the previous Contract Year and the amount of standing charge paid to the Contractor during the previous Contract Year as part of the Monthly Utilities Payments.

Unit Utility Service Cost Adjustment

- 9.17 Each Contract Year, a unit Utility Cost Adjustment will be made to reflect the difference between the actual unit cost of the Utility paid by the Contractor over the preceding Contract Year (by reference to Utility invoices) and the estimated unit cost of the Utility at the start of that Contract Year. This adjustment will be calculated as follows:

$$USA = \sum_{u=1}^{all\ utilities} (USCe_u - USCa_u) \times CT_u$$

Where:

- USA = the annual unit Utility Cost Adjustment;
- USCe_u = the estimated unit Utility Cost (u) including any fixed costs/charges at the start of the Contract Year;
- USCa_u = the actual unit Utility Cost (u) over the Contract Year;

$CT_u =$ the annual utility Consumption Target for the Utility (u) for that Contract Year (or agreed target for a part Contract Year);

Market Testing of Utilities Costs

- 9.18 The unit cost of each Utility will be market tested not less than two Payment Periods prior to the end of any Initial Phase and thereafter will be market tested not less than two Payment Periods prior to the end of each Contract Year, or longer as agreed with the Authority. The Authority will afford all reasonable assistance to the Contractor to enable it to purchase Utilities through the Authority’s existing agreements with Utility suppliers. The Authority will act as the Contractor’s agent in this regard provided that this paragraph does not in any way diminish or excuse the Contractor’s responsibility to provide Utilities in accordance with the standard required by this Agreement nor affect the obligation of the Contractor to meet the costs of such Utilities as provided in this Agreement.

Introduction of Energy Saving Technology

- 9.19 Either party may propose the introduction of energy saving technology, which may be implemented in accordance with Clause 60 (Authority and Contractor Changes). Where implemented, the annual Consumption Targets will be adjusted in light of the new technology. The Contractor may introduce energy saving technology and receive the full benefit of savings in consumption arising from this unless the Authority has already paid for the energy saving technology through the change mechanism, without adjustment under paragraph 9.12 until the end of the Utility Period in which it is introduced.

Part X - Availability Criteria

10

- 10.1 An Area at any Accommodation will be deemed to be Unavailable where the condition of the Area is such that:
 - 10.1.1 it is not possible to gain access to the Area in a reasonable manner by the normal means employed for that purpose and no suitable alternative means of access either exist or are provided by the Contractor; or
 - 10.1.2 as a result of the condition of the accommodation the Area fails to meet legal requirements in respect of the Health and Safety Regime; or
 - 10.1.3 as a result of the condition of the accommodation where persons entitled to use the Area for its Principal Function may not do so reasonably free from risk to their health and safety; or
 - 10.1.4 it is not free from flood, weather penetration and damp affecting the structure of the building to the extent that precludes the safe occupation of the Area save that such condition will not constitute the Unavailability of External Areas if the drainage provisions for the Area (including surfaces laid to falls) are fully functioning; or
 - 10.1.5 the Area is not maintained at a temperature within a range specified in the Authority's Requirements for that Area [(this range may change as a result of climatic or other changes over the life of the concession)]; or
 - 10.1.6 windows normally capable of being opened for the purpose of ventilating the Area are not able to be opened [to the extent that] or [with the result that] there is a material adverse impact on the provision of [Fire and Rescue][Police] Services; or
 - 10.1.7 the Area is not provided with a level of illumination sufficient to permit the materially unimpaired use of the Area for its Principal Function] and to permit the safe use of the Area having regard to its Principal Function; or
 - 10.1.8 the Area is not provided with sufficient number and type of safe water supplies delivering as applicable hot, cold or potable water to permit the materially unimpaired use of the Area for its Principal Function; or
 - 10.1.9 the Area is not served by a functioning and safe waste removal system connected to sinks, basins and sanitary equipment where such connections are present in the Area; or
 - 10.1.10 the live power outlets (13A sockets) installed within the Area are neither live or functioning resulting in a material adverse impact on the provision of Services; or
 - 10.1.11 any dedicated power supplies to equipment necessary for the use of the Area for its [Principal Function] are neither live or functioning; or

- 10.1.12 the Area is not provided with such fixtures & fittings in a functional condition as is necessary to permit the materially unimpaired use of the Area for its [Principal Function]; or
- 10.1.13 the Area is not provided with all of [the loose furniture required]¹⁹ and the same is not in such a functional condition as is necessary to permit the materially unimpaired use of the Area for its principal function [provided that this provision will only apply in respect of:
- New Buildings and [Refurbished]²⁰ Buildings;
 - the period of 5 years from the relevant Services Availability Date]; or
- 10.1.14 the communication outlets (voice and data) installed within the Area are not functioning due to a failure of the physical infrastructure forming part of the accommodation related to such installation resulting in a material adverse impact on the provision of Services; or
- 10.2.1 Every Area at an accommodation will be deemed to be Unavailable where it is not possible to gain access to the accommodation in a reasonable manner by the normal means employed for that purpose and no suitable alternative means of access exist or are provided; or
- 10.2.2 Toilet facilities will be considered Unavailable unless at least 50% capacity is provided for male staff and 50% capacity for female staff. Where:
- i. the toilet facilities are unisex; or
 - ii. the Contractor manages the use of the toilet facilities such that they can be used by both genders separately; they will not be considered Unavailable.

¹⁹To be decided on a project by project basis.

²⁰ The PFI programme only relates to new build accommodation.

Part XI - Consumption Target Table

To be based on scheme specifics.

Part XII - Form of Invoice

A separate invoice for Pass Through Costs and adjustments is appropriate and the following invoice covers the Monthly Unitary Charge and associated items

Contractor Headed Invoice

Contractor Address
Office
Street
Town
Full Postcode

Authority Address
Office
Street
Town
Full Postcode

Attn: [Contact for invoice payment]

| | | |
|-----------------------|------------------------------------|-----|
| Project Agreement Ref | [Unique reference] | |
| No | | |
| Invoice number | [Unique reference] | |
| Customer number | [Unique reference] | |
| VAT registration | [Contractor's registration number] | VAT |
| Date of invoice | [Invoice date] | |

| Description | VAT | Value (£) |
|---|-----|-----------|
| Monthly Unitary Charge for the month ending [31 st May 2007] being one twelfth of the indexed Annual Unitary Charge for [2007/2008] | S | [] |
| Less – deductions for Unavailability for the previous month through to [30 th April 2007] | | [] |
| Less – deductions for Service Performance Shortfalls above the threshold for the previous month through to [30 th April 2007] | | [] |
| Plus – Monthly Utilities Payment for the month ending [31 st May 2007] | | [] |
| VAT | | [] |
| Invoice Total | | [] |

Payable to; [Contractor name]; Sort code:##-##-##; Account Number: #####
30 days from invoice date

See appended schedules used to calculate the unavailability and Service Failure Deductions

[Contractor registered head office and company registration number]

Part XIII - Area Failure Deduction

Area Rate

[An example of how the key metrics used to determine the Unavailability Deduction is calculated is provided as follows. This is based on the following assumptions:

- Priority 1 – weight 50 (rectification time 2 hrs)
- Priority 2 – weight 30 (rectification time 8 hrs)
- Priority 3 – weight 15 (rectification time 24 hrs)
- Priority 4 – weight 5 (rectification time 7 days)
- Unitary Charge £5,000,000
- Gearing 200%

The Area Rate is calculated by dividing the Unitary Charge (multiplied by 2 for the 200% gearing) by the Total Availability Weighting (TAW). The following example illustrates how the TAW is calculated:

| | PRIORITY (From Authority Area Sheets) | | | | Total |
|---------------------------------------|---------------------------------------|-----------|-----------|-----------|-------------------|
| | 1 | 2 | 3 | 4 | |
| Weighting Factor (WF) | 50 | 30 | 15 | 5 | |
| Deduction Periods (DP) per Day | 12 | 3 | 1 | 1 | |
| Station 1 | 6 | 6 | 2 | 5 | 19 |
| Station 2 | 8 | 12 | 12 | 4 | 36 |
| Station 3 | 8 | 12 | 11 | 6 | 37 |
| Station 4 | 6 | 8 | 6 | 3 | 23 |
| Station 5 | 8 | 10 | 12 | 5 | 35 |
| Station 6 | 8 | 12 | 12 | 4 | 36 |
| Station 7 | 6 | 6 | 2 | 6 | 20 |
| Station 8 | 6 | 8 | 6 | 6 | 26 |
| Station 9 | 8 | 12 | 10 | 5 | 35 |
| Station 10 | 6 | 7 | 2 | 4 | 19 |
| Total Areas | 70 | 93 | 75 | 48 | 286 |
| WF x DP x Total Areas | 42,000 | 8,370 | 1,125 | 240 | 51,735 |
| Availability Weighting (TAW) | 15,330,000 | 3,055,050 | 410,625 | 87,600 | 18,883,275 |
| Annual Unitary Payment (AP) | | | | | £5,000,000 |
| Gearing | | | | | 200% |
| Area Rate (AR) | | | | | £0.53 |

If an Area with a Weighting Factor of 50 (such as a Custody Suite) is unavailable within Station 1 for 3 Deduction Periods (i.e. 6 hours being 3 deduction periods based on 2 hr rectifications) the deduction can be calculated as:

$$UD_n = WF_n \times AR_n \times DP_n$$

Where:

$$WF_n = 50$$

$$AR_n = \text{£}0.53$$

$$DP_n = 3$$

The Unavailability Deduction would therefore be equal to 50 multiplied by £0.53 multiplied by 3, which equals £79.50. The deduction for Unavailability will apply each time that a rectification period relating to the same instance of Unavailability is missed. In this example one failure to rectify within a 2 hour period would have equalled a deduction of £26.50, once the next two hour rectification is missed the deduction increases to £53 and then once the third rectification of two hours is missed it increases as shown to £79.50.]

Part XIV - Rectification Periods for Unavailability

[Rectification periods should be based on the importance of the area and should be agreed on a project specific basis. If the rectification periods are altered this will affect the Area Rate calculation. Some examples of how permanent rectification periods can be specified in the Part of Schedule 6 are shown below]

| Category | Description of importance | Permanent rectification |
|-----------------|----------------------------------|--------------------------------|
| 1 | Critical Areas | 2 hours |
| 2 | Very Important Areas | 8 hours |
| 3 | Important Areas | 24 hours |
| 4 | Other Areas | 7 days |

[Temporary Rectification – the payment mechanism does not set out pre-agreed temporary rectification periods. Upon an initial assessment of the failure the Contractor may determine it is not possible to meet the permanent rectification target and can agree with the Authority to put a Temporary Rectification in place. This will have a rectification period of 5 operational days or shorter as agreed on a case by case basis with the Contract Manager or such longer period as may be required provided 2 days prior notice is given and the Authority approves. The intention of this is that Temporary Rectification only applies on a case by case basis where for unforeseen reasons the permanent rectification is proving difficult to achieve – e.g. the supply of a new window takes 2 days and therefore a Temporary Rectification is required prior to the new window being supplied]

Part XV - Rectification Priority Categories for Service Performance Shortfalls

The following table is taken from the Output Specification Part Two which sets out the response and rectify times in relation to Service Performance.

Authorities should note that the response times and rectification periods, together with the service standards expected from the Contractor, have been the subject of extensive consultation with private sector organisations prior to publication, and are therefore considered to be both reasonable and deliverable. Consequently, Authorities should not countenance any significant variation to any of these.

| | Response Times | Rectification Period |
|--------|--|--|
| High | 1 hour after Notification | 2 hours or as otherwise agreed with the Authority |
| Medium | 1 Working Day i.e. 24 hours after Notification | 1 Working Day or as otherwise agreed by Authority |
| Low | 5 working days | 5 working days or as otherwise agreed with the Authority |

**Part XVI - Service Priority Categories and
Service Failure Deductions**

[Based on the calibration of the performance mechanism using the list of Key Performance Indicators provided in the Output Specification Part Two the Performance Deduction Point Value is £3]

[Points will be awarded for failure to meet a KPI based on the following table]

| Performance Point Category | Number of Performance Points |
|-----------------------------------|-------------------------------------|
| Category 1 – Low Points | 1 |
| Category 2 – Medium Points | 3 |
| Category 3 – High Points | 5 |