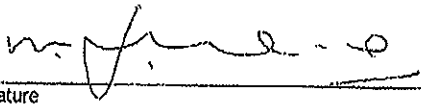
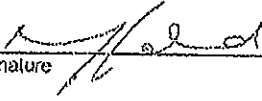


**Schedule 5 - Service Payment Calculation****Service Fees**

Signed for identification purposes by:	
on behalf of NSW Health	 Signature
on behalf of the Project Company	 Signature
On 28 OCTOBER	2008

**Definitions**

The following defined terms apply to this schedule:

"Additional Payment" means the figure expressed in Australian dollars which shall be calculated in accordance with section 14 of Part A of this schedule.

"Area Failure" means a Service Failure that:

- (a) is not subject to Response during the Response Time designated for that Service Failure or Rectification within the Rectification Time designated for that Service Failure; and
- (b) is classified as an Area Failure in Appendix D of the Support Services Specifications.

"Area Failure Level" means the classification of an Area Failure as either a Level A, Level B or Level C Area Failure in the Support Services Specifications.

"Area Failure Period" means, with respect of an Area Failure, a period of time equivalent to the Response Time or Rectification Time (as appropriate) for that Area Failure (without taking into account any extensions to Response Times or Rectification Times agreed under section 4.2 of this schedule).

"Area Points Weighting" means the number of Failure Points determined by the Functional Area Category and the Area Failure Level applying to any Area Failure, as specified in the table in section 4.1 of Part A of this schedule.

"Backlog Maintenance and Refurbishment" has the meaning ascribed to it in the Support Services Specifications.

"Backlog Maintenance and Refurbishment Payment" means the monthly payment during the Interim Services Phase in respect of the Backlog Maintenance and Refurbishment determined in accordance with section 2 of Part A of this schedule.

"Car Park Facilities" has the meaning ascribed to it in the Car Park License Agreement.

"Catering Services" has the meaning ascribed to it in the Support Services Specifications.

"Cleaning and Domestic Service" has the meaning ascribed to it in the Support Services Specifications.

"Core Hours" means from Monday to Friday, the core working hours of 07.30 to 18.00.

"Deduction" means an amount that shall be deducted from the Monthly Payment as a result of an Area Failure, Quality Failure, Repeated Failure or Reporting Failure and calculated in accordance with section 3 of Part A of this schedule.

"Divested Facilities" has the meaning ascribed to it in the Project Deed.

"Energy" means gas and electricity used at the Hospital.

"Energy Contract" means the contractual agreement(s) entered into by NSW Health for the purchase of Energy.

"Energy Payment" means the amount payable by NSW Health in the third calendar month of each Quarter calculated in accordance with the provisions of section 15 of Part A of this schedule.

"Failure Point Band" means the band applicable for Failure Points provided in section 3 of Part A of this schedule.

"Failure Points" means the number of points allocated to an Area Failure (in accordance with section 4 of Part A), a Quality Failure (in accordance with section 5 of Part A), a Repeated Failure (in accordance with section 7 of Part A) or a Reporting Failure (in accordance with section 10 of Part A) for the purposes of calculating a Deduction.

"Fee for Service" has the meaning ascribed to it in the Support Services Specifications.

"FM Delay Fees" means the amount calculated in accordance with the provisions in Part B of this schedule.

"Full Service Start Date" means the later of date on which the Construction Phase ends for all PPP As-Built Health Facilities and 1 November 2014.

"Functional Area" means a room or space within the Hospital which is specified as a Functional Area in Appendix F of the Support Services Specifications.

"Functional Area Category" means a category to which Functional Areas are classified as specified in Appendix F of the Support Services Specifications for the purposes of determining the Area Points Weighting applicable to any Area Failure in a Functional Area in accordance with section 4.1 of Part A of this schedule.

"Groceries Service" means the service described in section 15.3.9 of the Support Services Specifications.

"Hard FM Start Date" means the date which is 12 months after Financial Close.

"Helpdesk Services" means those services described in clauses 9.1 to 9.10 of the Support Services Specifications.

**'Helpdesk Services Early Implementation Period'** means the period from the issue of the written notice under clause 33.1(e) to the completion of the Helpdesk Services implementation;

**'Helpdesk Services Early Operation Period'** means the period which commences the day following the completion of the Helpdesk Services Early Implementation Period and expires on the day which is 6 months prior to the Commencement Date for Stage 2;

**'Helpdesk Services Early Implementation Service Credit'** means the amount payable in accordance with section 16.3 of Part A of this schedule;

**"Incremental Quarterly Service Payment (1)" or "IQSP(1)"** means the quarterly amount from the later of the Commencement Date for Stage 1 and the 1 July 2011 to the Full Service Start Date calculated in accordance with the provisions set out in Part B of this schedule.

**"Incremental Quarterly Service Payment (2)" or "IQSP(2)"** means the quarterly amount from the later of the Commencement Date for Stage 2, the Commencement Date for Stage 3, and 1 May 2014 to the Full Service Start Date calculated in accordance with the provisions set out in Part B of this schedule.

**"Incremental Quarterly Service Payment (3)" or "IQSP(3)"** means the quarterly amount from the later of the Commencement Date for Stage 4 and 1 November 2014 to the Full Service Start Date calculated in accordance with the provisions set out in Part B of this schedule.

**"Industrial Classification Rate"** means the industrial classification rate applied by the Treasury Managed Fund for the purpose of determining the premium payable under the workers' compensation insurance or self-insurance arrangements (whilst ever NSCCAHS self-insures under the Workers' Compensation Act 1987), for the Health Staff Members, in the relevant year.

**"Insurance Adjustment"** means the annual amount calculated in accordance with the provisions of clause 30.5(b).

**"Interim Hard FM Services"** has the meaning ascribed to it in the Support Services Specifications.

**"Interim R&E Hard FM Services"** has the meaning ascribed to it in the Support Services Specifications.

**"Interim Services Phase"** has the meaning ascribed to it in the Support Services Specifications.

**"Interim Soft FM Services"** has the meaning ascribed to it in the Support Services Specifications.

**"Interim SPV Services"** means the management, insurance, consultancy and other services provided by Project Company during the Interim Services Phase.

**"KPI"** has the meaning ascribed to it in the Support Services Specifications.

**"Level A"** has the meaning ascribed to it in the Support Services Specifications.

**"Level B"** has the meaning ascribed to it in the Support Services Specifications.

**"Level C"** has the meaning ascribed to it in the Support Services Specifications.

"Lifecycle Refurbishment Component" means the amount calculated in accordance with the provisions in Part B of this schedule.

"Maintenance Consumables" has the meaning ascribed to it in the Support Services Specifications.

"Measurement and Verification Plan" has the meaning ascribed to it in the Support Services Specifications.

"Monthly Interim Hard FM Services Payment" means the monthly payment during the Interim Services Phase in respect of the Interim Hard FM Services determined in accordance with section 2 of Part A of this schedule.

"Monthly Interim R&E Hard FM Services Payment" means the monthly payment during the Interim Services Phase in respect of the Interim R&E Hard FM Services determined in accordance with section 2 of Part A of this schedule.

"Monthly Interim Services Payment" means the total of the Monthly Interim Hard FM Services Payment, Monthly Interim R&E Hard FM Services Payment, Monthly Interim Soft FM Services Payment, Monthly Interim SPV Services Payment, and Backlog Maintenance and Refurbishment Payment calculated in accordance with section 2 of this schedule.

"Monthly Interim Soft FM Services Payment" means the monthly payment during the Interim Services Phase in respect of the Interim Soft FM Services determined in accordance with section 2 of Part A of this schedule.

"Monthly Interim SPV Services Payment" means the monthly payment during the Interim Services Phase in respect of the Interim SPV Services determined in accordance with section 2 of Part A of this schedule.

"Monthly Service Payment" means the monthly service payment calculated in accordance with section 1 of Part A of this schedule.

"Monthly Payment" means the amount calculated in accordance with provisions in Part B of this schedule.

"NSW Health's Materials Management System" has the meaning ascribed to it in the Support Services Specifications.

"Operating Hours" means the hours in which a Functional Area must be available to occupants as set out in Appendix F of the Support Services Specification.

"Operating Year" means a financial year commencing on 1 July and falling within an Operations Phase provided that

- (a) the first Operating Year will be the period from the Hard FM Start Date to the start of the next financial year; and
- (b) the last Operating Year will be the period from the end of the immediately previous financial year until the end of the Term.

"Quality Failure" means a Service Failure which has been classified as a Quality Failure in Appendix B of the Support Services Specifications.

"Quality Failure Level" means the classification of a Quality Failure as either an "Extreme Criticality", "High Criticality", "Medium Criticality" or "Low Criticality" in the Support Services Specifications.

"Quality Failure Points" means in respect of a Quality Failure, the number of quality failure points (expressed as a number) set out in Appendix E of the Support Services Specifications in respect of that Quality Failure.

"Quarter" means a period of three months commencing on 1 January, 1 April, 1 July or 1 October in any year, provided that:

- (a) the first Quarter commences on Financial Close and ends on the next Quarter End; and
- (b) the last Quarter ends on the last day of the Term.

"Quarter End" means 31 March, 30 June, 30 September or 31 December.

"Quarterly Service Payment" means the quarterly amount from the Full Service Start Date until the Expiration Date calculated in accordance with the provisions set out in Part B of this schedule.

"Premises" has the meaning ascribed to it in the Retail Head Lease.

"Rectification" means, in respect of an Area Failure, the taking of those actions specified in section 4.4(b) of Part A of this schedule.

"Rectification Time" means the period specified in Appendix D of the Support Services Specifications that starts with a Service Request and within which Rectification of the relevant Area Failure in the relevant Functional Area must be completed.

"Repeat Quality Failure Deduction Period" means in respect of a Quality Failure, the repeat quality failure deduction period allocated to that Quality Failure set out in Appendix E of the Support Services Specifications.

"Repeated Failure" has the meaning ascribed to that term in section 7 Part A of this schedule.

"Reporting Failure" means a failure arising as a result of inaccurate recording of an Area Failure, Quality Failure or Repeated Failure or incorrect calculation of Failure Points incurred as a result of an Area Failure, Quality Failure or Repeated Failure.

"Reserve Release" means the amount calculated in accordance with the provisions in Part B of this schedule.

"Residual Facilities" has the meaning ascribed to it in the Project Deed.

"Response" means, in respect of an Area Failure, the taking of those actions specified in section 4.4(a) of Part A of this schedule.

"Response Time" means the period specified in Appendix D of the Support Services Specifications that starts with a Service Request and within which Response to the relevant Area Failure in the relevant Functional Area must be completed.

"Return Date" means for the purpose of Temporary Accommodation the date agreed for the return by NSW Health to the original Functional Area(s).

"Security Services" has the meaning ascribed to that term in the Support Services Specifications.

"Service Failure" means a failure by the Project Company to satisfy or comply with a KPI in accordance with and to the standard specified in the Support Services Specifications except:

- (a) to the extent that the failure is a direct and intended consequence of the carrying out of any planned maintenance or refurbishment as set out in the Operations Manual provided that if the failure lasts for more than the agreed duration of planned maintenance or refurbishment, a Service Failure will be deemed to have occurred at the end of the agreed period of planned maintenance or refurbishment;
- (b) to the extent that the failure is contemplated by or as a consequence of the proper and timely implementation of a NSW Health Variation Request (including those resulting from deemed NSW Health Variation Requests in accordance with clause 22.4); or
- (c) to the extent that the Project Company is instructed by the Project Director not to provide certain Support Services or comply with a KPI.

"Service Request" has the meaning ascribed to it in the Support Services Specifications.

"Soft FM Start Date" means the date 18 months after Financial Close.

"Start Date" has the meaning given in schedule 23.

"Temporary Accommodation" means accommodation offered to NSW Health by the Project Company as a substitute for any Functional Area which is subject to a Level A Area Failure, subject to section 4.3 of Part A of this schedule.

"Temporary Fix" means, in respect of the occurrence of a Service Failure, a course (or courses) of action that will temporarily ameliorate the consequences of the Service Failure whilst permanent Rectification of the Service Failure can be completed.

"Time Weighting" means the time weighting calculated in accordance with section 4.2 of Part A of this schedule.

"Volume Adjustment" means the figure expressed in Australian dollars (whether positive or negative) which shall be calculated in accordance with section 13 of Part A of this schedule.

"Waste Management Service" has the meaning ascribed to it in the Support Services Specifications

**Part A****1. Monthly Service Payment**

The Monthly Service Payment for each Operating Month will be calculated in accordance with the following formula:

$$\text{MSP} = \text{MP} + \text{LRC} + \text{VA} + \text{E} + \text{A} + \text{IA} - \text{D} - \text{RR}$$

where:

- MP** = The Monthly Payment calculated in accordance with section 1 of Part B of this schedule;
- LRC** = the Lifecycle Refurbishment Component which, when an Operating Month falls on the third calendar month of a Quarter, will be calculated in accordance with section 2 of Part B of this schedule, and for all other Operating Months will be 0;
- VA** = the Volume Adjustment calculated in accordance with section 13;
- E** = the Energy Payment which when an Operating Month falls on the third calendar month of a Quarter, will be calculated in accordance with section 15, and for all other Operating Months will be 0;
- A** = the Additional Payment calculated in accordance with section 14;
- IA** = the Insurance Adjustment multiplied by  $N_m/365$ , where  $N_m$  refers to the number of days in the relevant Operating Month.
- D** = the Deduction for the Operating Month, calculated in accordance with section 3;
- RR** = the Reserve Release calculated in accordance with section 3 of Part B of this schedule.

**2. Monthly Interim Services Payment**

The Monthly Interim Services Payment for each month during the Interim Services Phase will be calculated in accordance with section 4 of Part B of this schedule.

**3. Entitlement to make Deductions**

- (a) The Project Company will incur Failure Points with respect to any Arca Failure, Quality Failure, Reporting Failure or Repeated Failure. NSW Health will be entitled to make a Deduction from the relevant Monthly Payment calculated on the basis of the total number of Failure Points incurred during the relevant Operating Month.
- (b) The Deduction will be calculated as follows:

$$\text{D} = ((\text{MP} \times \text{LCF}) + \text{VA}) \times ((\text{FP}_A \times 0.0025\%) + (\sum \text{FP}_Q \times \text{MPF}_Q))$$

where:

- MP** = The Monthly Payment calculated in accordance with section 1 of Part B of this schedule;
- LCF** = The Lifecycle Conversion Factor of 1.1065
- VA** = The Volume Adjustment calculated in accordance with section 13;
- FP<sub>A</sub>** = The number of Failure Points calculated in accordance with section 4 in respect of Area Failures incurred during an Operating Month;
- FP<sub>Q</sub>** = The number of Failure Points falling in each Failure Point Band (Q) in Table 1 based on the total number of Failure Points calculated in accordance with section 5 (in respect of Quality Failures), section 7 (Repeat Failures) and section 10 (Reporting Failures) and incurred during an Operating Month; and
- MPF<sub>Q</sub>** = The MP Fraction as shown in Table 1 for each Failure Point Band for Failure Points calculated in accordance with section 5 (in respect of Quality Failures), section 7 (Repeat Failures) and section 10 (Reporting Failures).

**Table 1: Percentage of the Monthly Service Payment deducted per Failure Point for Quality Failures, Repeat Failures and Reporting Failures**

Failure Point Band (Q)	MP Fraction (MPF <sub>Q</sub> )
Up to 15	0%
More than 15 and up to and including 75	0.004%
More than 75 and up to and including 150	0.01%
More than 150 and up to and including 250	0.02%
More than 250	0.05%

As an example, for 200 Failure Points calculated in accordance with section 5, with respect to Quality Failures, the Deduction would equal 1.99% of the Monthly Payment plus Volume Adjustment (15 points × 0% + 60 points × 0.004% + 75 points × 0.01% + 50 points × 0.02%).

- (c) The maximum Deduction that can be made in any Operating Month, shall be such that the Monthly Service Payment cannot be less than 0.
- (d) Notwithstanding any of the other provisions set out in this Part A section 3 the Deduction applied to the relevant Monthly Payment in the period from the Hard FM Start Date to the Commencement Date for Stage 2 shall be deemed to be 0, unless the provisions of Part A section 16 apply in which case the Deduction applied to the relevant Monthly Payment shall be capped at \$[REDACTED] per month from commencement of the Helpdesk Services Early Operation Period until the Commencement Date for Stage 2.

- (e) The monthly cap in section 3(d) above is stated in 1 July 2008 prices and shall be subject to CPI indexation in accordance with Part B section 6 of this schedule.

#### 4. Area Failures

##### 4.1 Area Failure Deduction

- (a) If an Area Failure occurs during an Operating Month, Failure Points will be calculated in accordance with the following formula in respect of each Functional Area affected by the Area Failure:

$$FP = APW \times TW$$

where:

- FP = the number of Failure Points incurred as a result of the Area Failure;
- APW = the Area Points Weighting as specified in Table 2, below and determined by:
- (i) the Functional Area Category applicable to the Functional Area affected by the Area Failure in accordance with the Functional Area categorisation in Appendix F of the Support Services Specifications; and
  - (ii) the Area Failure Level applicable to the Area Failure in accordance the Area Failure Levels set out in the Support Service Specifications.
- TW = the Time Weighting for the failure to Respond or the failure to Rectify.

Table 2: Area Points Weightings

Functional Area Category	Response Failure Level			Rectification Failure Level		
	Level A (Health / Safety / Access)	Level B (Function-ality)	Level C (Aesthetics & Other)	Level A (Health / Safety / Access)	Level B (Function-ality)	Level C (Aesthetics & Other)
Category 1	8	5	2	20	10	6
Category 2	6	4	2	13	8	5
Category 3	4	3	1	7	6	4
Category 4	4	3	1	5	4	3
Category 5	4	3	1	4	3	2

##### 4.2 Determination of Time Weighting

- (a) The Time Weighting will be equal to the number of Area Failure Periods (or part thereof) from the commencement of the Response Time or Rectification Time (as appropriate) until the Project Company has completed the Response and/or

Rectification (as appropriate), provided that should the Project Company complete a Response within the Response Time or a Rectification within the Rectification Time, the Time Weighting will be zero.

- (b) In the case of Level C Area Failures, other than Service Failures in relation to Cleaning Services with a Rectification Time of 48 hours, (as described in the Support Services Specifications), the fourth and all subsequent Area Failure Periods (or part thereof) for the same Area Failure shall use a multiplication factor of 10, until the Project Company has completed the Response and/or Rectification (as appropriate).
- (c) The formula set out in section 4.1 of this schedule shall be applied separately for:
- (i) each failure to complete a Response within the Response Time for the Area Failure; and
  - (ii) each failure to complete a Rectification within the Rectification Time for the Area Failure.
- (d) The calculation of the formula set out in section 4.1 in respect of a failure to complete a Response within the Response Time or a failure to complete a Rectification within the Rectification Time will be performed once the relevant Response or Rectification is complete. If, however, a Response or Rectification is not completed at the end of the Operating Month in respect of which the Failure Points are being calculated, then the Failure Points shall be calculated using a Time Weighting equal to the number of Area Failure Periods from the commencement of the Area Failure until the end of the Operating Month. A further calculation shall be completed in the following Operating Month using a Time Weighting equal to the number of Area Failure Periods from the commencement of the Operating Month until the Response or Rectification is complete.
- (e) Where the Rectification Time for an Area Failure expires outside the Operating Hours on a particular day for the affected Functional Area(s), the Rectification Time will be extended until the commencement of the next Operating Hour ("Extended Rectification Time").
- (f) If the Rectification Time for an Area Failure is extended under paragraph (e) and the Project Company fails to complete the Rectification by that Extended Rectification Time, then the calculation in accordance with section 4.1 of this schedule shall be made using a Time Weighting which assumes the Extended Rectification Time is the Rectification Time.

*For example, if there was a Level B Area Failure in the Treatment Bay 1 of the Physical Therapies Area which has Operating Hours of 07:30 - 18:00, and it is reported to the helpdesk at 16:00:*

- *the Response Time expires at 16:30; and*
- *the Rectification Time expires at 22:00, however, since 22:00 is outside the Operating Hours, clause 4.3(e) of this Schedule 5 applies, such that the Rectification Time is extended until 07:30 of the following day (Extended Rectification Time).*

*In this instance, if Project Company:*

- *completes the Rectification by the Extended Rectification Time, being 07:30 of the following day, no Failure Points will apply;*
  - *does not complete the Rectification by the Extended Rectification Time, then Failure Points will apply. Should the Area Failure be rectified by:*
    - o *07:31 on that same morning, then the Time Weighting would be equal to 1; or*
    - o *10:30 on that same morning, then the Time Weighting would be equal to 1.5 (ie, a Time Weighting of 1 at 07:31, plus (3 hours/6 hours) from 07:30 - 10:30).*
- (g) If the Project Company is instructed by the Project Director not to undertake a Response or complete a Rectification of an Area Failure, the Response Time and/or the Rectification Time will be extended by the time period which is notified in writing by the Project Director to the Project Company.
- (h) The Operating Hours of Functional Areas are as specified in Appendix F of the Support Services Specifications. The Project Director may alter the Operating Hours after giving not less than 24 hours written notice to the Project Company or after giving a lesser period of notice if there is an emergency or it is reasonable to do so in all the circumstances. Should such an alteration by the Project Director result in a sustained change in the Operating Hours of at least 3 months duration, this will constitute a deemed NSW Health Variation Request and paragraph 3 of Schedule 16 shall apply.

#### 4.3 Temporary Accommodation

- (a) If a Level A Area Failure occurs the Project Company may offer NSW Health Temporary Accommodation by written notice to NSW Health within 3 Business Days from the commencement of the relevant Level A Area Failure ("Temporary Accommodation Notice").
- (b) The Temporary Accommodation shall:
- (i) be a temporary alternative having regard to the facts and the circumstances in existence;
  - (ii) be upon terms which are not materially different from the terms upon which NSW Health occupied the affected Functional Area(s);
  - (iii) be accommodation for which NSW Health is not already paying for in the Monthly Service Payment or other terms of the deed;
  - (iv) be acceptable to NSW Health as being suitable having regard to the activities usually carried out at or from the affected Functional Area(s);
  - (v) be supplied with the Support Services which were required to be provided to the affected Functional Area(s), to the standards set out in the Support Services Specifications; and

- (vi) not involve NSW Health incurring any additional cost or charges in respect of the Temporary Accommodation including, without limitation, the costs of any relocation to and from the Temporary Accommodation.
- (c) The Temporary Accommodation Notice shall:
  - (i) describe the Temporary Accommodation;
  - (ii) invite NSW Health to inspect the Temporary Accommodation and shall give NSW Health reasonable notice of a time and a date when it may do so;
  - (iii) set out its proposals regarding the timing and co-ordination of relocation to the Temporary Accommodation;
  - (iv) specify the date (agreed by NSW Health before the submission of the written notice) by which Project Company reasonably expects NSW Health to be able to relocate back to the relevant Functional Area (the "Return Date"); and
  - (v) describe the terms upon which NSW Health shall be entitled to occupy such Temporary Accommodation.
- (d) NSW Health shall notify the Project Company in writing of its acceptance or refusal of the proposed Temporary Accommodation within 24 hours of its inspection of the Temporary Accommodation.
- (e) NSW Health may refuse any proposed Temporary Accommodation in its absolute discretion.
- (f) If NSW Health accepts the Project Company's offer of Temporary Accommodation, no further Failure Points shall be incurred in respect of the Area Failure associated with the Functional Area(s) vacated by NSW Health while the Temporary Accommodation is being used by NSW Health.
- (g) The Project Company shall incur Failure Points in respect of any Area Failure which occurs in the Temporary Accommodation as if the Temporary Accommodation was the Functional Area(s) which it replaced.
- (h) Upon the Project Company completing the required works to enable NSW Health to return to the Functional Area(s), the Project Director shall confirm that the required works are acceptable, and shall agree a relocation programme with the Project Company to return to the Functional Area.
- (i) Where the Project Company fails to complete the works to enable NSW Health to return to the Functional Area by the Return Date there shall be deemed to be a Level B Area Failure in the Temporary Accommodation occurring each day from (but excluding) the Return Date until the date on which NSW Health is able to resume its use of the Functional Area(s).
- (j) Upon acceptance of the Project Company's offer of Temporary Accommodation, NSW Health shall specify a date (being a date no earlier than the Return Date), by which the full Rectification of the affected Functional Area(s) shall be completed. If the Project Company fails to complete this Rectification the following shall apply:

Schedule 5 - Service Payment Calculation

- (i) NSW Health may, without prejudice to its other rights under this deed, take such steps as it considers appropriate (either itself or by engaging others to take such steps) to restore any Functional Area(s) for which the Temporary Accommodation is a replacement, to a condition which satisfies in all respects the requirements of the Support Services Specifications; and
- (ii) the Project Company shall reimburse NSW Health for all reasonable costs, losses, expenses or damages incurred by NSW Health in relation to taking the steps, or engaging others to take the steps, referred to in section 4.3(j)(i) above and NSW Health shall be entitled to deduct any such amount from any amounts payable to the Project Company under the provisions of this deed.

#### 4.4 Response and Rectification

- (a) During the Response Time for an Area Failure, the Project Company is required, to the reasonable satisfaction of the Project Director, to:
  - (i) establish the nature, location and cause of the problem and attend the site if necessary;
  - (ii) appoint a suitably qualified, experienced and accountable person(s) to assess the situation who, within reasonable limits, are empowered to take or to authorise any required action; and
  - (iii) take all necessary actions to make the affected Functional Area(s) safe and secure, and as a minimum fulfil all health and safety requirements, pursuant to applicable Laws, Consents, Policy and the Support Services Specifications.
- (b) During the Rectification Time, the Project Company is required to:
  - (i) make good any Area Failure as soon as reasonably practicable in all the circumstances, irrespective of the Rectification Time allowed for that Area Failure, so as to comply with this deed and the Support Services Specifications using methods which are consistent with Good Industry Practice and meeting all applicable health and safety requirements pursuant to applicable Laws, Consents, Policy and the Support Services Specifications and applicable operational policies;
  - (ii) carry out any testing and commissioning work that may be required;
  - (iii) provide the Project Director with an assessment of the problem, the progress and any likely delays to Rectification, details of any work required within time scales and limitations that this may impose on any related Functional Area(s) or Support Services;
  - (iv) carry out temporary repairs where necessary to facilitate provision of the Support Services and Health Functions; and
  - (v) minimise, where at all practical, disruption to the Support Services and the Health Functions.

- (c) Before undertaking any Rectification, the Project Company shall inform the Project Director of any work to be undertaken that is likely to impact on any other Functional Areas, Support Services or other services provided by NSW Health or NSCCAHS.
- (d) The Project Company is required to notify the Project Director when the rectification effected in accordance with section 4.4(b) is complete.

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## 5. Quality Failures

- (a) If a Quality Failure occurs during an Operating Month, Failure Points shall be incurred based on:
  - (i) the Quality Failure Category assigned to the Quality Failure in accordance with Table 15 of Appendix E of the Support Services Specifications; and
  - (ii) the Failure Points applicable to each Quality Failure Category as determined in accordance with Table 13 of Appendix E of the Support Services Specifications and multiplied by the factor, where applicable, in accordance with Table 14 of Appendix E of the Support Services Specifications.
- (b) Quality Failures shall be attributed to the Operating Month in which they are reported in accordance with the Monthly Performance Report, irrespective of when they occur.
- (c) Where the Quality Failure can be rectified but it is not rectified, further Failure Points will be incurred upon the expiry of the Repeat Quality Failure Deduction Period and each subsequent Repeat Quality Failure Deduction Period, thereafter.

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## 6. Temporary Fix

- (a) If the Project Company considers that it is not able to complete the Rectification of a Service Failure within the Rectification Time or within the Repeat Quality Failure Deduction Period (as applicable), it may propose to the Project Director a Temporary Fix. The Project Company shall also suggest a time by which Rectification will occur ("Permanent Fix Time"). The acceptance of a Temporary Fix and the Permanent Fix Time are at the sole discretion of the Project Director.
- (b) If the Project Company proposes a Temporary Fix and/or a Permanent Fix Time because Hazardous Materials existing prior to the Operations Phase are discovered within the building fabric and cannot be removed or made safe in time, the Temporary Fix and/or a Permanent Fix Time will be permitted provided the Project Company is able to demonstrate to the Project Director's satisfaction, acting reasonably, that the Temporary Fix is adequate and the Permanent Fix Time is the minimum necessary.
- (c) If the Project Director permits a Temporary Fix the Project Company shall diligently pursue the Temporary Fix. Failure Points shall apply where the Temporary Fix is not implemented within the Rectification Time or the Repeat Quality Failure Deduction Period (as applicable), unless otherwise agreed by the

Project Director as part of the Temporary Fix. The Project Company shall ensure that the Rectification of a Service Failure is complete by the Permanent Fix Time.

- (d) If a Service Failure occurs and the Project Director agrees to accept a Temporary Fix:
- (i) if the agreed Temporary Fix is completed within the Rectification Time or Repeat Quality Failure Deduction Period (as applicable) and the Rectification of the Service Failure is complete within the Permanent Fix Time no Failure Points may be applied in respect of the event;
  - (ii) if the Temporary Fix is not completed within the Rectification Time or Repeat Quality Failure Deduction Period (as applicable) then the Project Company will incur Failure Points on the basis of the original Rectification Time or Repeat Quality Failure Deduction Period; and
  - (iii) if Rectification of the Service Failure is not completed by the Permanent Fix Time, then the Project Company will incur Failure Points on the basis that the Permanent Fix Time is the first Rectification Time or Repeat Quality Failure Deduction Period.

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## 7. Repeated Failures

- (a) A Repeated Failure will be deemed to occur for any Service Failure that, if not rectified, would lead to an Area Failure and:
- (i) the same or a substantially similar Service Failure has occurred; or
  - (ii) Service Failures have occurred with the same underlying cause,
- on more than 4 separate occasions over 2 in any 3 consecutive Operating Months.
- (b) The Repeated Failure will occur regardless of the Functional Areas affected by the Service Failures and even though the Response to the Service Failure was completed within the Response Time and the Rectification was completed within the Rectification Time.
- (c) A separate Repeated Failure will occur for the fifth and each subsequent Service Failure as determined in accordance with paragraphs 7(a) and 7(b) and each Repeated Failure will incur 10 Failure Points.
- (d) For the avoidance of doubt, Repeated Failures will not include Area Failures that incur Failure Points.

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## 8. Overlap of Service Failures

- (a) Where the same event causes more than one Area Failure to occur in the same Functional Area then Failure Points will only be calculated for the Area Failure which causes the highest number of Failure Points.
- (b) Where the same event results in more than one Quality Failure, it shall be deemed to be the Quality Failure with the highest number of Failure Points.

- (c) Where the same event causes both Quality Failure(s) and Area Failure(s) and the effects of the Quality Failure(s) are confined to the Functional Area(s) affected by the Area Failure(s), then Failure Points will be calculated on the basis of the higher of the Failure Points incurred as a result of the Quality Failure(s) or the Area Failure(s).

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## 9. Assessment of Area Failures and Quality Failures

- (a) The Helpdesk will classify Area Failures based on the Area Failure Levels and Quality Failures based on the Quality Failures Levels in accordance with the procedure set out in the Operations Manual. The Project Director may alter the classification of Area Failures and Quality Failures by notifying the Helpdesk accordingly.
- (b) If the Project Company disagrees with the changed classification, this disagreement shall be dealt with in accordance with clause 4.6(h) and/or clause 40 (Dispute Resolution) but, until such determination, the parties shall act on the basis of the classification by the Project Director. If, following resolution of the dispute under clause 4.6(h) and/or clause 40, an adjustment is agreed or determined in respect of the classification of the Area Failure and/or Quality Failure, then that adjustment will be added to or deducted from (as the case may be) the next Monthly Service Payment after that agreement is reached or that determination is made (as the case may be).

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## 10. Reporting Failures

- (a) If there has been a Reporting Failure in relation to an Area Failure, Quality Failure or Repeated Failure, an adjustment will be included in the Deduction for the next Monthly Services Payment equal to the difference (positive or negative) between the Deduction that should have been applied if the Reporting Failure had not occurred in the Operating Month and the Deduction that was applied in the relevant Operating Month.
- (b) Ten Failure Points will be incurred for each Reporting Failure. Failure Points incurred for Reporting Failures will be additional to any Failure Points incurred as a result of a breach of a reporting KPI within the Support Services Specifications.
- (c) If there has been a Reporting Failure in an Operating Month which is Rectified by the Project Company prior to payment of the relevant Monthly Invoice by NSW Health, no adjustment of the Deduction or Failure Points in respect of the Reporting Failure shall apply.
- (d) If there is a dispute between the Project Company and the Project Director as to whether a Reporting Failure has occurred, either party may refer the matter for dispute resolution in accordance with clause 4.6(h) and/or clause 40. Until the Project Company and the Project Director otherwise agree or a determination is made in accordance with clause 4.6(h) and/or clause 40, the occurrence of the relevant Reporting Failure shall be determined by the Project Director and the Project Company shall ensure that such determination is reflected in the relevant Monthly Invoice. If, following resolution of the dispute under clause 4.6(h) and/or clause 40, an adjustment is agreed or determined in respect of the alleged Reporting Failure, then that adjustment will be added to or deducted from (as the case may be)

the next Monthly Service Payment after that agreement is reached or that determination is made (as the case may be).

## 11. Deductions during Relief Events or Force Majeure Events

- (a) Notwithstanding anything contained elsewhere in this Schedule 5, if a Relief Event or Force Majeure Event is subsisting;
- (i) Any Failure Points incurred as a result of an Area Failure which arises directly from the Relief Event or Force Majeure Event will be calculated on the basis of:
- A. a minimum Rectification Time of 24 hours; and
  - B. multiplication of the Failure Points by 5%,
- for the period for which the Project Company is relieved of its obligations;
- (ii) No Failure Points will be incurred as a result of a Quality Failure or Repeated Failure or an Area Failure caused by a failure to meet a Response Time and which arises, in each case, directly from the Relief Event or Force Majeure Event and relates to the provision of Support Services in a Functional Area which is subject to an Area Failure with a Rectification Time of 24 hours pursuant to section 11 (a) (i) of Part A; and
- (iii) Any Deduction incurred as a result of a Quality Failure which arises directly from the Relief Event or Force Majeure Event, other than a Quality Failure covered by section 11 (a) (ii) of Part A, will be calculated on the basis of:
- A. A cap equal to 2.5% of the applicable Monthly Payment for Deductions attributable to the Building and PF&FE Maintenance Services and Utilities Services (in total);
  - B. A cap equal to 2.5% of the applicable Monthly Payment plus Volume Adjustment for Deductions attributable to all of the other Support Services (in total); and
  - C. A pro rata reduction of the caps in section 11 (a) (iii) A and B of Part A where the effects of the Relief Event or Force Majeure Event subsist for part of an Operating Month.

## 12. Review of Payment Mechanism

Without limiting clause 22.1 of this deed:

- (a) the Project Company or NSW Health can request that the identification of Functional Areas, Functional Area Categories, Failure Levels, Area Points Weightings, Response Times, Rectification Times, Failure Points incurred per Quality Failure and Repeat Quality Failure Deduction Periods be reviewed by NSW Health and the Project Company at anytime. However:
- (i) neither party will be obliged to undertake such a review more than once in every Operating Year; and
- (ii) NSW Health will be entitled, in its absolute discretion, to choose the date of such review, so long as that date falls within the Operating Year in which the request was made;
- (b) NSW Health and the Project Company shall act reasonably and diligently in carrying out the review;
- (c) NSW Health and the Project Company may in respect of each matter the subject of the review either:
- (i) agree that the status of the relevant matter shall continue to apply unchanged in the Operating Year immediately following the review; or
- (ii) agree adjustments to the relevant matter to take effect in the Operating Year immediately following the review;
- (d) any agreed adjustment pursuant to a review shall be effective from the commencement of the Operating Year immediately following the relevant review; and
- (e) if NSW Health or the Project Company cannot agree to an adjustment, the arrangement will remain unchanged.

## 13. Volume Adjustments

The Volume Adjustment in respect of any Operating Month shall be the adjustment (if any) made in respect of the number of meals delivered in accordance with the Support Services Specifications in respect of the Catering Service, and calculated in accordance with the following formula:

$$VA = \sum (PC_i \times CPI_{i,t} / CPI_{i,0} \times (AC_i - QC_i \times N_m / N_0))$$

where:

VA = the Volume Adjustment;

PC<sub>i</sub> = the price for each category of patient meal as provided in Part B;

- $AC_i$  = the actual number of patient meals for each individual category of patient meal provided by the Project Company in accordance with the Support Services Specifications over the Operating Month;
- $QC_i$  = the number of patient meals for each category of patient meal provided in the calculation of the Quarterly Service Payment as determined in Part B;
- $i$  = each category of patient meal;
- $N_m$  = the number of days in the Operating Month for which the Quarterly Service Payment as applicable, is payable; and
- $N_q$  = the number of days in the relevant Quarter.

## 14. Additional Payments

### 14.1 General

The Additional Payment in respect of any Operating Month shall be calculated in accordance with the following formula:

$$A = GSP + FFS + EmP + HECRA + CET$$

where:

- $A$  = the Additional Payment;
- $GSP$  = the payment for the Groceries Service calculated in accordance with this section;
- $FFS$  = the payment for Fee for Service works requested by NSW Health in accordance with the Support Services Specifications, and calculated in accordance with this section;
- $EmP$  = the costs for which NSW Health is liable to the Project Company under clause 19.2(a) of this deed;
- $HECRA$  = during the Operating Month, the costs which have been incurred in relation to a Health Staff Member during the Management Period for that Health Staff Member, as a result of:
- A. the requirement to backdate any changes to any Industrial Instrument and then only to the extent that the backdating of such change is required by the relevant NSW Health Information Bulletin; and/or
  - B. an increase in the salary rate applicable to the Health Staff Members since the end of the last Quarter calculated consistently with the methodology in section 6 of Part B.
- $CET$  = the net of any costs or revenues, incurred or received by the Project Company or a Key Subcontractor, in connection with the operation of

Schedule 5 - Service Payment Calculation

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the cogeneration plant and resulting from the requirements of a national emissions trading scheme or any other Legislation regulating the emission of greenhouse gases.

#### 14.2 Groceries Service Payment

The payment in respect of the volume of supplies provided under the Groceries Service carried out in accordance with the Support Services Specifications in any Operating Month ("GSP") shall be calculated in accordance with the following formula:

$$GSP = \sum (PG_i \times AG_i)$$

where:

- $PG_i$  = the price for each category of food item included on NSW Health's Materials Management System;
- $AG_i$  = the actual number of food items for each individual category of food item provided over the relevant Operating Month;
- $i$  = each category of food item.

#### 14.3 Fee for Service Payment

The payment in respect of Fee for Service works carried out in accordance with the Support Services Specifications in any Operating Month shall be calculated in accordance with the following formula:

$$FFS = \sum (LRC \times IR \times ALC) + \sum (LRO \times IR \times ALO) + MC$$

where:

- $LRC$  = the labour rate applied during Core Hours for each service discipline cost category listed in the Schedule of Rates as provided in Part B;
- $LRO$  = the labour rate applied outside Core Hours for each service discipline cost category listed in the Schedule of Rates as provided in Part B;
- $ALC$  = the actual number of hours worked during Core Hours for each service discipline for the Fee for Service works during the relevant Operating Month;
- $ALO$  = the actual number of hours worked outside Core Hours for each service discipline for the Fee for Service works during the relevant Operating Month;
- $IR$  = the indexation rate which is  $CPI_{t-2}/CPI_t$ ;
- $MC$  = the total cost of materials used in carrying out the Fee for Service works during the relevant Operating Month, excluding Maintenance Consumables.

**15. Energy Payment**

In the third calendar month of every Quarter following the Commencement Date for Stage 2 the Energy Payment shall be calculated in accordance with the following formula:

$$E = \{ \sum [ (VEB_{iq} - VEA_{iq}) \times PE_i ] \times CPI_{q,2} / CPI_0 \times B_q / N_q \times Z \} + \{ (VGB_q - VGA_q) \times PG \times CPI_{q,2} / CPI_0 \times B_q / N_q \times Q \} + [ (2000 \text{ kVA} - MAMEMD_q) \times CC \times N_q \times 0.25 \times CPI_{q,2} / CPI_0 \times F ]$$

where

$VEB_{iq}$  = the total Baseline Units of electricity in each Energy Category (i) to be used at the Hospital (but excluding Residual Facilities, Divested Facilities, Vacated Facilities and retail Premises) during the relevant Quarter (q), as determined and adjusted from time to time in accordance with the Measurement and Verification Plan;

$VEA_{iq}$  = the total actual units of electricity in each Energy Category (i) (excluding Capacity Charge) used at the Hospital (but excluding Residual Facilities, Divested Facilities, Vacated Facilities and retail Premises) during the relevant Quarter (q);

$PE_i$  = the price per unit of Energy Category (i) (excluding the Capacity Charge) nominated in Part B section 7.3 of this schedule;

$VGB_q$  = the total Baseline Units of gas to be used at the Hospital (but excluding Residual Facilities, Divested Facilities and retail Premises) during the relevant Quarter (q), as determined and adjusted from time to time in accordance with the Measurement and Verification Plan;

$VGA_q$  = the total actual units of gas used at the Hospital (but excluding Residual Facilities, Divested Facilities, Vacated Facilities and retail Premises) during the relevant Quarter;

$PG$  = the price per unit of gas as determined from the rates nominated in Part B section 7.3 of this schedule;

$B_q / N_q$  = the number of days that the Baseline Unit energy usage is guaranteed by (or applicable to) the Project Company ( $B_q$ ) divided by the number of days in the relevant Quarter ( $N_q$ )

$Z$  If  $\sum VEA_{iq} > [\sum VEB_{iq} \times (100\% + CAP)]$ , then:

$$Z = [(\sum VEB_{iq} \times CAP) + 0.1 \times (\sum VEA_{iq} - \sum VEB_{iq} \times (100\% + CAP))] / (\sum VEA_{iq} - \sum VEB_{iq}),$$

or if  $\sum VEA_{iq} < (\sum VEB_{iq} \times LIMIT)$ , then:

$$Z = [(\sum VEB_{iq} \times (100\% - LIMIT)) + 0.1 \times (\sum VEB_{iq} \times LIMIT - \sum VEA_{iq})] / (\sum VEB_{iq} - \sum VEA_{iq}),$$

else  $Z = 1$

$Q$  If  $\sum VGA_{iq} > [\sum VGB_{iq} \times (100\% + CAP)]$ , then:

$$Q = \frac{[(\sum VGB_{iq} \times CAP) + 0.1 \times (\sum VGA_{iq} - \sum VGB_{iq} \times (100\% + CAP))]}{(\sum VGA_{iq} - \sum VGB_{iq})}$$

or if  $\sum VGA_{iq} < (\sum VGB_{iq} \times LIMIT)$ , then:

$$Q = \frac{[(\sum VGB_{iq} \times (100\% - LIMIT)) + 0.1 \times (\sum VGB_{iq} \times LIMIT - \sum VGA_{iq})]}{(\sum VGB_{iq} - \sum VGA_{iq})}$$

else  $Q = 1$

**CAP** = the percentage cap on energy consumption over the total Baseline Units of electricity in each Energy Category as nominated in the Measurement and Verification Plan

**LIMIT** = the percentage limit on energy consumption under the total Baseline Units of electricity in each Energy Category as nominated in the Measurement and Verification Plan

**MAMEMD<sub>q</sub>** = Maximum actual mains electricity metered demand (kVA) advised by the electricity retailer applicable to the relevant Quarter and attributable to the planned operation of the Acute Hospital cogeneration plant. MAMEMD<sub>q</sub> shall be capped at 4000 kVA.

**CC** = the Capacity Charge nominated in Part B section 7.3 of this schedule;

**R** = 0 for the initial 2 years following Commencement Date for Stage 2, and equals 1 thereafter.

**n** = the number of Quarters from the Quarter ending 30 June 2008

**CPI<sub>q-2</sub>** = the CPI for Quarter q-2, that is, the CPI for the Quarter which is 2 Quarters prior to the current Quarter q (being the most recently released CPI at the start of Quarter q)

**16. Early Implementation of Helpdesk Services****16.1 Helpdesk Services Early Implementation Costs**

- (a) If the Project Director gives the Project Company a direction under clause 33.1(e) to provide the Helpdesk Services, the costs of the implementation of the Helpdesk Services will be shared by NSW Health and the Project Company whereby NSW Health shall pay 75% of the implementation costs and the Project Company shall pay 25% of the implementation costs.
- (b) NSW Health shall pay to the Project Company throughout the Helpdesk Services Early Implementation Period the costs shown in Table 3a below:

**Table 3a: Helpdesk Services early implementation payments by NSW Health**

Months from commencement of the Helpdesk Services Early Implementation Period	Cost (Real \$'000s as at 1 July 2008)
1	██████████
2	██████████
3	██████████
4	██████████
5	██████████
6	██████████

- (c) The costs shown in Table 3a shall be subject to CPI indexation in accordance with Part B section 6 of this schedule.

**16.2 Helpdesk Services Early Operational Costs**

- (a) If the Project Director gives the Project Company a direction under clause 33.1(e) to provide the Helpdesk Services, NSW Health shall be liable to pay Helpdesk Services operating costs to the Project Company.
- (b) NSW Health shall pay the Project Company in the Helpdesk Services Early Operation Period the costs shown in Table 3b below:

**Table 3b: Helpdesk Services early operation costs payments by NSW Health**

	Monthly Cost (Real \$'000s as at 1 July 2008)
Helpdesk Services early operating cost	██████████

- (c) The costs shown in Table 3b shall be subject to CPI indexation in accordance with Part B section 6 of this schedule.

**16.3 Helpdesk Services Early Implementation Service Credit**

- (a) If the Project Director gives the Project Company a direction under clause 33.1(e) to provide the Helpdesk Services, the Project Company shall be liable to pay to NSW Health a one off payment of the Helpdesk Services Early Implementation Service Credit, as shown in Table 4 below:

**Table 4: Helpdesk Services Early Implementation Service Credit payable by the Project Company**

	Monthly Cost (Real \$'000s as at 1 July 2008)
Helpdesk Services Early Implementation Service Credit	

- (b) The Helpdesk Services Early Implementation Service Credit shall be applied as a reduction to the Monthly Payment payable in respect of the relevant month in which the Project Director gives the Project Company a direction under clause 33.1(e) to provide the Helpdesk Services.
- (c) The Helpdesk Services Early Implementation Service Credit shall be subject to CPI indexation in accordance with Part B section 6 of this schedule.
- (d) For the avoidance of doubt this section 16 Part A shall only apply in the event that the Helpdesk Services are to be implemented prior to the Commencement Date for Stage 2 as a result of the application of clause 33.1(e).

**Part B****1. Monthly Payment**

- (a) From the Hard FM Start Date until the Full Service Start Date:

$$MP = IQSP(1) \times N_m(1)/N_q + IQSP(2) \times N_m(2)/N_q + IQSP(3) \times N_m(3)/N_q + SER - FMD$$

Where:

The three terms **IQSP(1)** to **IQSP(3)** refer to the dollar amounts specified in Table 5A in the row headed "IQSP(n) or QSP" and corresponding to each term. Each **IQSP** (or "Incremental Quarterly Services Payment") is the additional cost associated with the Commencement Date of each Stage.

The three terms **N<sub>m</sub>(1)** to **N<sub>m</sub>(3)** refer to the number of days in the relevant Operating Month for which the corresponding **IQSP** is payable (**N<sub>m</sub>(1)** corresponds to **IQSP(1)**, etc.).

The term **N<sub>q</sub>** refers to the number of days in the relevant Quarter.

For example, if **IQSP(2)** commences on the 10<sup>th</sup> day of a calendar month, the calendar month has 30 days and the Quarter has 91 days, then **N<sub>m</sub>(2)** will be 21, **N<sub>q</sub>** will be 91 and the fraction of **IQSP(2)** added to the **MP** will be equal to 21/91.

The term **SER** refers to services fees calculated in accordance with paragraph (c) below.

The term **FMD** refers to FM Delay Fees calculated in accordance with paragraph (d) below.

- (b) Following the Full Service Start Date:

$$MP = QSP \times N_m/N_q + SER$$

Where:

The term **QSP** (or "Quarterly Services Payment") refers to the dollar amount specified Table 5A in the row headed "IQSP(n) or QSP" and column headed "QSP".

The term **N<sub>m</sub>** refers to the number of days in the relevant Operating Month for which the **QSP** is payable.

The term **N<sub>q</sub>** refers to the number of days in the relevant Quarter.

The term **SER** refers to services fees calculated in accordance with paragraph (c) below.

(c)  $SER = FCPI + FWI + FBI$

Where:

**FCPI** = Fee component for the Operating Month indexed by CPI as per Table 5B. Where the component is expressed in Table 5B on a quarterly basis, and the Operating Month falls within that Quarter, FCPI applicable to that Quarter will be multiplied by  $N_m/N_q$  to determine the amount payable for the Operating Month.

**FWI** = Fee component for the Operating Month indexed by  $WI_{Hard}$  or  $WI_{Soft}$  as per Table 5B. Where the component is expressed in Table 5B on a quarterly basis, and the Operating Month falls within that Quarter, the FWI applicable to that Quarter will be multiplied by  $N_m/N_q$  to determine the amount payable for the Operating Month.

**FBI** = Fee component for the Operating Month applicable to Health Staff Members workers compensation from the date which is two years after the Soft FM Start Date and indexed by  $BI_{Hard}$  or  $BI_{Soft}$  as per Table 5B. Where the component is expressed in Table 5B on a quarterly basis, and the Operating Month falls within that Quarter, the FBI applicable to that Quarter will be multiplied by  $N_m/N_q$  to determine the amount payable for the Operating Month.

The term  $N_m$  refers to the number of days in the relevant Operating Month and the term  $N_q$  refers to the number of days in the relevant Quarter.

(d)  $FMD = \text{Hard FMD}(1) \times N_d(1)/N_m + \text{Hard FMD}(2) \times N_d(2)/N_m + \text{Hard FMD}(4) \times N_d(4)/N_m$

Where:

The terms **Hard FMD(1)**, **Hard FMD(2)** and **Hard FMD(4)** are the amounts specified in Table 5C for the relevant Operating Month.

The terms  $N_d(1)$ ,  $N_d(2)$  and  $N_d(4)$  refer to the number of days in the relevant Operating Month for which the corresponding **FMD(n)** is deductible.

The term  $N_m$  refers to the number of days in the relevant Operating Month, except that for the month in which the Target Completion Date for that Stage falls, the term  $N_m$  refers to the number of days in the relevant Operating Month from the Target Completion Date for that Stage.

Where the Commencement Date for Stage 1 does not occur by the Target Completion Date for Stage 1, **Hard FMD(1)** in Table 5C will be deducted in each Operating Month from the Target Completion Date for Stage 1 until the Commencement Date for Stage 1.

Where the Commencement Date for Stage 2 does not occur by the Target Completion Date for Stage 2, **Hard FMD(2)** in Table 5C will be deducted in each Operating Month from the Target Completion Date for Stage 2 until the Commencement Date for Stage 2.

Where the Commencement Date for Stage 4 does not occur by the Target Completion Date for Stage 4, **Hard FMD(4)** in Table 5C will be deducted in each Operating Month from the Target Completion Date for Stage 4 until the Commencement Date for Stage 4.

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## 2. Lifecycle Refurbishment Component

For the Term

LRC = the Lifecycle Refurbishment Component for the relevant Operating Month as specified in Table 5B.

with the exception of any periods during which a Relief Event has subsisted for more than two months, or a Force Majeure Events subsists, in which case the Project Director (acting reasonably) may reduce payment of the Lifecycle Refurbishment Component to the extent that the replacement or refurbishment of the building elements or items of FF&FE specified in the Base Case (in Pro Forma 3.6 – Lifecycle Replacement – Building Fabric and Engineering, and Pro Forma 3.7 – Lifecycle Replacement – FF&FE) in that Operating Month and attributable to those areas of the Hospital affected by the Relief Event or Force Majeure Event have not been undertaken and will not be required to be undertaken for the remainder of the Term.

The extent of the reduction of the Lifecycle Refurbishment Component shall be limited to the direct cost component of the amounts specified in the Base Case (in Pro Forma 3.6 – Lifecycle Replacement – Building Fabric and Engineering; and Pro Forma 3.7 – Lifecycle Replacement – FF&FE) for those building elements or items of FF&FE specified above.

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## 3. Reserve Release

RR = the Reserve Release for the relevant Operating Month as specified in Table 5B for the Quarter which the relevant Operating Month falls within multiplied by  $N_m/N_q$ .

The term  $N_m$  refers to the number of days in the relevant Operating Month and the term  $N_q$  refers to the number of days in the relevant Quarter.

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## 4. Monthly Interim Services Payment

During the Interim Services Phase, the Monthly Interim Services Payment will be the total of the amounts specified for the Interim Hard FM Services Payment, the Interim R&E Hard FM Services Payment, the Interim Soft FM Services Payment, the Interim SPV Services Payment and the Backlog Maintenance and Refurbishment Payment for the relevant Operating Month indexed by CPI as per Table 5D.

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**5. Payments**

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**6. Indexation**

Each payment component will be indexed at the commencement of each Quarter in accordance with the Indexation Factors shown in Tables 5A, 5B, 5C and 5D. The Indexation Factors are defined as follows:

NI	=	1
CPI	=	$CPI_{q-2}/CPI_0$ [See example overleaf]
$WI_{Hard}$	=	Salaries (Hard) <sub>y</sub> /Base (Hard) <sub>y</sub>
Base(Hard) <sub>y</sub>	=	The aggregate base salaries for the Hard FM Health Staff Members in year y as set out in Part C Section 1
Salaries (Hard) <sub>y</sub>	=	The aggregate salaries for the year y for the Hard FM Health Staff Members, calculated in accordance with Part C Section 1
$WI_{Soft}$	=	Salaries (Soft) <sub>y</sub> /Base(Soft) <sub>y</sub>
Base(Soft) <sub>y</sub>	=	the aggregate base salaries for the Soft FM Health Staff Members in year y as set out in Part C Section 2
Salaries (Soft) <sub>y</sub>	=	the aggregate salaries for the year y for the Soft FM Health Staff Members, calculated in accordance with Part C Section 2
$BI_{Hard}$	=	$ICR_y/ICR_0 \times WI_{Hard}$
$BI_{Soft}$	=	$ICR_y/ICR_0 \times WI_{Soft}$
ICR <sub>y</sub>	=	Industrial Classification Rate for the year y
ICR <sub>0</sub>	=	Industrial Classification Rate for the year ending 30 June 2008
$CPI_{q-2}$	=	the CPI for Quarter q-2, that is, the CPI for the Quarter which is 2 Quarters prior to the current Quarter q (being the most recently released CPI at the start of Quarter q)
$CPI_0$	=	the CPI for the quarter ending 30 June 2008
q	=	the number of Quarters from the Quarter ending 30 June 2008
y	=	the number of financial years from the financial year ending 30 June 2008

For the avoidance of doubt, the following examples illustrate the CPI indexation that is applicable on relevant payment components.

1. For the Quarter ending 30 September 2009, payment components that are linked to CPI indexation will be indexed at the commencement of that Quarter on the following basis:

Parameter	Value	Comment
q	5	Being 5 Quarters from the Quarter ending 30 Jun 2008
$CPI_{q+2}$	$CPI_{5+2} = CPI_7$	Being the CPI for the Quarter ending 31 Mar 2009
$CPI_0$	$CPI_0$	Being the CPI for the Quarter ending 30 Jun 2008

Indexation will therefore be on the basis of:  
 $CPI$  for the Quarter ending 31 Mar 2009  
 $CPI$  for the Quarter ending 30 Jun 2008

2. For the Quarter ending 31 March 2018, payment components that are linked to CPI indexation will be indexed at the commencement of that Quarter on the following basis:

Parameter	Value	Comment
q	39	Being 39 Quarters from the Quarter ending 30 Jun 2008
$CPI_{q+2}$	$CPI_{39+2} = CPI_{41}$	Being the CPI for the Quarter ending 30 Sep 2017
$CPI_0$	$CPI_0$	Being the CPI for the Quarter ending 30 Jun 2008

Indexation will therefore be on the basis of:  
 $CPI$  for the Quarter ending 30 Sep 2017  
 $CPI$  for the Quarter ending 30 Jun 2008

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**7. Volume and Prices included within Quarterly Service Payment**

**Part C**

**Part D****Staff Costs to be paid to NSW Health**

The Project Company will be liable to NSW Health for the following amount paid or incurred in respect of each Health Staff Member under the Labour Services Agreement ("Health Staff Member Cost" or "HSMC") as follows:

(a) From the start of the Management Period to the date which is two years after the Soft FM Start Date:

$$\text{HSMC} = \text{CR} + \text{OR} + \text{AIB} + \text{WCC} + \text{OC} - \text{S}$$

where:

- CR** = base cash salary and overtime, allowances, penalties, bonuses or other cash incentives (before PAYE tax) but excluding any amount which could otherwise be classified as Fringe Benefits under section 136 of the *Fringe Benefits Tax Assessment Act (1986)* (Cth) ("FBTA") including any amounts on account of annual leave and sick leave;
- OR** = amounts classified as "Fringe Benefits" under section 136 of the FBTA to a maximum tax grossed up value as provided in the FBTA and any fringe benefits tax payable on such amounts;
- AIB** = half of the additional amount/benefit which would be received by the Health Staff Member as a result of salary packaging arising out of the FBT status of Health Staff Members;
- WCC** = other workers compensation costs (including Litigation Costs (as defined in the Labour Services Agreement), medical expenses and rehabilitation costs) in relation to any workers compensation claim less any amounts that NSW Health and NSCCAHS are entitled to recover under the Treasury Managed Fund Contract of Coverage, except to the extent that such costs arise as a result of injuries sustained by the Health Staff Member prior to their applicable Start Date;
- OC** = any other costs which NSCCAHS incurred and paid in respect of each Health Staff Member during and in respect of the Management Period which an employer of the Health Staff Members in the position of NSCCAHS would be expected to bear in the ordinary course of business (including abnormal costs provided they arise in the ordinary course of business);
- S** = any amount included in CR, OR and OC on account of superannuation entitlements or long service leave or payroll tax.

(b) From the date which is two years after the Soft FM Start Date:

$$\text{HSMC} = \text{CR} + \text{OR} + \text{AIB} + \text{WC} + \text{WCC} + \text{OC} - \text{S}$$

where:

- CR** = base cash salary and overtime, allowances, penalties, bonuses or other cash incentives (before PAYE tax) but excluding any amount which could

Schedule 5 - Service Payment Calculation

otherwise be classified as Fringe Benefits under section 136 of the *Fringe Benefits Tax Assessment Act (1986)* (Cth) ("FBTA") including any amounts on account of annual leave and sick leave;

OR	=	amounts classified as "Fringe Benefits" under section 136 of the FBTA to a maximum tax grossed up value as provided in the FBTA and any fringe benefits tax payable on such amounts;
AIB	=	half of the additional amount/benefit which would be received by the Health Staff Member as a result of salary packaging arising out of the FBT status of Health Staff Members;
WC	=	workers compensation premiums attributable to the Health Staff Members plus or minus any hindsight adjustments under the Treasury Managed Fund Contract of Coverage related to incidents incurred no earlier than the Soft FM Start Date;
WCC	=	other workers compensation costs (including Litigation Costs (as defined in the Labour Services Agreement), medical expenses and rehabilitation costs) in relation to any workers compensation claim less any amounts that NSW Health and NSCCAHS are entitled to recover under the Treasury Managed Fund Contract of Coverage, except to the extent that such costs arise as a result of injuries sustained by the Health Staff Member prior to their applicable Start Date;
OC	=	any other costs which NSCCAHS incurred and paid in respect of each Health Staff Member during and in respect of the Management Period which an employer of the Health Staff Members in the position of NSCCAHS would be expected to bear in the ordinary course of business (including abnormal costs provided they arise in the ordinary course of business);
S	=	any amount included in CR, OR and OC on account of superannuation entitlements or long service leave or payroll tax.

## For the avoidance of doubt:

- (a) WC, WCC and OC will only be included in the calculation of the HSMC in the month in which NSW Health's or NSCCAHS 's liability for payment of those amounts arises and only where they are incurred in respect of the Health Staff Members during and in respect of the Management Period; and
- (b) the calculation of HSMC will not:
  - (i) include any amounts on account of superannuation, long service leave, and payroll tax;
  - (ii) apply in respect of a Health Staff Member during the period for which they are on long service leave; and
  - (iii) include any amounts on account of annual leave or sick leave incurred by any Health Staff Member prior to their applicable Start Date.

**Part E****1. Pro Forma Invoice – Interim Services Phase**

[Project Company]  
ABN: [xx xxx xxx xxx]

[Date]

Tax  
invoice

Invoice number [xxx]

For month [xxx]

Project Director  
[Address]

Interim Service Payment		Unit	Amount
A	Interim Hard FM Services Payment	AUD	
B	Interim R&E Hard FM Services Payment	AUD	
C	Interim Soft FM Services Payment	AUD	
D	Interim SPV Services Payment	AUD	
E	Backlog Maintenance and Refurbishment Payment	AUD	
F	Interim Service Payment	AUD	
G	GST	AUD	
H	Interim Service Payment (GST inclusive)	AUD	

Payment should be to:  
[Account details]

Payment due [date]

## 2. Pro Forma Invoice – From Hard FM Start Date to Full Service Start Date

[Project Company]  
ABN: [xx xxx xxx xxx]

[Date]

Tax  
invoice

Invoice number [xxx]

For Contract month  
[xxx]

Project Director  
[Address]

Monthly Service Payment		Unit	Input	Amount
A1.1	IQSP(1) as specified in Table 5A of Schedule 5	AUD		
A1.2	Number of days for which IQSP(1) is payable (N <sub>m</sub> (1))	Days		
A2.1	IQSP(2) as specified in Table 5A of Schedule 5	AUD		
A2.2	Number of days for which IQSP(2) is payable (N <sub>m</sub> (2))	Days		
A3.1	IQSP(3) as specified in Table 5A of Schedule 5	AUD		
A3.2	Number of days for which IQSP(3) is payable (N <sub>m</sub> (3))	Days		
A4.1	Number of days in Quarter (N <sub>q</sub> )	Days		
A5.1	FCPI	AUD		
A5.2	FWI	AUD		
A5.3	FBI	AUD		
A5.4	Number of days in the Operating Month (N <sub>m</sub> )	Days		
A5.5	Number of days in the Quarter (N <sub>q</sub> )	Days		
A5	SER (A5.1 × A5.4/A5.5) + (A5.2 × A5.4/A5.5) + (A5.3 × A5.4/A5.5)	AUD		

Schedule 5 – Service Payment Calculation

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Monthly Service Payment		Unit	Input	Amount
A6.1	Hard FMD(1)	AUD		
A6.2	Hard FMD(2)	AUD		
A6.3	Hard FMD(4)	AUD		
A6.4	$N_d(1)$	Days		
A6.5	$N_d(2)$	Days		
A6.6	$N_d(4)$	Days		
A6.7	$N_m$	Days		
A6	FMD $A6.1 \times A6.4/A6.7 + A6.2 \times A6.5/A6.7 + A6.3 \times A6.6/A6.7$	AUD		
A	Total Monthly Payment $A1.1 \times A1.2/A4.1 + A2.1 \times A2.2/A4.1 + A3.1 \times A3.2/A4.1 + A5 - A6$	AUD		
B	Lifecycle Refurbishment Component	AUD		
C	Volume Adjustment	AUD		
D	Energy Payment	AUD		
E1	Payment for Groceries Service (GSP)	AUD		
E2	Payment for Fee for Service works requested by NSW Health (FFS)	AUD		
E3	Costs for which NSW Health is liable to the Project Company under clause 19.2(a) of the Project Deed	AUD		
E4	HECRA	AUD		
E5	CET	AUD		
E	Additional Payment $E1 + E2 + E3 + E4 + E5$	AUD		
F	Insurance Adjustment	AUD		
G	Deduction	AUD		
H	Reserve Release	AUD		
I	Monthly Service Payment	AUD		
J	GST	AUD		
K	Monthly Service Payment (GST inclusive)	AUD		

Payment should be to:  
[Account details]

Payment due [date]

## Indexation

CPI

 $CPI_{q,2}$  $CPI_0$  $WI_{hard}$ Salaries (Hard)<sub>y</sub>Base (Hard)<sub>y</sub> $WI_{soft}$ Salaries (Soft)<sub>y</sub>Base (Soft)<sub>y</sub> $BI_{(hard)}$  $ICR_y$  $ICR_0$  $WI_{(hard)}$  $BI_{(soft)}$  $ICR_y$  $ICR_0$  $WI_{(soft)}$

**3. Pro Forma Invoice – From Full Service Start Date**

[Project Company]  
ABN: [xx xxx xxx xxx]

[Date]

Tax Invoice

Invoice number [xxx]

For Contract month  
[xxx]

Project Director  
[Address]

Monthly Service Payment		Unit	Input	Amount
A1	Quarterly Service Payment as specified in Table 5A of Schedule 5	AUD		
A2	Number of days for which QSP is payable	Days		
A3	Number of days in Quarter	Days		
A4.1	FCPI	AUD		
A4.2	FWI	AUD		
A4.3	FBI	AUD		
A4.4	Number of days in the Operating Month	Days		
A4.5	Number of days in the Quarter	Days		
A4	SER $(A4.1 \times A4.4/A4.5) + (A4.2 \times A4.4/A4.5) + (A4.3 \times A4.4/A4.5)$	AUD		
A	Total Monthly Payment $A1 \times A2/A3 + A4$	AUD		
B	Lifecycle Refurbishment Component	AUD		
C	Volume Adjustment	AUD		
D	Energy Payment	AUD		

Schedule 5 – Service Payment Calculation

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Monthly Service Payment		Unit	Input	Amount
E1	Payment for Groceries Service (GSP)	AUD		
E2	Payment for Fee for Service works requested by NSW Health (FFS)	AUD		
E3	Costs for which NSW Health is liable to the Project Company under clause 19.2(a) of the Project Deed	AUD		
E4	HECRA	AUD		
E5	CET	AUD		
E	Additional Payment $E1 + E2 + E3 + E4 + E5$	AUD		
F	Insurance Adjustment	AUD		
G	Deduction	AUD		
H	Reserve Release	AUD		
I	Monthly Service Payment	AUD		
J	GST	AUD		
K	Monthly Service Payment (GST inclusive)	AUD		

Payment should be to:  
[Account details]

Payment due [date]

Indexation	
	$CPI$
	$CPI_{0,2}$
	$CPI_0$
	$W_{I(Hard)}$
	Salaries (Hard) <sub>y</sub>
	Base (Hard) <sub>y</sub>
	$W_{I(Soft)}$
	Salaries (Soft) <sub>y</sub>
	Base (Soft) <sub>y</sub>
	$BI_{(Hard)}$
	$ICR_y$
	$ICR_0$
	$W_{I(Hard)}$
	$BI_{(Soft)}$
	$ICR_y$
	$ICR_0$
	$W_{I(Soft)}$