

**SCHEDULE 8**

**PAYMENTS**

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

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## SCHEDULE 8

### PAYMENTS

#### 1. INTERPRETATION

##### 1.1 Definitions

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

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

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

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

**“Deduction”** means a deduction from a Service Payment, calculated in accordance with this Schedule;

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

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

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

**“Labour Rate”** means the hourly rate payable to housekeeping aids and waste and linen team staff pursuant to the Acciona Facility Services S.A.U. collective agreement to be negotiated and to come into effect as of **DELETED**;

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

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

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

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

**“New Service Provider Start Date”** means:

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

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

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

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

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

**“Payment Period”** means a calendar month;

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

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

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

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

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

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

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

in each case calculated:

- (d) from the time that the Event is reported to the Help Desk; or
- (e) in the case of an Event that has not been Rectified within one or more earlier Rectification Periods, from the end of the immediately preceding Rectification Period;

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

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

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

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

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

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

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

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

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

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

**“Total Unavailability”** occurs when:

- (a) Functional Units with floor area of 25% or more of the Facility are Unavailable at the same time and a Rectification Period has expired with respect to each such Unavailable Functional Unit;
- (b) 50% or more of the washrooms in the Facility are Unavailable at the same time and a Rectification Period has expired with respect to each such washroom; or
- (c) any of the following are not accessible:
  - (1) the service tunnel at level 0
  - (2) the elevators at level 0;
  - (3) the service elevator lobbies at level 0;
  - (4) two or more of the required fire exits;
  - (5) the Level 3 link; or

(6) all of the patient transfer elevators,

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

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

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

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

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

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

## 2. CALCULATION OF SERVICE PAYMENTS

### 2.1 Service Payment

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

- (a) the Periodic Payment for that Payment Period;
- (b) subject to Section 3.1 of this Schedule, minus the aggregate of Deductions for that Payment Period; and
- (c) plus amounts due to Project Co under Section 7 in respect of Outbreak Cleanings in that Payment Period.

### 2.2 Periodic Payments

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

- (a) a fixed amount that is **DELETED** of the Periodic Payment will not be Index Linked and the remainder of the Periodic Payment, subject to Section 10.4 of this Schedule, will be Index Linked;
- (b) the Periodic Payment will be adjusted as set out in Section 10 of this Schedule;
- (c) if a Bed Usage Notice delivered by the Authority pursuant to Section 2.3 or 2.4 of Appendix 4E [Housekeeping and Waste Management Services] results in a change in the applicable Bed Usage Band as shown on Appendix 8D [Bed Usage Bands], from the effective date of such Bed Usage Notice, the Periodic Payment will be adjusted by an

amount equal to the increase or decrease, as the case may be, resulting from calculating the Periodic Payment using the amount shown in Column 3 of Appendix 8D [Bed Usage Bands] which corresponds to the number of open beds set out in the Bed Usage Notice for the applicable Payment Period;

- (d) the Periodic Payment will be increased by **DELETED** (Index-Linked) as of the date on which the Demand Maintenance Night Cover arrangements set out in Section 3.12 of Appendix 4D [Plant Services] are terminated by the Authority in accordance with that Section;
- (e) the Periodic Payment will be adjusted for Market Tested Services in accordance with Section 2.3 of this Schedule;
- (f) if the first Payment Period from and after the Service Commencement Date is less than a full calendar month, the Periodic Payment will be reduced by the same proportion that the first Payment Period is less than a full calendar month; and
- (g) if the last Payment Period of the Term is less than a full calendar month, the Periodic Payment will be reduced by the same proportion that the last Payment Period is less than a full calendar month.

### **2.3 Effect of Market Testing**

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

- (a) the Periodic Payments following the Market Testing will be adjusted according to the following procedure:
  - (1) the new prices for the Market Tested Services will be calculated for each Payment Period for the applicable Contract Year;
  - (2) the prices for the Market Tested Services as set out in Appendix 8B will be calculated, including applicable indexation, for each Payment Period for the applicable Contract Year;
  - (3) after such calculations, the Periodic Payments will be adjusted by the amount of the difference (positive or negative) between the aggregate of the new prices and the prices in Appendix 8B;
  - (4) any adjustment to the Periodic Payments will take effect, in the case of Market Tested Services subject to a Benchmarking Exercise, on the Market Testing Date or as otherwise agreed by the parties, and in the case of all other Market Tested Services, on the later of the Market Testing Date to which the Market Testing related and the date on which the Preferred Service Tenderer begins to perform the relevant Market Tested Services;

- (5) if the new prices for the Market Tested Services are not indexed, or are indexed differently from the manner set out in the definition of “Index Linked”, then the indexation of the Periodic Payments under Section 2.2(a) of this Schedule will be deemed to be modified as required to give effect to the indexation arrangement for the new prices for the Market Tested Services; and
  - (6) for the purpose of subsequent Market Testing, Appendix 8B will be deemed to be modified as required to give effect to the new prices for the Market Tested Services; and
- (b) the Outbreak Cleaning Cost following a Market Testing of the Housekeeping and Waste Management Services will be adjusted according to the following procedure:
- (1) the new Labour Rate and Outbreak Cleaning Cost will be calculated, including applicable indexation, for the applicable Contract Year;
  - (2) any alteration to the Outbreak Cleaning Cost will take effect, in the case of Market Tested Services subject to a Benchmarking Exercise, on the Market Testing Date or as otherwise agreed by the parties, and in the case of all other Market Tested Services, on the later of the Market Testing Date to which the Market Testing related and the date on which the Preferred Service Tenderer begins to perform the relevant Market Tested Services;
  - (3) if the new price for the Outbreak Cleaning Cost is not indexed, or is indexed differently from the manner set out in the definition of “Index Linked”, then indexation of the Outbreak Cleaning Cost will be deemed to be modified as required to give effect to the indexation arrangement for the new price for the Outbreak Cleaning Cost; and
  - (4) for the purpose of subsequent Market Testing, Section 7.1 of this Schedule will be deemed to be modified as required to give effect to the new price for the Outbreak Cleaning Cost.

### **3. DEDUCTIONS FROM SERVICE PAYMENTS**

#### **3.1 Entitlement to Make Deductions**

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

- (a) the maximum aggregate of all Deductions that the Authority can make from a Service Payment in respect of a Payment Period is the aggregate amount of the Periodic Payment and Outbreak Cleaning payments for that Payment Period; and



- (b) to the extent that an Unavailability Event or a Service Failure is the result of an Excusing Event or a Compensation Event, the Authority will not be entitled to make Deductions.

### **3.2 Classification of Event**

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

### **3.3 Service Failure Becoming Unavailability Event**

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

### **3.4 Total Unavailability**

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

### **3.5 Deductions for Unavailability Events**

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

- (a) \$200, Index Linked; and
- (b) subject to Section 3.6 of this Schedule, the aggregate of the Unit Deduction Amounts for all Functional Units made Unavailable as a result of the Unavailability Event.

### **3.6 Unavailable But Used**

If any Functional Unit is Unavailable (including, for greater certainty, Functional Units that are deemed Unavailable under Section 3.4 of this Schedule) but the Authority continues to use it or a Linked Unit for the intended use or purpose of that Functional Unit or Linked Unit, for the purposes of Section 3.5(b) of this Schedule the Unit Deduction Amount applicable to an Unavailability Deduction for such Functional Unit and Linked Unit will be multiplied by 50%.

### 3.7 Deductions for Service Failures

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

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

### 3.8 Response Time

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

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

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

### 3.9 Rectification Periods

If an Event occurs:

- (a) in the case of a Service Failure for which there is no Rectification Period, the Authority will make the applicable Service Failure Deduction;
- (b) in the case of an Unavailability Event, other than a deemed Unavailability Event due to Total Unavailability, if Project Co Rectifies the Unavailability Event within the Rectification Period, then no Deduction will be made for such Unavailability Event;
- (c) in the case of a deemed Unavailability Event due to Total Unavailability, the Authority will make the applicable Unavailability Deduction; and
- (d) in any case and in addition to the foregoing, if Project Co does not Rectify the Event (which in the case of deemed Unavailability Events due to Total Unavailability means that Total Unavailability no longer occurs) within the Rectification Period:
  - (1) the applicable Deduction will be made for the Event; and
  - (2) a new Event (which in the case of a Service Failure will be of the same category as the original Service Failure unless otherwise specified in Schedule 4 [Service

Protocols and Specifications]) will be deemed to occur at the end of such Rectification Period and the provisions of this Section 3.9 will again apply and will continue to apply with repeated Deductions until Project Co Rectifies the Event.

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

### 3.10 Multiple Events

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

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

### 3.11 Temporary Repairs

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

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

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

### **3.12 Compliance with Laws and Good Industry Practice**

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

### **3.13 Deficiency Correction Period - Unavailability**

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

### **3.14 Service Failure Related Solely to Unavailability**

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

### **3.15 Transition Periods - Service Failures**

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

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

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

#### **4. TEMPORARY ALTERNATIVE ACCOMMODATION**

##### **4.1 Project Co Option to Provide**

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

##### **4.2 Requirements**

The Temporary Alternative Accommodation must:

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

##### **4.3 Notice Requirements**

The Temporary Alternative Accommodation Notice must:

- (a) describe the Temporary Alternative Accommodation;
- (b) invite the Authority to inspect the Temporary Alternative Accommodation and give the Authority reasonable notice of a time and a date when it may do so;
- (c) set out Project Co’s proposals regarding the timing and co-ordination of relocation to the Temporary Alternative Accommodation;

- (d) specify the date (which must be agreed by the Authority before the submission of the written notice) by which Project Co reasonably expects the Authority to be able to relocate back to the applicable Functional Unit (the “**Return Date**”); and
- (e) describe the terms upon which the Authority will be entitled to occupy such Temporary Alternative Accommodation including the proposed division of such accommodation into Functional Units and the weighting to be attributed to them for the purposes of the operation of this Schedule.

#### **4.4 Acceptance by Authority**

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

#### **4.5 Effect of Acceptance**

If the Authority accepts the offer of Temporary Alternative Accommodation:

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

#### **4.6 Additional Authority Costs**

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

#### **4.7 Deduction**

If the Authority accepts Project Co’s offer of Temporary Alternative Accommodation, no further Deductions will be made in respect of a Functional Unit vacated by the Authority while the Temporary Alternative Accommodation replacing that Functional Unit is being used by the Authority. The Authority will be entitled to make Deductions in respect of any Service Failure or Unavailability Event which occurs

in the Temporary Alternative Accommodation as if the Temporary Alternative Accommodation was the Functional Unit which it replaced and any Deduction in respect of an Unavailability Event will be calculated using the Unit Deduction Amounts attributed to such Functional Unit.

#### **4.8 Return to Functional Unit**

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

#### **4.9 Failure to Complete Works**

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

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

#### **4.10 Long Stop Return Date**

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

- (a) the Authority may (without prejudice to its rights under Section 12 (Project Co Events of Default) or any other express rights of the Authority under this Agreement) take such steps as it considers to be appropriate (either itself or by engaging others to take such steps) to restore the Functional Unit to a condition that satisfies in all respects the requirements of Schedule 4 [Services Protocols and Specifications]; and
- (b) Project Co will reimburse the Authority for all reasonable direct costs and expenses incurred by the Authority in relation to taking the steps, or engaging others to take the steps, referred to in Section 4.10(a) and the Authority will be entitled to deduct any such amount from any amounts payable to Project Co under this Agreement.

## **5. REVIEW OF FUNCTIONAL UNITS, DEDUCTIONS, ETC.**

### **5.1 Initiation of Review**

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

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

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

### **5.2 Results of Review**

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

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

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

### **5.3 Effective Time of Adjustments**

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

## **6. FAILURE BY PROJECT CO TO MONITOR OR REPORT**

### **6.1 Performance Monitoring Report**

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



## **6.2 Failure to Monitor or Report**

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

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

## **6.3 Misconduct**

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

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

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

## **6.4 No Prejudice to Other Rights**

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

## **7. OUTBREAK CLEANING PAYMENT**

### **7.1 Outbreak Cleaning Cost**

As of the Effective Date, the Outbreak Cleaning Cost is equal to the lesser of:

- (a) the sum of:
  - (1) the Labour Rate per person hour of labour reasonably required to attend to an Outbreak Cleaning;

- (2) an allowance for indirect costs calculated by multiplying the Labour Rate by **DELETED**; and
  - (3) an allowance for direct costs calculated by multiplying the sum of the Labour rate and the allowance calculated in (2) above by **DELETED**; and
- (b) **DELETED** per IPU per Outbreak Cleaning.

The Labour Rate and the maximum amount per IPU set out in (b) above will (subject to Section 10.4 regarding the indexation of the Labour Rate) be Index Linked and will be adjusted for Market Tested Services in accordance with Section 2.3 of this Schedule.

## 7.2 Payment

Project Co will not be entitled to any payment for the first 24 Outbreak Cleanings in a Contract Year. For each Outbreak Cleaning in excess of that amount, Project Co will be entitled to the Outbreak Cleaning Cost applicable to such Outbreak Cleaning.

## 8. GENERAL PAYMENT PROVISIONS

### 8.1 Invoicing and Payment Arrangements

With respect to invoicing and payment:

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

- (d) the Authority will not be obligated to make any payment unless all conditions of payment in this Agreement have been satisfied;
- (e) within 10 Business Days following the end of each Payment Period, Project Co will submit to the Authority:
  - (1) a Performance Monitoring Report for that Payment Period; and
  - (2) a report (a "**Payment Adjustment Report**") setting out any adjustments, including Deductions, to the Service Payments for that Payment Period, and the amount of over-payment or under-payment from the amount paid previously by the Authority for that Payment Period;
- (f) Project Co will include with each invoice and Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the invoiced amounts and amounts set out in each Payment Adjustment Report;
- (g) for the final 3 Payment Periods of the Term, the Authority may withhold from payment a reasonable amount for possible adjustments to the Service Payments; and
- (h) no payment will be construed as an acceptance or approval of incomplete, defective or improper Design, Construction, Services or any other matter provided by Project Co which is not in conformance with the requirements of this Agreement, and will not operate to relieve Project Co from any of its obligations under this Agreement.

## 9. RHD FUNDING

### 9.1 Definitions

In this Section 9:

- (a) "**Cost to Date**" as at a date means the total amounts paid or payable by Project Co to the Design-Builder under the Design-Build Agreement (including the amount of any holdback required under the *Builders Lien Act* (British Columbia)) for Construction performed by the Design-Builder; and
- (b) "**RHD Funding**" has the meaning set out in Section 9.2 of this Schedule.

### 9.2 Total RHD Funding Amount

In consideration for the Design and Construction of the Facility (and, for greater certainty, not on account of any Equipment) the Authority will pay \$85,097,600, inclusive of all Taxes, to Project Co in monthly instalments as set out in this Section 9 (the "**RHD Funding**").

### 9.3 Monthly Payment Amount

The amount of RHD Funding payable by the Authority to Project Co as at the end of the month indicated in Appendix 8C will be:

- (a) the amount of the instalment applicable to that month as set out in Column B of Appendix 8C;
- (b) less 40% of the amount, if any, by which the Cost to Date at the end of that month is less than the amount set out in Column C of Appendix 8C for that month.

#### 9.4 Catch-Up Payments

If a monthly payment of RHD Funding is reduced as a result of Section 9.3(b) of this Schedule, Project Co may on a later date invoice the Authority for the amount so reduced once the Cost to Date as at the later date is greater than or equal to the amount set out in Columns C of Appendix 8C for the month to which that payment applied. Project Co may combine such invoice with any other invoice for amounts payable under Section 9.3.

#### 9.5 Invoicing and Payment

Project Co will invoice the Authority for amounts payable under this Section 9 at any time after the end of the applicable month (or at any time after the relevant date for invoicing set out in Section 9.4 of this Schedule in the case of payment under Section 9.4 of this Schedule) and will include with that invoice:

- (a) a certificate of the Independent Certifier certifying (in the manner outlined in Section 3.4 of Schedule 2 [Design and Construction Protocols]) the Cost to Date as at the end of the applicable month (or as at the date of the invoice in the case of payment under Section 9.4 of this Schedule); and
- (b) copies of all certifications provided to, and communications from, the Senior Lenders with respect to payments to the Design-Builder;
- (c) a certificate of an officer of Project Co certifying that:
  - (1) Project Co is in compliance with all applicable provisions of the Senior Financing Agreements and the Design-Build Agreement with respect to all payments to the Design-Builder made on or before the date of the invoice; and
  - (2) Project Co has taken all steps required under the Senior Financing Agreement to draw the funds required (in addition to the amounts invoiced to the Authority) to pay the Design-Builder and knows of no reason why such funds would not be advanced as requested.

The Authority will review each invoice submitted in accordance with this Section 9.5 of this Schedule within 5 Business Days and pay the amount approved by the Authority within 10 Business Days after receipt of the invoice.

## 10. LABOUR RATE ADJUSTMENT

### 10.1 Definitions

In this Section 10, "**Labour Rate Adjustment**" means the decrease, if any, to be made to the Periodic Payment to reflect the amount, if any, by which the Labour Rate is less than **DELETED** per hour so that

any such decrease reflects the dollar for dollar decrease in the cost in providing the Housekeeping and Waste Management Services attributable solely to such difference in hourly rate of pay, multiplied by 1.0609 **DELETED** to account for assumed increases in the Labour Rate from September, 2008 to the Service Commencement Date.

#### **10.2 Parties to Meet**

Project Co and the Authority will meet no later than **DELETED** and, each Party acting reasonably and in good faith, will seek to agree to the Labour Rate Adjustment.

#### **10.3 Failure to Agree**

If the Parties do not agree to the Labour Rate Adjustment by **DELETED**, either Party may refer the matter to the Dispute Resolution Procedure.

#### **10.4 Adjustment to Periodic Payments**

The Periodic Payment will be adjusted to take into account the Labour Rate Adjustment agreed or determined in accordance with this Section 10. The portion of the Periodic Payment that is affected by the Labour Rate adjustment will not be Index-Linked until April 1, 2012.

**APPENDIX 8A**

**FUNCTIONAL UNITS, UNIT DEDUCTION AMOUNTS, RECTIFICATION PERIODS**

**[see separate Excel document]**

**APPENDIX 8B**

**COST FOR MARKET TESTED SERVICES**

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

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

Notes:

1. Subject to Section 10 of this Schedule 10, the prices are Index Linked.
2. Pursuant to Section 2.3(a)(6) of this Schedule 8, the prices in this table will be deemed to be modified as necessary after each subsequent Market Testing.

**APPENDIX 8C**

**RHD FUNDING**

A	B	C
Month	Maximum Instalment (\$000)	Minimum Cost to Date (\$000)
July, 2008	2,636	<b>DELETED</b>
August, 2008	1,595	<b>DELETED</b>
September, 2008	3,165	<b>DELETED</b>
October, 2008	2,296	<b>DELETED</b>
November, 2008	3,109	<b>DELETED</b>
December, 2008	3,340	<b>DELETED</b>
January, 2009	3,506	<b>DELETED</b>
February, 2009	3,697	<b>DELETED</b>
March, 2009	4,221	<b>DELETED</b>
April, 2009	4,160	<b>DELETED</b>
May, 2009	3,983	<b>DELETED</b>
June, 2009	3,487	<b>DELETED</b>
July, 2009	3,334	<b>DELETED</b>
August, 2009	3,132	<b>DELETED</b>
September, 2009	4,795	<b>DELETED</b>
October, 2009	4,807	<b>DELETED</b>
November, 2009	4,813	<b>DELETED</b>
December, 2009	4,753	<b>DELETED</b>
January, 2010	4,402	<b>DELETED</b>
February, 2010	4,026	<b>DELETED</b>
March, 2010	3,679	<b>DELETED</b>
April, 2010	3,335	<b>DELETED</b>
May, 2010	774	<b>DELETED</b>
June, 2010	0	<b>DELETED</b>
July, 2010	0	<b>DELETED</b>
August, 2010	0	<b>DELETED</b>
September, 2010	0	<b>DELETED</b>
October, 2010	0	<b>DELETED</b>
November, 2010	0	<b>DELETED</b>
December, 2010	0	<b>DELETED</b>



**APPENDIX 8D**

**BED USAGE BANDS**

<b>Bed Usage Band</b>		<b>No. of Beds Open</b>	<b>Housekeeping Component of ASP (Index Linked)</b>
	Maximum Beds in Band	500	
<b>Band 490</b>			<b>DELETED</b>
	Minimum Beds in Band	481	
	Maximum Beds in Band	480	
<b>Band 470</b>			<b>DELETED</b>
	Minimum Beds in Band	461	
	Maximum Beds in Band	460	
<b>Band 450</b>			<b>DELETED</b>
	Minimum Beds in Band	441	
	Maximum Beds in Band	440	
<b>Band 430</b>			<b>DELETED</b>
	Minimum Beds in Band	421	
	Maximum Beds in Band	420	
<b>Band 410</b>			<b>DELETED</b>
	Minimum Beds in Band	401	
	Maximum Beds in Band	400	
<b>Band 390</b>			<b>DELETED</b>
	Minimum Beds in Band	381	
	Maximum Beds in Band	380	
<b>Band 370</b>			<b>DELETED</b>
	Minimum Beds in Band	361	
	Maximum Beds in Band	360	
<b>Band 350</b>			<b>DELETED</b>
	Minimum Beds in Band	341	

Bed Usage Band		No. of Beds Open	Housekeeping Component of ASP (Index Linked)
	Maximum Beds in Band	340	
<b>Band 330</b>			<b>DELETED</b>
	Minimum Beds in Band	321	
	Maximum Beds in Band	320	
<b>Band 310</b>			<b>DELETED</b>
	Minimum Beds in Band	301	
	Maximum Beds in Band	300	
<b>Band 290</b>			<b>DELETED</b>
	Minimum Beds in Band	281	