

SCHEDULE 8

PAYMENTS

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APPENDIX 8A FUNCTIONAL UNITS, UNIT DEDUCTION AMOUNTS, RECTIFICATION PERIODS

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SCHEDULE 8

PAYMENTS

1. INTERPRETATION

1.1 Definitions

In this Schedule, in addition to the definitions set out in Schedule 1 of this Agreement:

“Availability Condition” means, with respect to a Functional Unit, that the Functional Unit, Maintained Equipment within the Functional Unit and normal access routes are in a state or condition that:

- (a) allows safe and convenient access to all persons who are entitled to enter, leave, occupy or use it, using normal access routes; and
- (b) is complete, operational, safe, functional and fit for its intended use (as contemplated in the Room Data Sheets), and meets all other requirements of this Agreement including Section 3.2 of Appendix 4D and of the Room Data Sheets,

and for Functional Units on floors other than the ground floor at least 2 elevators are functional and operating to manufacturer's specifications.

“Event” means an incident or state of affairs affecting the Availability Condition of a Functional Unit or requiring FM Services to be performed (or both);

“Functional Unit” means a room or space which is specified as such in Appendix 8A to this Schedule;

“High Service Failure” means a Service Failure which has been designated in Schedule 4 [Services Protocols and Specifications] or in this Schedule as a High Service Failure;

“Linked Unit” means, with respect to a Functional Unit, any other Functional Unit which is designated in Appendix 8A as being linked to the first Functional Unit;

“Long Stop Return Date” has the meaning set out in Section 4.10 of this Schedule;

“Low Service Failure” means a Service Failure which has been designated in Schedule 4 [Services Protocols and Specifications] or in this Schedule as a Low Service Failure, or a Service Failure which has not been designated as a Medium Service Failure or High Service Failure;

“Medium Service Failure” means a Service Failure which has been designated in Schedule 4 [Services Protocols and Specifications] or in this Schedule as a Medium Service Failure;

“New Service Provider Start Date” means:

- (a) the Service Commencement Date; or
- (b) if any Service Provider is replaced by a new Service Provider after the Service Commencement Date, either:

- (1) in the case of replacement following a Market Testing, the later of the Market Testing Date to which the Market Testing related and the date on which the Preferred Service Tenderer begins to perform the relevant Market Tested Services; or
- (2) in other cases, the date on which the FM Services begin to be provided by the replacement Service Provider or, if earlier, the date on which they were first due to be provided;

“New Service Provider Transition Period” has the meaning set out in Section 3.15 of this Schedule;

“Outbreak Cleaning” has the meaning set out in Appendix 4E [Housekeeping and Waste Management Services];

“Outbreak Cleaning Cost” means the sum set out in Section 7.1 of this Schedule;

“Outbreak Cleaning Payment” for a Payment Period means the total of the Outbreak Cleaning Costs for all Outbreak Cleanings in that Payment Period;

“Payment Adjustment Report” has the meaning set out in Section 8.1(e) of this Schedule;

“Payment Period” means a calendar month;

“Performance Monitoring Report” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Periodic Payment” means the sum calculated in accordance with Section 2.2 of this Schedule;

“Permanent Repair” means Rectification where a Temporary Repair has been permitted and carried out pursuant to Section 3.11 of this Schedule;

“Permanent Repair Deadline” has the meaning set out in Section 3.11(a)(4) of this Schedule;

“Rectification” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Rectification Period” for an Event means the amount of time, if any, specified as such for that Event in Appendix 8A (for an Unavailability Event) or Schedule 4 [Services Protocols and Specifications] or for reports or other documentation required to be delivered by Project Co, 24 hours, or, if not so specified for a Service Failure:

- (a) 4 hours for a High Service Failure;
- (b) 1 Business Day for a Medium Service Failure; and
- (c) 5 Business Days for a Low Service Failure,

in each case calculated:

- (d) in the case of an Event reported during Opening Hours of the applicable Functional Unit, from the time that the Event is reported to the Help Desk;

- (e) in the case of an Event reported outside of Opening Hours of the applicable Functional Unit, from the start of next Opening Hours for that Functional Unit;
- (f) in the case of an Event that has not been Rectified within one or more earlier Rectification Periods, from the end of the immediately preceding Rectification Period,

and provided that if a Rectification Period so measured would end after the Opening Hours of the applicable Functional Unit for that day and before the start of the next Opening Hours for that Functional Unit, the Rectification Period will be extended so that it ends at the start of the next Opening Hours for that Functional Unit;

“Response Time” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Return Date” has the meaning set out in Section 4.3(d) of this Schedule;

“Room Data Sheets” means data sheets for the various types of Functional Units, initial versions of some of which are contained in Appendix 2C [Proposal Extracts (Design & Construction)], and which will be revised and finalized pursuant to the Design Review Procedure and the User Consultation Procedure;

“Service Failure” means any failure by Project Co, other than an Unavailability Event, to provide the FM Services or to satisfy its reporting obligations in accordance with this Agreement and in particular in accordance with Schedule 4 [Services Protocols and Specifications], and includes a failure to satisfy any Performance Indicator;

“Service Failure Deduction” means a Deduction which may be made in respect of a Service Failure;

“Service Payment” means the sum calculated in accordance with Section 2.1 of this Schedule;

“Temporary Alternative Accommodation” means accommodation offered to the Authority by Project Co as a substitute for any Unavailable Functional Unit pursuant to Section 4.1 of this Schedule;

“Temporary Alternative Accommodation Notice” has the meaning set out in Section 4.1 of this Schedule;

“Temporary Availability Condition” has the meaning set out in Section 3.11(a)(2) of this Schedule;

“Temporary Repair” means, in respect of the occurrence of an Unavailability Event, works of a temporary nature that do not constitute Rectification;

“Temporary Repair Proposal” has the meaning set out in Section 3.11(a) of this Schedule;

“Total Unavailability” occurs when:

- (a) more than **DELETED** of the Functional Units (other than washrooms) that are designated in Appendix 8A as being in clinical areas (**“Clinical Functional Units”**) are Unavailable at the same time, except that if and whenever a single root cause Event, the primary cause of which is not the negligence or wilful misconduct of Project Co, results in Unavailability of more than **DELETED** of the Clinical Functional Units, such Unavailable Clinical Functional Units will be excluded from the numerator (but will remain in the denominator)

for the purposes of the foregoing calculation of the percentage of Unavailable Clinical Functional Units;

- (b) **DELETED** or more of the washrooms in the Facility are Unavailable at the same time; or
- (c) the main lobby entrance, underground car park entrance and secondary north side entrance to the Facility are Unavailable at the same time,

and a Rectification Period has expired with respect to each such Unavailable Functional Unit, washroom or entrance;

“Transition” means the tolerance level for the making of Deductions in respect of Service Failures as described in Section 3.15 of this Schedule;

“Unavailable” and **“Unavailability”** means, with respect to a Functional Unit, that such Functional Unit or an applicable Linked Unit is in a state or condition that does not comply with the Availability Condition;

“Unavailability Deduction” means a Deduction which may be made in respect of an Unavailability Event;

“Unavailability Event” means an incident or state of affairs which causes one or more Functional Units to be Unavailable; and

“Unit Deduction Amounts” means the amount of the Deduction specified in Appendix 8A per Functional Unit for an Unavailability Event, which amounts are Index Linked.

2. CALCULATION OF SERVICE PAYMENTS

2.1 Service Payment

From and after the Service Commencement Date, the Authority will pay Project Co in respect of each Payment Period the Service Payment calculated as follows:

- (a) the Periodic Payment for that Payment Period;
- (b) subject to Section 3.1 of this Schedule, minus the aggregate of Deductions for that Payment Period; and
- (c) plus the Outbreak Cleaning Payment for that Payment Period.

2.2 Periodic Payments

The Periodic Payment for each Payment Period from and after the Service Commencement Date will be **DELETED** subject to the following adjustments:

- (a) a fixed amount that is **DELETED** of the Periodic Payment will not be Index Linked and the remainder of the Periodic Payment will be Index Linked;
- (b) the Periodic Payment will be adjusted for Market Tested Services in accordance with Section 2.3 of this Schedule;

- (c) if the first Payment Period from and after the Service Commencement Date is less than a full calendar month, the Periodic Payment will be reduced by the same proportion that the first Payment Period is less than a full calendar month; and
- (d) if the last Payment Period of the Term is less than a full calendar month, the Periodic Payment will be reduced by the same proportion that the last Payment Period is less than a full calendar month.

2.3 Effect of Market Testing

On the appointment of any Preferred Service Tenderer, or, if applicable, on the completion of the re-pricing of a Market Tested Service pursuant to the Benchmarking Exercise or as otherwise agreed by the Authority:

- (a) the Periodic Payments following the Market Testing will be adjusted according to the following procedure:
 - (1) the new prices for the Market Tested Services will be calculated for each Payment Period for the applicable Contract Year;
 - (2) the prices for the Market Tested Services as set out in Appendix 8B [Cost for Market Tested Services] will be calculated, including applicable indexation, for each Payment Period for the applicable Contract Year;
 - (3) after such calculations, the Periodic Payments will be adjusted by the amount of the difference (positive or negative) between the aggregate of the new prices and the prices in Appendix 8B [Cost for Market Tested Services];
 - (4) any adjustment to the Periodic Payments will take effect, in the case of Market Tested Services subject to a Benchmarking Exercise, on the Market Testing Date or as otherwise agreed by the parties, and in the case of all other Market Tested Services, on the later of the Market Testing Date to which the Market Testing related and the date on which the Preferred Service Tenderer begins to perform the relevant Market Tested Services;
 - (5) if the new prices for the Market Tested Services are not indexed, or are indexed differently from the manner set out in the definition of "Index Linked", then the indexation of the Periodic Payments under Section 2.2(a) of this Schedule will be deemed to be modified as required to give effect to the indexation arrangement for the new prices for the Market Tested Services; and
 - (6) for the purpose of subsequent Market Testing, Appendix 8B [Cost for Market Tested Services] will be deemed to be modified as required to give effect to the new prices for the Market Tested Services; and
- (b) the Outbreak Cleaning Cost following a Market Testing of the Housekeeping and Waste Management Services will be adjusted according to the following procedure:

- (1) the new price for the Outbreak Cleaning Cost will be calculated for the applicable Contract Year;
- (2) the price set out in Section 7.1 of this Schedule will be calculated, including applicable indexation, for the applicable Contract Year;
- (3) after such calculations, the Outbreak Cleaning Cost will be adjusted by the amount of the difference (positive or negative) between the new price and the price set out in Section 7.1 of this Schedule;
- (4) any alteration to the Outbreak Cleaning Cost will take effect, in the case of Market Tested Services subject to a Benchmarking Exercise, on the Market Testing Date or as otherwise agreed by the parties, and in the case of all other Market Tested Services, on the later of the Market Testing Date to which the Market Testing related and the date on which the Preferred Service Tenderer begins to perform the relevant Market Tested Services;
- (5) if the new price for the Outbreak Cleaning Cost is not indexed, or is indexed differently from the manner set out in the definition of "Index Linked", then indexation of the Outbreak Cleaning Cost in Section 7.1 of this Schedule will be deemed to be modified as required to give effect to the indexation arrangement for the new price for the Outbreak Cleaning Cost; and
- (6) for the purpose of subsequent Market Testing, Section 7.1 of this Schedule will be deemed to be modified as required to give effect to the new price for the Outbreak Cleaning Cost.

3. DEDUCTIONS FROM SERVICE PAYMENTS

3.1 Entitlement to Make Deductions

If at any time after the Service Commencement Date an Unavailability Event or a Service Failure occurs the Authority will be entitled to make Deductions in accordance with this Schedule 8 (including Section 3.9 of this Schedule 8) in respect of that Unavailability Event or Service Failure (and, for greater certainty, in respect of all other Unavailability Events and Service Failures) from the Service Payment for the relevant Payment Period, except that:

- (a) the maximum aggregate of all Deductions that the Authority can make from a Service Payment in respect of a Payment Period is the aggregate amount of the Periodic Payment and Outbreak Cleaning Payment for that Payment Period; and
- (b) to the extent that an Unavailability Event or a Service Failure is the result of an Excusing Event or a Compensation Event, the Authority will not be entitled to make Deductions.

3.2 Classification of Event

The classification of an Event as a Service Failure or an Unavailability Event, and the rank of an Unavailability Event, will be made at the time at which the occurrence of the Event is reported to the Help

Desk or otherwise reported to Project Co. If an Event which results in an immediate Service Failure Deduction (because there is no applicable Response or Rectification Period) can properly be classified as both a Service Failure and an Unavailability Event at the time it is reported, it will be classified as the Event that has the highest potential Deduction applicable to it. An Event which is incorrectly classified may be re-classified only with the approval of the Authority, such approval not to be unreasonably withheld. If such an Event is re-classified, the appropriate Deduction (if applicable) will be made and any Deduction incorrectly applied will be withdrawn.

3.3 Service Failure Becoming Unavailability Event

A Service Failure may become or lead to an Unavailability Event if circumstances change or the Service Failure continues. In such a circumstance, when the Functional Unit becomes Unavailable, the Service Failure will have ended (without prejudice to the Service Failure Deductions that have accrued to that point) and an Unavailability Event will have occurred.

3.4 Total Unavailability

When Total Unavailability occurs, there will be deemed to be an Unavailability Event for each Functional Unit that otherwise met the Availability Condition at that time and all Functional Units will continue to be deemed to be Unavailable until Total Unavailability no longer occurs.

3.5 Deductions for Unavailability Events

Subject to Sections 3.1, 3.9 and 3.12 of this Schedule, the Deduction in respect of each Unavailability Event will be the greater of:

- (a) \$100, Index Linked; and
- (b) subject to Section 3.6 of this Schedule, the aggregate of the Unit Deduction Amounts for all Functional Units made Unavailable as a result of the Unavailability Event.

3.6 Unavailable But Used

If any Functional Unit is Unavailable (including, for greater certainty, Functional Units that are deemed Unavailable under Section 3.4 of this Schedule) but the Authority continues to use:

- (a) the Functional Unit; or
- (b) in the case of a Functional Unit that is Unavailable solely because a Linked Unit is Unavailable, the Linked Unit,

for the intended use or purpose of that Functional Unit or Linked Unit, as the case may be:

- (c) for the purposes of Section 3.5(b) of this Schedule the Unit Deduction Amount applicable to an Unavailability Deduction for such Functional Unit will be multiplied by 50%; and
- (d) the total Deductions in respect of such Functional Unit on any day that it is Unavailable but used will not exceed the greater of:

- (1) the Unavailability Deduction calculated under (c) above; and
- (2) the total Service Failure Deductions related to that Functional Unit on that day.

3.7 Deductions for Service Failures

Subject to Sections 3.1 and 3.15 of this Schedule, the amount of the Deduction in respect of a Service Failure will be as follows:

- (a) for a High Service Failure, the sum of \$3,000, Index Linked;
- (b) for a Medium Service Failure, the sum of \$1,000, Index Linked; and
- (c) for a Low Service Failure, the sum of \$50, Index Linked.

3.8 Response Time

If an Event occurs and a Response Time is indicated in Schedule 4 [Services Protocols and Specifications], in addition to any other Deduction arising from such Event, if Project Co does not respond as required under this Agreement within the applicable Response Time:

- (a) a Low Service Failure will be deemed to have occurred; and
- (b) unless otherwise specified in Schedule 4 [Services Protocols and Specifications], a new Response Time will start and the provisions of this Section 3.8 will again apply and will continue to apply with repeated Low Service Failures until Project Co responds as required under this Agreement.

Nothing in this Section 3.8 will limit any other Deductions in respect of the same Event or the occurrence of, and Deductions in respect of, additional Events that occur within a Response Time period.

3.9 Rectification Periods

If an Event occurs:

- (a) in the case of a Service Failure for which there is no Rectification Period, the Authority will make the applicable Service Failure Deduction;
- (b) in the case of an Unavailability Event, other than a deemed Unavailability Event due to Total Unavailability, if Project Co Rectifies the Unavailability Event within the Rectification Period, then no Deduction will be made for such Unavailability Event;
- (c) in the case of a deemed Unavailability Event due to Total Unavailability, the Authority will make the applicable Unavailability Deduction; and
- (d) in any case and in addition to the foregoing, if Project Co does not Rectify the Event (which in the case of deemed Unavailability Events due to Total Unavailability means that Total Unavailability no longer occurs) within the Rectification Period:
 - (1) the applicable Deduction will be made for the Event; and

- (2) a new Event (which in the case of a Service Failure will be of the same category as the original Service Failure unless otherwise specified in Schedule 4 [Service Protocols and Specifications]) will be deemed to occur at the end of such Rectification Period and the provisions of this Section 3.9 will again apply and will continue to apply with repeated Deductions until Project Co Rectifies the Event.

Nothing in this Section 3.9 will limit any other Deductions in respect of the same Event or the occurrence of, and Deductions in respect of, additional Events that occur within a Rectification Period.

3.10 Multiple Events

If the root cause of a series of Events is substantially the same, whether or not Project Co Rectifies any or all of the Events within the applicable Rectification Period, there will be deemed to be a Medium Service Failure on the occurrence of any of the following:

- (a) the third such Event in a day and on the occurrence of each subsequent such Event in that day; and
- (b) the fourth such Event in a rolling consecutive seven day period and on the occurrence of each subsequent such Event in that seven day period.

3.11 Temporary Repairs

If Project Co is unable to Rectify an Unavailability Event within the applicable Rectification Period due to the need for specialized materials or personnel that are not required by this Agreement to be immediately available at the Facility and are not, and cannot reasonably be expected to be, available at the Facility, then:

- (a) Project Co may provide the Authority with a proposal (the "**Temporary Repair Proposal**") for:
- (1) a Temporary Repair;
 - (2) a temporary modification to the Availability Condition for the relevant Functional Unit until the Permanent Repair is completed (the "**Temporary Availability Condition**");
 - (3) the Permanent Repair; and
 - (4) the period within which to complete the Permanent Repair (the "**Permanent Repair Deadline**");
- (b) the Authority may in its discretion consider the Temporary Repair Proposal, and Project Co will not carry out the Temporary Repair until the Temporary Repair Proposal is accepted by the Authority;
- (c) if the Authority accepts the Temporary Repair Proposal, Project Co will carry out the Temporary Repair in accordance with the Temporary Repair Proposal;

- (d) if the Temporary Repair is completed in accordance with the Temporary Repair Proposal, the Availability Condition for the relevant Functional Unit will be modified to be the Temporary Availability Condition until the Permanent Repair Deadline;
- (e) if the Permanent Repair is not completed by the Permanent Repair Deadline, the Temporary Availability Condition will cease to be the Availability Condition and the Authority may make all applicable Unavailability Deductions with effect from the Permanent Repair Deadline; and
- (f) except with respect to the applicable modification of the Availability Condition, nothing in this Section 3.11 will limit the Authority's entitlement to Deductions within the applicable Rectification Periods.

3.12 Compliance with Laws and Good Industry Practice

When carrying out Rectification, or works of Temporary Repair pursuant to Section 3.11 of this Schedule, Project Co will at all times act in accordance with Laws and Good Industry Practice. If in doing so Project Co breaches Law, there will be deemed to be a new additional High Service Failure. If in doing so Project Co breaches Good Industry Practice, but does not also breach Laws, there will be deemed to be a new additional Low Service Failure.

3.13 Deficiency Correction Period - Unavailability

During the 28 day period beginning on the Service Commencement Date, the amount of any Unavailability Deductions for Unavailability Events directly caused by Deficiencies will be reduced by 100%. This Section 3.13 does not give any relief in respect of any Service Failure Deductions.

3.14 Service Failure Related Solely to Unavailability

No Service Failure Deduction will be made if the Service Failure to which it relates arises solely as a result of the Unavailability of the Functional Unit in which the FM Service was to be provided. If any Functional Unit is Unavailable but the Authority continues to use it for the intended use or purpose of that Functional Unit, the Authority will, subject to Sections 3.3 and 3.6(d), deduct the full amount of any Service Failure Deductions that apply to the FM Services in the applicable Functional Unit.

3.15 Transition Periods - Service Failures

In respect of each FM Service, there will be a period of 90 days (the "**New Service Provider Transition Period**") for Transition beginning on each New Service Provider Start Date. During each New Service Provider Transition Period the following provisions will apply:

- (a) during the first 30 days of the New Service Provider Transition Period, the amount of any Service Failure Deductions will be reduced by 75%;
- (b) during the next 30 days of the New Service Provider Transition Period, the amount of any Service Failure Deductions will be reduced by 50%; and
- (c) during the final 30 days of the New Service Provider Transition Period, the amount of any Service Failure Deductions will be reduced by 25%.

This Section 3.15 will not give any relief during any period of Transition in respect of Unavailability Deductions.

3.16 Events Reported After Opening Hours

For an Event reported outside Opening Hours for the applicable Functional Unit, notwithstanding that the Response Time and Rectification Period will not commence until the start of the next Opening Hours for that Functional Unit, Project Co will use reasonable efforts to attend to any such Events causing a risk to person or property in a reasonable time and take appropriate preliminary steps to make the affected locations safe.

4. TEMPORARY ALTERNATIVE ACCOMMODATION

4.1 Project Co Option to Provide

If an Unavailability Event occurs Project Co may offer the Authority Temporary Alternative Accommodation by notice (the “**Temporary Alternative Accommodation Notice**”) to the Authority within 5 Business Days from the commencement of the applicable Event.

4.2 Requirements

The Temporary Alternative Accommodation must:

- (a) comply with the Availability Condition for the Functional Units affected by the 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 Unit;
- (d) unless the Authority otherwise agrees, be accommodation that Project Co is not already obligated to provide to the Authority;
- (e) be supplied with the FM Services to the standards set out in Schedule 4 [Services Protocols and Specifications] which Project Co would under normal circumstances be providing within the Unavailable Functional Unit;
- (f) not involve the Authority incurring any additional cost or charges in respect of the Temporary Alternative Accommodation including the reasonable costs of any relocation to and from the Temporary Alternative Accommodation; and
- (g) be in reasonable proximity to the Facility, be reasonably accessible by public and private transport and have adequate parking.

4.3 Notice Requirements

The Temporary Alternative Accommodation Notice must:

- (a) describe the Temporary Alternative Accommodation;
- (b) invite the Authority to inspect the Temporary Alternative Accommodation and give the Authority reasonable notice of a time and a date when it may do so;
- (c) set out Project Co's proposals regarding the timing and co-ordination of relocation to the Temporary Alternative Accommodation;
- (d) specify the date (which must be agreed by the Authority before the submission of the written notice) by which Project Co reasonably expects the Authority to be able to relocate back to the applicable Functional Unit (the "**Return Date**"); and
- (e) describe the terms upon which the Authority will be entitled to occupy such Temporary Alternative Accommodation including the proposed division of such accommodation into Functional Units and the weighting to be attributed to them for the purposes of the operation of this Schedule.

4.4 Acceptance by Authority

If it wishes to inspect the Temporary Alternative Accommodation the Authority will do so within 5 Business Days of receipt of the Temporary Alternative Accommodation Notice. The Authority will notify Project Co in writing of its acceptance or refusal of the proposed Temporary Alternative Accommodation within 24 hours of its inspection or, if the Authority has elected not to inspect, within 5 Business Days of receipt of the Temporary Alternative Accommodation Notice. The Authority may in its discretion refuse or accept any proposed Temporary Alternative Accommodation that does not meet the requirements of Section 4.2 of this Schedule and in all other cases will act reasonably when deciding to accept or refuse any proposed Temporary Alternative Accommodation.

4.5 Effect of Acceptance

If the Authority accepts the offer of Temporary Alternative Accommodation:

- (a) which is not within the Facility then, without affecting the Authority's remedial rights under Section 11 of this Agreement, the Authority will 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 Unit in accordance with the agreed program for return and re-commissioning referred to in Section 4.8 of this Schedule; and
- (b) which is within the Facility and the Authority subsequently needs such Temporary Alternative Accommodation in connection with needs that were not anticipated at the time the Authority agreed to occupy the space, then the Authority will be entitled to vacate the Temporary Alternative Accommodation.

4.6 Additional Authority Costs

Project Co will pay for any additional reasonable and direct costs and expenses incurred by the Authority in respect of Temporary Alternative Accommodation, including reasonable relocation costs to and from the Temporary Alternative Accommodation.

4.7 Deduction

If the Authority accepts Project Co's offer of Temporary Alternative Accommodation, no further Deductions will be made in respect of a Functional Unit vacated by the Authority while the Temporary Alternative Accommodation replacing that Functional Unit is being used by the Authority. The Authority will be entitled to make Deductions in respect of any Service Failure or Unavailability Event which occurs in the Temporary Alternative Accommodation as if the Temporary Alternative Accommodation was the Functional Unit which it replaced and any Deduction in respect of an Unavailability Event will be calculated using the Unit Deduction Amounts attributed to such Functional Unit.

4.8 Return to Functional Unit

When Project Co has completed the required works to enable the Authority to return to the Functional Unit the Authority will confirm that the Availability Condition is met for the Functional Unit and the Authority and Project Co will agree to a relocation program to return to the Functional Unit and any necessary period for re-commissioning.

4.9 Failure to Complete Works

If the Authority has accepted the proposed Temporary Alternative Accommodation and Project Co fails to complete the works to enable the Authority to return to the relevant Functional Unit on the Return Date:

- (a) the Temporary Alternative Accommodation will be deemed to be Unavailable with effect from the Return Date until the date on which the Unavailability Event has been Rectified and the Authority is able to resume its use of the Functional Unit; and
- (b) the Authority may, in its absolute discretion, vacate the Temporary Alternative Accommodation at any time after the Return Date or remain in occupation, and in the latter circumstance a 50% reduction will apply with respect to the Unavailability Deduction.

4.10 Long Stop Return Date

The Authority will specify a date (the "**Long Stop Return Date**"), being a date no earlier than 30 days after the Return Date, by which the Rectification must be completed and if Project Co fails to complete the Rectification of the Functional Unit for which the Temporary Alternative Accommodation is a replacement by the Long Stop Return Date:

- (a) the Authority may (without prejudice to its rights under Section 12 (Project Co Events of Default) 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 the Functional Unit to a condition that satisfies in all respects the requirements of Schedule 4 [Services Protocols and Specifications]; and

- (b) Project Co will reimburse the Authority for all reasonable direct costs and expenses incurred by the Authority in relation to taking the steps, or engaging others to take the steps, referred to in Section 4.10(a) and the Authority will be entitled to deduct any such amount from any amounts payable to Project Co under this Agreement.

5. REVIEW OF FUNCTIONAL UNITS, DEDUCTIONS, ETC.

5.1 Initiation of Review

The following will be reviewed by the Authority and Project Co at any time if requested by either party but in any event will be reviewed at least once in every Contract Year for the purposes of the following Contract Year:

- (a) the identification of Functional Units, Linked Units, Performance Indicators, Response Times, Rectification Periods, Unit Deduction Amounts;
- (b) the amount of Deductions for each category of Service Failure and for Unavailability and Events; and
- (c) the number of Outbreak Cleanings experienced at the Facility in a Contract Year.

If so requested the Authority and Project Co will act reasonably and diligently in carrying out the review, which will not exceed 30 days without the agreement of both parties. For the avoidance of doubt, the parties intend that any changes made as a result of such a review will not alter the overall risk profile of the relevant FM Service or the likely magnitude of Deductions. If proposed changes would result in any such alteration, the matter will be deemed to be a Change subject to the provisions of Schedule 6 [Changes, Minor Works and Innovation Proposals].

5.2 Results of Review

The Authority and Project Co may, in respect of each matter that is the subject of the review, either:

- (a) agree that the status of the relevant matter will continue to apply unchanged for the relevant Contract Year; or
- (b) agree to adjustments to the relevant matter to take effect in the relevant Contract Year.

If the parties do not agree within 30 days after completion of the review, either party may refer the matter to the Dispute Resolution Procedure. No change will be made with respect to a matter under review until agreed or until determined under the Dispute Resolution Procedure.

5.3 Effective Time of Adjustments

Any adjustment pursuant to a review will be effective from the commencement of the relevant Contract Year.

6. FAILURE BY PROJECT CO TO MONITOR OR REPORT

6.1 Performance Monitoring Report

The Performance Monitoring Report produced by Project Co for any Payment Period will be the initial source of the information regarding the performance of the FM Services for the relevant Payment Period for the purposes of calculating the relevant Deductions.

6.2 Failure to Monitor or Report

If Project Co fails to monitor or accurately report an Event, a Service Failure or an Unavailability Event:

- (a) such failure will be deemed to be a new Low Service Failure for each Event that has been misreported. The relevant Deduction for the new Low Service Failure will be made in addition to the Deductions that would have been made had there been no failure to monitor or report;
- (b) the Authority will be entitled to make Deductions in respect of any Service Failures or Unavailability Events in the manner prescribed in this Schedule, and the Performance Monitoring Report(s) and invoice(s) with respect to all Payment Periods affected by such failure will be restated to include any such Deductions; and
- (c) Project Co will forthwith pay to the Authority the amount, if any, by which the amount paid to it for the affected Payment Periods exceeds the amount in the restated invoices for such Payment Periods.

6.3 Misconduct

If the Authority's inspection or investigation of records reveals, on the part of Project Co or a Project Co Person:

- (a) fraudulent action or inaction; or
- (b) deliberate misrepresentation; or
- (c) gross misconduct or incompetence,

then a new High Service Failure will be deemed to have occurred for each Event that has been misreported. The relevant Deduction for the new High Service Failure will be made in addition to the Deductions that would have been made had there been no misreporting.

6.4 No Prejudice to Other Rights

The provisions of this Section 6 are without prejudice to any rights of the Authority in this Agreement, including pursuant to Section 6 (Performance Monitoring and Reporting) of Schedule 4 [Services Protocols and Specifications] and Section 12.1 (Project Co Events of Default) of this Agreement.

7. OUTBREAK CLEANING PAYMENT

7.1 Outbreak Cleaning Cost

As of the Effective Date, the Outbreak Cleaning Cost for Outbreak Cleanings in a Payment Period is:

- (a) for a housekeeper, **DELETED**;
- (b) for a supervisor, if and to the extent Project Co or the Service Provider incurs incremental salary or overtime costs, **DELETED**; and
- (c) for a manager, if and to the extent Project Co or the Service Provider incurs incremental salary or overtime costs, **DELETED**;

per person hour of labour in excess of 4 hours reasonably required to attend to Outbreak Cleanings in that Payment Period (and the Authority acknowledges that there will be a minimum 4 hour payment required for personnel called in to perform an Outbreak Cleaning). The Outbreak Cleaning Cost will be Index Linked and will be adjusted for Market Tested Services in accordance with Section 2.3 of this Schedule.

8. GENERAL PAYMENT PROVISIONS

8.1 Invoicing and Payment Arrangements

With respect to invoicing and payment:

- (a) all Service Payments will be payable in advance for each Payment Period;
- (b) a minimum of 10 Business Days prior to each Payment Period, Project Co will provide the Authority with an invoice in a form agreed by the parties, acting reasonably. The invoice will include as a minimum:
 - (1) the estimated Service Payments for the applicable Payment Period;
 - (2) any adjustments to a previous Payment Period, as set out in the applicable Payment Adjustment Report approved by the Authority;
 - (3) any amount owing to the Authority under this Agreement;
 - (4) any amount owing to Project Co under this Agreement;
 - (5) the amount of applicable GST;
 - (6) the amount of applicable PST; and
 - (7) the net amount owing by the Authority to Project Co, or by Project Co to the Authority, as applicable;
- (c) the Authority will review each invoice submitted in accordance with this Section 8.1 within 5 Business Days and the Authority will pay the amount approved by the Authority on the

later of the first day of the Payment Period or the 10th Business Day after receipt of the invoice;

- (d) the Authority will not be obligated to make any payment unless all conditions of payment in this Agreement have been satisfied;
- (e) within 5 Business Days following the end of each Payment Period, Project Co will submit to the Authority:
 - (1) a Performance Monitoring Report for that Payment Period; and
 - (2) a report (a "**Payment Adjustment Report**") setting out any adjustments, including Deductions, to the Service Payments for that Payment Period, and the amount of over-payment or under-payment from the amount paid previously by the Authority for that Payment Period;
- (f) Project Co will include with each invoice and Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the invoiced amounts and amounts set out in each Payment Adjustment Report;
- (g) for the final 3 Payment Periods of the Term, the Authority may withhold from payment a reasonable amount for possible adjustments to the Service Payments; and
- (h) no payment will be construed as an acceptance or approval of incomplete, defective or improper Design, Construction, Services or any other matter provided by Project Co which is not in conformance with the requirements of this Agreement, and will not operate to relieve Project Co from any of its obligations under this Agreement.

9. PAYMENT FOR GREEN TIMBERS WAY WORKS

9.1 Payment Over 10 Years

The Authority will pay to Project Co \$1,675,000 on account of the Green Timbers Way Works over 10 years with interest at 5.01% by making 120 equal monthly payments of \$18,043 to be made on the first day of each Payment Period commencing after the later of:

- (a) Service Commencement; and
- (b) the date of substantial completion of the Green Timbers Way Works, as declared by the Green Timbers Way Inspector under Section 6.15(f)(2) of Schedule 2 [Design and Construction Protocols].

9.2 Payments Not Subject to Deductions

The payments set out in Section 9.1 of this Schedule are not subject to Deductions.

10. LABOUR RATE ADJUSTMENT

10.1 Definitions

In this Section 10:

"Full Time Equivalent" means a person employed solely for the Relevant Services for 37.5 hours per week, 1957.5 hours per annum;

"Labour Rate Adjustment" means the adjustment, if any, to be made to the Periodic Payment to reflect changes between the Relevant Base Rates and Relevant Market Rates (by comparing the difference between them) so that any such adjustment reflects the dollar for dollar change in the cost in providing the Relevant Services attributable solely to such changes in hourly rates of pay;

"Labour Rate Adjustment Date" has the meaning set out in Section 10.2 of this Schedule;

"Qualifying Staff" means the number of Full Time Equivalents shown in Appendix 8C in respect of each relevant category of employee performing the Relevant Services;

"Prevailing Rates" means the rates (inclusive of wages and benefits) being paid to persons performing services the same as or similar to the Relevant Services in other hospital facilities in Fraser Health Authority for the Applicable Contract Year. For greater clarity, Prevailing Rates means:

- (a) if the same or similar services are performed by contractors at other hospital facilities in the Fraser Health Authority, the relevant collective agreements are those in effect for the applicable Contract Year for such contractors. If the rates in such collective agreements differ for a particular Relevant Service, the higher rate will be the Prevailing Rate;
- (b) if a comparable private sector outsourcing contract does not exist for a Relevant Service, the Prevailing Rate will be determined by increasing the Relevant Base Rate for such Relevant Service by the average difference between the Relevant Base Rates and the Prevailing Rates determined under (a) above; and
- (c) if Project Co is found by the Labour Relations Board, or required by legislation or government directive, to be a successor employer to the Authority for any or all of the Relevant Services, the rates (including wages and benefits) found in collective agreements in relation to those Relevant Services in effect for the Authority for the applicable Contract Year less any reduction to those rates which Project Co is able to achieve in negotiations with the union representing the employees performing the Relevant Services;

"Relevant Base Rates" means the aggregate cost of employing Qualifying Staff at the hourly rates shown in Appendix 8C (inclusive of wages and benefits) for each relevant category of employee performing the Relevant Services;

"Relevant Market Rates" means, at the Labour Rate Adjustment Date, the aggregate cost of employing Qualifying Staff at the Prevailing Rates; and

"**Relevant Services**" means the Housekeeping and Waste Management Services which Project Co is providing pursuant to the terms of this Agreement.

10.2 Parties to Meet

Project Co and the Authority will meet on a date falling not less than nine months following the Service Commencement Date (the "**Labour Rate Adjustment Date**") and, each Party acting reasonably and in good faith, will seek to agree to the Labour Rate Adjustment which will be retroactive to the Service Commencement Date.

10.3 Excluded Factor

In agreeing to the Labour Rate Adjustment, the Parties will disregard any increase in rates attributable to changes in job specification imposing greater responsibilities or more onerous burdens than required at the date of this Agreement.

10.4 Failure to Agree

If the Parties do not agree to the Labour Rate Adjustment within five months of the Labour Rate Adjustment Date, either Party may refer the matter to the Dispute Resolution Procedure.

10.5 Adjustment to Period Payments

The Periodic Payments set out in Section 2.2 of this Schedule will be adjusted for each Contract Year with effect from the Service Commencement Date to take into account the Labour Rate Adjustment agreed or determined in accordance with this provision. For the period between the Service Commencement Date and the date of implementation of the Labour Rate Adjustment (the "**pre-LRA period**"), the Authority will pay Project Co a retroactive payment equal to the difference between the Periodic Payments paid to Project Co during the pre-LRA period and the value of those Periodic Payments after application of the Labour Rate Adjustment.

APPENDIX 8A

FUNCTIONAL UNITS, UNIT DEDUCTION AMOUNTS, RECTIFICATION PERIODS

[see separate Excel document]

APPENDIX 8B

COST FOR MARKET TESTED SERVICES

The following table describes the cost for the Market Tested Services attributed to each full Periodic Payment (i.e. 1/12 of annualized prices).

Market Tested Service	Cost of Market Tested Service attributed to each Periodic Payment (i.e. 1/12 of annualized price) (\$)
Housekeeping and Waste Management Services	DELETED
Parking Services	DELETED

Notes:

1. The prices are Index Linked.
2. Pursuant to Section 2.3(a)(6) of this Schedule 8, the prices in this table will be deemed to be modified as necessary after each subsequent Market Testing.

APPENDIX 8C

FULL TIME EQUIVALENT AND RELEVANT BASE RATES

<u>Description</u>	<u>Staff Numbers</u>	<u>Hours per week</u>	<u>Relevant Base Rate (Wages plus Benefits) per person \$</u>	<u>Rate Per Hour \$</u>
Car Parking				
Operative	DELETED	DELETED	DELETED	DELETED
Operative	DELETED	DELETED	DELETED	DELETED
	DELETED	DELETED	DELETED	DELETED
Housekeeping	DELETED	DELETED	DELETED	DELETED
Domestic Manager	DELETED	DELETED	DELETED	DELETED
Housekeeping Supervisor	DELETED	DELETED	DELETED	DELETED
Full Time Operative	DELETED	DELETED	DELETED	DELETED
Night Operative	DELETED	DELETED	DELETED	DELETED
Weekend Operative	DELETED	DELETED	DELETED	DELETED