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## **PART 18 OF THE SCHEDULE: PAYMENT MECHANISM**

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### **Section 1A: Interpretation**

#### **Accessibility Condition**

means a state or condition of the relevant Functional Area or the means of access to it which allows all persons who are entitled to enter, occupy or use the relevant Functional Area safely to enter and leave the Functional Area in a manner that is reasonable having regard to the Prescribed Health Function, the Prescribed Operational Function and/or the use of such Functional Area (as the case may be);

#### **Affected Days**

means the number of Contract Days to be taken into account for the purposes of calculating deductions to be made to the Service Payment in respect of Failure Events as established pursuant to paragraph 7.2 of Part B of Section 2 of this Part 18 of the Schedule;

#### **Annual Service Payment**

means the sum in pounds sterling calculated in accordance with the provisions set out in paragraph 2 of Section 1 of this Part 18 of the Schedule;

#### **Area Weighting Percentage**

means the percentage weighting ascribed to the relevant Functional Area for the purpose of calculating deductions to the Service Payments for Failure Events as set out in Appendix D to this Schedule;

#### **Availability Condition**

means any of the Accessibility Condition, the Safety Condition, the Use Condition, the Prescribed Health Function Condition and the Prescribed Operational

	Function Condition;
<b>Base Date</b>	means the Twenty seventh day of June 2003;
<b>Category A Failure Event</b>	means the occurrence of a repeated failure as set out in paragraph 9.1 of Section 2 of this Part 18 of the Schedule;
<b>Category B Failure Event</b>	means any Failure Event which does not result in an Unavailability;
<b>Category C Failure Event</b>	means any Failure Event which leads to an Unavailability but where the Trust continues to use the Unavailable Functional Area;
<b>Category D Failure Event</b>	means any Failure Event which leads to an Unavailability where the Trust does not continue to use the Unavailable Functional Area;
<b>Contract Day</b>	means a period commencing at 12.00am on the relevant day and ending at midnight of the relevant day;
<b>Event</b>	means an incident or state of affairs which does not meet or comply with the Output Requirements but which has not become a Failure Event;
<b>Failure Event</b>	means <ul style="list-style-type: none"> <li>(a) the failure to rectify an Event within the specified Rectification Time;</li> <li>(b) where in accordance with the Output Requirements the Project Co is required to take action prior to rectification (including but not limited to ensuring compliance with the Safety Condition) the failure to take the required action within the period specified in the Output Requirements; or</li> <li>(c) a failure to respond to a Service Request within</li> </ul>

the required Service Response Time or in accordance with any other criteria specified in the Output Requirements;

**Failure Event Category**

a Category A Failure Event, a Category B Failure Event, Category C Failure Event or Category D Failure Event as appropriate;

**Failure Event Deduction**

means a deduction from a Service Payment made pursuant to paragraph 6.1 and part B of Section 2 of this Part 18 of the Schedule;

**Failure Event Deduction Percentage**

means the percentage figure attributable to the Failure Event Category as set out in column 3 of the table at Appendix C to this Schedule;

**Functional Area**

means an area of the Facility specified as such in the Accommodation Schedule;

**Helpdesk**

means the facility provided by Project Co in accordance with Paragraph 5.1.1 of part 16 of the Schedule (*Performance Monitoring*);

**Low Priority Quality Failure**

means a Quality Failure which has been designated as "Low" in column 4 of the relevant performance parameter table set out in the Output Requirements 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 affect (taken by itself) on the operation and use of the Hospital and any other Quality Failure which is not a Medium Priority Quality Failure or a High Priority Quality Failure;

**Medium Priority Quality Failure**

means a Quality Failure which has been designated as "Medium" in column 4 of the relevant performance parameter table set out in the Output Requirements or, if no designation has been made in respect of it, a

<b>High Priority Quality Failure</b>	Quality Failure that may be considered to be important to the Trust's ability to deliver the Clinical Services but which is not a failure to comply with Law; means a Quality Failure which has been designated as "High" in column 4 of the relevant performance parameter table set out in the Output Requirements or, if no designation has been made in respect of it, a Quality Failure which constitutes a failure to comply with Law;
<b>Minimum Agreed Availability Conditions</b>	means the Accessibility Condition, the Safety Condition and either the Prescribed Health Function Condition or Prescribed Operational Function Condition (as the case may be);
<b>Minimum Deduction</b>	means the sum of twenty five pounds (£25) Sterling which shall be index linked;
<b>New Service Provider Start Date</b>	means (as the case may be) the Payment Commencement Date or, where a Service Provider is replaced by a new Service Provider 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;
<b>Performance Monitoring Period</b>	means a period of time specified in the Performance Monitoring System 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 the Trust of its performance of that Service or the relevant part of it during that period;
<b>Performance Monitoring Report</b>	means the report specified in the Performance Monitoring System in respect of a Service or a part of a Service which Project Co has an obligation to

prepare for the Trust in respect of its performance of that Service or the relevant part of it during a specified period;

**Permanent Repair**

means Rectification following the agreement of a Temporary Repair;

**Prescribed Health Function**

means the clinical use or purpose of the relevant Functional Area (if any);

**Prescribed Health Function Condition**

means a state or condition of the relevant Functional Area which allows the Prescribed Health Function for that Functional Area to be carried on and performed in accordance with any Law for such Prescribed Health Function and having regard to the practicalities of carrying on and performing such Prescribed Health Function;

**Prescribed Operational Function**

means the use or purpose of the relevant Functional Area other than a Prescribed Health Function;

**Prescribed Operational Function Condition**

means a state or condition of the relevant Functional Area which allows the Prescribed Operational Function for that Functional Area to be carried on and performed having regard to the practicalities of carrying on and performing such Prescribed Operational Function;

**Quality Failure**

means a Service Failure which has specifically been designated as a Quality Failure and marked "QF" in column 3 of the relevant performance parameter table set out in the Output Requirements or Performance Monitoring System (as the case may be) or if no specific designation has been ascribed to such Service Failure, any such Service Failure which is not a Failure Event;

<b>Quality Failure Category</b>	means a Low Priority Quality Failure, a Medium Priority Quality Failure, or a High Priority Quality Failure;
<b>Quality Failure Category Percentage</b>	means the percentage figure attributable to the relevant Quality Failure Category for the purposes of calculating deductions to the Service Payments for Quality Failures as identified by paragraph 4.1.6 of Section 2 of this Part 18 of the Schedule;
<b>Quality Failure Deductions</b>	means a deduction from a Service Payment made pursuant to paragraphs 3.2 and Part A of Section 2 of this Part 18 of the Schedule;
<b>Re-Commissioning Period</b>	means the period which the Trust shall agree with Project Co pursuant to paragraph 10.9 of Section 2 of this Part 18 of the Schedule for recommissioning a Functional Unit or Functional Area that shall have been Unavailable;
<b>Rectification</b>	means making good a Service Failure so that the subject matter of such Service Failure complies with the levels of service required pursuant to this Agreement and shall without prejudice to the generality of the foregoing include (a) restoring all functional capability (b) ensuring that any Functional Area which has been affected by the relevant Service Failure complies with the Availability Conditions (c) complying with and making good in accordance with Good Industry Practice, the Health and Safety Regime and Trust Policies and "Rectify" shall be construed accordingly;
<b>Rectification Confirmation Notice</b>	means a formal written notice from Project Co to the Trust Representative confirming the date and time

that a Service Response or Rectification has been completed with respect to the relevant Event or Service Request;

**Rectification Time**

means the period specified in column 6 of the relevant performance parameter table set out in the Output within which Rectification of the relevant Event in the relevant Functional Area must be completed, calculated from the time that such Event is reported to the Helpdesk;

**Return Date**

means for the purpose of Temporary Alternative Accommodation the date agreed for the return to the original Functional Area in accordance with paragraph 10.3.4 of Section 2 of this Part 18 of the Schedule;

**Safety Condition**

means a state or condition of the relevant Functional Area which allows those persons so entitled to enter, leave, occupy and use such Functional Area without a higher risk to their health safety and welfare than should be expected for premises of the type of the relevant Functional Area and in particular which might arise due to any failure to comply with any Law or NHS Requirement relating to fire safety or health and safety at work including but not limited to the Health and Safety Regime;

**Service Failure**

means any breach by Project Co of its obligations to provide the Services in accordance with this Agreement and in particular in accordance with the Output Requirements;

**Service Failure Points**

means points allocated to individual Service Providers in respect of the occurrence of Service

Failures which are determined by the provisions set out in Paragraph 14 of Section 4 of this Part 18 of the Schedule;

**Service Payment**

means the sum in pounds sterling payable by the Trust to Project Co for the provision of the Services in accordance with this Agreement;

**Service Request**

means a request by the Trust to Project Co by notification to the Helpdesk for the provision of a Service which the Trust is entitled to request in accordance with the Output Requirements and for which a Service Response Time has been ascribed;

**Service Response**

means completing the relevant Service Request in accordance with the requirements of that Service Request as set out in the Output Requirements and "Respond" shall be construed accordingly;

**Service Response Time**

means the period specified in column 5 of the relevant performance parameter table set out in Output Requirements within which the relevant Service Request is to be responded to calculated from the time that such Service Request is made to the Helpdesk;

**Service Weighting Percentage**

means the percentage figure attributable to the relevant Service for the purpose of calculating deductions to the Service Payment for Quality Failures as identified by paragraph 4.1.5 of Section 2 of this Part 18 of the Schedule;

<b>Temporary Alternative Accommodation</b>	means accommodation offered to the Trust by Project Co as a substitute for any Unavailable Functional Area pursuant to paragraph 10.2 of Section 2 of this Part 18 of the Schedule;
<b>Temporary Repair</b>	means, in respect of the occurrence of an Event, works of a temporary nature that do not constitute Rectification but satisfy the Minimum Agreed Availability Conditions and substantially make good the relevant Service Failure for the period until a Permanent Repair can be undertaken;
<b>Unavailable</b>	means in relation to a Functional Area that such Functional Area is in a state or condition which does not comply with any one or more of the Availability Conditions and the term "Unavailability" will be construed accordingly;
<b>Use Condition</b>	means a state or condition of the relevant Functional Area which satisfies the Use Parameters for that Functional Area;
<b>Use Parameters</b>	means the range of functional requirements for the proper use and enjoyment of a Functional Area for its particular purpose relating to (i) temperature; (ii) humidity; (iii) air-flow; (iv) lighting; (v) power (essential and non-essential); (vi) safe water (relating to availability, temperature, quality and safe sewerage system); (vii) nurse call system; (viii) medical and other equipment; (ix) medical gases; as the same are specified on the Room Data Sheets for the relevant Functional Area as set out in Section 6 of Part 8 of the Schedule;

## Section 1: Calculation of the Service Payment

### 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:

$$\mathbf{mSP = (ASPn \times NM/NY) - \sum D(FE) - \sum D(QF)}$$

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 **NM** is the number of days in the relevant Contract Month;
  - 1.1.4 **NY** is the number of days in the relevant Contract Year;
  - 1.1.5  **$\sum D(FE)$**  is the sum of the Failure Event Deductions in respect of the relevant Contract Month; and
  - 1.1.6  **$\sum D(QF)$**  is the sum of the Quality Failure Deductions in respect of the relevant Contract Month.
- 1.2 For the purposes of paragraph 1.1.3 of this Part 18 of Schedule, in the Contract Month in which the Payment Commencement Date falls and in the last Contract Month of the Project Term **NM** shall be 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).
- 1.3 For the purposes of paragraph 1.1.4 of this Part 18 of the Schedule 1, in the Contract Year in which the Payment Commencement Date falls and in the last Contract Year of the Project Term **NY** shall be the total number of days in the relevant Contract Year and shall not be pro-rated.

### 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:

$$\mathbf{ASPn = ASPo \times (RPI_n / RPI_o)}$$

where:

- 2.1.1 **ASPn** is the Annual Service Payment for the relevant Contract Year;

- 2.1.2 **ASPo** is  
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  
March 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.

## **Section 2: Service Failure Deductions**

### **3. SERVICE FAILURE DEDUCTIONS**

- 3.1 If at any time during the Operational Term a Service Failure shall occur the Trust shall be entitled to make deductions from the relevant Service Payment in respect of that Service Failure.
- 3.2 If the Service Failure is a Quality Failure the deductions which the Trust will be entitled to make will be calculated in accordance with the provisions set out in Part A of this Section 2.
- 3.3 If the Service Failure is a Failure Event the deductions which the Trust will be entitled to make will be calculated in accordance with Part B of this Section 2.
- 3.4 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 in respect of the relevant month.

### **PART A**

#### **Section 2 - Part A: Quality Failures**

### **4. QUALITY FAILURE DEDUCTIONS**

- 4.1 Subject to paragraph 3.2 of this Part 18 of the Schedule, the amount to be deducted from the Service Payment in respect of a Quality Failure shall be calculated in accordance with the following formula:

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

where:

- 4.1.1 **D (QF)** means the amount (in pounds sterling) to be deducted from the Service Payment in respect of the relevant Quality Failure;
- 4.1.2 **ASP<sub>n</sub>** means the Annual Service Payment for the Contract Year in which the relevant Quality Failure occurs;
- 4.1.3 **N<sub>y</sub>** means the number of days in the Contract Year (being the year in which the relevant Quality Failure occurs);
- 4.1.4 **R** is the relevant period in Contract Days;
- 4.1.5 **SW** means the Service Weighting Percentage which shall:
- 4.1.5.1 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;
- 4.1.5.2 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 12 of this Part 18 of the Schedule;
- 4.1.6 **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.

## 5.1 **Low Priority Quality Failure Tolerance**

- 5.1.1 No deduction shall be available to be made by the Trust to the Service Payment for the relevant Contract Month in respect of any Low Priority Quality Failure if:-
- 5.2.1.1 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 Contract Month in respect of that Service do not exceed in aggregate 3 in number; and
- 5.2.1.2 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 Contract Month do not exceed in aggregate 10 in number.

- 5.1.2 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.
- 5.1.3 If 10 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

### Section 2 - Part B: Failure Events

#### 6. FAILURE EVENT DEDUCTIONS

6.1 Subject to paragraphs 6, 7, 8 9 and 10 of this Part 18 of the Schedule, 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:

$$D(FE) = (ASPn/Ny) \times (Nd) \times AW \times DP (FE)$$

where:

- 6.1.2 **D(FE)** means the amount (in pounds sterling) to be deducted from the Service Payment in respect of the Failure Event;
- 6.1.3 **ASPn** means the Annual Service Payment for the Contract Year in which the relevant Failure Event occurs;
- 6.1.4 **Ny** means the number of days in the Contract Year (being the year in which the relevant Failure Event occurs);
- 6.1.5 **Nd** means the number of Affected Days for each Functional Area;
- 6.1.6 **AW** means the Area Weighting Percentage attributable to the Functional Area in which the Failure Event occurs;
- 6.1.7 **DP (FE)** means the Failure Event Deduction Percentage attributable to the Failure Event Category allocated to the Failure Event;

#### 7. GENERAL RULES FOR CALCULATING DEDUCTIONS

##### 7.1 Contract Days

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

- 7.1.1.1 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

7.1.1.2 a deduction in respect of a Failure Event in accordance with Part B of Section 2 of this Part 18 of the 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.

## 7.2 Calculation of Affected Days

7.2.1 For the purposes of paragraph 6.1.5 of this Part 18 of the Schedule the number of Affected Days in each relevant Functional Area shall be established by applying the following rules:

7.2.1.1. 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;

7.2.1.2 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 7.2.2 of this Part 18 of the Schedule, be the time and date notified to the Trust Representative in the form of the Rectification Confirmation Notice;

7.2.1.3. where a Functional Area requires re-commissioning by or at the direction of the Trust following Rectification of an Event, the re-commissioning of the Functional Area shall be deemed to have been completed on the earlier of:

7.2.1.3.1. the expiry of forty-eight hours after the time and date notified to the Trust in the Rectification Confirmation Notice as the time and date that Rectification was completed;

7.2.1.3.2. the time and date on which the Trust or the relevant Trust Party commences to use again the Functional Area for the purposes for which it was being used prior to the occurrence of the relevant Event;

7.2.1.4 if paragraph 7.2.1.3 of this Part 18 of the Schedule applies, the number of Affected Days shall also include all Contract Days after

the Service Response or Rectification has been completed up to and including the Contract Days in which the re-commissioning of the Functional Area shall have been deemed to have been completed;

7.2.1.5 if paragraph 9 of this Part 18 of the Schedule or paragraph 10.10.1 of this Part 18 of the Schedule applies, any such deemed Category A Failure Event or Category C Failure Event shall be deemed to commence at the beginning of a Contract Day in respect of the relevant Functional Area 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).

7.2.2 The Rectification Confirmation Notice shall state as the relevant time and date of Rectification or Service Response the time and date of the Rectification Confirmation Notice or, if such notice is given following a verbal notification to the Trust Representative of such Rectification or Service Response, the time and date of such verbal notification Provided That if the Trust 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.

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

7.3.1 Subject to paragraph 9 of this Part 18 of the Schedule, 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.

## 8. **TEMPORARY REPAIRS**

8.1 If Project Co informs the Trust 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 Trust may in its absolute discretion:

- (a) permit Project Co to carry out the Temporary Repair proposed by Project Co;
- (b) agree the time by which a Permanent Repair must be made; and

(c) agree any reduction to the requirement in respect of the Use Condition which may subsist following the Temporary Repair in respect of any Functional Area affected by the Event until the Permanent Repair is made.

8.2 Except and to the extent agreed by the Trust in accordance with paragraph 8.1 of this Part 18 of the Schedule, if any Functional Area 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 C Failure Event or a Category D Failure Event (as the case may be) shall be deemed to have occurred in respect of any relevant Functional Area and the provisions of paragraph 6 of this Part 18 of the Schedule shall apply.

8.3 Subject to paragraph 8.2 of this Part 18 of the Schedule, if the agreed Temporary Repair is effected within the Rectification Time and the Permanent Repair is effected within the period agreed by the Trust pursuant to paragraph 8.1 of this Part 18 of the Schedule no Failure Event will occur and no Failure Event Deduction may be made in respect of the Event.

## **9. REPEATED RECTIFICATION**

9.1 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:-

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

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

Provided That each such Event is:-

6.1.2.1 in connection with the same Output Requirement; and

6.1.2.2 in respect of the same Functional Area.

9.2 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).

## **10. UNAVAILABILITY**

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

10.1.1 Subject to paragraph 10.1.2 of this Part 18 of the Schedule, if a Category D Failure Event or a Category C Failure Event occurs, until the Category D Failure

Event or Category C Failure Event has been rectified, the Failure Event Deduction in respect of the Category D Failure Event or Category C Failure Event shall be the only deduction available to be made in respect of:

10.1.1.1 any Functional Area in which the Category D Failure Event or Category C Failure Event has occurred; and

10.1.1.2 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 Area.

10.1.2 Notwithstanding the provisions of paragraph 10.1.1 of this Part 18 of the Schedule, and subject to paragraph 10.1.3 below, if a Category C Failure Event occurs, in addition to the Failure Event Deduction in respect of the Category C Failure Event the Trust 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 C Failure Event.

10.1.3 The maximum Failure Event Deduction available to be made for any relevant Functional Area in which a Category C Failure Event has occurred in any Contract Day shall be equivalent to the Failure Event Deduction which would have been made had a Category D Failure Event occurred in the relevant Functional Area.

## 10.2 Temporary Alternative Accommodation

10.2.1 If a Category C Failure Event or a Category D Failure Event occurs Project Co may offer the Trust Temporary Alternative Accommodation by written notice to the Trust within 5 Business Days from the commencement of the relevant Event.

10.2.2 The Temporary Alternative Accommodation shall:-

10.2.2.1 comply with:

10.2.2.1.1 the Accessibility Condition;

10.2.2.1.2 the Safety Condition;

10.2.2.1.3 the Use Condition;

10.2.2.1.4 the Prescribed Health Function Condition;

10.2.2.1.5 the Prescribed Operation Condition;

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

- 10.2.2.2 be reasonably suitable for the purposes for which the Trust used or intended to use the Functional Area which is or has become Unavailable;
- 10.2.2.3 be a temporary alternative having regard to the facts and the circumstances in existence;
- 10.2.2.4 be upon terms which are not materially different from the terms upon which the Trust occupied the affected Functional Area;
- 10.2.2.5 be accommodation for which the Trust is not already paying within the Service Payment or other terms of this Agreement;
- 10.2.2.6 be acceptable to the Trust as being suitable for the Clinical Services having regard to the activities usually carried out at or from the Functional Area which is or has become unavailable;
- 10.2.2.7 be supplied with the Services to the standards set out in the Output Requirements which Project Co would under normal circumstances be providing within the Unavailable Functional Area; and
- 10.2.2.8 not involve the Trust 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.

10.3 The written notice sent by Project Co to the Trust pursuant to paragraph 10.2.1 of this Part 18 of the Schedule shall:-

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

- 10.4 The Trust 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.
- 10.5 The Trust shall be able to refuse any proposed Temporary Alternative Accommodation in its absolute discretion. If the Trust accepts the offer of Temporary Alternative Accommodation then, without affecting the Trust's remedial rights under Clause 29 of this Agreement, the Trust shall not be entitled to vacate the Temporary Alternative Accommodation until the earlier of the Return Date and the date on which the Trust is entitled and able to return to and use the Functional Area in accordance with the agreed programme for relocation and re-commissioning referred to in paragraph 10.9 below.
- 10.6 For the avoidance of doubt, the Trust's rights under Clause 29 (Monitoring of Performance) of this Project Agreement shall not be affected by the acceptance by the Trust of the Temporary Alternative Accommodation.
- 10.7 If the Trust accepts Project Co's offer of Temporary Alternative Accommodation, no further Failure Event Deductions shall be made in respect of the Functional Area vacated by the Trust while the Temporary Alternative Accommodation is being used by the Trust.
- 10.8 The Trust 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 Area which it replaced and the Failure Event Deduction shall be calculated using the weighting attributed by the Trust pursuant to paragraph 10.3.5 of this Part B.
- 10.9 When Project Co has completed the required works to enable the Trust to return to the Functional Area the Trust Representative shall confirm that the Availability Conditions for the Functional Area are met and the Trust Representative and Project Co shall agree a relocation programme to return to the Functional Area and any necessary Re-Commissioning Period.
- 10.10 Where the Trust has accepted the proposed Temporary Alternative Accommodation pursuant to paragraph 10.4, in the event that Project Co fails to complete the works to enable the Trust to return to the relevant Functional Area on the Return Date the Trust may, in its absolute discretion, vacate the Temporary Alternative Accommodation at any time after the Return Date or remain in occupation. In such circumstances:

- 10.10.1 Where the Trust, in its discretion, remains in occupation of the Temporary Alternative Accommodation following the Return Date there shall be deemed to be a Category C Failure Event in the Temporary Alternative Accommodation occurring on the Return Date and the Trust shall levy 50% of the Failure Event Deduction which would have been levied in respect of that Category C Failure Event for each Contract Day on which the Trust occupies the Temporary Alternative Accommodation thereafter until the date on which the Failure Event referred to in paragraph 10.2.1 above has been rectified and the Trust is able to resume its use of the Functional Area.
- 10.10.2 Where the Trust, in its discretion, vacates 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 each Contract Day on which the Trust is not in occupation of the Temporary Alternative Accommodation until the date on which the Failure Event referred to in paragraph 10.2.1 above has been rectified and the Trust is able to resume its use of the Functional Area.
- 10.11 The Trust 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 Area for which the Temporary Alternative Accommodation is a replacement by the Long-Stop Return Date the following shall apply:
- 10.11.1 the Trust may (without prejudice to its rights under Clause 44 (*Project Co Events of Default*) or any other express rights of the Trust 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 Area for which the Temporary Alternative Accommodation is a replacement to a condition which satisfies in all respects the requirements of the Output Requirements; and
- 10.11.2 Project Co shall reimburse the Trust for all reasonable costs, losses, expenses or damages incurred by the Trust in relation to taking the steps, or engaging others to take the steps, referred to in paragraph 10.11.1 above and the Trust shall be entitled to deduct any such amount from any amounts payable to Project Co under the provisions of this Agreement.

## **PART C**

### **Section 2 - Part C: Review of Weightings**

#### **11. FAILURE EVENTS**

11.1 The identification of Functional Areas, Service Response Times, Rectification Times, Area Weighting Percentages, and the Failure Event Deduction Percentages shall be reviewed at any time but at least once in every Contract Year by the Trust and Project Co if requested by either party and the Trust and Project Co shall act reasonably and diligently in carrying out the review.

11.2 The Trust and Project Co may in respect of each matter the subject of the review either:-

11.2.1 agree that the status of the relevant matter shall continue to apply unchanged in the Contract Year immediately following the review; or

11.2.2 agree adjustments to the relevant matter to take effect in the Contract Year immediately following the review; and

11.2.3 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 paragraph 11.1 of this Part 18 of the Schedule.

#### **12. QUALITY FAILURES**

12.1 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 Trust and Project Co if requested by either party and the Trust and Project Co shall act reasonably and diligently in carrying out the review.

12.2 The Trust and Project Co shall in respect of each Service and each Quality Failure Category either:-

12.2.1 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

12.2.2 agree adjustments to the relevant percentage figure to take effect in the Contract Year immediately following the review; and

12.2.3 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 paragraph 12.1 of this Part 18 of the Schedule.

## PART D

### SECTION 2 - PART D

#### 13. FAILURE BY PROJECT CO TO MONITOR OR REPORT

- 13.1 Subject to paragraphs 13.2 to 13.5 of this Part 18 of the Schedule, 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.
- 13.2 If there shall be any error or omission in the Performance Monitoring Report for any Contract Month Project Co and the Trust shall agree the amendment to the Performance Monitoring Report or, failing agreement within 5 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 13.8 of this Part 18 of the Schedule either party may refer the matter to the Fast Track Dispute Resolution Procedure.
- 13.3 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 13.8 of this Part 18 of the Schedule apply, in which case there shall be deemed to be a new High Priority Quality Failure.
- 13.4 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 13.8 of this Part 18 of the Schedule apply, in which case there shall be deemed to be a new High Priority Quality Failure.
- 13.5 Where Project Co fails to monitor or accurately to report a Failure Event or a Quality Failure in the circumstances referred to in paragraph 13.8 of this Part 18 of the Schedule, for the purposes of paragraph 1 of Section 1 of Part 25 of the Schedule (*Record Provisions*) the Trust shall be deemed to have reasonable cause to require that Project Co shall make available to the Trust for inspection such of the records referred to in Section 2 of Part 25 of the Schedule as the Trust may specify.

- 13.6 Project Co shall upon submission of a valid invoice pay to the Trust a sum equal to the costs reasonably incurred by the Trust in carrying out any inspection and investigation of records made available pursuant to paragraph 13.5 above.
- 13.7 In the event that the Trust's inspection or investigation of records made available pursuant to paragraph 13.5 above reveals any further matters of the type referred to in paragraphs 13.3 and 13.4 above, those matters shall be dealt with in accordance with paragraph 13.3 and 13.4 as appropriate and the Trust shall, in addition, be entitled to make deductions in respect of any Failure Events or Quality Failures in the manner prescribed in Section 2 of this Part 18 of the 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 Trust's investigations or, to the extent that the Trust is unable to make any further deductions from the Service Payment in respect of that Contract Month by virtue of paragraph 3.4 of this Part 18 of the Schedule, may be carried forward and deducted from Service Payments due in respect of subsequent Contract Months.
- 13.8 For the purposes of paragraphs 13.2, 13.3, 13.4, and 13.5, of this Part 18 of the Schedule the relevant circumstances are:-
- 13.8.1 fraudulent action or inaction; or
- 13.8.2 deliberate misrepresentation; or
- 13.8.3 gross misconduct or incompetence in each case on the part of Project Co or a Project Co Party.
- 13.9 For the purposes of calculating the amount of any deduction to be made under paragraph 1 of this Part 18 of the Schedule in respect of any Quality Failure arising under paragraphs 13.3 or 13.4 of this Part 18 of the Schedule:
- 13.9.1 "**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 Estates: and
- 13.9.2 "**R**" shall be deemed to be 30 days.
- 13.10 The provisions of this Part 18 of the Schedule shall be without prejudice to any rights of the Trust in this Agreement pursuant to Clause 29 (*Monitoring of Performance*) Clause 44 (*Project Co Events of Default*) and Clause 54 (*Corrupt Gifts and Payments*).

## **Section 4: Service Failure Points**

### **14. SERVICE FAILURE POINTS**

Service Failure Points shall be awarded for every Failure Event and every Quality Failure deemed or actual which occur during the Project Term unless such Service Failures are disregarded pursuant to paragraph 5.2 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.

#### **14.1 Service Failure Points and Failure Events**

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

14.1.1.1 the number of Service Failure Points attributable to the Failure Event Category allocated to the relevant Failure Event as set out in column 2 of the Table in Appendix C; and

14.1.1.2 the number of Affected Days in respect of the relevant Failure Event as determined pursuant to paragraph 7.2 of Part B of Section 2 of this Schedule.

#### **14.2 Service Failure Points and Quality Failures**

14.2.1 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 2 of the Table in Appendix B.

14.2.2 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

14.2.3 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.

**14.3 Total Monthly Service Failure Points**

Project Co shall calculate:

14.3.1 the total number of Service Failure Points awarded to each Service provided by the individual Service Providers in each Contract Month; and

14.3.2 the sum total of all Service Failure Points awarded across all Services provided by all Service Providers in each Contract Month.

**14.4 New Service Providers**

14.4.1 No abatement of the award of Service Failure Points shall be allowed to a New Service Provider in respect of any "bedding-in" period.

14.4.2 Without prejudice to paragraph 14.4.3 of this Section 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 14.3.1 of this Section 4.

14.4.3 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.

**APPENDIX A**  
**Service Weightings (SW)**

<b>Service</b>	<b>Service Weighting (%)</b>
Estates	5%
Grounds and Gardens	4%
Pest Control	2%
Energy and utilities	5%

**APPENDIX B**

**Quality Failure Categories**

<b>Quality Failure Category</b>	<b>Deduction Category DP(QF)</b>	<b>SFPs</b>
High Priority	25%	20
Medium Priority	15%	6
Low Priority	5%	2

## APPENDIX C

### Failure Event Categories

<b>Failure Event Category</b>	<b>SFPs</b>	<b>Percent Deduction</b>
A. Repeated Rectification Only	1	5%
B. Major	4	25%
C. Unavailable and Used	20	50%
D. Unavailable and Not Used	20	100%

**APPENDIX D- Area Weighting Percentage**

<b>1. FUNCTIONAL AREA</b>	<b>No of Areas</b>	<b>Total Area Weighting Percentage</b>
Inpatient bedrooms – ensuite	40	160%
Day/dining room	4	10%
Assisted bathrooms	2	10%
Assisted showers / toilets / wc	14	14%
Snoezelen room	1	1%
Offices	4	4%
Disposal / sluice / clean utility	3	9%
Preparation room	1	1%
Stores	6	3%
Nurse station (ward)	1	10%
Nurse station (O/ P/ D)	1	5%
Satellite bases	2	1%
Ward Pantry	1	1%
DSR	3	3%
Disposal hold	2	2%
Hairdresser's room	1	1%
Kitchen / servery	1	10%
Overnight accommodation – ensuite + wc	1	2%
Personal laundry	1	2%
Reception	1	10%
Staff dining room	1	5%
Changing rooms	3	5%
Multi-purpose room	1	2%
Medical physics	1	1%
Clinic waiting area	1	10%
Baby feeding / changing	1	2%
Examination / consulting rooms	9	36%
Treatment room	1	25%
Physiotherapy cubicles	3	3%
Physiotherapy gym	1	15%
X-ray room	1	25%
Corridors		10%
OT kitchen	1	1%
IT room	1	1%