

**SCHEDULE PART 18**

This is the Schedule Part 18 comprising the Payment Mechanism referred to in the Project Agreement for the Gartnavel Royal Hospital

between

**Greater Glasgow Health Board**

and

**Robertson Health (Gartnavel) Limited**

## SCHEDULE 18

### Part 1: Calculation of Service Payments

#### 1. MONTHLY SERVICE PAYMENT

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

$$mSP = [(ASPn/12)] - \Sigma D(FE) - \Sigma D(QF)] + EP$$

where:

- 1.1.1 **mSP** is the Service Payment for the Contract Month for which the formula is to be applied;
- 1.1.2 **ASPn** is the Annual Service Payment for the relevant Contract Year;
- 1.1.3 **EP** is the Monthly Energy Payment calculated in respect of the relevant Contract Month;
- 1.1.4  **$\Sigma D(FE)$**  is the sum of deductions in respect of the relevant Contract Month in relation to Failure Events calculated in accordance with the provisions set out in Part 2 of this Schedule; and
- 1.1.5  **$\Sigma D(QF)$**  is the sum of deductions in respect of the relevant Contract Month in relation to Quality Failures calculated in accordance with the provisions set out in Part 2 of this Schedule.
- 1.2 In the Contract Month in which the Payment Commencement Date falls and in the last Contract Month of the Project Term the Service Payment shall reflect the actual number of days in the relevant Contract Month from and including the Payment Commencement Date (for the first month) and up to and including the last day of the Project Term (for the last month) and **mSP** shall be pro-rated to the number of days in such period accordingly.

#### 2. CALCULATION OF THE ANNUAL SERVICE PAYMENT

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

$$ASPn = ASPo \times (RPI_n / RPI_o)$$

where:

- 2.1.1 **ASPn** is the Annual Service Payment for the relevant Contract Year;
- 2.1.2 **ASPo** is ~~£~~1,875,800 being the Annual Service Payment at the Base Date;
- 2.1.3 **RPI<sub>n</sub>** is the value of the **RPI** published or determined with respect to the month of February which most recently precedes the relevant Contract Year; and
- 2.1.4 **RPI<sub>o</sub>** is the value of the **RPI** published or determined with respect to the month in which the Base Date falls.

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**SCHEDULE 18**

**Part 2: Service Failure Deductions**

**1. SERVICE FAILURE DEDUCTIONS**

- 1.1 If at any time during the Operational Term a Service Failure shall occur the Board shall be entitled to make deductions from the relevant Service Payment in respect of that Service Failure.
- 1.2 If the Service Failure is a Quality Failure the deductions which the Board will be entitled to make will be calculated in accordance with the provisions set out in Part A of this Part 2.
- 1.3 If the Service Failure is a Failure Event the deductions, which the Board will be entitled to make, will be calculated in accordance with Part B of this Part 2.
- 1.4 The maximum aggregate deduction in respect of Service Failures that can be made from a Service Payment in respect of any Contract Month shall be the Service Payment Before Deductions.
- 1.5 For avoidance of doubt existing Performance Parameters shall continue to apply unless and until changed or added to pursuant to Part C.

**PART A**  
**QUALITY FAILURES**

**1. QUALITY FAILURE DEDUCTIONS**

- 1.1 Subject to paragraph 1.2 of this Part A, the amount to be deducted from the Service Payment in respect of a Quality Failure shall be calculated in accordance with the following formula:

$$D(QF) = (ASP_n/N_y) \times R \times SW \times DP(QF) \times BdIn$$

where:

- 1.1.1 **D (QF)** means the amount (in pounds sterling) to be deducted from the Service Payment in respect of the relevant Quality Failure;
- 1.1.2 **ASP<sub>n</sub>** means the Annual Service Payment for the Contract Year in which the relevant Quality Failure occurs;
- 1.1.3 **N<sub>y</sub>** means 365;
- 1.1.4 **R** is 30 days;
- 1.1.5 **SW** means the **Service Weighting Percentage** which shall:
- (A) in the Contract Year in which the Payment Commencement Date occurs, be the percentage figure attributable to the Service in respect of which the Quality Failure occurs as set out in the second column of the Table at Appendix A;
  - (B) in all subsequent Contract Years, be such percentage figure attributable to the Service in respect of which the Quality Failure occurs as may be agreed or determined pursuant to paragraph 2 of Part C of this Schedule;
- 1.1.6 **DP (QF)** means the “**Quality Failure Category Percentage**” which shall be the percentage figure attributable to the Quality Failure Category allocated to the Quality Failure as set out in the second column of the Table at Appendix B; and
- 1.1.7 **BdIn** means:
- (A) if the Quality Failure occurs within the first 21 days from and including the New Service Provider Start Date for the Service affected by the Quality Failure, zero);
  - (B) if the Quality Failure occurs after the 21<sup>st</sup> day after the New Service Provider Start Date for the Service affected by the Quality Failure, one hundred percent (100%).

**1.2 Low Priority Quality Failure Tolerance**

- 1.2.1 No deduction shall be available to be made by the Board to the Service Payment for the relevant Contract Month in respect of any Low Priority Quality Failure if:-
- (A) in respect of the Service in which the relevant Low Priority Quality Failure has occurred, the relevant Low Priority Quality Failure and all other Low Priority Quality Failures which have occurred in the relevant Contract Month in respect of that Service do not exceed in aggregate 2 in number; and
  - (B) in respect of all Services, the relevant Low Priority Quality Failure and all other Low Priority Quality Failures in all Services, which have occurred in the relevant Contract Month, do not exceed in aggregate 4 in number.
- 1.2.2 If 3 or more Low Priority Quality Failures occur in respect of an individual Service in a Contract Month a Quality Failure Deduction shall be made in respect of each and every Low Priority Quality Failure, which shall have occurred in that Service during that Contract Month.
- 1.2.3 If 5 or more Low Priority Quality Failures in respect of all Services occur in a Contract Month, a Quality Failure Deduction shall be made in respect of each and every Low Priority Quality Failure, which shall have occurred during the Contract Month.

**PART B  
FAILURE EVENTS**

**1. FAILURE EVENT DEDUCTIONS**

1.1 Subject to paragraphs 2, 3, 4, 5 and 6 of this Part B, the amount to be deducted from the Service Payment in respect of any Failure Event shall be the higher of

- a) the Minimum Deduction ; and
- b) an amount calculated in accordance with the following formula:-

$$D(FE) = (ASP_n/N_y) \times (N_{sa}/N_s) \times AW \times UW \times DP (FE) \times Bdl_n$$

where:

- 1.1.1 **D(FE)** means the amount (in pounds sterling) to be deducted from the Service Payment in respect of the Failure Event;
- 1.1.2 **ASP<sub>n</sub>** means the Annual Service Payment for the Contract Year in which the relevant Failure Event occurs;
- 1.1.3 **N<sub>y</sub>** means 365;
- 1.1.4 **N<sub>sa</sub>** means the number of Affected Sessions in the Contract Day for each Functional Unit;
- 1.1.5 **N<sub>s</sub>** means the total number of Sessions in a Contract Day allocated to the Functional Unit in which the Failure Event occurs as set out in the Room Data Sheets;
- 1.1.6 **AW** means the Area Weighting Percentage attributable to the Functional Area in which the Failure Event occurs;
- 1.1.7 **UW** means the Unit Weighting Percentage attributable to the Functional Unit in which the Failure Event occurs.
- 1.1.8 **DP (FE)** means the Failure Event Deduction Percentage attributable to the Failure Event Category allocated to the Failure Event;
- 1.1.9 **Bdl<sub>n</sub>** means:-
  - (A) if the Failure Event occurs within the first 21 days from and including the New Service Provider Start Date for the Service affected by the Failure Event, zero (0);
  - (B) if the Failure Event occurs after the 21<sup>st</sup> day after the New Service Provider Start Date for the Service affected by the Failure Event, one hundred percent (100%).

## **2. GENERAL RULES FOR CALCULATING DEDUCTIONS**

### **2.1 Contract Days**

2.1.1 If a Failure Event commences in one Contract Day but is still subsisting at the commencement of a second (and any subsequent) Contract Day:-

- (A) there shall be deemed to be a new Failure Event occurring at the commencement of each Contract Day that the relevant Event or Service Request shall subsist without Rectification or Service Response as the case may be; and
- (B) a deduction in respect of a Failure Event in accordance with Part B of Part 2 of this Schedule shall be calculated in respect of each such deemed new Failure Event on each Contract Day during which the Event or Service Request shall subsist without Rectification or Service Response as the case may be.

### **2.2 Calculation of Affected Sessions**

2.2.1 For the purposes of paragraph 1.1.4 of this Part B the number of Affected Sessions in each relevant Functional Unit in a Contract Day shall be established by applying the following rules:

- (A) a Service Request or an Event (as the case may be) shall be deemed to have commenced from the point at which the Service Request or Event in respect of which the Failure Event has occurred was reported to the Helpdesk;
- (B) the time and date at which the Service Response to a Service Request or Rectification of an Event has been completed shall, subject to paragraph 2.2.2 of this Part B, be the time and date notified to the Helpdesk;
- (C) during the Contract Day in which the Service Request or Event occurs the Affected Sessions shall include all the Sessions from and including the Session in which the Service Request or Event was notified to the Helpdesk to and including the Session in which the Service Response or Rectification was completed or, if not completed, the last Session of that Contract Day;
- (D) during the second and any subsequent Contract Day after the Service Request or Event is notified to the Helpdesk, if the Service Response or Rectification has not been completed at the commencement of the first Session of such Contract Day the Affected Sessions shall include the first Session and if applicable any subsequent Sessions during the whole or part of the Contract Day to and including the Session in which the Service Response or Rectification is completed, or if not completed, the last Session of the relevant Contract Day;
- (E) if paragraph 4 of this Part B (Deemed Category A Failure Events) or paragraph 3 of Part D of this Part 2 (Deemed Low Priority Quality Failure) applies, any such deemed Category A Failure Event or Low Priority Quality Failure shall be deemed to commence at the beginning of a Contract Day in respect of the relevant Functional Part and the Service Response or

Rectification shall be deemed to have been completed at the expiry of the Service Response Time or Rectification Time (as the case may be).

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

**2.3 No Failure Event if Service Response or Rectification Within Specified Periods**

- 2.3.1 Subject to paragraph 4 of this Part B, a Failure Event shall not occur if Project Co Responds to the Service Request or Rectifies the Event (as the case may be) within the specified Service Response Time or specified Rectification Time and in such circumstances no Failure Event Deduction shall be made in respect of the relevant Service Request or Event.

**3. TEMPORARY REPAIRS**

- 3.1 If Project Co informs the Board that it is unable to Rectify an Event within the specified Rectification Time due to the need for specialised materials or personnel that are not generally available at the Facility but that a Temporary Repair can be effected, the Board :
- (a) shall, where such Temporary Repairs are not related to any of the areas set out in Appendix F, permit Project Co to carry out the Temporary Repair proposed by Project Co;
  - (b) may in its absolute discretion, where such Temporary Repairs are to be made to any of the areas set out in Appendix F, in its absolute discretion permit Project Co to carry out the Temporary Repair proposed by Project Co;
  - (c) may agree the time by which a Permanent Repair must be made which is not to exceed 5 days; and
  - (d) may agree any reduction to the requirement in respect of the Use Condition, which may subsist following the Temporary Repair in respect of any Functional Part affected by the Event until the Permanent Repair is made. For the avoidance of doubt, Project Co must maintain the Safety Condition at all times and this is not affected by the provision of a Temporary Repair.
- 3.2 Except and to the extent agreed by the Board in accordance with paragraph 3.1 of this Part B, if any Functional Part affected by the relevant Event remains or becomes Unavailable by virtue of a breach of any of the Minimum Agreed Availability Conditions at any time after the expiry of the Rectification Time until the Permanent Repair is made a Category D Failure Event or a Category E Failure Event (as the case may be) shall be deemed to have occurred in respect of any relevant Functional Unit and the provisions of paragraph 6 of this Part B shall apply.
- 3.3 Subject to paragraph 3.2 of this Part B, if the agreed Temporary Repair is effected within the Rectification Time and the Permanent Repair is effected within the period agreed by



the Board pursuant to paragraph 3.1 of this Part B no Failure Event will occur and no Failure Event Deduction may be made in respect of the Event.

#### **4. REPEATED RECTIFICATION**

4.1 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 on:-

4.1.1 the third such Event that arises during the Contract Day; and/or

4.1.2 the fourth such Event which occurs in any consecutive seven day period

Provided that each such Event is:-

(A) in connection with the same Performance Standards or Performance Parameters set out in the Service Level Specification and in respect of the same Functional Part; OR

(B) where the Event occurs in the same Functional Unit or different Functional Units within the same Functional Area, the root cause of the Event is substantially the same.

4.2 If the same such Event occurs more than three times in a Contract Day or more than four times in any consecutive seven day period, a Category A Failure Event shall be deemed to have occurred in respect of each and every Event which has occurred during the Contract Day or during the consecutive seven day period (as the case may be).

#### **5. TOLERANCE OF CATEGORY A FAILURE EVENTS**

5.1 If a Category A Failure Event occurs (other than a Category A Failure Event which is deemed to occur pursuant to paragraph 4 of this Part B) no Failure Event Deduction may be made in respect of that Category A Failure Event if:-

5.1.1 in respect of the Service in which the relevant Category A Failure Event has occurred, the relevant Category A Failure Event and all other Category A Failure Events which have occurred in the Contract Day in respect of that Service do not exceed 2; and

5.1.2 in respect of all Services, the relevant Category A Failure Event and all other Category A Failure Events in the Contract Day, which have occurred in all Services, do not exceed 4 .

5.1.3 in respect of the Service in which the relevant Category A Failure Event has occurred, the relevant Category A Failure Event and all other Category A Failure Events which have occurred in that Contract Month do not exceed 30; and

5.1.4 in respect of all Services, the relevant Category A Failure Event and all other Category A Failure Events in the Contract Month, which have occurred in all Services, do not exceed 35.

5.2 If 3 or more Category A Failure Events in respect of an individual Service occur in a Contract Day, a Failure Event Deduction shall be made in respect of each and every Category A Failure Event, which shall have occurred for that Service during the Contract Day.

- 5.3 If 31 or more Category A Failure Events in respect of an individual Service occur in a Contract Month, a Failure Event Deduction shall be made in respect of each and every Category A Failure Event, which shall have occurred for that Service during the Contract Month.
- 5.4 If 5 or more Category A Failure Events in respect of all Services occur in a Contract Day, a Failure Event Deduction shall be made in respect of each and every Category A Failure Event, which shall have occurred during the Contract Day.
- 5.5 If 36 or more Category A Failure Events in respect of all Services occur in a Contract Month, a Failure Event Deduction shall be made in respect of each and every Category A Failure Event, which shall have occurred during the Contract Month.
- 5.6 Any Category A Failure Events which have been deemed to have occurred pursuant to paragraph 4 of this Part B shall not be taken into account for the purposes of calculating the number of Category A Failure Events pursuant to this paragraph 5.

## **6. UNAVAILABILITY**

### **6.1 Effect of Unavailability on other deductions**

- 6.1.1 Subject to paragraph 6.1.2 of this Part B, if a Category E Failure Event or a Category D Failure Event occurs, until the Category E Failure Event or Category D Failure Event has been rectified, the Failure Event Deduction in respect of the Category E Failure Event or Category D Failure Event shall be the only deduction available to be made in respect of any Functional Unit in which the Category E Failure Event or Category D Failure Event has occurred and no further Failure Event Deduction shall be made for any subsequent Failure Event which may occur during the period until Rectification in the relevant Functional Unit or Functional Area (as the case may be).
- 6.1.2 if a Category D Failure Event occurs, in addition to the Failure Event Deduction in respect of the Category D Failure Event the Board may make further Failure Event Deductions in respect of any subsequent or subsisting Failure Events that are not directly linked to or caused by the relevant Category D Failure Event.
- 6.1.3 The maximum Failure Event Deduction available to be made for any relevant Functional Part in which a Category D Failure Event has occurred in any Contract Day shall be equivalent to the Failure Event Deduction which would have been made had a Category E Failure Event occurred in the relevant Functional Part.

### **6.2 Temporary Alternative Accommodation**

- 6.2.1 If a Category D Failure Event or a Category E Failure Event occurs Project Co. may offer the Board Temporary Alternative Accommodation by written notice to the Board within 3 Business Days from the commencement of the relevant Event.
- 6.2.2 The Temporary Alternative Accommodation shall:-
  - (A) comply with:
    - (1) the Accessibility Condition;
    - (2) the Safety Condition;

- (3) the Use Condition;
- (4) the Prescribed Health Function Condition;
- (5) the Prescribed Operational Function Condition;

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

- (B) be reasonably suitable for the purposes for which the Board used or intended to use the Functional Part which is or has become Unavailable;
- (C) be a temporary alternative having regard to the facts and the circumstances in existence;
- (D) be upon terms which are not materially different from the terms upon which the Board occupied the affected Functional Part;
- (E) be accommodation for which the Board is not already paying within the Service Payment or other terms of the Project Agreement;
- (F) be acceptable to the Board as being suitable for the Clinical Services having regard to the activities usually carried out at or from the Functional Part which is or has become unavailable;
- (G) be supplied with the Services to the standards set out in the Service Level Specifications which Project Co. would under normal circumstances be providing within the Unavailable Functional Part; and
- (H) not involve the Board incurring any additional cost or charges in respect of the Temporary Alternative Accommodation including, without limitation, the reasonable costs of any relocation to and from the Temporary Alternative Accommodation. For the avoidance of doubt, any and all relocation costs shall be borne by Project Co.

6.3 The written notice sent by Project Co. to the Board pursuant to paragraph 6.2.1 of this Part B shall:-

- 6.3.1 describe the Temporary Alternative Accommodation;
- 6.3.2 invite the Board to inspect the Temporary Alternative Accommodation and shall give the Board reasonable notice of a time and a date when it may do so;
- 6.3.3 set out its proposals regarding the timing and co-ordination of relocation to the Temporary Alternative Accommodation;
- 6.3.4 specify the date (agreed by the Board before the submission of the written notice) by which Project Co. reasonably expects the Board to be able to relocate back to the relevant Functional Part (the "Return Date"); and
- 6.3.5 describe the terms upon which the Board 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.

- 6.4 The Board 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.
- 6.5 The Board shall be able to refuse any proposed Temporary Alternative Accommodation in its absolute discretion. If the Board accepts the offer of Temporary Alternative Accommodation then, without affecting the Board's remedial rights under clause 29 of this Agreement, the Board shall not be entitled to vacate the Temporary Alternative Accommodation until the earlier of the Return Date and the date on which the Board is entitled and able to return to and use the Functional Part in accordance with the agreed programme for relocation and re-commissioning referred to in paragraph 6.9 below.
- 6.6 For the avoidance of doubt, the Board's rights under clause 29 (Monitoring of Performance) of this Project Agreement shall not be affected by the acceptance by the Board of the Temporary Alternative Accommodation.
- 6.7 If the Board accepts Project Co's offer of Temporary Alternative Accommodation, no further Failure Event Deductions shall be made in respect of the Functional Part vacated by the Board while the Temporary Alternative Accommodation is being used by the Board.
- 6.8 The Board 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 Part which it replaced and the Failure Event Deduction shall be calculated using the weighting attributed by the Board pursuant to paragraph 6.3.5 of this Part B.
- 6.9 When Project Co. has completed the required works to enable the Board to return to the Functional Part the Board Representative shall confirm that the Availability Conditions for the Functional Part are met and the Board Representative and Project Co. shall agree a relocation programme to return to the Functional Part and any necessary Re-Commissioning Period.
- 6.10 Where the Board has accepted the proposed Temporary Alternative Accommodation pursuant to paragraph 6.4, in the event that Project Co fails to complete the works to enable the Board to return to the relevant Functional Part on the Return Date the Board may, in its absolute discretion, vacate the Temporary Accommodation at any time after the Return Date or remain in occupation. In such circumstances:
  - 6.10.1 Where the Board, 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 the Board shall levy 50% of the Failure Event Deduction which would have been levied in respect of that Category D Failure Event for each Contract Day on which the Board occupies the Temporary Alternative Accommodation thereafter until the date on which the Failure Event referred to in paragraph 6.2.1 above has been rectified and the Board is able to resume its use of the Functional Part.
  - 6.10.2 Where the Board, 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 Contract Day on which the Board is not in occupation of the Temporary Alternative Accommodation until the date on which the Failure Event referred to in paragraph

6.2.1 above has been rectified and the Board is able to resume its use of the Functional Part.

6.11 The Board shall specify a date ("the Long Stop Return Date"), being a date no earlier than the Return Date, by which the Rectification shall be completed and if Project Co fails to complete the Rectification of the Functional Part for which the Temporary Alternative Accommodation is a replacement by the Long-Stop Return Date the following shall apply:

6.11.1 the Board may (without prejudice to its rights under clause 44 (*Project Co Events of Default*) or any other express rights of the Board under this Agreement) take such steps as it considers to be appropriate (either itself or by engaging others to take such steps) to restore any Functional Part for which the Temporary Alternative Accommodation is a replacement to a condition which satisfies in all respects the requirements of the Service Level Specifications.

6.11.2 Project Co shall reimburse the Board for all reasonable costs, losses, expenses or damages incurred by the Board in relation to taking the steps, or engaging others to take the steps, referred to in paragraph 6.11.1 above and the Board shall be entitled to deduct any such amount from any amounts payable to Project Co under the provisions of this Agreement.

## **PART C**

### **REVIEW OF WEIGHTINGS**

#### **1. FAILURE EVENTS**

- 1.1 The identification of Functional Areas, Functional Units, Service Response Times, Rectification Times, Area Weighting Percentages, Unit Weighting Percentages and the Failure Event Deduction Percentages shall be reviewed at any time but at least once in every Contract Year by the Board and Project Co if requested by either party and the Board and Project Co shall act reasonably and diligently in carrying out the review.
- 1.2 The Board and Project Co. may in respect of each matter the subject of the review either:-
- (A) agree that the status of the relevant matter shall continue to apply unchanged in the Contract Year immediately following the review; or
  - (B) agree adjustments to the relevant matter to take effect in the Contract Year immediately following the review.
- 1.2.2 Any agreed adjustment pursuant to a review in accordance with paragraph 1.1 of this part C shall be effective from the commencement of the Contract Year immediately following the relevant review.

#### **2. QUALITY FAILURES**

- 2.1.1 The Service Weighting Percentages and the Quality Failure Category Percentages shall be reviewed at any time but at least once in every Contract Year by the Board and Project Co if requested by either party and the Board and Project Co shall act reasonably and diligently in carrying out the review.
- 2.1.2 The Board and Project Co. shall in respect of each Service and each Quality Failure Category 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; or
  - (B) agree adjustments to the relevant percentage figure to take effect in the Contract Year immediately following the review.
- 2.1.3 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 paragraph 2.1.1 of this Part C.

**PART D**

**FAILURE BY PROJECT CO TO MONITOR OR REPORT**

1. Subject to paragraphs 2 to 5 inclusive of this Part D, the Performance Monitoring Report produced by Project Co. for any Contract Month shall be the source of the factual information regarding the performance of the Services for the relevant Contract Month for the purposes of calculating the relevant Service Payment, the number of Service Failure Points awarded and the number of Warning Notices awarded.
2. If there shall be any error or omission in the Performance Monitoring Report for any Contract Month Project Co. and the Board shall agree the amendment to the Performance Monitoring Report or, failing agreement within 10 calendar days of notification of the error or omission which shall not be made more than 2 calendar months following the relevant Performance Monitoring Report except in the circumstances referred to in paragraph 8 of this Part D either party may refer the matter to the Fast Track Dispute Resolution Procedure.
3. If Project Co. fails to monitor or accurately to report an Event, Failure Event or a Service Request then, without prejudice to the deduction to be made in respect of the relevant Failure Event (if any), the failure to monitor or report the Event, Failure Event or Service Request shall be deemed to be a new Low Priority Quality Failure, unless the circumstances set out in paragraph 8 of this part D apply, in which case there shall be deemed to be a new High Priority Quality Failure.
4. Where Project Co. fails to monitor or accurately to report a Quality Failure there shall be deemed to be a new Low Priority Quality Failure, unless the circumstances set out in paragraph 8 of this Part D apply, in which case there shall be deemed to be a new High Priority Quality Failure.
5. Where Project Co fails to monitor or accurately to report a Failure Event or a Quality Failure in the circumstances referred to in paragraph 8 of this Part D, for the purposes of paragraph 1 of Part 1 of Schedule 25 (*Record Provisions*) the Board shall be deemed to have reasonable cause to require that Project Co shall make available to the Board for inspection such of the records referred to in paragraphs 1 of Part 2 of Schedule 25 as the Board may specify.
6. Project Co shall upon submission of a valid invoice pay to the Board a sum equal to the costs reasonably incurred by the Board in carrying out any inspection and investigation of records made available pursuant to paragraph 5 above.
7. In the event that the Board's inspection or investigation of records made available pursuant to paragraph 5 above reveals any further matters of the type referred to in paragraphs 3 and 4 above, those matters shall be dealt with in accordance with paragraph 3 or 4 as appropriate and the Board shall, in addition, be entitled to make deductions in respect of any Failure Events or Quality Failures in the manner prescribed in part 2 of this Schedule. Any such deductions shall be made from the Service Payment payable in respect of the Contract Month in which the relevant matters were revealed by the Board's investigations or, to the extent that the Board is unable to make any further deductions from the Service Payment in respect of that Contract Month by virtue of paragraph 1.4 of part 2 of this Schedule, may be carried forward and deducted from Service Payments due in respect of subsequent Contract Months.

8. For the purposes of paragraphs 2, 3, 4 and 5 of this Part D the relevant circumstances are:-
  - 8.1 fraudulent action or inaction; or
  - 8.2 deliberate misrepresentation; or
  - 8.3 gross misconduct or incompetence in each case on the part of Project Co or a Project Co Party.
9. For the purposes of calculating the amount of any deduction to be made under paragraph 1 of Part A of Part 2 of this Schedule in respect of any Quality Failure arising under paragraphs 3 or 4 of this part D:
  - 9.1 "SW" shall be the same Service Weighting Percentage as that which applies to the Service, 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 shall be deemed to be the Estates Service Weighting; and
  - 9.2 "R" shall be deemed to be 30 days.
10. The provisions of this Part D shall be without prejudice to any rights of the Board in this Agreement pursuant to clause 29 (*Monitoring of Performance*) clause 44 (*Project Co Events of Default*) and clause 54 (*Corrupt Gifts and Payments*).



### **Part 3: Energy Payments**

#### **1.1.1 Responsibility for Supply of Energy**

Project Co shall with effect from the Payment Commencement Date:

- 1.1.2 be responsible as principal in any contract for the agreement of the terms and conditions of supply of gas and electricity; and
- 1.1.3 be liable for and subject to paragraph 1.3 pay for all consumption of gas and electricity after receipt of an invoice or demand from the relevant supplier.

#### **1.2 Measurement of Annual Targets**

- 1.2.1 During the Base Year Period Project Co shall collect the data required to determine the total consumption in respect of the Facilities for both gas and electricity during the Base Year Period.
- 1.2.2 Following expiry of the Base Year Period Project Co shall determine the total consumption of gas and electricity by volume during the Base Year Period and shall calculate its estimate of the Annual Gas Target and the Annual Electricity Target (together "the Annual Targets"). The Board shall be entitled to review in accordance with paragraph 1.2.3 below all relevant records and documents of Project Co or any Service Provider used for the purpose of establishing such estimate.
- 1.2.3 Project Co shall as soon as practicable following the expiry of the Base Year Period provide the Board with its estimate of the Annual Targets together with copies of all supporting documents. Project Co shall provide the Board with details of the methods employed for the collection of data and calculations used to determine its estimate of the Annual Targets.
- 1.2.4 Project Co and the Board shall agree the Annual Targets within 30 Business Days of Project Co providing the Board with its estimate and supporting documentation. In the event that agreement is not reached within 30 Business Days the matter shall be referred to the Dispute Resolution Procedure.

#### **1.3 Reimbursement Of Utility Costs**

- 1.3.1 In respect of the period from the Payment Commencement Date to the end of the Contract Month in which agreement (or determination under the Dispute Resolution Procedure) of the Annual Target is achieved, the full cost of gas and electricity consumed in each Contract Month at the Facilities shall be reimbursed by the Board in full in the next Service Payment immediately following such Contract Month.
- 1.3.2 In respect of each Contract Month immediately following the agreement (or its determination under the Dispute Resolution Procedure) of the Annual Targets, the Board shall pay to Project Co by way of adjustment to the Service Payment an amount calculated in accordance with the following formula:-

$$A = (B \times C) + (D \times E) + F$$

where:-

- A = the Energy Payment;
- B = the Utility Tariff for gas (calculated per Gigajoule) as paid by Project Co in accordance with a contract entered into in accordance with paragraph 1.5;
- C = the Annual Gas Target divided by 12;
- D = the Utility Tariff for electricity (calculated per Gigajoule) as paid by Project Co in accordance with a contract entered into in accordance with paragraph 1.5;
- E = the Annual Electricity Target divided by 12; and
- F = all standing charges or fixed costs payable by Project Co to the relevant supplier of the gas or electricity (as the case may be) in each case where such amount is actually due and payable to the relevant supplier at the time such amount is charged by Project Co to the Board.

1.4 At the end of each Contract Year following agreement or determination of the Annual Targets the actual consumption of gas for that Contract Year ("the Annual Gas Consumed") shall be compared to the Annual Gas Target and the actual consumption of electricity ("the Annual Electricity Consumed") for that Contract Year shall be compared to the Actual Electricity Target. The following adjustments shall then be made:-

1.4.1 if the actual consumption of gas is between 90% and 110% of the Annual Gas Target, no adjustment shall be made;

1.4.2 if the actual consumption of gas is less than 90% of the Annual Gas Target, Project Co shall pay to the Board within 30 days of such calculations being agreed or determined between the parties:-

$50\% \times ((90\% \text{ of the Annual Gas Target} - \text{Annual Gas Consumed}) \times B \text{ (as defined in paragraph 1.3)})$

1.4.3 if the actual consumption of gas is more than 110% of the Annual Gas Target, the Board shall pay to Project Co within 30 days of such calculations being agreed or determined between the parties:-

$50\% \times ((\text{Annual Gas Consumed} - 110\% \text{ of the Annual Gas Target}) \times B \text{ (as defined in paragraph 1.3)})$ ;

1.4.4 if the actual consumption of electricity is between 90% and 110% of the Annual Electricity Target, no adjustment shall be made;

1.4.5 if the actual consumption of electricity is less than 90% of the Annual Electricity Target, Project Co shall pay to the Board within 30 days of such calculations being agreed or determined between the parties:-

$50\% \times ((90\% \text{ of the Annual Electricity Target} - \text{Annual Electricity Consumed}) \times D \text{ (as defined in paragraph 1.3)})$ ;

- 1.4.6 if the actual consumption of electricity is more than 110% of the Annual Electricity Target, the Board shall pay to Project Co within 30 days of such calculations being agreed or determined between the parties:-

$50\% \times ((\text{Annual Electricity Consumed} - 110\% \text{ of the Annual Electricity Target}) \times D$   
(as defined in paragraph 1.3)).

#### **1.5 Establishment Of Utility Tariff**

In respect of gas and electricity the relevant Utility Tariff for each Contract Year shall be agreed by Project Co with a relevant supplier no later than one month prior to the commencement of the relevant Contract Year in accordance with the following provisions of this paragraph 1.5:-

- 1.5.1 Project Co shall be responsible, at its own cost, for entering into such agreements as are necessary to purchase gas and electricity ("the Purchase Agreements") provided that:-
- (a) the Purchase Agreements shall not be of more than 36 months in duration unless the consent of the Board is obtained in writing for a longer duration; and
  - (b) Project Co in entering into the Purchase Agreements shall do so under contracts entered into on an arms length basis and Project Co shall endeavour to obtain best value to the Board; and
  - (c) if requested by Project Co, and to the extent that Project Co considers that it will represent best value to the Board, the Board shall use its reasonable endeavours to assist the entering into of Purchase Agreements by Project Co through the Board's purchasing arrangements.
- 1.5.2 Prior to entering into a Purchase Agreement Project Co shall carry out a market test of the price of gas and electricity.
- 1.5.3 Project Co shall carry out such market test:-
- (a) at its own cost;
  - (b) in a manner which ensures that the market test is completed at least one Contract Month prior to the renewal date of any Purchasing Agreement;
  - (c) on an open book basis; and
  - (d) with a view to entering into Purchasing Agreements following the market test which represent best value to the Board.
- 1.5.4 Following the market test Project Co shall enter into those Purchasing Agreements which it, in its reasonable opinion, considers represents best value to the Board. The Board shall have the right to audit any prices obtained by Project Co as part of the market test and the Purchasing Agreements to be entered into by Project Co following the market test.

#### **1.6 Changes To Annual Targets**

- 1.6.1 Where the number of Functional Units is increased or decreased pursuant to a Board Variation Enquiry, the Board Variation Enquiry shall include any proposal for adjusting the Annual Targets applicable for future Contract Years (if relevant).
- 1.6.2 Where the Clinical Use of the Facilities has a demonstrably material impact on total consumption of gas and electricity in any Contract Year then the parties shall discuss and seek to agree any appropriate adjustment to the Annual Targets for future Contract Years.

#### **1.7 Benchmarking**

- 1.7.1 During the Benchmarking Review Period Project Co shall collect the data required to determine the total consumption of gas and electricity during each Contract Year during the Benchmarking Review Period.
- 1.7.2 Following expiry of the Benchmarking Review Period Project Co shall determine the total consumption of gas and electricity by volume during the Benchmarking Review Period and shall calculate its estimate of the revised Annual Gas Target or Annual Electricity Target (as the case may be).
- 1.7.3 Project Co shall, as soon as practicable following the expiry of the Benchmarking Review Period, provide the Board with its estimate of the revised Annual Targets, together with copies of all supporting documents. Project Co shall provide the Board with details of the methods employed for the collection of data and calculations used to determine its estimate of the revised Annual Targets.
- 1.7.4 Project Co and the Board shall agree the revised Annual Targets within 30 Business Days of Project Co providing the Board with its estimate and supporting documentation. In the event that agreement is not reached within 30 Business Days the matter shall be referred to the Dispute Resolution Procedure.

#### **1.8 Other Utilities**

The Board shall meet the full cost of all additional utilities services other than gas and electricity from the Payment Commencement Date. In the event that Project Co is invoiced in respect of any such utilities services and makes payment to the utilities provider, the Board shall reimburse Project Co in respect thereof within 20 Business Days of request from Project Co.

**SCHEDULE 18**  
**Part 4: Service Failure Points**

**1. SERVICE FAILURE POINTS**

Service Failure Points shall be awarded for every Failure Event for each Session affected and every Quality Failure deemed or actual which occur during the Project Term unless such Service Failures are disregarded pursuant to paragraph 1.2 of Part A of Part 2 and paragraph 5 of Part B of Part 2 of this Part 18 of the Schedule and further disregarding any Failure Event or Quality Failure which is attributable to the occurrence of a Relief Event or an event of Force Majeure.

**1.1 Service Failure Points and Failure Events**

1.1.1 The number of Service Failure Points awarded in respect of each Failure Event shall be calculated by multiplying:

- (A) 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; and
- (B) the number of Affected Sessions in respect of the relevant Failure Event as determined pursuant to paragraph 2.2 of Part B of Part 2 of this Schedule;

**1.2 Service Failure Points and Quality Failures**

1.2.1 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.

1.2.2 Where the Performance Monitoring Period referable to the Quality Failure in question is a period which begins in a Contract Month and expires in another, the Service Failure Points to be awarded in respect of such Quality Failure shall be included in the total number of Service Failure Points for the Contract Month during which the Quality Failure occurred comes to an end; or

1.2.3 where the Performance Monitoring Period referable to the Quality Failure in Question is a period which begins and ends on the first and last day of a Contract Month or is a period which is wholly contained within the Contract Month or where no specific Performance Monitoring Period is referable to the Quality Failure in Question, the Service Failure Points to be awarded in respect of such Quality Failure shall be included in the total number of Service Failure Points for that Contract Month.

**1.3 Total Monthly Service Failure Points**

Project Co. shall calculate:

- 1.3.1 the total number of Service Failure Points awarded to each Service provided by the Service Provider in each Contract Month; and
- 1.3.2 the sum total of all Service Failure Points awarded across all Services provided by the Service Provider in each Contract Month.

**1.4 New Service Providers**

- 1.4.1 No abatement of the award of Service Failure Points shall be allowed to a New Service Provider in respect of any "bedding-in" period.
- 1.4.2 Without prejudice to paragraph 1.4.3 of this Part 4 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 Contract Month pursuant to paragraph 1.3.1 of this Part 4.
- 1.4.3 Subject to paragraph 1.4.4, Service Failure Points which have been awarded to a Service Provider which has been replaced shall not be deducted from the total number of Service Failure Points awarded in respect of all Services in any relevant Contract Month.
- 1.4.4 In circumstances where Project Co is required to replace a Service Provider by the Board in terms of Clause 44.6 of the Project Agreement, any Service Failure Points awarded to that Service Provider shall not be taken into account in calculating the total number of Service Failure Points of either the new Service Provider or Project Co in any relevant Contract Month.

**APPENDIX A**

**Service Weightings (SW)**

<b>Service</b>	<b>Service Weighting (%)</b>
Estates	9%
General	2%
Grounds and Gardens	2%
Pest Control	1%
Helpdesk	4%
Energy and utilities	3%

**APPENDIX B**

**Quality Failure Categories**

<b>Quality Failure Category</b>	<b>Deduction Category DP(QF)</b>	<b>SFPs</b>
High Priority	2.0%	20
Medium Priority	1.5%	6
Low Priority	1.0%	2



## APPENDIX C

## Failure Event Categories

Failure Event Category	Description	SFPs	Percentage Deduction
A Routine	Repeated Rectification (see paragraph 4 of part B of this Schedule Part 18)	1	5%
B Important	Failure to Rectify in time allowed - but not likely to impact on the continuity or quality of the Board's delivery of Clinical Services	2	10%
C Major	Failure to Rectify in time allowed - will impact on the Board's delivery of clinical Services but doesn't breach Availability Conditions	6	30%
D Unavailable and Used	Failure Event which renders a Functional Unit/Area Unavailable but where the Board continues to use the affected Unit/Area	20	50%
E Unavailable and Not Used	Failure which renders a Functional Unit/Area Unavailable where the Board ceases to use the affected Unit/Area	20	100%