

Schedule 15

Social Care Payment Mechanism

Part A) : Definitions

The terms and expressions used in this Schedule 15 shall be of the same meaning as set out in Schedule 1 (*Definitions and Interpretation*) of the Agreement unless the context requires otherwise. The following words and expressions shall have the meanings set out below:

Accessibility Condition	means a state or condition of the relevant Functional Part or the means of access to it which allows all persons who are entitled to enter, occupy or use the relevant Functional Part to enter and leave the Functional Part safely and conveniently and using normal access routes;
Additional Period	has the meaning given in paragraph 7.4(a) of Part C of this Schedule 15;
Ad-Hoc Services	means those Services which, in accordance with the Services Specification, the Authority is entitled to require the Service Provider to provide but where the Service Provider's obligation to provide such Services does not arise unless, and until, it is requested to do so by the Authority;
Ad-Hoc Services Request	means a request for the provision of an Ad-Hoc Service made by the Authority to the Service Provider in accordance with the Services Specification;
Annual Service Payment	means the sum in pounds sterling calculated in accordance with the provisions set out in paragraph 3 of Part B of this Schedule 15;
Asset Maintenance Service	means the facilities management service to be provided by the Service Provider in accordance with this Agreement;
Availability Condition	means any of: <ul style="list-style-type: none">(i) the Accessibility Condition;(ii) the Safety Condition;(iii) the Use Condition; and(iv) the Prescribed Operational Function Condition;

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Base Date¹	means the ♦ 20 ♦;
Bedding-In	means a tolerance level for the making of Deductions in respect of Performance Failures allowed for a period of time following, as the case may be, a New Services Contractor Start Date or the Actual Completion Date, as more particularly described in paragraph 2 of Part C of this Schedule 15;
Contract Day	means a 24 hour period commencing at midnight at the start of the relevant day;
Deduction	means a deduction made from a Service Payment in accordance with this Schedule 15;
Excusing Cause	means one of the following circumstances: <ul style="list-style-type: none">(a) any breach of any express provision of this Agreement by the Authority or any Authority Party (unless, and to the extent, caused or contributed to by the Service Provider or any Service Provider Party);(b) any deliberate act or omission of the Authority or of any Authority Party or any failure by the Authority or Authority Party (having regard always to the interactive nature of the activities of the Authority and of the Service Provider) to take reasonable steps to carry out its activities in a manner which minimises undue interference with the Service Provider's performance of the Project Operations, save where (and to the extent):<ul style="list-style-type: none">(i) caused or contributed to by the Service Provider or any Service Provider Party;(ii) the Authority or Authority Party is acting in accordance with a recommendation or instruction of the Service Provider or any Service Provider Party;

¹ The Base Date will be a fixed date for the purpose of pricing the Service Payment.

(iii) any such act or omission giving rise to such failure was within the contemplation of the parties or was otherwise provided for in this Agreement;

(iv) the consequences of any such deliberate act or omission or other acts or omissions giving rise to such failure would have been prevented by the proper performance of the Service Provider's obligations under this Agreement;

(c) the implementation of any action taken by the Authority or any Authority Party, or any suspension of the Service Provider's obligation to deliver any or any part of the Services or the compliance by the Service Provider with instructions given by the Trust, in each case in the circumstances referred to in clause 29.7 (*Authority Right of Step In*) of this Agreement;

(d) the carrying out of any Small Works in accordance with the terms of this Agreement during the period of time agreed between the Authority and the Service Provider; or

(e) the carrying out of planned preventative maintenance in accordance with the Schedule of Programmed Maintenance;

Fault

means an incident or state of affairs affecting a Functional Part which does not meet or comply with the Performance Standards set out in the Services Specification and/or results in the Availability Condition not being met;

Functional Part

means a Zone or a Functional Zone according to the context in which it is used;

Functional Zone

means an area of the Facilities specified as such in Appendix 4 to this Schedule 15 comprising two or more Zones;

Functional Zone Weighting

means the percentage weighting ascribed to the

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Percentage	relevant Functional Zone for the purpose of calculating Deductions for Unavailability Events as set out in Appendix 4 to this Schedule 15;
Helpdesk	means the contact point to be established by the Service Provider pursuant to Part B of the Services Specification in respect of the Helpdesk Service for the notification of Ad-Hoc Service Requests, the occurrence of Faults and other day to day matters arising in relation to the provision of the Services;
High Performance Failure	a Performance Failure which has been designated in the Services Specification or in this Schedule 15 as a High Performance Failure;
Long Stop Return Date	has the meaning given to it in paragraph 10.11 of Part C of this Schedule 15;
Low Performance Failure	a Performance Failure which has been designated in the Services Specification or in this Schedule 15 as a Low Performance Failure;
Medium Performance Failure	a Performance Failure which has been designated in the Services Specification or in this Schedule 15 as a Medium Performance Failure;
Minimum Agreed Availability Conditions	means the Accessibility Condition, the Safety Condition and the Prescribed Operational Function Condition together with the Use Condition, as temporarily modified as permitted in accordance with paragraph 7.2 of Part C of this Schedule 15 for the purposes of a Temporary Repair;
Minimum Unavailability Deduction	means the sum of [£30] ² which shall be index linked. For the avoidance of doubt, if more than one Zone or Functional Zone is rendered Unavailable by an Unavailability Event, the amount of the Minimum Unavailability Deduction in respect of that Unavailability Event remains the same ³ ;
New Services Contractor Start Date	means the Service Commencement Date and, where a Services Contractor is replaced by a new

² Project specific. The calibration of the payment mechanism should be such that the Minimum Availability Deduction is likely to apply to a limited number of Zones.

³ If the Unavailability Event is not rectified within a further 4 hour period, another Deduction (including the Minimum Availability Deduction) becomes possible, since this is treated as a further Unavailability Event.

Services Contractor, either:

- (a) (in the case of replacement following a Market Testing) the date established in accordance with Schedule 16 (*Market Testing*); or
- (b) in other cases, the date on which the Services commence to be provided by the new Services Contractor or, if earlier, the date on which they were first due to be provided by the new Services Contractor;

New Services Contractor Bedding-In Period

has the meaning given in paragraph 2.1 of Part C of this Schedule 15;

Performance Failure

means

- (a) where a Fault occurs, and a Rectification Time is applicable under the Services Specification, the failure by the Service Provider to Rectify the Fault within the specified Rectification Time;
- (b) where the Service Provider is required by the relevant Service Specification to provide a Service (including an Ad-Hoc Service) within a specified period, the failure by the Service Provider to provide that Service within the required period; and
- (c) in all other cases, a failure to satisfy the requirements of the Services Specification;

except for an Unavailability Event;

Performance Failure Deduction

means a Deduction which may be made in respect of a Performance Failure;

Performance Monitoring Report

means the report specified in Part A of the Services Specification which the Service Provider has an obligation to prepare for the Authority in respect of its performance of the Services;

Permanent Repair

means Rectification where a Temporary Repair has been permitted and carried out pursuant to paragraph 7 of Part C of this Schedule 15;

Permanent Repair Deadline

has the meaning given to it in paragraph 7.1(b) of Part C of this Schedule 15;

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Prescribed Operational Function	means the use or purpose of the relevant Functional Part as stated in Appendix 1 to this Schedule 15;
Prescribed Operational Function Condition	means a state or condition of the relevant Functional Part which allows the Prescribed Operational Function for that Functional Part to be carried on and performed having regard to the practicalities of carrying on and performing such Prescribed Operational Function;
Rectification	<p>means, following the occurrence of a Fault, making good the Fault in a way that ensures compliance with this Agreement and the Services Specification. Without prejudice to the generality of the foregoing, this shall include:</p> <ul style="list-style-type: none">(a) restoring all functional capability; and(b) ensuring that any Functional Part which has been affected by the relevant Fault complies with the Availability Conditions <p>and Rectify shall be construed accordingly;</p>
Rectification Time	means the period specified in the Services Specification for Rectification of a Fault, except that where a Fault causes a Functional Part to be Unavailable, that period shall be four (4) hours. In each case the relevant period shall begin at the time the Fault is reported to the Helpdesk. For the avoidance of doubt, if no period for Rectification is specified in the Services Specification in respect of the relevant requirement, no Rectification Time applies ⁴ ;
Remedial Period	has the meaning given in paragraph 6.3 of Part C of this Schedule 15 ⁵ ;
Return Date	means for the purpose of Temporary Alternative Accommodation the date agreed for the return to

⁴ Some matters do not attract a Rectification Time, for example Performance Failures that do not directly affect the condition of the Facilities. Also, where there is a request for an Ad-Hoc Service, the service requirement must be met within the time prescribed in the Service Specification. If it is not, then a Performance Failure will have occurred - there is no additional Rectification Time.

⁵ The way this works is as follows: when a Performance Failure occurs (in some cases, mostly estates-related faults, there will be a Rectification Period, but in all other cases the Performance Failure is immediate) and there is a Deduction. Further Deductions can be made at regular intervals if the problem continues to be unresolved. These intervals are Remedial Periods. They apply to all types of Fault.

the original Functional Part in accordance with paragraph 10.3(d) of Part C of this Schedule;

Safety Condition

means a state or condition of the relevant Functional Part which allows those persons who, it can reasonably be expected, may, from time to time, require to enter, leave, occupy and use such Functional Part to do so safely, including but not limited to, compliance with the relevant health and safety regime and any other Legislation or Guidance relating to fire safety or health and safety at work;

Service Failure Points

means points allocated to the Service Provider and to the FM Contractor and/or the Services Contractor in respect of the occurrence of Unavailability Events and Performance Failures which are determined by the provisions set out in Part E of and Appendix 2 to this Schedule 15;

Service Payment

means the sum in pounds sterling payable by the Authority to the Service Provider for the provision of the Project Operations in accordance with this Agreement;

Temporary Alternative Accommodation

means accommodation offered to the Authority by the Service Provider as a substitute for any Unavailable Functional Part pursuant to paragraph 10 of Part C of this Schedule 15;

Temporary Repair

means, where a Fault occurs in the Asset Maintenance Service, works of a temporary nature that do not constitute Rectification but satisfy the Minimum Agreed Availability Conditions and substantially make good the relevant Fault for the period until a Permanent Repair can be undertaken;

Unavailability Event

means a Fault which causes a Functional Part to be Unavailable and which has not been Rectified within four (4) hours of the time at which the Fault was reported to the Helpdesk;

Unavailable and Unavailability

means, in relation to a Functional Part, that such Functional Part is in a state or condition which does not comply with any one or more of the Availability Conditions;

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Use Condition	means a state or condition of the relevant Functional Part which satisfies the Use Parameters for that Functional Part;
Use Parameters	<p>means the range of functional requirements for the proper use and enjoyment of a Functional Part for its particular purpose relating to:</p> <ul style="list-style-type: none">(i) temperature;(ii) humidity;(iii) air-flow;(iv) lighting;(v) power (essential and non-essential);(vi) safe water (relating to availability, temperature, quality and safe sewerage system);[(vii) nurse call system;](viii) [<i>Authority to specify</i>] <p>as the same are specified on the Zone Data Sheets for the relevant Functional Part;</p>
Zone	means a room or group of rooms or space within a Functional Zone which is specified as such in Appendix 4 to this Schedule 15; ⁶
Zone Weighting Percentage	means the percentage weighting ascribed to each Zone for the purpose of calculating Deductions for Unavailability Events as set out in Appendix 4 to this Schedule 15;

⁶ Calibration exercises using the NHS payment mechanism suggest that, in order to prevent excessive reliance on the Minimum Deduction, it may be desirable to group together more than one room in a single Functional Unit.

Part B) : Calculation of Service Payments

1 Monthly Service Payment⁷

- 1.1 The Service Payment payable in respect of any [Contract Month] shall be calculated in accordance with the following formula:

$$\text{MSP} = (\text{ASPn}/12) - \Sigma\text{D}$$

where:

MSP is the Service Payment for the Contract Month for which the formula is to be applied;

ASPn is the Annual Service Payment for the relevant Contract Year;

ΣD is the sum of Deductions in respect of the relevant Contract Month in relation to Performance Failures and Unavailability Events calculated in accordance with the provisions set out in Part C of this Schedule 15;

- 1.2 In the Contract Month in which the Service Commencement Date falls and in the last Contract Month of the Contract Period a pro rata adjustment shall be made to reflect the actual number of days in the relevant Contract Month from, and including, the Service Commencement Date (for the first month) and up to and including the last day of the Contract Period (for the last month).

2 Annual Service Payment

- 2.1 The Annual Service Payment for any Contract Year shall be calculated in accordance with the following formula:

$$\text{ASPn} = (\text{ASPo} \times (1 - [\text{UCI}])) + (\text{ASPo} \times [\text{UCI}] \times (\text{RPI}_n / \text{RPI}_o))$$

Where:

ASPn is the Annual Service Payment for the relevant Contract Year;

ASPo is £[]⁸, being the Annual Service Payment at the Base Date, as adjusted from time to time in accordance with paragraph 4 of this Part B;

RPI_n is the value of the Retail Prices Index published or determined with respect to the month of ♦⁹ which most recently precedes the relevant Contract Year;

⁷ If any part of the Services are volume based (such as laundry) the calculation will need to be amended. Note also that this payment mechanism and the calculation does not include energy or other utility costs.

⁸ This figure should be the initial planned Annual Service Payment in Base Date prices.

⁹ Authority to insert, depending on the date of financial close and whether the parties have decided to amend the definition of Contract Year so that indexation reviews coincide with the start of the Authority's financial year.

RPI_o is the value of the Retail Prices Index published or determined with respect to the month in which the Base Date falls; and

[**UCI** is the proportion of the Annual Service Payment which, at the date of carrying out the relevant calculation, is subject to indexation¹⁰.]

3 Effect of Value Testing on Annual Service Payment

- 3.1 The Annual Service Payment shall with effect from the date established in accordance with Schedule 16 (*Market Testing*) be the sum calculated in accordance with the following formula:

$$\mathbf{ASPo(new)} = \mathbf{ASPo(previous)} + / - \mathbf{RVTA}$$

Where:

ASPo(new) is the Annual Service Payment revised to reflect any change to the costs of any of the Market Tested Services following a Market Test and expressed in value of money terms as if it were payable at the Base Date;

ASPo(previous) is the figure in pounds sterling set out in paragraph 2.1 of this Part B; and

RVTA is the adjustment to the cost of the Market Tested Services following a Market Test (if any and whether up or down) re-based to reflect the value of the amount of the adjustment at the Base Date.

- 3.2 For the purposes of this paragraph 4 of this Part B **RVTA** shall be a figure in pounds sterling (whether positive or negative) calculated in accordance with the formula:

$$\mathbf{RVTA} = (\mathbf{NAP} - (\mathbf{OPVT} \times \mathbf{RPI}_{In} / \mathbf{RPI}_{Io})) \times (\mathbf{RPI}_{Io} / \mathbf{RPI}_{In})$$

Where

NAP is the aggregate of the new annual prices for the Market Tested Services arising from the Market Test;

RPI_{In} is the value of the Retail Prices Index published or determined with respect to the month of ♦ in the Contract Year in which the Market Testing Date falls;

OPVT is the aggregate of the original annual prices for the Market Tested Services, as set out in the second column (headed “Costs”) of Appendix 3 of this Schedule 15; and

¹⁰ In accordance with guidance published by HM Treasury entitled “Interest Rate and Inflation Risk Issues in PFI Contracts” and published in May 2006, Authority will need to consider if value for money may be improved if indexation is not applied to part of the Annual Service Payment.

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RPIo is the value of the Retail Prices Index published or determined with respect to the month in which the Base Date falls.

Part C) : Deductions from Service Payments

1 Entitlement to Make Deductions

- 1.1 If at any time during the Service Period an Unavailability Event or a Performance Failure shall occur the Authority shall, subject to paragraph 1.2, paragraph 1.3 and paragraph 4.1 of this Part C, be entitled to make Deductions from the Service Payment in respect of that Unavailability Event or Performance Failure.
- 1.2 The maximum aggregate of all Deductions that the Authority can make from a Service Payment in respect of any Contract Month shall be the Service Payment.
- 1.3 To the extent that an Unavailability Event or a Performance Failure is the result of an Excusing Cause the Authority shall not be entitled to make Deductions or to award Service Failure Points.

2 Bedding-In Periods

- 2.1 In respect of each Service, there shall be a period of [two (2)] Contract Months for Bedding-In beginning on each New Services Contractor Start Date (the **New Services Contractor Bedding-In Period**). During the New Services Contractor Bedding-In Period, the following provisions shall apply:
 - (a) during the first Contract Month of the New Services Contractor Bedding-In Period, no Deductions may be made in respect of Performance Failures occurring in the provision of the relevant Service; and
 - (b) during the second Contract Month of the New Services Contractor Bedding-In Period, the amount of any Deductions in respect of Performance Failures occurring in the provision of the relevant Service shall be reduced by 50%.
- 2.2 There shall be no relief during any period of Bedding-In in respect of Deductions which relate to Unavailability Events.

3 Amount of Deductions for Performance Failures

- 3.1 Subject to paragraphs 1 and 2 of this Part C, the amount of the Deduction in respect of a Performance Failure shall be as follows:
 - (a) in the case of a Low Performance Failure, the sum of [£XX]¹¹, index-linked;

¹¹ Project specific.

- (b) in the case of a Medium Performance Failure, the sum of [£XX], index-linked; and
 - (c) in the case of a High Performance Failure, the sum of [£XX], index-linked.
- 3.2 The classification of a Fault as a potential Performance Failure or Unavailability Event shall be made at the time at which the occurrence of the Fault is reported to the Helpdesk. A Fault which is incorrectly classified may be re-classified with the approval of the Authority Representative and the Service Provider Representative, (approval not to be unreasonably delayed or withheld). If this happens, the appropriate Deduction (if applicable) shall be made and any Deduction incorrectly applied shall be withdrawn.

4 Deductions for Unavailability Events

- 4.1 Subject to paragraph 1.2 and paragraph 1.3 of this Part C, the amount to be deducted from the Service Payment in respect of any Unavailability Event shall be the higher of:
- (a) the Minimum Unavailability Deduction¹²; and
 - (b) the aggregate of amounts calculated in accordance with the following formula in respect of all Functional Parts made Unavailable as a result of the Unavailability Event:

$$D = (ASPn / (Ny \times 6)) \times AW \times UW \times DP$$

Where:

D means the amount (in pounds sterling) of the Deduction in respect of the Unavailability Event;

ASPn means the Annual Service Payment at the time the relevant Unavailability Event occurs;

Ny means the number of days in the Contract Year (being the year in which the relevant Unavailability Event occurs) provided that, if the first or the final Contract Year is of less than 12 months' duration, Ny shall be deemed to be 365¹³;

¹² If more than one Zone is affected, the Minimum Unavailability Deduction is the same amount in total (i.e. there is not a separate Minimum Unavailability Deduction per Zone).

¹³ The Authority may replace Ny with 365 days if it wishes, although this disregards leap years.

AW means the Functional Zone Weighting Percentage attributable to each Functional Zone in which the Unavailability Event occurs as set out in Appendix 4 of this Schedule 15;

UW means the Zone Weighting Percentage attributable to each Zone in which the Unavailability Event occurs, as set out in Appendix 4 of this Schedule 15;

DP is 50% and shall apply only where the relevant Functional Part is Unavailable but the Authority continues to use it for its Prescribed Operational Function (or for a function serving an operational purpose similar to the Prescribed Operational Function)

Provided that, where more than one (1) Zone in the same Functional Zone is Unavailable as a result of the same Unavailability Event, the maximum Deduction allowable in respect of that Functional Zone shall be the amount derived from setting UW at 100%.

5 Rectification

- 5.1 Where a Rectification Time is specified in the Services Specification, in respect of a Fault then, subject to paragraph 8 of this Part C, no Performance Failure or Unavailability Event shall occur if the Service Provider successfully carries out Rectification within the specified Rectification Time and in such circumstances no Deduction shall be made.
- 5.2 If Rectification (where applicable) is not successfully carried out by the Service Provider within the specified Rectification Time, a Performance Failure or, as the case may be, an Unavailability Event shall occur.
- 5.3 On the occurrence of a Performance Failure or an Unavailability Event, the appropriate Deduction shall be made depending on whether the matter is a Low Performance Failure, a Medium Performance Failure or a High Performance Failure or an Unavailability Event.
- 5.4 When carrying out Rectification, or works of Temporary Repair pursuant to paragraph 7 of this Part C, the Service Provider shall, at all times act in accordance with Legislation, Guidance, Authority Policies and Good Industry Practice. Failure to do so shall be deemed to be a new Low Performance Failure, unless the failure constitutes a breach of Legislation, in which case there shall be deemed to be a new High Performance Failure.

6 Performance Failures with no Rectification Time

- 6.1 Where no Rectification Time is specified in the Services Specification in respect of a Performance Failure, the provisions of this paragraph 6 shall apply.

- 6.2 On the occurrence of a Performance Failure, the appropriate Deduction shall be made depending on whether the matter is a High, Medium or Low Performance Failure.
- 6.3 A period shall apply, within which the Service Provider shall demonstrate, to the reasonable satisfaction of the Authority Representative, that it has remedied the Performance Failure or, where the period is marked with an asterisk in the Services Specification¹⁴, has taken appropriate steps to prevent the recurrence of the Performance Failure. This period is the **Remedial Period**. The lengths of the Remedial Periods shall be as stated in the Services Specification in respect of the relevant Performance Failure.
- 6.4 If before the expiry of the Remedial Period the Service Provider demonstrates to the reasonable satisfaction of the Authority Representative that it has remedied the Performance Failure or as applicable, has taken appropriate steps to prevent the recurrence of the Performance Failure, no further Deductions shall be made in respect of the Performance Failure. Otherwise a further Deduction shall be made of the appropriate amount (as described in paragraph 6.2 of this Part C) and a further Remedial Period or Periods of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as the Service Provider shall demonstrate to the reasonable satisfaction of the Authority Representative that it has remedied the Performance Failure or, as applicable, taken appropriate steps to prevent the recurrence of the Performance Failure.

7 Temporary Repairs

- 7.1 If the Service Provider informs the Authority that it is unable to Rectify a Fault within the specified Rectification Time due to the need for specialised materials or personnel that are not, and cannot reasonably be expected to be, immediately available at the Facilities but that a Temporary Repair can be effected in accordance with the provisions:
- (a) the Authority Representative shall permit the Service Provider to carry out the Temporary Repair proposed by the Service Provider unless the Authority Representative, acting reasonably, considers that if the Temporary Repair proposed by the Service Provider is carried out, the use of the relevant Functional Part will not be in accordance with generally accepted [social care] practices or not be in accordance with Good Industry Practice; and
 - (b) where a Temporary Repair is permitted, a deadline by which a Permanent Repair must be made shall be set, giving the Service Provider a reasonable period within which to carry out the Permanent Repair (the **Permanent**

¹⁴ Authority to ensure the Services Specification are compatible with this regime.

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Repair Deadline). Both the Authority and the Service Provider shall act reasonably in seeking to agree what the deadline should be.

7.2 During any period beginning at the time when a Temporary Repair is permitted and ending at the earlier of:

- (a) the time at which a Permanent Repair is successfully completed; and
- (b) the Permanent Repair Deadline,

the Availability Condition shall be replaced by the Minimum Agreed Availability Conditions for the purposes of assessing if the relevant Functional Part is Unavailable.

7.3 Subject to paragraph 5.4 if the agreed Temporary Repair is effected within the specified Rectification Time (as referred to in paragraph 7.1) and the Permanent Repair is effected by no later than the Permanent Repair Deadline, no Performance Failure or Unavailability Event will occur and no Deduction may be made, in respect of the Fault.

7.4 If the Temporary Repair is not carried out within the specified Rectification Time, a Performance Failure or, as the case may be, Unavailability Event shall be deemed to occur and the following provisions shall apply:

- (a) there shall be a further period (an **Additional Period**) beginning on the expiry of the Rectification Time and of a duration equal to that of the Rectification Time. The Service Provider shall ensure that the Temporary Repair is successfully carried out prior to the expiry of the Additional Period. If the Temporary Repair is not successfully carried out by the Service Provider before the expiry of the Additional Period, a further Performance Failure or, as the case may be, Unavailability Event shall occur and a further Additional Period shall commence;
- (b) unless the Temporary Repair has been successfully carried out by the Service Provider prior to the expiry of each Additional Period then, subject to paragraph 7.4(c), a further Performance Failure or, as the case may be, Unavailability Event shall occur until such time as the Temporary Repair shall have been successfully completed;
- (c) if the Temporary Repair is not successfully carried out by the Service Provider prior to the Permanent Repair Deadline, and no Permanent Repair has been successfully carried out, the right for the Service Provider to carry out a Temporary Repair pursuant to this paragraph 7 shall cease and paragraph 7.5 shall apply.

- 7.5 If the Permanent Repair is not carried out by the Permanent Repair Deadline, a Performance Failure or, as the case may be, an Unavailability Event shall be deemed to occur, and the provisions of paragraph 5.3 and paragraph 9 of this Part C shall apply.

8 Repeated Rectification

- 8.1 Notwithstanding that the Service Provider completes a Rectification in respect of a Fault within the relevant Rectification Time there shall be deemed to be a Low Performance Failure on the occurrence of:

- (a) the third such Fault that arises during the Contract Day; and/or
- (b) the fourth such Fault which occurs in any consecutive seven (7) day period

Provided That:

- (c) each such Fault is in connection with the same Performance Standard set out in the Services Specification and occurs in the same Functional Zone; and
 - (d) whether the Faults occur in the same Zone or in different Zones within the same Functional Zone there is good reason to believe that the root cause of each Fault is the same.
- 8.2 If the same such Fault occurs more than three (3) times in a Contract Day or more than four (4) times in any consecutive seven (7) day period, a Low Performance Failure shall be deemed to have occurred in respect of each and every Fault which has occurred during the Contract Day or during the consecutive seven (7) day period (as the case may be).

9 Effect of Unavailability on other Deductions

Until an Unavailability Event has been Rectified, the Deduction in respect of the Unavailability Event shall be the only Deduction available to be made in respect of any Zone in which the Unavailability Event has occurred. No further Deduction shall be made for any subsequent Performance Failure which may occur in the relevant Zone during the period until Rectification has been completed. Provided that where the Authority continues to use a Zone which is affected by an Unavailability Event for the same, or a comparable, Prescribed Operational Function, the Service Provider shall be obliged to continue to provide in respect of that Zone such of the Services as are normally provided as part of the day to day functioning of that Zone and, if those Services are not provided in a manner which satisfies the requirements of the relevant part of the Services Specification

the Authority shall be entitled to award Service Failure Points in accordance with Part E of this Schedule 15 where appropriate.

10 Temporary Alternative Accommodation

10.1 If an Unavailability Event occurs the Service Provider. may offer the Authority, Temporary Alternative Accommodation by written notice to the Authority within [ten (10)] Business Days from the commencement of the relevant Fault.

10.2 The Temporary Alternative Accommodation shall:-

(a) comply with:

- (i) the Accessibility Condition;
- (ii) the Safety Condition;
- (iii) the Use Condition;
- (iv) the Prescribed Operational Function Condition

applicable to any Functional Part which is affected by the relevant Unavailability Event for which Temporary Alternative Accommodation is offered;

- (b) be a temporary alternative having regard to the facts and the circumstances in existence;
- (c) be upon terms which are not materially different from the terms upon which the Authority occupied the affected Functional Part;
- (d) be accommodation for which the Authority is not already paying within the Service Payment or other terms of this Agreement;
- (e) be supplied with the Services to the standards set out in the Services Specification which the Service Provider would under normal circumstances be providing within the Unavailable Functional Part;
- (f) not involve the Authority incurring any additional cost or charges in respect of the Temporary Alternative Accommodation including, without limitation, the reasonable costs of any relocation to and from the Temporary Alternative Accommodation;¹⁵ and
- (g) be in reasonable proximity to the Facilities for which it is a temporary replacement, shall be reasonably accessible by public and private transport and shall have adequate parking facilities.

¹⁵ For the avoidance of doubt any and all relocation costs shall be borne by the Service Provider.

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- 10.3 The written notice sent by the Service Provider. to the Authority pursuant to paragraph 10.1 of this Part C shall:
- (a) describe the Temporary Alternative Accommodation;
 - (b) invite the Authority to inspect the Temporary Alternative Accommodation and shall give the Authority reasonable notice of a time and a date when it may do so;
 - (c) set out its proposals regarding the timing and co-ordination of relocation to the Temporary Alternative Accommodation;
 - (d) specify the date (agreed by the Authority before the submission of the written notice) by which the Service Provider reasonably expects the Authority to be able to relocate back to the relevant Functional Part (the **Return Date**); and
 - (e) describe the terms upon which the Authority shall be entitled to occupy such Temporary Alternative Accommodation including the proposed division of such accommodation into Zones and Functional Zones and the proposed weighting to be attributed to them for the purposes of the operation of the Payment Mechanism. The weighting allocated to Temporary Alternative Accommodation shall, taken as a whole, be equivalent to the weighting of the accommodation it replaces.
- 10.4 If it requires to inspect the Temporary Alternative Accommodation the Authority shall do so within five (5) Business Days of receipt of the notice referred to in paragraph 10.1 of this Part C. The Authority shall notify the Service Provider in writing of its acceptance or refusal of the proposed Temporary Alternative Accommodation within twenty four (24) hours of its inspection of the same or, if the Authority has elected not to carry out an inspection, within five (5) Business Days of receipt of the notice referred to in paragraph 10.1 of this Part C. The Authority shall act reasonably when deciding to accept or refuse any proposed Temporary Alternative Accommodation.
- 10.5 If the Authority accepts the offer of Temporary Alternative Accommodation then, the Authority shall not be entitled to vacate the Temporary Alternative Accommodation until the earlier of the Return Date and the date on which the Authority is entitled and able to return to and use the Functional Part in accordance with the agreed programme for relocation referred to in paragraph 10.9 of this Part C.
- 10.6 For the avoidance of doubt, the Authority's rights under clause 28 (*Monitoring of Performance*) of this Agreement shall not be affected by the acceptance by the Authority of the Temporary Alternative Accommodation.

- 10.7 If the Authority accepts the Service Provider's offer of Temporary Alternative Accommodation, no further Deductions shall be made or Service Failure Points awarded in respect of a Functional Part vacated by the Authority while the Temporary Alternative Accommodation replacing that Functional Part is being used by the Authority.
- 10.8 The Authority shall be entitled to award Service Failure Points and make Deductions in respect of any Performance Failure or Unavailability Event which occurs in the Temporary Alternative Accommodation as if the Temporary Alternative Accommodation was the Functional Part which it replaced and any Deduction in respect of an Unavailability Event shall be calculated using the weighting attributed pursuant to paragraph 10.3(e) of this Part C.
- 10.9 When the Service Provider has completed the required works to enable the Authority to return to the Functional Part the Authority Representative shall confirm that the Availability Condition for the Functional Part is met and the Authority Representative and the Service Provider Representative shall agree a relocation programme to return to the Functional Part.
- 10.10 Where the Authority has accepted the proposed Temporary Alternative Accommodation pursuant to paragraph 10.4 of this Part C, in the event that the Service Provider fails to complete the works to enable the Authority to return to the relevant Functional Part on the Return Date the Authority may, in its absolute discretion, vacate the Temporary Alternative Accommodation at any time after the Return Date or remain in occupation. In such circumstances:
- (a) where the Authority, in its discretion, remains in occupation of the Temporary Alternative Accommodation following the Return Date the Temporary Alternative Accommodation shall be deemed to be Unavailable with effect from the Return Date and the Authority shall levy fifty per-cent (50%) of the Deduction which would have been levied in respect of that Unavailability Event for each Contract Day on which the Authority occupies the Temporary Alternative Accommodation thereafter until the date on which the Unavailability Event referred to in paragraph 10.1 of this Part C has been rectified and the Authority is able to resume its use of the Functional Part.
 - (b) where the Authority, in its discretion, vacates the Temporary Alternative Accommodation following the Return Date, the Temporary Alternative Accommodation shall be deemed to be Unavailable on each Contract Day on which the Authority is not in occupation of the Temporary Alternative Accommodation until the date on which the Unavailability Event referred to in paragraph 10.1 of this Part C has been rectified and the Authority is able to resume its use of the Functional Part.

- 10.11 The Authority shall specify a date (the **Long Stop Return Date**), being a date no earlier than the Return Date, by which the Rectification shall be completed and if the Service Provider fails to complete the Rectification of the Functional Part for which the Temporary Alternative Accommodation is a replacement by the Long-Stop Return Date the following shall apply:
- (a) the Authority may (without prejudice to its rights under clause 51 (*Termination on Service Provider Default*) of this Agreement or any other express rights of the Authority under this Agreement) take such steps as it considers to be appropriate (either itself or by engaging others to take such steps) to restore any Functional Part for which the Temporary Alternative Accommodation is a replacement to a condition which satisfies in all respects the requirements of the Services Specification; and
 - (b) the Service Provider shall reimburse the Authority for all reasonable costs, losses, expenses or damages incurred by the Authority in relation to taking the steps, or engaging others to take the steps, referred to in paragraph 10.11(a) and the Authority shall be entitled to deduct any such amount from any amounts payable to the Service Provider under the provisions of this Agreement.

Part D) : Failure by the Service Provider to Monitor or Report

- 1 Subject to paragraphs 2 to 8 (inclusive) of this Part D, the Performance Monitoring Report produced by the Service Provider for any Contract Month shall be the source of the factual information regarding the performance of the Services for the relevant Contract Month for the purposes of calculating the relevant Service Payment, the number of Service Failure Points awarded and the number of Warning Notices awarded.
- 2 If there shall be any error or omission in the Performance Monitoring Report for any Contract Month the Service Provider and the Authority shall agree the amendment to the Performance Monitoring Report or, failing agreement within [ten (10)] Business Days of notification of the error or omission (which notification shall not be made more than two (2) calendar months following the relevant Performance Monitoring Report except in the circumstances referred to in paragraph 7 of this Part D) either party may refer the matter to the [Fast Track] Dispute Resolution Procedure.
- 3 If the Service Provider fails to monitor or accurately to report a Fault, a Performance Failure, an Unavailability Event or an Ad-Hoc Service Request¹⁶ then, without prejudice to the Deduction to be made in respect of the relevant Performance Failure or Unavailability Event (if any), the failure to monitor or report the Fault, Performance Failure, Unavailability Event or Ad-Hoc Service Request shall be deemed to be a new Low Performance Failure, unless the circumstances set out in paragraph 7 of this Part D apply, in which case there shall be deemed to be a new High Performance Failure.
- 4 Where the Service Provider fails to monitor or accurately to report a Performance Failure or an Unavailability Event in the circumstances referred to in paragraph 7 of this Part D, for the purposes of paragraph 1 of Part 1 of Schedule 19 (*Record Provisions*) the Authority shall be deemed to have reasonable cause to require that the Service Provider shall make available to the Authority for inspection such of the records referred to in Part 2 of Schedule 19 (*Record Provisions*) as the Authority may specify.
- 5 The Service Provider shall upon submission of a valid invoice pay to the Authority a sum equal to the costs reasonably incurred by the Authority in carrying out any inspection, investigation and audit of records made available pursuant to paragraph 4 of this Part D.
- 6 In the event that the Authority's inspection, investigation or audit of records made available pursuant to paragraph 4 of this Part D reveals any further matters of the type referred to in paragraphs 2 and 3 of this Part D, those matters shall be dealt with in accordance with paragraph 2 or 3 of this Part D as appropriate. The Authority shall, in addition, be entitled to make Deductions in respect of any Performance Failures or Unavailability Events in the manner prescribed in Part B of this Schedule 15. Any such Deductions shall be made from the Service Payment payable in respect of the Contract Month in which the relevant matters were revealed by the Authority's investigations or, to the extent that the Authority is unable to make any further deductions from the Service Payment in respect of that Contract Month by virtue of paragraph 1.2 of Part C

¹⁶ Authoritys should check that their Services Specification do in fact contain an obligation to monitor and record Ad-Hoc Service Requests.

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of this Schedule 15, may be carried forward and deducted from Service Payments due in respect of subsequent Contract Months.

- 7 For the purposes of paragraphs 2, 3, and 4 of this Part D the relevant circumstances are:-
 - (a) fraudulent action or inaction;
 - (b) deliberate misrepresentation; or
 - (c) gross misconduct or incompetence in each case on the part of the Service Provider or a Service Provider Party.

- 8 The provisions of this Part D shall be without prejudice to any rights of the Authority in this Agreement pursuant to clause 28 (*Monitoring of Performance*), clause 51 (*Termination on Service Provider Default*) and clause 54 (*Termination for Corrupt Gifts*).

Part E) : Service Failure Points

1 Service Failure Points

- 1.1 Service Failure Points shall be awarded for every Performance Failure and every Unavailability Event deemed or actual which occur during the Contract Period and further disregarding any Performance Failure or Unavailability Event which is attributable to the occurrence of a Relief Event or an event of Force Majeure¹⁷.
- 1.2 There shall be no change in the number of Service Failure Points to be awarded during a Bedding-In Period
- 1.3 For the avoidance of doubt, when awarding Service Failure Points, where a further Unavailability Event or Performance Failure is deemed to have occurred in accordance with paragraph 5 of Part C of this Schedule 15, because Rectification is not carried out or (in the case of Performance Failures to which a Remedial Period applies the Performance Failure has not been remedied prior to the expiry of the Remedial Period) the appropriate number of Service Failure Points shall be awarded in respect of each such Unavailability Event or Performance Failure, even though they arise from the same circumstances.
- 1.4 If the same Unavailability Event or Performance Failure affects more than one Zone, the number of Service Failure Points to be awarded in respect of that Unavailability Event or Performance Failure shall be the same as if only one Zone had been affected.¹⁸
- 1.5 **Service Failure Points and Performance Failures**
- The number of Service Failure Points which shall be awarded in respect of each Performance Failure shall be the number of Service Failure Points attributable to the Performance Failure Category allocated to the Performance Failure as set out in Appendix 2 of this Schedule 15.
- 1.6 **Total Monthly Service Failure Points¹⁹**

¹⁷ The Service Provider is given relief from termination in the case of Force Majeure and Relief Events. Accordingly Service Failure Points do not arise in such cases.

¹⁸ This clause has been included to clarify the intention. Thresholds for warning notices and termination resulting from the number of Service Failure Points awarded will need to be set with this in mind. For the avoidance of doubt, the intention is as follows:

(a) SFPs are awarded for each Performance Failure/Unavailability Event. If rectification does not take place (or remedial action is not taken, as the case may be) within a further specified period, there will be a further Performance Failure/Unavailability Event. This will lead to the award of further SFPs.

(b) Just because more than one Zone is affected by a Performance Failure/Unavailability Event, this does not mean that further SFPs are awarded. The award of SFPs is per Fault, not per unit.

(c) If more than one unit is affected by an Unavailability Event, this will be reflected in the amount of the financial deduction, not the number of SFPs awarded.

¹⁹ The assumption is that there are two subcontractors. An FM Contractor who will provide all Asset Maintenance Services which are not Market Tested and a Services Contractor who will provide the other Services which (with the exception of the Contract Management Service) will be Market Tested Services. To be adapted on a project specific basis.

The Service Provider. shall calculate:

- (a) the total number of Service Failure Points awarded to each Service provided by each of the FM Contractor and the Services Contractor (as the case may be) in each Contract Month; and
- (b) the sum total of all Service Failure Points awarded across all Services in each Contract Month.

1.7 **New Services Contractors**

Service Failure Points awarded to the Services Contractor which has been replaced by a new Services Contractor in accordance with this Agreement shall not be taken into account in calculating the total number of Service Failure Points of the new Services Contractor in any Contract Month pursuant to paragraph 1.6(a) of this Part E.

- 1.8 Service Failure Points which have been awarded to a Services Contractor which has been replaced shall not be deducted from the total number of Service Failure Points awarded in respect of all Services provided by the Services Contractor in any relevant Contract Month, except where the replacement of the Services Contractor was required by the Authority pursuant to clause 51.5 (*Replacement of Non-Performing Services Contractor*) of this Agreement, in which case those Service Failure Points shall be so deducted.

Appendix 1

Prescribed Operational Function

[Set out here a description of the Prescribed Operational Function of each Zone.]

Appendix 2²⁰

Service Failure Points

Category	SFPs
Low Performance Failure	[X]
Medium Performance Failure	[Y]
High Performance Failure	[Z]
Unavailability Event	[A]

²⁰ To be completed on a project specific basis.

Appendix 3

Original Annual Prices for Market Tested Services in Base Date prices²¹

Market Tested Services	Costs £
Building Cleaning	
Pest Control	
Waste Management	
SUB-TOTAL	
Non-Market Tested Services	
Contract Management	
Asset Maintenance	
TOTAL	

²¹ To be completed on a project specific basis.

Appendix 4

**Zones and Functional Zones with Functional Zone Weighting Percentages
and Zone Weighting Percentages²²**

⁴⁶The Authority will include on a project specific basis.