

SCHEDULE 23**PAYMENT MECHANISM**

This Schedule 23 is comprised of the following separate Schedules, all of which are hereby incorporated by reference herein and each of which may be referred to either by a general reference to this Schedule or by a specific reference to the part of this Schedule in which it is located, as listed below:

<u>Schedule</u>	<u>Description</u>
23-1	Interpretation
23-2	Calculation of Service Payments
23-3	Service Failure Deductions
23-3A	Quality Failures
23-3B	Failure Events
23-4	Temporary Alternative Accommodation
23-5	Review of Factors Affecting Failure Events and Quality Failures
23-6	Failure by Project Co to Monitor or Report
23-7	Volume Adjustments
23-8	Utility Payments
23-9	Service Failure Points
23-10	Bonus Payment

This Schedule 23 includes Appendices A through J.

This Schedule 23 shall be read as whole.

During the HCOCP, the provisions of Appendix J – Health Co Operational Commissioning Period shall take precedence over the balance of this Schedule 23.

Following the HCOCP, Appendix J – Health Co Operational Commissioning Period shall have no further effect, except in respect of obligations and disputes involving the HCOCP.

SCHEDULE 23 – 1

INTERPRETATION

1. DEFINITIONS

The following terms shall have the following meanings:

- 1.1 "Actual Utility Usage" means the actual volume of: (i) natural gas; (ii) electricity; (iii) fuel oil and (iv) water, consumed within the Facility during a Contract Year and, in respect of natural gas, electricity and fuel oil all other comparable energy sources that have Periodic Utility Targets.
- 1.2 "Adjusted Lower Utility Limit" means the Lower Utility Limit agreed or determined pursuant to Schedule 23-8.
- 1.3 "Adjusted Upper Utility Limit" means the Upper Utility Limit agreed or determined pursuant to Schedule 23-8.
- 1.4 "Adjusted Lower Utility Price" means the cost of providing the Adjusted Lower Utility Limit at the Utility Price.
- 1.5 "Adjusted Upper Utility Price" means the cost of providing the Adjusted Upper Utility Limit at the Utility Price.
- 1.6 "Annual Service Payment" means the sum calculated for each Contract Year in accordance with Section 4 of Schedule 23-2.
- 1.7 "Annual Utility Price" means the cost of providing the Actual Utility Usage at the Utility Price.
- 1.8 "Adjusted Utility Threshold" means the Adjusted Upper Utility Limit and the Adjusted Lower Utility Limit.
- 1.9 "Availability Condition" means a state or condition of the relevant Functional Unit which:
 - (a) allows safe access to all persons who are entitled to enter, leave, occupy or use the relevant Functional Unit;
 - (b) is complete, operational, functional and fit for its intended use, all as required or evidenced by the Output Specifications; and
 - (c) is safe for occupancy, meaning that it complies with Applicable Law including in relation to health and safety, and that all persons including patients can occupy and use the Functional Unit without risk to their health, safety or welfare (other than any such risks ordinarily arising from the use of any such Functional Unit for the purpose(s) contemplated by the Output Specifications).
- 1.10 "Availability Factor" means for each Functional Unit the amount as set out in Appendix E to be used for determining the Failure Event Deduction attributable to such Functional

Unit for each Session it is affected by a Failure Event, as defined for Functional Units as at the Base Date in Appendix E of this Schedule 23 and as indexed for all Payment Periods after the first Payment Period in accordance with Section 1.4 of Schedule 23-3B.

- 1.11 “Base Date” means 30 April 2004, the base date for pricing of the Annual Service Payment.
- 1.12 “Bedding-in Period” means a period of 28 days from any New Service Provider Start Date but during the HCOCP means the periods of time specified in Appendix J of this Schedule 23.
- 1.13 “Bonus Factor” has the meaning given to it in Section 3.2 of Schedule 23 – 10.
- 1.14 “Bonus Payment” has the meaning given to it in Schedule 23-10.
- 1.15 “Category A Failure Event” means in respect of an affected Functional Unit any Failure Event which has been specified as a Category A Failure Event in the Output Specifications or specified pursuant to Section 3.1 of Schedule 23-3B as a Category A Failure Event, or if no designation has been made in respect of it a Failure Event that is not of a serious nature and does not affect the provision of Clinical/Non-Clinical Services but that does not meet the requirements of the Output Specifications.
- 1.16 “Category B Failure Event” means in respect of an affected Functional Unit any Failure Event which has been specified as a Category B Failure Event in the Output Specifications, or if no designation has been made in respect of it a Failure Event that does not materially affect the provision of Clinical/Non-Clinical Services through the use of such Functional Unit.
- 1.17 “Category C Failure Event” means in respect of an affected Functional Unit any Failure Event which has been specified as a Category C Failure Event in the Output Specifications, or if no designation has been made in respect of it a Failure Event that materially affects the provision of Clinical/Non-Clinical Services but that does not by itself result in such Functional Unit becoming Unavailable.
- 1.18 “Category D Failure Event” means in respect of an affected Functional Unit any Failure Event which has been specified as a Category D Failure Event in the Output Specifications, or if no designation has been made in respect of it a Failure Event that renders such Functional Unit Unavailable but where Health Co continues to use the affected Functional Unit for any Clinical/Non-Clinical Service.
- 1.19 “Category E Failure Event” means in respect of an affected Functional Unit any Failure Event which has been specified as a Category E Failure Event in the Output Specifications, or if no designation has been made in respect of it a Failure Event that renders such Functional Unit Unavailable and where Health Co ceases to use the affected Functional Unit for any Clinical/Non-Clinical Service.
- 1.20 “Contract Day” means a period commencing at the start of the first Session of the relevant day and ending at the end of the last Session of the relevant day.
- 1.21 “CPI_n” is the value of CPI for the month of January which most recently precedes the start of the relevant Contract Year.

- 1.22 “CPIo” is the value of CPI for the month in which the Base Date falls.
- 1.23 “Customer Satisfaction Bonus” or “CSB” has the meaning given to it in Section 1.1(b) of Schedule 23 – 10.
- 1.24 “Customer Satisfaction Bonus Target” has the meaning given to it in Section 2.2(d) of Schedule 23 – 10.
- 1.25 “Customer Satisfaction Score” has the meaning given to it in Section 2.2(c) of Schedule 23 – 10.
- 1.26 “Energy Report” has the meaning given to it in Section 1.4 of Schedule 23 – 8.
- 1.27 “Escalation Date” or “ED” means, for purposes of calculating ASP_p^{mec} , every February 28, May 31, August 31 and November 30 during the term.
- 1.28 “Event” means an incident or state of affairs comprising a Service Failure or the failure of any Functional Unit to comply with all the Availability Conditions.
- 1.29 “Failure Event” means the occurrence of any of the following:
- (a) an Event which has not been Rectified by the expiry of the applicable Rectification Time (if any); or
 - (b) a failure to provide a successful Service Response in respect of a Service Request within the Service Response Time,
- and includes all Failure Events whether specified or deemed in accordance with this Schedule 23.
- 1.30 “Failure Event Category” means a Category A Failure Event, a Category B Failure Event, a Category C Failure Event, a Category D Failure Event or a Category E Failure Event.
- 1.31 “Failure Event Deduction” means an amount calculated pursuant to Section 1.1 of Schedule 23-3B and paid by Project Co to Health Co in the event of a Failure Event and to effect such payment by Project Co such amount shall be deducted by Health Co from the Periodic Service Payment for the relevant Payment Period pursuant to Section 3 of Schedule 23-2 and to Schedule 23-3 or as otherwise provided in this Agreement.
- 1.32 “Full Time Equivalent” has the meaning given to it in Section 6.1 of Schedule 23-2.
- 1.33 “Functional Area” means the area designated as such in Appendix E to this Schedule 23, and encompasses those Functional Units as listed in Appendix E that correspond to that area.
- 1.34 “Functional Unit” means a room or space within the Facility as set out in Appendix E to this Schedule 23. Where a room or space within the Facility is not set out in Appendix E then such room or space shall be added to Appendix E as an additional Functional Unit and an Availability Factor will be determined and specified in Appendix E for the room or

space based on the most comparable, listed Functional Unit and the initial determination shall be made in accordance with Section 1.4 of Schedule 23-5.

- 1.35 “Health Authority Facilities” means the Facility, the other existing 11 Fraser Health hospital facilities (in Burnaby, Chilliwack, Delta, Hope, Langley, Maple Ridge, Mission, New Westminster, Port Moody, Surrey, and White Rock) and the 4 existing BCCA cancer centres (in Victoria, Vancouver, Surrey, and Kelowna).
- 1.36 “High Priority Quality Failure” means a Quality Failure which has been designated a High Priority Failure in the FM Output Specifications or, if no designation has been made in respect of it, a Quality Failure which constituted a failure to comply with Applicable Law where such failure had the potential to result in a material disruption of the Project Operations or Clinical/Non-Clinical Services.
- 1.37 “Labour Rate Adjustment” has the meaning given to it in Section 6.1 of Schedule 23-2.
- 1.38 “Linked Functional Unit” means a Functional Unit that is noted as ‘Linked To’ in the last column of Appendix E to this Schedule 10. A Linked Functional Unit represents a combination of Functional Units that are mutually dependent in order to be able to provide Clinical / Non-Clinical Services from the Functional Unit.
- 1.39 “Long Stop Return Date” has the meaning given to it in Section 1.13 of Schedule 23 – 4.
- 1.40 “Low Priority Quality Failure” means a Quality Failure which has been designated a Low Priority Quality Failure in the FM Output Specifications or if no designation has been made in respect of it, a Quality Failure that may be considered to be routine in nature and which has little effect (taken by itself) on the Project Operations or Health Co’s ability to perform the Clinical/Non-Clinical Services or any other Quality Failure which is not a Medium Priority Quality Failure or a High Priority Quality Failure.
- 1.41 “Lower Utility Limit” means the relevant lower volume amount of natural gas, electricity, fuel oil and water (and, in respect of natural gas, electricity and fuel oil all other comparable energy sources that have Periodic Utility Targets) for a Contract Year expected to be consumed within the Facility, as set out for a full calendar year in the column headed “Lower Utility Limit” in the table at Appendix A to Schedule 22 and as reduced for Contract Years that are shorter than a full calendar year, such reduction to be agreed by Health Co and Project Co both acting reasonably based upon the practice of apportionment of the Upper Utility Limit projected usage over Payment Periods pursuant to Section 1.2 of Schedule 23 – 8 Utility Payments.
- 1.42 “LRA Date” has the meaning given to it in Section 6.2 of Schedule 23-2.
- 1.43 “Medium Priority Quality Failure” means a Quality Failure which has been designated a Medium Priority Quality Failure in the FM Output Specifications or, if no designation has been made in respect of it, a Quality Failure that has an impact on the Project Operations or Health Co’s ability to perform the Clinical/Non-Clinical Services or had the potential to result in a material disruption to the Project Operations or Clinical/Non-Clinical Services, but which is not a High Priority Quality Failure.

- 1.44 “n” means:
- (a) in the subscript of a formula or variable dealing with an annual value, the relevant Contract Year’s value for that variable and “n” should therefore be considered to extend from 0 (denoting the first Contract Year) up to the integer representing the Contract Year in which the Agreement expires or is terminated; and,
 - (b) in the superscript of a formula, a power function and should take on the integer value from 0 to 33 as applicable to the Contract Year for the variable being calculated.
- 1.45 “New Service Provider Start Date” means (as the case may be): for purposes of Appendix J the first day of HCOCP; for purposes of the period following HCOCP, the day following the last day of the HCOCP and, where a Service Provider is replaced by a new Service Provider, either:
- (a) (in the case of replacement following a Market Testing) the date established in accordance with Schedule 24 – Market Testing Procedure; or
 - (b) in other cases, the date on which the Services commence to be provided by the replacement Service Provider or, if earlier, the date on which they were first due to be provided.
- 1.46 “p” means in the subscript of a formula or variable dealing with Periodic value, the relevant Period’s value for the relevant Contract Year for that variable and “p” should therefore be considered to extend from 1 (denoting the first Period of the first Contract Year) up to the integer representing the last Period in the Contract Year in which the Agreement expires or is terminated.
- 1.47 “Payment Mechanism” means and is comprised of this Schedule 23.
- 1.48 “Performance Monitoring Period” means a period of time specified in the Output Specifications in respect of a Service or a part of a Service and in respect of which Project Co has an obligation to prepare a report for Health Co of its performance of that Service or the relevant part of it during that period.
- 1.49 “Performance Monitoring Report” means the report specified in the Output Specifications in respect of a Service or a part of a Service which Project Co has an obligation to prepare for Health Co in respect of its performance of that Service or the relevant part of it during a specified period.
- 1.50 “Periodic” means an event that occurs or action undertaken in each Payment Period.
- 1.51 “Periodic Service Payment” means the sum payable by Health Co to Project Co for the provision of the Services in accordance with Schedule 23-2.
- 1.52 “Periodic Utility Payment” means the sum payable by Health Co in each Payment Period calculated in accordance with the provisions of Section 1.1 of Schedule 23-8.
- 1.53 “Periodic Utility Target” has the meaning given to it in Section 1.2 of Schedule 23-8.

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- 1.54 "Prevailing Rates" has the meaning given to it in Section 6.1 of Schedule 23-2.
- 1.55 "Quality Failure" means a Service Failure which has specifically been designated as a Quality Failure in the Output Specifications or Performance Monitoring Program (as the case may be) and all other Service Failures except any such other Service Failure that results in a Failure Event.
- 1.56 "Quality Failure Category" means a Low Priority Quality Failure, a Medium Priority Quality Failure, or a High Priority Quality Failure.
- 1.57 "Quality Failure Deduction" means an amount calculated pursuant to Section 1.1 of Schedule 23-3A and paid by Project Co to Health Co in the event of a Quality Failure and to effect such payment by Project Co such amount shall be deducted by Health Co from the Periodic Service Payment for the relevant Payment Period pursuant to Section 3 of Schedule 23-2 and to Schedule 23-3 or as otherwise provided in this Agreement.
- 1.58 "Quality Satisfaction Failure" means a Service Failure by Project Co resulting from the outcome of the Quality Satisfaction Survey as set out in the Output Specifications.
- 1.59 "Quality Satisfaction Survey" has the meaning given to it in the Output Specifications.
- 1.60 "Real Life Cycle Payments" is comprised of Appendix H.1.
- 1.61 "Re-Commissioning" means any act required to enable a Functional Unit to be used by Health Co or the Health Authorities for the purpose for which it was being properly used pursuant to this Agreement by any such party prior to the occurrence of the relevant Event.
- 1.62 "Rectification" means making good, whether temporarily or permanently, an Event so that the subject matter of such Event complies with the levels of service and performance of the Services required pursuant to this Agreement and shall without prejudice to the generality of the foregoing include (a) restoring all functional capability affected by the Event and (b) ensuring that any affected Functional Unit is returned to the Availability Conditions existing immediately prior to the occurrence of the Event. "Rectified" and "Rectify" shall be construed accordingly.
- 1.63 "Rectification Confirmation Notice" means a notice from Project Co in accordance with the Output Specifications to Health Co's Representative confirming the date and time that a Service Response or Rectification has been completed with respect to the relevant Event.
- 1.64 "Rectification Time" means the period specified in the Output Specifications within which Rectification of the relevant Event in the relevant Functional Unit must be completed, calculated from the earlier of the time that such Event has received a Service Response and the time the Service Response Time has elapsed or, if there is no Service Response Time specified, the time the Event is reported to the Helpdesk.
- 1.65 "Relevant Base Rates" has the meaning given to it in Section 6.1 of Schedule 23-2.
- 1.66 "Relevant Market Rates" has the meaning given to it in Section 6.1 of Schedule 23-2.

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- 1.67 “Relevant Services” has the meaning given to it in Section 6.1 of Schedule 23-2.
- 1.68 “Return Date” has the meaning given to it in Section 1.10 of Schedule 23-4.
- 1.69 “Service Failure” means any breach by Project Co of its obligations to meet the Output Specifications in accordance with this Agreement.
- 1.70 “Service Failure Points” or “SFP’s” means points allocated to Project Co in respect of the occurrence of Service Failures which are determined by the provisions set out in Schedule 23-9.
- 1.71 “Service Request” means a request by Health Co to Project Co by notification to the Helpdesk for the provision of a Service.
- 1.72 “Service Response” means assessing and, if applicable, providing the Service which is the subject of the relevant Service Request in accordance with the requirements of that Service Request and the Output Specifications, and “Respond”, “Responding” and “Response” shall be construed as applicable to refer to a Service Response.
- 1.73 “Service Response Time” means the period specified in the FM Output Specifications within which a Service Response is to be provided in respect of the relevant Service Request calculated from the time that such Service Request is made to the Helpdesk.
- 1.74 “Service Weightings” are the applicable percentage for each Service Category as identified in Appendix A of this Schedule 23.
- 1.75 “Session” means each of the periods 12 am to 7 am, 7 am to 10 am, 10 am to 1 pm, 1 pm to 4 pm, 4 pm to 7 pm and 7 pm to 12 am in every 24 hours for a total of six Sessions per day.
- 1.76 “Temporary Alternative Accommodation” means accommodation offered to Health Co by Project Co as a substitute for any Unavailable Functional Unit pursuant to Schedule 23-4.
- 1.77 “Total Annual Service Payment” has the meaning given to it in Schedule 23-2.
- 1.78 “Total Volume Adjustment” means the figure expressed in an amount which shall be calculated in accordance with the provisions set out in Schedule 23-7.
- 1.79 “Unavailable” or “Unavailability” means a state or condition of the relevant Functional Unit which does not comply with the Availability Condition.
- 1.80 “Upper Limit Payment Amount” means the absolute value of the difference calculated as the Adjusted Upper Utility Price less the Upper Utility Price.
- 1.81 “Upper Utility Limit” means the relevant upper volume amount of natural gas, electricity, fuel oil and water for a Contract Year (and, in respect of natural gas, electricity and fuel oil all other comparable energy sources that have Periodic Utility Targets) expected to be consumed within the Facility, as set out for a full calendar year in the column headed “Upper Utility Limit” in the table at Appendix A to Schedule 22 and as reduced for Contract Years that are shorter than a full calendar year, such reduction to be agreed by

Health Co and Project Co both acting reasonably based upon the practice of apportionment of the Upper Utility Limit projected usage over Payment Periods pursuant to Section 1.2 of Schedule 23 – 8 Utility Payments.

- 1.82 “Upper Utility Price” means the cost of providing the Upper Utility Limit at the Utility Price.
- 1.83 “Utility” means natural gas, electricity, water and any other utility for which payment adjustments are made under the provisions of Schedule 23-8.
- 1.84 “Utility Contract” the contractual agreement(s) entered into by Health Co or by Project Co with the prior written consent of Health Co for the purchase of any Utility.
- 1.85 “Utility Price” means, in respect of each type of Utility, the price which Project Co has contracted to pay as agent of Health Co, or which Health Co has contracted to pay, per unit or per any other method of measuring and/or calculating the value of the volume of the consumption of the relevant Utility during the relevant Contract Year under the terms of the relevant Utility Contract.
- 1.86 “Utility Threshold” means the Upper Utility Limit and the Lower Utility Limit.
- 1.87 “Volume Adjusted Periodic Service Payment” means the amount that would be calculated for the relevant Payment Period in accordance with the formula set out in Section 3.1 of Schedule 23-2 without other deductions for Quality Failures or Failure Events or additions for the annual Bonus Payment.

SCHEDULE 23 – 2

CALCULATION OF SERVICE PAYMENTS

1. INTENTIONALLY DELETED

2. TOTAL ANNUAL SERVICE PAYMENT

2.1 The Total Annual Service Payment in respect of any Contract Year shall be calculated in accordance with the following formula and each component of the formula payable as set out herein:

$$\text{TASP} = \sum \text{PSP} + \text{BP}$$

- (a) TASP is the Total Annual Service Payment in the Contract Year;
- (b) $\sum \text{PSP}$ is the sum of Periodic Service Payments in the Contract year calculated and payable in accordance with Section 3 below; and
- (c) BP is the Bonus Payment calculated and payable in accordance with the provisions set out in Schedule 23-10.

3. PERIODIC SERVICE PAYMENT

3.1 The Periodic Service Payment payable in respect of any Payment Period shall be calculated in accordance with the following formula:

$$\text{PSP}_p = [(\text{ASP}_n / P_n) + \text{ASP}_p^{\text{mec}} + \text{ASP}_p^{\text{fec}} + \text{VA}_p + \text{UP}_p] - \sum \text{D}(\text{FE}_p) - \sum \text{D}(\text{QF}_p) + \sum \text{VAR}(\text{PSP} - \text{PP}_p)$$

where:

- (a) PSP_p is the Periodic Service Payment for the relevant Payment Period;
- (b) ASP_n is the Annual Service Payment for the relevant Contract Year as set out in Section 4 below;
- (c) P_n is the number of Payment Periods in the relevant Contract Year;
- (d) $\text{ASP}_p^{\text{fec}}$ is the element of the Periodic Service Payment calculated for the relevant Payment Period as the sum, over all relevant months, of the amount calculated for each month that contains days that are part of the relevant Payment Period as:
 - (i) the monthly dollar amount specified in Appendix H.2 – Schedule of Nominal Fixed Escalation Payments of this Schedule 23 for that month; multiplied by
 - (ii) the proportion of such month comprised of the relevant Payment Period, calculated as:

- (aa) the number equal to the number of days in the relevant Payment Period contained in the applicable month; divided by
- (bb) the number of days in such month,

so that the monthly scheduled amounts in Appendix H.2 are allocated proportionately to the relevant Periods and Periodic Service Payments without duplication;

(e) $ASP_p^{mec} = ASP_{p0}^{mec} \times EscalationIndex_p$

where:

ASP_{p0}^{mec} has the meaning given to it in Schedule 9 – Financial Close Information.

- (i) *EscalationIndex_p* means the indexation to be applied to the ASP_0^{mec} for the relevant Periodic Payment where the *EscalationIndex_p* is the greater of:

[*DELETION]

where:

- (aa) CPI_{ED} is the value of CPI for the month that is 3 months prior to the Escalation Date; and
- (bb) CPI_{ED-1} is the value of CPI for the month that is 6 months prior to the Escalation Date,

and so, for example, for a Payment Period starting any time from September 1 to November 30 the formula will reference the *EscalationIndex* set on the 31 August Escalation Date and the CPI_{ED} will be set at the CPI value for the month ending May and CPI_{ED-1} is set at the CPI value for the month ending February three months earlier and (CPI_{ED}/CPI_{ED-1}) always takes on the value of escalation of CPI for a quarter year;

- (cc) *EscalationIndex_{p-1}* is the value calculated as the product of all prior *EscalationIndex_p* having been calculated quarterly from the first Escalation Date from the date of this Agreement, beginning with the *EscalationIndex_p* of 1.000000 being the date of this Agreement, to and including the *EscalationIndex_p* that would be calculated at the Escalation Date prior to the most recent Escalation Date;
- (dd) where the Payment Period includes an Escalation Date, the ASP_p^{mec} will be calculated by applying the *EscalationIndex_p* from

the Escalation Date falling in the period and $EscalationIndex_{p-1}$ from the Escalation Date immediately preceding and will be time weighted average based on the number of days falling in the Payment Period that relate to the two escalation periods.

- (f) VA_p is the Total Volume Adjustment calculated in respect of the relevant Payment Period in accordance with the provisions set out in Schedule 23-7;
- (g) UP_p is the Utility Payment calculated in respect of the relevant Payment Period in accordance with the provisions set out in Schedule 23-8;
- (h) $\sum D(FE_p)$ is the sum of all Failure Event Deductions for all Functional Units in respect of the relevant Payment Period and $D(FE)$ is defined and calculated in accordance with the provisions set out in Schedule 23-3B;
- (i) $\sum D(QF_p)$ is the sum of deductions in respect of the relevant Payment Period in relation to all Quality Failures and $D(QF)$ is defined and calculated in accordance with the provisions set out in Schedule 23-3A; and
- (j) $\sum VAR(PSP-PP_p)$ is the sum of all Periodic Service Payment adjustments not already taken into account by an adjustment to the Annual Service Payment made pursuant to Schedule 25 – Variation Procedure for the Payment Period.

4. CALCULATION OF THE ANNUAL SERVICE PAYMENT

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

$$ASP_n = (ASP_0^{fm} + ASP_{n0}^{lc}) \times \left(\frac{CPI_n}{CPI_0} \right)$$

where:

- (a) ASP_n is the Annual Service Payment for the relevant Contract Year. In the Contract Year in which the Payment Commencement Date occurs the value for ASP_n will be pro-rated downward from a full year ASP on the basis of the number of days in that Contract Year from the Payment Commencement Date to the end of that Contract Year. In the final Contract Year the value for ASP_n will be pro-rated downward from a full ASP based on the number of days from the first day of that Contract Year until the date on which this Agreement expires or is terminated;
- (b) ASP_0^{fm} has the meaning given to it in Schedule 9 – Financial Close Information, being an element of the Annual Service Payment, as amended by Sections 4.2 and 6 of this Schedule 23-2;
- (c) ASP_{n0}^{lc} is the element of the Annual Service Payment in year n identified as the year n real lifecycle payment in the schedule of “Real Lifecycle Payments” as set out in Appendix H.1 of this Schedule 23.

- 4.2 For the purposes of Section 4.1(b) of this Schedule 23-2, ASP_0^{fm} shall with effect from each Market Testing Date (or such other date as may be established in accordance with Schedule 24 - Market Testing) until the next Market Testing Date, be ASP_0^{fm} (new) as determined pursuant to the provision of Section 5.1 of this Schedule 23-2.

5. EFFECT OF MARKET TESTING ON ANNUAL SERVICE PAYMENT

- 5.1 $ASPo^{FM}$ (new) shall with effect from the date established in accordance with Schedule 24 - Market Testing Procedure be the sum calculated in accordance with the following formula:

$$ASPo^{FM}(\text{new}) = ASPo^{FM}(\text{original}) + \text{MTSA}$$

where:

- (a) $ASPo^{FM}$ (new) is the element of the Annual Service Payment relating to the cost of the provision of facilities management services revised to reflect any change to the costs of any of the Market Tested Services following a Market Testing and expressed in value of money terms as if it were a payment, not discounted, at the Base Date;
 - (b) $ASPo^{FM}$ (original) is the amount as set out in Section 4.1(b) of this Schedule 23-2 as at the date of this Agreement as amended pursuant to Section 6 below; and
 - (c) MTSA is the adjustment to the cost of the Market Tested Services following a Market Testing (if any and whether an increase or decrease) to reflect the value of the amount of the adjustment at the Base Date, as set out in Section 4.2.
- 5.2 For the purposes of Section 5.1(c) of this Schedule 23-2, MTSA shall be an amount (whether positive or negative) calculated in accordance with the formula:

$$\text{MTSA} = (\text{NAP} \times \text{CPIo/CPIIn}) - \text{OMTSA}$$

where:

- (a) NAP is the aggregate of the new annual prices for the Market Tested Services arising from the Market Testing; and
- (b) OMTSA is the aggregate of the original annual prices for the Market Tested Services as set out in the second column of Appendix D of this Schedule.

6. LABOUR RATE ADJUSTMENT

[*DELETION]

SCHEDULE 23 – 3

FAILURE EVENT AND QUALITY FAILURE DEDUCTIONS

1. FAILURE EVENT AND QUALITY FAILURE DEDUCTIONS

- 1.1 If at any time during any Payment Period a Quality Failure or a Failure Event shall occur, then Health Co shall be entitled to make deductions from the Periodic Service Payment for such Payment Period.
- 1.2 If a Quality Failure occurs, then the deductions which Health Co will be entitled to make will be calculated in accordance with the provisions set out in Schedule 23-3A.
- 1.3 If a Failure Event occurs, then the deductions which Health Co will be entitled to make will be calculated in accordance with Schedule 23-3B.
- 1.4 All Failure Events shall be assigned one of the Failure Event Categories and all Quality Failures shall be assigned one of the Quality Failure Categories. Where in the Output Specifications a Service Failure has a range of, or the Service Failure does not have an assigned, Failure Event Category or Quality Failure Category, the Failure Event Category or Quality Failure Category which most closely describes the Service Failures shall be used and the initial determination of a Failure Event Category or Quality Failure Category shall be made by Project Co.
- 1.5 Subject to the terms of the Agreement that expressly limit the amount of aggregate deduction, the maximum aggregate deduction in respect of Failure Event Deductions and Quality Failure Deductions that can be made from the Periodic Service Payment in respect of any Payment Period shall be the Periodic Service Payment less the element of that payment attributable to the Real Lifecycle Payment as referred to in Section 4.1 of Schedule 23-2.
- 1.6 No Quality Failure Deduction shall be made to the extent that the Quality 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 and where Health Co has ceased using the affected Functional Unit for any Clinical/Non-Clinical Service (and such Unavailability is not caused by that Quality Failure).

SCHEDULE 23 – 3A**QUALITY FAILURES****1. QUALITY FAILURE DEDUCTIONS**

- 1.1 The amount to be deducted from the Periodic Service Payment in respect of a Quality Failure shall be calculated in accordance with the following formula:

$$D(QF) = (ASPn^{FM} / P) \times SW \times [DP(QF) \times Nd/Np + DP(QSF)] \times Bdl_n$$

where:

- (a) D(QF) means the amount to be deducted from the Periodic Service Payment in respect of the relevant Quality Failure;
- (b) $ASPn^{FM}$ is the amount equal to ASP_0^{fm} as defined in Section 4.1 of Schedule 23-2, indexed to the relevant Contract Year;
- (c) P is the number of Payment Periods in the relevant Contract Year;
- (d) SW means the percentage weighting figure attributable to the Service for the purposes of calculating deductions to the Periodic Service Payment for Quality Failures which shall:
 - (i) in the Contract Year in which the Payment Commencement Date occurs, until the first Market Testing Date, be the percentage figure attributable to the Service Category in respect of which the Quality Failure occurs as set out in the second column of the Table at Appendix A;
 - (ii) in all subsequent Contract Years, be such percentage figure attributable to the Service Category in respect of which the Quality Failure occurs as may be agreed or determined pursuant to Schedule 23-5;
- (e) DP(QF) means the deduction percentage figure attributable to the relevant Quality Failure Category for the purposes of calculating deductions to the Periodic Service Payment as set out in the second column of the Table at Appendix B;
- (f) Nd means the number of days or partial days the Quality Failure has been identified as having subsisted for, where partial days shall be deemed to be whole days;
- (g) Np means the number of days in the relevant Payment Period;
- (h) DP(QSF) means the deduction percentage figure attributable to the relevant Quality Satisfaction Failure for the purposes of calculating deductions to the Periodic Service Payment as set out in the third column of the Table in Appendix G; and

- (i) BdlIn means:
 - (i) if the Quality Failure occurs within the first 14 days from and including the New Service Provider Start Date for the Service Category affected by the Quality Failure, then fifty per cent (50%);
 - (ii) if the Quality Failure occurs during the 15th to 28th day (inclusive) after the New Service Provider Start Date for the Service Category affected by the Quality Failure, then seventy five percent (75%); and/or
 - (iii) if the Quality Failure occurs after the 28th day after the New Service Provider Start Date for the Service Category affected by the Quality Failure, then one hundred percent (100%).
- 1.2 The maximum aggregate deduction in respect of Quality Failures that can be made from a Periodic Service Payment in respect of any Payment Period for any Service Category shall be $ASPn^{FM/P}$ multiplied by the applicable Service Weightings percentage for that Service Category as identified in Appendix A plus any Volume Adjustment relating to that Service Category.

2. QUALITY SATISFACTION FAILURES

- 2.1 Quality Satisfaction Surveys will be undertaken on a quarterly basis as set out in the Output Specifications.
- 2.2 A Quality Satisfaction Failure arising from a Quality Satisfaction Survey undertaken on a quarterly basis will be deemed to be a single Quality Satisfaction Failure in the Payment Period in which the Quality Satisfaction Survey is undertaken.
- 2.3 For the purposes of both Quality Satisfaction Failure and Customer Satisfaction Bonus determination pursuant to this Schedule 23-10, the following shall apply each Contract Year:
- (a) the facilities to be surveyed are the Health Authority Facilities, of which Project Co shall perform the survey for the Facility pursuant to the Agreement and Health Co and the Health Authorities shall perform the surveys for all other Health Authority Facilities;
 - (b) the relevant Quality Satisfaction Failure referred to in Section 1.1(h) of this Schedule 23 – 3A determined at the time of each survey and for each Service surveyed shall be determined by the relative score ranking of the Facility for the relevant Service compared to the scores of all other Health Authority Facilities as indicated by the first two columns of Appendix G;
 - (c) in the event that the number of Health Authority Facilities providing a surveyed service changes from the number set out in Column 2 of Appendix G, as a result of either the number of Health Authority Facilities changing or surveyed services not being provided at all the Health Authority Facilities, then the relative ranges in Column 2 of Appendix G will be amended to ensure 20% by number of applicable Health Authority Facilities are (for the relevant survey and Service) contained in each Quality Satisfaction Failure Category range in Column 2 (in the

first three rows of the table) of Appendix G and that the “N/A” category (bottom row) of the table contains 40% by number of the Health Authority Facilities. For the purpose of amending the relative ranges of numbers of facilities in each row of the table as per this Section 2.3(c), the calculation will, working from the bottom row of the table up, round the number up or down, as the case may be, to the nearest whole number of facilities for the “N/A” category (bottom row), and for the rows containing Satisfaction Failure Categories (the first three rows) the calculation will, working from “Low Failure” row up, round up to the nearest whole number of facilities and for the “High Failure” category round so that the total facilities equals the actual applicable number for the survey and Service;

- (d) where a Service Provider provides a surveyed Service to more than two thirds of the Health Authority Facilities, the ranges in Column 2 of Appendix G will be amended such that the range in the “N/A” category (bottom row) will represent half of the Health Authority Facilities and the number of Health Authority Facilities falling in the remaining categories will be allocated equally between the first three rows containing Quality Satisfaction Failure Categories. For the purpose of amending the relative ranges of numbers of facilities in each row of the table, rounding will be applied as in Section 2.3(c) above so that the total facilities equals the actual applicable number for the survey and Service;
- (e) the principles outlined in Sections 2.3(c) and 2.3(d) above for amending rank ranges in Appendix G over time shall also be applied on a Service by Service basis to circumstances where a surveyed service is not provided in a Health Authority Facility so that the ranking is out of the subset of facilities and the rank ranges reflect the smaller number of relevant facilities;
- (f) all surveys shall be carried out at each of the Health Authority Facilities and the AHCC:
 - (i) in a consistent manner that will provide for statistically significant results;
 - (ii) using the same survey information and methodology;
 - (iii) at the same times, and to the maximum extent possible, in the same areas of the relevant hospitals and cancer centres;
 - (iv) using the same mix of sampled population, whether staff, patients or visitors; and,
 - (v) will be subject to independent audit and verification;
- (g) if Health Co or the Health Authorities do not perform the comparable surveys in all relevant facilities, excluding the Facility, for a Service or if survey results from the applicable Health Authority Facilities, excluding the Facility, are deemed invalid, then:
 - (i) if the cause for such failure was not within the reasonable control of Health Co, a Health Co Party or the Health Authorities or, if the cause was within the reasonable control of such parties but was not due to negligence of any of them, Project Co’s score for that Service and the

- survey shall be determined, for the purpose of this Section 2.3 and Schedule 23-10, to be equal to the top ranked facility's score for that Service and survey unless Health Co performs such survey and the results are determined to be valid before the end of the next ensuing Period; or
- (ii) if the cause for such failure was negligence on the part of Health Co, a Health Co Party or a Health Authority, Project Co's score for that Service and the survey shall be determined, for the purpose of this Section 2.3 and Schedule 23-10, to be equal to the top ranked facility's score for that Service and survey; and
- (h) if Project Co does not perform the survey for a Service or if survey results are deemed invalid, then Project Co's score for that Service and survey:
- (i) for the purpose of earning the Customer Satisfaction Bonus determined pursuant to Schedule 23-10, shall be determined to be equal to the bottom ranked facility's score for that Service and survey unless Project Co has:
 - (1) not been negligent in the performance of or failure to perform such survey; and,
 - (2) performs such survey and the results are determined to be valid before the end of the next ensuing Period; or
 - (ii) for purposes of determining Quality Satisfaction Failures, shall not be determined for that Service and survey until Project Co has performed such survey and the results are determined to be valid.

SCHEDULE 23 – 3B**FAILURE EVENTS****1. FAILURE EVENT DEDUCTIONS**

- 1.1 Subject to Section 1.2 below but in accordance with Section 1.3 below, for each Functional Unit a Failure Event Deduction is to be calculated for each Session in which there is a Failure Event that affects the Functional Unit during that Session, whether the relevant Failure Event first occurred or is continuing during that Session, and including the Session in which Rectification of such Failure Event occurs or such later Session as is specified by Section 2.5 below.
- 1.2 Where a Failure Event is Rectified in the Session following the Session in which the Failure Event commenced, there shall be relief from one of the Failure Event Deductions.
- 1.3 Where a Failure Event commences in one Session and the Event giving rise to it or the state of Unavailability is still subsisting at the commencement of a second (and any subsequent) Session then:
- (a) there shall be deemed to be a new Failure Event occurring for each Session at the start of which the relevant Event or state of Unavailability subsists; and
 - (b) a Failure Event Deduction in respect of a Failure Event in accordance with this Schedule 23-3 shall be calculated in respect of each such deemed new Failure Event and the applicable Failure Event Category shall be determined anew for each affected Functional Unit.
- 1.4 All Failure Event Deductions that are determined for Failure Events occurring or continuing during a Payment Period shall be aggregated for purposes of deducting all such amounts from the Periodic Service Payment for such Payment Period.

Subject to the other provisions of this Schedule 23-3B, for each Failure Event a Failure Event Deduction shall be calculated as follows:

$$D(FE) = AF_n \times DP(FEC) \times BdIn$$

where:

- (a) D(FE) means the Failure Event Deduction amount in respect of an affected Functional Unit for the relevant Session;
- (b) AF_n means the Availability Factor in the relevant Payment Period for the Functional Unit affected by the Failure Event as calculated in accordance with Section 1.5 below;
- (c) DP(FEC) means the percent deduction amount per Session specified for the relevant Failure Event Category in the second column of Appendix C; and

- (d) BdIn means:
- (i) if the Failure Event occurs within the first 14 days from and including the New Service Provider Start Date for the Service Category affected by the Failure Event, then fifty percent (50%);
 - (ii) if the Failure Event occurs during the 15th to 28th day (inclusive) after the New Service Provider Start Date for the Service Category affected by the Failure Event, then seventy five percent (75%); and/or
 - (iii) if the Failure Event occurs after the 28th day after the New Service Provider Start Date for the Service Category affected by the Failure Event, then one hundred percent (100%).

1.5 Availability Factors attributable to Functional Units shall be calculated in accordance with the following formula:

$$AF_n = AF_o \times 1.02^n$$

where:

- (a) AF_n means the Availability Factor per Session for the relevant Contract Year for the Functional Unit affected by the Failure Event; and
- (b) AF_o means the Availability Factor per Session attributable to the affected Functional Unit in Base Date prices as set out in Appendix E.

2. GENERAL RULES FOR CALCULATING FAILURE EVENT DEDUCTIONS

2.1 Where a Functional Unit becomes Unavailable due to causes other than an Event that is designated a Failure Event in the FM Output Specifications, Project Co shall be entitled to a Rectification Time of one (1) hour, six (6) hours or twenty-four (24) hours depending on whether the Event is deemed an emergency, urgent or routine Event. If the Unavailability of that Functional Unit is not Rectified within such Rectification Time and the Availability Condition is not satisfied, then the Event shall be deemed to be a Failure Event as described in Section 1.29(a) of Schedule 23-1 and a Failure Event Deduction shall apply. Project Co shall, acting reasonably, be responsible for the initial determination of the Event category as emergency, urgent or routine and such category determination (as well as the Rectification Time, but not the time of the start of the Rectification Time) shall be amended as Project Co rectifies the Event. Where Project Co incurs a deduction under this Section 2.1 no Service Failure Points will be awarded to Project Co for the Event.

2.2 The following applies to Events relating to Plant Services for which the applicable Rectification Time specified in Section 4E8.4.2.1, Table 2 of the FM Output Specifications includes a specified number of hours and also includes the phrase, "(or as reasonably required by nature of repair)":

- (a) where an Event occurs relating to the Plant Services as a result of which a Functional Unit is Unavailable and has not been Rectified within the specified number of hours notwithstanding that for such Event the phrase "(or as

- reasonably required by nature of repair)” would require a longer Rectification Time, then the Event shall be deemed a Failure Event as described in Section 1.29(a) of Schedule 23-1 and a Failure Event Deduction shall apply notwithstanding that the permitted Rectification Time may exceed the specified number of hours;
- (b) despite such Event referred to in Section 2.2(a) of this Schedule 23-3B being a Failure Event pursuant to that Section, no Service Failure Points shall be deducted in relation to such Failure Event provided that it is Rectified within such period required by the phrase “(or as reasonably required by nature of repair)”;
 - (c) Project Co shall make the initial determination of the Failure Event category for each Functional Unit and such category determination (as well as the Rectification Time, but not the time of the start of the Rectification Time) shall be amended as Project Co rectifies the Event; and
 - (d) where an Event occurs relating to the Plant Services which does not cause Unavailability of a Functional Unit, such Event shall not be a Failure Event provided that it is Rectified within such period required by the phrase “(or as reasonably required by nature of repair)”.
- 2.3 Where a Failure Event occurs in a Linked Functional Unit a Failure Event in any of the Linked Functional Units will be deemed to be a Failure Event in all of the Linked Functional Units.
- 2.4 Where a Failure Event occurs as described in Section 1.29(b) of Schedule 23-1 that is not a Failure Event pursuant to Section 2.2(a) of this Schedule 23-3B but the relevant Event is Rectified within the relevant Rectification Time (if applicable) the Failure Event Deduction and number of Service Failure Points awarded shall be reduced by 75%.
- 2.5 Where a Functional Unit requires Re-commissioning by or at the direction of Health Co following Rectification of an Event, the Re-commissioning of the Functional Unit shall be at the sole cost and expense of Project Co and shall be deemed to have been completed on the earlier of:
- (a) the expiry of twenty-four hours after the time and date notified to Health Co in the Rectification Confirmation Notice as the time and date that Rectification was completed; and
 - (b) the time and date on which Health Co or the relevant Health Co Party commences to use the Functional Unit again for the purposes for which it was being used prior to the occurrence of the relevant Event.
- 2.6 Health Co will immediately and diligently commence Re-commissioning following Rectification and receipt of notice from Project Co.
- 2.7 The relevant Failure Event shall continue and shall be deemed to occur for all Sessions up to and including the Session in which the Re-commissioning of the Functional Unit shall have been deemed to have been completed. Service Failure Points shall not accrue during any Re-commissioning periods.

2.8 Where more than 18% of all Functional Units by area are Unavailable in a Session as a result of a single Event, then the total Failure Event Deductions in respect of such Event for any affected Session will be limited to the lesser of:

(a) the amount calculated as:

$$(PSP_p - (ASP_{n0}^{lc} / P_n) \times (CPI_n / CPI_0)) / d \times 1/6$$

where:

(i) PSP_p , ASP_{n0}^{lc} , and P_n have the meanings specified in Schedule 23-2; and

(ii) d is the number of days in the relevant Payment Period; and

(b) the aggregate Failure Event Deductions in respect of the Event in question calculated under this Schedule 23-3B.

2.9 The Rectification Confirmation Notice shall state as the relevant time and date of Rectification or Service Response the time and date of the Rectification Confirmation Notice or, if such notice is given following a verbal notification to Health Co's Representative of such Rectification or Service Response, the time and date of such verbal notification provided that if Health Co does not agree to the time and date stated or that Rectification or Service Response has been completed it may refer the matter to the Dispute Resolution Procedure.

3. REPEATED RECTIFICATION

3.1 Notwithstanding that Project Co completes a Rectification in respect of an Event within the relevant Rectification Time, there shall be deemed to be a Category A Failure Event for all affected Functional Units, for and as applicable to each Event, on:

(a) the third and each subsequent occurrence of the same circumstances as the previously Rectified Event during the Contract Day; or

(b) the fourth and each subsequent occurrence of the same circumstances as the previously Rectified Event in any consecutive seven day period,

provided that each such Event is in connection with the same FM Output Specifications.

4. UNAVAILABILITY

4.1 The maximum aggregate Failure Event Deductions that can be made for each Functional Unit in any Session for all Failure Events affecting the Functional Unit in that Session shall be the amount calculated for the Functional Unit and Session as the Failure Event Deduction for a Category E Failure Event, subject to Section 2.8 above.

SCHEDULE 23 – 4**TEMPORARY ALTERNATIVE ACCOMMODATION****1. TEMPORARY ALTERNATIVE ACCOMMODATION****1.1 Failure Event Relief**

- (a) If a Category D Failure Event or a Category E Failure Event occurs, Project Co may offer Health Co Temporary Alternative Accommodation by written notice to Health Co within three (3) Business Days from the commencement of the relevant Event.
- (b) The Temporary Alternative Accommodation shall:
 - (i) comply with the Availability Condition applicable to any Functional Unit which is affected by the relevant Failure Event for which Temporary Alternative Accommodation is offered;
 - (ii) be a temporary alternative having regard to the facts and the circumstances in existence;
 - (iii) be upon terms which are not materially different from the terms upon which Health Co occupied the affected Functional Unit;
 - (iv) be accommodation for which Project Co is not already obligated to provide within the Periodic Service Payment or other terms of the Project Agreement or if it is within the Facility, be accommodation for which Health Co does not have alternative plans within the time period that the accommodation will reasonably be required by Project Co for use by Health Co being the time specified in Section 1.3(d) below plus one month;
 - (v) be acceptable to Health Co acting reasonably to enable delivery of the Clinical/Non-Clinical Services having regard to the activities usually carried out at or from the Functional Unit which is or has become unavailable and the proximity of the proposed Temporary Alternative Accommodation to the affected Functional Unit; and
 - (vi) be supplied with the Services to the standards set out in the Output Specifications which Project Co would under normal circumstances be providing within the Unavailable Functional Unit.
- (c) In relation to the Temporary Alternative Accommodation Project Co shall pay for any additional costs and charges incurred by Health Co in respect of the Temporary Alternative Accommodation including, without limitation, the reasonable direct costs of any relocation to and from the Temporary Alternative Accommodation and the Facility.

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- 1.2 Where the Temporary Alternative Accommodation proposed by Project Co is within the Facility and Health Co ultimately uses such Temporary Alternative Accommodation, a Category D Failure Event will be deemed to occur in each Functional Unit affected by the Failure Event for each Session in which Health Co occupies the Temporary Alternative Accommodation. Furthermore, no Service Failure Points will be awarded in respect of such Failure Event affecting each Functional Unit.
- 1.3 The written notice sent by Project Co to Health Co pursuant to Section 1.1(a) of this Schedule 23-4 shall:
- (a) describe the Temporary Alternative Accommodation;
 - (b) invite Health Co to inspect the Temporary Alternative Accommodation and shall give Health Co 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 Health Co before the submission of the written notice) by which Project Co reasonably expects Health Co to be able to relocate back to the relevant Functional Unit; and
 - (e) describe the terms upon which Health Co shall 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 the Payment Mechanism.
- 1.4 Health Co shall notify Project Co in writing of its acceptance or refusal of the proposed Temporary Alternative Accommodation within 24 hours of its inspection of the same (Health Co having used all reasonable endeavours to inspect the proposed Temporary Alternative Accommodation within 24 hours of notification pursuant to Section 1.3(b) above) and a failure by Health Co to provide any such notice shall be deemed to be a refusal of the proposed Temporary Alternative Accommodation.
- 1.5 Health Co shall be able to refuse any proposed Temporary Alternative Accommodation on the basis that it does not satisfy the criteria in Section 1.1(b) above or that any item referred to in Section 1.3 above is unacceptable to Health Co acting reasonably.
- 1.6 If Health Co accepts the offer of Temporary Alternative Accommodation:
- (a) which is not within the Facility, then, without affecting Health Co's remedial rights under this Agreement including Section 32 of this Agreement, Health Co shall not be entitled to vacate the Temporary Alternative Accommodation until the earlier of the Return Date and the date on which Health Co is entitled and able to return to and use the Functional Unit in accordance with the agreed programme for relocation and re-commissioning referred to in Section 1.11 below; or
 - (b) which is within the Facility and Health Co subsequently needs such Temporary Alternative Accommodation for purposes in connection with its performance of Clinical/Non-Clinical Services that were not anticipated needs for such space for the expected period of occupancy at the time Health Co agreed to occupy such

space, then Health Co shall be entitled to vacate such Temporary Alternative Accommodation within 15 Business Days of notice in writing to Project Co and Project Co may offer alternative Temporary Alternative Accommodation in accordance with this Schedule 23-4.

- 1.7 For the avoidance of doubt, Health Co's rights under Section 31 of this Agreement shall not be affected by the acceptance by Health Co of the Temporary Alternative Accommodation.
- 1.8 Subject to Section 1.2 of this Schedule 23-4, if Health Co accepts Project Co's offer of Temporary Alternative Accommodation, no further Failure Event Deductions shall be made in respect of the Functional Unit vacated by Health Co while the Temporary Alternative Accommodation is being used by Health Co.
- 1.9 Health Co shall be entitled to award Service Failure Points and make Failure Event Deductions in respect of any Failure Event which occurs in the Temporary Alternative Accommodation as if the Temporary Alternative Accommodation was the Functional Unit which it replaced and the Failure Event Deduction shall be calculated using the weighting determined pursuant to Section 1.3(e) of this Schedule 23-4.
- 1.10 Project Co shall confirm by written notice provided to Health Co the date on which Project Co reasonably expects Health Co to be able to relocate back to the relevant Functional Unit (the "Return Date"). Such notice must be provided no less than 14 days prior to the Return Date, or if the period of Temporary Alternative Accommodation is for a period of less than 14 days, such notice must be provided in accordance with Section 1.3(d).
- 1.11 When Project Co has completed everything necessary to enable Health Co to return to the Functional Unit, Health Co's Representative shall confirm that the Availability Conditions for the Functional Unit are met and Health Co's Representative and Project Co shall agree to a relocation programme to return to the Functional Unit and any necessary re-commissioning period.
- 1.12 Where Health Co has accepted the proposed Temporary Alternative Accommodation pursuant to Section 1.4 of this Schedule 23-4, in the event that Project Co fails to complete everything necessary to enable Health Co to return to the relevant Functional Unit on the Return Date, Health Co 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 Health Co, in its discretion, remains in occupation of the Temporary Alternative Accommodation following the Return Date there shall be deemed to be a Category D Failure Event in the Temporary Alternative Accommodation occurring on the Return Date and Health Co shall discount at a rate of 50% the Failure Event Deduction which would have been levied in respect of that Category D Failure Event for each affected Session in which Health Co occupies the Temporary Alternative Accommodation thereafter until the date on which the Failure Event referred to Section 1.1(a) above has been rectified and Health Co is able to resume its use of the Functional Unit; and

- (b) where Health Co, in its discretion, vacates the Temporary Alternative Accommodation following the Return Date, there shall be deemed to be a Category E Failure Event in the Temporary Alternative Accommodation occurring on each Session in which Health Co is not in occupation of the Temporary Alternative Accommodation until the Session in which the Failure Event referred to in Section 1.1(a) above has been rectified and Health Co is able to resume its use of the Functional Unit. For the avoidance of doubt, under such a scenario, Project Co will not be responsible for paying additional costs and charges incurred by Health Co in respect of its relocation or operation at the new temporary alternative accommodation selected by Health Co that are in excess of the costs Project Co was previously responsible for at the Temporary Alternative Accommodation.

- 1.13 Health Co shall specify a date (“the Long Stop Return Date”), being a date no earlier than the date specified in Section 1.3(d), by which the Rectification shall 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 the following shall apply:
 - (a) Health Co may (without prejudice to its rights under Section 45 or to other references or any other express rights of Health Co 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 Unit for which the Temporary Alternative Accommodation is a replacement to a condition which satisfies in all respects the requirements of the Agreement; and
 - (b) Project Co shall reimburse Health Co for all reasonable direct costs and expenses incurred by Health Co in relation to taking the steps, or engaging others to take the steps, referred to in Section 1.13(a) above and Health Co shall be entitled to deduct any such amount from any amounts payable to Project Co under the provisions of this Agreement.

SCHEDULE 23 – 5**REVIEW OF FACTORS AFFECTING FAILURE EVENTS AND QUALITY FAILURES****1. FAILURE EVENTS**

- 1.1 The identification of Functional Units and their Availability Factors, Service Response Times and Rectification Times shall be reviewed after the first two Contract Years and thereafter shall again be reviewed concurrently, and in sufficient time to be taken into account in Market Testing, as each review of Market Tested Services as outlined in Schedule 24 all for the purpose of ensuring that such Functional Unit identification, Availability Factors, Service Response Times and Rectification Times are appropriate for the efficient and effective delivery of the Services and the Clinical/Non-Clinical Services, the convenient use by the public of the Services and the Clinical/Non-Clinical Services, and appropriate for the satisfaction of Project Co's other obligations under the Agreement.
- 1.2 Health Co and Project Co may, in respect of each matter subject of the review, either:
- (a) agree that the status of the relevant matter shall continue to apply unchanged until the time of the next such review; or
 - (b) agree to adjustments to the relevant matter.
- 1.3 Any agreed adjustment pursuant to a review shall be effective from the commencement of the Contract Year immediately following the relevant review carried out in accordance with Section 1.1 of this Schedule 23-5. Where an agreed adjustment relates to the material change in use, addition or deletion of a Functional Unit, such adjustment may be effected through the Variation Procedure.
- 1.4 Health Co or Project Co may, with respect to Service Response Times, Rectification Times and the identification of Functional Units that are not at the time identified in Appendix E to this Schedule 23 that are reviewed, but not agreed or resolved following the review, at the request of either of them determine such matters pursuant to the Dispute Resolution Procedure.
- 1.5 Changes to the identification and breakdown of Functional Units and their Availability Factors that are already identified in Appendix E to this Schedule 23 at the time of any review under this Section 1 shall require agreement of the Parties and either Party may withhold its agreement at its sole discretion. Such proposed changes shall not be subject to the Dispute Resolution Procedure.

2. QUALITY FAILURES

- 2.1 Health Co and Project Co if requested by either party shall review following the completion of each Market Testing, but at least once every five Contract Years, the Service Weighting percentage figures in the second column of Appendix A – Service Weighting (SW) for the purpose of equating the Service Weighting percentage for each Service Category to the cost of such Service Category to Project Co relative to the element of the Annual Service Payment relating to the facilities management services,

ASP_{fm}^0 following the Market Testing pursuant to Schedule 24 – Market Testing Procedure.

- 2.2 Health Co and Project Co shall, in respect of each Service Weighting either:
- (a) agree that the relevant percentage figure applicable at the date of the review shall continue to apply in the Contract Year immediately following the review and until the next review; or
 - (b) agree to adjustments to the relevant percentage figure to take effect in the Contract Year immediately following the review and until the next review.
- 2.3 Any agreed or determined adjustment pursuant to a review shall be effective from the commencement of the Contract Year immediately following the review carried out in accordance with Section 2.1 of this Schedule 23-5 until the next review.
- 2.4 Health Co or Project Co may, in respect to those matters reviewed, but not agreed or resolved following the review, require such matters to be determined pursuant to the Dispute Resolution Procedure.

SCHEDULE 23 – 6**1. FAILURE BY PROJECT CO TO MONITOR OR REPORT**

- 1.1 The Performance Monitoring Report provided as part of the Performance Monitoring Program by Project Co in accordance with the Output Specifications for any Payment Period shall 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 Periodic Service Payment and the number of Service Failure Points and Warning Notices issued.
- 1.2 Without limiting any audit or inspection rights in this Agreement, if Project Co fails to monitor or report an Event, Failure Event or Quality Failure in accordance with the FM Output Specifications, Project Co shall, upon submission of a valid invoice by Health Co reimburse Health Co in full for all deductions that should have been made, and in addition shall reimburse Health Co for the direct costs relating to the auditor, audit, inspector and inspection to a maximum that is the lesser of:
- (a) the actual direct costs relating to the auditor, audit, inspector and inspection reasonably incurred by Health Co in carrying out any audit, inspection or investigation of records made available pursuant to the Agreement and this Schedule 23-6; or
 - (b) an amount equivalent to the amount of all such deductions that should have been made.
- 1.3 Without limiting obligations in the Agreement for Project Co to pay Health Co or Health Co's rights of set off, in the event that Health Co's inspection or investigation of records made available pursuant to the Agreement reveals any further Service Failures relating to Project Co's failure to monitor or report an Event, Failure Event or Quality Failure, Health Co shall, in addition, be entitled to make deductions in respect of any such Failure Events or Quality Failures in the manner prescribed in Schedule 23-3. Any such deductions may be made from the Periodic Service Payment payable in respect of the Payment Period in which the relevant matters were revealed by Health Co's investigations or, to the extent that Health Co is unable to make any further deductions from the Periodic Service Payment in respect of that Payment Period by virtue of Section 1.5 of Schedule 23-3, such un-deducted balance may be carried forward and deducted from Periodic Service Payments due in respect of a subsequent Payment Period.
- 1.4 In the event that Health Co's inspection or investigation of records reveals any of the following acts:
- (a) fraudulent action or inaction;
 - (b) deliberate misrepresentation; or
 - (c) gross misconduct or incompetence;

in each case on the part of Project Co or a Project Co Party, there shall be deemed to be a new High Priority Quality Failure and Health Co shall be entitled to make deductions in respect of such High Priority Quality Failure in the manner prescribed in Schedule 23-3.

- 1.5 For the purposes of calculating the amount of any deduction to be made under Section 1.1 of Schedule 23-3A in respect of any Quality Failure arising under Section 1.3 of this Schedule 23-6:
- (a) "SW" shall be the same Service Weighting deduction percentage as that which applies to the Service Category, the performance of which gave rise to the Failure Event or Quality Failure which Project Co has failed to report. If no such service can be identified, the relevant Service Category shall be deemed to be General Management as outlined in the Output Specifications; and
 - (b) "Nd" shall be deemed to be equal to the number of days in the applicable period "Np".
- 1.6 The provisions of this Schedule 23-6 shall be without prejudice to any rights of Health Co in this Agreement including pursuant to Section 32 and Section 45 of this Agreement.

SCHEDULE 23 – 7**VOLUME ADJUSTMENTS****1. VOLUME ADJUSTMENT**

- 1.1 The Total Volume Adjustment in respect of any Payment Period shall be calculated in accordance with the following formula:

$$VA = VAL + VAFS + VAOC + VAB$$

where:

- (a) VA is the Total Volume Adjustment;
 - (b) VAL is the price adjustment (if any) made in respect of the volume of laundry and linen carried out in accordance with the FM Output Specifications in respect of the Laundry/Linen Service calculated in accordance with Section 1.3 of this Schedule 23-7;
 - (c) VAFS is the price adjustment (if any) made in respect of the number of meal days prepared in accordance with the Output Specifications in respect of the Food Services calculated in accordance with Section 1.4 of this Schedule 23-7;
 - (d) VAOC is the price adjustment (if any) made in respect of the number of hours of outbreak cleaning undertaken in accordance with the Output Specifications in respect of the Housekeeping Services calculated in accordance with Section 1.5 of this Schedule 23-7; and
 - (e) VAB is the price adjustment (if any) made in respect of the number of open beds in the Facility calculated in accordance with Section 1.6 of this Schedule 23-7.
- 1.2 For the purposes of Sections 1.3(c) and 1.4(c) of this Schedule 23-7, in the Payment Period in which the Payment Commencement Date falls and in the last Payment Period of the Project Term N_p shall be the actual number of days in the Payment Period from and including the Payment Commencement Date (for the first period) and (for the last period) up to and including the last day of the Project Term.
- 1.3 Laundry Price Adjustment
- For the purposes of Section 1.1(b) of this Schedule 23-7 the price adjustment in respect of the volume of laundry utilized in accordance with the Output Specifications in any Payment Period ("VAL") shall be calculated in accordance with the following formula, summing over all laundry types:

$$VAL = \sum \left(\left(\frac{IALP}{ILU} \times \frac{CPI_{In}}{CPI_{Io}} \right) \times \left(ALU - \left(ILU \times \frac{Np}{Ny} \right) \right) \right)$$

where:

- (a) IALP is the initial annual laundry price per laundry type as set out in Appendix F as amended by Schedule 24 - Market Testing Procedure or Schedule 25 – Variation Procedure;
- (b) ILU is the number of items or weight of laundry per laundry type included in the initial annual laundry price as set out in Appendix F as amended by Schedule 24 - Market Testing Procedure or Schedule 25 – Variation Procedure;
- (c) Np is the number of days in the relevant Payment Period;
- (d) Ny is the number of days in the relevant Contract Year; and
- (e) ALU is the number of Items or weight of laundry per laundry type received by Health Co in the relevant Payment Period which met the standards specified in the Output Specifications for Laundry/Linen Services after taking into account the relevant reject rates set out in Table 2 of Section 4E6.4.1.1 of the FM Output Specifications.

1.4 Food Services Adjustment

For the purposes of Section 1.1(c) of this Schedule 23-7 the price adjustment in respect of the volume of meals utilized in accordance with the Output Specifications in any Payment Period (“VAFS”) shall be calculated in accordance with the following formula, summing over all meal day types:

$$VAFS = \sum \left[\left(\frac{IAMP}{IMD} \times \frac{CPI_{In}}{CPI_{Io}} \right) \times \left(AMD - \left(IMD \times \frac{Np}{Ny} \right) \right) \right] + FSU + CA$$

where:

- (a) IAMP is the initial annual meal day price per meal day type as set out in Appendix F as amended by Schedule 24 - Market Testing Procedure or Schedule 25 – Variation Procedure;
- (b) IMD is the number of meal days per meal day type included in the initial annual meal day price as set out in Appendix F as amended by Schedule 24 - Market Testing Procedure or Schedule 25 – Variation Procedure;
- (c) Np is the number of days in the relevant Payment Period;
- (d) Ny is the number of days in the relevant Contract Year;

- (e) AMD is the actual number of meal days per meal day type received by Health Co in the relevant Payment Period;
- (f) FSU means the food supplies adjustment amount, being the extent to which the actual costs for food services units (floor supplies, oral supplies and nourishments) differs from the budgeted amount (as such budgeted amount is adjusted for inflation) provided in Food Services and the FSU shall be a positive or negative amount as applicable. The budget, which shall be indexed, provided by Project Co, as at the Base Date, is ~~[*DELETION]~~ (~~[*DELETION]~~ for such supplies for 90,700 patient days); and,
- (g) CA means the catering Service adjustment amount being the amount invoiced and payable for the prior Period on account of catering Services provided by Project Co during that Period at Health Co’s request and based upon the agreed prices.

1.5 Outbreak Cleaning Services Adjustment

For the purposes of Section 1.1(d) of this Schedule 23-7 the price adjustment in respect of the volume of outbreak cleaning Services carried out in accordance with the Output Specifications in any Payment Period (“VAOC”) shall be calculated in accordance with the following formula:

where:

- (a) IOCP is the outbreak cleaning price per unit hour as set out in Appendix F as amended by Schedule 24 - Market Testing Procedure or Schedule 25 – Variation Procedure; and
- (b) AOCK is the actual number of outbreak cleaning unit hours requested by Health Co in the relevant Payment Period which meet the standards specified in the Output Specifications for relevant Housekeeping Services.

1.6 Bed Servicing Volume Adjustment

For the purposes of Section 1.1(e) of this Schedule 23-7 the price adjustment in respect of the volume of Services related to the servicing of open beds as carried out in accordance with the Output Specifications in any Payment Period (“VAB”) shall be calculated in accordance with the following formula:

$$VAB = BA \times \frac{CPI_n}{CPI_o}$$

where:

- (a) BA is the bed adjustment value which is set out in Appendix F as amended Schedule 24 - Market Testing Procedure or Schedule 25 – Variation Procedure.

$$VAOC = IOCP \times \frac{CPI_n}{CPI_o} \times AOCK$$

1.7 For the purposes of Section 1.6 of this Schedule 23-7 and in accordance with Appendix F as amended by Schedule 24 - Market Testing Procedure or Schedule 25 - Variation Procedure Health Co shall notify Project Co of the cumulative net change in open beds in accordance with the following:

- (a) following the Substantial Completion Date, three months advance notice shall be provided where changes in the number of open beds would change the total number of open beds from one range to another range identified in the Bed Servicing Volume Adjustment Table in Appendix F of this Schedule 23. Where less than three months notice is given, the Bed Adjustment Value utilized in Section 1.6 of this Schedule 23 will be that which would apply to the higher of the number of open beds prior to the change or the number of open beds after the change until the three month period from the notice expires; and
- (b) notice for changes to the number of open beds that do not change the total number of open beds from one range to another range identified in the Bed Servicing Volume Adjustment Table in Appendix F of this Schedule 23 will be given by Health Co to Project Co within ten (10) days prior to the beginning of any Payment Period.

SCHEDULE 23 – 8**UTILITY PAYMENTS****1. UTILITY PAYMENT**

1.1 Project Co shall receive in respect of each Payment Period the Periodic Utility Payment, calculated in accordance with Section 1.2 of this Schedule 23-8 and with the following formula:

$$UP = (Vg \times Pg + Ug) + (Ve \times Pe + Ue) + (Vw \times Pw + Uw) + (Vf \times Pf + Uf) + (Vo \times Po + Uo)$$

where:

- (a) UP is the Periodic Utility Payment for the relevant Payment Period;
- (b) Vg is the Periodic Utility Target for natural gas to be used at the Facility during the relevant Payment Period;
- (c) Pg is the Utility Price per unit of natural gas payable by Project Co pursuant to the relevant Utility Contract;
- (d) Ug is the sum of levies, taxes (not including commodity taxes) and charges properly included in invoices from the gas supplier(s) for the provision of their services except use or consumption charges;
- (e) Ve is the Periodic Utility Target of electricity to be used at the Facility during the relevant Payment Period;
- (f) Pe is the Utility Price per unit of electricity payable by Project Co pursuant to the relevant Utility Contract;
- (g) Ue is the sum of levies, taxes (not including commodity taxes) and charges properly included in invoices from the electricity supplier(s) for the provision of their services except use or consumption charges;
- (h) Vw is the Periodic Utility Target of water to be used at the Facility during the relevant Payment Period;
- (i) Pw is the Utility Price per unit of water including any sewer usage charges payable by Project Co pursuant to the relevant Utility Contract;
- (j) Uw is the sum of levies, taxes (not including commodity taxes) and charges properly included in invoices from the water supplier(s) for the provision of their services except use or consumption charges;

- (k) Vf is the volume in litres of Fuel Oil properly used at the Facility (when not used as an approved comparable energy substitute for natural gas or electricity) in excess of the initial full capacity and annual consumption to a value of \$12,000 per annum indexed;
- (l) Pf is the Utility Price of Fuel Oil per litre payable by Project Co for the Fuel Oil used for the purposes described in Section 1.1(k) above;
- (m) Uf is the sum of levies, taxes (not including commodity taxes) and charges properly included in invoices from the Fuel Oil supplier(s) for the provision of their services except use or consumption charges;
- (n) Vo is the actual volume in units of other Utilities used at the Facility for Clinical/Non-Clinical Services (as agreed with Health Co prior to such use) during the relevant Payment Period;
- (o) Po is the Utility Price per unit of other Utilities for Clinical/Non-Clinical Services payable by Project Co pursuant to the relevant Utility Contract;
- (p) Uo is the sum of levies, taxes (not including commodity taxes) and charges properly included in invoices from the other utility supplier(s) for the provision of their services except use or consumption charges; and
- (q) for greater certainty, the Periodic Utility Payment relating to Sections 1.1(b), 1.1(e), 1.1(h) and 1.1(k) above shall be paid to Project Co without regard to the actual volume of the Utilities consumed at the Facility.

1.2 For the purposes of Sections 1.1(b), 1.1(e), 1.1(h) and 1.1(k) above:

- (a) the term "Periodic Utility Target" means the part of the Upper Utility Limit for the relevant Utility apportioned for the relevant Payment Period projected usage, as agreed by Health Co and Project Co (both acting reasonably) at the beginning of the Contract Year; and
- (b) where Health Co has approved the use of other Utilities (including fuel oil) as comparable energy sources to natural gas or electricity, then the Parties shall:
 - (i) agree (acting reasonably) to the relevant Upper Utility Limit for such substitute comparable Utility;
 - (ii) reduce the Upper Utility Limits of natural gas and electricity (as applicable) in aggregate by the equivalent energy values to those projected to be provided by the substitute comparable Utilities as agreed pursuant to Section 1.2(b)(i) above, so that the aggregate Utility Thresholds and Adjusted Utility Thresholds for all Utilities before the use of such substitute comparable Utility is equal to the aggregate Utility Thresholds and Adjusted Utility Thresholds for all Utilities after the use of such substitute comparable Utility has been agreed;

- (iii) agree that the Periodic Utility Target for the substitute comparable Utility shall be based on the relevant Upper Utility Limit for such substitute comparable Utility as agreed pursuant to Section 1.2(b) above; and
- (iv) amend all Periodic Utility Targets for all Utilities accordingly to take the Periodic Utility Target for the substitute comparable Utility as agreed pursuant to Section 1.2(b)(iii) above into account and agree that all amended Periodic Utility Targets shall apply to Section 1.1(q).

1.3 Energy Efficiency – General Principles

The Parties acknowledge and agree that:

- (a) further to Sections 1.1 and 1.2 above, at the end of the Contract Year, Health Co will have paid to Project Co the Upper Utility Price for natural gas, electricity, fuel oil and water (and in respect of natural gas and electricity all other comparable energy sources that have Periodic Utility Targets);
- (b) Project Co will have paid the Annual Utility Price for natural gas, electricity, fuel oil and water (and in respect of natural gas and electricity all other comparable energy sources that have Periodic Utility Targets);
- (c) at the end of the Contract Year, the Parties shall agree on an adjustment to the relevant Utility Threshold to take into account load or usage changes as a result of any of the circumstances identified in Section 1.6 below and to identify the Adjusted Upper Utility Price and the Adjusted Lower Utility Price; and
- (d) the remainder of this Schedule 23-8 shall apply to distribute by way of adjustment payments by Project Co or Health Co, as applicable, to the other of any overpayment or underpayment by Health Co as a result of Health Co having paid the Upper Utility Price for natural gas, electricity, fuel oil comprising Vf volumes and water and, as applicable, this Section 1.3(d) and the remainder of this Schedule 23-8 shall be read to include all other comparable energy sources that have Periodic Utility Targets established pursuant to Section 1.2 above (including fuel oil that does not comprise Vf volumes).

1.4 Energy Reporting

By no later than 60 days after the expiry of each Contract Year, Project Co shall provide a report to Health Co including the following information:

- (a) the Actual Utility Usage and the Annual Utility Price for natural gas, electricity, fuel oil and water;
- (b) in furtherance of Section 1.6 below, Project Co's calculation of the amount of the adjustment to the Utility Threshold, including:
 - (i) the reason for the adjustment in accordance with Section 1.6 below, together with all supporting information; and

- (ii) any other information reasonably requested by Health Co in order for it to conduct a complete review of the proposed adjustment; and
- (c) Project Co's calculation of any overpayment or underpayment by Health Co as a result of Health Co having paid the Upper Utility Price for that Contract Year in accordance with Section 1.7, together with all supporting information,

together, the "Energy Report".

1.5 Within 30 days of receipt of the Energy Report, Health Co shall either:

- (a) confirm its acceptance of all or any aspect of the Energy Report; or
- (b) notify Project Co of the details of any disagreement of all or any aspect of the Energy Report, and the parties shall then seek to agree to any matters in dispute, but where such matters cannot be resolved within a further 30 days, it shall be dealt with in accordance with the Dispute Resolution Procedure.

1.6 Adjustment to Utility Threshold

During the 60 days following the end of each Contract Year, the Parties shall, based in each case upon a technical analysis, review the Utility Threshold for that Contract Year and shall agree to adjust the Utility Threshold for each Utility including the Upper Utility Limit and the Lower Utility Limit to determine the Adjusted Upper Utility Limit and the Adjusted Lower Utility Limit where there has been any:

- (a) temperate variations for the Contract Year for Abbotsford, BC as reported by Environment Canada compared to the most recent 50 year average meteorological data for Abbotsford, BC as reported by Environment Canada, available at the time of the Energy Report;
- (b) Variations implemented in accordance with Schedule 25 - Variation Procedure that would cause load changes or other variations in the Utility Threshold;
- (c) changes in the utilization of the Facility from that identified in Schedule 22 – Utilities; or
- (d) other cause not due to the performance of the Facility, as otherwise agreed by the Parties;

provided that the Utility Threshold and Adjusted Utility Threshold for natural gas, electricity and fuel oil (to the extent fuel oil is an approved substitute for natural gas or electricity) shall be a combined Utility Threshold and the proportion of each in the combined Utility Threshold shall be as specified in Appendix A to Schedule 22 and the proportion of each in the combined Adjusted Utility Threshold shall be the same as the proportion of each to the other in the Actual Utility Usage.

1.7 Underpayment or Overpayment of Utilities

The following is the basis for the calculation (and adjustment payments by Health Co or Project Co, as applicable, to the other) of any overpayment or underpayment by Health

Co as a result of Health Co having paid the Upper Utility Price as part of the aggregate UP amounts for that Contract Year for natural gas, electricity and fuel oil (to the extent fuel oil is an approved substitute for natural gas or electricity) for inclusion in the Energy Report and, once the final amount of such calculation is agreed or determined pursuant to Section 1.5 above, in any Contract Year:

- (a) if the Actual Utility Usage is greater than the Upper Utility Limit and greater than the Adjusted Upper Utility Limit, then:
 - (i) if the Adjusted Upper Utility Limit is greater than the Upper Utility Limit, Health Co shall pay to Project Co the Upper Limit Payment Amount;
 - (ii) if the Adjusted Upper Utility Limit is less than the Upper Utility Limit, Project Co shall pay to Health Co the Upper Limit Payment Amount; or
 - (iii) if the Adjusted Upper Utility Limit is equal to the Upper Utility Limit, no payment is made to either Party;
- (b) if the Adjusted Lower Utility Limit is less than or equal to the Actual Utility Usage and the Actual Utility Usage is less than or equal to the Upper Utility Limit, then Project Co pays to Health Co the sum of:
 - (i) the Upper Utility Price less the Annual Utility Price; and
 - (ii) if the Actual Utility Usage is greater than the Adjusted Upper Utility Limit, then the Annual Utility Price less the Adjusted Upper Utility Price; and
- (c) if the Actual Utility Usage is less than the Adjusted Lower Utility Limit, then Project Co shall pay to Health Co the sum of:
 - (i) the Upper Utility Price less the Adjusted Lower Utility Price; and
 - (ii) 50% of the sum of the Adjusted Lower Utility Price less the Annual Utility Price,

and the Parties agree that:

- (iii) the calculations and determination of adjustment payments pursuant to Sections 1.7(a), 1.7(b) and 1.7(c) shall be performed and determined for natural gas, electricity and fuel oil together (to the extent fuel oil is an approved substitute for natural gas or electricity) and, without duplication, separately for fuel oil comprising Vf; and
- (iv) no interest shall accrue or be payable on any or all sums payable in accordance with this Section 1.7 on account of time within the relevant Contract Year.

- 1.8 Underpayment or Overpayment on account of water and fuel oil comprising Vf volumes (being fuel oil that is not in substitution for electrical or natural gas consumption as an approved comparable energy source).

The following is the basis for the calculation (and adjustment payments by Health Co or Project Co, as applicable, to the other) of any overpayment or underpayment by Health Co as a result of Health Co having paid the Upper Utility Price as part of the aggregate Utility Price amounts for that Contract Year for water and Vf volumes of fuel oil for inclusion in the Energy Report and, once the final amount of such calculation is agreed or determined pursuant to Section 1.5 above, in any Contract Year:

- (a) if the Annual Utility Price for water is greater than the Upper Utility Price for water then Health Co shall pay Project Co the difference between such costs;
- (b) if the Upper Utility Price for water is greater than the Annual Utility Price for water then Project Co shall pay Health Co the difference between such costs;
- (c) if the Annual Utility Price for Vf volumes of fuel oil consumed is greater than the Upper Utility Price for Vf volumes of fuel oil then there shall be no further payment on account of such Vf volume of fuel oil; and
- (d) if the Upper Utility Price for Vf volumes of fuel oil is greater than the Annual Utility Price for Vf volumes of fuel oil consumed then Project Co shall pay Health Co the difference between such costs.

SCHEDULE 23 – 9**SERVICE FAILURE POINTS****1. SERVICE FAILURE POINTS**

- 1.1 Service Failure Points shall be awarded for every Failure Event and Quality Failure which occurs, whether actual or deemed under the provisions of this Schedule to have occurred under this Schedule 23, during the Project Term except for any Failure Event or Quality Failure which is attributable to the occurrence of an Excusing Cause, Relief Event or an event of Force Majeure, Section 2.2 of Schedule 23-3B or where otherwise stated in this Agreement that Service Failure Points shall not be awarded for a Failure Event or Quality Failure, where Project Co is given relief under the Agreement. The Service Failure Points shall be awarded in addition to any deductions.
- 1.2 Service Failure Points and Failure Events
- (a) The number of Service Failure Points awarded in respect of each Failure Event shall be the number of Service Failure Points attributable to the Failure Event Category allocated to the relevant Failure Event as set out in column 3 of the Table in Appendix C.
- 1.3 Service Failure Points and Quality Failures
- (a) The number of Service Failure Points which shall be awarded in respect of each Quality Failure shall be the number of Service Failure Points attributable to the Quality Failure Category allocated to the Quality Failure as set out in column 3 of the Table in Appendix B and in respect of Quality Satisfaction Failures shall be as set out in Column 4 of the Table in Appendix G.
- (b) Where any Performance Monitoring Period for a Performance Monitoring Report that refers to the Quality Failure in question is a period which begins in a Payment Period and expires in another, the Service Failure Points to be awarded in respect of such Performance Monitoring Period and Quality Failure shall be included in the total number of Service Failure Points for the Payment Period during which the Quality Failure first occurred in that Performance Monitoring Period.
- (c) Where any Performance Monitoring Period for a Performance Monitoring Report that refers to the Quality Failure in question is a period which begins and ends on the first and last day of a Payment Period or is a period which is wholly contained within the Payment Period or where no specific Performance Monitoring Report refers to the Quality Failure in question, the Service Failure Points to be awarded in respect of such Quality Failure and, if applicable, such Performance Monitoring Period shall be included in the total number of Service Failure Points for that Payment Period.

1.4 Total Period Service Failure Points

Project Co shall calculate:

- (a) the total number of Service Failure Points awarded to each Service Category provided by the individual Service Providers in each Payment Period; and
- (b) the sum total of all Service Failure Points awarded across all Services provided by all Service Providers in each Payment Period.

1.5 New Service Providers

- (a) Service Failure Points shall not be awarded in respect of any Bedding-in Period.
- (b) Without prejudice to Section 1.5(c) of this Schedule 23-9, Service Failure Points awarded to a Service Provider which has been replaced by a new Service Provider shall not be taken into account in calculating the total number of Service Failure Points of the new Service Provider in any Payment Period pursuant to Section 1.4(a) of this Schedule 23-9.
- (c) Service Failure Points which have been awarded to a Service Provider which has been replaced as permitted by this Agreement shall not be deducted from the total number of Service Failure Points awarded in respect of all Services in any relevant Payment Period. Points accrued by replaced Service Providers are not inherited by their replacements, but continue to count towards the aggregate of points accrued by Project Co.

SCHEDULE 23 – 10**BONUS PAYMENT****1. BONUS PAYMENT**

- 1.1 Project Co may earn a Bonus Payment (“Bonus Payment”) each Contract Year, in an amount up to but not exceeding that calculated in accordance with this Section 1.1 for exceeding the standards set out in the Output Specifications:

$$BP = CSB \times (CPI_n / CPI_o)$$

where:

- (a) BP is the annual Bonus Payment in dollars; and
- (b) CSB is the “Customer Satisfaction Bonus” which means in each instance the amount calculated in accordance with Section 2 of this Schedule 23-10. In the Contract Year in which the Payment Commencement Date occurs the value for CSB will be pro-rated on the basis of the number of days in that Contract Year, excluding HCOCP, from the Payment Commencement Date to the end of that Contract Year. In the final Contract Year the value for CSB will be pro-rated from the first day of that Contract Year until the date on which this Agreement expires or is terminated.
- 1.2 In the event of Health Co exercising any rights in accordance with Section 32.1 (which have not been determined under the Dispute Resolution Procedure to have been improperly exercised) of this Agreement then except in respect of this Section 1.2, this Schedule 23-10 shall not apply in that Contract Year. If it is determined in a subsequent year that Health Co was improperly exercising its rights, then Schedule 23-10 will apply retroactively.
- 1.3 Any Bonus Payment due in accordance with this Schedule 23-10 will be paid to Project Co within 90 days following the end of the relevant Contract Year.

2. CUSTOMER SATISFACTION SURVEY

- 2.1 Quality Satisfaction Surveys undertaken in accordance with the Output Specifications shall be performed so that each of the hospital and cancer centre components can be separately scored for the purposes of operation of the Customer Satisfaction Bonus mechanism.
- 2.2 The survey scores for Quality Satisfaction Surveys undertaken in accordance with the Output Specifications and as further described in Section 2.3 of Schedule 23-3A will, for each of the hospital and cancer centre components of the AHCC and for each Service which is the subject of any such survey:
- (a) be arithmetically averaged over the relevant Contract Year by each Service, and the resulting average Contract Year score for each Service will then be scaled down to reflect the relative Service Weighting of each such Service to the

aggregate of all Service Weightings for all the Services surveyed in the Facility so that the total of the scaled down weighted average Contract Year Service scores will reflect an aggregate score out of a possible 100%;

- (b) for analogous surveys of Health Authority Facilities, not including the Facility, the average Contract Year score for the Quality Satisfaction Surveys will be determined on a facility by facility basis by:
 - (i) first, (to deal with different sets of services and different value weightings for those services in different facilities) setting and scaling the weights of the surveyed services in the facility so the weights total 100% by using the relative Service Weightings of the same services in the Facility and grossing up this subset of relevant referent Service Weightings so that they total 100% (for use in the next part of this Section 2.2(b)); and
 - (ii) second, as in Section 2.2(a) above for the Facility, for each service which is the subject of surveys obtain a Contract Year score by averaging the quarterly scores over the relevant Contract Year and the resulting average Contract Year score for each service will then be scaled down to reflect the relative weight of each such service (as determined above in this Section 2.2(b)) to all the services surveyed in the facility so that the total of the scaled down weighted average Contract Year service scores will reflect an aggregate score out of a possible 100%;
- (c) for each of the individual Health Authority Facilities, including the Facility, the weighted average Service scores for all the surveyed Services for the Contract Year determined pursuant to Sections 2.2(a) and 2.2(b) above will be aggregated and the total shall be the "Customer Satisfaction Score" out of a possible 100% for that facility for the Contract Year; and
- (d) the "Customer Satisfaction Bonus Target" means and shall be set for each Contract Year at the Customer Satisfaction Score of the fourth highest ranked Fraser Health hospital facility and the second highest ranked BCCA cancer centre facility, ranking by Customer Satisfaction Scores for the Contract Year.

2.3 Subject to Section 3.1 below, where:

- (a) the Customer Satisfaction Score obtained by Project Co equals or exceeds the hospital or cancer centre Customer Satisfaction Bonus Target level Project Co will receive the relevant (or both, as applicable) Maximum Available Customer Satisfaction Bonus determined pursuant to Section 3.1 below for a 13 period Contract Year; or
- (b) Project Co does not meet the hospital or cancer centre Customer Satisfaction Bonus Target but comes within 5% of it, the following Customer Satisfaction Bonus for a 13 period Contract Year will be paid by Health Co (rounding to the nearest one-tenth of one percent):
 - (i) within 4.1 to 5% of the target – 25% of the amount identified as the hospital or cancer centre Maximum Available Customer Satisfaction Bonus, as the case may be, in Section 2.1 of this Schedule 23-10;

- (ii) within 2.1 to 4% of the target – 50% of the amount identified as the hospital or cancer centre Maximum Available Customer Satisfaction Bonus, as the case may be, in Section 2.1 of this Schedule 23-10; and
- (iii) within 0.1 to 2% of the target – 75% of the amount identified as the hospital or cancer centre Maximum Available Customer Satisfaction Bonus, as the case may be, in Section 2.1 of this Schedule 23-10.

3. AVAILABLE BONUS PAYMENT

3.1 The availability of the Bonus Payment will consider whether surveys have been appropriately carried out, as further described in Section 2.3 of Schedule 23-3A.

3.2 Subject to Section 1.2 above:

- (a) the Maximum Available Customer Satisfaction Bonus for the hospital component survey for a Contract Year shall be **[*DELETION]** multiplied by the Bonus Factor;
- (b) the Maximum Available Customer Satisfaction Bonus for the cancer centre component survey for a Contract Year shall be **[*DELETION]** multiplied by the Bonus Factor; and
- (c) in each case, the “Bonus Factor” shall mean 100% minus 50% for each instance of any of the following occurring as a result of an act or acts of Project Co or a Project Co Party, but the Bonus Factor shall not be less than 0%:
 - (i) any substantiated act of patient abuse;
 - (ii) any substantiated breach of confidentiality;
 - (iii) an event of emergency objectively established to have been created by Project Co whereby a patient, Health Co staff member, Health Authorities’ staff member, a physician, volunteer or visitor suffers death, an injury requiring inpatient hospitalization or a near miss of death or serious injury (as interpreted under the Workers Compensation Act or regulations thereof);
 - (iv) any infection outbreak objectively established to have been a direct result of Project Co personnel failing to follow industry standards or good industry practices; and/or
 - (v) any food poisoning outbreak objectively established to have been a direct result of Project Co personnel failing to follow industry standards or good industry practices.

3.3 The provisions for establishing maximum available bonuses and Bonus Payments do not in any way limit the right of Health Co or the Health Authorities to seek other appropriate remedies or payment for damages.

APPENDIX A

Service Weightings (SW)

Service	Service Weighting (%)
General Management Services	[*DELETION]
Help Desk Services	[*DELETION]
Parking Services	[*DELETION]
Food Services: Patient and Non-Patient	[*DELETION]
Housekeeping Services	[*DELETION]
Laundry/Linen Services	[*DELETION]
Materiel Services	[*DELETION]
Portering Services	[*DELETION]
Plant Services	[*DELETION]
Protection Services	[*DELETION]
Utilities Management	[*DELETION]

APPENDIX B

Quality Failure Categories

Quality Failure Category	Percent Deduction DP(QF)	SFPs
High Priority	*DELETION]	*DELETION]
Medium Priority	*DELETION]	*DELETION]
Low Priority	*DELETION]	*DELETION]

APPENDIX C

Failure Event Categories

Failure Event Category	Percent Deduction DP(FEC)	SFPs
A	*DELETION	*DELETION
B	*DELETION	*DELETION
C	*DELETION	*DELETION
D	*DELETION	*DELETION
E	*DELETION	*DELETION

APPENDIX D

Original Annual Prices for Services in Base Date prices

Service	\$
General Management Services	[*DELETION]
Help Desk Services	[*DELETION]
Parking Services	[*DELETION]
Food Services: Patient and Non-Patient	[*DELETION]
Housekeeping Services	[*DELETION]
Laundry/Linen Services ⁽¹⁾	[*DELETION]
Materiel Services	[*DELETION]
Portering Services	[*DELETION]
Plant Services	[*DELETION]
Protection Services	[*DELETION]
Utilities Management	[*DELETION]

Note 1: Health Co acknowledges that the Laundry/Linen Services Base Date price identified above at the date of the Agreement excludes PST and that if Health Co is not exempt from PST on these Laundry/Linen Services and Project Co is levied for and pays PST on Laundry/Linen Services then Health Co is responsible to Project Co for such PST as an additional charge, without markup by Project Co, and the Base Date price identified above and the SW in Appendix A above will be amended as required to account for such additional charge.

APPENDIX E

Appendix E follows immediately after this page. The page numbering of Appendix E commences at page 1. The page numbering of this Schedule 23 will continue after Appendix E.

APPENDIX F

Volume Sensitive Services

a) Laundry

Laundry Type	Number of Items or Weight of Laundry included in the Annual Laundry Price (ILU)	Initial Annual Laundry Price (IALP) (\$)
General Linen, Uniforms, Specialty Linen and Linen Replacement	1,236,707 pounds	*DELETION*
Operating Room Linen	153,275 items	*DELETION*
Patient Slings	-	*DELETION*

b) Food Services

Meal Day Type	Number of Meal Days included in the Annual Meal Day Price (IMD)	Initial Annual Meal Day Price (IAMP) (\$)
In-Patient Meal Days	90,700	*DELETION*
Out-Patient Meal Days	2,000	*DELETION*

c) Housekeeping: Outbreak Cleaning

Outbreak Cleaning Unit	Number of Unit Hours included in the Annual Outbreak Cleaning Price	Initial Annual Outbreak Cleaning Price (\$ / hour) (IOCP)
One Project Co Staff Hour ("Unit Hour") with 4 hour minimum	nil	*DELETION*

d) Bed Servicing Volume Adjustment

Number of Open Beds in Payment Period	Housekeeping	General Management (excluding Helpdesk)	Helpdesk	Laundry / Linen*	Materials Management	Portering	Plant	Protection	Parking	Total Bed Adjustment (BA)
	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)
175-200	*DELETION]	-	*DELETION]	-	-	*DELETION]	-	-	-	*DELETION]
201-225	*DELETION]	-	*DELETION]	-	-	-	-	-	-	*DELETION]
226-250	*DELETION]	-	-	-	-	-	-	-	-	*DELETION]
251-275	-	-	-	-	-	-	-	-	-	-
276-300	*DELETION]	*DELETION]	*DELETION]	*DELETION]	-	*DELETION]	If in: Year 1 – *DELETION] Year 2 – *DELETION] Year 3 – *DELETION] Year 4 – *DELETION] Year 5 – *DELETION] Year 6 onwards – *DELETION]	*DELETION]	-	*DELETION]

* Excludes variable costs shown in a) Laundry above.

APPENDIX G

Quality Satisfaction Failure Categories

Quality Satisfaction Failure Category	Survey score ranking of the Health Authority Facilities excluding the Facility	Percent Deduction DP(QSF)	SFPs
High Failure	13-15	2.0%	20
Medium Failure	10-12	1.0%	6
Low Failure	7-9	0.5%	2
N/A	1-6	N/A	N/A

APPENDIX H.1

Schedule of Real Lifecycle Payments

Contract Year	\$
1	*DELETION]
2	*DELETION]
3	*DELETION]
4	*DELETION]
5	*DELETION]
6	*DELETION]
7	*DELETION]
8	*DELETION]
9	*DELETION]
10	*DELETION]
11	*DELETION]
12	*DELETION]
13	*DELETION]
14	*DELETION]
15	*DELETION]
16	*DELETION]
17	*DELETION]
18	*DELETION]
19	*DELETION]
20	*DELETION]
21	*DELETION]
22	*DELETION]

23	[*DELETION]
24	[*DELETION]
25	[*DELETION]
26	[*DELETION]
27	[*DELETION]
28	[*DELETION]
29	[*DELETION]
30	[*DELETION]

APPENDIX H.2

Schedule of Nominal Fixed Escalation Payment

Appendix H.2 follows immediately after this page. The page numbering of Appendix H.1 commences at page 1. The page numbering of this Schedule 23 will continue after Appendix H.2.

[*DELETION]

APPENDIX I

Qualifying Staff and Relevant Base Rates

Full Time Equivalents and Rates

Item No.	Category of employee performing the Relevant Services	Number of Full Time Equivalents	Relevant Base Rates
1.	Housekeeping Services – Cleaner (includes waste management)	[*DELETION]	[*DELETION]
2.	Housekeeping Services – Critical Care Cleaner	[*DELETION]	[*DELETION]
3.	Food Services – Lead Cook	[*DELETION]	[*DELETION]
4.	Food Services – Cook	[*DELETION]	[*DELETION]
5.	Food Services – Dietary Aide	[*DELETION]	[*DELETION]
6.	Portering Services – Porter	[*DELETION]	[*DELETION]
7.	Help Desk Services – Customer Service Representative	[*DELETION]	[*DELETION]

APPENDIX J

Health Co Operational Commissioning Period

1. DURING THE HEALTH CO OPERATION COMMISSIONING PERIOD

1.1 During the HCOCP and only during the HCOCP, the following provisions of this Appendix J shall apply.

1.2 With respect to all Services, the following Bedding-in Period provisions shall apply:

- (a) Failure Event Deductions for the first 28 days of the HCOCP will be reduced by 50%;
- (b) Failure Event Deductions for day 29 to the end of the HCOCP will be reduced by 25%;
- (c) there will be no Quality Failure Deductions during the HCOCP;
- (d) there will be no Service Failure Points awarded during the HCOCP; and
- (e) the payments to be made to Project Co during the HCOCP will be the applicable Periodic Service Payment part of Total Annual Service Payment each Period, less adjustments to be made in respect of Sections 1.5 and 1.4(c)(ii) below for the relevant period.

1.3 With respect to Non-Patient Food Services:

- (a) such Services will be provided during the HCOCP to a level that Project Co believes necessary to achieve the requirements contained in the FM Output Specifications given the anticipated customer volumes while ensuring the provision of the Non Patient Food Services is providing Project Co with a net positive cash flow calculated over the HCOCP; and
- (b) Health Co will compensate Project Co for any additional requirements imposed upon Project Co by Health Co pursuant to a Variation Enquiry with respect to Non-Patient Food Services during the HCOCP to the extent such additional requirements are projected to reduce Project Co's cash flow below a break even level calculated over the whole HCOCP.

1.4 With respect to Housekeeping Services, Laundry/Linen Services, and Materiel Services:

- (a) such Services shall be provided to meet the requirements of the FM Output Specifications including:
 - (i) the management and administration elements of such Services consistent with the planned opening bed level; and

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- (ii) for all other elements of such Services the level of Service as requested by Health Co on a bi-weekly basis. Health Co shall notify Project Co no later than 10 Business Days prior to commencement of the HCOCP of, and thereafter 10 Business Days in advance of any change in, the level of Services Health Co requires Project Co to provide;
 - (b) the part of the indexed ASP_0^{fm} part of the (ASPn/P_n) component of the applicable Periodic Service Payment PSP_n calculated pursuant to Schedule 23-2 on account of Housekeeping Services, Laundry/Linen Services, and Materiel Services shall be deemed to be the amount calculated as Project Co's Direct Costs incurred to provide the Service level determined pursuant to Section 3(a) above plus a profit and administration margin of [15%] on such Direct Costs, subject to such Direct Cost plus margin amounts being capped on a Periodic basis during HCOCP at the amounts specified for such Services in Appendix [D] of this Schedule 23 (indexed) and such cap shall be amended to the extent Health Co has, by Variation, required services that are not provided for in the Output Specifications; and
 - (c) after giving effect to the Bedding-in Provisions specified in Section 1.2 above, Failure Event Deductions awarded for Failure Events occurring during the HCOCP in respect of such Services will be scaled down by the ratio calculated as:
 - (i) the amount Project Co's Direct Costs incurred to provide the required Services plus a profit and administration margin of [15%]; divided by,
 - (ii) the part of the indexed ASP_0^{fm} part of the (ASPn/P_n) component of the applicable Periodic Service Payment PSP_n that would be calculated pursuant to Schedule 23-2 on account of such Services had the HCOCP ended the day before the start of the then current Payment Period.
- 1.5 Patient Food Services and Patient Porter Services shall not be provided during the HCOCP and there will therefore be a reduction in the Periodic Service Payment during the HCOCP by the amount calculated as the part of the indexed ASP_0^{fm} part of the (ASPn/P_n) component of the applicable Periodic Service Payment PSP_n that would be calculated pursuant to Schedule 23-2 on account of such Services had the HCOCP ended the day before the start of the then current Payment Period.