



Education Funding Agency

PSBP STANDARD DOCUMENT

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ISSUED SUBJECT TO FINAL COMMENTS FROM HMT

DATED []

(1) SECRETARY OF STATE FOR EDUCATION

(2) [CONTRACTOR] LIMITED

**PF2 AGREEMENT
SCHEDULE 6
PAYMENT MECHANISM**

PRIORITY SCHOOL BUILDING PROGRAMME

Standard Form PF2 Payment Mechanism

IMPORTANT NOTICE

This is the PSBP standard form of the Payment Mechanism, the intention of which is to minimise the time and costs of dealing with legal issues relating to the Programme. The Education Funding Agency (EFA) expects the standard form Payment Mechanism to be used un-amended. However, a certain degree of customisation of the standard form Payment Mechanism will be necessary to reflect local circumstances and where this is anticipated it has been flagged in a footnote.

The private sector should note that any proposed amendments to the standard form Payment Mechanism will be one of the criteria taken into account by EFA in evaluating a bid response to a batch of schools. Any proposed amendments to the standard form Payment Mechanism, save for when such proposed amendments (1) are scheme-specific changes supported by strong scheme-specific reasoning; or (2) highlight genuine drafting errors, are likely to be negatively evaluated.

The standard form Payment Mechanism contains a number of footnotes which identify certain key issues which the Parties will need to consider when using it. The standard form Payment Mechanism will therefore need to be analysed and reviewed in detail to ensure that its terms (and their impact) are clearly understood by the relevant parties. The footnotes should be removed as appropriate before finalisation of the document for execution [and/or release to bidders]⁹⁹⁹.

⁹⁹⁹ Tailor or remove for each project (batch of schools).

Document Properties	
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Abstract	

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7 June 2013	Issued	PSBP PF2 Standard Document with programme-level drafting. To be customised for each project.

SCHEDULE 6

Payment Mechanism

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Part I

Definitions

- 1 In this Schedule, unless the context otherwise requires, the following words and expressions shall have the following meanings:

Adjoining Area

an Area which adjoins an Area subject to Unavailability or Service Performance Deductions to which access is reasonably required to assess or attempt to remedy the Unavailability or Service Performance Shortfall of the adjoining Area;

Alternative Accommodation

alternative accommodation offered by the Contractor to the Authority in accordance with paragraph 4.8 of this Schedule 6;

Annual Energy Volume Adjustment or AEVA

the annual energy adjustment to be made (if any) pursuant to paragraph 8.4.5 of this Schedule 6;

Annual Service Plan Reimbursement

the payment (if any) to reflect the increase in the costs of the Contractor in implementing the Annual Service Plan in accordance with clause 39.3.11 (Contractor's Annual Services Report and Annual Service Plan);

Annual Shared Risk Core Energy Service Consumption Target or ASRCET

- (a) for the Initial Period, the figures set out in the table in paragraph 8.3.1 of this Schedule 6; and
- (b) following the Initial Period, the figures calculated in accordance with paragraph 8.3.5 of this Schedule 6;

Area

an area as identified on an Area Data Sheet;

Area Data Sheets

the data sheets relating to each Area within a relevant School;

Area Failure Deduction

an amount per Core Session set out in Part XI of this Schedule 6 and adjusted in accordance with this Agreement;

Authority Service Failure Notice

a notice given in accordance with paragraph 5.2.1 of this Schedule 6;

Authority Unavailability Notice

a notice given in accordance with paragraph 4.2.1 this Schedule 6;

Available

any Area which is not Unavailable, and **Availability** shall be construed accordingly;

Availability Criteria

minimum requirements to be met by the Contractor under this Agreement so as to ensure that an Area is Available, as detailed in Part X of this Schedule 6, together with any such criteria specific to an Area which shall be identified on the Area Data Sheet for that Area;

Availability Priority Category

the categories set out in Part XI of this Schedule 6 and identified on the Area Data Sheets;

AWEI Publication Date

the date on which Average Weekly Earnings Index for the February immediately preceding the Contract Year is published;

Building Load

the consumption of Energy Services in respect of:

- (a) space heating;
- (b) internal lighting and emergency lighting excluding security lighting;
- (c) swimming pool and hydrotherapy pool heating; and
- (d) building related services,

as set out in paragraph 2.8.1.9 of the Facilities Output Specification;

Catering Areas

the Areas identified as necessary for the provision of school meals in accordance with [paragraph [] of Part []] of the Authority's Requirements;

Change Protocol Deductions or CPD

the deductions arising pursuant to paragraph 5.9 of this Schedule 6;

Close / Closed / Closure

a School will be considered as Closed (or partially closed) where the Authority Representative or head teacher or deputy head teacher (acting reasonably) decides that all (or some) staff, pupils or visitors to the Buildings are requested to leave the Buildings, or not to attend the Buildings, because of a School Escalation Event;

Consequential Unavailability

Unavailability in respect of an Area which is Consequentially Unavailable;

Consequential Unavailability Table

shall have the meaning given in paragraph 4.3.4 of this Schedule 6;

Consequentially Unavailable Area

any Area deemed Unavailable as a result of the operation of paragraph 4.3.4 of this Schedule 6;

Contract Month

any month in a Contract Year provided that:

- (a) the first Contract Month shall commence on the Commencement Date and end on the last day of the month in which the Commencement Date occurs; and

- (b) the last Contract Month shall begin on the first day of the month in which the last day of the Contract Period occurs and end on the last day of the Contract Period;

Contractor Unavailability Notice

a notice given by the Contractor to the Helpdesk under paragraph 4.2.4 of this Schedule 6;

Contractor Service Performance Shortfall Notice

a notice given by the Contractor to the Helpdesk under paragraph 5.2.4 of this Schedule 6;

Core Energy Hours

are all School Day Mornings, all School Day Afternoons and the hours of 12:00 a.m. midnight to 07:00 a.m. every day of the year.

Core School Hours

those periods set out in paragraph 15.1 of this Schedule 6;

Core Sessions

those periods during which the Schools (or relevant parts of them) are required to be made Available to the Authority which shall comprise:

- (a) a School Day Morning or School Day Afternoon during the Core Schools Hours; and/or
- (b) any period of up to five (5) hours within an Additional School Period in accordance with paragraph 15.3 of this Schedule 6;

Correct Figures

has the meaning given to it in paragraph 2.3.4 limb (b) of this Schedule 6;

Critical Academic Function

national examinations, SATS and mock examinations for national examinations and SATS, as conducted from time to time by each School;

Critical Academic Function Increment or CAFI

shall be an amount equal to ten pounds (£10) (indexed) per pupil affected and a minimum of five hundred pounds (£500)¹ (indexed) in respect of secondary schools; or three hundred pounds (£300)¹ (indexed) in respect of primary schools;

Deduction Period

the number of Relevant Core Sessions during which Unavailability or a Service Performance Shortfall occurs pursuant to this Schedule 6;

Elective Services Charge (ESC)

the charge calculated in accordance with paragraph 2.4 of this Schedule 6. Those charges made by the Contractor to cover the cost of providing Elective Services in accordance with paragraph 1 of Part 7 (Elective Services) of Schedule 24 (Change Protocol) to this Agreement;

¹ The deduction amounts stated will be indexed at the time deductions are calculated. Local Authorities should index the amounts themselves from a base date of 01.01.2009 to the date of anticipated financial close.

End of the Inspection Period

has the meaning given to it in paragraphs 4.5.2 and 5.5.2 of this Schedule 6;

Energy Period

a period of one (1) Contract Year, or such other period in the case of:

- (a) the Initial Period; and
- (b) the period which would be one (1) year but for the Expiry Date;

Energy Service

each of [biofuel,] natural gas, fuel oils and electricity supplies;

Escalation Event

- (a) where, in any Core Session, the aggregate number of all Areas which are Unavailable or Unavailable but Used (disregarding those Areas where no Unavailability Deductions may be made pursuant to paragraph 4.7.1 of this Schedule 6) within a School exceeds thirty per cent (30%)² of the aggregate number of all the Areas (disregarding those Areas where no Unavailability Deductions may be made pursuant to paragraph 4.7.1 of this Schedule 6) within the relevant School; or
- (b) where, in any Core Session, the number of sanitary fittings or washbasins unavailable to pupils in a School for reasons other than those excused under paragraph 4.7.1 of this Schedule 6 is more than thirty per cent (30%) of the number contained in the Contractor's proposals; or
- (c) where the aggregate number of all Relevant Teaching Areas which are Unavailable or Unavailable but Used in a School (disregarding those Areas where no Unavailability Deductions may be made pursuant to paragraph 4.7.1 of this Schedule 6) exceeds twenty five per cent (25%) of the aggregate number of all the Relevant Teaching Areas (disregarding those Areas where no Unavailability Deductions may be made pursuant to paragraph 4.7.1 of this Schedule 6) within the relevant School;
- (d) where the Catering Areas are Unavailable at any point between 7 a.m. and 2 p.m. during the day; or
- (e) where the ICT server room is unavailable,

save in each case to the extent directly caused by a Relief Event or Force Majeure Event;

Event-Based Performance Standards

are the performance standards described in paragraph 13.4 of this Schedule 6;

External Area

those external Areas identified as such in the Area Data Sheets contained on the Contractor's Proposals³;

² Percentage may vary depending on School design.

³ External Areas need an Area Data Sheet otherwise there will be no Service Performance Deductions.

Forecast Period

has the meaning given to it in paragraph 2.3.3 limb (b) of this Schedule 6;

Forecast AWEI

has the meaning given to it in paragraph 2.3.3 limb (a) of this Schedule 6;

Forecast RPIX

has the meaning given to it in paragraph 2.3.3 limb (a) of this Schedule 6;

Helpdesk

the helpdesk provided by the Contractor in accordance with [] of the Services Output Specification;

Incorrect Figures

has the meaning given to it in paragraph 2.3.4 limb (b) of this Schedule 6;

Indexable Labour Element or ILE

the part of the Unitary Charge, initially set at [£] per annum⁴, that is subject to RPIX indexation to be adjusted from time to time pursuant to the terms of this Agreement;

Indexable Non-Labour Element or INLE

the part of the Unitary Charge, initially set at [£] per annum⁵, that is subject to AWEI indexation to be adjusted from time to time pursuant to the terms of this Agreement;

Indexation Base Month

April [2013],⁶

Indexation Review Date

shall be 1 April twelve (12) months immediately following the Indexation Base Month, and every 1 April thereafter;

Initial Period

the period from the Services Availability Date to one year after the 31 March immediately following the Services Availability Date at a School;

Kilowatt Hour Electrical Equivalents, or kWhe

the electrical energy equivalents of other Energy Services; this is a notional unit of energy to allow the consumption of different energy sources to be combined in a single figure. These will be calculated by multiplying actual consumption in kWh by the conversion factors of 1.0 for electricity, 0.4 for thermal energy and 0.5 for all other fuels;

Logged Failure Time

the time at which Unavailability or a Service Performance Shortfall (as the case may be) was notified to the Helpdesk in accordance with paragraphs 4.2 or 5.2 of this Schedule 6 as appropriate;

⁴ This part of the Unitary Charge should be selected so as to provide the best approximate hedge against inflation.

⁵ This part of the Unitary Charge should be selected so as to provide the best approximate hedge against inflation.

⁶ The month of April used as the price base date within the Financial Model. This should be less than 12 months prior to Financial Close to avoid ambiguity of when first Indexation Review Date falls. Ambiguity may arise on indexation if the first Indexation Review Date falls prior to Financial Close.

Logged Permanent Rectification Time

the time at which the permanent remedy of any Unavailability was notified to the Helpdesk in accordance with paragraph 4.5.1 (subject to paragraph 4.5.2) of this Schedule 6, or the remedy of a Service Performance Shortfall was effected in accordance with paragraph 5.5.1 of this Schedule 6;

Logged Temporary Rectification Time

the time at which the temporary remedy of any Unavailability was notified to the Helpdesk in accordance with paragraph 4.5.1 (subject to paragraph 4.5.2) of this Schedule 6, or the remedy of a Service Performance Shortfall was effected in accordance with paragraph 5.5.1 of this Schedule 6;

Monthly Unitary Charge

the monthly amount calculated in accordance with paragraph 2.2 of this Schedule 6;

Monthly Unitary Payment

the monthly payment calculated in accordance with paragraph 2.1 of this Schedule 6;

Other Set Off Amount or OSOA

any amount which the Authority is entitled to set off as a sum due and payable to the Authority against any payment due to the Contractor under the terms of this Agreement;

Partial Period

has the meaning given to it in paragraph 8.4.1 of this Schedule 6;

Pass-Through Cost or PTC

- (a) rates, water supply charges and unmetered charges for surface water drainage levied in respect of the Schools; and
- (b) charges for telephone and data connections and usage (save to the extent attributable to the use of the telephone and data connection by the Contractor or a Contractor Related Party)⁷ ;

Performance Standard

minimum standard of provision relating to a Service as set out in the Services Output Specification;

Periodic Performance Standard

has the meaning given to it in paragraph 13.5 of this Schedule 6;

Permanent Rectification

rectification measures taken by the Contractor to remedy, as appropriate, either:

- (a) a breach or breaches of the Availability Criteria in respect of an Area(s) such that, following rectification, the affected Area(s) meet(s) all relevant Availability Criteria; or
- (b) a Service Performance Shortfall so that the relevant Service is performed to the relevant Performance Standards;

⁷

These are examples of likely Pass-Through Costs. The definition is to be finalised for each Project.

Permanent Rectification Period

- (a) the period set out in Part XII to this Schedule 6, which elapses from the relevant Logged Failure Time and during which the Contractor must fully rectify Unavailability in order to avoid incurring an Area Failure Deduction; or
- (b) the period set out in Part XIV to this Schedule 6, which elapses from the relevant Logged Failure Time and during which the Contractor must fully rectify fully a Service Performance Shortfall in order to avoid incurring a Service Failure Deduction;

Ratchet

the multiple applied to the Unavailability Deduction, Service Failure Deduction or Unavailable but Used Deduction in accordance with paragraphs 6.1, 6.2 and 6.3 of this Schedule 6, being a factor of 2.0 or 1.0;

Rectification Period

a Temporary Rectification Period or a Permanent Rectification Period as appropriate;

Rectification Priority Category

the categories set out in Part XIV of this Schedule 6 describing the Rectification Periods to be established for any Service Performance Shortfall in accordance with paragraph 5.2 of this Schedule 6;

Relevant Core Session

those Core Sessions which shall be used in order to calculate deductions in accordance with this Schedule 6 and shall be:

- (a) in respect of Unavailability or Unavailable but Used, any Core Session in which the relevant Unavailable Area should be, and is not, Available for use by the Authority as prescribed under this Agreement; or
- (b) in respect of a Service Performance Shortfall any Core Session in which the relevant Service should be, and is not, provided in accordance with the Service Requirement as prescribed under this Agreement.

References to Relevant Core Sessions in which events occur shall, if the event in question does not occur during a Core Session, refer instead to the Relevant Core Session immediately:

- (a) preceding the event (in the case of rectification); or
- (b) following the event (in the case of failure);

Relevant Teaching Areas

those Areas used for the purposes of teaching identified as such in [the Area Data Sheets]⁸;

Relocation Date

the date and time, notified by the Contractor to the Authority in accordance with paragraph 4.8.1 of this Schedule 6, 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;

⁸ To be identified by reference to a plan on a school-by-school basis.

Relocation Plan

a plan, in relation to Alternative Accommodation, provided by the Contractor to the Authority in accordance with paragraphs 4.8.1 of this Schedule 6;

Reporting Deduction or RD

the deductions calculated in accordance with Part IX of this Schedule 6;

Reporting Cycle

the periods and frequencies for monitoring reports on Service Requirements as set out in paragraph 2.3 of the Services Output Specification, the Performance Standards Table in Appendix 1 of the Services Output Specification and Part XVII of this Schedule 6;

RPIX Publication Date

the date on which RPIX for the February immediately preceding the Contract Year is published;

School Day Afternoon

has the meaning given to it in paragraph 15.1 of this Schedule 6;

School Day Morning

has the meaning as set out in paragraph 15.1 of this Schedule 6;

School Escalation Event

an Escalation Event as it applies to a particular School;

Service Failure Deduction

the financial deduction specified in Part XIII of this Schedule 6 and adjusted in accordance with this Agreement;

Service Performance Deduction or SPD

the deduction (if any) made to the Monthly Unitary Charge as a result of Service Performance Shortfalls in accordance with Part V of this Schedule 6 (including, for the avoidance of doubt, any Ratchet incurred pursuant to paragraph 6.2 of this Schedule 6 and/or any Change Protocol Deductions);

Service Performance Shortfall

a failure of the Contractor to provide a Service in accordance with the Performance Standards relating to a relevant Service Requirement which includes any of the Specific Requirements relating to the relevant Service Requirement;

Service Priority Category

the categories set out in Part XIII of this Schedule 6 as applied to the Services in the Services Output Specification;

Service Requirement

the Services required to be provided by the Contractor to the Authority under this Agreement as set out in the Services Output Specification;

Soft Services Excusing Cause

has the meaning given in paragraph 4.7.1(l) of this Schedule 6;

Specific Requirement

the specific requirements relating to each Service Requirement as set out in the Services Output Specification;

Step-In Adjustment or SIA

the costs which are to be deducted from the Monthly Unitary Charge under clause 61.5.2 (Authority Step-In);

Temporary Rectification

rectification measures taken by the Contractor which ensure that the affected Area(s) can continue to be used without risk to the health and safety of users;

Temporary Rectification Period

the period from the relevant Logged Failure Time as set out in Part XII or Part XIV of this Schedule 6 (as appropriate) within which the Contractor must effect a Temporary Rectification to the Unavailability in order to avoid incurring an Area Failure Deduction, or to the Service Performance Shortfall in order to avoid incurring a Service Failure Deduction, until such time as Permanent Rectification is carried out;

Total Deductions

the sum of all Unavailability Deductions, Unavailable but Used Deductions, Service Performance Deductions and Reporting Deductions;

Total Unavailability Deductions

has the meaning given to it in paragraph 4.6.1 of this Schedule 6;

Unavailability Deductions or UD

the deductions (if any) made to the Monthly Unitary Charge as a result of Areas being Unavailable in accordance with Part IV of this Schedule 6 where the Logged Permanent Rectification Time and/or the Logged Temporary Rectification Time has not occurred within the relevant Rectification Period (including, for the avoidance of doubt, any Ratchet or Critical Academic Function Increment incurred pursuant to paragraphs 6.1, 6.3 or 6.4 of this Schedule 6 and any Consequential Unavailability);

Unavailable

any Area which does not meet all applicable Availability Criteria or any Area which is Consequentially Unavailable, or is otherwise deemed to be Unavailable in accordance with the terms of this Schedule 6, and Unavailability shall be construed accordingly;

Unavailable but Used

an Area which is Unavailable but which the Authority continues to use even though an Authority Unavailability Notice has been issued;

Unavailable but Used Deductions or UUD

the deductions (if any) made to the Monthly Unitary Charge as a result of Areas being Unavailable (but which continue to be used by the Authority) in accordance with Part IV of this Schedule 6 (including, for the avoidance of doubt, any Ratchet or Critical Academic Function Increment incurred pursuant to paragraphs 6.1, 6.3 or 6.4 of this Schedule 6);

Unindexable Element or UE

[£] (being the unindexed element of the Unitary Charge as set out in the financial model and adjusted from time to time pursuant to the terms of this Agreement); and

Unitary Charge

the annual total amount of the Indexable Labour Element, the Indexable Non-Labour Element and the Unindexable Element calculated in accordance with Part II of this Schedule 6.

Part II

The Unitary Charge

2

2.1 The Monthly Unitary Payment

The Monthly Unitary Payment in respect of a Payment Period, being Contract Month “n”, shall be calculated by adding to the Monthly Unitary Charge for Contract Month “n” the Pass-Through Costs for Contract Month “n” and the Elective Services Charge for Contract Month “n” and by deducting the Total Deductions relating to the pre-preceding Contract Month “n-2” (other than Reporting Deductions, which shall be those agreed or determined in the preceding Contract Month “n-1” and the Step-In Adjustment for the preceding Contract Month “n-1” and any Other Set Off Amount for the preceding Contract Month “n-1” and the Annual Energy Adjustment⁹ and the Annual Service Plan Reimbursement, in accordance with the following formula:

$$MUP_n = MUC_n - TUD_{n-2} - SPD_{n-2} - RD_{n-1} + PTC_n - SIA_{n-1} + ESC_n - OSOA_{n-1} + ASPR - AEA$$

where:

MUP_n = the Monthly Unitary Payment for Contract Month “n”;

MUC_n = the Monthly Unitary Charge in respect of Contract Month “n” calculated in accordance with paragraph 2.2 of this Schedule 6;

TUD_{n-2} = the Total Unavailability Deductions for Contract Month “n-2”;

SPD_{n-2} = the Service Performance Deductions for Contract Month “n-2”;

RD_{n-1} = the Reporting Deductions for Contract Month “n-1”;

PTC_n = the Pass-Through Costs for Contract Month “n”;

ESC_n = the Elective Services Charge for Contract Month “n”;

SIA_{n-1} = the Step-In Adjustment for Contract Month “n-1”;

OSOA_{n-1} = the Other Set Off Amount for Contract Month “n-1”;

ASPR = the Annual Service Plan Reimbursement; and

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

2.2 Calculation of the Monthly Unitary Charge

The Monthly Unitary Charge shall commence on the Services Availability Date for the first available [School / Phase].¹⁰

⁹ When paragraph 8.4.9 of this Schedule 6 applies, the value of AEA will be negative so a negative number will be subtracted, leading to an increase in MUP_n.

¹⁰ This is drafted to allow phased start up across Schools and the project. If there is a single commencement date for the entire Unitary Charge, and/or it is not part way through a month, the text

The Monthly Unitary Charge for any Payment Period (each Contract Month “n”) shall be calculated as:

$$MUC_n = \left(\frac{UC_m}{12} \times F \right)$$

where:

MUC_n = the Monthly Unitary Charge for Contract Month “n”;

UC_m = the Unitary Charge for Contract Year ‘m’ which includes the Contract Month in respect of which UC_m is to be calculated as:

$$UC_m = UE_m + ILE_m + INLE_m$$

where:

UE_m = the Unindexable Element of the Unitary Charge for Contract Year ‘m’;

ILE_m = the Indexable Labour Element of the Unitary Charge for Contract Year m as calculated in paragraph 2.3.1 (*Indexation of the Indexable Labour Element of the Unitary Charge*) of this Schedule 6; and

$INLE_m$ = the Indexable Non-Labour Element of the Unitary Charge for Contract Year “m” as calculated in paragraph 2.3.2 (*Indexation of the Indexable Non-Labour Element of the Unitary Charge*) of this Schedule 6.

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

$$F = \sum_{\text{School Phase}} (SP_x \times C_x)$$

where:

SP_x = the percentage of the Unitary Charge attributable to each School Phase ‘x’ from the Services Availability Date in relation to such School Phase, as set out in the table below:

School Phase	SP_x
[Insert phased buildings /	[Insert %]

should be amended to delete either (or both) “F” and “C” from the formula. The Monthly Unitary Charge will be payable from the first Services Availability Date.

School Phase	SP _x
Schools]	
TOTAL	100.00%

$$C_x = dr_n / dm_n$$

where:

dr_n = total number of days in Contract Month "n" or, if Services commence or end part way through a Contract Month, the number of days remaining in Contract Month "n" at the date of the relevant Services Availability Date or, as the case may be, number of days in the Contract Month up to and including the date when Services end; and

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

2.3 Indexation

2.3.1 Indexation of the Indexable Labour Element of the Unitary Charge

On each Indexation Review Date, the Indexable Labour Element shall be recalculated as:

$$ILE_m = ILE_{m-1} \times \frac{D}{C}$$

where:

ILE_m = the Indexable Labour Element applicable from the relevant Indexation Review Date;

ILE_{m-1} = the Indexable Labour Element applicable immediately before the relevant Indexation Review Date;

C = the value of AWEI for the month of February twelve (12) months prior to that used in the calculation of "D" (save in the case of the first Indexation Review Date when it shall be the value of AWEI for February immediately preceding the Indexation Base Month); and

D = the value of AWEI for the month of February immediately preceding the relevant Indexation Review Date.

2.3.2 Indexation of the Indexable Non-Labour Element of the Unitary Charge

On each Indexation Review Date, the Indexable Non-Labour Element shall be recalculated as:

$$INLE_m = INLE_{m-1} \times \frac{B}{A}$$

where:

INLE_m = the Indexable Non-Labour Element applicable from the relevant Indexation Review Date;

INLE_{m-1} = the Indexable Non-Labour Element applicable immediately before the relevant Indexation Review Date;

A = the value of RPIX for the February twelve (12) months prior to that used in the calculation of "B" (save in the case of the first Indexation Review Date when it shall be the value of RPIX for February immediately preceding the Indexation Base Month); and

B = the value of RPIX for the month of February immediately preceding the relevant Indexation Review Date.

2.3.3 Forecast RPIX and Forecast AWEI

For the purposes of calculating ILE_m pursuant to paragraph 2.3.1(c) above and INLE_m pursuant to paragraph 2.3.2(c) of this Schedule 6, where RPIX and / or AWEI for the month of February in Contract Year "m" has not been published then:

- (a) The Contractor's forecast of RPIX or AWEI as demonstrated to the reasonable satisfaction of the Authority (**Forecast RPIX or Forecast AWEI**) shall be used in replacement of RPIX or AWEI;
- (b) within ten (10) Business Days of the RPIX Publication Date or AWEI Publication Date, the Indexable Labour Element and / or the Indexable Non-Labour Element shall be recalculated, using the published RPIX or AWEI rather than the Forecast RPIX or Forecast AWEI, and the Unitary Charge shall be adjusted for the period from the Indexation Review Date to the RPIX Publication Date or AWEI Publication Date (the **Forecast Period**); and
- (c) if the amount of the Monthly Unitary Payment paid by the Authority pursuant to clause 37 (Payment Provisions) of this Agreement in respect of the Forecast Period is either in excess of or less than the amount which would have been paid had the RPIX or AWEI for the

month of February in Contract Year “m” been published on time, then an amount equal to the shortfall or excess shall be added to or deducted from the Monthly Unitary Payment for the Payment Period which follows the RPIX Publication Date or AWEI Publication Date.

2.3.4 Changes to the Index

- (a) If there is a material change in the nature or basis of any index required for this Part II, or if any index is discontinued, the Parties shall agree upon an alternative index that as closely replicates RPIX or AWEI as is possible, and such consequential changes shall be made to the calculations provided for in this Part II as are necessary to ensure that all payments to be made pursuant to this Agreement shall be the same as if such change had not occurred. Any dispute regarding changes to the calculations may be referred by either Party to the Dispute Resolution Procedure.
- (b) If any error or mistake shall occur in the publication of RPIX or AWEI (the **Incorrect Figures**) that has been used at any time in any calculation in this Schedule 6 or any amount required to be indexed in accordance with this Agreement which is subsequently duly acknowledged and corrected (**Correct Figures**) by the Office of National Statistics or the relevant government department with responsibility for the publication of the Index then the Authority and the Contractor agree that any calculations which used the Incorrect Figures for the adjustment of any part or parts of the Unitary Charge shall be recalculated based upon the Correct Figures. Any overpayment or underpayment by either Party to the other which has occurred as a result of the Incorrect Figures shall be paid or repaid by the Party benefiting from any overpayment or underpayment as determined in accordance with this paragraph 2.3.3 to the other within ten (10) Business Days of the recalculation using the Correct Figures being agreed or determined. Any dispute in relation to this clause may be referred at the request of either Party to the Dispute Resolution Procedure.

2.4 Elective Services

2.4.1 Elective Services Charge

Where the Contractor has provided Elective Services in accordance with a request made by the Authority or a School Entity pursuant to paragraph 1 of Part 7 (Elective Services) of Schedule 24 (Change Protocol) to this Agreement the Contractor shall be entitled to charge the Authority for the relevant Elective Service on the basis of either:

- (a) Where the Elective Services Catalogue indicates an annual charge for the Elective Service, the Elective Service Charge shall be one twelfth (1/12th) of the annual Elective Service Catalogue cost for the service, adjusted for inflation in accordance with paragraph 2.4.2 of this Schedule 6; and charged on a monthly basis (in arrears) from the month of the first provision of the relevant Elective Service up until the last month of the provision of the Elective Services (the Authority having given notice in accordance with the Elective Services provision to terminate the Elective Service); or

- (b) Where the Elective Service Catalogue indicates a one-off charge for the provision of the Elective Service, the Elective Service Charge shall be the full amount indicated in the Elective Service Catalogue, and shall be charged in the Contract Monthly following the satisfactory completion of the Elective Service.

2.4.2 Indexation of Elective Services Catalogue

On each Indexation Review Date the Elective Services Charges set out in the Elective Services Catalogue shall be recalculated as:

$$ESC_y = ESC_{y-1} \times \frac{B}{A}$$

where:

- ESC_y = the Elective Services Charge applicable from the relevant Indexation Review Date;
- ESC_{y-1} = the Elective Services Charge applicable in the year immediately before the relevant Indexation Review Date;
- A = the value of RPIX for the month of February twelve (12) months prior to that used in the calculation of "B" (save in the case of the first Indexation Review Date, when it shall be the value of RPIX for the month of February immediately preceding the Indexation Base Month); and
- B = the value of RPIX for the month of February immediately preceding the relevant Indexation Review Date.

Part III

Reporting

3

3.1 Reporting Requirements

Within five (5) Business Days following the end of the Contract Month, the Contractor shall submit a report to the Authority, in a format to be agreed between the Parties, that meets the reporting requirements included in Part XIV of this Schedule 6 in respect of the Contract Month just ended and within ten (10) Business Days following the end of the Contract Year, the Contractor shall submit a report to the Authority, in a format to be agreed between the Parties, that meets the reporting requirements included in Part XVII of this Schedule 6 in respect of the Contract Year just ended giving:

- 3.1.1 a summary report and list of all incidents reported to the Helpdesk identifying which incidents have been treated as potential events of Unavailability and which incidents have been treated as potential Service Performance Shortfalls;
- 3.1.2 a summary assessment of all notifications of circumstances potentially constituting an event of Unavailability or Unavailable but Used, together with a detailed description of each notification, including:
 - (a) a list of reported incidents;
 - (b) details of the responses to each reported incident, identifying whether the incident resulted in an event of Unavailability or Unavailable but Used, and if not why not;
 - (c) the Areas and Services affected by each Unavailability;
 - (d) the total duration of each event of Unavailability (including the time and date upon which the same commenced and, where relevant, ceased) and in relation to any continuing Unavailability, the expected end date for that Unavailability; and
 - (e) any other factors that the Contractor acting reasonably shall consider relevant;
- 3.1.3 any Unavailability Deductions which should be made in accordance with this Schedule 6 including all relevant calculations;
- 3.1.4 a summary assessment of all notifications of circumstances potentially constituting a Service Performance Shortfall, together with a detailed description of each notification, including:
 - (a) a list of reported incidents;
 - (b) details of the responses to each reported incident, identifying whether the incident resulted in a Service Performance Shortfall, and if not why not;

- (c) the Areas and Services affected by each Service Performance Shortfall;
- (d) the total duration of each Service Performance Shortfall (including the time and date upon which the same commenced and, where relevant, ceased) and in relation to any continuing Service Performance Shortfall, the expected end date for that Service Performance Shortfall; and
- (e) any other factors that the Contractor acting reasonably shall consider relevant; and

3.1.5 any Service Performance Deductions which shall fall to be made in accordance with this Schedule 6 including all relevant calculations.

3.2 The Authority shall notify the Contractor in writing within ten (10) Business Days of receipt by the Authority of the relevant report if there is any part of that report which the Authority disputes and shall submit to the Contractor such supporting evidence as the Authority may have.

3.3 The Parties shall endeavour to resolve any dispute identified pursuant to paragraph 2.5 above before the end of the month in which it arises. Clause 37 (Payment Provisions) of this Agreement shall then apply.

3.5 Non-Reporting

If the Reporting Requirements in paragraph 3.1 of this Schedule 6 are not met, deductions for the Contract Month that is the subject of the report shall be calculated on the basis that all Areas were Unavailable during that Contract Month. If the report is satisfactorily provided at a later date, the Unavailability Deductions and Service Performance Deductions for the relevant Contract Month will be recalculated at that time.

Part IV

Unavailability

4

4.1 Authority's right to make deductions

In the event that an Area becomes Unavailable, the Authority may make deductions from the Monthly Unitary Charge in accordance with this Schedule 6. For the purposes of this Part IV, references to Unavailable or Unavailability shall be taken to include references to Unavailable but Used or Consequentially Unavailable or Consequential Unavailability where appropriate.

4.2 Notice of Unavailability

If the Authority's Representative, head teacher, a deputy head teacher, assistant head teacher, business manager, head of department or other nominated officer believes that an Area may be or may have been Unavailable, then that party may give notice to the Helpdesk, such notice (an **Authority Unavailability Notice**) to contain the following information:

- (a) details of the relevant fault;
- (b) the Area believed to be Unavailable; and
- (c) the reasons why such Areas are believed to be Unavailable.

4.2.2 Where an Authority Unavailability Notice is provided to the Contractor, then the Contractor shall report the details of the Authority Unavailability Notice as provided under paragraph 4.2.1 above to the Helpdesk within ten (10) minutes of receipt of the Authority Unavailability Notice and the time of such notification to the Helpdesk shall constitute the Logged Failure Time in relation to such Unavailability.

4.2.3 Where the Authority Unavailability Notice is provided directly to the Helpdesk, then the time of such notification shall constitute the Logged Failure Time in relation to such Unavailability. Where the same failure is recorded by the Authority and also by the Contractor, the earlier time will constitute the Logged Failure Time.

4.2.4 If the Contractor believes that any Area is Unavailable and the Contractor has not received an Authority Unavailability Notice then the Contractor shall give notice (containing the information referred to in paragraph 4.2.1 of this Schedule 6) to the Helpdesk. The time of such notification will constitute the Logged Failure Time in relation to such Unavailability and the Helpdesk shall notify the Authority's Representative, promptly after its receipt of a Contractor Unavailability Notice, of the Contractor Unavailability Notice and of the details contained within it.

4.2.5 The Authority Unavailability Notice, or the Contractor Unavailability Notice, shall be given to the Helpdesk in writing. The Contractor shall, as soon as reasonably practicable (and without prejudice to the expiry of the relevant Rectification Period) confirm in writing to the Authority's Representative whether it agrees that such fault has given rise to Unavailability. If the Contractor's Representative agrees then paragraph 4.3.2 of this Schedule

6 shall apply. If the Contractor's Representative does not agree then paragraph 4.3.3 of this Schedule 6 shall apply.

4.3 Responding to Notice of Unavailability

4.3.1 The Contractor shall, within two (2) hours of the relevant Logged Failure Time (and without prejudice to the expiry of the relevant Rectification Period), assess the Unavailability which has been notified to the Helpdesk in accordance with paragraphs 4.2.1, 4.2.2 or 4.2.4 of this Schedule 6 and issue the Authority with a notice specifying (to the extent that this can be determined by the Contractor using all reasonable endeavours):

- (a) the cause of the Unavailability;
- (b) the Contractor's plans for rectifying any Unavailability and the estimated period in which the Unavailability will be temporarily and/or permanently remedied; and
- (c) whether any of the provisions detailed in paragraph 4.7 of this Schedule 6 are applicable in respect of the relevant Unavailability.

If the Contractor does not respond within two (2) hours of the relevant Logged Failure Time the Area will be deemed to be Unavailable.

4.3.2 The Contractor shall provide the Authority:

- (a) on a daily basis, for so long as such Area remains Unavailable, with an update on the progress made in rectifying such Unavailability, together with any revised estimate as to when such Unavailability will be made safe, temporarily rectified and permanently rectified;
- (b) promptly on becoming aware of any change to the information provided to the Authority pursuant to paragraph 4.3.1 of this Schedule 6, with details of all such changes; and
- (c) on a monthly basis with a report in accordance with paragraph 3.1 of this Schedule 6, of all events of Unavailability reported in the preceding calendar month together with confirmation of the time period between the Logged Failure Time and the Logged Permanent Rectification Time and the time period between the Logged Failure Time and the Logged Temporary Rectification Time.

4.3.3 Should the Authority and Contractor disagree over whether an incident of Unavailability has arisen or whether any of the provisions detailed in paragraph 4.7 of this Schedule 6 are applicable in respect of the relevant Unavailability, then the Authority's decision shall prevail for the purposes of calculating Unavailability Deductions under this Schedule 6. The Contractor may refer the matter to the Dispute Resolution Procedure.

4.3.4 Where an Area specified in the first column of the table annexed to Part XVI of this Schedule 6 (the **Consequential Unavailability Table**) is or at any time becomes Unavailable, and as a direct consequence of such Unavailability the Authority, Authority Related Party or staff or pupils of the School are unable (acting reasonably) to access or use or occupy for its intended purpose any other Area identified in the second column 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 Failure 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.

4.4 Commencement and Duration of Unavailability

- 4.4.1 For the purposes of this paragraph 4.4, a temporary remedy or a permanent remedy is only effective when the remedy has both been effected and also been notified to the Helpdesk as set out in paragraph 4.5.1 of this Schedule 6.
- 4.4.2 Where no rectification period is set out in the Facilities Output Specification, the Service Failure Deduction will be made by the Authority in respect of each Relevant Core Session which are those Core Sessions from (and including) the Core Session in which the Logged Failure Time occurred until (and including) the Core Session during which the Service Performance Shortfall ceases to occur.
- 4.4.3 Where a rectification period is allowed:
- (a) If the Unavailability notified to the Helpdesk in accordance with paragraphs 4.2.1, 4.2.2 or 4.2.4 of this Schedule 6 has been made safe and temporarily (or permanently) remedied by the end of the Temporary Rectification Period and permanently remedied by the end of the Permanent Rectification Period, then it will be deemed that no Unavailability of that Area occurred on that occasion for the purpose of calculating Unavailability Deductions.
 - (b) If the Unavailability notified to the Helpdesk in accordance with paragraph 4.2.1, 4.2.2 or 4.2.4 of this Schedule 6 has been made safe and temporarily remedied by the end of the Temporary Rectification Period but has not been permanently remedied by the end of the Permanent Rectification Period, then it will be deemed that Unavailability of that Area occurred from the end of the Temporary Rectification Period and an Unavailability Deduction shall be made in respect of each Relevant Core Session, which are those Core Sessions from (and including) the Core Session during which the Temporary Rectification Period expired up to and including the Core Session in which the relevant Unavailability was permanently remedied.
 - (c) If the Unavailability notified to the Helpdesk in accordance with paragraph 4.2.1, 4.2.2 or 4.2.4 of this Schedule 6 has not been made safe and either permanently or temporarily remedied by the end of the Temporary Rectification Period but has been permanently remedied by the end of the Permanent Rectification Period, then it will be deemed that Unavailability of that Area occurred from the Logged Failure Time and an Unavailability Deduction shall be made in respect of each Relevant Core Session, which are those Core Sessions from (and including) the Core Session during which the Logged Failure Time occurred up to and

including the Core Session in which the permanent remedy occurred. For the avoidance of doubt the Permanent Rectification Period shall commence at the Logged Failure Time and not on expiry of the Temporary Rectification Period.

- (d) If the Unavailability notified to the Helpdesk in accordance with paragraphs 4.2.1, 4.2.2 or 4.2.4 of this Schedule 6 has not been made safe and temporarily remedied by the end of the Temporary Rectification Period and has not been permanently remedied by the end of the Permanent Rectification Period, then it will be deemed that Unavailability of that Area occurred from the Logged Failure Time and an Unavailability Deduction shall be made in respect of each Relevant Core Session, which are those Core Sessions from (and including) the Core Session during which the Logged Failure Time occurred up to and including the Core Session in which the permanent remedy occurred. For the avoidance of doubt the Permanent Rectification Period shall commence at the Logged Failure Time and not on expiry of the Temporary Rectification Period.
- (e) Where the Contractor has reasonably demonstrated that its attempts to remedy the relevant Unavailability are frustrated by the Authority failing to grant the Contractor access to an Unavailable Area (or Adjoining Area) for at least two (2) hours in aggregate during a Core Session:
 - (i) such Core Session shall not be taken into account in calculating the relevant Permanent Rectification Period and the Permanent Rectification Period shall commence in the first Core Session in which at least two (2) hours of access is permitted; and
 - (ii) the relevant Temporary Rectification Period shall be the first sixty (60) minutes of unimpeded access to the relevant Areas(s) enjoyed by the Contractor following the relevant Logged Failure Time,

and where the Contractor reasonably needs access to an Area or Adjoining Area to remedy the relevant Unavailability, the Authority shall not unreasonably withhold such access, subject to the need for the Authority to deliver Educational Services at the Schools.

4.5 Cessation of Unavailability

- 4.5.1 The Contractor shall immediately notify the Helpdesk when it believes that any Unavailability has been made safe and temporarily or permanently remedied. The time of such notification will, subject to paragraph 4.5.2 of this Schedule 6, constitute the Logged Temporary Rectification Time or the Logged Permanent Rectification Time respectively in relation to such Unavailability and the Helpdesk shall, as soon as is reasonably practicable after such notification by the Contractor, and in any event within twenty-four 24 hours, notify the Authority's Representative that the relevant Unavailability has been remedied.

- 4.5.2 The Authority's Representative, head teacher, a deputy head teacher, assistant head teacher, business manager, head of department or other nominated officer shall be entitled to inspect the Area where such Unavailability has been made safe and temporarily or permanently remedied and must carry out such inspection by the end of the School Day following the day on which it was notified that the relevant remedy occurred (the **End of the Inspection Period**). If the Authority's Representative does not agree that such Unavailability has been so remedied then it shall notify the Contractor of the same by the end of the Core Session following the End of the Inspection Period and it shall be deemed that the Logged Temporary Rectification Time or Logged Permanent Rectification Time in respect of the incident has not yet occurred. The Authority's decision will prevail for the purposes of determining whether the relevant Unavailability has been remedied. The Contractor may refer the matter to the Dispute Resolution Procedure.
- 4.5.3 Subject to paragraph 4.4.3 of this Schedule 6, Unavailability will continue from (and including) the Relevant Core Session during which the Logged Failure Time occurs until (and including) the Relevant Core Session during which the Logged Permanent Rectification Time or the Logged Temporary Rectification Time occurs.

4.6 Calculation of Unavailability Deductions

4.6.1 The Total Unavailability Deduction

The Total Unavailability Deduction for each Contract Month will be the aggregate of all Unavailability Deductions and Unavailable but Used Deductions for all Core Sessions in that Contract Month being:

The Unavailability Deduction for the period of Unavailability in respect of each Unavailable Area shall be calculated as follows:

$$TUD = UD + UUD$$

where:

TUD = the Total Unavailability Deduction for all Schools;

UD = the aggregate of the Unavailability Deductions for each Area in each School; and

UUD = the aggregate of the Unavailable but Used Deductions for each Area in each School.

4.6.2 Unavailability Deduction

If any Area is Unavailable during a Core Session and is not used by the Authority after such Unavailability begins during that Core Session, then the Area will be Unavailable for that Core Session and thereafter until it is permanently rectified. The Unavailability Deduction shall be calculated as follows:

$$UD_a = AFD \times (DP_1 + (DP_2 \times R)) + CAFI$$

where:

- UD_a = the Unavailability Deduction for the relevant Area "a";
- AFD = the Area Failure Deduction for that Area;
- DP_1 = the Deduction Period, expressed as a number of Core Sessions, calculated in accordance with paragraphs 4.4 and 4.5 of this Schedule 6, to which the Ratchet does not apply;
- DP_2 = the Deduction Period, expressed as a number of Core Sessions, calculated in accordance with paragraphs 4.4 and 4.5 of this Schedule 6, to which the Ratchet does apply pursuant to paragraphs 6.1 and/or 6.3 of this Schedule 6;
- R = the Ratchet, which will be a factor of 2.0 when paragraph 6.1.1 or 6.3 of this Schedule 6 applies and 1.0 when neither paragraph 6.1.1 nor 6.3 of this Schedule 6 applies; and
- $CAFI$ = the Critical Academic Function Increment, which may be applied pursuant to paragraph 6.4 of this Schedule 6.

4.6.3 Indexation of the Area Failure Deduction

On each Indexation Review Date the Area Failure Deductions set out in Part XI shall be indexed in accordance with the following¹¹:

$$AFD_y = AFD_{y-1} \times B/A$$

where:

- AFD_y = the Area Failure Deduction set for each Area applicable from the relevant Indexation Review Date;
- AFD_{y-1} = the Area Failure Deduction set for each Area applicable immediately before the relevant Indexation Review Date;
- A = the value of RPIX for the month of February 12 months prior to that used in the calculation of "B" (save in the case of the first Indexation Review Date, when it shall be the value of RPIX for the month of February immediately preceding the Indexation Base Month); and
- B = the value of RPIX for the month of February immediately preceding the relevant Indexation Review Date.

4.6.4 Unavailable but Used Deduction

If any Area, or any Alternative Accommodation accepted by the Authority pursuant to paragraph 4.8 of this Schedule 6, is Unavailable during a Core

¹¹ Area Failure Deductions are intentionally fully indexed.

Session but is nevertheless used by the Authority after such Unavailability begins during that Core Session, then the Area or Alternative Accommodation will be Unavailable but Used for such Core Session (and any subsequent Core Sessions during which the relevant Area or Alternative Accommodation is Unavailable but is nevertheless used by the Authority) until the Unavailability is permanently rectified.

The Unavailable but Used Deduction for the period in respect of which each Area or Alternative Accommodation is Unavailable but Used shall be calculated as follows:

$$UUDa = (AFD \times (DP_1 + (DP_2 \times R)) + CAFI) \times 0.5$$

where:

- UUDa = the Unavailable but Used Deduction for the relevant Area “a” or Alternative Accommodation;
- AFD = the Area Failure Deduction for that Area or Alternative Accommodation;
- DP₁ = the Deduction Period, expressed as a number of Core Sessions, calculated in accordance with paragraphs 4.4 and 4.5 of this Schedule 6, to which the Ratchet does not apply;
- DP₂ = the Deduction Period, expressed as a number of Core Sessions, calculated in accordance with paragraphs 4.4 and 4.5 of this Schedule 6, to which the Ratchet does apply pursuant to paragraphs 6.1 and/or 6.3 of this Schedule 6;
- R = the Ratchet, which will be a factor of 2.0 when paragraphs 6.1.1 or 6.3 of this Schedule 6 applies and 1.0 when neither paragraph 6.1.1 nor 6.3 applies; and
- CAFI = the Critical Academic Function Increment, which may be applied pursuant to paragraph 6.4 of this Schedule 6.

4.7 No Unavailability Deductions

4.7.1 An Area shall not be deemed to be Unavailable and consequently no Unavailability Deduction may be made in respect of an Area if, and to the extent that, the Authority is using Alternative Accommodation provided by the Contractor in place of the affected Area pursuant to paragraph 4.8 of this Schedule 6 that does not form part of the then existing Buildings (or External Areas) at the relevant School or if it has been demonstrated to the reasonable satisfaction of the Authority that the relevant Unavailability is a direct result of:

- (a) an Authority Default;
- (b) any of:

- (i) a Small Value Change implemented (1) by the Contractor in accordance with paragraph 4.1 of Part 2 of Schedule 24 (Change Protocol), or (2) by or on behalf of the Authority pursuant to paragraph 4.3 of Part 2 of Schedule 24 (Change Protocol) or a Permitted Small Value Change implemented by or on behalf of the Authority or a School pursuant to paragraph 1.3 of Part 2 of Schedule 24 (Change Protocol);
 - (ii) a Medium Value Change implemented (1) by the Contractor in accordance with paragraph 8.1 of Part 3 of Schedule 24 (Change Protocol), or (2) by or on behalf of the Authority pursuant to paragraph 8.3 of Part 3 of Schedule 24 (Change Protocol); or
 - (iii) a High Value Change implemented (1) by the Contractor in accordance with paragraph 10 of Part 4 of Schedule 24 (Change Protocol), or (2) by or on behalf of the Authority pursuant to paragraph 4.6.2 of Part 4 of Schedule 24 (Change Protocol);
- (c) a Qualifying Change in Law;
 - (d) an Emergency not caused or contributed to by the Contractor or a Contractor Related Party;
 - (e) maintenance work being carried out in accordance with the Schedule of Programmed Maintenance or Lifecycle Schedule;
 - (f) (except where such act or omission is the result of an act or omission of the Contractor) any act or omission of any provider of utilities or statutory undertaker (and, in each case, of any of their respective agencies, employees, contractors or other persons for whom it is responsible) where the Contractor is using all reasonable endeavours to minimise the impact of such act or omission on the performance of its obligations under this Agreement;
 - (g) the Authority's Representative or the head teacher of the relevant School making a specific request of the Contractor or giving specific instructions to the Contractor (in either case, against the reasonable advice of the Contractor, and provided that the Contractor has advised the Authority's Representative or the head teacher of the impact such request or instruction will have on the ability of the Contractor to perform its obligations under this Agreement) which prevent the Contractor ensuring that an Area or Areas meets the relevant Availability Criteria;
 - (h) a Compensation Event;
 - (i) an Authority step-in under clause 61 (Authority Step-In), subject to the rights of the Authority to deduct the Authority's costs of operation in taking the Required Action under clause 61.5.2 (Step-in on Contractor Breach) and the other provisions of this Agreement;

- (j) extreme adverse weather in relation to External Areas [in excess of that anticipated by the Authority's Requirements¹²];
- (k) the Authority assuming responsibility for unforeseen ground conditions and/or Contamination in accordance with clause 18.2 (Site Matters);
- (l) any deliberate act, omission or breach of the Authority or any Soft Services Provider or a failure of the Authority or any Soft Services Provider to take reasonable steps to carry out its activities in a manner which does not impede the Contractor in the performance of the Services (except where:
 - (i) such act, omission, failure or breach is caused or contributed to by the Contractor or any Contractor Related Party;
 - (ii) the Authority or Soft Services Provider is acting in accordance with a recommendation or instruction of the Contractor or any Contractor Related Party;
 - (iii) any such act, omission or breach giving rise to such failure was within the contemplation of the Parties or was otherwise provided for in this Agreement; or
 - (iv) the consequences of any such deliberate act, omission or breach or other acts, omissions or breaches giving rise to such failure would have been prevented by the proper performance of the Contractor's obligations under this Agreement),

a **Soft Services Excusing Cause**, only where the Contractor is using all reasonable endeavours to mitigate the consequences of such Soft Services Excusing Cause on its ability to perform the Services;

- (m) the introduction of equipment by the school beyond the design parameters stated in the Authority's Requirements; or
- (n) a failure of the Authority to stop using or remove Group 2 or Group 3 Furniture and Equipment following the issue of a valid notification to do so by the Contractor under clause 11.7.13 of this Agreement.

4.8 Alternative Accommodation

4.8.1 In order to offer Alternative Accommodation to the Authority the Contractor shall deliver to the Authority a Relocation Plan setting out:

- (a) full details of the proposed Alternative Accommodation (including, without limitation, its location, the extent to which it complies with the Authority's Requirements for the relevant Area and any logistical

¹² This may be added on a project specific basis, but will only be appropriate where no infrastructure or remedial works have been required to mitigate the effects of adverse weather in relation to a specific area e.g. drainage for playing fields.

or other arrangements which the Contractor proposes to be put in place in order to facilitate the Authority's occupation of the proposed Alternative Accommodation); and

- (b) 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.

- 4.8.2 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 the Contractor promptly of its decision whether or not such proposed Alternative Accommodation is acceptable. For the avoidance of doubt, an Area or Areas that the Contractor is otherwise required to make Available during the relevant Core Sessions shall not be counted as Alternative Accommodation.
- 4.8.3 The performance regime under this Schedule 6 will apply to any Alternative Accommodation accepted by the Authority so that the Authority shall be entitled to make Unavailability, Unavailable but Used and Service Performance Deductions in respect of that Alternative Accommodation in accordance with this Schedule 6 at the same level as for the Area for which the Alternative Accommodation is a replacement.
- 4.8.4 The Contractor 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.
- 4.8.5 If at any time such Alternative Accommodation falls below the standard which was acceptable to the Authority under paragraph 4.8.2 of this Schedule 6 the Authority may reject such Alternative Accommodation and shall notify the Contractor of its decision to do so. Unavailability Deductions shall apply in respect of the Area which is Unavailable (for which the Alternative Accommodation is a replacement) from such notification until such Area ceases to be Unavailable.
- 4.8.6 If the Contractor 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 Criteria) by the Relocation Date, or the Alternative Accommodation is rejected by the Authority under paragraph 4.8.5 of this Schedule 6, then the Authority may:
 - (a) vacate some or all of the Alternative Accommodation, and make Unavailability Deductions in respect of the Area for which the Alternative Accommodation so vacated is a replacement; or
 - (b) remain in occupation of the Alternative Accommodation and, subject to paragraph 6.3 of this Schedule 6, 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 the Contractor's failure to make the relevant Area(s) Available by the Relocation Date occurred.

- 4.8.7 The Authority, having elected to remain in occupation of Alternative Accommodation pursuant to paragraph 4.8.6(b) of this Schedule 6, may elect at any later time (on giving reasonable notice to the Contractor) to vacate the Alternative Accommodation and make Unavailability Deductions in accordance with paragraph 4.8.6(a) of this Schedule 6 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 Criteria).
- 4.8.8 The Contractor 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 4.8 of this Schedule 6 shall apply mutatis mutandis to such revised Relocation Date.
- 4.8.9 If there is any dispute relating to the provision of Alternative Accommodation under this paragraph 4.8 of this Schedule 6, 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.

4.9 School Unavailability Threshold

- 4.9.1 The Contractor 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.
- 4.9.2 Where, in any Core Session a School Escalation Event subsists, the Authority's Representative or head teacher of the relevant School may decide to Close the School.
- 4.9.3 If in any Core Session the Authority's Representative advises the Helpdesk that a School will be partially or entirely Closed for the remainder of that day due to Unavailability (the summation of all Unavailability within the relevant School being in excess of the threshold set out in the relevant Escalation Event), then the Contractor 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.
- 4.9.4 If the Contractor 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 4.9.5 of this Schedule 6 shall (provided that the Contractor acts reasonably in so informing the Authority's Representative) only apply if the Contractor fails to remedy the Unavailability within that Core Session to an extent sufficient that the Escalation Event no longer subsists, in which case an additional Reporting Deduction of one thousand pounds (£1,000), (indexed) shall apply.

- 4.9.5 If a School is Closed in accordance with paragraphs 4.9.2 or 4.9.6 of this Schedule 6, then every Area which is so unoccupied 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. Unavailability Deductions may therefore be made (subject to paragraph 4.7 of this Schedule 6) in respect of all Relevant Core Sessions during that day irrespective of the time at which the relevant Areas cease to be Unavailable (save in respect of any Relevant Core Sessions occurring after 1800 hours on the relevant day where the relevant Unavailability has been rectified and the relevant Area is used for its intended purpose).
- 4.9.6 Where, in any Core Session, an Escalation Event occurs, and a School is partially Closed or Closed pursuant to this paragraph 4.9, then each Area within that School will be deemed to be Unavailable but Used for that Core Session and any subsequent Core Session during which the Escalation Event subsists and the Areas remain occupied. Thereafter, if the Escalation Event subsists and the pupils or visitors are sent home, then from that time paragraph 4.9.5 of this Schedule 6 shall apply.
- 4.9.7 If the occurrence of an Escalation Event is attributable to a Relief Event or Force Majeure Event this paragraph 4.9 shall not apply.

Part V

Performance Deductions

5

5.1 Authority's right to make deductions

In the event of a Service Performance Shortfall, the Authority may make deductions from the Monthly Unitary Charge in accordance with this Schedule 6.

5.2 Notice of Service Performance Shortfall

5.2.1 If the Authority's Representative, head teacher, a deputy head teacher, assistant head teacher, business manager, head of department or other nominated officer believes that a Service Performance Shortfall may have, or has occurred, then that party may give notice (an **Authority Service Failure Notice**) to the Helpdesk, or to the Contractor, which shall contain the following information:

- (a) details of the Area where the Service Performance Shortfall occurred;
- (b) details of the relevant fault including, where applicable, the relevant Rectification Priority Category believed to be applicable to the relevant Service Performance Shortfall;
- (c) where relevant, the Service believed to be subject to the Service Performance Shortfall; and
- (d) the reasons why such Service is believed to be subject to a Service Performance Shortfall.

5.2.2 Where an Authority Service Failure Notice is provided to the Contractor, then the Contractor shall report the details of the Authority Service Failure Notice as provided under paragraph 5.2.1 of this Schedule 6 to the Helpdesk within ten (10) minutes of receipt of the Authority Service Failure Notice and the time of such notification to the Helpdesk shall constitute the Logged Failure Time in relation to such Service Performance Shortfall.

5.2.3 Where the Authority Service Failure Notice is provided directly to the Helpdesk, then the time of such notification shall constitute the Logged Failure Time in relation to such Service Performance Shortfall. Where the same failure is recorded by the Authority and also by the Contractor, the earlier time will constitute the Logged Failure Time.

5.2.4 If the Contractor believes that a Service Performance Shortfall has occurred and the Contractor has not received a Service Performance Shortfall Notice then the Contractor shall give notice (containing the information referred to in paragraph 5.2.1 of this Schedule 6) to the Helpdesk. The time of such notification will constitute the Logged Failure Time in relation to such Service Performance Shortfall and the Helpdesk shall notify the Authority's Representative, promptly after its receipt of a Contractor Service Performance Shortfall Notice, of the Contractor Service Performance Shortfall Notice and of the details contained within it.

5.2.5 The Authority Service Failure Notice or the Contractor Service Performance Shortfall Notice shall be given to the Helpdesk or, where relevant, the Contractor in writing. The Contractor shall, within one (1) hour of the relevant Logged Failure Time (and without prejudice to the expiry of the relevant Rectification Period) confirm in writing to the Authority's Representative whether it agrees that such fault has given rise to a Service Performance Shortfall. If the Contractor's Representative does not agree then paragraph 5.2.7 of this Schedule 6 shall apply.

5.3 Responding to Notice of Service Performance Shortfall

5.3.1 The Contractor shall, within two (2) hours of the relevant Logged Failure Time (and without prejudice to the expiry of the relevant Rectification Period), assess the Service Performance Shortfall which has been notified to the Helpdesk in accordance with paragraphs 5.2.1, 5.2.2 or 5.2.4 of this Schedule 6 and issue the Authority with a notice (an **Authority Service Failure Notice**) specifying (to the extent that this can be determined by the Contractor using all reasonable endeavours):

- (a) the cause of the Service Performance Shortfall; and
- (b) whether the Service Performance Shortfall qualifies for a Rectification Period in accordance with the Services Output Specification, and where a Rectification Period is allowed, the proposed Rectification Priority Category applicable to the Service Performance Shortfall;
- (c) the Contractor's plans for rectifying the Service Performance Shortfall and the estimated period in which the Service Performance Shortfall will be temporarily and/or permanently remedied; and
- (d) whether any of the provisions detailed in paragraphs 5.5.3 to 5.5.5 of this Schedule 6 are applicable in respect of the relevant Service Performance Shortfall.

5.3.2 The Contractor shall provide the Authority:

- (a) on a daily basis, for so long as such Service Performance Shortfall is not rectified, with an update on the progress made in rectifying such Service Performance Shortfall, together with any revised estimate as to when such Service Performance Shortfall will be made safe, temporarily rectified and permanently rectified;
- (b) promptly on becoming aware of any change to the information provided to the Authority pursuant to paragraph 5.3.1 of this Schedule 6, with the details of all such changes; and
- (c) on a monthly basis with a report in accordance with paragraph 3.1 of this Schedule 6, of all events of Service Performance Shortfall reported in the preceding calendar month together with confirmation of the time period between the Logged Failure Time and the Logged Permanent Rectification Time and the time period between the Logged Failure Time and the Logged Temporary Rectification Time;

- 5.3.3 Should the Authority and Contractor disagree over whether a Service Performance Shortfall has occurred, the Rectification Priority Category proposed in accordance with paragraph 5.2.1 limb (b) or whether any of the provisions detailed in paragraphs 5.7.3 to 5.7.5 of this Schedule 6 are applicable in respect of the relevant Service Performance Shortfalls, then the Authority's decision shall prevail for the purposes of calculating Service Performance Deductions under this Schedule 6. The Contractor may refer the matter to the Dispute Resolution Procedure.

5.4 **Commencement and Duration of a Service Performance Shortfall**

- 5.4.1 For the purposes of this paragraph 5.4, a temporary remedy or a permanent remedy is only effective when the remedy has both been effected and also been notified to the Helpdesk as set out in paragraph 5.5.1 of this Schedule 6.
- 5.4.2 Where no rectification is allowed as set out in the Services Output Specification, the Service Failure Deduction will be made by the Authority in respect of each Relevant Core Session which are those Core Sessions from (and including) the Core Session in which the Logged Failure Time occurred until (and including) the Core Session during which the Service Performance Shortfall ceases to occur.
- 5.4.3 Where a Rectification Period is allowed:
- (a) If the Service Performance Shortfall notified to the Helpdesk in accordance with paragraphs 5.2.1, 5.2.2 or 5.2.4 of this Schedule 6 has been made safe and temporarily (or permanently) remedied by the end of the Temporary Rectification Period and permanently remedied by the end of the Permanent Rectification Period (where applicable and as set out in the Facilities Output Specification), then it will be deemed that no Service Performance Shortfall occurred on that occasion for the purpose of calculating Service Failure Deductions.
 - (b) If the Service Performance Shortfall notified to the Helpdesk in accordance with paragraphs 5.2.1, 5.2.2 or 5.2.4 of this Schedule 6 has been made safe and temporarily remedied by the end of the Temporary Rectification Period but has not been permanently remedied by the end of the Permanent Rectification Period, then it will be deemed that a Service Performance Shortfall has occurred from the end of the Temporary Rectification Period and a Service Failure Deduction shall be made in respect of each Relevant Core Session, which are those Core Sessions from (and including) the Core Session during which the Temporary Rectification Period expired up to and including the Core Session in which the relevant Service Performance Shortfall was permanently remedied.
 - (c) If the Service Performance Shortfall notified to the Helpdesk in accordance with paragraphs 5.2.1, 5.2.2 or 5.2.4 of this Schedule 6 has not been made safe and either permanently or temporarily remedied by the end of the Temporary Rectification Period but has been permanently remedied by the end of the Permanent Rectification Period, then it will be deemed that a Service Performance Shortfall shall have subsisted from the Logged Failure

Time and a Service Failure Deduction shall be made in respect of each Relevant Core Session, which are those Core Sessions from (and including) the Core Session during which the Logged Failure Time occurred up to and including the Core Session in which the permanent remedy occurred. For the avoidance of doubt the Permanent Rectification Period shall commence at the Logged Failure Time and not on expiry of the Temporary Rectification Period.

- (d) If the Service Performance Shortfall notified to the Helpdesk in accordance with paragraphs 5.2.1, 5.2.2 or 5.2.4 of this Schedule 6 has not been made safe and temporarily remedied by the end of the Temporary Rectification Period and has not been permanently remedied by the end of the Permanent Rectification Period, then it will be deemed that a Service Performance Shortfall shall have subsisted from the Logged Failure Time and a Service Failure Deduction shall be made in respect of each Relevant Core Session which are those Core Sessions from (and including) the Core Session during which the Logged Failure Time occurred up to and including the Core Session in which the permanent remedy occurred. For the avoidance of doubt the Permanent Rectification Period shall commence at the Logged Failure Time and not on expiry of the Temporary Rectification Period.
- (e) Where the Contractor has reasonably demonstrated that its attempts to remedy the relevant Service Performance Shortfall are frustrated by the Authority failing to grant the Contractor access to an Area (or Adjoining Area):
 - (i) for a Service Performance Shortfall categorised as Routine for at least two (2) hours in aggregate during a Core Session, such Core Session shall not be taken into account in calculating the relevant Permanent Rectification Period; and
 - (ii) the relevant Temporary Rectification Period (and, for a Service Performance Shortfall categorised as Urgent, the relevant Permanent Rectification Period) shall be the first sixty (60) minutes of unimpeded access to the relevant Areas(s) enjoyed by the Contractor following the relevant Logged Failure Time, provided that Rectification occurs.

Where the Contractor reasonably needs access to an Area or Adjoining Area to remedy the relevant Service Performance Shortfall, the Authority shall not unreasonably withhold such access, subject to the need for the Authority to deliver Educational Services at the Schools.

5.5 Cessation of Service Performance Shortfall

- 5.5.1 The Contractor shall immediately notify the Helpdesk when it believes that any Service Performance Shortfall has been made safe and temporarily or permanently remedied. The time of such notification will, subject to paragraph 5.5.2 of this Schedule 6, constitute the Logged Temporary

Rectification Time or the Logged Permanent Rectification Time respectively in relation to such Service Performance Shortfall and the Helpdesk shall, as soon as is reasonably practicable after such notification by the Contractor, and in any event within twenty-four 24 hours, notify the Authority's Representative that the relevant Service Performance Shortfall has been remedied.

5.5.2 The Authority's Representative, head teacher, a deputy head teacher, assistant head teacher, business manager, head of department or other nominated officer shall be entitled to inspect the Area where such Service Performance Shortfall has been made safe and temporarily or permanently remedied and must carry out such inspection by the end of the School Day following the day on which it was notified that the relevant remedy occurred (the **End of the Inspection Period**). If the Authority's Representative does not agree that such Service Performance Shortfall has been so remedied then it shall notify the Contractor of the same by the end of the Core Session following the End of the Inspection Period and it shall be deemed that the Logged Temporary Rectification Time or Logged Permanent Rectification Time in respect of the incident has not yet occurred. The Authority's decision will prevail for the purposes of determining whether the relevant Service Performance Shortfall has been remedied. The Contractor may refer the matter to the Dispute Resolution Procedure.

5.5.3 Subject to paragraph 5.4.3 of this Schedule 6, the Service Performance Shortfall will continue from (and including) the Relevant Core Session during which the Logged Failure Time occurs until (and including) the Relevant Core Session during which the Logged Permanent Rectification Time or the Logged Temporary Rectification Time occurs.

5.6 Calculation of Service Performance Deductions

5.6.1 The Service Performance Deduction for each Contract Month shall be calculated using the following formula:

$$SPD = \sum_S \sum_{ps} (SFD \times (DP_1 + (DP_2 \times R))) + CPD$$

where:

\sum_S = aggregate across all services and all Areas;

\sum_{ps} = aggregate of all failures across all Performance Standards for each Service S that have not been remedied within the relevant Rectification Period;

SFD = the Service Failure Deductions arising from a Service Performance Shortfall in respect of a Performance Standard, as set out in Part XIII;

DP_1 = the Deduction Period, expressed as a number of Core Sessions, for each Service S, being the number of Relevant Core Sessions in which a Service Performance Shortfall subsisted, calculated in accordance with paragraphs 5.4 and 5.5 of this Schedule 6, to which the Ratchet does not apply;

- DP₂ = the Deduction Period, expressed as a number of Core Sessions, for each Service S, being the number of Relevant Core Sessions in which a Service Performance Shortfall subsisted, calculated in accordance with paragraphs 5.4 and 5.5 of this Schedule 6, to which the Ratchet does apply pursuant to paragraph 6.2 of this Schedule 6;
- R = the Ratchet, which will be a factor of 2.0 when paragraph 6.2.1 of this Schedule 6 applies and 1.0 when paragraph 6.2.1 of this Schedule 6 does not apply; and
- CPD = the aggregate of all Change Protocol Deductions arising in the Contract Month in question.

5.6.2 Either party to this Agreement may refer disputes under this paragraph 5.6 to the Dispute Resolution Procedure.

5.6.3 Indexation of Service Failure Deductions

On each Indexation Review Date the Service Failure Deductions set out in Part XIII shall be indexed in accordance with the following:

$$SFD_y = SFD_{y-1} \times B/A$$

where:

SFD_y = the Service Failure Deductions applicable from the relevant Indexation Review Date;

SFD_{y-1} = the Service Failure Deductions applicable immediately before the relevant Indexation Review Date;

A = the value of RPIX for the month of February twelve (12) months prior to that used in the calculation of "b" (save in the case of the first Indexation Review Date, when it shall be the value of RPIX for the month of February immediately preceding the Indexation Base Month); and

B = the value of RPIX for the month of February immediately preceding the relevant Indexation Review Date.

5.7 Limitations on Service Performance Deductions

5.7.1 The calculation of Service Failure Deductions shall be made only once in respect of a particular Service Performance Shortfall occurring in a particular Area at a particular time, notwithstanding that more than one (1) report may have been received by the Helpdesk of the relevant School.

5.7.2 Where a failure is such that it can be classified as a failure to meet more than one (1) Specific Requirement in an Area then the Authority shall only be entitled to make Service Failure Deductions in respect of that failure by reference to one (1) such Specific Requirement and not to each such Specific Requirement but shall be entitled to make Service Failure

Deductions by reference to such Specific Requirement as attracts the greatest Service Failure Deduction.

5.7.3 No Service Failure Deduction may be made in any Relevant Core Session in relation to any Service if an Unavailability Deduction is made by the Authority in respect of an Area affected by the Service Performance Shortfall for the same Relevant Core Session provided that Service Failure Deductions may be made for a Service Performance Shortfall if such Area:

- (a) is Unavailable but Used (but only to the extent that it is practicable to provide the relevant Services in such Unavailable but Used Area);
- (b) is Unavailable but Used following an Escalation Event in accordance with paragraph 3.9 of this Schedule 6 (but only to the extent that it is practicable to provide the relevant Services in such Unavailable but Used Area); or
- (c) is occupied by the Authority as Alternative Accommodation in accordance with paragraph 4.8 of this Schedule 6. Service Failure Deductions may be made by the Authority in respect of such Alternative Accommodation by applying this Schedule 6 and Schedule 1 (Authority's Requirements), mutatis mutandis, to such Alternative Accommodation in respect of all applicable Service Requirement.

5.7.4 The total Service Failure Deductions made pursuant to paragraph 5.7.3 (a) and (b) of this Schedule 6 in respect of an Area and a Core Session shall be capped at the level of Unavailable but Used Deductions for that Relevant Core Session for that Area. Once this cap has been reached it shall be deemed that no further Service Performance Shortfalls occur in respect of that Area in that Core Session.

5.7.5 No Service Failure Deductions may be made if, and to the extent that, it has been demonstrated to the reasonable satisfaction of the Authority that the Service Performance Shortfall is a direct result of:

- (a) an Authority Default;
- (b) any of:
 - (i) a Small Value Change implemented (1) by the Contractor in accordance with paragraph 4.1 of Part 2 of Schedule 24 (Change Protocol), or (2) by or on behalf of the Authority pursuant to paragraph 4.3 of Part 2 of Schedule 24 (Change Protocol) or a Permitted Small Value Change implemented by or on behalf of the Authority or a School pursuant to paragraph 1.3 of Part 2 of Schedule 24 (Change Protocol);
 - (ii) a Medium Value Change implemented (1) by the Contractor in accordance with paragraph 8.1 of Part 3 of Schedule 24 (Change Protocol), or (2) by or on behalf of the Authority pursuant to paragraph 8.3 of Part 3 of Schedule 24 (Change Protocol); or

- (iii) a High Value Change implemented (1) by the Contractor in accordance with paragraph 10 of Part 4 of Schedule 24 (Change Protocol), or (2) by or on behalf of the Authority pursuant to paragraph 4.6.2 of Part 4 of Schedule 24 (Change Protocol);
- (c) a Qualifying Change in Law;
- (d) an Emergency not caused or contributed to by the Contractor or a Contractor Related Party;
- (e) maintenance work being carried out in accordance with the Schedule of Programmed Maintenance;
- (f) (except where such act or omission is the result of an act or omission of the Contractor including any breach of Service Requirement), any act or omission of any provider of utilities or statutory undertaker (and, in each case, of any of their respective agencies, employees, contractors or other persons for whom it is responsible) where the Contractor is using all reasonable endeavours to minimise the impact of such act or omission on the performance of its obligations under this Agreement;
- (g) the Authority's Representative or the head teacher of the relevant School making a specific request of the Contractor, or giving specific instructions to the Contractor, (in either case, against the reasonable advice of the Contractor, and provided that the Contractor has advised the Authority's Representative or the head teacher, on the impact such request or instruction will have on the ability of the Contractor to perform its obligations under this Agreement) which prevent the Contractor from meeting the relevant Service Requirement;
- (h) a Compensation Event;
- (i) Authority step-in under clause 61 (Authority Step-In), subject to the rights of the Authority to deduct the Authority's costs of operation in taking the Required Action under clause 61.5.2 (Step-in on Contractor Breach) and the other provisions of this Agreement;
- (j) extreme adverse weather in relation to External Areas [in excess of that anticipated by the Authority's Requirements¹³];
- (k) the Authority assuming responsibility for unforeseen ground conditions and/or Contamination in accordance with clause 18.2 (Site Matters) of this Agreement;
- (l) a Soft Services Excusing Cause, only where the Contractor is using all reasonable endeavours to mitigate the consequences of such Soft Services Excusing Cause on its ability to perform the Services; or

¹³

This may be added on a project-specific basis, but will only be appropriate where no infrastructure or remedial works have been required to mitigate the effects of adverse weather in relation to a specific area e.g. drainage for playing fields.

- (m) the introduction of equipment by the school beyond the design parameters stated in the Authority's Requirements; or
- (n) a failure of the Authority to stop using or remove Group 2 or Group 3 Furniture and Equipment following the issue of a valid notification to do so from the Contractor under clause 11.7.13 of this Agreement.

Change Protocol Deductions¹⁴

5.8 Change Protocol Deductions shall apply in the manner set out in paragraph 5.9 of this Schedule 6 where the Contractor is in breach of Schedule 24 (Change Protocol) to this Agreement (the **Change Protocol Schedule**). Where Change Protocol Deductions arise they shall be treated as Service Performance Deductions, calculated in accordance with paragraph 5.4.1 of this Schedule 6.

5.9

	Small Value Change	Medium Value Change	High Value Change
Failure to provide a response to a request for a Change	£50 (indexed) for each Business Day over five (5) Business Days following the submission by the Authority of a Small Value Change Notice in accordance with paragraph 1 of Part I of Schedule 24.	£100 (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 1 of Part 3 of Schedule 24, or such later time period agreed pursuant to paragraph 2.4.2 of Part 3 of Schedule 24. This deduction shall not apply where the Contractor refuses a Medium Value Change in accordance with paragraph 1 of Part 3 of Schedule 24.	£150 (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 Part 4 of Schedule 24, save where the Contractor serves a notice on the Authority in accordance with paragraph 3.1 of Part 4 of Schedule 24.

¹⁴

The deduction amounts stated in the table will be indexed at the time deductions are calculated. Local Authorities should index the amounts appearing in the table from a base date of 01.01.2009 to the date of anticipated financial close if this represents a material change.

	Small Value Change	Medium Value Change	High Value Change
Failure to provide a response of the required standard	Not applicable ¹⁵	£100 (indexed) for each Business Day over fifteen (15) Business Days following a determination pursuant to paragraph 6 of Part 3 of Schedule 24 that the Contractor's Estimate does not represent a fair and reasonable approach to the Medium Value Change Notice.	£150 (indexed) for each Business Day (i) in the case of a High Value Change Proposal, following a determination pursuant to paragraph 4.10 of Part 4 of Schedule 24 that the High Value Change Protocol does not represent a fair and reasonable response to the High Value Change Notice, or (ii) in the case of a High Value Change Stage 2 Submission, following a determination pursuant to paragraph 4.8 of Part 4 of Schedule 24 that the High Value Change Stage 2 Submission did not meet the Approval Criteria.
Failure to implement the agreed changes to the agreed standard by the agreed date	£100 (indexed) for each Business Day following the date established in accordance with paragraph 2.5 of Part 2 of Schedule 24, where such Small Value Change is not completed in accordance with paragraph 4 of Part 2 of Schedule 24.	£200 (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 Part 3 of Schedule 24, where such Medium Value Change is not completed as evidenced in accordance with paragraph 9 of Part 3 of Schedule 24.	Unavailability Deductions ¹⁶ shall apply following the date specified for completion in the High Value Change Stage 2 Submission in respect of all Areas which are the subject of the Change in question that are not then Available. No other Change Protocol Deductions shall be made in respect of these changes.

¹⁵ There is no deduction proposed in these circumstances on the basis that if the Contractor cannot provide an acceptable proposal the Authority can carry out the Small Value Change itself.

¹⁶ Service Performance Deductions will be made rather than or in addition to Unavailability Deductions where the change involves the provision of services.

- 5.10 Change Protocol Deductions shall cease to apply where:
- 5.10.1 the Authority notifies the Contractor, pursuant to paragraph 4.3 of Part 2 of Schedule 24 (Change Protocol) to this Agreement that it is exercising its rights to carry out or procure the carrying out of the relevant Change;
 - 5.10.2 (in relation to deductions for a failure to provide a response) the Contractor submits a response;
 - 5.10.3 (in relation to deductions for a failure to submit a response of the required standard for a Medium Value Change) the Contractor submits a revised Estimate; and
 - 5.10.4 (in relation to deductions for a failure to implement the Change) the Contractor implements the Change in accordance with the terms of this Agreement (and any related deed of variation).

Part V

Other Deductions

- 6 This Part VI of Schedule 6 shall not apply where the relevant Unavailability or Service Performance Shortfall was caused directly by a Relief Event or Force Majeure Event.

6.1 Ratchet – Unavailability

- 6.1.1 Where in each of any four (4) or more Core Sessions (whether consecutive or not) in any rolling period of twenty (20) Business Days the same Area is Unavailable, Unavailable but Used, or Consequentially Unavailable then in respect of that Area the Ratchet of 2.0 will be applied to the fourth and every subsequent Unavailability Deduction or Unavailable but Used Deduction in that twenty (20)-day period.
- 6.1.2 There shall be no Rectification Period for any Unavailability which occurs within three (3) Business Days of the rectification of a failure in respect of the same Availability Criteria in the same Area caused by a re-occurrence of the same event.

6.2 Ratchet – Service Performance Shortfalls

- 6.2.1 Where in each of any four (4) or more Core Sessions (whether consecutive or not) in any rolling period of twenty (20) Business Days any Service Performance Shortfall occurs in relation to the same Performance Standard, then the Ratchet of 2.0 will be applied to the fourth and each subsequent Service Failure Deduction in that twenty (20)-day period.
- 6.2.2 There shall be no Rectification Period (where applicable) for a Service Performance Shortfall which occurs within three (3) Business Days of the rectification of a Service Performance Shortfall in respect of the same Performance Standard caused by a re-occurrence of the same failure event.
- 6.2.3 Where in two consecutive Reporting Cycles any Service Performance Shortfall occurs in relation to the same Periodic Performance Standard, then the Ratchet of 2.0 will be applied to the second and each subsequent Service Failure Deduction for as long as that Performance Standard is not satisfied. This paragraph does not apply to Reporting Deductions, which are dealt with separately in Part IX.

6.3 Ratchet – Alternative Accommodation

If the Contractor has failed to make available to the Authority the Area for which Alternative Accommodation is a replacement by the Relocation Date, and the Authority has chosen to remain in occupation of that Alternative Accommodation in accordance with paragraph 4.8.6(b) of this Schedule 6, then the Ratchet of 2.0 will apply to any Unavailable but Used Deduction from the Relocation Date.

6.4 Critical Academic Function Increment

- 6.4.1 Where an Area was due to be utilised for a Critical Academic Function in the applicable Core Session and such Critical Academic Function could not be performed in the Area due to the Unavailability, for each Core Session

so affected the Contractor shall pay the Critical Academic Function Increment or, if higher, the reasonable costs incurred by the Authority in procuring and using alternative accommodation provided always that:

- (a) a minimum of four (4) weeks' verbal notice (which must be confirmed in writing within five (5) Business Days) or written notice has been given to the Helpdesk that the Area is to be used for the purpose of a Critical Academic Function; and
- (b) the Area was not subject to Unavailability or was not Unavailable but Used at the time the notice referred to in paragraph 6.4.1 (a) above was given; and
- (c) the Area was not utilised for the Critical Academic Function.

Part VII

Limitations On Deductions

7

7.1 Cash Flow Cap

The Authority may not, in respect of any Contract Month, make Total Deductions which are greater than the Monthly Unitary Charge. Deductions which, but for this paragraph, could have been made by the Authority will be permanently disregarded for the purposes of this Schedule 6.

7.2 Cap on Service Performance Deductions

The Authority may not, in respect of any Contract Year, make Service Performance Deductions which are greater than £[]¹⁷ (indexed). Deductions which, but for this paragraph, could have been made by the Authority will be permanently disregarded for the purposes of this Schedule 6.

7.3 Cap on Service Performance Deductions relating to Elective Services

The Authority may not, in respect of any Contract Year, make Service Performance Deductions which are greater than the Elective Services Charge for the Contract Year. Deductions which, but for this paragraph, could have been made by the Authority will be permanently disregarded for the purposes of this Schedule 6.

¹⁷ This should be set on a project-specific basis, and should equate to the value of services (as opposed to capital works) forming part of the unitary charge - including hard FM, insurance and SPV administration.

Part VIII

Utilities Management

8

8.1 Energy Services: General Obligation to Supply and Costs

Throughout the Services Period Energy Services will be purchased by each School.

8.2 Rates and Telecoms

Rates, water supply charges and unmetered charges for surface water drainage for a School shall be paid by that School which shall also pay the cost of the telephone and data connection at that School save to the extent attributable to the use of the telephone and data connection by the Contractor or a Contractor Related Party.

8.3 Annual Shared Risk Core Energy Service Consumption Target

8.3.1 A purchased consumption target for the Building Load during Core Energy Hours for each School will be set for each Energy Service (the **Annual Shared Risk Core Energy Service Consumption Target**) as contained in the Annual Shared Risk Core Energy Service Consumption Target Table. These Annual Shared Risk Core Energy Service Consumption Targets will apply for the Initial Period¹⁸ for each School.

Annual Shared Risk Core Energy Service Consumption Target Table for Purchased Energy During Core Energy Hours¹⁹

Name of School	Purchased Electricity Consumption (kWh)	Purchased Thermal Energy Consumption (kWh)	Purchased Consumption of Other Fuels (kWh)

8.3.2 The Annual Shared Risk Core Energy Service Consumption Target for each Energy Service for the Initial Period for each School shall be as described in paragraph 8.3.1 above. Paragraphs 8.3.3 to 8.3.5 below will apply to the setting of all Annual Shared Risk Core Energy Service Consumption Targets for Energy Periods following the Initial Period.

8.3.3 Not less than three (3) Contract Months prior to the end of each Contract Year, the Contractor shall submit to the Authority its proposed new Annual Shared Risk Core Energy Service Consumption Targets for each Energy

¹⁸ The Initial Period extends to the second 31 March after the service Availability Date (i.e. is between one and two years, and is probably eighteen months) and the annual figures above will need to be adjusted for the actual period of operations, taking account of the seasonality.

Service for the next Contract Year, together with documentation supporting its proposals. The documentation shall include:

- (a) logs of consumption, on-site generation and off-site sales in the most recent twelve month period for which such data is available;
- (b) calculations on which the new targets are based; and
- (c) details of how these targets relate to the information contained in the relevant Monthly Energy Reports and Energy Reports.

8.3.4 Not more than one (1) Contract Month following receipt by the Authority of the Contractor's proposals for the new Annual Shared Risk Core Energy Service Consumption Targets, the Parties shall meet to discuss those proposals and agree the Annual Shared Risk Core Energy Service Consumption Targets for the next Energy Period. Any failure to agree the Annual Shared Risk Core Energy Service Consumption Targets shall be referred to the Dispute Resolution Procedure.

8.3.5 The Annual Shared Risk Core Energy Service Consumption Target for an Energy Service shall be derived from the lower of:

- (a) average annual recorded purchased consumption of that Energy Service over the three years ended on the last day of the previous Contract Year, except that the first twelve (12) months of full operations shall be ignored after two years of operations; and
- (b) For all Energy Services, consumption to achieve a Building Load energy cap of fifty six (56) **kilowatt hour electrical equivalents**, or **kWhe**, per square metre adjusted in accordance with paragraph 2.9.10.5 of the Facilities Output Specification during Core Energy Hours. This fifty six (56) kWhe per square metre adjusted in accordance with paragraph 2.9.10.5 of the Facilities Output Specification should be multiplied by the GIFA of the relevant School. Where the total energy use during Core Energy Hours would otherwise exceed this figure, each ASRCET will be reduced pro rata, so that:

$$ASRCET_{elec,CEH} = A_{elec,CEH} \frac{C_{buildingCEH}}{A_{buildingCEH}}$$

and

$$ASRCET_{therm,CEH} = A_{therm,CEH} \frac{C_{buildingCEH}}{A_{buildingCEH}}$$

and

$$ASRCET_{other,CEH} = A_{other,CEH} \frac{C_{buildingCEH}}{A_{buildingCEH}}$$

where

$ASRCET_{elec,CEH}$ = total Annual Shared Risk Core Energy Service Consumption Target during Core Energy Hours for electricity in kWh;

$ASRCET_{therm,CEH}$ = total Annual Shared Risk Core Energy Service Consumption Target during Core Energy Hours for thermal energy in kWh;

$ASRCET_{other,CEH}$ = total Annual Shared Risk Core Energy Service Consumption Target during Core Energy Hours for all other fuels in kWh;

$A_{elec,CE}$ = actual Building Load consumption of electricity during Core Energy Hours (in kWh) calculated using the methodology as in the agreed In Use Energy Model as defined in paragraph 2.8.1.3 of the Facilities Output Specification once this has been agreed between the Parties or, prior to such agreement, the agreed Final Baseline Energy Model in the Contractor's Proposal, in each case adjusted for the factors identified in paragraph 2.9.10.5 of the Facilities Output Specification;

$A_{therm,CEH}$ = actual Building Load consumption of thermal energy during Core Energy Hours (in kWh) calculated as in the agreed In Use Energy Model as defined in paragraph 2.8.1.3 of the Facilities Output Specification once this has been agreed between the Parties or, prior to such agreement, the agreed Final Baseline Energy Model in the Contractor's Proposal, in each case adjusted for the factors identified in paragraph 2.9.10.5 of the Facilities Output Specification;

$A_{other,CEH}$ = actual Building Load consumption of other fuels during Core Energy Hours (in kWh) calculated as in the agreed In Use Energy Model as defined in paragraph 2.8.1.3 of the Facilities Output Specification once this has been agreed between the Parties or, prior to such agreement, the agreed Final Baseline Energy Model in the Contractor's Proposal, in each case adjusted for the factors identified in paragraph 2.9.10.5 of the Facilities Output Specification;

$A_{building,CEH}$ = actual Building Load per square metre during Core Energy Hours (in kWh/m²) arrived at by adding together the weighted consumption of $A_{elec,CEH}$ during Core Energy Hours to the weighted consumption of $A_{therm,CEH}$ during Core Energy Hours to the weighted consumption of $A_{other,CEH}$ during Core Energy Hours. These weighted consumptions will be calculated by multiplying actual consumption

in kWh by the conversion factors of 1.0 for electricity, 0.4 for thermal energy and 0.5 for all other fuels; and

$C_{building,CEH}$ = the maximum permitted consumption of Energy Services in respect of Building Load during Core Energy Hours. This is fifty six (56) kWh multiplied by the Gross Internal Floor Area but may be adjusted for the factors identified in paragraph 2.9.10.5 of the Facilities Output Specification.

8.4 Annual Energy Adjustment

8.4.1 In every Contract Year other than the first, within two (2) weeks of 1 April the actual purchased consumption of each Energy Service over the previous Contract Year (or part of a Contract Year where relevant (the **Partial Period**)) will be calculated and an Energy Report sent to the Authority as set out in paragraphs 2.3.3 and 2.8.1.7 of the Services Output Specification. The values calculated for the Building Load will be compared to the relevant Annual Shared Risk Core Energy Service Consumption Target (or, in the case of any Partial Period, an agreed target for the relevant months in the Partial Period, allowance having been made for normal seasonal energy usage for the Partial Period in question); the Annual Shared Risk Core Energy Service Consumption Target for the Contract Year just ended will be recalculated if necessary to allow for the factors identified in paragraph 2.9.10.5 of the Facilities Output Specification.

8.4.2 The actual Building Load during Core Energy Hours over the previous Contract Year (or part of a Contract Year where relevant (the Partial Period)) will be calculated as:

$$A_{building,CEH} = (A_{elec,CEH} \times 1.0) + (A_{therm,CEH} \times 0.5) + (A_{other,CEH} \times 0.4)$$

where:

$A_{building,CEH}$ = total actual Building Load during Core Energy Hours (in kWh);

$A_{elec,CEH}$ = as defined in paragraph 8.3.5 limb (b) of this Schedule 6;

$A_{therm,CEH}$ = as defined in paragraph 8.3.5 limb (b) of this Schedule 6; and

$A_{other,CEH}$ = as defined in paragraph 8.3.5 limb (b) of this Schedule 6.

8.4.3 The target Building Load during Core Energy Hours over the previous Contract Year (or part of a Contract Year where relevant (the Partial Period)) will be calculated as:

$$T_{building,CEH} = (AUSCT_{elec,CEH} \times 1.0) + (AUSCT_{therm,CEH} \times 0.5) + (AUSCT_{other,CEH} \times 0.4)$$

where:

$T_{\text{building,CEH}}$ = total target Building Load during Core Energy Hours (kWhe);

$AUSCT_{\text{elec,CEH}}$ = as defined in paragraph 8.3.5(b) of this Schedule 6;

$AUSCT_{\text{therm,CEH}}$ = as defined in paragraph 8.3.5(b) of this Schedule 6; and

$AUSCT_{\text{other,CEH}}$ = as defined in paragraph 8.3.5(b) of this Schedule 6.

8.4.4 The cap on Building Load during Core Energy Hours, $C_{\text{building,CEH}}$, over the previous Contract Year (or part of a Contract Year where relevant (the Partial Period)) will be calculated as fifty six (56) kWhe per square metre per annum adjusted for the factors identified in paragraph 2.9.10.5 of the Facilities Output Specification and multiplied by the Gross Internal Floor Area in square metres.

8.4.5 Where actual purchased consumption in respect of Building Load during Core Energy Hours in the previous Contract Year is different to the total target Building Load during Core Energy Hours (or, in the case of any Partial Period, an agreed target for the relevant months in the Partial Period, allowance having been made for normal seasonal energy usage for the Partial Period in question) the Annual Energy Adjustment shall be calculated as:

$$AEA = EAUC \times AEVA$$

where:

AEA = the Annual Energy Adjustment in £;

$EAUC$ = the Energy Average Unit Cost per kWhe as set out in paragraph 8.4.6 of this Schedule 6; and

$AEVA$ = the Annual Energy Volume Adjustment as set out in paragraphs 8.4.7 to 8.4.10 of this Schedule 6.

8.4.6 The Energy Average Unit Cost in respect of a Contract Year will be calculated as:

$$EAUC = \frac{(A_{\text{elec,CEH}} \times 1.0 \times U_{\text{elec}}) + (A_{\text{therm,CEH}} \times 0.4 \times U_{\text{therm}}) + (A_{\text{other,CEH}} \times 0.5 \times U_{\text{other}})}{((A_{\text{elec,CEH}} \times 1.0) + (A_{\text{therm,CEH}} \times 0.4) + (A_{\text{other,CEH}} \times 0.5))}$$

where:

$EAUC$ = the Energy Average Unit Cost (£ per kWhe);

$A_{elec,CEH}$	=	as defined in paragraph 8.3.5(b) of this Schedule 6;
$A_{therm,CEH}$	=	as defined in paragraph 8.3.5(b) of this Schedule 6;
$A_{other,CEH}$	=	as defined in paragraph 8.3.5(b) of this Schedule 6;
U_{elec}	=	the average price paid in £ per kWh for electricity during that Contract Year;
U_{therm}	=	the average price paid in £ per kWh for thermal energy during that Contract Year; and
U_{other}	=	the average price paid in £ per kWh for other fuels during that Contract Year.

8.4.7 Where actual purchased consumption in kWh in respect of Building Load during Core Energy Hours in the previous Contract Year (or part of a Contract Year in the case of any Partial Period) was equal to or lower than the Cap on Building Load during Core Energy Hours and was higher than the total target Building Load during Core Energy Hours (or, in the case of any Partial Period, an agreed target for the relevant months in the Partial Period, allowance having been made for normal seasonal energy usage for the Partial Period in question) ($T_{building,CEH}$) the Annual Energy Volume Adjustment shall be calculated as:

$$AEVA = X_a + \frac{Y_a - T_{building,CEH}}{2}$$

where:

AEVA	=	the Annual Energy Volume Adjustment (kWh);
X_a	=	the greater of: 0 and $A_{building,CEH} - (1.2 \times T_{building,CEH})$;
Y_a	=	the lower of: $1.2 \times T_{building,CEH}$ and $A_{building,CEH}$;
$A_{building,CEH}$	=	as defined in paragraph 8.3.5(b) of this Schedule 6; and
$T_{building,CEH}$	=	as defined in paragraph 8.3.5(b) of this Schedule 6.

8.4.8 Where actual purchased consumption in kWh in respect of Building Load during Core Energy Hours in the previous Contract Year (or part of a Contract Year in the case of any Partial Period) ($A_{building,CEH}$) was higher

than the Cap on Building Load during Core Energy Hours ($C_{\text{building,CEH}}$) and was also higher than the total target Building Load during Core Energy Hours (or, in the case of any Partial Period, an agreed target for the relevant months in the Partial Period, allowance having been made for normal seasonal energy usage for the Partial Period in question) ($T_{\text{building,CEH}}$) the Annual Energy Volume Adjustment shall be calculated as:

$$AEVA = A_{\text{building,CEH}} - C_{\text{building,CEH}} + X_b + \frac{Y_b - T_{\text{building,CEH}}}{2}$$

where:

AEVA = the Annual Energy Volume Adjustment (kWhe);

X_b = the greater of:
0
and
 $C_{\text{building,CEH}} - (1.2 \times T_{\text{building,CEH}})$;

Y_b = the lower of:
 $C_{\text{building,CEH}}$
and
 $1.2 \times T_{\text{building,CEH}}$;

$C_{\text{building,CEH}}$ = as defined in paragraph 8.3.5(b) of this Schedule 6; and

$T_{\text{building,CEH}}$ = as defined in paragraph 8.3.5(b) of this Schedule 6.

8.4.9 Where actual purchased consumption in kWhe in respect of Building Load during Core Energy Hours in the previous Contract Year (or part of a Contract Year in the case of any Partial Period) ($A_{\text{building,CEH}}$) was lower than the target Building Load during Core Energy Hours (or, in the case of any Partial Period, an agreed target for the relevant months in the Partial Period, allowance having been made for normal seasonal energy usage for the Partial Period in question) ($T_{\text{building,CEH}}$) the Annual Energy Volume Adjustment shall be calculated as:

$$AEVA = \frac{A_{\text{building,CEH}} - T_{\text{building,CEH}}}{2}$$

where:

AEVA = the Annual Energy Volume Adjustment (kWhe);

$A_{\text{building,CEH}}$ = as defined in paragraph 8.4.3 of this Schedule 6; and

$T_{\text{building,CEH}}$ = as defined in paragraph 8.4.2 of this Schedule 6

8.4.10 Where neither of paragraphs 8.4.7 to 8.4.9 of this Schedule 6 applies the Annual Energy Volume Adjustment shall be zero.

8.5 Introduction of Energy Saving Technology

Either party may propose the introduction of energy saving technology, which may be implemented in accordance with clause 60 (Authority and Contractor Changes) of this Agreement. Where implemented, the Annual Shared Risk Core Energy Service Consumption Targets will be adjusted in light of the new technology. The Contractor may introduce energy saving technology and receive [75%] of the savings in purchased consumption arising from this for [five (5) years], or as otherwise agreed between the parties prior to the expenditure being incurred. These savings will not be subject to sharing under paragraph 8.4.5 of this Schedule 6 and the Annual Shared Risk Core Energy Service Consumption Targets under paragraph 8.3.5 of this Schedule 6 will need to be agreed by the Parties prior to the introduction of the energy saving technology.

Part IX

Reporting Deductions

- 9 Any error or omission in the information to be provided by the Contractor pursuant to paragraph 2.4 of this Schedule 6 or clause 37.2 of this Agreement as agreed by the parties or determined by the Dispute Resolution Procedure shall attract a Reporting Deduction equivalent to a Service Performance Shortfall for a Periodic Performance Standard. The first such error or omission within a rolling twelve (12) month period shall attract a deduction equivalent to a Service Performance Shortfall with a Low Priority Category. The second and third such errors or omissions within a rolling twelve (12) month period shall attract deductions equivalent to Service Performance Shortfalls with a Medium Priority Category and High Priority Category respectively. Each subsequent failure within a rolling twelve (12) month period shall attract a deduction equivalent to a Service Performance Shortfall with a Super Priority Category. Such Reporting Deductions shall be taken into account in the invoice and report provided pursuant to clause 37.2 of this Agreement in the Payment Period following that in which they are agreed or determined.

Part X

Availability Criteria

10

- 10.1 Additional Availability Criteria are set out in the Area Data Sheets in respect of each Area.
- 10.2 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:
 - 10.2.1 exist;
 - 10.2.2 be accessible by means that accord with the Facilities Output Specification (including by lifts where applicable), with access being safe and free from obstruction;
 - 10.2.3 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 School buildings;
 - 10.2.4 be maintained at a temperature within the ranges defined in the Area Data Sheets, Performance in Use Standards and the Facilities Output Specification for that Area;
 - 10.2.5 be capable of illumination at lux levels at or above the minimum levels required by the Facilities Output Specification, Performance in Use Standards and Area Data Sheets for that Area (with all of the lighting infrastructure and at least 75% of the lamps operational);
 - 10.2.6 have sufficient and safe electrical supplies where required by the Area Data Sheets and the Facilities Output Specification;
 - 10.2.7 maintain the level of ventilation as required in the Area Data Sheets, Performance in Use Standards and the Facilities Output Specification;
 - 10.2.8 have a sufficient, constant and safe hot water supply in accordance with the Area Data Sheets and the Facilities Output Specification;
 - 10.2.9 have a sufficient, constant and safe cold water supply in accordance with the Area Data Sheets and the Facilities Output Specification;
 - 10.2.10 be compliant with all relevant Legislation, including fire, health and safety, safeguarding and security legislation;
 - 10.2.11 have permanent structural elements and building fabric present and in sufficiently good order to enable the delivery of Educational Services in the Area;
 - 10.2.12 be free from flood, weather penetration and damp affecting the structure of the building to the extent that precludes the safe occupation of the area or adversely affects the Services or the long-term condition of the School buildings;

- 10.2.13 be served by an operational security system in accordance with the Area Data Sheets and the Facilities Output Specification (as applicable);
 - 10.2.14 be served by operational alarm/emergency communication systems (as applicable);
 - 10.2.15 be clear of waste, with a safe and constant sewage and drainage system in accordance with the Area Data Sheets and the Facilities Output Specification;
 - 10.2.16 have constant and safe supply of gas where required under the Area Data Sheets, Performance in Use Standards and the Facilities Output Specification (as applicable);
 - 10.2.17 be maintained within the range of noise levels outlined in the Area Data Sheets and the Facilities Output Specification;
 - 10.2.18 have the Type 1 furniture, fixtures and equipment and Catering Equipment necessary for the use of that Area as required by the Area Data Sheets and the Facilities Output Specification and in a safe and functional condition;
 - 10.2.19 where an information technology or telecommunications supply is required pursuant to the Facilities Output Specification, Performance in Use Standards or Area Data Sheets for the Area, there is a secure supply with all of the cabling infrastructure working and less than fifteen per cent (15%) failure of the network outlets in that Area; and
 - 10.2.20 have access to drinking water as specified in the Area Data Sheets and the Facilities Output Specification.
- 10.3 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:
- 10.3.1 exist;
 - 10.3.2 be surfaced in accordance with the Authority's Output Specification;
 - 10.3.3 have a drainage system which is functional (where applicable);
 - 10.3.4 [have pitch markings which are visible (where applicable);]
 - 10.3.5 [have functional flood lights where required by the Area Data Sheets;]
 - 10.3.6 [include equipment as per the relevant Area Data Sheet and which is necessary for the use of that Area;]
 - 10.3.7 be compliant with all relevant Legislation, including health and safety and security legislation; and
 - 10.3.8 be accessible.
- 10.4 For car parking Areas to be deemed Available, such Areas must:
- 10.4.1 exist;

- 10.4.2 be surfaced in accordance with the Authority's Output Specification;
- 10.4.3 have a drainage system which is functional;
- 10.4.4 have markings which are clearly visible in the absence of snow and ice;
- 10.4.5 be compliant with all relevant Legislation, including health and safety and security legislation;
- 10.4.6 have functional lighting and electrical services where required by the Area Data Sheets; and
- 10.4.7 be accessible.

Part XI

Availability Priority Categories^{20 21 22}

11

11.1 Area Failure Deductions

Availability Priority Category	[Suggested] Area Types	Area Failure Deduction (£ per Core Session)
1	Minor support areas such as [kiln room, laundry, habitat areas, minor stores]	[£10]
2	Support areas [such as infrastructure areas and offices, meeting room, car parking, medical room, some larger stores]	[£20]
3	Common and circulation areas and less critical areas such as [less student orientated areas such as staff resource areas, reception, changing areas, central stores, other sports areas; long jump pits, running track]	[£30]
4	Important support areas such as [generally non-teaching but important support areas such as learning resource spaces, library, careers, group rooms, dining and social, pupil resource areas]	[£35]
5	Generic areas used for the delivery of Authority activities such as [general teaching spaces e.g. maths, English, humanities - areas that are more easily interchangeable in an unavailability situation. Also pupil and disabled toilets, external pitches]	[£45]
6	Specialist areas such as [science, music, technology, hall, specialist sports areas, special needs suites and provision.]	[£55]
7	Critical areas such as [IT server rooms, sports halls, assembly halls and swimming pools]	[£150]

²⁰ Every Area Data Sheet will have an Availability Priority Category. See the example Area Data Sheets referred to at Annex 2 of Volume 2 of the Services Specification.

²¹ A full list of all areas should be provided by the Authority with the Payment Mechanism. A proforma is provided in the paper entitled " Payment Mechanism Calibration".

²² The deductions should be calibrated prior to the appointment of a winning bidder. Only minor recalibrations can take place after the appointment.

11.2 **Recalibration**

Area Failure Deductions shall be recalibrated upon a change in Unitary Charge resulting from an Authority Change or Contractor Change being implemented which results in the cumulative un-recalibrated change in the Monthly Unitary Charge due to such changes exceeding five per cent (5%).

Part XII

Rectification Periods for Unavailability

12

12.1

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

12.2 Where:

12.2.1 there is Authority Damage for which the Authority is responsible pursuant to clause 64.1 (Accidental Damage and Vandalism);

12.2.2 there is a lack of available additional parts or additional resource required to rectify the Authority Damage and its consequences within the Rectification Periods in question; and

12.2.3 (and to the extent that) such a lack of available additional parts or additional resource is consistent with the Services Delivery Proposals

the Contractor may request an extension of the Rectification Periods to address any Unavailability arising from such damage.

12.3 The Parties shall act reasonably in agreeing any such extension taking into account:

12.3.1 the parts and resources that should be available to the Contractor at the Schools to deliver the Services Output Specification in accordance with the Services Delivery Proposals;

12.3.2 the availability of the additional parts or resources in question; and

12.3.3 the time taken to agree whether or not any such extension should be permitted.

12.4 References to Core Sessions in paragraph 12.1 above shall include the Core Session in which the Unavailability was recorded.

12.5 Where a failure to meet the Availability Criteria 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 the Contractor to effect a Temporary Rectification within the Temporary Rectification Period and the Permanent Rectification Period shall commence at the Logged Failure Time.

12.6 Where an Unavailability is recorded during the School Day, any subsequent Core Sessions arising from Additional School Periods shall only be included in the Core Sessions referenced in paragraph 12.1 if the Unavailability impacts directly or indirectly on the Areas required for the Additional School Periods.

Part XIII

Service Priority Categories and Service Failure Deductions²³

13

13.1

Service Priority Category	Service Failure Deduction (£ per Core Session) for Event-Based Performance Standards	Service Failure Deduction (£ per Reporting Cycle) for Periodic Performance Standards
Low	[£5]	[£50]
Medium	[£10]	[£75]
High	[£20]	[£100]
Super	[£50]	[£250]

13.2 Service Failure Deductions will be made for Service Performance Shortfalls.

13.3 Service performance will be monitored and reported across individual services, and each incident of failure will be reported.

13.4 Event-Based Performance Standards will be monitored for each Area; for example, the operation of window blinds and each failure to meet the required standard recorded in an Area will be recorded as a Performance Shortfall.

13.5 Periodic Performance Standards are those that must be monitored over a period of time to determine whether or not they have occurred, for example answering 95% of telephone calls within thirty (30) seconds and doing so in an appropriate manner. Deductions for failures in this type of standard will be incurred per Reporting Cycle (the durations of Reporting Cycle periods are set out in the Services Output Specification).

13.6 The Service Priority Category of each Service Standard is set out in Volume 1, Section 4 of the Services Output Specification.

²³

The current version of the Service Specification requires amendment to ensure consistency with this Part XIII.

Part XIV

Rectification Periods and Rectification Priority Categories for Service Performance Shortfalls

14

14.1

Rectification Priority Category	Description	Temporary Rectification Period	Permanent Rectification Period
Urgent	Matters that impinge upon the operational function of the School including the operation of the Helpdesk service	Within two (2) hours	Within three (3) hours where no Temporary Rectification has been carried out within two (2) hours, or within the shorter of two Business Days and four (4) Core Sessions where a temporary rectification has been carried out within two (2) hours.
Routine	Matters not categorised as Urgent	Within four (4) hours	Within the shorter of four (4) Business Days and eight (8) Core Sessions.

- 14.2 Annex 2 of the Services Output Specification identifies in relation to each Service Quality Standard, whether it is one for which a Rectification Period is allowed.
- 14.3 References to Core Sessions in paragraph 14.1 above include the Core Session in which the Service Performance Shortfall was recorded.
- 14.4 Where a Service Performance Shortfall does not create or contribute to a risk to the health and safety of users there shall be no requirement on the Contractor to effect a Temporary Rectification within the Temporary Rectification Period and the Permanent Rectification Period shall commence at the Logged Failure Time.

Part XV

Core School Hours, Additional School Periods and Community Use²⁴

15

15.1 Core School Hours

Core Sessions			
Description	School Day Morning	School Day Afternoon	Day
Secondary Schools	[07:00 to 12:00]	[12:00 to 17:00]	
[Community Library]	[07:00 to 12:00]	[12:00 to 17:00]	

15.2 Additional School Periods

Category of Use	Number of Core Hours per Contract Year which can be booked by the Authority for use over and beyond the Core Sessions (above).²⁵
All Schools	[300]
[Community Library]	[300]

15.3 When the Authority notifies the Contractor in accordance with clause [29.11] (Additional School Periods) of this Agreement that it requires the utilisation of Additional School Periods, the first five (5) hours of each Additional School Period shall comprise one (1) Core Session. Each subsequent five (5) hours or part thereof within the same Additional School Period and on the same day shall comprise a separate Core Session.

²⁴

In addition to the Core Sessions, each School may book Additional School Periods up to the limit specified in 15.2 above for each Area within a School, during which the provisions of this Schedule 6 shall apply. The actual number will depend on the nature of the School.

Part XVI

Consequential Unavailability

16

Accommodation Unavailable²⁶	Consequential Unavailability²⁷
Community changing or showers	<ul style="list-style-type: none"> • Swimming pool/storage/spectators • Teaching pool • Games hall including storage • Dance studio/GP hall • Fitness suite • Creche and softplay • Sports pitches • Sauna/steam room/Jacuzzi
Staff changing or staff toilets or staff showers	As above but excluding crèche and softplay
Pupils changing or toilets or showers	As above but excluding crèche and softplay
Access to main entrance	<i>[To be discussed on a project specific basis]</i>

²⁶ These are examples of events that may trigger Consequential Unavailability. Each Area Data Sheet will specify whether Unavailability for that Area will trigger Consequential Unavailability in another area. This table and the Area Data Sheets should be completed on a project specific basis. It is not the intention that a Consequential Unavailable Area can itself trigger Unavailability.

²⁷ These are examples of where Consequential Unavailability may arise. These should be completed on a project-specific basis.

Part XVII

Reporting Requirements

- 17 The Monthly Review Report and the Contractor's Annual Services Report shall include (without limitation) the following content (where quarterly reporting is specified the information is to be included in the Monthly Review Report at the end of the quarter):

Detail Required	Cross ref (S.O.S. or P.A.)	Monthly	Quarterly	Annually
Contractor training and development	1.9	Detailed Report As and when any changes (feeds into Monthly and Quarterly Reports)		
Random Call Audit of Helpdesk calls	2.1.10	Detailed Report		
Helpdesk Calls in period		Detailed Report		
Measurement of performance against Performance Standards		Detailed Report		
Helpdesk performance	2.1.5	Detailed Report		Summary report
Details of any recurring helpdesk calls where further action is required		Detailed Report		Summary report
Details of defects reported in period	2.3.3	Detailed Report		Summary report
Service Failure and Unavailability	This Schedule 6	Detailed Report		Summary report
Exception reporting	2.3.8 and 2.3.28	In accordance with agreed format		
Records of Programmed Maintenance	1.9.10 and 2.3.13	Detailed records		Summary to feed into update of Schedule of Programmed Maintenance
Schedule of Programmed Maintenance	clause 23 2.6.8 and 2.6.9	Report monthly activities carried out against schedule		Detailed update of Schedule projecting activities for the next year.
Five year Lifecycle planned work / spend against profile	clause 23	Lifecycle work planned / completed this month		Five year Lifecycle plan update
Lifecycle progress against agreed plan	clause 23	Lifecycle work planned for next month		Review of Lifecycle works to date against plan
Report on performance against Lifecycle Survey Requirements	2.6.9 (and clause 23)	Detailed report		Summary report

Detail Required	Cross ref (S.O.S. or P.A.)	Monthly	Quarterly	Annually
Lifecycle reconciliation	clause 23	Lifecycle works planned / completed		Review of Lifecycle works to date
Report on performance against Quality Management Plan	2.3.19	Detailed report		Summary report
Report on Statutory Inspections	2.3.20		Detailed report	Summary report
Report on Performance against Energy and Utilities Management Plan	2.3.21		Detailed report	
Energy Targets Reviewed		Tracking performance against target		Summary of annual performance against target
Report on total water consumption	2.3.32		Detailed report	
Report energy usage on iSERVcmb	2.3.24	Monthly as a minimum (but daily if possible)		
End uses on carbon buzz	2.3.26			Detailed report
Exception reporting on avoidable energy use	2.3.28	Detailed report		Summary report
Report on POE data	2.3.29.5	In first three years as required by Soft Landings		Detailed report
Report on Thermal water efficiency	2.3.30.1			Detailed report
Report on tests of boiler plant and hot water generators and their flue systems	2.3.31			Detailed report
Performance Deductions in period	2.3.6	Detailed report		Summary report
Unavailability deductions in period	2.3.6	Detailed report		Summary report
Payment notices / invoices raised in period		Current invoice cycle		Financial summary
Change notices and costs in period		Detailed report		Summary report
Operating costs in period		Detailed report		Summary report
Report on Lifecycle Spend as against Profile	clause 23.4.3.3			Detailed report
Report on Quality Assurance	clause 34			Detailed report
Changes and Elective Services		Details of all changes carried out under the Change Protocol and any Elective Services		Summary report

Detail Required	Cross ref (S.O.S. or P.A.)	Monthly	Quarterly	Annually
Health & Safety Review				Overall Health & Safety performance review