

# **HUB PROGRAMME DELIVERY OFFICE**

## **GUIDANCE NOTE 08/17**

### **GUIDANCE ON THE OPERATIONAL PHASE OF HUB DBFM PROJECTS**

**Issued August 2017**

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## Introduction

SFT has been undertaking reviews into operational PPP projects in the health and education sectors and, as part of this line of work, provides support to the NHS through its Specialist Support Team which undertakes reviews into operational health projects. Since 2013, SFT has undertaken reviews on nearly 20 projects covering both sectors.

Reviews currently under way and completed have identified that guidance and training on how to manage projects on a day-to-day basis would be beneficial. Key challenges occur at every phase, from the end of construction, in the early operational phase and throughout the concession period.

This guidance has been prepared to provide assistance to public sector bodies and hub companies who are setting up their contract monitoring systems and preparing for the management of the operational phase of projects procured through the hub initiative. The contract is complex and the relationship between the contracting parties should be carefully considered in order to ensure that the public sector achieves value for money. The guidance has been developed from lessons learnt during the reviews into operational PPP projects and focuses on the issues and areas highlighted from those reviews which, if managed appropriately, will result in the public sector getting what it is paying for.

The guidance is set out to cover the period in the build up to the operational phase including the documentation that is required to be in place such as method statements detailing service delivery, the helpdesk protocol and processes setting out payment procedures. It then goes on to deal with matters that are considered to be day-to-day management issues including performance monitoring, monthly reporting and dealing with lifecycle and maintenance obligations.

## Who Should Read the Guidance

The guidance is intended for public sector managers, hub companies and facilities management service providers who have responsibility for the management of projects in their operational phase and who provide the direct interface between the public-sector partner and the DBFM Co providing the service. As well as dealing with issues which occur on a regular basis such as helpdesk usage, the review of monthly reports and the payment process, the guidance also deals with matters that occur less frequently such as wider payment mechanism issues, performance monitoring, maintenance and lifecycle planning.

## Scope and Layout of the Guidance

The guidance has been split into specific sections each dealing with a particular topic that will require to be dealt with on a regular basis and relating to ongoing operational issues. Matters that occur on an infrequent basis have not been included in the guidance and should be treated as one-off issues and appropriate advice should be sought.

It is set out to cover the period immediately before service commencement and consequently includes a section on documents that are required to be submitted by the DBFM Co and reviewed by the public-sector partner. The process around snagging is covered and the guidance then goes on to deal with matters that are considered to be day-to-day service management issues.

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The guidance is split into individual sections, each one covering a specific topic. The layout of each section follows a similar pattern covering –

- Key definitions
- Specific information relating to the topic being covered
- Where appropriate, a flow chart setting out timescales and durations
- Other relevant information and key considerations

This guidance is based on the Standard Form Project Agreement (hub DBFM Projects) version 2.4 dated November 2016 and on the Standard Service Level Specification (hub) version 2 dated June 2012. Both documents can be viewed on SFT's website at: <http://www.scottishfuturestrust.org.uk/publications/hub/>

Adjustments are likely to have been made to each individual project including, in some cases, optional drafting. For example, drafting relating to malicious damage may have been included in one project but not deemed to be necessary on another. Accordingly, the detail of individual contracts may be different though the principles and structure will be the same.

In a number of places, the timescales in the standard form are blank. In this guidance, where numbers are included in square brackets, such as in the flow charts, there are typical timescales taken from a contract that has been concluded and, again, timescales on individual contracts may differ. For example, in some cases documentation is required to be provided two months before a particular date. In other cases, it may have been agreed that the same documentation is required three months before the date and this should be checked and updated depending on the specific arrangements agreed for the project being managed.

Where clause reference numbers have been made, such as references to clauses within the main body of the Project Agreement or Performance Standard reference numbers from the Service Level Specification, those numbers should be checked against the references used in individual contracts as they may have changed if any amendments to the standard form contract have been agreed.

This guidance does not constitute legal or other advice to authorities or any third party and authorities should take their own legal and other advice as and when required.

## 1 - Document Checklist

### Pre-commencement checklist

The following documents and/or systems need to be provided and/or be implemented prior to the commencement of the operational term.

#### DBFM Co to provide:

1. Operation and Maintenance manuals (*PA Cl. 18.5*) – first draft [12] weeks prior to completion.
2. Operation and Maintenance manuals (*PA CL 18.5.2*) – final draft in order to allow the Authority to use the Facilities safely and efficiently.
3. DBFM Co management structure (*SLS FM01*)
4. Building User Guide (*SLS FM04*)
5. Health & Safety system relevant to the Services (*SLS FM06*)
6. Quality Management system - ISO 9001 (*SLS FM08, PA Cl. 20.2*)
7. Environmental Management system - ISO 14001 (*SLS FM10*)
8. Vulnerable persons – DBFM Co staff approval (*SLS FM15, PA Cl. 27*)
9. Induction programme – for Staff and Authority Employees (*SLS FM18*)
10. List of Service Providers (*SLS FM27*)
11. Contingency plans for all Services (*SLS FM28*) including (but not limited to):
  - a. Fire and evacuation action plan
  - b. Disaster action plan
  - c. Loss of utility supply
  - d. Service specific risk assessments
  - e. Water emergency plan
12. Helpdesk user instructions and training (*SLS FM33 & FM34*)
13. Service Report and Service Event categorisation and call logging protocol (*SLS FM35*)
14. Format of Customer satisfaction surveys (*SLS FM44*)
15. BMS – to be managed and operated in line with BCRs (*SLS FM47*)
16. Format and quality of Monthly Service Report (*SLS FM52*) Appendix A: Reporting Standards A.1.
17. Format and quality of Annual Service Report (*SLS FM53*) Appendix A: Reporting Standards A.2.
18. 5-year Maintenance Plan (*SLS FM56, PA Cl. 23.11*) – [3] months prior to commencement date.
19. Annual Schedule of Programmed Maintenance (*SLS FM57, PA Cl. 23.1*) – [3] months prior to commencement date.
20. Schedule of Lifecycle Replacement (*SLS FM56, PA Cl. 23A*) – [3] months prior to commencement date.

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21. Statutory Testing programme (*SLS FM64*)

**The Authority to provide:**

1. Permit to Work System referred to in *SLS FM13*.

### Other relevant information and key considerations

- It is important to be aware of the dates and timescales when information should be provided by DBFM Co, especially that information which should be provided up to [3] months prior to completion.
- Adequate resources should be allocated to review the documentation and agree formats where required.
- **Operation & Maintenance manuals** – it should be noted that the final draft should be made available on or before the Actual Completion Date, with the completed manual handed over within [2] weeks of the completion date. The first draft is due no later than [12] weeks prior to the completion date. It is important that the manuals are thoroughly checked and any missing or substandard information identified. It is not uncommon for manuals to be incomplete or sub-standard at the time they are presented. It is also common that they are not handed over on time. The facilities management provider also has an interest in making sure these are presented in a fully completed format and are updated to take account of changes within the facilities and/or amendments by manufacturers in relation to specifications and warranties.
- **Building user guide** – content and style to be agreed.
- **Quality Management system** – important to note that ISO 9001 accreditation is not required upon commencement only a system that meets the requirements. Accreditation is required within the first 18 Contract Months of the Operational Term. The Authority should diarise that date and identify who will be responsible for chasing this up. In cases where it is a multi-site project, all elements of the project should achieve the accreditation within the prescribed period.

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- **Environmental Management system** - important to note that ISO 14001 accreditation is not required upon commencement only a system that meets the requirements. Accreditation is required within the first 18 Contract Months of the Operational Term.
- **Vulnerable persons – DBFM Co staff approval** – format of information to be agreed with the Authority.
- **Induction programme for Staff and Authority Employees** – the content and style of delivery to be agreed with the Authority. Early discussion will be required with DBFM Co.
- **Contingency plans for all Services** – note that the list included in the SLS is not fully exhaustive and there may be other services for which contingency plans may be required.
- **Helpdesk user instructions and training** – it is important that user instructions are received and training given to a high standard prior to completion. DBFM Co should be encouraged to provide test helpdesk systems for training and familiarisation purposes. The Authority should spend time developing an internal protocol for the use of the helpdesk and should allocate sufficient resource and training in advance of the helpdesk going live, particularly how reporting should be handled. It is also important that all relevant wording in the SLS is fully detailed in the helpdesk forms so that all parties have a readily available reference regarding what individual Performance Standards actually state.
- **Service Report and Service Event categorisation and call logging protocol** – protocol to be agreed with the Authority.
- **Format of Customer satisfaction surveys** – format to be agreed with the Authority. It is important that the survey covers all aspects of the Services in sufficient detail to obtain meaningful feedback.
- **Format and quality of Monthly Service Report (MSR)** – the minimum requirements are set out in Appendix A.1. However, it is important that any additional requirements are agreed in advance and that the format and quality of report is agreed with DBFM Co.
- **Format and quality of Annual Service Report (ASR)** – the minimum requirements are set out in Appendix A.2. However, it is important that any additional requirements are agreed in advance and that the format and quality of report is agreed with DBFM Co. The ASR may be required sooner than first expected as it is a requirement linked to the end of the Contract Year, which is the anniversary of the Agreement Date rather than the anniversary of the commencement of services.

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- **5-year Maintenance Plan** – to be provided [3] months prior to the completion date.
- **Schedule of Programmed Maintenance** – to be provided [3] months prior to the completion date. Note that this will only cover the period up to the end of the Contract Year, which is likely to mean the period covered in the schedule is less than one year. The Authority should ensure that the maintenance schedules are reviewed by staff who are sufficiently experienced in technical matters to ensure that manufacturers' specifications and warranties are complied with.
- **Programmed Lifecycle Replacement** – 5-year lifecycle replacement plan to be provided on an annual basis to the Authority's Representative for review not less than [60] Business Days prior to the commencement of each Contract Year in accordance with Clause 23.11.
- **Statutory Testing** – a programme or schedule setting out all the equipment and systems along with the relevant statutory testing and inspection for each item should be provided, including frequencies and details of which party will undertake the testing and inspection. The Authority should ensure that the statutory testing schedules are reviewed by staff who are sufficiently experienced in technical matters to ensure that the schedules are comprehensive and that testing is planned and carried out appropriately.
- **Permit to Work System** – the Authority needs to develop its works access and safety management system relative to the facilities and ensure that these are delivered to DBFM Co in advance. DBFM Co should be requesting this information to ensure it can comply with SLS FM13.



## 2 - Snagging Process

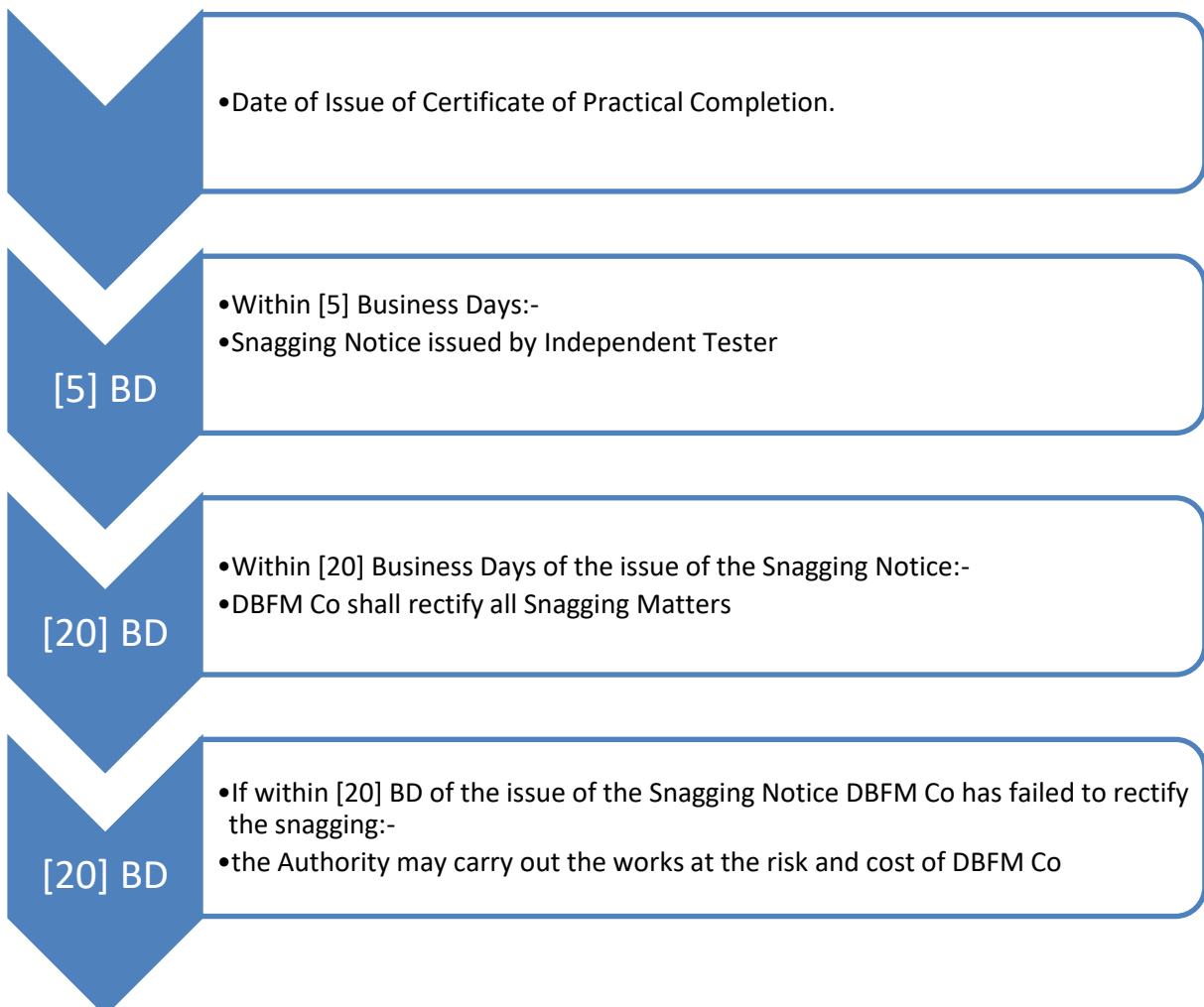
### Key Definitions

#### Snagging Matters:

- Means minor items of outstanding work (including in relation to landscaping) which would not materially impair the Authority's use and enjoyment of the Facilities or the carrying out by the Authority of the Authority Services or the performance of the Services by DBFM Co.

#### Snagging Notice:

- Means the notice to be issued by the Independent Tester in accordance with Clause 17.14.



### Independent Tester's responsibilities

- Issue a Snagging Notice specifying any Snagging Matters [also check cl 17.14 which refers to "estimate of cost...."].
- Review the programme for rectification of all Snagging Matters to be carried out and agree the programme with DBFM Co.
- Monitor and review the rectification of such Snagging Matters.

### Other relevant information

- The Authority shall grant DBFM Co access to carry out the Snagging Matters (clause 9.2.2).
- DBFM Co shall rectify all Snagging Matters in such a manner so as to minimise disruption to the Authority's post completion commissioning and the Authority's use of the Facilities (clause 17.15).
- DBFM Co shall provide the Authority with such information relating to the Snagging Matters to allow for updating of the Operational Manuals (clause 18.6).

### Snagging and the Helpdesk

- It is important that the Snagging Matters only includes genuine snagging items, which are those of a minor nature. It is common that items, which are more than snagging and may be considered as incomplete works, are added to the snagging list primarily as a result of the pressure to get a building handed over on the agreed date. This will be resisted.
- All Snagging Matters should be logged on the helpdesk upon issue of the Snagging Notice. The Snagging Matters generally should be logged under Performance Standard FM65 (Unprogrammed Maintenance – Routine Requests).

### 3 - Method Statements

#### Key Definitions

##### Method Statements:

- Means the method of providing a Service as set out or identified in Section 2 (*Method Statements*) of Schedule Part 12 (*Service Requirements*) as amended from time to time in accordance with Clause 33 (*Change Protocol*) and Clause 22 (*The Services*);

##### Service Level Specification:

- Means the requirements of the Authority set out in Section 1 (*Service Level Specification*) of Schedule Part 12 (*Service Requirements*) as amended from time to time in accordance with Clause 33 (*Change Protocol*);

##### Services:

- Means the services to be provided, managed and/or procured by DBFM Co for the Authority in accordance with Schedule Part 12 (*Service Requirements*) as subsequently amended or adjusted in accordance with this Agreement.

### Method Statements

- DBFM Co shall provide the Services in accordance with the Method Statements (MS) **and** the Service Level Specification (SLS) (*PA Cl. 22.1*) including, any other obligations in accordance with the remaining terms of the Agreement. Comprehensively developed Method Statements should align with the SLS.
- DBFM Co complying with the obligations of an MS does not necessarily mean that it has satisfied the SLS, and vice versa. **Both** need to be complied with.
- Conflict between MS and SLS – in the event that there is a conflict between the two documents then the Authority can decide, in its sole discretion, which shall take precedence. DBFM Co shall be obliged to comply, without cost to the Authority.
- MS should not be generic; they must be specific to the project and the Services to be delivered. They also need to be developed in sufficient detail and ensure that all ambiguity has been removed and that there is clarity as to how DBFM Co or its Service Providers intend to deliver the Services.
- DBFM Co is entitled to propose changes to the MS at any time (*PA Cl. 22.4*). The proposed changes must be submitted in accordance with the Review Procedure (*Schedule Part 8*). Grounds for objections to any proposed changes are outlined in paragraph 3 of Schedule Part 8. The Authority should ensure that any proposed changes to the MS are reviewed by staff who are sufficiently experienced in the areas of proposed change to ensure that any changes are not detrimental to the specific service delivery.
- It should be noted that DBFM Co are not entitled to any payment, or relief, in connection with changes to an MS.

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- SLS service standards with direct reference to MS – whilst the following make specific reference to the MS, it should be noted that DBFM Co must provide all Services in accordance with the MS, not just those which refer to them.
  - FM32 – helpdesk
  - FM43 – performance monitoring
  - FM56 – 5-year maintenance plan – at least in the detail of example incorporated in the MS. It is important to ensure that the MS includes an example in a format and level of detail that the Authority requires.
  - FM57 – Schedule of Programmed Maintenance – at least in the detail of example incorporated in the MS. It is important to ensure that the MS includes an example in a format and level of detail that the Authority requires.
- It is important to ensure that there is a method statement covering Temporary Repairs protocol and that it is aligned with the contract provisions.

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## 4 - Helpdesk

### Key Definitions

#### Helpdesk:

- means the service described in paragraph 3.5 of Section C of the Service Level Specification;

#### Helpdesk Users:

- means the Authority's Representative and any other person(s) authorised by the Authority to call the Helpdesk and notified to DBFM Co from time to time, any Authority Employee in an emergency, an Auditor, DBFM Co, the Service Provider and/or any employee of DBFM Co and /or the Service Provider;

#### Service Event:

- means an incident or state of affairs which does not meet or comply with the Performance Standards and/or does not satisfy the Availability Standards;

#### Service Report:

- means the notification of a Service Event to the Helpdesk.

## Helpdesk Service and Operation

- The Helpdesk is the principal tool for reporting Service Events. These reports trigger timed response and rectification by DBFM Co.
- It is quite common for Authority staff to bypass the helpdesk system, viewing it as making a formal complaint, and instead trying to deal with it at a local level. The helpdesk is a tool to make the contract work as intended and ensuring the services are delivered to the required standard. The Authority cannot exercise a sanction against DBFM Co for non-compliant service if it (the Authority) has not followed the prescribed process. Rigorous logging of Service Events also provides data which can be used for trend analysis and provides the base data for evaluating any deductions due under the contract.
- The Helpdesk is the day to day notification interface for (*Service Level Specification (SLS) 3.5.1*):
  - all queries and requests relating to the Services;
  - the notification of Service Events;
  - monitoring of alarms (if appropriate);
  - notification of Emergencies;
  - recording and keeping the Helpdesk User up to date of progress of Service Events.
- The Helpdesk staff shall assist in raising the alarm, reporting an incident, coordinating responses and logging details of any emergencies at whatever time (*SLS FM40*).
- DBFM Co should provide a Helpdesk, in accordance with the Method Statements, which shall be available 24 hours per day, 365/366 days per year (*SLS FM32*) – Remedial period is 1 Business Day;
- All telephone calls to the Helpdesk to be answered by a human operator within 15 seconds (*SLS FM41*).
- At the time of the Service Event request, the Helpdesk User shall be informed as to the proposed course of action and the Response/Remedial/Rectification Period allocated (*SLS FM38*).
- Helpdesk Users shall be kept informed of the status and progress of reported Service Events. In the event of delays occurring, the Helpdesk User shall be kept informed (*SLS FM42*). Note that details of progress updates to the requester/reporter are required to be included as relevant details in the list as set out in *SLS FM36*.

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- Day to day operations and service delivery will not necessarily be provided by one company but will be provided by individual Service Providers. The relevant Service Provider must receive an activity request report from DBFM Co for each Service Report reported to the helpdesk. This must be documented ([SLS FM37](#)). These reports will provide factual evidence regarding date/time/to whom within the Service Provider the information/request was passed.
- DBFM Co must ensure that all Service Reports are signed as complete or otherwise ([SLS FM39](#)). Compliance with this requirement against every Service Report should be specifically reported on in the monthly report.
- All DBFM Co staff should receive training in the use of the Helpdesk as part of their induction training ([SLS FM19](#)). It is important that the time is taken to train all Helpdesk Users properly so that they clearly understand the function of the helpdesk and how it operates.
- DBFM Co must review the helpdesk procedures bi-annually and if they are amended or updated then the updated procedures must be submitted to the Authority's Representative (AR) ([SLS FM33](#)).
- DBFM Co must ensure that all Helpdesk Users (HU) and Authority Employees are trained in the use of the helpdesk, including where appropriate, any changes to the helpdesk ([SLS FM34](#)).
- A Service Report and Service Event categorisation and call logging protocol shall be agreed with the Authority's Representative and this shall be reviewed annually ([SLS FM 35](#)). It is important to understand the significance of which Performance or Availability Standard is to be used when agreeing a protocol. DBFM Co has ultimate responsibility for categorising Service Events correctly. Failure to do so may result in a failure to accurately report a Performance or Availability Failure under [paragraph 3 of Section 5 of Schedule Part 14, Payment Mechanism](#).



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- Self-reporting – DBFM Co has a responsibility for self-monitoring and reporting. This must be in line with the Service Level Specification as set out in *PA cl 24.2* and failure to do so is dealt with as set out in *paragraph 3 of Section 5 of Schedule Part 14, Payment Mechanism*. This does not mean the Authority staff should assume that DBFM Co will pick up every issue. However, if the Authority becomes aware of a Service Event then it should be logged on the helpdesk in accordance with the agreed protocol. The Authority should consider undertaking regular service delivery checks to ensure that DBFM Co is actually undertaking self-reporting and self-monitoring.
- DBFM Co shall log all Service Reports and shall include all relevant details as set out in *SLS FM36*. The list specified is not limited and further information should be recorded as required:
  - Requester's/reporters name;
  - Date and time of Service Report;
  - Location of Service Event (if applicable);
  - Nature of the Service Report;
  - Categorisation (priority);
  - Response Period and Remedial Period/Rectification Period assigned to the Service Report;
  - Unique report/request reference;
  - Service Provider and contact name to which the request/report was passed;
  - Date and time that the request/report was passed to the relevant Service Provider;
  - Action taken to rectify or remedy including regular progress updates;
  - Actual times that response and rectification were achieved; and
  - Details of progress updates to requester/reporter.
- The Helpdesk and the reports that it generates are used to monitor performance against the contract and to determine the extent of any failure to meet the Performance Standards;
- The Monthly Service Report shall include:
  - Helpdesk call logs; and
  - A summary of Service Reports (including all Service Events recorded under DBFM Co's self-monitoring process) with all details as set out in *SLS FM36*. This is typically included as a separate appendix in the report and should be submitted in Excel spreadsheet format.

## 5 - Payment Mechanism

### Key Definitions

#### Availability Failure:

- Subject to section 4 (Temporary Repairs) of this Schedule Part 14 (Payment Mechanism), means a Service Event which has not been Rectified within the relevant Rectification Period and which causes a Functional Area to be Unavailable;

#### Availability Standards:

- Means the service requirements identified as such, set out in the Service Level Specification;

#### Performance Failure:

- Subject to section 4 (Temporary Repairs) of this Schedule Part 14 (Payment Mechanism), means a Service Event relating to a Performance Standard which has not been Rectified within the relevant Rectification Period (if any);

#### Performance Standards:

- means the service requirements identified as such, set out in the Service Level Specification;

#### Service Event:

- means an incident or state of affairs which does not meet or comply with the Performance Standards and/or does not satisfy the Availability Standards;

#### Unavailable:

- means in relation to a Functional Area that such Functional Area is in a state or condition which does not comply with any one or more of the Availability Standards.

## Payment Mechanism

- The Payment Mechanism is covered under *Schedule Part 14* of the contract and sets out the application of the payment mechanism to fulfil the obligations of the contract in relation to payment as set out in *Part 9: Financial of the PA*.
- It should be noted that the payment mechanism does not deal solely with payment matters but also includes matters such as calculating deductions, Repeated Failures, failure to monitor or report, Pass Through Costs (PTC) and Temporary Repairs. The Authority Representative, and other staff as designated, should spend time familiarising themselves with the payment mechanism and ensure that they have a full understanding of it.
- If deductions reach certain levels then this can lead to Warning Notices (*PA Cl.24.3*) and ultimately to default (*PA Cl. 40.1.8 and 9*).
- Monthly Service Report (*PA Cl.34.2.4*) (*SLS FM52*) must include details of all Performance Deductions and Availability deductions for the Contract Month, calculated in accordance with the *Payment Mechanism (Schedule Part 14)*.
- The formulae for calculation of the Monthly Service Payment (MSP) and Annual Service Payment (ASP) are set out in Section 2 (Calculation of Service Payments) of Schedule Part 14.
- Indexation of the ASP is also dealt with in Section 2.
- Deductions fall into two main categories:
  - Performance Failure deductions;
  - Availability Failure deductions;
- Availability Failure deductions take precedence over Performance Failure deductions (paragraph 7, Section 3, Schedule Part 14).
- **Availability Failures** occur when:
  - a Service Event has not been rectified within the relevant Rectification Period (RP) (subject to the Temporary Repairs provisions (*Section 4 of Schedule Part 14*); **and**
  - which causes a Functional Area to be Unavailable (i.e. in a condition which is non-compliant with the Availability Standards).
- If a Functional Area is deemed unavailable this does not mean that it has to be unusable or unused. If the Availability Standards are not met but otherwise the area can be used, then it may continue to be used. This is classed as Unavailable but Used (UBU) and, in the event of this occurring, the level of deduction will be reduced by 50%.

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- Whole Facilities Unavailability (WFU) – there are a number of conditions which could lead to WFU. This is set out in the contract definition but includes:
  - Functional Areas totalling [30%] or more of Gross Service Units are Unavailable or UBU;
  - [25%] of total toilet provision is Unavailable.
- Availability Deduction will be the higher of:
  - The Minimum Availability Deduction (specified in Schedule Part 14 and indexed annually); and
  - Service Units Affected (SUA) x Service Unit Rate (SUR) x Deduction Period (DP)
- **Performance Failures** occur when:
  - A Service Event has not been rectified within the relevant Rectification Period (subject to the Temporary Repairs provisions).
  - If there is no specified Rectification Period then there is an immediate Performance Failure (PF), and there will be further PFs if DBFM Co does not remedy the failure within the specified Remedial Period. This process is repeated until it is remedied.
- Performance deductions = PFD x the Deduction Period (DP). The PFD will vary depending on whether it is a:
  - Minor Performance Failure [£20], index linked;
  - Medium Performance Failure [£80], index linked;
  - Major Performance Failure [£200], index linked; or
  - Energy Efficiency Failure [£400], index linked.

The severity classification is shown against the Performance/Availability Standard as noted under the heading: “Category” in the SLS.

- Minor Performance Failures (MPF) – no deduction will be made if the total number of MPF in a Contract Month is not more than [5].
- There can only be one PF per Functional Area per day.
- **Repeated Failures** occur when:
  - If an AF or PF in respect of the same Standard occurs [3] or more times in a rolling period of [3] months, then
  - The Deduction for the [4<sup>th</sup>] and each subsequent PF and/or AF, during the [3] month period, shall be multiplied by 1.5.

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- **Repeated Rectification.** Regardless of whether the rectification of an SE occurs within the specified RT, there will be a Major Performance Failure if:
  - 4 or more SEs occurs in a rolling 7 day period *and*
  - The SEs relate to the same Standard and affect the same Functional Area *and*
  - There is good reason to believe that the root cause of each SE is the same.
- If a PF occurs and an AF also occurs affecting the same Functional Area, only the deductions for the AF shall apply (*paragraph 7.1 of Section 3 of Schedule Part 14*).
- If an AF affects a Functional Area (FA) and the Authority does not continue to use that area then they shall not be entitled to make further deductions relating to that FA other than the original AF (*paragraph 7.2 of Section 3 of Schedule Part 14*).
- If an FA is UBU the Authority is still entitled to make deductions if a PF affects the same area (*paragraph 7.3 of Section 3 of Schedule Part 14*). The Authority is entitled to make Performance Failure deductions during this period, notwithstanding the area is UBU. The maximum deduction available to the Authority in this situation cannot exceed the deduction that would have been applied had the Functional Area been Unavailable.
- The procedure of **Temporary Repairs** is set out in *Section 4 of Schedule Part 14*. Temporary Repair (TR) means works of a temporary nature that do not constitute Rectification but satisfy the Minimum Agreed Availability Standards and substantially make good the relevant Service Event for the period until a Permanent Repair can be undertaken. TR is covered in more detail under the specific guidance note covering that topic [see section 7]. A brief summary of the conditions required for a TR is included below:
  - Can only arise if there is a need for specialist materials or personnel that are, or cannot reasonably be expected to be, immediately available at the Facilities.
  - The TR must:
    - Satisfy the Minimum Agreed Availability Standards; and
    - Substantially make good the relevant SE.
  - DBFM Co must submit proposals to the Authority's Representative.
  - The Authority can object to the proposal if the TR would leave the area unfit for its normal use.
  - A deadline for the Permanent Repair (PR) must be agreed, both parties acting reasonably.

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- The TR must be completed within the specified Rectification Time and the PR within the agreed, extended time period, otherwise deductions can be incurred
- **Pass Through Costs** (PTC), where applicable, are added to the Monthly Service Payment and may include such things as Utility Charges, Rates and Operational Insurance Premiums. PTC is set out in *Section 6 of Schedule Part 14*.
- Deemed Performance Failures result if DBFM Co fails to monitor or accurately to report a SE, a PF or an AF. Such a failure to report will lead to a Medium Performance Failure, or in some cases a Major Performance Failure, for each failure. The Authority should note that the original deduction also applies. Particular focus should be placed on failure to accurately report. All SEs should be reported, even if they meet their Rectification Time and therefore do not become an AF or PF and consequently do not incur deductions.
- The Authority should also be aware of, and familiarise itself with, the provisions of *Section 5 (Failure by DBFM Co to monitor or report) of Schedule Part 14*. Checking of relevant details such as correct Categorisation of a Service Event, date/time of the Service Report as set out in *SLS FM36* should be undertaken in each reporting period.
- The Authority should be aware of *PA Cl.51 (Excusing Causes)*. In the event that an Excusing Cause interferes adversely with or affects DBFM Co's ability to meet its obligations under the contract and is notified to the Authority within [10] Business Days of DBFM Co becoming aware of its effect on the delivery of the Services, there may be circumstances whereby DBFM Co is entitled to full payment as if there had been no adverse interference i.e. it does not incur deductions under the Payment Mechanism. Occurrences that constitute an Excusing Cause are listed in *PA Cl.51.2*. This also applies where DBFM Co is instructed to perform additional services in an emergency under cl 24.10 where Aviva are the funder.

## 6 - Invoicing

### Key Definitions

#### Contract Month:

- means a calendar month provided that the first Contract Month shall be the period from and including the Payment Commencement Date to and including the last day of the calendar month in which the Payment Commencement Date falls.

#### Payment Commencement Date:

- means the Actual Completion Date which can be altered at the Authority's discretion if early completion is achieved (*PA Cl.14.5*); Consideration be given to the consequences of any early handover in respect of the Operational Term and liability to pay additional U/C

#### Monthly Service Payment:

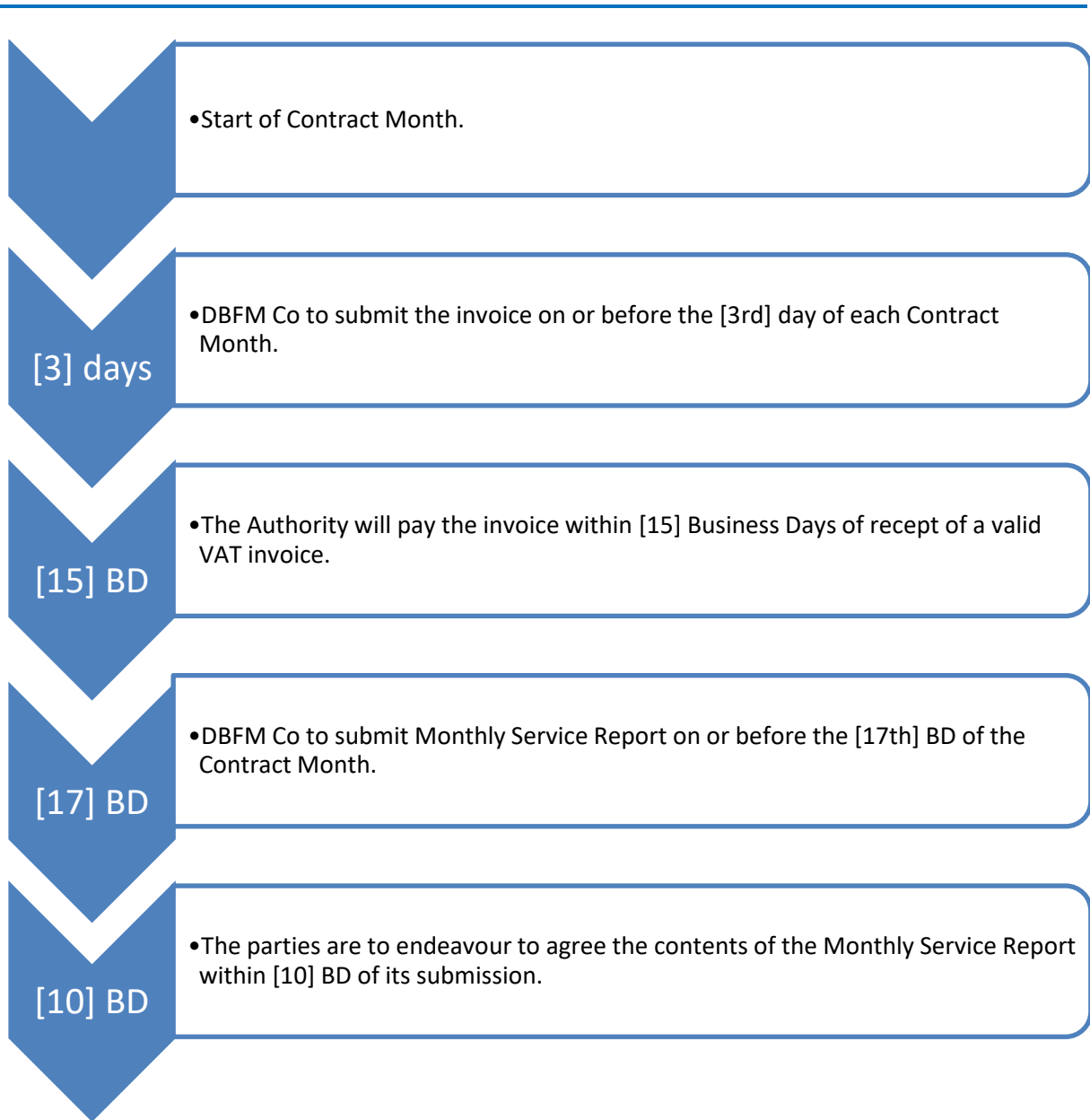
- means the sum in pounds sterling calculated in accordance with paragraph 1 of Section 2 **Error! Reference source not found.** (*Calculation of Service Payments*) of this Schedule Part 14 (*Payment Mechanism*)

#### Monthly Service Report:

- means a monthly report to be prepared by DBFM Co and provided to the Authority in accordance with the relevant provisions in Section 1 (*Service Level Specification*) of Schedule Part 12 (*Service Requirements*);

#### Pass Through Costs:

- means costs payable to DBFM Co pursuant to Section 6 (*Pass Through Costs*) of this Schedule Part 14 (*Payment Mechanism*);





### Amounts included in the invoice

- Monthly Service Payment:
  - Annual Service Payment/12.
  - LESS - the sum of deductions during the Contract Month that was 2 months prior to current Contract Month.
  - PLUS - Any Pass Through Costs.
- adjustments to reflect previous over-payments and/or under-payments (each adjusted stated separately);
- any other amounts due by one party to the other (and where owed by DBFM Co showing as a negative figure);
- any VAT payable in respect of the above amounts;
- any amounts owed to DBFM Co to take account of an Equal Pay Adjustment in accordance with Clauses 25 or 26.

### Disputed amounts

- Upon checking the invoice, the Authority acting in good faith may dispute all or part of it.
- Undisputed amounts must be paid by the Authority by the due date in the normal manner.
- The Authority and DBFM Co shall try to resolve the disputed amount within [10] Business Days. If the dispute cannot be resolved then either party can refer it to the Dispute Resolution Procedure.
- Following resolution any amount agreed to have been payable must be paid forthwith and interest will be applicable in accordance with the Late Payments clause (clause 34.5)

### Other relevant information and key considerations

- Note that the payment period for any non-project invoices is likely to be shorter than normally expected. Interest may be charged for late payment. It is important therefore that a system is put in place to ensure that all supporting information is provided and that the invoice is checked, approved or disputed, and payment made on time. The Authority should consider undertaking trial runs of its payment procedures to ensure that late payment does not occur.
- Late payment – interest will be calculated at the Default Interest Rate (2% over LIBOR) commencing on the day after the date on which payment was due.
- Invoice will need to be checked to make sure it is calculated correctly and provided in the form required under the contract. This will include checking to ensure that any deductions have been calculated correctly in accordance with the Payment Mechanism.
- Pass Through Costs include Utility Charges, Rates and Operational Insurance Premiums – any Pass Through Costs included must be supported by an invoice from the relevant supplier, local authority or insurer.
- Set-off – the Authority has the right to set-off any amounts agreed as payable by DBFM Co. The Authority must give [5] Business Days notice to DBFM Co of its intention to deduct monies. DBFM Co also has set-off rights for any sums agreed to be payable by the Authority.
- The Authority should check that indexation adjustments have been calculated correctly and that any adjustments are applied to the relevant minimum deductions as well as the Annual Service Payment in the relevant Contract Year.

## 7 - Temporary Repairs

### Key Definitions

**Temporary Repairs:**

- means, in respect of the occurrence of a Service Event, works of a temporary nature that do not constitute Rectification but satisfy the Minimum Agreed Availability Standards and substantially make good the relevant Service Event for the period until a Permanent Repair can be undertaken;

**Service Event:**

- means an incident or state of affairs which does not meet or comply with the Performance Standards and/or does not satisfy the Availability Standards;

**Availability Standards:**

- means the service requirements identified as such, set out in the Service Level Specification;

**Performance Standards:**

- means the service requirements identified as such, set out in the Service Level Specification;

**Minimum Agreed Availability Standards:**

- means the minimum standards with which a Functional Area must comply, as agreed between the Authority and DBFM Co, for the period until a Permanent Repair can be undertaken.

### Temporary Repairs

- Temporary Repairs (TR) is part of the Payment Mechanism provisions and is applicable to both Availability Standards and Performance Standards.
- DBFM Co shall inform the Authority (Authority's Representative or another nominated person) of their proposed Temporary Repair. This should only happen when DBFM Co is unable to rectify a Service Event within the specified Rectification Period due to need for specialised materials (which are not available 'off the shelf') or personnel that are not, and cannot reasonably be expected to be, immediately available at the Facilities. The request for a TR should be made as soon as it becomes apparent that one may be required and not simply when it is realised that a Rectification Time is not going to be achieved and the Service Event associated with the TR request should be substantially made good.

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- The Authority may object to the proposed TR if they consider that the affected Functional Area will not be fit for its intended use. The Authority needs to act reasonably when considering this.
- The TR must satisfy the Minimum Agreed Availability Standards and should substantially make good the relevant Service Event. Note that the Minimum Agreed Availability Standards need to be agreed between the Authority and DBFM Co.
- Once a TR has been permitted the Authority and DBFM Co must agree a date and time by which the Permanent Repair (PR) must be made. DBFM Co needs to be given a reasonable period in which to carry out the repair, but at the same time the permitted period should not be excessive.
- The TR must be completed within the specified Rectification Period (as set out in the Service Level Specification) and the Permanent Repair completed by the Permanent Repair Deadline for deductions to be avoided. If either TR or PR has not been completed by the due deadline then a Performance Failure or Availability Failure will have occurred and the provisions of the Payment Mechanism will apply.
- If the Permanent Repair has not been completed by the agreed Permanent Repair Deadline then a Performance Failure or Availability Failure will occur at that date and time.
- It is expected that a TR protocol, set out in sufficient detail, be included in the Method Statements. It should be possible for DBFM Co to include details of specialised personnel which will not be immediately available, as well as specialised materials which would not be readily available. However, this will not necessarily be able to cover all eventualities and may vary over time and does not remove the need to carry spares for the facility.
- To assist and provide clarity on works of a temporary nature, please see Appendix 1 - Template Temporary Repair Proposal Form – Hub Projects. The Template Temporary Repair Proposal Form captures the required inputs, actions and approvals as described in Schedule Part 16 – Temporary Repairs.

## 8 - Performance Monitoring

### Key Definitions

#### Method Statements:

- means the method of providing a Service as set out or identified in Section 2 (*Method Statements*) of Schedule Part 12 (*Service Requirements*) as amended from time to time in accordance with Clause 33 (*Change Protocol*) and Clause 22 (*The Services*).

#### Service Level Specification:

- means the requirements of the Authority set out in Section 1 (*Service Level Specification*) of Schedule Part 12 (*Service Requirements*) as amended from time to time in accordance with Clause 33 (*Change Protocol*).

#### Performance Standards:

- means the service requirements identified as such, set out in the Service Level Specification.

#### Service Quality Standards:

- means the standards identified in Appendix B of the Service Level Specification.

### Performance Monitoring

- DBFM Co shall comply with *Schedule Part 12 (Service Requirements)* which includes the Service Level Specification (SLS), the Method Statements and the Service Quality Plan (*PA Cl. 24.1*).
- DBFM Co has an obligation to monitor its performance against the requirements of the SLS (*PA Cl. 24.2*). This should be undertaken in accordance with the Method Statements (*SLS FM 43*).
- It is important that each of the Performance Standards is monitored at the frequency stipulated under the Performance Monitoring Period column in the SLS. The frequencies include per request/occurrence, daily, monthly, quarterly, bi-annually and annually. The Authority should consider holding discussions with DBFM Co to agree monitoring methods including frequencies and sample sizes and the Method Statements should be amended accordingly.

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- There is an obligation on DBFM Co to report formally on the performance monitoring undertaken each month. The Monthly Service Report (MSR) should include details of the monitoring which DBFM Co has performed in accordance with the Method Statements. It should include details of the findings of that monitoring (*SLS Appendix A: Reporting Standards, A.1. Monthly Service Report (SLS FM52)*).
- DBFM Co shall also carry out customer satisfaction surveys in relation to the Services performed every quarter (*SLS FM44*). The format of the survey should be agreed with the Authority. The requirement is that it is issued to a minimum of 90% of the staff using the Facilities. In order to achieve a high return rate for the surveys it is recommended that they are designed to be easy and quick to complete.
- The customer satisfaction rating must be maintained at a level of 90% or higher. Following a survey, if customer satisfaction is found to be less than 90% then DBFM Co must undertake a review of the applicable Services and provide an action plan to remedy the issues raised (*SLS FM45*).
- Although DBFM Co is responsible for performance monitoring, the Authority is entitled to undertake monitoring in order to satisfy itself that DBFM Co is meeting its obligations (*PA Cl. 24.2*). It is recommended that the Authority has resources in place and a process for carrying out checks at regular intervals. In addition to checking DBFM Co's records, physical checks of Facilities should also be undertaken with comparisons made against the SLS.
- The monitoring should aim to cover whole Facilities over an appropriate time period, and particular attention should be paid to any areas of critical importance and/or heavy use. The monitoring process should aim to ensure that the Service Quality Standards as set out in SLS Appendix B are being met and maintained.
- Joint performance monitoring between the Authority and DBFM Co, although not a specific requirement, should be encouraged. The Authority should be familiar with the detail of the SLS before embarking on any joint monitoring to ensure that the SLS is used as the benchmark and not simply what DBFM Co may consider to be acceptable.
- The Authority should be aware of DBFM Co's obligations in relation to self-monitoring and its own rights in the event that monitoring is not being undertaken sufficiently as set out in *Section 5 (Failure by DBFM Co to Monitor or Report) of Schedule Part 14 (Payment Mechanism)*.

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## 9 - Monthly Reporting

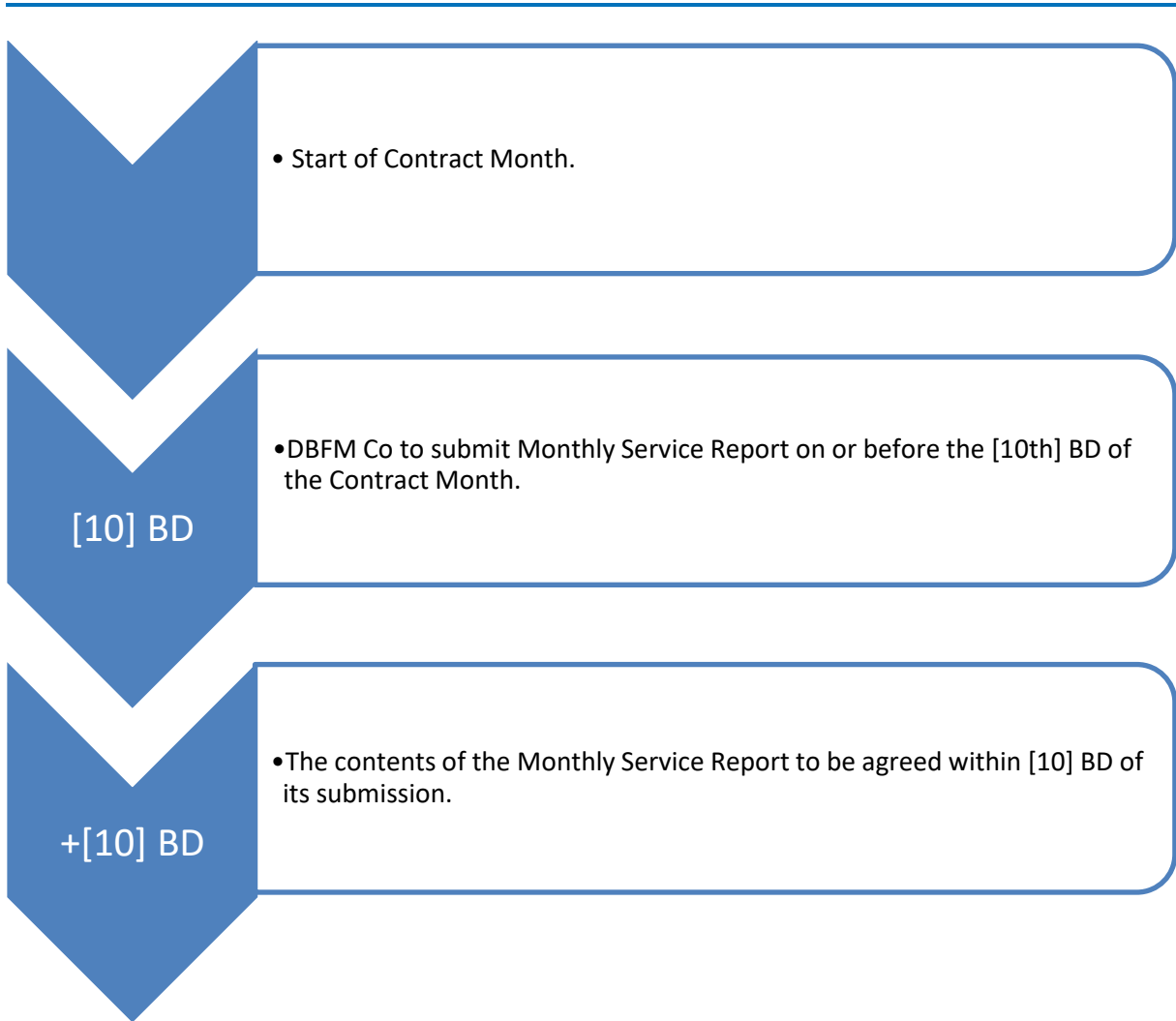
### Key Definitions

#### Contract Month:

- means a calendar month provided that the first Contract Month shall be the period from and including the Payment Commencement Date to and including the last day of the calendar month in which the Payment Commencement Date falls.

#### Monthly Service Report:

- means a monthly report to be prepared by DBFM Co and provided to the Authority in accordance with the relevant provisions Appendix A: Reporting Standards in Section 1 (*Service Level Specification*) of Schedule Part 12 (*Service Requirements*).





## Monthly Reporting

### Monthly Service Report Contents:

- Details of Deductions incurred in relation to Performance Failures for the immediately preceding Contract Month;
- Details of Deductions incurred in relation to Availability Failures for the immediately preceding Contract Month;
- Minimum content requirements set out in Appendix A.1 of the Service Level Specification (Schedule Part 12).
- Under Performance Standard FM52 the Monthly Service Report needs to be in the agreed format and quality. If not submitted this will be an automatic Performance Failure as no rectification period is specified. It is classified as a Minor Performance Failure and therefore, depending on the total number of MPFs within the Contract Month, the Authority may not be entitled to apply a deduction (see clause 2.3 of Section 3 of Schedule Part 14). This should be discussed and agreed between the parties prior to the operational period. It is essential that all parties are fully conversant with the reporting process and comfortable with their own roles and responsibilities.

### Utilities Bills:

- Under Performance Standard FM50 DBFM Co shall verify consumption data against meter readings including confirmation of their accuracy – within [2] Business Days of receipt of the bills from the Authority's Representative.
- Under Performance Standard FM51, DBFM Co has to provide a 3 month rolling utility profile using half hourly data. The monthly report should identify any potential interference factors, potential areas of waste and potential solutions. (Please note this only commences from the end of the 3<sup>rd</sup> Contract Month).

### Ensuring that Planned Maintenance is completed:

- Under Performance Standard FM58, DBFM Co must carry out and complete Programmed Maintenance in accordance with the Schedule of Programmed Maintenance. As part of the monthly report details should be provided of all planned maintenance completed in the month reported against the agreed programme.

### Other relevant information and key considerations

- It is recommended that the format of the monthly reporting information is discussed and agreed with DBFM Co prior to the commencement of operational term. Information to be included in the Monthly Service Report as set out in Appendix A.1 is the minimum requirement. As good practice, DBFM Co should be willing to add information to the MSR at the reasonable request of the Authority.
- A system should be put in place to check the MSR and ensure that all the relevant information, required as a minimum, has been provided in the agreed format and quality.
- Deduction calculations should be thoroughly checked to ensure that they are correct.
- Utilities consumption data should be checked by appropriately trained personnel. Ensure information required under FM51 is provided in sufficient detail, including provision of solutions to any issues identified. Half hourly data will allow trend analysis and identification of potential problems.
- A check should be made to ensure that programmed maintenance has been carried out in accordance with the Schedule of Programmed Maintenance - review of the completed Programme Maintenance records against the Schedule of Programmed Maintenance. This shall include any planned lifecycle works.

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## 10 - Annual Reporting

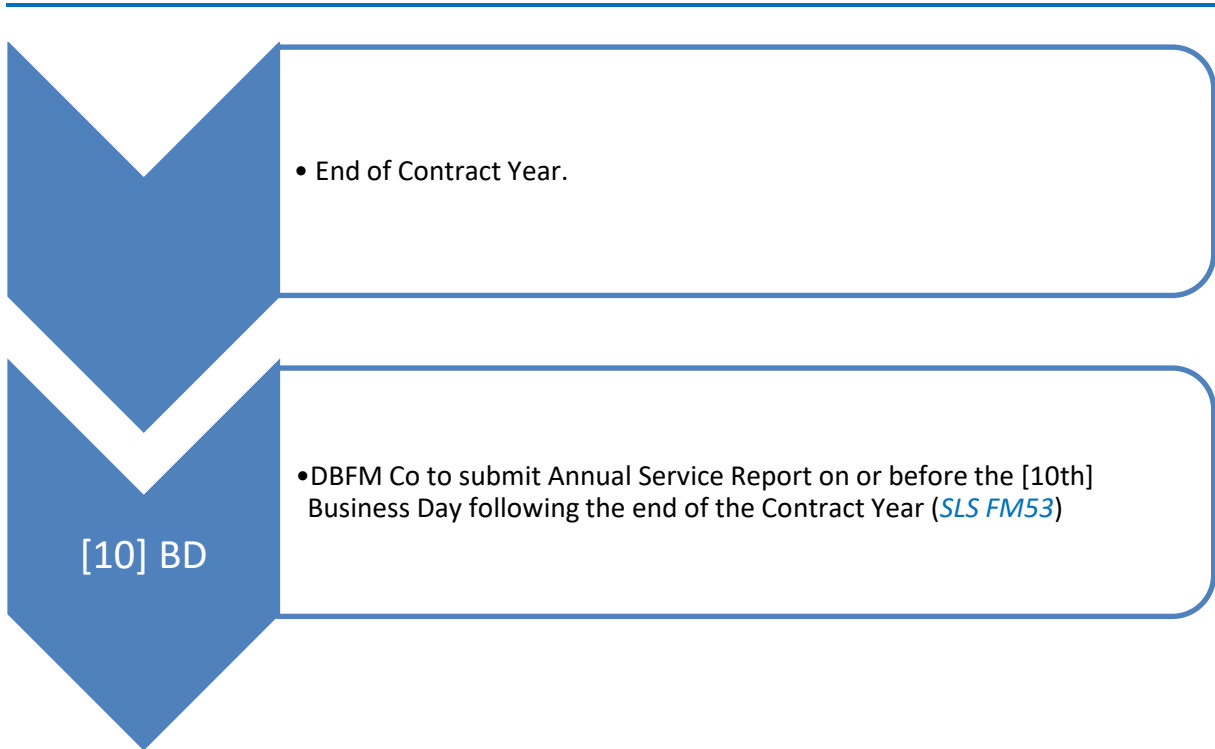
### Key Definitions

#### **Contract Year:**

- means the period of twelve (12) calendar months commencing on and including [the date of this Agreement] and each subsequent period of twelve (12) calendar months commencing on each anniversary of [the date of this Agreement], provided that the final Contract Year shall be such period as commences on and includes the anniversary of [the date of this Agreement] that falls in the year in which this Agreement expires or is terminated (for whatever reason) and ends on and includes the date of expiry or earlier termination of this Agreement (as the case may be).

#### **Annual Service Report:**

- means an annual report to be prepared by DBFM Co and provided to the Authority in accordance with the relevant provisions in Appendix A Section 1 (Service Level Specification) of Schedule Part 12 (Service Requirements).



## Annual Reporting

**Annual Service Report - minimum content requirements set out in Appendix A.2 of the Service Level Specification (Schedule Part 12):**

1. Summary of Service Reports during the Contract Year including category, response and rectification times achieved;
2. Report indicating Functional Areas that were Unavailable or Unavailable but Used in the Contract Year;
3. Summary of all Performance Failures and Availability Failures during the Contract Year;
4. Financial performance indicating income generated from Services;
5. Asset acquisition and disposal (where relevant) including lifecycle replacement;
6. Summary of all annual reviews of documentation including but not limited to health and safety policies, this shall include details of any changes made that may impact the Community Services delivered at the Facilities;
7. Summary of KPI performance over the previous Contract Year;
8. Summary of contingency plan testing carried out in the previous Contract Year;
9. Customer service performance review;
10. Resource summary and performance review including any changes;
11. Energy performance report (energy consumed, energy use and distribution data);
12. Utility usage report (water consumption and sewage);
13. Details of Utilities initiatives implemented in the previous 12 months with summary of their relative success; and
14. Details of Utilities initiatives planned for the forthcoming 12 months.

### Other relevant information and key considerations

- It is recommended that the format of the annual reporting information is discussed and agreed with DBFM Co prior to the commencement of operational term.
- Consideration should be given, pre-commencement, as to what other information may be required in the annual report. It would be good to get this established and agreed at the outset, but there is scope to get further information added at a later date as the list specified in SLS Appendix A.2 is a minimum.
- A system should be put in place to check the Annual Service Report and ensure that all the relevant information, required as a minimum, has been provided in the agreed format and quality and that appropriate actions following the report are undertaken.
- Other items to consider for inclusion:
  - Annual health and safety statistics including RIDDOR, other incidents, near misses, etc.
  - Performance and Availability Deduction information for the Contract Year broken down into sufficient data and presented in such a way to facilitate trend analysis.
  - Defects summary – including details of defects raised, remedial action taken, etc.
  - Statutory testing records summary for the Contract Year.
  - Utilities consumption data presented in a format that includes sufficient detail for each of the utilities used in line with *FM50 and FM51 of the SLS*, on month-by-month basis, along with comparison with previous year(s).
  - Grounds for Warning Notices – information provided in such a format as to show deduction levels relative to Warning Notice thresholds. (NOTE: this information should also be considered for inclusion in the Monthly Service Report).
- Under Performance Standard FM53 the ASR needs to be in the agreed format and quality. If not submitted this will be an automatic Performance Failure as no rectification period is specified. It is classified as a Minor Performance Failure and therefore depending on the total number of MPFs within the Contract Month the Authority may not be able to apply a deduction (see clause 2.3 of Section 3 of Schedule Part 14).

## 11 – Maintenance and Lifecycle Scheduling

### Key Definitions

#### Programmed Maintenance:

- means the maintenance work which DBFM Co is to carry out in accordance with the Schedule of Programmed Maintenance and includes servicing, statutory testing and lifecycle replacement.

#### Schedule of Programmed Maintenance:

- means the programme referred to in *Clause* 23.1 to be submitted to the Authority's Representative by DBFM Co in accordance with *Schedule Part Error! Reference source not found. (Review Procedure)*.

#### Maintenance Works:

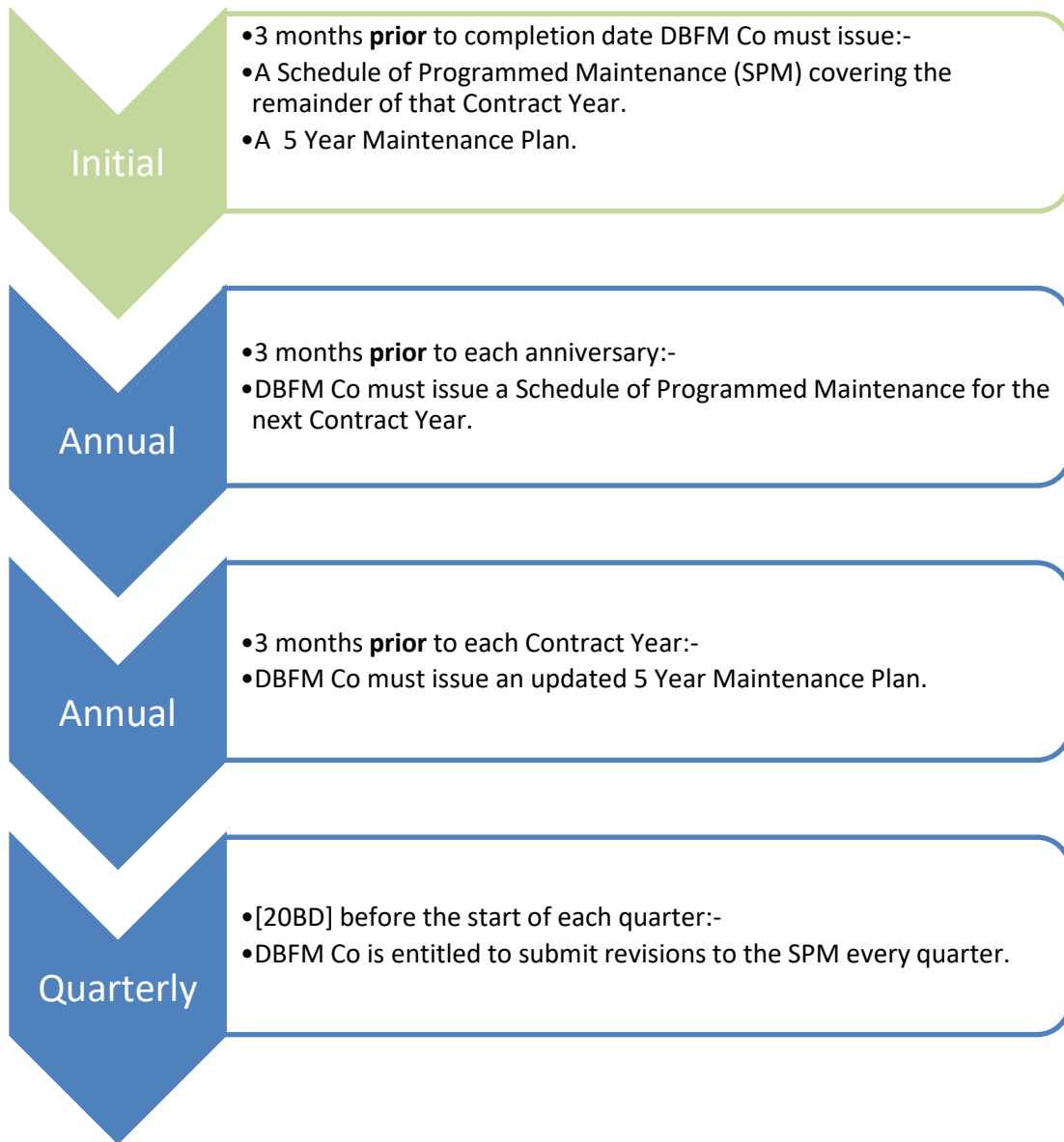
- means any reactive or planned works for maintenance or repair of the Facilities that are necessary to ensure that the Facilities are maintained in accordance with the Service Level Specification and Method Statements and that the Facilities comply with the Authority's Construction Requirements and DBFM Co's Proposals (including, without limitation, the renewal or replacement of any Plant or equipment) throughout the Project Term.

#### 5 Year Maintenance/Lifecycle Plan:

- means the plan, to be prepared by or on behalf of DBFM Co, for any works for the maintenance or repair of the Facilities, including the renewal or replacement of plant or equipment as necessary, during each rolling five year period for the duration of the Project Term.

#### Contract Year:

- means the period of twelve (12) calendar months commencing on and including [the date of this Agreement] and each subsequent period of twelve (12) calendar months commencing on each anniversary of [the date of this Agreement], provided that the final Contract Year shall be such period as commences on and includes the anniversary of [the date of this Agreement] that falls in the year in which this Agreement expires or is terminated (for whatever reason) and ends on and includes the date of expiry or earlier termination of this Agreement (as the case may be).





### Other relevant information and key considerations

- The first Schedule of Programmed Maintenance (SPM) will be submitted 3 months prior to the planned completion date (*PA Cl.23.1*). This will cover the period to the end of that Contract Year (CY). Thereafter the SPM will be submitted annually 3 months prior to each anniversary of the completion date and cover the next Contract Year (*PA Cl.23.2*).
- The SPM will be submitted in accordance with the *Review Procedure (Schedule Part 8)* and the Authority must ensure it has sufficient resources and time to review the SPM. If the SPM does not meet the agreed level of detail, once rejected, DBFM Co has 3 Business Days to re-submit the SPM to the agreed format and quality (*SLS FM56*). Where the Authority raises comments on the SPM in relation to durations and hours of work, suitable re-scheduled dates and durations should be given (*PA Cl.23.5*).
- DBFM Co may submit revisions to the SPM every quarter, to be submitted no later than [20BD] prior to the start of the quarter (*PA Cl. 23.4*). It is important that the Authority's Representative (AR) checks any submitted revisions because if they do not raise any comments in accordance with the *Review Procedure (Schedule Part 8)* then the revised SPM will become the SPM for that quarter.
- The Hours for Programmed Maintenance are set out in *Appendix 2 to Schedule Part 8 (Review Procedure)*. DBFM Co can propose to carry out works outside these times subject to the approval of the AR.
- It is critical to ensure that the Facilities are maintained to the required standards in order to minimise breakdowns and extend asset life. The Authority must be fully aware of all rights and obligations in relation to programmed maintenance and lifecycle replacement and should allocate resource with a technical background to ensure that proposals are fully and appropriately assessed. Assessments of submitted SPMs should take into consideration any trends that have developed in relation to maintained assets and should make a direct comparison with what has been proposed compared with the requirements of manufacturers' specifications and warranties (*SLS FM57*).
- Each SPM shall contain (*PA Cl.23.3*):
  - Details of works to be carried out, proposed start and end date and hours of work;
  - Details of any effect of the Programmed Maintenance (PM) on the delivery of any of the Services and/or the activities of the Authority.

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- The Authority should give consideration to the format of the SPM and have discussions with DBFM Co about it at an early stage. The format must be at least to the level of detail as set out by DBFM Co in its Method Statement ([SLS FM57](#)). It should include the following information:
  - Details of the works to be carried out – itemised and described in sufficient detail.
  - Proposed start and end dates
  - Proposed hours of work for each item of PM.
  - Details of the Functional Areas affected.
  - Compliance with manufacturers’ specifications and warranties.
  - Compliance with Service Quality Standards.
  - Compliance with the Authority’s Construction Requirements (ACRs).
- Request to accelerate or defer works - the AR can request acceleration or deferral of any item of PM. The request must be made [20] Business Days (BD) prior to the planned date of the PM. DBFM Co must give an estimate of any increased costs as a result within 5 BD of receiving any such request. The Authority then has a further 5BD to either confirm or withdraw the request. If a response is not received within 5BD then the Authority request will be deemed to have been confirmed and DBFM Co shall proceed. The Authority will reimburse reasonable costs incurred, but these shall not exceed the initial estimate (PA Cl.23.7).
- Where PM has been deferred at the request of the AR under Clause 23.7, should DBFM Co fail to perform the relevant Service as a result of the deferred works, deductions cannot be applied for the period from the end of the originally scheduled PM until after the agreed end date of the deferred period of PM ([PA Cl. 23.10](#)).
- Operation and Maintenance manuals – it is essential that O&M manuals are updated as necessary throughout the Project Term. The PM contained in the SPM must be developed to meet, in full, the manufacturers’ recommendations as set out in the O&M manuals. The O&M manuals should be updated, if necessary, following the completion of any PM and lifecycle replacement works and this should be reported on by DBFM Co and checked and confirmed as part of monitoring.
- If the Authority raises comments about durations and the hours of works shown in the SPM, it should provide alternative hours when the works can be re-scheduled to be completed and DBFM Co shall update the SPM accordingly ([PA Cl.23.5](#)).

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- Unprogrammed Maintenance Works (UMW) – the AR needs to be aware of the contract provisions in respect of UMW. This includes the following:
  - No UMW to be carried out without the prior agreement of the AR ([PA Cl.23.8](#));
  - Emergency need for UMW – DBFM Co to give notice (2BD) to the AR ([PA Cl.23.9](#)).
- The first 5 Year Maintenance Plan (5YMP) will be submitted 3 months prior to the planned completion date ([PA Cl.23.11](#)). Thereafter the 5YMP will be submitted annually 3 months prior to the start of each Contract Year. The 5YMP should cover a rolling 5 year period, the first year being the next Contract Year. The plan should include, in sufficient detail, the planned maintenance expected to be carried out over the 5 year period and should include any planned replacements or improvements during that time.
- The format of the 5YMP should be agreed with DBFM Co in advance and the level of detail of the 5YMP should be at least to the level of detail previously submitted in DBFM Co’s Method Statements.
- The Authority can inspect the Facilities at any time to ensure that they are being maintained as required under the contract e.g. compliance with the Service Level Specification, Authority’s Construction Requirements and DBFM Co’s Proposals at all times ([PA Cl.23.12](#)). The Authority may wish to undertake any inspection itself or commission an independent third party to complete an inspection. The Authority will make known the findings of any survey to DBFM Co and the Funders.
- The Service Level Specification (SLS) contains the following specific requirements in respect of Maintenance:
  - [SLS FM56](#) – 5YMP submitted annually in accordance with [PA Cl.23.11](#);
  - [SLS FM57](#) – SPM submitted annually in accordance with [PA Cl.23](#).
  - [SLS FM58](#) – PM to be carried out and completed in accordance with SPM – this to be reviewed monthly.
  - [SLS FM65](#) – DBFM Co ensure that the Facilities are maintained in accordance with the Service Quality Standards (SQS), ACRs, the requirements of the manufacturers’ specifications and warranties, Law and Good Industry Practice.

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- Operation and Maintenance manuals – it is essential that O&M manuals are updated as necessary throughout the Project Term. When lifecycle replacement works are completed which involve the replacement of plant, equipment or components with those of a different specification it is important that the manufacturer’s maintenance requirements and/or warranties are added to all copies of the manuals and that any superseded information be removed.
- The Authority should be aware of [PA Cl.51 \(Excusing Causes\)](#). In the event that an Excusing Cause interferes adversely with or affects DBFM Co’s ability to meet its obligations under the contract and is notified to the Authority within [10] Business Days of DBFM Co becoming aware of its effect on the delivery of the Services, there may be circumstances whereby DBFM Co is entitled to full payment as if there had been no adverse interference. Occurrences that constitute an Excusing Cause are listed in [PA Cl.51.2](#) and [Cl.51.2.6](#) deals specifically with the carrying out of planned maintenance in accordance with the SPM.

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## 12 - Authority's Maintenance Obligations

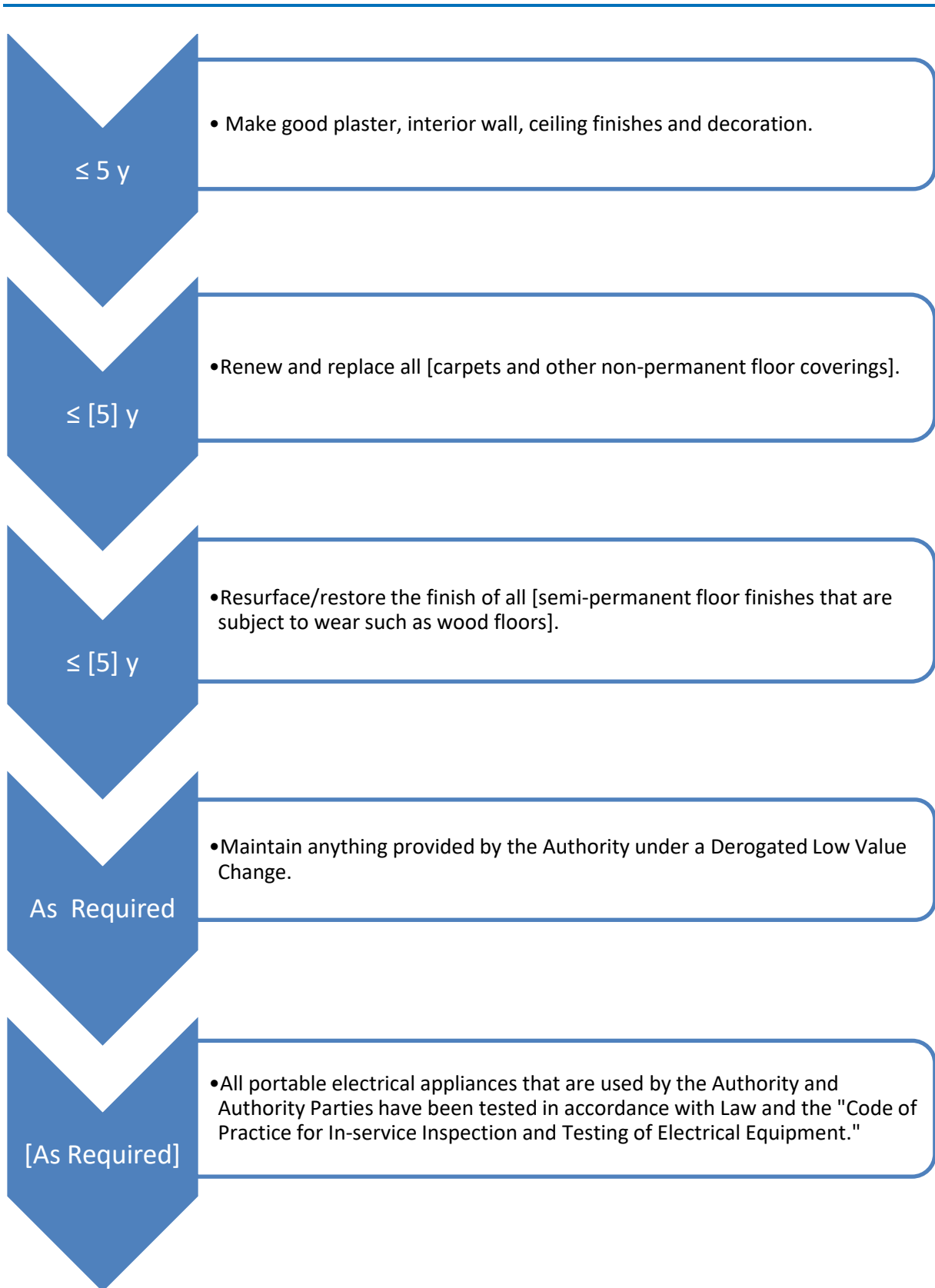
### Key Definitions

#### Authority's Maintenance Obligations:

- has the meaning given in Clause 23.13 and includes an obligation to, not less frequently than every five years, make good plaster and other interior wall and ceiling finishes and decoration;
- renew and replace floor coverings in accordance with the following timescales:
  - carpet tiles every [20] years;
  - cushioned flooring every [20] years; and
  - vinyl flooring every [15] years.
- ensure that all portable electrical appliances supplied by the Authority and Authority Parties have been tested (PAT).

#### DBFM Co's Remedial Services:

- means any activities to be performed by or on behalf of DBFM Co pursuant to its rights under Clause 23.16



#### Other relevant information and key considerations

- The Authority's Maintenance Obligations (AMO) must be performed as often as required (as specified in [PA Cl.23.13](#)) and in accordance with Good Industry Practice.
- The AMO must be planned so as not to interfere with DBFM Co carrying out maintenance in accordance with the Schedule of Programmed Maintenance and/or Unprogrammed Maintenance Work (UMW) ([PA Cl.23.14](#)). However, under [PA Cl. 23.2](#) both parties have an obligation to co-operate with each other to coordinate activities, such that the Authority's intended maintenance works must be included in the Schedule of Programmed Maintenance (SPM). Obviously UMW will not be known about when the SPM is prepared. However, under [PA Cl. 23.8](#) the timing of UMW needs to be approved by the Authority's Representative so should allow conflicts to be avoided.
- In order to allow those works required to satisfy the AMO to be included in the SPM, the Authority will need to provide details of its planned works to DBFM Co in sufficient time to allow for inclusion in the SPM (which is due to be submitted [3] months prior to the commencement of the contract Year ([PA Cl. 23.2](#))).
- If the Authority does not comply with its maintenance obligations then DBFM Co may give notice requiring the Authority to comply. If the Authority does not reply within 10 Business Days (providing a reasonable programme for the works) or comply with the programme, once issued, then DBFM Co shall be entitled to do the works. ([PA Cl.23.15](#)). The timing of any such remedial works by DBFM Co needs to be agreed with the Authority's Representative. DBFM Co must give due notice (20 BD) and the Authority has 10 BD in which to reply, failing which it will be deemed to have been approved. The Authority must allow DBFM Co access to carry out the works ([PA Cl. 23.17](#)) and the Authority will liable for all reasonable costs incurred by DBFM Co ([PA Cl. 23.20](#)). All of the above is subject to the test that the AMO is only carried out by DBFM Co "so far as necessary to prevent any reasonably foreseeable adverse effect on the Services and/or DBFM Co's obligations ....".  
The Authority should be committed to fulfilling its maintenance obligations to the standards that DBFM Co is required to meet. There should be an equal level of commitment on either side.

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- The Authority needs to have sufficient resources to be able to manage its maintenance obligations. This should include competent persons who can assess the condition of the building elements, specify the scope of works required, procure and manage the works.
- Under [PA Cl. 23.21](#) it should be noted that DBFM Co is responsible for making good any defects in plaster, wall finishes, ceiling finishes, decoration and floor coverings which were caused by defective design or workmanship during the Works or as part of planned or unplanned maintenance. In practice it might be difficult to establish or prove that it is such a defect of design or workmanship. DBFM Co shall also be responsible for any defects caused by its acts or omissions.
- The scope of the Authority's Maintenance Obligations also includes works that may have been carried out under an Authority Change. This is in addition to elements completed by DBFM Co as part of the Works. Elements include:
  - Soft floor finishes (carpets, vinyl, etc)
  - Hard floor finishes (wood floors)
  - Wall finishes including plaster
  - Ceiling finishes
  - Decoration
  - Portable appliance testing (PAT)
  - Anything provided by the Authority under a Derogated Low Value Change.
- When flooring is being replaced then expansion joints, cover/jointing strips, mat wells, seals, formed/coved skirtings should also be replaced where necessary.
- Portable appliance testing (PAT) – it is considered good practice to carry out testing annually. There should be a process to make sure all equipment is made available for testing including infrequently used items.



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- Specification of the replacement – elements to be replaced should be to the same or equivalent specification as that installed as part of the Works. It may be worth considering an alternative if the existing is deemed to be unsuitable e.g. replacing carpet with vinyl. Consideration needs to be given to avoiding installing or fitting an alternative which may result in increased operational costs or increased frequency of replacement. Environmental considerations can also be relevant, e.g. acoustic reverberation times.
- Sign off of completed works – consideration should be given to developing and implementing a process for joint sign off of works completed in order to record that the Authority has complied with the Authority's Maintenance Obligations.

## 13 - Malicious Damage

### Key Definitions

#### Malicious Damage Report:

- has the meaning given in Clause 49A.2.1.

#### *malicious damage or vandalism:*

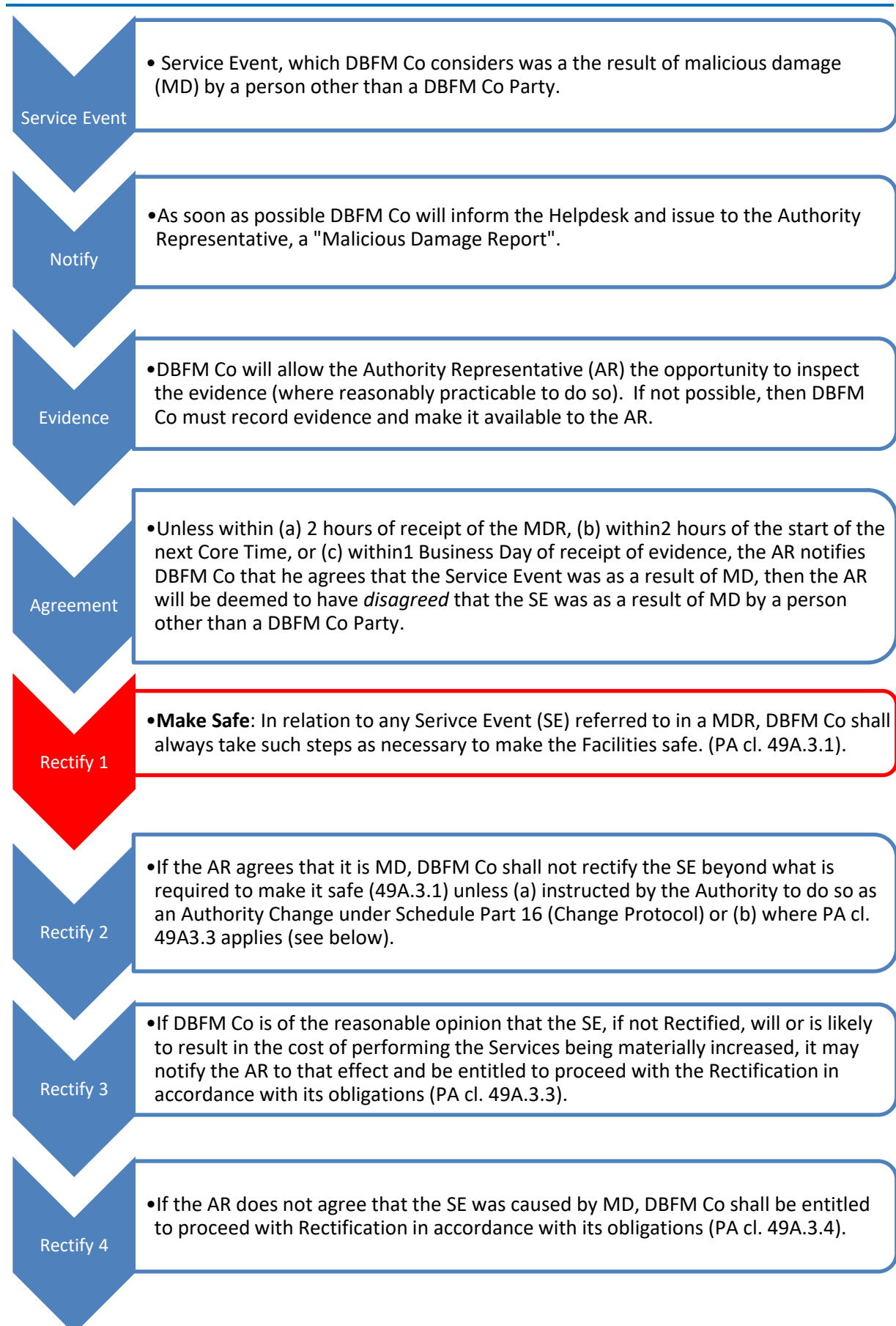
- The terms 'malicious damage' or 'vandalism' are not specifically defined, however, they are deemed to include any deliberate act or omission of the Authority or Authority Party.

#### Facilities:

- means [the buildings and other facilities, together with all supporting infrastructure (including the Plant and [the Group 1 Equipment]), external hard-standings, specialist surfaces and other amenities located on the Site (including as a minimum all aspects detailed within Appendix B to Section 1 (*Service Level Specification*) of Schedule Part 12 (*Service Requirements*), as required to enable DBFM Co to comply with its obligations under this Agreement, all as the same may be varied, amended or supplemented from time to time in accordance with this Agreement].

#### DBFM Co Party:

- means DBFM Co's agents and contractors (including without limitation the Contractor and the Service Providers) and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project. "**DBFM Co Parties**" shall be construed accordingly.



### Malicious Damage (PA Cl. 49A)

#### Notification:

1. As soon as it becomes aware the Service Event was caused by malicious damage by a person other than a DBFM Co Party, DBFM Co shall verbally inform the Helpdesk and the Authority's Representative (AR) – Malicious Damage Report (PA Cl. 49A.2.1).
2. Opportunity for the AR to inspect the evidence, if it is reasonably practicable to do so (PA Cl. 49A.2.1).
3. If the AR agrees it is malicious damage then they shall respond within the specified timescale, failing which they will be deemed to have disagreed (PA Cl. 49A.2.2).

#### Rectification:

4. In relation to any SE referred to in an MDR, DBFM Co shall always take such steps as are necessary in accordance with its obligations under this Agreement to make the Facilities safe (PA Cl. 49A.3.1).
5. If the AR agrees that it is MD (except where clause 49A.3.3 applies) DBFM Co shall not rectify the SE beyond what is required to make it safe (49A.3.1) unless instructed by the Authority to do so as an Authority Change under Schedule Part 16 (Change Protocol) (PA Cl. 49A.3.2) - Note that the Authority will need to instruct DBFM Co to complete full reinstatement. The Authority should also make reference to and be aware of the Excusing Cause provisions (PA Cl. 51.2.7).
6. If DBFM Co are of the reasonable opinion that the SE referred to in the MDR, if not Rectified, will or is likely to result in the cost of performing the Services and in particular the costs of Maintenance Works and Lifecycle Replacement being materially increased, it may notify the AR to that effect and be entitled to proceed with the Rectification in accordance with its obligations (PA Cl. 49A.3.3).
7. If the AR does not agree that the SE was caused by MD, DBFM Co shall be entitled to proceed with Rectification in accordance with its obligations (PA Cl. 49A.3.4).

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**Malicious Damage (PA Cl. 49A)**

**Cost of Rectifying Malicious Damage:**

8. DBFM Co will be entitled to include all reasonable costs incurred
  - o to make the Facilities safe pursuant to clause 49A.3.1 if it is agreed by the Authority or determined under Dispute Resolution Procedure that the SE was caused by MD.
  - o to carry out Rectification pursuant to 49A.3.3.
  - o to carry out Rectification pursuant to 49A.3.4 if determined by DRP that the SE was caused by MD.
9. DBFM Co shall include any such costs in a Monthly Invoice (*PA Cl. 34.2.1(c)*).
10. In deciding what a reasonable cost is, regard may be had to prices and rates in the Catalogue (as defined in Schedule Part 16 (Change Protocol)).

#### Other relevant information and key considerations

- DBFM Co has an obligation to notify “as soon as possible” – although a timescale is not defined, it is in DBFM Co’s interest to notify as soon as it becomes aware as, the longer it takes the harder it will be for DBFM Co to be able to prove it was MD.
- Unless it is immediately obvious that it was MD, DBFM Co will look to rectify the SE within the RP in order to mitigate the risk of deductions.
- The onus is on DBFM Co to provide reasonable evidence to support its claim of malicious damage.
- Accidental damage or malicious damage. DBFM Co will have to provide evidence that it was malicious damage and not accidental. DBFM Co may argue that if the damage could not have been caused during normal expected use then it should be classified as malicious damage. This is not the case as malicious damage is the result of a deliberate act.
- The key to proving something was damaged as a result of malicious damage is taking action as soon as it becomes evident, notifying the Authority, being able to carry out a joint inspection, and providing supporting evidence.
- If it is not reasonably practicable to allow the Authority’s Representative to inspect the evidence then DBFM Co must take steps to preserve or record the evidence and make it available to the AR. Types of evidence could include:
  - Witnesses/witness statements;
  - CCTV footage;
  - Digital photographs; and
  - Historic evidence e.g. previous incidents of the same type or nature.
- Disputes – If DBFM Co disagrees with the Authority’s opinion, or feels that the AR is not assessing Malicious Damage Reports reasonably, then it may raise a dispute, with any such disputes being determined under the Dispute Resolution Procedure ([PA Cl.49A.6](#)). This is more likely if DBFM Co feels that precedents may be set which would not be in its long-term interests. Depending on the experience of DBFM Co personnel, they may look to pursue this early in the contract, but others may not wish to risk key relationships by raising disputes.

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- The default position if the Authority's Representative does not respond within the specified timescale (2 hours of notification of MDR, 2 hours of start of next Core Time, or 1 BD of receipt of evidence) is that they *disagree* that the Service Event was as the result of malicious damage by a person other than a DBFM Co party. As a result, DBFM Co is likely to be proactive in pursuing the Authority's Representative for a response.
- Absence of the Authority's Representative – Authority should also be aware of the obligations under [PA Cl. 8](#) (Representatives), specifically [PA Cl. 8.4](#). The Authority's Representative may elect to authorise another person to deal with malicious damage.
- If DBFM Co deems that the malicious damage is of minimal cost, where the cost of pursuing it would not be proportional then it may choose to rectify the Service Event without raising the Malicious Damage Report. Similarly, if it feels that it might not be successful in evidencing the malicious damage then it may also decide not to pursue it.
- Insurance – the Authority can make claims, under the operational insurances policies, for losses due to malicious damage ([PA Cl. 49A.5](#)). Careful consideration should be given before claims are made as depending on the claims history this could result in an increase in operational insurance premiums. The Authority should also familiarise itself with the amount of the policy deductible applicable to claims of this nature. Reference should be made to Schedule Part 14, Section 6 (Pass Through Costs), specifically clause 3.2.
- Excusing Cause ([PA Cl. 51](#)) – The Authority should be aware of Excusing Cause provisions, specifically clause [51.2.7](#).
- Third party use – the Authority should consider the risk of any damage caused by third parties and the introduction of a mechanism for recovering any such costs should it choose to do so.

## 14 - Governance & Escalation

### Key Definitions

#### Authority's Representative:

- means the person so appointed by the Authority pursuant to Clause 8 (Representatives).

#### DBFM Co's Representative:

- means the person so appointed by DBFM Co pursuant to Clause 8 (Representatives).

### Governance & Escalation

- The Authority must appoint an Authority's Representative (AR) and this person will be named in the contract (*PA Cl. 8.1*). The Authority is entitled to change the AR but must notify DBFM Co in accordance with *PA Cl. 8.3*. It is important that the nominated AR fully understands their role and responsibilities in respect of the contract.
- The Authority is also entitled to authorise another person to exercise the functions and powers of the Authority. Again, notice needs to be given to DBFM Co (*PA Cl.8.2*).
- DBFM Co rep (*PA Cl. 8.7*) – DBFM Co must appoint a DBFM Co's Representative (SR) and this person will be named in the contract (*PA Cl. 8.7*). DBFM Co is entitled to change the SR but must notify the Authority in accordance with *PA Cl. 8.8*.
- DBFM Co and the AR should meet at least monthly (*SLS FM22*).
  - Attendees should include the AR and SR as a minimum but other staff from the Authority, DBFM Co or Service Providers may attend as necessary.
  - More senior personnel should be invited as and when deemed necessary.
  - A schedule of meeting dates should be established to ensure that the minimum meeting requirement is met.



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- The meetings should be scheduled to take place shortly after submission of the Monthly Report. This will allow any issues arising from the report to be discussed.
- Consideration should be given to developing a standard agenda in consultation with DBFM Co.
- The minutes need to be formally recorded and minutes distributed to all parties. It is recommended that the Authority takes responsibility for taking the minutes.
- Other meetings should be arranged as necessary to satisfy the obligations of the contract. Ad-hoc meetings can also be arranged as and when required.
- Relationships should also be developed with DBFM Co at a senior level. This will allow issues to be escalated where necessary but also allow potential problems to be addressed before they develop into more serious issues.
- As part of the Authority's governance arrangements there should be a clear escalation process, which the AR should be fully aware of.
- It is also recommended that a governance manual is developed. This should be completed in advance of the operational period so that any practical issues are ironed out before the project goes live.

## 15 - Review Procedure

### Key Definitions

#### Review Procedure:

- Means the procedure set out in Schedule Part 8 (Review Procedure).

### Review Procedure

- The Review Procedure (RP) is described in *Schedule Part 8*. There are a number of items specified within the contract documents which require to be reviewed in accordance with the procedure.
- The Authority should be aware of, and familiarise itself, with the review procedure. The review procedure applies from the commencement of the contract, throughout both the construction period and the operational period. The Authority Representative (AR) and other staff will have become accustomed to using the RP throughout the construction period, but if the AR changes prior or during the operational term then they will need to familiarise themselves with the RP, as will any other staff involved in reviewing documents.
- The Authority needs to have sufficient resources in place to review information submitted under the RP. The review procedure, or other contract provisions, set out the timescale for responding to submitted items. The Authority should have resources to allow it to meet these timescales and, where relevant, resource with a technical background should be utilised for maintenance and lifecycle scheduling matters.
- The Authority shall make comment on the submitted items which means raise comment or make objections (*paragraph 3 (Grounds of Objection) of Schedule Part 8*). The RP outlines the basis on which the Authority can make comments or objections in relation to the different types of submission. It should be noted that, depending on the type of submitted item, there may be other provisions expressed elsewhere in the contract.
- If insufficient information is submitted by DBFM Co the Authority is entitled to object to the submitted item.
- The Authority shall return one copy of a submitted item within [15] Business Days of the date of receipt, either marked “no comment” or with comment.

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- If the AR raises comments then they must state the ground for objection and provide evidence to substantiate it.
- DBFM Co may dispute the comments raised if it feels the ground for objection is not permitted under the contract.
- Common items required to be submitted for review in accordance with the RP. Please note that this list is not exhaustive:
  - Schedule of Programmed Maintenance and Lifecycle;
    - Annually (*PA Cl.23.2*)
    - Quarterly revisions (*PA Cl.23.4*)
  - Proposed amendments to Method Statements (*PA Cl.22.4*).
  - Services Quality Plans (*PA Cl.20.7*)
  - Handback Requirements (*Schedule Part 18*).
- The Authority should be aware that whilst the majority of the requirements for review are contained within the RP there are other provisions contained elsewhere in the contract which they Authority should become familiar with. These may include:
  - The timing of a submission for review;
  - The format of a submission for review;
  - The time period for the Authority to review;
  - The grounds for comment or objection;
  - The effect of the Authority not responding to a review.
- DBFM Co must retain all documents, drawings or other submissions raised in accordance with the RP. It also must compile and maintain a register of all submitted items.

## **16 - Appendix 1 - Template Temporary Repair Proposal Form – Hub Projects**

To assist and provide clarity on works of a temporary nature, the following Template Temporary Repair Proposal Form captures the required inputs, actions and approvals as described in Schedule Part 16 – Temporary Repairs.

**Template Temporary Repair Proposal Form – Hub Projects**

<b>Project:</b>	[Project Name and Authority]
<b>Service Event No:</b>	[CAFM Reference Number]
<b>Logged Report Time:</b>	[From CAFM Records]
<b>Temporary Repair Submission Time:</b>	[Time and Date Temporary Repair was submitted to Authority]
<b>Functional Area Affected:</b>	[From CAFM Records]
<b>Description:</b>	[Description of Service Event – take from CAFM Records]
<b>Temporary Repair:</b>  <b>NOTE – Temporary Repair requests should not be submitted to the Authority for approval until parts 1 to 4 have been completed.</b>	<ol style="list-style-type: none"> <li>1. [Description of what has been done to substantially make good the Service Event.]</li> <li>2. [Why is a Temporary Repair required – reference the need for Specialist Labour and/or Materials that would not reasonably be available.]</li> <li>3. [Description of Minimum Agreed Availability Standards/Performance Standards (where relevant) and who these have been agreed with.]</li> <li>4. [Confirmation that Temporary Repair meets the Minimum Agreed Availability Standard and substantially makes good the relevant Service Event until a Permanent Repair can be undertaken.]</li> </ol>
<b>Temporary Repair Rectification Time:</b>	[This is deemed to be Logged Rectification Time of the Service Event for the purpose of determining the value of DP in accordance with Sch Part 14, Section 3.]
<b>Action to Permanently Rectify:</b>	[What is being done to provide a Permanent Repair.]
<b>Permanent Repair Deadline Proposed:</b>	[Date and Time of the Permanent Repair Deadline.]
<b>Authority Comments/Grounds for Objection:</b>	<p>[Confirmation by Authority that parts 1 to 4 above have been completed in sufficient detail. Without completion, approval of a Temporary Repair request cannot be granted.]</p> <p>[Comment by Authority on the appropriateness of the Temporary Repair Request.]</p>
<b>Authority Approval:</b>	Name:  Signed:  Date and Time:

<p><b>Linked Helpdesk Service Event for Permanent Repair:</b></p>	<p>[Insert the new linked Service Event reference number to track the permanent repair of the original Service Event.]</p> <p>This section to be in accordance with the Helpdesk and Call Logging Protocol for the individual project as appropriate.</p>
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