



Llywodraeth Cymru
Welsh Government

Payment Mechanism

**Schedule 14¹ of the
Standard Form Education MIM Project
Agreement**

**(WEP Strategic Partnering Framework
Version)**

**November 2018
(Engagement Version)²**

¹ The Payment Mechanism has been developed in the context of a Schools project and will require project specific review in the context of College projects. Please see further guidance in the Important Notice attached to the Project Agreement.

² Welsh Government is intending to consult separately on the subject of Energy. This draft is subject to development of those specific issues.

**SCHEDULE 14
PAYMENT MECHANISM**

SECTION 1

INTERPRETATION

In this Schedule 14 (*Payment Mechanism*) and elsewhere in this Agreement (save where Schedule 1 (*Definitions and Interpretation*) provides to the contrary) the following words shall have the following meanings:

“Additional Period”	means such additional five (5) hour block periods outside of the Core Day which the Authority can request in accordance with Clauses 5.10 to 5.13 (<i>Additional Periods</i>) and during which the Services must be provided at the [specified] Facility;
“Alternative Accommodation”	means the alternative accommodation offered by Project Co to the Authority in accordance with paragraphs 4.7 of Section 3 (<i>Deductions from Monthly Service Payments</i>) of this Schedule 14 (<i>Payment Mechanism</i>);
"Annual Energy Adjustment" or "AEA"	means [■]; ³
"Annual Service Charge" or "ASC"	means the sum in Pounds Sterling calculated in accordance with paragraph 3 (<i>Annual Service Charge</i>) of Section 2 (<i>Calculation of Service Payments</i>) of this Schedule 14 (<i>Payment Mechanism</i>);
"Area"	means an area of [the]/[each] Facility, identified as such on the Area Data Sheets;
“Area Data Sheets”	the data sheets relating to each Area within a [relevant] Facility and annexed to Appendix 3 (<i>Area Data Sheets</i>) of this Schedule 14 (<i>Payment Mechanism</i>);
“Area Failure Deduction”	means an amount deducted per Core Session following an Availability Failure, as set out Section 10 (<i>Availability Priority Categories</i>) of this Schedule 14 (<i>Payment Mechanism</i>) and adjusted in accordance with this Agreement;
"Available"	means any Area which is not Unavailable, and Availability shall be construed accordingly;
“Availability Deduction” or	an amount calculated in accordance with paragraph 4.2 of Section 3 (<i>Deductions from Monthly Service Payments</i>) of this

³ To be developed. See separate "Energy" consultation paper.

“AD”	Schedule 14 (<i>Payment Mechanism</i>) adjusted in accordance with this Agreement;
"Availability Failure"	means subject to paragraph 3 of Section 4 (<i>Notice of Service Events, Monthly Service Reports and Temporary Repairs</i>) of Schedule 14 (<i>Payment Mechanism</i>) a Service Event which has not been Rectified within the relevant Rectification Period and which causes an Area to be Unavailable;
“Availability Priority Category”	means the categories set out in Section 10 (<i>Availability Priority Categories</i>) of this Schedule 14 (<i>Payment Mechanism</i>) and identified on the Area Data Sheets;
"Availability Standards"	means the minimum requirements to be met by Project Co under this Agreement so as to ensure that an Area is Available, identified as such in Section 9 (<i>Availability Standards and Response and Rectification Periods for Unavailability</i>) of this Schedule 14 (<i>Payment Mechanism</i>), [together with any such criteria specific to an Area which are identified on the Area Data Sheet for that Area];
“Catering Areas”	means the Areas identified as necessary for the provision of meals in accordance with paragraph [■] of the Authority’s Construction Requirements;
“Change Protocol Deductions” or “CPD”	means the deductions arising pursuant to paragraph 2 of Section 8 (<i>Performance Failure Effective Deductions and Change Protocol Deductions</i>) of this Schedule 14 (<i>Payment Mechanism</i>)
“Close / Closed / Closure”	means a Facility will be considered as Closed where the Authority Representative or head teacher or deputy head teacher, acting reasonably, decides that all of the Students or visitors to the Facility are requested to leave the Facility, or not to attend the Facility, because of an Escalation Event;
“Consequential Unavailability” or “Consequentially Unavailable”	means an Area that would otherwise be Available but which is rendered Unavailable because its principal use or access thereto is dependent on an adjacent Area that has become Unavailable in accordance with paragraph 9 of Section 3 (<i>Recording Service Events</i>) of Schedule 14 (<i>Payment Mechanism</i>);
"Consequential Unavailability Table"	means [the table contained in the Area Data Sheets for the [relevant] Facility, with columns headed 'Full Space Name' or 'Generic Space Name' and 'CU'];
“Core Day”	means each day, itself comprising a Core Day Morning and Core Day Afternoon, that the Authority requires use of the [relevant] Facility to deliver Educational Services to the Students during

	the Academic Year;
“Core Day Afternoon”	has the meaning given to it in Appendix 1 (<i>Core Sessions and Additional Periods</i>) of this Schedule 14 (<i>Payment Mechanism</i>);
“Core Day Morning”	has the meaning given to it in Appendix 1 (<i>Core Sessions and Additional Periods</i>) of this Schedule 14 (<i>Payment Mechanism</i>);
“Core Sessions”	<p>means those periods, set out in Appendix 1 (<i>Core Sessions and Additional Periods</i>) of this Schedule 14 (<i>Payment Mechanism</i>), during which the Facilities (or relevant parts of them) are required to be made Available to the Authority during the Academic Year, which shall more particularly comprise:</p> <p>(a) a Core Day Morning or Core Day Afternoon during the Core Day; and/or</p> <p>(b) any Additional Period requested by the Authority in accordance with Clause 5.10 to 5.13 (<i>Additional Periods</i>);</p>
"Deduction Period" or "DP"	<p>means:</p> <p>(a) where the relevant Performance Failure arises following a Service Event in respect of which a Rectification Period is specified in the Performance Standards, as applicable, means the number of periods equivalent to the Rectification Period that elapse during Core Sessions only from the point at which the Service Failure Time occurs to the point at which the Logged Rectification Time occurs;</p> <p>(b) where the relevant Performance Failure arises following a Service Event in respect of which no Rectification Period is specified in the Performance Standards, means 1;</p> <p>(c) where it is deemed that a Performance Failure has occurred which is not related to a specific Performance Standard set out in the Service Level Specification, means 1;</p> <p>(d) where the relevant Availability Failure arises following a Service Event in respect of which a Rectification Period is specified in the Availability Standards, means the number of Core Sessions that elapse from and including the Core Session in which the Service Failure Time occurs to, and including, the Core Session on which the Logged Rectification Time occurs; or</p> <p>(e) as otherwise set out in paragraph 8.2 of Section 3 of this Schedule 14 (<i>Payment Mechanism</i>).</p>
“Escalation Event”	<p>means [in respect of each Facility] any of the following:</p> <p>(a) where, in any Core Session, the aggregate number of</p>

	<p>all Areas which are Unavailable or Unavailable but Used (disregarding those Areas where no Availability Deductions may be made pursuant to paragraph 4.5 of Section 3 (<i>Deductions from Monthly Service Payments</i>) of this Schedule 14 (<i>Payment Mechanism</i>)) within a Facility exceeds thirty percent (30%) of the aggregate number of all the Areas within the relevant Facility; or</p> <p>(b) where, in any Core Session, the number of sanitary fittings or washbasins Unavailable to Students in a Facility for reasons other than those excused under paragraph 4.5 of Section 3 (<i>Deductions from Monthly Service Payments</i>) of this Schedule 14 (<i>Payment Mechanism</i>) is more than thirty per cent (30%) of the number contained in Project Co's Proposals; or</p> <p>(c) where the aggregate number of all Relevant Teaching Areas which are Unavailable or Unavailable but Used in a Facility (disregarding those Areas where no Availability Deductions may be made pursuant to paragraph 4.5 of Section 3 (<i>Deductions from Monthly Service Payments</i>) of this Schedule 14 (<i>Payment Mechanism</i>)) exceeds twenty five per cent (25%) of the aggregate number of all the Relevant Teaching Areas within the relevant Facility; or</p> <p>(d) where the Catering Areas are Unavailable at any point between 7 a.m. and 2 p.m. during the Core Day,</p> <p>save in each case to the extent directly cause by an Excusing Cause, Relief Event of Force Majeure Event.⁴</p>
"Helpdesk"	means the helpdesk facilities established by Project Co pursuant to the Service Level Specification;
"Indexation Base Month"	April 20[xx ⁵];
"Indexation Review Date"	shall be 1 April twelve (12) months immediately following the Indexation Base Month, and every 1 April thereafter;
"Logged Rectification Time"	means the time which is shown in the Helpdesk records maintained by Project Co in accordance with the Service Level Specification as being the time when a Service Event was Rectified or Remedied, as the case may be, or, in the event that a failure affecting the Helpdesk occurs, as shown on the manual Helpdesk records maintained by Project Co;
"Logged Report Time"	means the date and time which is shown in the Helpdesk records maintained by Project Co in accordance with the Service

⁴ To be considered on a project specific basis.

⁵ This the April in the year that immediately precedes Financial Close and should be consistent with the base month used in the Financial Model

	Level Specification as being the date and time at which a Service Report was received by the Helpdesk [or, if a failure affecting the Helpdesk occurs, as shown on the manual Helpdesk records maintained by Project Co;
“Make Safe”	means to ensure that any immediate risk of injury or incident that might impinge on the health and safety and/or security of users of the Facilities or immediate risk of damage to property is removed by means of temporary or permanent Rectification, notification and/or obstruction;
"Minimum Agreed Availability Standards"	means the minimum standards with which the Area must comply, as agreed between the Authority and Project Co, for the period until a Permanent Repair can be undertaken;
“Monthly Service Charge”	means the sum in Pounds Sterling calculated in accordance with paragraph 2 of Section 2 (<i>Calculation of Service Payments</i>) of this Schedule 14 (<i>Payment Mechanism</i>);
"Monthly Service Payment"	means the sum in Pounds Sterling calculated in accordance with paragraph 1 of Section 2 (<i>Calculation of Service Payments</i>) of this Schedule 14 (<i>Payment Mechanism</i>);
“Other Costs” or “OC”	means those costs set out in Section 6 (<i>Other Costs</i>) of this Schedule 14 (<i>Payment Mechanism</i>);
"Performance Failure"	means, subject to paragraph 3 of Section 4 of Schedule 14 (<i>Payment Mechanism</i>), a Service Event relating to a Performance Standard which has not been Rectified within the relevant Rectification Period (if any), or as otherwise deemed to be a Performance Failure in accordance with the terms of this Schedule 14 (<i>Payment Mechanism</i>);
"Performance Failure Deductions"	means an amount calculated in accordance with paragraph 2.1 of Section 3 (<i>Deductions from Monthly Service Payments</i>) of this Schedule 14 (<i>Payment Mechanism</i>), adjusted in accordance with this Agreement;
“Performance Failure Effective Deduction”	means the financial deduction specified in paragraph 1 of Section 8 (<i>Performance Failure Effective Deductions and Change Protocol Deductions</i>) of this Schedule 14 (<i>Payment Mechanism</i>) and adjusted in accordance with this Agreement;
"Performance Standards"	means the service requirements identified as such, set out in the Service Level Specification;
"Permanent Repair"	means Rectification following the agreement of a Temporary Repair;

"Permanent Repair Deadline"	has the meaning given in paragraph 1.2 of Section 4 of this Schedule 14 (<i>Payment Mechanism</i>);
"Rectification"	means, following the occurrence of a Service Event, making good the Service Event so that the subject matter of the Service Event complies with the levels of Service required pursuant to this Agreement which shall, without prejudice to the generality of the foregoing, include (a) restoring all functional capability and (b) ensuring that any Area which has been affected by the relevant Service Event complies with the Availability Standards and the Performance Standards, as applicable, and "Rectify" and "Rectifying" shall be construed accordingly;
"Rectification Period"	<p>means, where applicable, the period of time specified in the Availability Standards or the Performance Standards, as the case may be, allowed for the Rectification of the relevant Service Event, which period:</p> <p>(a) shall commence at the Logged Report Time (if the Logged Report Time occurs during a Core Session [for the relevant Area]); or</p> <p>(b) if the Logged Report Time occurs outwith a Core Session [for the relevant Area], shall commence at the commencement of the immediately following Core Session [for the relevant Area];</p> <p>provided that:</p> <p>(i) subject to Project Co having promptly notified the Authority's Representative of the fact and having recorded the same on the Helpdesk system, the Rectification Period shall be extended by any period during which Project Co was prevented or interrupted by the Authority and any Authority Party from Rectifying any failure to meet the Availability Standards or Performance Standards; and</p> <p>(ii) if the Rectification Period would otherwise expire outside a Core Session [for the relevant Area], it shall be extended so as to expire immediately prior to the start of the next Core Session for the relevant Area;</p>
"Relevant Teaching Areas"	means those Areas used for the purposes of teaching identified as such in the Area Data Sheets;
"Relocation Date"	means the date and time, notified by Project Co to the Authority in accordance with paragraph 4.7.1 of Section 3 (<i>Deductions from Monthly Service Payments</i>) of this Schedule 14 (<i>Payment Mechanism</i>), on which it is intended by the parties that the Authority may resume occupation of the Area or Areas for which any Alternative Accommodation is a replacement;

“Relocation Plan”	means a plan, in relation to Alternative Accommodation, provided by Project Co to the Authority in accordance with paragraph 4.7.1 of Section 3 (<i>Deductions from Monthly Service Payments</i>) of this Schedule 14 (<i>Payment Mechanism</i>);
"Remedial Period"	means, where applicable, the period of time specified in the Performance Standards within which Project Co must Remedy a Service Event;
"Remedy"	means the actions or tasks, detailed in the column headed [Remedial Period/Remedy] in the Performance Standards, required to remedy a Performance Failure and "Remedied" shall be construed accordingly;
“Routine”	means, in relation to a Service Event, a fault that is not categorised as Urgent;
"Service Event"	means an incident or state of affairs which does not meet or comply with the Performance Standards and/or does not satisfy the Availability Standards;
"Service Failure Time"	means the date and time when a Service Event becomes a Performance Failure or an Availability Failure, as the case may be;
“Service Priority Category”	means the categories set out in paragraph 1 of Section 8 (<i>Performance Failure Effective Deductions and Change Protocol Deductions</i>) of this Schedule 14 (<i>Payment Mechanism</i>) as applied to the requirements in Schedule 12 (<i>Service Level Specification</i>);
"Service Report"	has the meaning given in paragraph 1.1 of Section 4 of this Schedule 14 (<i>Payment Mechanism</i>);
"Temporary Repair"	means, in respect of the occurrence of a Service Event, works of a temporary nature that do not constitute Rectification but satisfy the Minimum Agreed Availability Standards and substantially make good the relevant Service Event for the period until a Permanent Repair can be undertaken;
“Total Availability Deduction” or “TAD”	an amount calculated in accordance with paragraph 4.1 of Section 3 (<i>Deductions from Monthly Service Payments</i>) of this Schedule 14 (<i>Payment Mechanism</i>) adjusted in accordance with this Agreement;
"Unavailable"	means in relation to an Area, that such Area is in a state or condition which does not comply with any one or more of the Availability Standards or is Consequentially Unavailable, or is

	otherwise deemed to be Unavailable in accordance with this Schedule 14 (<i>Payment Mechanism</i>), and Unavailability shall be construed accordingly;
"Unavailable but Used"	means, in relation to any Area, that it is Unavailable but is used by the Authority for its normal purpose at any time (apart from the purposes of evacuating the Areas and the time taken for such evacuation) during the Core Sessions including for the avoidance of doubt, for the provision of Authority Services during which it would otherwise be Unavailable;
"Unavailable but Used Deduction" or "UUD"	an amount calculated in accordance with out paragraph 4.3 of Section 3 (<i>Deductions from Monthly Service Payments</i>) of this Schedule 14 (<i>Payment Mechanism</i>) adjusted in accordance with this Agreement;
"Urgent"	means a Service Event that gives rise to an immediate threat to the health and safety of any person and/or security of the Facilities, but does not render any Area Unavailable;.

SECTION 2

CALCULATION OF SERVICE PAYMENTS

1 MONTHLY SERVICE PAYMENT

1.1 The Monthly Service Payment in respect of Contract Month “n”, shall be calculated by adding to the Monthly Service Charge for Contract Month “n” the Other Costs for Contract Month “n”, by deducting the Total Availability Deductions and Performance Failure Deductions relating to Contract Month “n-2” and by applying the [Annual Energy Adjustment]⁶, in accordance with the following formula:

$$1.2 \quad \text{MSP}_n = \text{MSC}_n - \text{TAD}_{n-2} - \text{PFD}_{n-2} + \text{OC}_n [- \text{AEA}]$$

where:

MSP_n = the Monthly Service Payment for Contract Month “n”;

MSC_n = the Monthly Service Charge in respect of Contract Month “n” calculated in accordance with paragraph 2.2 of Section 2 (*Calculation of Service Payments*) of this Schedule 14 (*Payment Mechanism*);

TAD_{n-2} = the Total Availability Deductions for Contract Month “n-2”;

PFD_{n-2} = the Performance Failure Deductions for Contract Month “n-2”;

OC_n = means any Other Costs due for Contract Month “n” for which supporting uncontested invoices from Project Co’s suppliers are available and as set out in Section 6 (*Other Costs*) of this Schedule 14 (*Payment Mechanism*);

[AEA = any Annual Energy Adjustment as may be applicable in respect of the previous Contract Year.]⁷

2 MONTHLY SERVICE CHARGE⁸

2.1 The Monthly Service Charge shall commence on the Actual Completion Date for the [first available] Facility.

2.2 The Monthly Service Charge payable in respect of a Contract Month “n” shall be calculated using the following formula:

$$\text{MSC}_n = (\text{ASC}_n / 12) * F$$

where:

MSC_n = the Monthly Service Charge for the Contract Month n;

ASC_n = the Annual Service Charge for the Contract Year in which Contract Month n occurs, calculated in accordance with paragraph 3.1 of Section 2 (*Calculation of Service Payments*) of this Schedule 14 (*Payment Mechanism*) below;

⁶ To be developed. See separate “Energy” consultation paper.

⁷ To be developed. See separate “Energy” consultation paper.

⁸ Phased step up for snagging retention and/or any Phasing of the Works and/or batching of Schools to be developed as necessary on a project by project basis and aligned with the approach in Clause 35.1.

F = the Annual Service Charge Step-Up Factor which shall be calculated as follows:

$$F = \sum \text{All Facilities } (FP_x \times C_x)$$

where:

FP_x = the percentage of the Annual Service Charge attributable to each Facility 'x' from the Actual Completion Date [of that Facility], as set out in the table below:

Facility	FP _x ⁹
From the Actual Completion Date [for Facility 1]	[■]%
From the Snagging Completion Date [relating to] [the Main Works for] [Facility 1]	[■]%
[From the Actual Post Completion Works Date [relating to Facility 1]]	[■]%
[Repeat as necessary for Facility 2, Facility 3 etc]	[■]%
TOTAL	100.00%

C_x = dr_n / dm_n

where:

dr_n = total number of days in Contract Month "n" or, if the Actual Completion Date[,] [or] Snagging Completion Date [or Actual Post Completion Works Date] [for the relevant Facility] occurs part way through a Contract Month, the number of days remaining in Contract Month "n" at the relevant date or, as the case may be, number of days in the Contract Month up to and including the last day of the Project Term; and

dm_n = total number of days in Contract Month "n".

3 ANNUAL SERVICE CHARGE

3.1 The Annual Service Charge for Contract Year "n" shall be calculated using the following formula:

$$ASC_n = ASC_0 \times (1 - IF) + \left[(ASC_0 \times IF) \times \left[1 + \frac{(RPI(X)_n - RPI(X)_0)}{RPI(X)_0} \right] \right]$$

where:

ASC_n = the Annual Service Charge for the relevant Contract Year;

⁹ Approach to ASC Step Up post-completion may be different if there is more than one Facility

ASC ₀	=	the value for ASC ₀ stated in Appendix 2 (<i>Annual Service Charge at Base Date</i>) to this Schedule 14 (<i>Payment Mechanism</i>) (being the Annual Service Charge at the Base Date), subject to any adjustments made from time to time in accordance with any express provision of this Agreement;
IF	=	the Indexation Factor being [♦]%;
RPI(X) _n	=	the value of the RPI(X) published or determined with respect to the month of February which most recently precedes the relevant Contract Year ¹⁰ ; and
RPI(X) ₀	=	the value of the RPI(X) published or determined with respect to the Base Date.

¹⁰ Note this provision requires the Base Date month to be the same month as the Contract Year commences, with indexation taking place at commencement of the Contract Year. The month for RPI(X)_n would then be that being 2 months prior to the month of Contract Year commencement

SECTION 3

DEDUCTIONS FROM MONTHLY SERVICE PAYMENTS

1 ENTITLEMENT TO MAKE DEDUCTIONS

- 1.1 If at any time after the [Payment Commencement Date]/[Payment Commencement Date 1] an Availability Failure or a Performance Failure occurs the Authority will be entitled, subject to paragraphs 1.2 and 1.4 of this Section 3 (*Deductions from Monthly Service Payments*), paragraph 3 of Section 4 and Section 5 of this Schedule 14 (*Payment Mechanism*), to make Deductions in calculating the Monthly Service Payment in respect of that Availability Failure or Performance Failure, calculated in accordance with this Section 3 (*Deductions from Monthly Service Payments*) of Schedule 14 (*Payment Mechanism*).
- 1.2 In calculating the Monthly Service Payment for Contract Month "n", the maximum aggregate of all Deductions that the Authority may make in respect of Contract Month "n-2" is the Monthly Service Charge¹¹ for Contract Month "n-2".
- 1.3 In any Contract Month where the value of all Deductions to be applied in that Contract Month exceeds the value of the Monthly Service Charge, the Monthly Service Payment due by the Authority shall be an amount equal to the Other Costs for that Contract Month but the Authority shall, in calculating the Monthly Service Payment in respect of the following and (to the extent necessary) any subsequent Contract Months, be entitled to carry forward and set off the amount of such excess against the amount by which the value of the Monthly Service Charge exceeds the aggregate of all Deductions (as such values are calculated in the following Contract Month and (to the extent necessary) any subsequent Contract Months) in the relevant Contract Month for a period of up to twelve Contract Months, or, if earlier, until the amount of such excess has been set-off in full.
- 1.4 To the extent that an Availability Failure or a Performance Failure is the result of an Excusing Cause, the Authority shall not be entitled to make Deductions.
- 1.5 To the extent that an Availability Failure or a Performance Failure is the result of:
- 1.5.1 a Relief Event; or
- 1.5.2 an event of Force Majeure,
- the Authority shall be entitled to make Deductions but any such Deductions shall be disregarded for the purposes of Clause 26.3 (*Grounds for Warning Notices*) and Clause 40.1.8 (*Deductions*).

2 DEDUCTIONS FOR PERFORMANCE FAILURES

- 2.1 Subject to paragraphs 1 (*Entitlement to make Deductions*), 2.3 (*Deductions for Performance Failures*), 2.4 (*Deductions for Performance Failures*), 5 (*Repeated Failures*) and 7 (*Effect of Unavailability on Other Deduction*) of this Section 3 (*Deductions from Monthly Service Payments*), the amount of the Deduction in respect of Performance Failures is calculated using the following formula:

$$PFD_n = \sum (PFED \times DP) + \sum CPD$$

where:

¹¹ To comply with EPEC guidance on classification the Availability Deductions will be calibrated such that the proportionality principle of zero availability / zero payment is met.

- PFD_n = Performance Failure Deductions for Contract Month "n" (in Pounds Sterling) in respect of Performance Failures in Contract Month "n";
- PFED = Performance Failure Effective Deductions (indexed) for each instance of Performance Failure in Contract Month "n", in Pounds Sterling, as set out in paragraph 1 of Section 8 (*Performance Failure Effective Deductions and Change Protocol Deductions*) of this Schedule 14 (*Payment Mechanism*);
- CPD = Change Protocol Deductions in Contract Month "n", in Pounds Sterling, as set out in paragraph 2 of Section 8 (*Performance Failure Effective Deductions and Change Protocol Deductions*) of this Schedule 14 (*Payment Mechanism*);

- 2.2 In the case of a Service Event relating to a Performance Standard for which no Rectification Period is specified in the Performance Standard, a Performance Failure occurs immediately upon the occurrence of the Logged Report Time for the Service Event and, if it is not Remedied within the relevant Remedial Period, it will reoccur at the expiry of the Remedial Period and the Remedial Period will be deemed, for the purposes of making Deductions, to reoccur again, until such time as the Performance Failure has been Rectified.
- 2.3 No Deduction may be made by the Authority from the Monthly Service Payment for the relevant Contract Month in respect of any Performance Failures with a Service Priority Category of "Low" if the total number of Performance Failures per Facility which have Service Priority Category of "Low" and occurred in the relevant Contract Month is not more than [♦].
- 2.4 Where two (2) or more Performance Failures occur in an Area during a Core Session, only the Performance Failure that results in the highest Deduction will apply.

3 DEEMED PERFORMANCE FAILURES

- 3.1 If Project Co fails to monitor or accurately report a Service Event, a Performance Failure and/or an Availability Failure, without prejudice to the Deduction to be made in respect of the relevant Performance Failure or Availability Failure (if any), the failure to monitor or report the Service Event, Performance Failure and/or Availability Failure will be deemed to be a new Service Priority Category "Medium" Performance Failure, unless the circumstances set out in paragraph 1.7 of Section 5 (*Failure by Project Co to Monitor or Report*) apply, in which case there shall be deemed to be a new Service Priority Category "High" Performance Failure.
- 3.2 For the purpose of paragraph 3.1 and without prejudice to any deemed Service Priority Category "Medium" or "High" Performance Failure pursuant thereto, in determining whether an Availability Failure and/or Performance Failure has occurred, where a Service Report is not received by the Helpdesk and/or a Service Event is not logged to the Helpdesk records [in accordance with the Service Level Specification], the Logged Report Time shall be deemed to be the earlier of the time that Project Co:
- 3.2.1 became aware of the Service Event; or
- 3.2.2 ought reasonably to have been aware of the Service Event.

- 3.3 Where paragraph 3.1 applies and without prejudice to the Deductions to be made in respect of the relevant Performance Failure or Availability Failure, where Project Co has failed to log both a Service Event and the corresponding Performance Failure and/or Availability Failure, the deemed Performance Failure, shall apply in respect of the failure to log the corresponding Performance Failure and/or Availability Failure and not the failure to report the Service Event.

4 DEDUCTIONS FOR AVAILABILITY FAILURES

- 4.1 Subject to paragraphs 1 (*Entitlement to make Deductions*), 4.2 to 4.7 (*Deductions for Availability Failures*) and 5 (*Repeated Failures*) of this Section 3 (*Deductions from Monthly Service Payments*), the amount of Deductions in respect of Availability Failures shall be calculated in accordance with the following formula:

$$TAD = \sum (AD + UUD) \text{ (for all Areas [of the Facilities])}$$

where:

TAD = the Total Availability Deductions (in Pounds Sterling) for all Areas [of the Facilities] during the Core Sessions in the relevant Contract Month;

AD = the aggregate of the Availability Deductions for each Area [in each Facility] in the relevant Contract Month; and

UUD = the aggregate of the Unavailable but Used Deductions for each Area [in each Facility] in the relevant Contract Month.

- 4.2 The Availability Deduction in respect of each Unavailable Area which is not used during the period in which it is Unavailable shall be calculated as follows:

$$AD = AFD \times DP$$

Where:

AD = the Availability Deduction for an Area that is Unavailable; and

AFD = the Area Failure Deduction for that Area [for the relevant Facility] as set out in Section 10 (*Availability Priority Categories*) of this Schedule 14 (*Payment Mechanism*) and indexed in accordance with paragraph 4.4 (*Deductions for Performance Failures*) below.

- 4.3 The Unavailable but Used Deduction in respect of each Unavailable Area which is Unavailable but Used during the period in which it is Unavailable shall be calculated as follows:

$$UUD = 50\% \times AFD \times DP$$

where:

UUD = the Unavailable but Used Deduction for an Area that is Unavailable but Used; and

AFD = the Area Failure Deduction for that Area [for the relevant Facility] as set out in Section 10 (*Availability Priority Categories*) of this Schedule 14 (*Payment Mechanism*) and

indexed in accordance with paragraph 4.4 (*Deductions for Performance Failures*) below.

- 4.4 On each Indexation Review Date the Area Failure Deductions shall be indexed in accordance with the following:

$$AFD_y = [AFD_{y-1} \times (1 - IF)] + \left[(AFD_{y-1} \times IF) \times \left[1 + \frac{(RPI(X)_n - RPI(X)_0)}{RPI(X)_0} \right] \right]$$

where:

- AFD_y = the Area Failure Deduction applicable from the relevant Indexation Review Date;
- AFD_{y-1} = the Area Failure Deduction applicable immediately before the relevant Indexation;
- IF = the Indexation Factor being [♦]%;
- RPI(X)_n = the value of the RPI(X) published or determined with respect to the month of February which most recently precedes the relevant Contract Year; and
- RPI(X)₀ = the value of the RPI(X) published or determined with respect to the Base Date.

- 4.5 Subject to paragraph 1.4 of Section 3 (*Deductions from Monthly Service Payments*) of this Schedule 14 (*Payment Mechanism*), an Area shall not be deemed to be Unavailable and consequently no Availability Deductions may be made in respect of an Area if, and to the extent that, the Authority is using Alternative Accommodation provided by Project Co in place of the affected Area pursuant to paragraph 4.7 of Section 3 (*Deductions from Monthly Service Payments*) of this Schedule 14 (*Payment Mechanism*), that does not form part of the then existing Buildings (or External Areas) at the [relevant] Facility.

4.6 Facility Closure

- 4.6.1 Project Co shall notify the Authority's Representative of an anticipated or actual Escalation Event as soon as reasonably practical, regardless of whether or not this time is within a Core Session.
- 4.6.2 Where, in any Core Session an Escalation Event subsists, the Authority's Representative or head teacher of the relevant Facility may decide to Close the Facility.
- 4.6.3 If in any Core Session the Authority's Representative advises the Helpdesk that a Facility will be entirely Closed for the remainder of that day due to Unavailability (the summation of all Unavailability within the relevant Facility being in excess of the threshold set out in the relevant Escalation Event), then Project Co shall inform the Authority whether or not it believes that the Unavailability can be Rectified within that Core Session to an extent sufficient that the Escalation Event no longer subsists.
- 4.6.4 If Project Co does inform the Authority's Representative, within one (1) hour of the Authority's Representative advising the Helpdesk of the proposed Closure, that the Unavailability can be so Rectified, then paragraph 4.6.5 of Section 3 (*Deductions from Monthly Service*

Payments) of this Schedule 14 (*Payment Mechanism*) shall (provided that Project Co acts reasonably in so informing the Authority's Representative) only apply if Project Co fails to Rectify the Unavailability within that Core Session to an extent sufficient that the Escalation Event no longer subsists.

- 4.6.5 If a Facility is Closed in accordance with paragraphs 4.6.2 or 4.6.5 of Section 3 (*Deductions from Monthly Service Payments*) of this Schedule 14 (*Payment Mechanism*), then every Area will be deemed to be Unavailable for that Core Session and all subsequent Core Sessions on the same day, irrespective of the time at which the relevant Unavailability is Rectified. Availability Deductions may therefore be made in respect of all relevant Core Sessions during that Core Day irrespective of the time at which the relevant Areas cease to be Unavailable (save in respect of any relevant Core Sessions occurring after the Core Day on the relevant day where the relevant Unavailability has been Rectified and the relevant Area is used for its intended purpose).

4.7 **Alternative Accommodation**

- 4.7.1 In order to offer Alternative Accommodation to the Authority, Project Co shall deliver to the Authority a Relocation Plan setting out:
- i. full details of the proposed Alternative Accommodation (including, without limitation, its location, the extent to which it complies with the Authority's Construction Requirements for the relevant Area and any logistical or other arrangements which Project Co proposes to be put in place in order to facilitate the Authority's occupation of the proposed Alternative Accommodation); and
 - ii. the relevant Relocation Date.

For the avoidance of doubt, if the Relocation Plan is not delivered within the relevant Rectification Period, the Area will be considered to be Unavailable until such time as the Relocation Plan has been provided and agreed by the Authority.

- 4.7.2 The Authority's Representative shall not be obliged to accept any Alternative Accommodation but shall act reasonably in considering the proposals for Alternative Accommodation and will notify Project Co promptly of its decision whether or not such proposed Alternative Accommodation is acceptable. For the avoidance of doubt, an Area or Areas that Project Co is otherwise required to make Available during the relevant Core Sessions shall not be counted as Alternative Accommodation.
- 4.7.3 The performance regime under this Schedule 14 (*Payment Mechanism*) will apply to any Alternative Accommodation accepted by the Authority so that the Authority shall be entitled to make Deductions in respect of that Alternative Accommodation in accordance with this Schedule 14 (*Payment Mechanism*) at the same level as for the Area for which the Alternative Accommodation is a replacement.
- 4.7.4 Project Co shall bear any costs incurred by it, and all reasonable costs incurred by the Authority arising as a result of the provision or occupation of any such Alternative Accommodation and the Authority shall be entitled to recover such costs as a debt.

- 4.7.5 If Project Co has not made available to the Authority the Area for which Alternative Accommodation is a replacement (such Area being in compliance with all applicable Availability Standards) by the Relocation Date, Availability Deductions shall apply in respect of the Area which is Unavailable (for which Alternative Accommodation is a replacement) from the Relocation Date until such Area ceases to be Unavailable.
- 4.7.6 If at any time such Alternative Accommodation falls below the standard which was acceptable to the Authority under paragraph 4.7.2 of Section 3 (*Deductions from Monthly Service Payments*) of this Schedule 14 (*Payment Mechanism*) the Authority may reject such Alternative Accommodation and shall notify Project Co of its decision to do so.
- 4.7.7 If the Alternative Accommodation is rejected by the Authority under paragraph 4.7.6 of Section 3 (*Deductions from Monthly Service Payments*) of this Schedule 14 (*Payment Mechanism*), then the Authority may:
- i. vacate some or all of the Alternative Accommodation, and make Availability Deductions in respect of the Area for which the Alternative Accommodation so vacated is a replacement; or
 - ii. remain in occupation of the Alternative Accommodation and make Unavailable but Used Deductions in respect of the Area for which the Alternative Accommodation is a replacement.

In each case, such Deductions may be made by the Authority in respect of each relevant Core Session from (and including) the relevant Core Session during which Project Co's failure to make the relevant Area(s) Available by the Relocation Date occurred.

- 4.7.8 The Authority, having elected to remain in occupation of Alternative Accommodation pursuant to paragraph 4.7.7(ii) of Section 3 (*Deductions from Monthly Service Payments*) of this Schedule 14 (*Payment Mechanism*), may elect at any later time (on giving reasonable notice to Project Co) to vacate the Alternative Accommodation and make Availability Deductions in accordance with paragraph 4.7.7(i) of Section 3 (*Deductions from Monthly Service Payments*) of this Schedule 14 (*Payment Mechanism*) in respect of each relevant Core Session from (and including) the relevant Core Session during which such reasonable notice expires (but only, for the avoidance of doubt, if the Areas for which the Alternative Accommodation are a replacement fail to comply with the relevant Availability Standards).
- 4.7.9 Project Co and the Authority may, for the avoidance of doubt, agree to any new Relocation Date (suggested by either party) in which case the provisions of this paragraph 4.7 of Section 3 (*Deductions from Monthly Service Payments*) of this Schedule 14 (*Payment Mechanism*) shall apply mutatis mutandis to such revised Relocation Date.
- 4.7.10 If there is any dispute relating to the provision of Alternative Accommodation under this paragraph 4.7 of Section 3 (*Deductions from Monthly Service Payments*) of this Schedule 14 (*Payment Mechanism*), either party may refer the matter to the Dispute Resolution Procedure and until the resolution of such dispute the decision of the Authority shall prevail.

5 REPEATED FAILURES

5.1 Subject to paragraph 1 (*Entitlement to make Deductions*) of this Section 3 (*Deductions from Monthly Service Payments*) if:

5.1.1 a Performance Failure in respect of the same Performance Standard; or

5.1.2 an Availability Failure in respect of the same Availability Standard,

occurs [♦] or more times in a rolling period of [♦] consecutive Contract Months, then the Deduction calculated pursuant to paragraph 2 (*Deductions for Performance Failures*) or paragraph 4 (*Deductions for Availability Failures*) of this Section 3 (*Deductions from Monthly Service Payments*) for the [♦] and each subsequent such Performance Failure and/or the [♦] and each subsequent such Availability Failure during the relevant period of [♦] consecutive Contract Months shall be multiplied by [1.5].

5.2 If a Performance Failure in respect of a Performance Standard [FM ♦] occurs, [♦] or more times, in respect of Service Events that are [Routine], and/or [♦] or more times, in respect of Service Events that are [Urgent], in a rolling period of three (3) consecutive Contract Months then the Deduction calculated pursuant to paragraph 2 (*Deduction for Performance Failures*) of this Section 3 (*Deductions from Monthly Service Payments*) for the [♦] and each subsequent such Performance Failure, and/or the [♦] and each subsequent such Performance Failure (respectively) during the relevant period of [♦] consecutive Contract Months shall be multiplied by [1.5].

6 REPEATED RECTIFICATION

6.1 If four (4) or more Service Events occur in any rolling seven (7) day period and:

6.1.1 each such Service Event is in connection with the same Performance Standard or Availability Standard;

6.1.2 each such Service Event affects the same Area; and

6.1.3 there is good reason to believe that the root cause of each such Service Event is the same,

then, notwithstanding paragraph 2.3 and notwithstanding that Project Co achieves Rectification of the Service Events within the relevant Rectification Period, there will be deemed to be a Performance Failures with a Service Priority Category of "High".

7 EFFECT OF UNAVAILABILITY ON OTHER DEDUCTIONS

7.1 Subject to paragraphs 7.2 and 7.3, if a Performance Failure occurs affecting an Area and the Service Event giving rise to the Performance Failure also gives rise to an Availability Failure affecting that Area, only the Deductions for the Availability Failure apply.

7.2 If an Availability Failure affects an Area and the Authority does not continue to use that Area, the Authority shall not, until Rectification of that Availability Failure, be entitled to make further Deductions in respect of that Area other than in respect of the Availability Failure.

7.3 If an Area is Unavailable but Used, the Authority will be entitled to make Deductions in respect of any Performance Failures affecting that Area.

8 RESPONSE PERIOD

- 8.1 Project Co shall respond to and Make Safe any Service Event raised within any required Response Period specified for the relevant Performance Standards or Availability Standards as set out in Schedule 12 (*Service Level Specification*). Such Response Period shall commence at the Logged Report Time.
- 8.2 If Project Co does not respond to and Make Safe the Service Event within the Response Period specified then, where the Service Event relates to a(n):
- 8.2.1 Performance Standard, a Performance Failure of the relevant Performance Standard shall immediately apply with a Deduction Period of one (1); or
- 8.2.2 Availability Standard, then a Performance Failure with a Service Priority Category of "High" shall apply with a Deduction Period of one (1).

9 CONSEQUENTIAL UNAVAILABILITY

- 9.1 Where, an Area specified in the column headed ['Full Space Name' or 'Generic Space Name'] of the Consequential Unavailability Table is or at any time becomes Unavailable, and as a direct consequence of such Unavailability the Authority, Authority Party or Students of the [relevant] Facility are unable (acting reasonably) to access or use or occupy for its intended purpose any other Area identified and appearing opposite in the column headed ['CU'] of the Consequential Unavailability Table (the "**Consequentially Unavailable Area**"), then the Consequentially Unavailable Area shall be deemed to be Unavailable for any Core Session during which it was intended to be, but was not, used. For the avoidance of doubt, the Logged Report Time in respect of the Consequentially Unavailable Area will be deemed to be the same as that for the original Area that caused the Consequential Unavailability.

SECTION 4

NOTICE OF SERVICE EVENTS, MONTHLY SERVICE REPORTS AND TEMPORARY REPAIRS

1 NOTICE OF SERVICE EVENTS

- 1.1 If an Authorised Caller, notified to Project Co from time to time pursuant to the Joint Operating Protocol believes that an Area may be or may have been the subject of a Service Event, then that party may give notice to the Helpdesk, such notice (an "**Authority Service Event Notice**" or "**Service Report**") to contain the information required pursuant to the Performance Standards for the Helpdesk.
- 1.2 Project Co shall log the details of the Authority Service Event Notice as provided under paragraph 1.1 above on the Helpdesk within [ten (10) minutes] of receipt of the Authority Service Event Notice and the time of such notification to the Helpdesk shall constitute the Logged Report Time in relation to such Service Event.
- 1.3 Where the same Service Event is recorded by the Authority and also by Project Co, the earlier time will constitute the Logged Report Time.
- 1.4 If Project Co believes that any Area is subject to a Service Event and Project Co has not received an Authority Service Event Notice then Project Co shall give notice (containing the information referred to in paragraph 1.1 of Section 4 (*Recording Service Events*) of this Schedule 14 (*Payment Mechanism*)), being the "**Project Co Service Event Notice**" to the Helpdesk. The time of such notification will constitute the Logged Report Time in relation to such Service Event.

2 MONTHLY SERVICE REPORTS AND ANNUAL SERVICE REPORTS

- 2.1 Without prejudice to Clause 35.2.4, the Monthly Service Report shall set out, as a minimum[, in respect of each Facility]: [■]
- 2.2 Within ten (10) Business Days of the end of each Contract Year following the [Payment Commencement Date], Project Co shall submit to the Authority an Annual Service Report, including as a minimum the following[, in respect of each Facility]: [■]

3 TEMPORARY REPAIRS

- 3.1 If Project Co informs the Authority that it is unable to Rectify a Service Event within the specified Rectification Period due to the need for specialised materials or personnel that are not, and cannot reasonably be expected to be, immediately available at the Facilities but that a Temporary Repair can be effected:
 - 3.1.1 Project Co may carry out the Temporary Repair proposed by Project Co unless the Authority, acting reasonably, considers that, if the Temporary Repair proposed by Project Co is carried out, the relevant Area will not be fit for use for the Authority Services for which it is normally used or there have been [five (5)] or more Temporary Repairs in a rolling period of twelve (12) consecutive Contract Months in respect of the [relevant] Facility; and
 - 3.1.2 where a Temporary Repair is permitted pursuant to paragraph 3.1.1, the Authority and Project Co must act reasonably to agree a date and time (the "**Permanent Repair Deadline**") by which a Permanent Repair must be made, giving Project Co a reasonable period within which to carry out the Permanent Repair.

- 3.2 During any period beginning at the time when a Temporary Repair has been approved by the Authority and ending at the earlier of:
- 3.2.1 the time at which a Permanent Repair is successfully completed; or
 - 3.2.2 the Permanent Repair Deadline,
- the Availability Standards will be replaced by the Minimum Agreed Availability Standards.
- 3.3 If an agreed Temporary Repair is completed by Project Co before the Permanent Repair Deadline and results in the Area affected by the relevant Service Event satisfying the Minimum Agreed Availability Standards, the date and time shown in the Helpdesk records maintained by Project Co in accordance with the Service Level Specification as being the date and time when the Temporary Repair was completed (or, in the event that a failure affecting the Helpdesk occurs, as shown on the manual Helpdesk records maintained by Project Co as being the date and time when the Temporary Repair was completed) shall be deemed to be the Logged Rectification Time for that Service Event for the purpose of determining the value of DP in the formula in paragraph 4 (*Deductions for Availability Failures*) in Section 3 (*Deductions from Monthly Service Payments*) of this Schedule 14 (*Payment Mechanism*).
- 3.4 If the Permanent Repair is not carried out by the Permanent Repair Deadline, a Performance Failure or, as the case may be, an Availability Failure, will occur at that date and time and the provisions of paragraph 2 (*Deductions for Performance Failures*), paragraph 4 (*Deductions for Availability Failures*) and, if applicable, paragraph 5 (*Repeated Failures*) of Section 3 (*Deductions from Monthly Service Payments*) of this Schedule 14 (*Payment Mechanism*) shall apply.

SECTION 5

FAILURE BY PROJECT CO TO MONITOR OR REPORT

1 REPORTING FAILURES

- 1.1 The Monthly Service 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 Deductions pursuant to Section 3 (*Deductions from Monthly Service Payments*) of this Schedule 14 (*Payment Mechanism*).
- 1.2 Either party may give written notice to the other if it believes there is an error or omission in the calculation of a Deduction or the reporting of a Performance Failure or Availability Failure, in a Monthly Service Report provided that, save in the circumstances referred to in paragraph 1.6 below, such notice must be given before the end of the Contract Month that falls two (2) Contract Months after the Contract Month in which the relevant Monthly Service Report was submitted by Project Co. The parties shall endeavour to agree the amendments required to rectify the error or omission (if any) within ten (10) Business Days of notice being given in accordance with this paragraph 1.2, failing which either party may, on giving written notice to the other, refer the matter to the Dispute Resolution Procedure.
- 1.3 Where Project Co fails to monitor or accurately to report a Service Event, Performance Failure or an Availability Failure, for the purposes of paragraph 1 of Section 1 (*General Requirements*) of Schedule 19 (*Record Provision*) the Authority shall be deemed to have reasonable cause to require that Project Co shall make available to the Authority for inspection such of the records referred to in paragraphs 11 and 12 of Section 2 (*Records to be Kept*) of Schedule 19 (*Record Provision*) as the Authority may specify.
- 1.4 Project Co shall upon submission of a valid invoice pay to the Authority a sum equal to the costs reasonably incurred by the Authority in carrying out any inspection and investigation of records made available pursuant to paragraph 1.3 above.
- 1.5 In the event that Project Co fails to accurately monitor or report a Service Event, the matter shall be dealt with in accordance with paragraphs 1.2, 1.6 or 1.7 of this Section 5 (*Failure by Project Co to Monitor or Report*) as appropriate and the Authority shall, in addition, be entitled to make Deductions in respect of any Performance Failures or Availability Failures in the manner prescribed Section 3 (*Deductions from Monthly Service Payments*) of this Schedule 14 (*Payment Mechanism*). The Monthly Service Payment for the Contract Month in which any such Deduction would (but for the error or omission in the Monthly Service Report) have been made shall be re-calculated to take account of such Deduction and the amount of such Deduction shall be immediately due and payable by Project Co to the Authority together with interest at the Default Interest Rate from the date on which the Authority paid the Monthly Invoice for the relevant Contract Month until the date on which payment is made by Project Co.
- 1.6 Except where paragraph 1.7 of this Section 5 (*Failure by Project Co to monitor or Report*) applies, where Project Co fails to accurately notify the Helpdesk of a Service Event and/or report such Service Event in a Monthly Service Report, the Authority may give written notice of the error or omission, provided that such notice must be given before the end of the Contract Month that falls [twelve (12)] Contract Months after the Contract Month in which the relevant Monthly Service Report was submitted by Project Co. The parties shall endeavour to agree the amendments required to the relevant Monthly Service Report, rectify the relevant

error or omission (if any) within thirty (30) Business Days of notice being given in accordance with this paragraph 6, failing which either party may, on giving written notice to the other, refer the matter to the Dispute Resolution Procedure.

1.7 For the purposes of paragraphs 1.2, 1.5 and 1.6 of this Section 5 (*Failure by Project Co to Monitor or Report*) in circumstances where the error or omission in the calculation of a Deduction or the reporting of a Service Event, Performance Failure or Availability Failure occurs as a result of:

1.7.1 fraudulent action or inaction;

1.7.2 deliberate misrepresentation; or

1.7.3 gross misconduct or gross incompetence,

in each case on the part of Project Co or a Project Co Party, there shall be no notice limitations.

1.8 The provisions of this Section 5 (*Failure by Project Co to Monitor or Report*) shall be without prejudice to any rights of the Authority in this Agreement pursuant to Clause 26 (*Monitoring of Performance*), Clause 40 (*Project Co Events of Default*) and Clause 45 (*Corrupt Gifts and Payments*).

SECTION 6
OTHER COSTS

1 OPERATIONAL INSURANCE PREMIUMS

- 1.1 Subject to paragraph 1.2, Project Co may include the premiums paid by Project Co to take out and maintain the Operational Insurances in accordance with Clause 54 (*Insurance*) in the Monthly Service Payment in accordance with paragraph 1 (*Monthly Service Payment*) of Section 2 (*Calculation of Service Payments*) of this Schedule 14 (*Payment Mechanism*) on the basis of the cost incurred by Project Co and supported by appropriate premium notices from the relevant insurer.
- 1.2 There shall be excluded from the premiums treated as an Additional Cost, a sum equal to any portion of the premiums (referred to in paragraph 1.1) reasonably considered by the Authority, having taken into account the information in the Joint Insurance Cost Report, to be Project Co Factors.
- 1.3 Where the main source of remuneration of Project Co's insurance broker in respect of services provided to Project Co in connection with the placing of Operational Insurances is by way of a fee, instead of commission, and provided that the fee is reasonable and acceptable to the Authority and no commission is being received by the broker in addition to such fee, the amount of any fee charged, to the extent reasonably and properly attributable to the Operational Insurances, shall be treated in the same manner as the relevant premiums pursuant to paragraph 1.1 above.

SECTION 7
UTILITIES MANAGEMENT¹²

¹² To be developed. See separate "Energy" consultation paper.

SECTION 8

PERFORMANCE FAILURE EFFECTIVE DEDUCTIONS AND CHANGE PROTOCOL DEDUCTIONS

1 Service Priority Categories and Performance Failure Effective Deductions

Service Priority Category	Performance Failure Effective Deduction (£ per Deduction Period) for Performance Standards
Low	[£♦]
Medium	[£♦]
High	[£♦]
Super	[£♦]

2 Change Protocol Deductions

2.1 Change Protocol Deductions shall be calculated and indexed in accordance with paragraph 2.2 of Section 8 (*Performance Failure Effective Deductions and Change Protocol Deductions*) of this Schedule 14 (*Payment Mechanism*) where Project Co is in breach of Schedule 16 (*Change Protocol*) to this Agreement (the Change Protocol Schedule) during the Operational Term. Where Change Protocol Deductions arise they shall, other than in respect of their calculation and indexation, be treated as Performance Failure Deductions. Terms defined in this paragraph 2 of Section 8 of Schedule 14 (*Payment Mechanism*) shall have the meaning given to them in Section 1 of Schedule 16 (*Change Protocol*) where not otherwise defined in Schedule 1 (*Definitions and Interpretation*) or Section 1 of this Schedule 14 (*Payment Mechanism*).

2.2

	Low Value Change	Medium Value Change	High Value Change
Failure to provide a response to a request for a Change	[£♦] (indexed) for each Business Day over [five (5)] Business Days following the submission by the Authority of an Authority Change Notice for a Low Value Change in accordance with paragraph 2 of Section 2 (<i>Low Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>).	[£♦] (indexed) for each Business Day over [fifteen (15)] Business Days following the submission by the Authority of a Medium Value Change Notice in accordance with paragraph 2.2 of Section 3 (<i>Medium Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>). This deduction shall not apply where Project Co refuses a Medium	In respect of the High Value Change Proposal [£♦] (indexed) for each Business Day over [thirty (30)] Business Days following the submission by the Authority of a High Value Change Notice in accordance with paragraph 2 of Section 4 (<i>High Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>), or such longer

	Low Value Change	Medium Value Change	High Value Change
		<p>Value Change in accordance with paragraph 2.3 of Section 3 (<i>Medium Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>).</p> <p>[£♦] (indexed) for each Business Day over the period notified by Project Co under paragraph 2.2.2 of Section 3 (<i>Medium Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>), or otherwise agreed or determined pursuant to paragraph 2.4 of Section 3 (<i>Medium Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>) in respect of the Estimate.</p>	<p>period as is agreed or determined pursuant to paragraph 3.3 of Section 4 (<i>High Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>).</p> <p>In respect of the High Value Change Stage 2 Submission, [£♦] (indexed) for each Business Day over the period agreed or determined for submission of the High Value Change Stage 2 Submission pursuant to paragraph 4.1.1 of Section 4 of Schedule 16 (<i>Change Protocol</i>).</p>

	Low Value Change	Medium Value Change	High Value Change
Failure to provide a response of the required standard	Not applicable ¹³	<p>[£♦] (indexed) for each Business Day over [fifteen (15)] Business Days in respect of the response required to paragraph 2.2 of Section 3 (<i>Medium Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>).</p> <p>[£♦] (indexed) for each Business Day over the period notified by Project Co under paragraph 2.2.2 of Section 3 (<i>Medium Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>), or otherwise agreed or determined pursuant to paragraph 2.4 of Section 3 (<i>Medium Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>) that Project Co's Estimate does not represent a fair and reasonable approach to the Medium Value Change Notice.</p>	<p>[£♦] (indexed) (i) in the case of a High Value Change Proposal, for each Business Day over [thirty (30)] Business Days following the submission by the Authority of a High Value Change Notice in accordance with paragraph 2 of Section 4 (<i>High Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>), or such longer period as is agreed or determined pursuant to paragraph 3.3 of Section 4 (<i>High Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>), or (ii) in the case of a High Value Change Stage 2 Submission, for each Business Day over the period agreed or determined for submission of the High Value Change Stage 2 Submission pursuant to paragraph 4.1.1 of Section 4 of Schedule 16 (<i>Change Protocol</i>) that the High Value Change Stage 2 Submission did not include the content required by paragraph 4.3 of Section 4 of Schedule 16 (<i>Change Protocol</i>).</p>

¹³ There is no deduction proposed in these circumstances on the basis that if Project Co cannot provide an acceptable proposal the Authority can carry out the Low Value Change itself.

	Low Value Change	Medium Value Change	High Value Change
Failure to implement the agreed changes to the agreed standard by the agreed date	[£♦] (indexed) for each Business Day following the date specified in the notice given by Project Co in accordance with paragraph 3 of Section 2 (<i>Low Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>), or such date as is agreed by the parties pursuant to paragraph 5 of Section 2 of Schedule 16 (<i>Change Protocol</i>)..	[£♦] (indexed) for each Business Day following the date specified for completion in the Estimate as confirmed by the Authority in accordance with paragraph 7.1 of Section 3 (<i>Medium Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>), where such Medium Value Change is not completed as evidenced in accordance with paragraph 8 of Section 3 (<i>Medium Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>).	[£♦] (Indexed) for each Business Day following the date specified for completion in the High Value Change Stage 2 Submission as agreed by the parties pursuant to paragraph 4.3 of Section 4 (<i>High Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>), where such High Value Change is not completed as evidenced in accordance with paragraph 11 of Section 4 (<i>High Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>).

2.3 Change Protocol Deductions shall cease to apply where:

- 2.3.1 the Authority notifies Project Co, pursuant to paragraph 6.3 of Section 2 (*Low Value Changes*) of Schedule 16 (*Change Protocol*) or paragraph 8.3 of Section 3 of Schedule 16 (*Change Protocol*) to this Agreement that it is exercising its rights to carry out or procure the carrying out of the relevant Change;
- 2.3.2 (in relation to Deductions for a failure to provide a response) Project Co submits a response;
- 2.3.3 (in relation to Deductions for a failure to submit a response of the required standard for a Medium Value Change) Project Co submits a revised response to the required standard; and
- 2.3.4 (in relation to Deductions for a failure to implement the Change) Project Co implements the Change in accordance with the terms of this Agreement (and any related deed of variation).

SECTION 9

AVAILABILITY STANDARDS AND RESPONSE AND RECTIFICATION PERIODS FOR UNAVAILABILITY

1 Availability Standards

- 1.1 Additional Availability Standards are set out in the Area Data Sheets in respect of each Area. The Rectification Period and Response Periods set out in paragraph 2 of this Section 9 of Schedule 14 (*Payment Mechanism*) shall apply to the Availability Standards set out in the Area Data Sheets.
- 1.2 To classify as Available, the Area (other than Areas which are sports pitches, hard play areas, multi-use games areas, artificial grass pitches, pathways, roads, car parking or other outdoor areas) must:
- 1.2.1 exist;
 - 1.2.2 be accessible (including by lifts where the building is more than single storey) by means that accord with the Authority's Construction Requirements with access being safe and free from obstruction;
 - 1.2.3 not demonstrate failure of or damage to its structure or fabric which materially and adversely affects use of the Area, the Services or the long-term condition of the [relevant] [Facility] / [Facilities] or the health and safety of the users;
 - 1.2.4 be¹⁴ maintained at a temperature above the minimum maintained air temperature specified in paragraph [◆] of the Authority's Construction Requirements and:
 - i. during the period from October to April inclusive, below the maximum air temperature specified in paragraph [◆] of the Authority's Construction Requirements; and
 - ii. during the period from May to September inclusive, with a Daily Weighted Exceedance (Criterion 2, calculated as specified in paragraph [◆] of the Authority's Construction Requirements) below six degrees (6°) Celsius and with a maximum Exceedance (the Upper Temperature Criterion 3, described in paragraph [◆] of the Authority's Construction Requirements) below four degrees (4°) Celsius;
 - 1.2.5 have a vertical air temperature difference not exceeding six degrees (6°) Celsius in Areas with a clear floor to ceiling height not exceeding three (3) metres;
 - 1.2.6 for ICT server and hub rooms be maintained within the parameters specified in paragraph [◆] of the Authority's Construction Requirements;
 - 1.2.7 be free of draughts from ventilation systems as defined in paragraph [◆] of the Authority's Construction Requirements;
 - 1.2.8 be capable of illumination at lux levels at or above the minimum levels required by the Authority's Construction Requirements, Service Level

¹⁴ To be developed. See separate "Energy" consultation paper.

- Specification and Area Data Sheets for that Area (with all of the lighting infrastructure and at least 75% of the lamps operational);
- 1.2.9 have sufficient and safe electrical supplies where required by the Area Data Sheets and the Authority's Construction Requirements;
 - 1.2.10 maintain the level of ventilation as required in the Area Data Sheets, Service Level Specification and the Authority's Construction Requirements;
 - 1.2.11 have a sufficient, constant and safe hot water supply in accordance with the Area Data Sheets and the Authority's Construction Requirements;
 - 1.2.12 have a sufficient, constant and safe cold water supply in accordance with the Area Data Sheets and the Authority's Construction Requirements;
 - 1.2.13 be compliant with all relevant Law, including fire, health and safety, safeguarding and security legislation;
 - 1.2.14 have permanent structural elements and building fabric present and in sufficiently good order to enable the delivery of Educational Services in the Area;
 - 1.2.15 be free from leaks, flood, weather penetration and damp affecting the structure of the building;
 - 1.2.16 be served at all times by an operational security system in accordance with the Area Data Sheets and the Authority's Construction Requirements (as applicable);
 - 1.2.17 be served at all times by operational alarm/emergency communication systems;
 - 1.2.18 be clear of waste, with a safe and constant sewage and drainage system;
 - 1.2.19 have constant and safe supply of gas and compressed air where required under the Area Data Sheets, Service Level Specification and the Authority's Construction Requirements (as applicable);
 - 1.2.20 be maintained within the range of noise and acoustic levels outlined in the Area Data Sheets and the Authority's Construction Requirements;
 - 1.2.21 have the Group 1 Equipment necessary for the use of that Area as required by the Area Data Sheets and the Authority's Construction Requirements and in a safe and functional condition;
 - 1.2.22 where an information technology or telecommunications supply is required pursuant to the Authority's Construction Requirements, Service Level Specification or Area Data Sheets for the Area, there is a secure supply with all of the cabling infrastructure and less than fifteen per cent (15%) failure of the network outlets in that Area;
 - 1.2.23 be provided with WiFi coverage which complies with the requirements of the Authority's Construction Requirements, Service Level Specification or Area Data Sheets for the Area;
 - 1.2.24 have access to drinking water as specified in the Area Data Sheets and the Authority's Construction Requirements;

- 1.2.25 have emergency lighting in a safe and functional condition;
 - 1.2.26 have exhaust and extraction (including dust) systems in a safe and functional condition;
 - 1.2.27 have lightning protection in a safe and functional condition;
 - 1.2.28 have sprinkler and fire detection and alarm systems in a safe and functional condition; and
 - 1.2.29 have maintained fire safety, fire escape, fire protection, fire-stopping and fire-proofing and associated systems in a safe and functional condition.
- 1.3 For Areas which are sports pitches, hard play areas, multi-use games areas, artificial grass pitches or other outdoor areas to be deemed Available, such Areas must:
- 1.3.1 exist;
 - 1.3.2 be surfaced in accordance with the Authority's Construction Requirements;
 - 1.3.3 have a drainage system which is functional (where applicable);
 - 1.3.4 have pitch markings which are visible (where applicable);
 - 1.3.5 have functional flood lights where required by the Area Data Sheets;
 - 1.3.6 include equipment as per the relevant Area Data Sheet which Project Co is required to provide and which is necessary for the use of that Area;
 - 1.3.7 be compliant with all relevant Law, including health and safety and security legislation;
 - 1.3.8 have functional external lighting and electrical services where required by the Area Data Sheets; and
 - 1.3.9 be accessible.
- 1.4 For car parking Areas to be deemed Available, such Areas must:
- 1.4.1 exist;
 - 1.4.2 be surfaced in accordance with the Authority's Construction Requirements;
 - 1.4.3 have a drainage system which is functional;
 - 1.4.4 have markings which are clearly visible in the absence of snow and ice;
 - 1.4.5 be compliant with all relevant Law, including health and safety and security legislation;
 - 1.4.6 have functional lighting and electrical services where required by the Area Data Sheets; and
 - 1.4.7 be accessible.

2 Response and Rectification Periods for Unavailability

2.1 The Response Period and Rectification Period for each of the Availability Standard is as follows:

Response Period	Rectification Period
Within two (2) hours	Within the shorter of two Business Days and four (4) Core Sessions

2.2 References to Core Sessions in paragraph 2.1 above shall include the Core Session in which the Rectification Period is deemed to commence pursuant Section 1 of Schedule 14 (*Payment Mechanism*).

2.3 Where a failure to meet the Availability Standards still allows the affected Area(s) to be used without increased risk to the health and safety of users there shall be no requirement on Project Co to Make Safe the Area(s) within the Response Period.

2.4 Where an Unavailability is recorded during the Core Day, any subsequent Core Sessions arising from Additional Periods shall only be included in the Core Sessions referenced in paragraph 2.1 above if the Unavailability impacts directly or indirectly on the Areas required for the Additional Periods.

SECTION 10

AVAILABILITY PRIORITY CATEGORIES

1 Area Failure Deductions

- 1.1 The Base Date Area Failure Deductions for each Availability Priority Category are set out below.

Availability Priority Category	Area Failure Deduction (£ per Core Session) for [Facility 1]	Area Failure Deduction (£ per Core Session) for [Facility n]
1	[£♦]	[£♦]
2	[£♦]	[£♦]
3	[£♦]	[£♦]
4	[£♦]	[£♦]
5	[£♦]	[£♦]
6	[£♦]	[£♦]
7 or unspecified	[£♦]	[£♦]
[ICT Server Room (Secondary School)]	[£♦]	[£♦]
[ICT Server Room (Primary School)]	[£♦]	[£♦]
[ICT Server Room (College)]	[£♦]	[£♦]

2 Recalibration

- 2.1 Area Failure Deductions shall be recalibrated upon a change in Annual Service Charge resulting from an Authority Change or Project Co Change (as defined in Section 1 of Schedule 16 (*Change Protocol*)) being implemented which results in the cumulative un-recalibrated change in the Monthly Service Charge due to such changes exceeding [five per cent (5%)].

APPENDIX 1

CORE DAYS, CORE SESSIONS AND ADDITIONAL PERIODS

1

1.1 **Core Sessions within a Core Day**

Core Sessions		
Description	Core Day Morning	Core Day Afternoon
[Insert Name of Facility]	[07:00 to 11:59:59, Monday to Friday during a Term]	[12:00 to 17:00, Monday to Friday during a Term]

1.2 **Additional Period Core Sessions**

Category of Use	Number of Additional Periods per Academic Year which can be booked by the Authority for use over and beyond the Core Day (above).¹⁵
At [each]/[the] Facility	60

When the Authority notifies Project Co in accordance with Clauses 5.10 to 5.13 (*Additional Periods*) of this Agreement that it requires the utilisation of Additional Periods, each Additional Period shall comprise one (1) Core Session. Each subsequent Additional Period, whether or not on the same day, shall comprise a separate Core Session.

¹⁵ Each Additional Period is block period of 5 hours, with each Facility able to book up to 60 Additional Periods per Academic Year (300 hours).

APPENDIX 2¹⁶
ANNUAL SERVICE CHARGE AT BASE DATE

Contract Year	[Facility 1] Annual Service Charge at Base Date	[Facility n] Annual Service Charge at Base Date	Total Annual Service Charge at Base Date
1	[£♦]	[£♦]	[£♦]
[...]	[£♦]	[£♦]	[£♦]

¹⁶ Table to be completed on a project specific basis

APPENDIX 3
AREA DATA SHEETS¹⁷

¹⁷ Area Data Sheets to be attached on a project specific basis.