

SCHEDULE 8

PAYMENTS

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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 the requirements of Schedules 3 [Design and Construction Specifications] or Schedule 4 [Services Protocols and Specifications] specifically applicable to the relevant Functional Unit,

and for Functional Units (with the exception of parking stalls) on floors other than the ground floor at least one public elevator and two service elevators are functional and operating to manufacturer's specifications;

"Capital Payment" means the payment described in Section 2.1(a) of this Schedule;

"Deduction" means a deduction from a Service Payment, calculated in accordance with this Schedule;

"Event" means an incident or state of affairs affecting the Availability Condition of a Functional Unit or requiring Services to be performed or both;

"Facility Maintenance Payment" means the payment described in Section 2.1(c) of this Schedule;

"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;

"Life Cycle Payment" means the payment described in Section 2.1(b) of this Schedule;

"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;

"Market Tested Services Costs" means the costs for the Market Tested Services, as set out in Appendix 8D [Market Tested Services Costs] and as may be modified from time to time pursuant to Section 2.2 of this Schedule;

"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;

"Miscellaneous Occupant Request Services Payment" means the amount, subject to the maximum amount applicable to a Contract Year as set out in Section 8.2 of Schedule 4 [Services Protocols and Specifications], to be paid by the Authority to Project Co in respect of the costs incurred by Project Co in carrying out the Miscellaneous Occupant Request Services in a preceding Payment Period;

"New Service Provider Start Date" means:

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

"Payment Adjustment Report" has the meaning set out in Section 7.1(g)(2) of this Schedule;

"Payment Period" means a calendar month;

"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;

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

"Service Failure" means any failure by Project Co, other than an Unavailability Event, to provide the Services 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 if:

- (a) 25% or more of the Functional Units which are ranked a category 4 or 5 are Unavailable at the same time and a Rectification Period has expired with respect to each such Unavailable Functional Unit;
- (b) 50% or more of the washrooms in the Facility are Unavailable at the same time and a Rectification Period has expired with respect to each such washroom;
- (c) the following are Unavailable at the same time:
 - (1) the walk-in entrance to the Emergency Department; and
 - (2) the main entrance area to the Facility;
- (d) any of the following are not accessible:
 - (3) two or more of the required fire exits;
 - (4) all of the patient transfer elevators,

and a Rectification Period has expired with respect to each Event that caused such lack of access and the Authority has not approved a mitigation plan put forward by Project Co;

"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 a Service Payment calculated as follows:

- (a) the Capital Payment for that Payment Period in an amount equal to _____ which amount will not be Index Linked; plus
- (b) the Life Cycle Payment for that Payment Period in the amount set out in Appendix 8C [Life Cycle Payment] which amount will be Index Linked; plus
- (c) the Facility Maintenance Payment for that Payment Period in an amount equal to _____ which amount will be Index Linked; plus
- (d) the Miscellaneous Occupant Request Services Payment in an amount to be Index Linked; minus
- (e) the aggregate of Deductions for that Payment Period, subject to Section 3.1; and
- (f) plus the Energy Gainshare or minus the Energy Painshare payable in that Payment Period.

provided that:

- (g) if the first Payment Period from and after the Service Commencement Date is less than a full calendar month, the Service Payment will be reduced by the same proportion that the first Payment Period is less than the total number of days in the calendar month in which Service Commencement occurs;
- (h) if the last Payment Period of the Term is less than a full calendar month, the Service Payment will be reduced by the same proportion that the last Payment Period is less than the total number of days in the calendar month in which the final day of the Term occurs;
- (i) the Service Commencement Date and the date Service Payments commence will not be earlier than July 1, 2017 notwithstanding Project Co achieving Service Commencement earlier than such date; and
- (j) if after deducting the Energy Painshare the Service Payment as calculated is less than zero, Project Co will pay the Authority the lesser of the Energy Painshare and the amount by which the Service Payment is calculated to be less than zero.

The Payment Periods identified in Appendix 8C [Life Cycle Payment] assume that Service Commencement will be achieved by the Target Service Commencement Date and the Payment Periods are expressed numerically in terms of the Payment Periods starting from the Target Service Commencement Date. If Service Commencement is achieved after the Target Service Commencement Date, then the first Service Payment will be for the relevant Payment Period, or prorated portion thereof, indicated for the time after the Target Service Commencement Date, and Project Co will not be entitled to

any Service Payment for Payment Periods, or prorated portions thereof, between the Target Service Commencement Date and the Service Commencement Date.

2.2 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 a Market Testing or as otherwise agreed by the Authority, the Service Payments following the Market Testing will be adjusted according to the following procedure:

- (a) new Market Tested Services Costs will be determined and calculated for each Payment Period for the applicable Contract Year in accordance with Appendix 4G [Market Testing Procedure];
- (b) after such calculations, the Service Payments will be adjusted by the amount of the difference (positive or negative) between the new Market Tested Services Costs and the previous Market Tested Services Costs;
- (c) any adjustment to the Service 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; and
- (d) for the purpose of subsequent Market Testing, Appendix 8D [Market Tested Services Costs] will be deemed to be modified as required to give effect to the new Market Tested Services Costs.

2.3 Post-Service Commencement Construction

In the event that Project Co fails to complete any Post-Service Commencement Construction by the required completion date specified in Section 4.10 of Schedule 2 [Design and Construction Protocols], the Authority will be entitled to make a Deduction of \$3,000 for each day, or part thereof, after such required completion date until such time as the Post-Service Commencement Construction is certified by the Independent Certifier as being complete. Deductions made pursuant to this Section 2.3 will not be counted for the purposes of Section 11.1 or 12.1(h) of this Agreement or Sections 6.7 or 6.8 of Schedule 4 [Services Protocols and Specifications].

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 aggregate of all Deductions that the Authority may make from a Service Payment may not exceed the amount of the Service Payment in respect of a 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 Time 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 such 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 it or a Linked Unit for the intended use or purpose of that Functional Unit or Linked Unit, for the purposes of Section 3.5(b) of this Schedule the Unit Deduction Amount applicable to an Unavailability Deduction for such Functional Unit and Linked Unit will be multiplied by 50%.

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 : Index Linked;
- (b) for a Medium Service Failure, the sum of Index Linked; and
- (c) for a Low Service Failure, the sum of 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 Deduction Triggers

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), including any Service Failure for which there is a Rectification Period, 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 but without unreasonable delay, 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:
 - (1) 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
 - (2) Project Co may revise the Temporary Repair Proposal and resubmit such proposal to the Authority as a new Temporary Repair Proposal pursuant to Section 3.11(b) of this Schedule; 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 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 Section 3.3 of this Schedule, deduct the full amount of any Service Failure Deductions that apply to the Services in the applicable Functional Unit.

3.15 Transition Periods - Service Failures

In respect of each 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

- (b) during the next 30 days of the New Service Provider Transition Period, the amount of any Service Failure Deductions will be reduced by ; 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

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

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 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 identification of Functional Units, Linked Units, Performance Indicators, Response Times, Rectification Periods, Unit Deduction Amounts and the amount of Deductions for each category of Service Failure and for Unavailability Events 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 the following times, unless otherwise agreed by the parties:

- (a) at such time as the Design Development Phase as set out in Section 5.3 of Schedule 2 [Design and Construction Protocols] has been completed in all material respects;
- (b) in the circumstances referred to in Section 5.3 of Schedule 6 [Changes, Minor Works and Innovation Proposals];
- (c) following the Service Commencement Date; and
- (d) at least once in every Contract Year following the first anniversary of the Service Commencement Date for the purposes of the following Contract Year.

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 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 following Contract Year; or
- (b) agree to adjustments to the relevant matter to take effect in the following 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. For the avoidance of doubt, if the changes that are agreed or determined under the Dispute Resolution Procedure alter the overall risk profile of the relevant Service, the matter will be deemed a Change subject to the provisions of Schedule 6 [Changes, Minor Works and Innovation Proposals].

5.3 Effective Time of Adjustments

Any adjustment pursuant to a review will be effective from the commencement of the relevant Contract Year for which the adjustment is to take effect under Section 5.2 of this Schedule.

5.4 Result of Change, Minor Works or Innovation Proposal

As set out in Section 5.3 of Schedule 6 [Changes, Minor Works and Innovation Proposals] the parties will review and agree any changes to Appendix 8A [Functional Units, Unit Deduction Amounts, Rectification Periods] that are needed as the result of a Change, Minor Works or an Innovation Proposal.

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 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;
- (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. GENERAL PAYMENT PROVISIONS

7.1 Invoicing and Payment Arrangements

With respect to invoicing and payment the following will apply.

- (a) All Service Payments, except for the Miscellaneous Occupant Request Services Payment, will be payable in advance for each Payment Period;
- (b) The Miscellaneous Occupant Request Services Payment will be payable in arrears. Project Co will use reasonable efforts to include in its invoice amounts in respect of any Miscellaneous Occupant Request Services within one Payment Period following the Payment Period in which such Miscellaneous Occupant Request Services were carried out. Project Co will include in its invoice an amount in respect of any Miscellaneous Occupant Request Services within two Payment Periods following the Payment Period within which the Miscellaneous Occupant Request Services were carried out, and after that time Project Co waives the right to any claims against the Authority for payment in respect of such Miscellaneous Occupant Request Services.
- (c) 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 (not including the Miscellaneous Occupant Request Services Payment) for the applicable Payment Period;
 - (2) the amount of the Miscellaneous Occupant Request Services Payment;
 - (3) any adjustments to a previous Payment Period, as set out in the applicable Payment Adjustment Report;
 - (4) any amount owing to the Authority under this Agreement;
 - (5) any amount owing to Project Co under this Agreement;
 - (6) the amount of applicable GST calculated in accordance with Section 7.2 of this Appendix;
 - (7) the amount of applicable PST;
 - (8) Project Co's GST registration number; and

- (9) the net amount owing by the Authority to Project Co, or by Project Co to the Authority, as applicable;
- (d) the Authority will:
 - (1) review each invoice submitted in accordance with this Section 7.1 within 5 Business Days; and
 - (2) 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;
 - (3) concurrently advise Project Co of any amounts the Authority has not approved and the reasons for non-approval; and
- (e) Project Co:
 - (1) will, after discussion and agreement with the Authority, clarify and resubmit an invoice for any amounts not approved by the Authority in any previously submitted invoice and the Authority will pay such agreed amounts in accordance section 7.1(d)(2); and
 - (2) may refer for resolution pursuant to Dispute Resolution Procedure the amount of any invoice it has not agreed with the Authority;
- (f) the Authority will not be obligated to make any payment unless all conditions of payment in this Agreement have been satisfied;
- (g) within 10 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, the amount of the Miscellaneous Occupant Request Services Payment, and the amount of over-payment or under-payment from the amount paid previously by the Authority for that Payment Period;
- (h) 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;
- (i) 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 within 30 days after the expiry of the Term Project Co will provide the Authority with a final invoice setting out Project Co's calculations to reconcile any over-payments or under-payments and the Authority or Project Co, as applicable, will promptly pay the amount properly due and payable to the other party; and

- (j) 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.

7.2 GST

Project Co will include in each invoice for a Service Payment:

- (a) for the Payment Period immediately following the month in which Service Commencement is achieved, the GST payable by the Authority on the Cost To Date as at the Service Commencement Date, less the GST that has already been paid by the Authority on that portion of the Cost To Date as at the Service Commencement Date pursuant to Appendix 8B [Construction Period Payments];
- (b) for each Payment Period, the GST payable by the Authority on the Service Payment, excluding any portion of such Service Payment relating to costs in respect of which the Authority has already paid GST pursuant to Section 7.2(a) of this Schedule.

8. CONSTRUCTION PERIOD PAYMENTS

The Authority will make payments to Project Co relating to Construction in accordance with Appendix 8B [Construction Period Payments].