

PRIVATE FINANCE INITIATIVE
FULL BUSINESS CASE
FOR THE
REDEVELOPMENT OF MEDICINE FOR THE ELDERLY
SERVICES

Southern General Hospital NHS Trust

APPENDICES

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Criteria Submission

Department of Medicine for the Elderly

Southern General Hospital NHS Trust

Equipment

Title of Scheme: Equipment provision - Medicine for the Elderly Private Finance Initiative

Background/Description of Scheme

This criteria submission should be considered in conjunction with the Full Business Case submitted by the Southern General Hospital NHS Trust for a Private Finance Initiative to provide a 210 bed facility for Medicine for the Elderly within the Southern General Hospital campus.

The Trust included equipment as part of the initial Invitation to Negotiate and Invitation to Tender documents. During the evaluation process it became clear that it did not offer value for money to include the equipment within the Private Finance proposal. This is mainly due to the individual items costing less than £5,000.

The Trust presented a draft Full Business Case to the Management Executive in September 1996 and raised the requirement for equipment at that time.

Following a recent presentation to the Director of Finance at the Management Executive it was agreed that the Full Business Case should be accompanied with a Criteria Submission.

The Private Finance Initiative process has been protracted. During this time the Trust has not invested in replacement equipment. Approval of the Full Business Case by September 1998 will see a Services Commencement Date some 75 weeks later. The ward and nursing equipment will require to be fully replaced at this time.

The cost of replacing equipment for this facility will be £850,000.

Strategic Context

Greater Glasgow Health Board has approved this project and supports the Private Finance Initiative to replace the existing Medicine for the Elderly beds with a new 210-bed facility.

Health Board Support

As stated above

Private Finance

As stated above the requirement for fully re-equipping this new facility was included in the Invitation to Tender and Invitation to Negotiate. During the evaluation of the submissions the Trust panel concluded that it was not cost effective to purchase equipment costing less than £5,000 per item as part of a Private Finance Initiative. The repayment costs over 25 years could not be defended.

Spend Profile

The spend profile is determined by the approval of the Full Business Case. This submission is based on approval for the Full Business Case by December 1998. The funding for equipment purchase will therefore be required in financial year 2000/2001.

Trust Board Approval

This scheme has been approved by the Trust Board as part of the Private Finance Initiative for Medicine for the Elderly.

Signed _____ Date _____

Chairman

Signed _____ Date _____

Chief Executive

Criteria Submission

Department of Medicine for the Elderly

Southern General Hospital NHS Trust

Decant Arrangements

Title of Scheme: Decant ward upgrade - Medicine for the Elderly Private Finance Initiative

Background

This criteria submission should be considered in conjunction with the Full Business Case submitted by the Southern General Hospital NHS Trust for a Private Finance Initiative to provide a 210 bed facility for Medicine for the Elderly within the Southern General Hospital campus.

Description of Scheme

In order to construct the new 210-bed facility the consortium are required to demolish the existing accommodation. The new facility will be constructed on the same site within the Southern General Hospital grounds.

To enable the consortium access to the ground the Trust will require to reprovide accommodation for 90 beds for the continued management of assessment and rehabilitation for the elderly. The decant arrangements will require the department of Medicine for the Elderly to work from two locations. In order to provide accommodation that will meet the requirements of patients over the 75 week decant the Trust requires to upgrade two 25 bed wards that have been unused for some years.

The wards will require to be completely redecorated. The toilet and bathroom annexes will require to be fully refurbished and the flooring throughout the wards will require to be replaced.

Strategic Context

Greater Glasgow Health Board has approved this project and supports the Private Finance Initiative to replace the existing Medicine for the Elderly beds with a new 210-bed facility.

Health Board Support

As stated above

Private Finance

This project is for minor upgrade and would not attract interest as a Private Finance Initiative scheme

Spend Profile

The spend profile is determined by the approval of the Full Business Case. This submission is based on approval for the Full Business Case by December 1998. The upgrade of the decant accommodation will require to be carried out in advance of the Contractor starting on site.

1998/99 £250,000

Trust Board Approval

This scheme has been approved by the Trust Board as part of the Private Finance Initiative for Medicine for the Elderly.

Signed _____ Date _____

Chairman

Signed _____ Date _____

Chief Executive

Private Finance Initiative

Acute Medicine for The Elderly

Project History

Proposals to improve the accommodation for Medicine for the Elderly were first set out in the Application for Trust status prepared in 1992. Following this a business case was prepared in 1993 following an option appraisal which concluded that refurbishment of the existing accommodation would provide improved facilities for this patient group. The capital cost of this refurbishment was £5 million. This money was included in the Trust's EFL.

In taking this project forward the Trust had discussions with Wimpey Health Care who suggested that they could construct a 150bed facility that would provide high quality flexible accommodation with an integrated day hospital. The Trust took the view that this presented a better solution than the refurbishment and presented this to the Management Executive as an innovative 'PFI style' project. The Trust was advised that approval had only been given for refurbishment and that a new Outline Business Case would require to be submitted for new build. The Outline Business Case was resubmitted for new build in March 1995. At this stage the initial refurbishment became an option in the new Outline Business Case which recommended a new build facility.

The Trust received approval in July 1995 for the project to be advanced through the private finance initiative process and duly advertised for 150 bed and 30-place day hospital in the European Journal.

Two consortia were finally shortlisted following evaluation. The Invitation to Tender asked both consortia to provide a reference bid and indicated that variant proposals would be accepted.

The evaluation of the reference bids concluded that the 150 bed proposals were unaffordable. The evaluation of the reference bids concluded that Tarmac scored higher than Gleeson.

At this stage the variant bid prepared by Tarmac was considered. This proposal was for 210 beds to be built. The footprint of the original proposal remained. The variant proposal saw an extension of the second floor.

The Trust in discussion with Greater Glasgow Health Board agreed that the variant bid offered benefits in quality of accommodation for other patient groups and better value for money. It was at this stage that the variant bid became the preferred proposal.

In order to carry out the value for money analysis the Trust obtained a Public Sector comparator for 210 beds. The cost of this at 1998/9 prices was £11.6million.

Summary

In summary the Trust commenced this project with the aim of refurbishing existing accommodation. In seeking to obtain the highest quality accommodation and ensure value for money the Trust following wider evaluation concluded that replacement accommodation was the optimal way forward. This resulted in a variant bid becoming the preferred project under PFI.

Private Finance Initiative
Acute Medicine for the Elderly
Southern General Hospital NHS Trust

Options for Use of 30 unallocated beds

Introduction

At the meeting held in the Scottish Office on 4 November 1998 clarification was sought on the options for use of 30 unallocated beds. This paper which will form an addendum to the Full Business Case will set out the options that are under consideration and which will address the unallocated bed issue.

Options

In submitting the Full Business Case for consideration the Trust had explored a series of options with Greater Glasgow Health Board which caused the Trust and the Health Board to conclude that there was no risk to the NHS of these beds remaining unallocated at the time of submission. The options under consideration are set out below.

- *Option 1: Transfer 30 beds from existing Victorian infrastructure.*
- *Option 2 : Transfer 30 continuing care beds from Cowglen Hospital*
- *Option 3 : Acute adult psychiatry*

Option 1 - Transfer 30 beds from existing Victorian infrastructure

The Southern General Hospital occupies a 62-acre campus. The accommodation is of variable age with the oldest buildings dating back to the late 19th Century. The Trust is of the opinion that the 30 unallocated beds could be used to replace existing accommodation. This would provide high quality accommodation and support the Trust strategy of rationalisation of accommodation.

The merger of the Southern General Hospital NHS Trust and the Victoria Infirmary NHS Trust on 1 April 1999 creates further opportunity to utilise this accommodation. The 2 Trusts have been discussing clinical collaboration since April 1998 with the aim of developing a Clinical Strategy for South Glasgow. This inevitably means that clinical services will be subject to change. This affords a further opportunity to utilise this accommodation. Indeed it may be that the design and quality of this accommodation will lead to a greater bed reduction than the 30-bed replacement.

Option 2 - Transfer of 30 beds from Cowglen Hospital

Cowglen Hospital is a 120-bed continuing care facility for the frail elderly. Cowglen Hospital is managed by the Southern General Hospital NHS Trust and will form part of the new South Glasgow University Hospitals NHS Trust from 1 April 1999. In reviewing the disposition of continuing care Greater Glasgow Health Board has recognised moving from the Cowglen Hospital site would require the geographic disposition of beds to be

reviewed. The objective of any review being the location of 30 continuing care beds in the Govan area of South West Glasgow. Utilising the 30 beds in this development would deliver this objective.

Option 3 Acute Adult Psychiatry

The Greater Glasgow Community and Mental Health Services NHS Trust provides acute adult psychiatry from 30 inpatient beds on the Southern General Hospital campus. The accommodation is Victorian and requires to be replaced. The Greater Glasgow Community and Mental Health Services NHS Trust is committed to continue to provide acute adult psychiatry inpatient facilities from the Southern General Hospital and has intimated the requirement for new accommodation. The 30 beds to be allocated in the PFI would meet the needs of this client group.

Summary

As can be seen from the above the options for utilising this accommodation are all possibilities that would meet the requirements of the Trust and the Health Board. Notwithstanding that these option continue to be the subject of discussion the Trust with the commitment of Greater Glasgow Health Board is confident that there is no risk to the NHS in providing these 30 beds. Irrespective of the option chosen these beds will not be extra beds EXr South Glasgow but will replace poor quality beds.

NPV COMPARISON OF PUBLIC SECTOR AND PFI OPTION

£'000	PUBLIC SECTOR OPTION	PFI OPTION
NHS COMPARATOR CAPITAL COST	11,622	
LIFE CYCLE COSTS YRS 2 - 62	2,375	
YRS 27 - 62		467
SINKING FUND YRS 2 - 27		780
LEASE		-615
PFI LEASE COSTS		14,509
SUB TOTAL CAPITAL COSTS	13,997	15,141
RISK EVALUATION		
DESIGN & PLANNING	123	
CONSTRUCTION	407	
OPERATING COSTS	779	
VOLUME & AVAILABILITY	640	
SUB TOTAL RISK TRANSFER	1,949	0
NPV COMPARABLE COSTS	15,946	15,141
DIFFERENCE	-805	
EAC (62 years)	£ 984	£ 934

NPV COMPARISON OF PUBLIC SECTOR AND PFI OPTIONS
RISK ANALYSIS SUMMARY

	REF	COST C £	PROBABILITY P	C*P £
DESIGN & PLANNING	DP2A	123,000	5.0%	6,150
	DP2B	61,500	10.0%	6,150
	DP3	10,250	10.0%	1,025
	DP5A	112,560	20.0%	22,512
	DP7	281,400	5.0%	14,070
	DP9	1,688,400	5.0%	84,420
				<u>134,327</u>
CONSTRUCTION	C1	1,756,000	5.0%	87,800
		1,317,000	10.0%	131,700
		878,000	7.5%	65,850
	C2	1,317,000	5.0%	65,850
	C3	309,400	30.0%	92,820
				<u>444,020</u>
OPERATING	O1	32,964	20.0%	6,593
		24,723	50.0%	12,362
		16,482	30.0%	4,945
	O3	23,062	10.0%	2,306
	O5	717,000	2.5%	17,925
		127,000	5.0%	6,350
		717,000	0.5%	3,585
				<u>54,065</u>
AVAILABILITY	V3B	61,700	12.5%	7,713
	V3C	123,400	5.0%	6,170
	V3D	246,800	2.5%	6,170
	V3E	617,000	1.0%	6,170
	V3F	1,234,000	0.5%	6,170
	O5	955,000	2.5%	23,875
				<u>56,268</u>

YEAR	DESIGN PLANNING	CONST.	GROUND RENT	OPERATE COSTS	AVAIL	P8 LIFE CYCLE	PFI LIFE CYCLE	SINK FUND	LEASE COSTS
1	67,164	222,010		0	0	0	0	0	0
2	67,164	222,010		0	0	0	0	0	0
3			38,000	54,065	56,268	164,820	0	50,000	1,234,000
4			38,000	54,065	56,268	164,820	0	50,000	1,234,000
5			38,000	54,065	56,268	164,820	0	50,000	1,234,000
6			38,000	54,065	56,268	164,820	0	50,000	1,234,000
7			38,000	54,065	56,268	164,820	0	50,000	1,234,000
8			38,000	54,065	56,268	164,820	0	50,000	1,234,000
9			38,000	54,065	56,268	164,820	0	50,000	1,234,000
10			38,000	54,065	56,268	164,820	0	50,000	1,234,000
11			38,000	54,065	56,268	164,820	0	50,000	1,234,000
12			38,000	54,065	56,268	164,820	0	70,000	1,234,000
13			38,000	54,065	56,268	164,820	0	70,000	1,234,000
14			38,000	54,065	56,268	164,820	0	70,000	1,234,000
15			38,000	54,065	56,268	164,820	0	70,000	1,234,000
16			38,000	54,065	56,268	164,820	0	70,000	1,234,000
17			38,000	54,065	56,268	164,820	0	70,000	1,234,000
18			38,000	54,065	56,268	164,820	0	70,000	1,234,000
19			38,000	54,065	56,268	164,820	0	70,000	1,234,000
20			38,000	54,065	56,268	164,820	0	70,000	1,234,000
21			38,000	54,065	56,268	164,820	0	70,000	1,234,000
22			38,000	54,065	56,268	164,820	0	127,000	1,234,000
23			38,000	54,065	56,268	164,820	0	127,000	1,234,000
24			38,000	54,065	56,268	164,820	0	127,000	1,234,000
25			38,000	54,065	56,268	164,820	0	127,000	1,234,000
26			38,000	54,065	56,268	164,820	0	127,000	1,234,000
27			38,000	54,065	56,268	164,820	0	127,000	1,234,000
28			38,000	54,065	56,268	164,820	0	127,000	1,234,000
29			38,000	54,065	56,268	164,820	0	127,000	1,234,000
30			38,000	54,065	56,268	164,820	0	127,000	1,234,000
31			38,000	54,065	56,268	164,820	0	127,000	1,234,000
32			38,000	54,065	56,268	164,820	0	127,000	1,234,000
33			38,000	54,065	56,268	164,820	0	127,000	1,234,000
34			38,000	54,065	56,268	164,820	0	127,000	1,234,000
35			38,000	54,065	56,268	164,820	0	127,000	1,234,000
36			38,000	54,065	56,268	164,820	0	127,000	1,234,000
37			38,000	54,065	56,268	164,820	0	127,000	1,234,000
38			38,000	54,065	56,268	164,820	0	127,000	1,234,000
39			38,000	54,065	56,268	164,820	0	127,000	1,234,000
40			38,000	54,065	56,268	164,820	0	127,000	1,234,000
41			38,000	54,065	56,268	164,820	0	127,000	1,234,000
42			38,000	54,065	56,268	164,820	0	127,000	1,234,000

GDP		4.50%											
YEAR	DESIGN PLANNING	CONST.	GROUND RENT	OPERATE COSTS	AVAIL	PS LIFE CYCLE	PFI LIFE CYCLE	SINK FUND	LEASE COSTS				
43			38,000	54,065		164,820	164,820						
44			38,000	54,065		164,820	164,820						
45			38,000	54,065		164,820	164,820						
46			38,000	54,065		164,820	164,820						
47			38,000	54,065		164,820	164,820						
48			38,000	54,065		164,820	164,820						
49			38,000	54,065		164,820	164,820						
50			38,000	54,065		164,820	164,820						
51			38,000	54,065		164,820	164,820						
52			38,000	54,065		164,820	164,820						
53			38,000	54,065		164,820	164,820						
54			38,000	54,065		164,820	164,820						
55			38,000	54,065		164,820	164,820						
56			38,000	54,065		164,820	164,820						
57			38,000	54,065		164,820	164,820						
58			38,000	54,065		164,820	164,820						
59			38,000	54,065		164,820	164,820						
60			38,000	54,065		164,820	164,820						
61			38,000	54,065		164,820	164,820						
62			38,000	54,065		164,820	164,820						
63			38,000	54,065		164,820	164,820						
NPV		407,032	615,221	778,028	840,183	2,374,802	467,478	780,306	14,508,543				
		123,137											

SOUTHERN GENERAL HOSPITAL
THE TRUST
 1144 Gervais Road
 Calgary
 T2L 4T7
 Tel : 0141 201 1888

NAME	DATE	TIME
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ABSTRACT

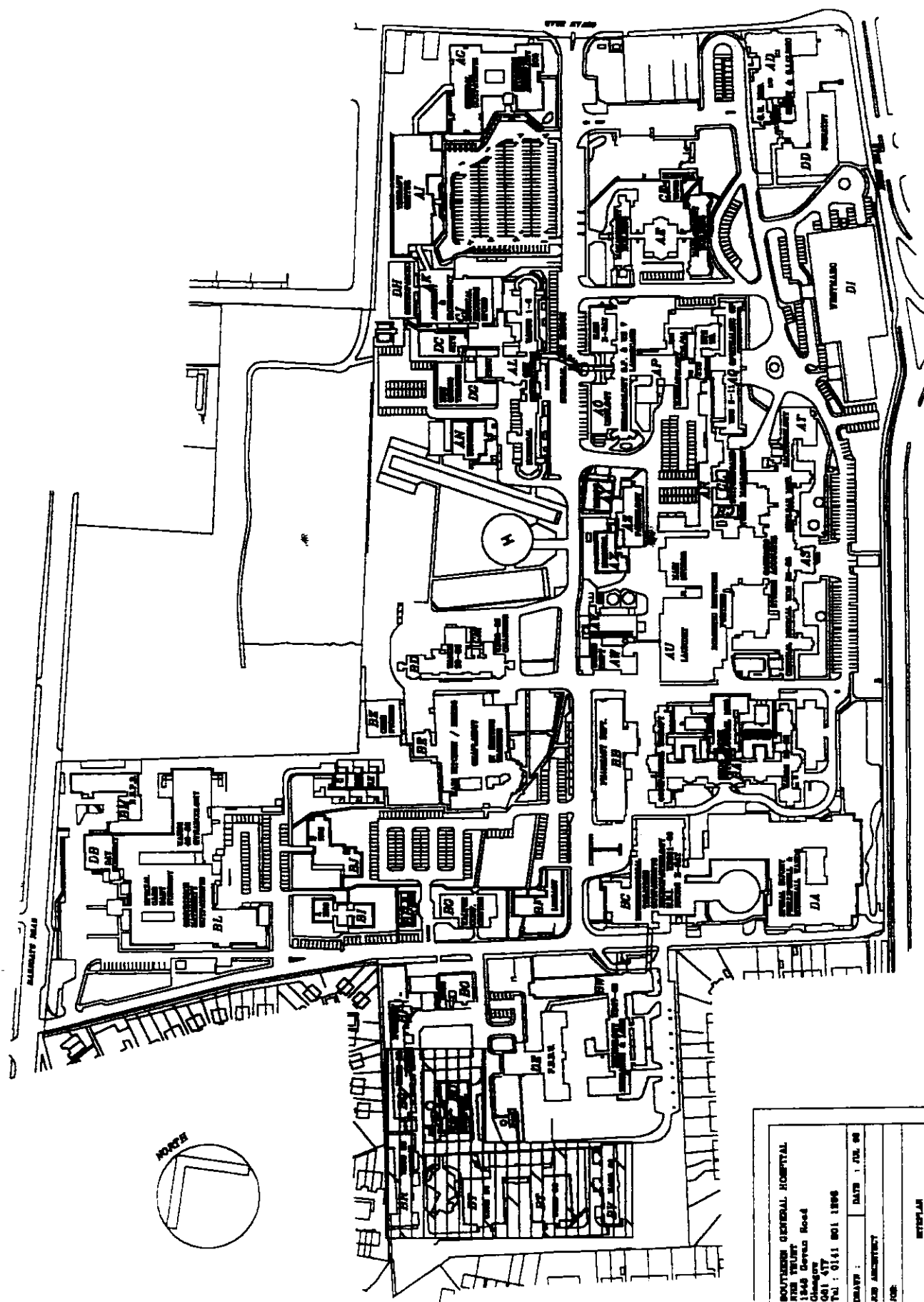
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STUDY

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NOTES

VALERON TRENCH INDUSTRIES

WPA TRUST
1948 Pension Board

**Chengdu
1343 Deyuan Road**

417 100

Tel : 0141 801 110

DATE :	
BY :	

FOR AMENDMENT

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

— 34 —

THE

References

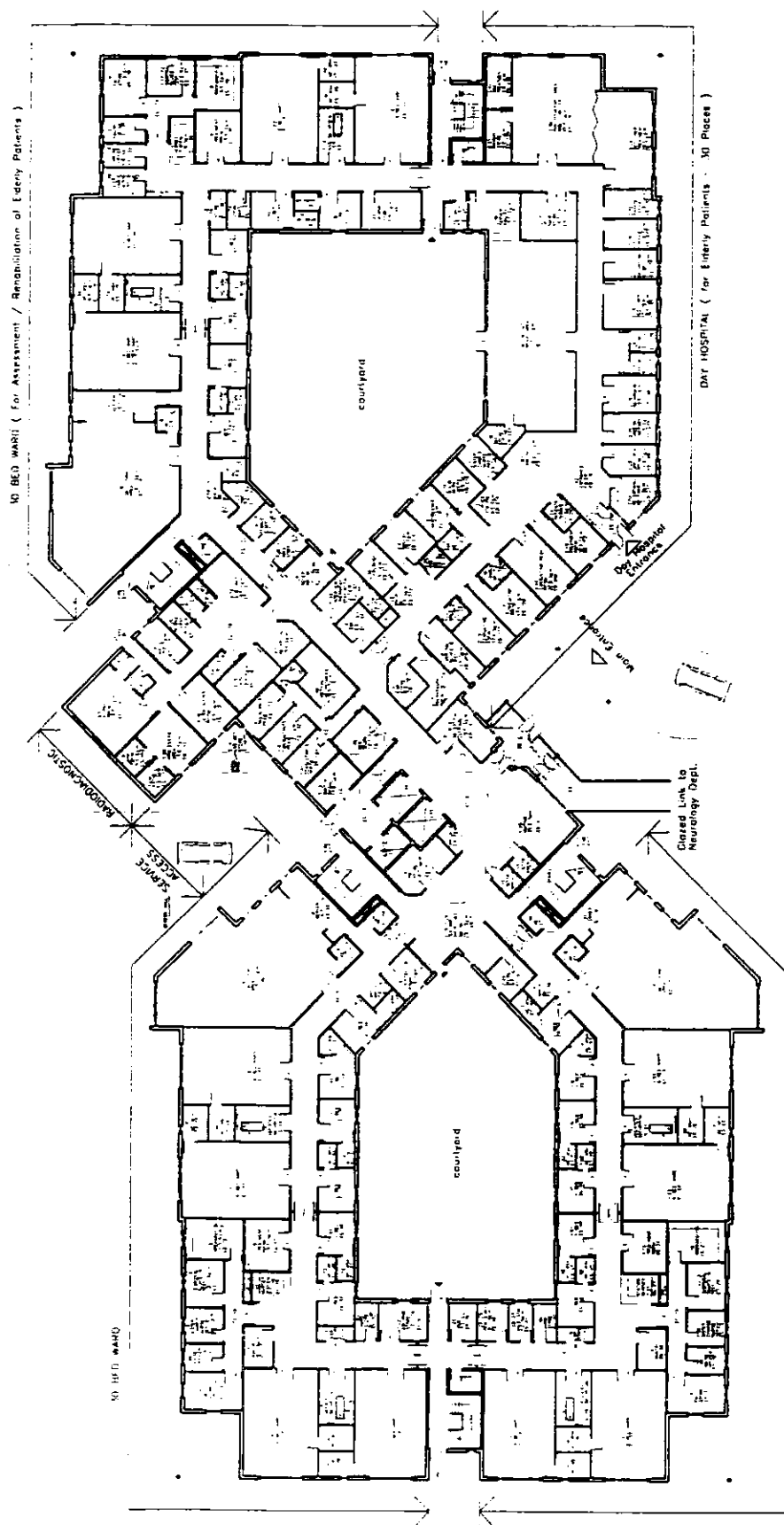
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NOTES



ground floor plan

1997 - 2000

| Date | | Time | | Location | | Remarks | |
|------|----------|-------|-------|----------|-------|---------|-------|
| 1 | 10/10/50 | 10:00 | 10:15 | 10:15 | 10:30 | 10:30 | 10:30 |
| 2 | 10/10/50 | 10:15 | 10:30 | 10:30 | 10:45 | 10:45 | 10:45 |
| 3 | 10/10/50 | 10:30 | 10:45 | 10:45 | 11:00 | 11:00 | 11:00 |
| 4 | 10/10/50 | 10:45 | 11:00 | 11:00 | 11:15 | 11:15 | 11:15 |
| 5 | 10/10/50 | 11:00 | 11:15 | 11:15 | 11:30 | 11:30 | 11:30 |
| 6 | 10/10/50 | 11:15 | 11:30 | 11:30 | 11:45 | 11:45 | 11:45 |
| 7 | 10/10/50 | 11:30 | 11:45 | 11:45 | 12:00 | 12:00 | 12:00 |
| 8 | 10/10/50 | 11:45 | 12:00 | 12:00 | 12:15 | 12:15 | 12:15 |
| 9 | 10/10/50 | 12:00 | 12:15 | 12:15 | 12:30 | 12:30 | 12:30 |
| 10 | 10/10/50 | 12:15 | 12:30 | 12:30 | 12:45 | 12:45 | 12:45 |
| 11 | 10/10/50 | 12:30 | 12:45 | 12:45 | 1:00 | 1:00 | 1:00 |
| 12 | 10/10/50 | 12:45 | 1:00 | 1:00 | 1:15 | 1:15 | 1:15 |
| 13 | 10/10/50 | 1:00 | 1:15 | 1:15 | 1:30 | 1:30 | 1:30 |
| 14 | 10/10/50 | 1:15 | 1:30 | 1:30 | 1:45 | 1:45 | 1:45 |
| 15 | 10/10/50 | 1:30 | 1:45 | 1:45 | 2:00 | 2:00 | 2:00 |
| 16 | 10/10/50 | 1:45 | 2:00 | 2:00 | 2:15 | 2:15 | 2:15 |
| 17 | 10/10/50 | 2:00 | 2:15 | 2:15 | 2:30 | 2:30 | 2:30 |
| 18 | 10/10/50 | 2:15 | 2:30 | 2:30 | 2:45 | 2:45 | 2:45 |
| 19 | 10/10/50 | 2:30 | 2:45 | 2:45 | 3:00 | 3:00 | 3:00 |
| 20 | 10/10/50 | 2:45 | 3:00 | 3:00 | 3:15 | 3:15 | 3:15 |
| 21 | 10/10/50 | 3:00 | 3:15 | 3:15 | 3:30 | 3:30 | 3:30 |
| 22 | 10/10/50 | 3:15 | 3:30 | 3:30 | 3:45 | 3:45 | 3:45 |
| 23 | 10/10/50 | 3:30 | 3:45 | 3:45 | 4:00 | 4:00 | 4:00 |
| 24 | 10/10/50 | 3:45 | 4:00 | 4:00 | 4:15 | 4:15 | 4:15 |
| 25 | 10/10/50 | 4:00 | 4:15 | 4:15 | 4:30 | 4:30 | 4:30 |
| 26 | 10/10/50 | 4:15 | 4:30 | 4:30 | 4:45 | 4:45 | 4:45 |
| 27 | 10/10/50 | 4:30 | 4:45 | 4:45 | 5:00 | 5:00 | 5:00 |
| 28 | 10/10/50 | 4:45 | 5:00 | 5:00 | 5:15 | 5:15 | 5:15 |
| 29 | 10/10/50 | 5:00 | 5:15 | 5:15 | 5:30 | 5:30 | 5:30 |
| 30 | 10/10/50 | 5:15 | 5:30 | 5:30 | 5:45 | 5:45 | 5:45 |
| 31 | 10/10/50 | 5:30 | 5:45 | 5:45 | 6:00 | 6:00 | 6:00 |
| 32 | 10/10/50 | 5:45 | 6:00 | 6:00 | 6:15 | 6:15 | 6:15 |
| 33 | 10/10/50 | 6:00 | 6:15 | 6:15 | 6:30 | 6:30 | 6:30 |
| 34 | 10/10/50 | 6:15 | 6:30 | 6:30 | 6:45 | 6:45 | 6:45 |
| 35 | 10/10/50 | 6:30 | 6:45 | 6:45 | 7:00 | 7:00 | 7:00 |
| 36 | 10/10/50 | 6:45 | 7:00 | 7:00 | 7:15 | 7:15 | 7:15 |
| 37 | 10/10/50 | 7:00 | 7:15 | 7:15 | 7:30 | 7:30 | 7:30 |
| 38 | 10/10/50 | 7:15 | 7:30 | 7:30 | 7:45 | 7:45 | 7:45 |
| 39 | 10/10/50 | 7:30 | 7:45 | 7:45 | 8:00 | 8:00 | 8:00 |
| 40 | 10/10/50 | 7:45 | 8:00 | 8:00 | 8:15 | 8:15 | 8:15 |
| 41 | 10/10/50 | 8:00 | 8:15 | 8:15 | 8:30 | 8:30 | 8:30 |
| 42 | 10/10/50 | 8:15 | 8:30 | 8:30 | 8:45 | 8:45 | 8:45 |
| 43 | 10/10/50 | 8:30 | 8:45 | 8:45 | 9:00 | 9:00 | 9:00 |
| 44 | 10/10/50 | 8:45 | 9:00 | 9:00 | 9:15 | 9:15 | 9:15 |
| 45 | 10/10/50 | 9:00 | 9:15 | 9:15 | 9:30 | 9:30 | 9:30 |
| 46 | 10/10/50 | 9:15 | 9:30 | 9:30 | 9:45 | 9:45 | 9:45 |
| 47 | 10/10/50 | 9:30 | 9:45 | 9:45 | 10:00 | 10:00 | 10:00 |
| 48 | 10/10/50 | 9:45 | 10:00 | 10:00 | 10:15 | 10:15 | 10:15 |
| 49 | 10/10/50 | 10:00 | 10:15 | 10:15 | 10:30 | 10:30 | 10:30 |
| 50 | 10/10/50 | 10:15 | 10:30 | 10:30 | 10:45 | 10:45 | 10:45 |
| 51 | 10/10/50 | 10:30 | 10:45 | 10:45 | 11:00 | 11:00 | 11:00 |
| 52 | 10/10/50 | 10:45 | 11:00 | 11:00 | 11:15 | 11:15 | 11:15 |
| 53 | 10/10/50 | 11:00 | 11:15 | 11:15 | 11:30 | 11:30 | 11:30 |
| 54 | 10/10/50 | 11:15 | 11:30 | 11:30 | 11:45 | 11:45 | 11:45 |
| 55 | 10/10/50 | 11:30 | 11:45 | 11:45 | 12:00 | 12:00 | 12:00 |
| 56 | 10/10/50 | 11:45 | 12:00 | 12:00 | 12:15 | 12:15 | 12:15 |
| 57 | 10/10/50 | 12:00 | 12:15 | 12:15 | 12:30 | 12:30 | 12:30 |
| 58 | 10/10/50 | 12:15 | 12:30 | 12:30 | 12:45 | 12:45 | 12:45 |
| 59 | 10/10/50 | 12:30 | 12:45 | 12:45 | 1:00 | 1:00 | 1:00 |
| 60 | 10/10/50 | 12:45 | 1:00 | 1:00 | 1:15 | 1:15 | 1:15 |
| 61 | 10/10/50 | 1:00 | 1:15 | 1:15 | 1:30 | 1:30 | 1:30 |
| 62 | 10/10/50 | 1:15 | 1:30 | 1:30 | 1:45 | 1:45 | 1:45 |
| 63 | 10/10/50 | 1:30 | 1:45 | 1:45 | 2:00 | 2:00 | 2:00 |
| 64 | 10/10/50 | 1:45 | 2:00 | 2:00 | 2:15 | 2:15 | 2:15 |
| 65 | 10/10/50 | 2:00 | 2:15 | 2:15 | 2:30 | 2:30 | 2:30 |
| 66 | 10/10/50 | 2:15 | 2:30 | 2:30 | 2:45 | 2:45 | 2:45 |
| 67 | 10/10/50 | 2:30 | 2:45 | 2:45 | 3:00 | 3:00 | 3:00 |
| 68 | 10/10/50 | 2:45 | 3:00 | 3:00 | 3:15 | 3:15 | 3:15 |
| 69 | 10/10/50 | 3:00 | 3:15 | 3:15 | 3:30 | 3:30 | 3:30 |
| 70 | 10/10/50 | 3:15 | 3:30 | 3:30 | 3:45 | 3:45 | 3:45 |
| 71 | 10/10/50 | 3:30 | 3:45 | 3:45 | 4:00 | 4:00 | 4:00 |
| 72 | 10/10/50 | 3:45 | 4:00 | 4:00 | 4:15 | 4:15 | 4:15 |
| 73 | 10/10/50 | 4:00 | 4:15 | 4:15 | 4:30 | 4:30 | 4:30 |
| 74 | 10/10/50 | 4:15 | 4:30 | 4:30 | 4:45 | 4:45 | 4:45 |
| 75 | 10/10/50 | 4:30 | 4:45 | 4:45 | 5:00 | 5:00 | 5:00 |
| 76 | 10/10/50 | 4:45 | 5:00 | 5:00 | 5:15 | 5:15 | 5:15 |
| 77 | 10/10/50 | 5:00 | 5:15 | 5:15 | 5:30 | 5:30 | 5:30 |
| 78 | 10/10/50 | 5:15 | 5:30 | 5:30 | 5:45 | 5:45 | 5:45 |
| 79 | 10/10/50 | 5:30 | 5:45 | 5:45 | 6:00 | 6:00 | 6:00 |
| 80 | 10/10/50 | 5:45 | 6:00 | 6:00 | 6:15 | 6:15 | 6:15 |
| 81 | 10/10/50 | 6:00 | 6:15 | 6:15 | 6:30 | 6:30 | 6:30 |
| 82 | 10/10/50 | 6:15 | 6:30 | 6:30 | 6:45 | 6:45 | 6:45 |
| 83 | 10/10/50 | 6:30 | 6:45 | 6:45 | 7:00 | 7:00 | 7:00 |
| 84 | 10/10/50 | 6:45 | 7:00 | 7:00 | 7:15 | 7:15 | 7:15 |
| 85 | 10/10/50 | 7:00 | 7:15 | 7:15 | 7:30 | 7:30 | 7:30 |
| 86 | 10/10/50 | 7:15 | 7:30 | 7:30 | 7:45 | 7:45 | 7:45 |
| 87 | 10/10/50 | 7:30 | 7:45 | 7:45 | 8:00 | 8:00 | 8:00 |
| 88 | 10/10/50 | 7:45 | 8:00 | 8:00 | 8:15 | 8:15 | 8:15 |
| 89 | 10/10/50 | 8:00 | 8:15 | 8:15 | 8:30 | 8:30 | 8:30 |
| 90 | 10/10/50 | 8:15 | 8:30 | 8:30 | 8:45 | 8:45 | 8:45 |
| 91 | 10/10/50 | 8:30 | 8:45 | 8:45 | 9:00 | 9:00 | 9:00 |
| 92 | 10/10/50 | 8:45 | 9:00 | 9:00 | 9:15 | 9:15 | 9:15 |
| 93 | 10/10/50 | 9:00 | 9:15 | 9:15 | 9:30 | 9:30 | 9:30 |
| 94 | 10/10/50 | 9:15 | 9:30 | 9:30 | 9:45 | 9:45 | 9:45 |
| 95 | 10/10/50 | 9:30 | 9:45 | 9:45 | 10:00 | 10:00 | 10:00 |
| 96 | 10/10/50 | 9:45 | 10:00 | 10:00 | 10:15 | 10:15 | 10:15 |
| 97 | 10/10/50 | 10:00 | 10:15 | 10:15 | 10:30 | 10:30 | 10:30 |
| 98 | 10/10/50 | 10:15 | 10:30 | 10:30 | 10:45 | 10:45 | 10:45 |
| 99 | 10/10/50 | 10:30 | 10:45 | 10:45 | 11:00 | 11:00 | 11:00 |
| 100 | 10/10/50 | 10:45 | 11:00 | 11:00 | 11:15 | 11:15 | 11:15 |

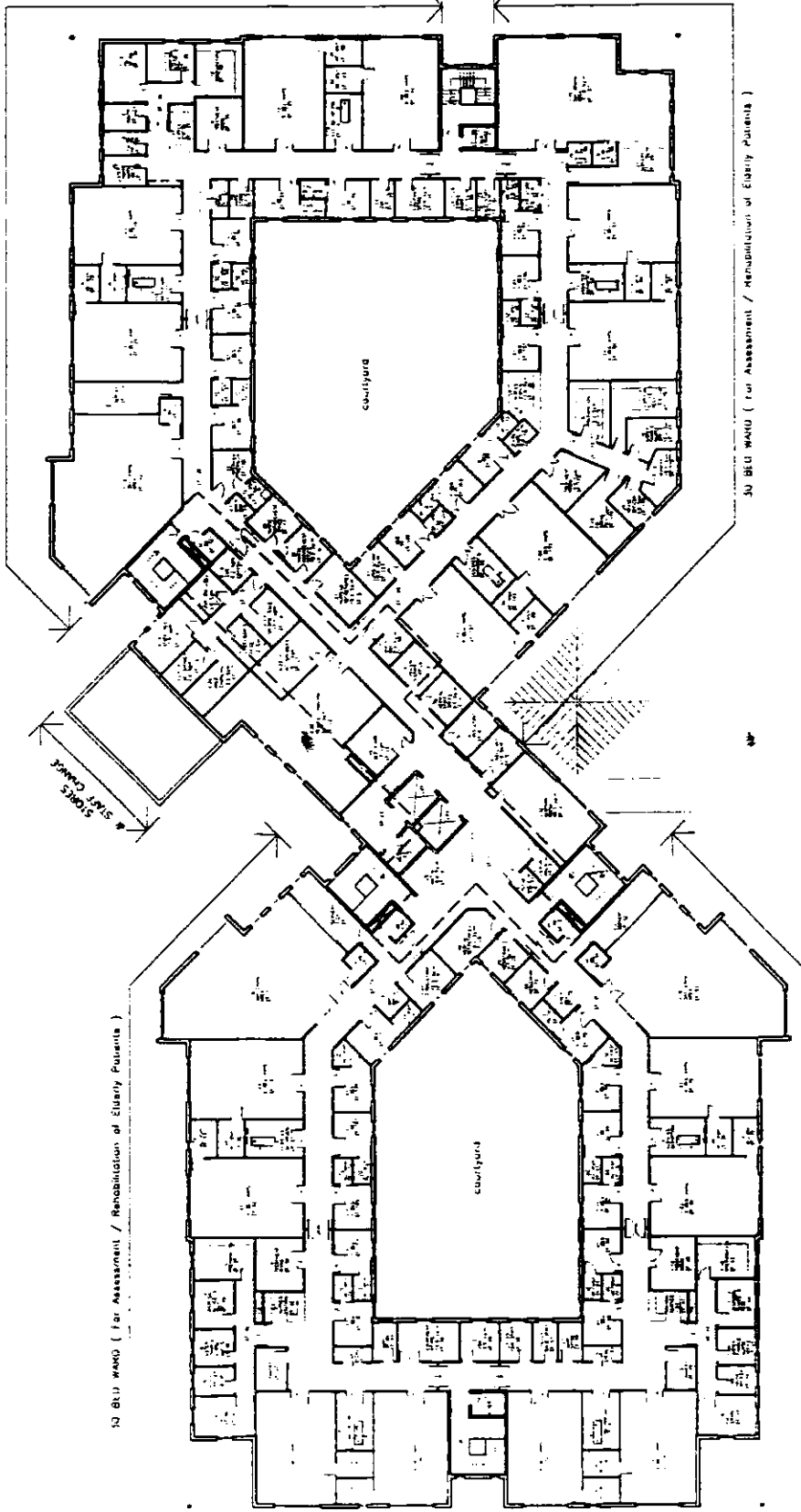
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Project
SOUTHERN GENERAL HOSPITAL
210 BED DEVELOPMENT
DEPT OF MEDICINE FOR ELDERLY

GROUND FLOOR PLAN

30 BED WARD (For Assessment / Renovation of Elderly Patients)



FIRST FLOOR PLAN

Scale 1:200

30 BED WARD (For Assessment / Renovation of Elderly Patients)

30 BED WARD (For Assessment / Renovation of Elderly Patients)

| Room No. | Room Name | Area (sq. m) | Volume (cu. m) | Notes |
|----------|-------------------|--------------|----------------|-------|
| 1 | Reception | 10.0 | 30.0 | |
| 2 | Waiting Room | 20.0 | 60.0 | |
| 3 | Consultation Room | 15.0 | 45.0 | |
| 4 | Examination Room | 10.0 | 30.0 | |
| 5 | Pharmacy | 10.0 | 30.0 | |
| 6 | Store Room | 5.0 | 15.0 | |
| 7 | Staff Room | 10.0 | 30.0 | |
| 8 | Restroom | 5.0 | 15.0 | |
| 9 | WC | 2.0 | 6.0 | |
| 10 | Shower Room | 10.0 | 30.0 | |
| 11 | Kitchen | 10.0 | 30.0 | |
| 12 | Dining Room | 20.0 | 60.0 | |
| 13 | Bar | 10.0 | 30.0 | |
| 14 | Library | 10.0 | 30.0 | |
| 15 | Office | 10.0 | 30.0 | |
| 16 | Storage Room | 5.0 | 15.0 | |
| 17 | Entrance Hall | 10.0 | 30.0 | |
| 18 | Corridor | 10.0 | 30.0 | |
| 19 | Staircase | 10.0 | 30.0 | |
| 20 | Plant Room | 10.0 | 30.0 | |
| 21 | Garage | 20.0 | 60.0 | |
| 22 | Parking | 10.0 | 30.0 | |
| 23 | Landscaping | 10.0 | 30.0 | |
| 24 | Security | 10.0 | 30.0 | |
| 25 | IT Room | 10.0 | 30.0 | |
| 26 | Finance | 10.0 | 30.0 | |
| 27 | HR | 10.0 | 30.0 | |
| 28 | Legal | 10.0 | 30.0 | |
| 29 | Insurance | 10.0 | 30.0 | |
| 30 | Marketing | 10.0 | 30.0 | |

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Southern General Hospital
 210 BED DEVELOPMENT
 DEPT OF MEDICINE FOR ELDERLY

FIRST FLOOR PLAN

A1

| Room No. | Room Name | Area (sq. m) | Volume (cu. m) | Notes |
|----------|-------------------|--------------|----------------|-------|
| 1 | Reception | 10.0 | 30.0 | |
| 2 | Waiting Room | 20.0 | 60.0 | |
| 3 | Consultation Room | 15.0 | 45.0 | |
| 4 | Examination Room | 10.0 | 30.0 | |
| 5 | Pharmacy | 10.0 | 30.0 | |
| 6 | Store Room | 5.0 | 15.0 | |
| 7 | Staff Room | 10.0 | 30.0 | |
| 8 | Restroom | 5.0 | 15.0 | |
| 9 | WC | 2.0 | 6.0 | |
| 10 | Shower Room | 10.0 | 30.0 | |
| 11 | Kitchen | 10.0 | 30.0 | |
| 12 | Dining Room | 20.0 | 60.0 | |
| 13 | Bar | 10.0 | 30.0 | |
| 14 | Library | 10.0 | 30.0 | |
| 15 | Office | 10.0 | 30.0 | |
| 16 | Storage Room | 5.0 | 15.0 | |
| 17 | Entrance Hall | 10.0 | 30.0 | |
| 18 | Corridor | 10.0 | 30.0 | |
| 19 | Staircase | 10.0 | 30.0 | |
| 20 | Plant Room | 10.0 | 30.0 | |
| 21 | Garage | 20.0 | 60.0 | |
| 22 | Parking | 10.0 | 30.0 | |
| 23 | Landscaping | 10.0 | 30.0 | |
| 24 | Security | 10.0 | 30.0 | |
| 25 | IT Room | 10.0 | 30.0 | |
| 26 | Finance | 10.0 | 30.0 | |
| 27 | HR | 10.0 | 30.0 | |
| 28 | Legal | 10.0 | 30.0 | |
| 29 | Insurance | 10.0 | 30.0 | |
| 30 | Marketing | 10.0 | 30.0 | |

Our Ref: CR/AG

Direct Line: 0141 201 4614

Fax Number: 0141 201 4601



GREATER GLASGOW
HEALTH BOARD

6 August 1998

Mr R Calderwood
Chief Executive
Southern General Hospital NHS Trust/Victoria Infirmary NHS Trust
1345 Govan Road
GLASGOW
G51 4TF

Dear Robert

MEDICINE FOR THE ELDERLY – PRIVATE FINANCE INITIATIVE

I write to confirm Greater Glasgow Health Board's support for the Private Finance Initiative to provide 210 beds on the Southern General Hospital campus.

In supporting this Project the Health Board would wish to emphasis the following:

- 1 That the proposal is in line with the Health Board's strategic view on the provision of Medicine for the Elderly services.
- 2 The Health Board has agreed to meet the additional revenue consequences of the scheme at a value of £250K per annum.
- 3 Greater Glasgow Health Board will work in conjunction with the Trust to identify clinical services to meet the balance of the beds associated with this 210 bed facility.
- 4 That the fabric of the current facility is now of such poor quality that Greater Glasgow Health Board believes that to do nothing is not an option and failure to proceed with this Private Finance Initiative would only mean other sources of capital investment required to be obtained to bring the building up to serviceable standard.
- 5 The quality of this facility will enable the Southern General Hospital to cope with emergency admissions in a high quality facility. Greater Glasgow Health Board is, therefore, keen to support the Southern General Hospital in concluding this particular project in order that the provision of elderly services can continue in high quality accommodation.

Yours sincerely

Catriona Renfrew
Director for Commissioning

RECEIVED
15
1998

TARMAC PFI TENDER - AFFORDABILITY
150 BED OPTION

£'000

REPAYMENTS

| | |
|----------|--------------|
| FIXED | 778 |
| VARIABLE | 331 |
| | 1,109 |

FUNDS AVAILABLE TO TRUST

£'000

| | |
|-----------------------|-----|
| CAPITAL CHARGE | 350 |
| POSSIBLE WARD SAVINGS | 163 |
| GGHB SUBSIDY | 150 |

TOTAL **663**

DIFFERENCE **446**

| OME & EXPENDITURE | £'000's | 1998/1999
Forecast | 1999/2000
Forecast | 2000/2001
Forecast | 2001/2002
Forecast |
|---|---------|-----------------------|-----------------------|-----------------------|-----------------------|
| TRUST INCOME | | | | | |
| Category A Income | | 81,248 | 81,701 | 83,049 | 83,840 |
| Category B Income - ECR | | 665 | 665 | 680 | 695 |
| Category B Income - Other | | 4,180 | 4,274 | 4,370 | 4,468 |
| Category C Income | | 7,754 | 7,944 | 8,122 | 8,305 |
| TOTAL INCOME | | 93,847 | 94,584 | 96,221 | 97,311 |
| TRUST EXPENDITURE | | | | | |
| Pay | | 58,976 | 60,303 | 61,457 | 62,770 |
| Non Pay | | 25,706 | 25,396 | 26,132 | 25,665 |
| Depreciation | | 4,144 | 3,900 | 3,635 | 3,607 |
| TOTAL EXPENDITURE | | 88,826 | 89,599 | 91,224 | 92,062 |
| Surplus before interest | | 5,021 | 4,985 | 4,997 | 5,249 |
| Interest Receivable | | 140 | 140 | 140 | 140 |
| Interest Payable - Originating Debt | | (1,949) | (1,839) | (1,743) | (1,646) |
| Interest Payable - Other Loans | | (1,340) | (1,265) | (1,354) | (1,281) |
| Surplus / (Deficit) before disposal | | 1,872 | 2,021 | 2,040 | 2,450 |
| Profit / (Loss) on disposal of fixed assets | | (1,403) | | | |
| Dividends On PDC | | (1,854) | (1,880) | (1,899) | (2,319) |
| Surplus / (Deficit) for Period | | (1,385) | 141 | 141 | 143 |
| Financial Target Performance | | 6.00% | 6.00% | 6.00% | 6.00% |
| Income from Host Board | | 55,072 | 58,722 | 59,037 | 59,430 |
| Income from other Boards | | 16,040 | 16,200 | 16,286 | 16,650 |
| Income from GP Fundholders | | 2,963 | | | |
| Income from ME | | 4,110 | 4,235 | 4,362 | 4,460 |
| Income from Trusts | | 2,320 | 2,390 | 2,461 | 2,516 |
| Income Other | | 13,342 | 13,037 | 13,590 | 13,540 |
| TOTAL INCOME | | 93,847 | 94,584 | 95,736 | 96,651 |

| Balance Sheet | £'000's | 1998/1999
Forecast | 1999/2000
Forecast | 2000/2001
Forecast | 2001/2002
Forecast |
|---|---------|-----------------------|-----------------------|-----------------------|-----------------------|
| Fixed Assets | | | | | |
| Land & Buildings | | 78,356 | 79,132 | 79,891 | 87,436 |
| Plant & Equipment | | 8,169 | 7,040 | 6,221 | 5,640 |
| In Course of Construction | | 1,800 | 4,000 | 6,000 | |
| Total Tangible Assets | | 88,325 | 90,172 | 92,112 | 93,076 |
| Intangible Fixed Assets | | | | | |
| TOTAL FIXED ASSETS | | 88,325 | 90,172 | 92,112 | 93,076 |
| Current Assets | | | | | |
| Stocks & Work in Progress | | 2,676 | 2,676 | 2,676 | 2,676 |
| Debtors - NHS | | 2,138 | 2,138 | 2,138 | 2,138 |
| Debtors - Other | | 662 | 662 | 662 | 662 |
| Cash | | 280 | 38 | 40 | 38 |
| TOTAL CURRENT ASSETS | | 5,756 | 5,514 | 5,516 | 5,514 |
| Creditors < 1 Year | | | | | |
| Creditors - NHS | | 1,591 | 1,591 | 1,591 | 1,591 |
| Creditors - Other | | 7,248 | 6,594 | 6,556 | 5,192 |
| Current Portion of Long Term Loans | | 2,078 | 2,141 | 2,141 | 2,261 |
| Bank Overdraft | | | | | |
| Short Term Loans - Government | | | | | |
| Short Term Loans - Other | | | | | |
| TOTAL CURRENT LIABILITIES | | 10,917 | 10,326 | 10,288 | 9,044 |
| NET CURRENT ASSETS / (LIABILITIES) | | (5,161) | (4,812) | (4,772) | (3,530) |
| Creditors Due after more than 1 Year | | | | | |
| Originating Interest Bearing Debt | | 21,385 | 20,229 | 19,073 | 17,917 |
| Long Term Loans - Government | | 15,152 | 16,668 | 17,941 | 19,440 |
| Long Term Loans - Other | | | | | |
| Other Creditors > 1 Year | | | | | |
| Provision for Liabilities & Charges | | | | | |
| TOTAL NET ASSETS | | 46,627 | 48,463 | 50,326 | 52,189 |
| Originating Public Dividend Capital | | 28,899 | 28,899 | 28,899 | 28,899 |
| Inc & Exp A/C | | 1,148 | 1,289 | 1,428 | 1,569 |
| Revaluation Reserve | | 16,328 | 18,023 | 19,747 | 21,469 |
| Donation Reserve | | 252 | 252 | 252 | 252 |
| Other Reserve | | | | | |
| Additional or New PDC | | | | | |
| TOTAL CAPITAL & RESERVES | | 46,627 | 48,463 | 50,326 | 52,189 |

SOUTHERN GENERAL HOSPITAL NHS TRUST
Risk transfer/cost assessment to support the full Business Case

| Risk | Cost | | Cost x Prob. | Est. % | Evaluation | | Rationale for cost | Rationale for probability |
|---|---------|-------|--------------|--------|------------|--|---|---|
| | Est. £ | Prob. | | | Ref. | | | |
| 1. Design & Planning | | | | | | | | |
| Planning costs up to preferred bidder stage. | - | - | - | - | DP1 | | | |
| Planning permission refused - design, legal and professional costs | | | | | | | | |
| Design | 97,375 | | | | | | | |
| Planning | 20,500 | | | | | | | |
| Other | 5,125 | | | | | | | |
| | 123,000 | 5% | 6,150 | | DP2A | | | |
| Cost in the event that ME and GGHB consents are not obtained | 61,500 | 10% | 6,150 | | DP2B | | 50% of costs (as above) | The low level of risk for the 150 bed options reflects the fact that the Planning Department has already given outline approval to the proposals of Wimpey Healthcare. The risk at 5% would seem to be reasonable for the 210 bed option given that the original proposal was partially a two storey development and as such the 210 proposal would not be significantly changed.

GGHB - low probability. Greater uncertainty over deliberations of ME |
| Cost of obtaining PP more than anticipated | 10,250 | 10% | 1,025 | | DP3 | | Design costs only to modify design and re-submission fee. | The 10% risk is based on an initial refusal of planning permission then a need to make re-submission. |
| Delay in obtaining Planning Permission (due to fault of Trust) | - | - | - | | DP4 | | Risk not transferred | There are no anticipated design delays from the Trust. Ground available, design agreed. |
| Delay in obtaining Planning Permission (due to the Management Executive | 112,560 | 20% | 22,512 | | DP5 | | Delay up to 6 months at risk of SPC. Thereafter negotiations would re-open. Potential increase in building cost due to delay (which would be borne by SPC) estimated at 1% of total costs. Revenue - Possible loss but same on both public sector and PFI option. | Planning permission submission delay is a real risk. But the offset is in the start and finish dates - not cost. |
| Delay in obtaining Planning Permission (due to the JVC/Consortium) | - | - | - | | DP6 | | Risk is only in PFI option. Therefore no risk transfer and no costs being borne by Trust. | |

SOUTHERN GENERAL HOSPITAL NHS TRUST
Risk transfer/cost assessment to support the full Business Case

| Risk | Cost | | Prob
Est. % | Cost x
Prob. | Evaluation | | Rationale for cost | Rationale for probability |
|---|-----------|----|----------------|-----------------|------------|------|---|--|
| | Est. £ | | | | Est. £ | Ref. | | |
| Change in design due to legislative change | 281,400 | 5% | 14,070 | DP7 | | | 2.5% of £11.3m total cost | The risk could occur at building control level rather than planning department. Risk borne by SPC. |
| Impact of the Tree Preservation Order | - | - | - | DP8 | | | | This should be seen under planning permission |
| Change in design due to inadequate specification by the Trust | 1,688,400 | 5% | 84,420 | DP9 | | | To the extent that any charges remain within the building 'footprint' the SPC will bear the full cost. If it requires a change in building design it is a shared risk. This has been estimated at 15% of total costs. | Given the detailed evaluation and liaison that has gone on with the users who have approved the specification a 15% risk is felt to be realistic and would imply changes basically at room data level. |

SOUTHERN GENERAL HOSPITAL NHS TRUST
Risk transfer/cost assessment to support the full Business Case

| Risk | Cost Est. £ | Prob. Est. % | Cost x Prob. | Evaluation on Ref. | Rationale for cost | Rationale for probability |
|---|-------------|--------------|--------------|--------------------|--|---|
| 2. Construction risks | | | | | | |
| Increase in direct construction costs | 20% | | | C1 | | |
| | 15% | 5% | 87,800 | | The estimated cost increases are in relation to the public sector comparator cost of £8.780m. | The 100% chance of the costs increasing reflects the Trust's experience of capital works, which inevitably rise in cost. |
| | 10% | 10% | 131,700 | | | |
| | | 10% | 87,800 | | | |
| Latent building defects | 1,317,000 | 5% | 65,850 | C2 | The estimated cost is the cost of external work per the public sector comparator. | Generally speaking experience in major hospital buildings has been that latent defects have occurred (for example pipework). The Trust anticipates that this could be a 15% risk. |
| Unforeseen ground conditions | 309,400 | 30% | 92,820 | C3 | The Trust considers the costs associated with this risk to be high at £600,000 (based on the estimated costs to get around burn and sewer problems including). As £290,600 has been included in the public sector comparator for 'adnormals' the balance is considered to be the cost risk transfer. | We have rated this particularly highly at 60% reflecting what we know to be difficult ground conditions in that area of the site including a burn and sewer and the possibility of uncharted services being uncovered. The £300,000 appears reasonable. |
| Delays on commissioning due to Trust not taking entry | - | - | - | C5 | (Covered above) | Contracting for activity an issue but it is highly unlikely that the Trust would not take entry. |
| Facilities unavailable through defects | - | - | - | C6 | (Covered above) | |
| Facilities unavailable through force majeure | 11.3m | Negligible | Negligible | C7 | Forces Majeur risks are:
- Sonic boom
- Nuclear contamination
- Act of war
Costs assumed at full cost of public sector comparator | Small risk of natural disasters or war. |

SOUTHERN GENERAL HOSPITAL NHS TRUST
Risk transfer/cost assessment to support the full Business Case

| Risk | Cost | | Cost x
Prob. | Evaluation
Ref | Rationale for cost | Rationale for probability |
|----------------------------------|--------|--------|-----------------|-------------------|--|---------------------------|
| | Est. £ | Est. % | | | | |
| 3. Financial Risk | | | | | | |
| Changes in interest rates | - | | | | No risk as public sector option does not have an interest 'cost' attached to it. | - |
| Changes in VAT rates | - | - | - | - | No impact (internal transfer payment) | - |
| Change in VAT rules | - | - | - | - | Cannot be assessed | - |
| Changes in Corporation tax rates | | | | | Risk transferred but no impact on the public sector option | - |

SOUTHERN GENERAL HOSPITAL NHS TRUST
Risk transfer/cost assessment to support the full Business Case

| Risk | Cost Est. | Prob. Est. % | Cost x Prob. | Evaluation Ref | Rationale for cost | Rationale for probability |
|--|-----------|--------------|--------------|----------------|--|---|
| 4. Operating risks | | | | | | |
| Life cycle costs exceed estimates | | | | | | |
| 20% | 32,964 | 20% | 6,593 | O1 | Estimated life cycle costs of the public sector comparator are £164,820 per annum. Costs could overrun by up to 20%. | Based on experience of management at Trust. |
| 15% | 24,723 | 50% | 12,361 | | | |
| 10% | 16,482 | 30% | 4,945 | | | |
| Failure to meet FM costs targets (building maintenance) measured through benchmarking | | | | O3 | | |
| Energy inefficiencies through use of inefficient building materials or poor design | 23,062 | 10% | 2,306 | O4 | 15% of 153,750 (being the costs of heat, light and power in the public sector comparator). | It is highly likely that the energy efficiencies being anticipated will be difficult to achieve as these depend so much on users and service provision. Therefore a 10% probability is being suggested with the cost again dependant on the energy running costs of the building. |
| Facilities Management risks included in the Hotel Services Contract Pay Increase above GDP | 717,000 | 2.5% | 17,925 | O5 | The manpower costs included in FM contract. | The possibility that the FM contractor will increase pay above the GDP inflator is small. |
| Non pay inflation | 127,000 | 5.0% | 6,350 | | The non pay costs within the FM contract | The probability of the FM contractor incurring costs above GDP are small but as it could be outwith his control thought to be a higher risk than pay. |
| Staff Turnover | 717,000 | 0.5% | 3,585 | | The manpower costs included in FM contract. | The FM Contractor bears the full cost of staff turnover but it is deemed to be a small risk. |
| Availability | 955,000 | 2.5% | 23,875 | | The full cost of the FM contract is subject to penalty if the service is not maintained to a satisfactory standard. | The penalties are based on a sliding scale with if the figure gets to 30% the contract can be terminated therefore a overall risk of 2.5% has been used. |

SOUTHERN GENERAL HOSPITAL NHS TRUST
Risk transfer/cost assessment to support the full Business Case

| Risk | Cost Est. £ | Prob. Est. % | Cost x Prob. | Evaluation Ref | Rationale for cost | Rationale for probability |
|---|-------------|--------------|---------------|----------------|---|---------------------------|
| 5. Volume / Availability risks | | | | | | |
| 'Profit rental' revenue from 30 bed 'shell' unit | | | | V2 | Would be available under both PFI and public sector option. | |
| Availability risk | | | | V3 | | |
| 0% | - | 25% | - | | | |
| 5% | 61,700 | 12.5% | 7,713 | | | |
| 10% | 123,400 | 5% | 6,170 | | | |
| 20% | 246,800 | 2.5% | 6,170 | | | |
| 50% | 617,000 | 1% | 6,170 | | | |
| 100% | 1,234,000 | 0.5% | 6,170 | | | |
| | | | <u>32,393</u> | | | |
| More or less than 1700 patient outputs per annum: | | | | | Risk born by Trust. | |
| +5% | - | - | - | | | |
| +10% | | | | | | |
| - 5% | | | | | | |
| - 10% | | | | | | |

SOUTHERN GENERAL HOSPITAL NHS TRUST
Risk transfer/cost assessment to support the full Business Case

| Risk | Cost Est. | Prob. Est. % | Cost x Prob. | Evaluation Ref. | Rationale for cost | Rationale for probability |
|---|-----------|--------------|--------------|-----------------|---|--|
| 6 Other risks | | | | | | |
| Cost of termination by Trust | 7,391,452 | 0.5% | 36,957 | OR1 | The Trust is liable to pay compensation to the equity investors if they terminate the contract early. The figures used are based on the Trust terminating the contract in year13. | The risk is small that the Trust would terminate the contract given the costs. However, as the cost of termination is high it has to be recognised. |
| Inflation in costs of materials and/or labour | - | - | - | - | (Covered above) | It is inevitable in a two-year project that costs and materials will rise with inflation. However, under NHS build contract these costs would generally be born by the contractor with only a small amount being at the risk of the Trust. |
| Default of Trust | - | - | - | - | | |
| Strikes etc., resulting in delays to completion | - | - | - | - | The cost impact is very low - it is more likely to be a delay cost, which is assessed elsewhere. | |
| Liquidation of subcontractors | - | - | - | - | This is a delay cost for a specific reason which is assessed elsewhere | |
| Liability for negligence with non-building maintenance services | - | - | - | - | | There is always a risk that the facilities management services will carry out some actions that make them liable for negligence claims. |
| Trust dissolved | - | - | - | - | | |
| Trust in receivership | - | - | - | - | | |
| Changes in the constitution of the Trust | - | - | - | - | | |

SOUTHERN GENERAL HOSPITAL NHS TRUST
Risk transfer/cost assessment to support the full Business Case

| Risk | Cost Est. £ | Prob. Est. % | Cost x Prob. | Evaluation Ref. | Rationale for cost | Rationale for probability |
|---|-------------|--------------|--------------|-----------------|-----------------------------------|---|
| Quality standards. Keeping up with new technology | - | - | N/A | | | In considering this aspect it is highly likely that new technologies will progress throughout the life-span of the building and as such there is a 100% risk of failing to keep up, particularly if the Trust is expected to fund either the capital or additional revenue costs. The risk in relation to the inappropriate design for current medical technologies should not be so great given the involvement of the Clinical Team early in detailed design discussions. |
| Design inappropriate for current medical technologies | - | - | negligible | | | |
| New investment in income generating schemes | - | - | | | | There is a requirement to ensure that the building is used to its full capacity but there is always the off chance that this cannot be achieved. |
| Changes in Treasury rules on PFI | - | - | | | Not a cost which can be assessed. | |
| Compensation on termination | - | - | | | See separate notes. | |
| Refurbishment during the FM agreement | - | - | | | | Given that the refurbishment of the facilities are written into the contract there is a limited risk as to failure to have this carried out. |

SUMMARY OF MAJOR CONTRACT ISSUES

| ISSUE | GENERIC POSITION | SOUTHERN GENERAL HOSPITAL |
|--------------------------------------|------------------|---|
| <u>Contract Structure and Length</u> | | <p>The Trust and Concessionco shall enter into a Concession Agreement under which Concessionco is obliged to procure the construction of the facility and the provision of the services to the Trust for a period of 60 years.</p> <p>The Trust would grant a lease of the ground to Concessionco on the day after signing the Concession Agreement for a period of 60 years, plus the construction period and a 14 day commissioning period. Concessionco will grant a sub-lease back to the Trust from the day after the facility is completed to allow the Trust right to use the facility.</p> <p>The Concession Agreement and the sub-lease natural expiry is 60 years. The Trust has options to break the Concession Agreement and the sub-lease at no cost after 25 years and at 5 yearly intervals thereafter.</p> <p>Concessionco will enter into a Construction Contract with Tarmac Construction to build the facility. Concessionco will enter into an FM Contract with Tarmac Services to provide the services.</p> <p>A parent company guarantee will be granted by Tarmac plc to Concessionco of Tarmac Construction's obligations to build the facility and Tarmac Services to provide the FM facility. Step In undertakings means that in the event of a default (other than where the lender has stepped in to rectify), the Trust will step into the shoes of Concessionco to enforce the Construction Contract, the Services Contract and the Parent Company Guarantee directly.</p> <p>There will be a Direct Lender Agreement which allows the lender to step in to remedy failures of Concessionco to procure the building of the facility or the provision of the services in order that the lenders can procure that any failure of availability is rectified to enable the cash flow to be safeguarded.</p> |

Payment Mechanism

Total variability in payment, can be seen to get zero payment

In terms of the Concession Agreement, there is no guaranteed payment to Concessionco. There are 3 main payment streams which will be included in a unitary invoice an availability payment, a performance related payment, and other pass through payments, such as fuel, oil and insurance premiums.

Availability The facility will divided into various area type and if part of the facility is unavailable then there is a mechanism for adjustment of the availability payment for each hour in which a particular area is unavailable. The percentage deduction for the facility equates to 100% of the availability payment and accordingly 100% is at risk.

Performance Related Payment Prior to the completion of the building, the Trust and Concessionco will have agreed a monitoring system for the FM services in respect of each service level specification. If the Concessionco meets none of the obligations set out in the service level specification the Trust shall award zero percent for such service. The performance related payment is also subject to adjustment for volume in respect of each service level specification. Performance related payment may be affected because of unavailability and there would be a corresponding adjustment to performance related payment.

Pass Through Payment

These will be met if incurred.

Payments will be made in respect of the availability payment and performance related payment shall be paid quarterly in advance. Adjustments to the availability payment and the performance related payment will be calculated monthly but applied quarterly in arrears. The Trust shall be entitled to withhold as a retention a sum equivalent to 5% of the invoice at termination to allow for any appropriate adjustments to be made. All other sums (other than termination payments) shall be payable on the third business day following receipt of the Concessionco's Invoice.

Payment Terms

Monthly in arrears, preferable but up to 3 months in advance

Indexation

Preferred RPI only/RPI or fixed escalator (max 3%) on availability and RPI on performance. Market testing is preferable but not obligatory

Both the availability payment and the performance related payment are to be adjusted twice yearly to take account of any increase or reduction in the GDP Deflator between:-

For availability, the preceding review date and the current review date;

and for performance related payment, the immediately previous benchmark date/immediately previous review date and the current review date.

Reviews are to take place for availability payment on 1 January and 1 July in each year and in respect of performance related payment the services commencement date and 1 April in each year. The operating fee and maintenance fee which are part of a performance related payment are, however, to be reviewed in line with the availability payment.

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The performance related payment is subject to benchmarking every five years (other than estates and maintenance service). If the benchmarking exercise does not result in agreement, then the matter is determined by a market testing exercise. Benchmarking is to take account of changes in legal requirements prevalent at the date of the benchmarking exercise (see below for special benchmarking for changes in legal requirements).

Trust Default Termination

Non-payment of undisputed money for length of time eg 3 mos. Also fundamental breach by Trust and adverse law that will impact on the vires of agreement or NHS legislative framework. SPV has right to receive net present value of the contract.

The Trust will be in default:-

1. if a sum in excess of £150,000 remains unpaid at the end of the day ten days after which it is due and Concessionco has given notice after that ten day period that it will terminate if such sums remain unpaid, and sums remain unpaid thirty days after such notice. It should be noted that as payments remain quarterly in advance, a normal quarterly invoice will be in the region of £500,000 to £600,000;
2. if the Trust fails to provide clinical services at the facility for a continuous period of six months or more. This is currently being resisted;
3. if discriminatory legislation is introduced. Provisions are being drafted in respect of devolution.

Consequences of termination through Trust Default

Construction Period

The Trust to pay within one year (unless discriminatory legislation, then 60 days) amount equal to:-

- (a) amounts outstanding under Funding Agreements and breakage costs;
- (b) amounts due to equity holders – paid up share capital and real annual equity internal rate of return from subscription to termination;
- (c) subordinated debt with interest;
- (d) amounts due to phasing of equity;
- (e) third party breakage costs and reasonable fees.

Operational Period

The Trust to pay within one year (unless discriminatory legislation, then 60 days) amount calculated on the same basis as if construction period save equity holders to be paid market value for shares (as determined).

Compensation should be the lower of the bank debt of the net present value of the contract ie after deducting trusts extra costs if any. Trust should have the option of lump sum or continuing payment.

SPV Default Termination

The Trust may terminate this Agreement on twenty eight days' notice in writing if:-

- (a) during the construction period Concessionco abandons the works for a period of sixty days or the works remain uncompleted for the purposes of this Agreement for a period of six months from the completion date (the completion date is adjusted to take account of relief and delay events);

If Concessionco is in breach of this Agreement, where such breach has or will have a material adverse affect on the ability of the Trust to provide all or substantially all of the clinical services at the Facility and such breach, if capable of remedy, has not been remedied or, if capable of remedy,

Concessionco has not demonstrated to the reasonable satisfaction of the Trust that such breach will not be repeated within sixty days. It is deemed that a breach of the Agreement entitling the Trust to terminate if in terms of the performance regime the Trust has required four service providers in respect of a single service or service providers in respect of four different services to be replaced upon requirements of the Trust in any three year period.

Consequences of Termination following Concessionco default

Construction Period

The Trust to pay to Concessionco amount equal to the capital value of the Construction Contract (adjusted pound for pound for variations) less the Trust's costs in completing the works. Concessionco's limit of liability is to be the capital value of the Construction Contract.

The Trust may pay as a lump sum within sixty days or on equal semi annual payments for the remainder of the funding period. Interest is charged if payment over time option taken.

Operational Period

The Trust pays to Concessionco the lesser of A or B.

A is equal to the payment of availability payment as if Concessionco fulfilled its obligations in full less the cost of putting the Trust back in the position it would have been if the Contract had been performed.

B is equal to the amount due under the Funding Agreement.

The Trust has the option to pay in a lump sum or quarterly payments until the first break option is exercisable by the Trust.

Construction Period

Delay Events

Relief events are matters not caused by either party but which affect the ability to comply with contractual obligations. SPV will not be regarded

Relief and Delay Events

as being in default but will not get compensation (other than through their own insurance cover). Delay, where public sector have a greater degree of influence covers the event. Delay get compensation eg extension of time, or some of availability payment. Should be few in number, only after has affected performance for reasonable length of time eg 30 days, SPV should attempt to mitigate loss.

Certain events allow an extension of time for the works during the Construction Period. These are:-

1. negligence or default or act of the Trust under the Project Agreement;
2. any additional works delayed pursuant to a change in legal requirements or a change in the necessary consent;
3. any variation due to a confirmed variation instruction;
4. following additional events:
 - (a) civil disorder, civil disturbance, riot, blockade (not constituting force majeure);
 - (b) official or unofficial strike not applying only to Concessionaire or the Building Contractor;
 - (c) any accident at sea, in the air or on land;
 - (d) any failure or shortage of power, fuel or transport;
 - (e) the effects of weather, flood, drought, tempest, corrosion, lightning or volcanic eruption;
 - (f) the effects of fire, explosion, ionising radiation;
 - (g) the event of force majeure;
 - (h) discovery of unexploded bomb or other munition;
 - (i) any action, inaction or default by statutory undertaker;
 - (j) discover of any fossil or antiquity;
 - (k) the occurrence of any circumstance which would allow a review or revocation of the planning consent

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all to the extent not caused by the deliberate or negligent act of Concessionario and could not reasonably have been foreseen at the date of the Agreement.

Operational Period

Delay Events

The following events are delay events during the operational period which will allow a commensurate extension to the Contract Period:-

accidental loss or damage to the site or the facility or roads or services serving the same;

failure, shortage of power, fuel or transport provided the same is not due to any deliberate or negligent act on the part of Concessionario;

effects of weather, flood, drought, tempest, corrosion, lightning or volcanic eruption;

the effects of fire, explosion or ionising radiation;

force majeure;

civil disorder, civil disturbance, riot;

official or unofficial strike, lock-out or go-slow;

any act or omission or default of the statutory undertaker.

Relief Events

The Trust will not adjust the availability payment or performance related payment notwithstanding a failure to fulfil any obligation under the Project Agreement if to the extent that such arises from:-

1. negligence or default of the Trust;

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2. loss or damage or failure of equipment which Concessionaire is not obliged to maintain and repair; or

3. the instructions of any member of the Trust staff pursuant to the service level specification to the extent that the particular activity should cease.

In respect of the construction and operational period, the obligations of both parties are suspended during force majeure.

"Force Majeure" means:-

(a) war, civil war, riot and armed conflict within and affecting the United Kingdom;

(b) radioactive, chemical or biological contamination of the whole of the contract works of the site due to war, civil war or act of terrorism;

(c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; or

(d) acts of terrorism

save to the extent that any such risks are covered by an insurance policy in force at the time.

Trust to bear hospital specific risk, PFI discriminatory risk. The impact of general legislative change including taxation borne by the SPV. Changes in the cost of services taken up by indexation/market testing. SPV should not be responsible for D of H guidelines that do not amount to legislation. Can share the cost of changes to the

Change of Law

A change of law means any enactment, amendment, revocation or change in interpretation (which is not subject of an appeal) in respect of any legal requirement having effect after the date of the Agreement. The legal requirement is any law, regulation, bye-law, directive, statutory instrument or other legislative measure having a force of law or any request, requirement, guideline, recommendation or instruction of any competent person including Scottish Office, National Health Service in Scotland and the Health and Safety Executive whether or not having the force of law and the compliance of which is with the general practice of persons with whom the requirement guideline is

physical asset.

addressed.

Construction Period: Concessionco is responsible for any change in the legal requirements:-

reasonably foreseeable, an experience building contractor at the date of the Agreement based on draft Bills, White Papers, draft Statutory Instruments or proposals in the Official Journal; and

a change in Corporation Tax legislation; and

a change in Environmental legislation; and

a change in Health and Safety legislation.

2, 3 and 4 are subject to the provisos that the Trust is responsible for any change in legislation which applies specifically to Concessionco, to the Facility or to health care facilities generally, or in relation to the policy of HM government in relation to the provision of private finance for the funding of healthcare facilities in the NHS ("a Qualifying Change").

Operational Phase:

1. Concessionco will be responsible for any changes which are reasonably foreseeable at the date of the Agreement or at any benchmark date by an experienced provider of services as above; and

2. Change in Corporation Tax (other than a Qualifying Change)

3. Change in Environmental legislation (other than a Qualifying Change) bringing about the requirement for additional work to be carried out at the site coming into effect within five years from the services commencement date; or

4. Change in Health and Safety Regulation (other than a Qualifying Change) bringing about the requirement for additional work to be carried out at the site and coming into effect within five years from the services commencement date.

There is a ceiling on liability of Concessionco for the environmental legislation

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and health and safety legislation for a total of £200,000.

Where a change in legal requirements for which the Trust is responsible requires a change to physical asset, then Concessionco shall make a proposal to the Trust as to the basis of compensation which shall include where possible absorption of costs in Indexation and performance related payment and planned preventative maintenance budget.

Where the relevant change will not require additional construction work, Concessionco can, where it is unable to absorb additional costs by reviewing its operating practices and staffing levels, put forward proposals where a special benchmarking exercise is to be conducted in respect of performance related payment.

Equipment

Trusts have found it very difficult to pass any equipment risk to the private sector. Many schemes have a budgeted sum that the private sector uses to buy equipment.

Concessionco shall provide in terms of the commissioning schedule Modified Group 1 equipment which will be set out in an equipment list. The finalised provisions in respect of equipment are dependent on the separate criteria submission by the Trust. The Trust will be responsible for its equipment within the Facility and Concessionco is responsible for its own equipment. There is no funding mechanism for additional equipment to be provided.

Use of Surplus Land

Land can be disposed of to the SPV at start of contract. DV's valuation plus to be underwritten. SPV to provide guarantee if land is disposed of at start of contract.

Not applicable.

Smoothing Monies

Used to offset the difference in depreciation lives of the PSC and PFI solutions.

Not applicable.

Balance Sheet Treatment

The Trust should obtain financial advice which indicates that the scheme is off balance sheet and the Trust

should propose that this accounting treatment should be adopted. The Trust should also obtain the views of its external auditor on the proposed accounting treatment.

Planning Consent

The Trust is responsible for obtaining Outline Planning permission and the SPV should obtain Detailed Planning Permission. Usually, Detailed Planning will be obtained before financial close, subject to reserve matters.

Outline planning permission was obtained for this Project. Detailed planning permission has been [submitted by Tarmac plc].

Affordability

The Trust should obtain agreement from its purchaser that the PFI project is affordable.

Step In

Right given to funders to preserve contract prior to termination for SPV default. If bank steps in Trust should continue to enjoy the contract. The Trust should be protected from any increased costs as a result of step in. If funder does not step in then Trust terminate for SPV default.

Confirmed.

Funding Model

Should have an equity risk in the project. Either by non-recourse funding with significant equity stake (Project Finance Model) or parent company guarantee.

There is an equity risk in the Project Finance Model. There is a Parent Company Guarantee guaranteeing the obligations of Tarmac Services and Tarmac Construction to the Concessionco. The Trust could step into the shoes of Concessionco to enforce the Parent Company Guarantee in the event of the lenders not stepping in.

TUPE and Suzen Issues

Staff should be transferred to SPV under TUPE transfer. The Suzen case may not allow any service provider who

The current position is that no staff of the Trust shall transfer to the service provider. It is considered that no staff of any current service provider to the

loses a contract to transfer under TUPE. Trust may have to indemnify the SPV for any original Trust employees who are caught by Suzen for the first change only.

Trust shall transfer to the service provider.

Expiry of Contract

Option of walk away, tender existing services, carrying on for secondary period, Trust buying back the asset on market value.

The concession agreement is for sixty years with options of walk-away by the Trust at no expense at Years 25 and five yearly intervals thereafter. The Trust has no right to buy the asset on the market value and the remainder of the Head Lease will continue in the name of Concesslonco at the expiry of sixty years if the Trust has exercised its option to walk away. If there is an early termination of the Agreement or a termination of the Agreement at sixty years, then the Head Lease will also terminate.

Insurance Provisions

Insurance is to be undertaken.

Construction Period

Construction all risks. Trust, Concesslonco and the Building Contractor, Sub-Contractors and professional team for site activities and the lender are all insured.

Advanced loss of profits – Concesslonco and the lender are insured.

Public Liability – Trust, Concesslonco and the Building Contractor, their sub-contractors and professional team for site activities and the lender are insured.

Compulsory insurances, employers liability and motor insurance.

Operation Period

Minimum insurance to be taken:-

1. Material Damage, All Risks – Concessionco, FM Contract and the Trust, their sub-contractors and service providers are all insured. This covers the property owned by the insured for which it accepts responsibility used in connection with the ownership, maintenance and operation of a hospital (accordingly, all Trust equipment insured).
2. Business Interruption – Concessionco and the lenders are insured in respect of each prospective rights and for the Trust is insured in respect of increased cost of working extension.
3. Public Liability – Concessionco, the Trust, Lenders and FM Contractor, sub-contractors and Service Providers for accidental death, injury, disease, accidental loss of any person, accidental loss to any property and arising out of the ownership maintenance operation of the hospitals (excluding professional negligence of the Trust).
4. Money – Concessionco for legal liability for money, for example patient funds.
5. Directors and officers liability for Concessionco.
6. Fidelity guarantee in respect of drugs, money and accounts for employees of Concessionco.
7. Compulsory insurance – employers liability, including waiver of subrogation between the FM Contractor and the Trust's insurers.
8. Motor insurance.

Cost of Insurance

Construction Period

The cost is incorporated within the Available Payment and no further payment will be made by the Trust to Concessionco.

Operating Period

Insurance cost is to be reviewed annually having regard to cost, deductibles, availability of insurance. Such premiums are to be paid by Concessionco in the first instance and then reimbursed by the Trust to Concessionco by invoice.

DATED

1998

**SOUTHERN GENERAL HOSPITAL
NATIONAL HEALTH SERVICE TRUST**

and

[CONCESSIONCO] LIMITED

AGREEMENT

**in relation to a
New Acute Medical Facility
for the Elderly at
Southern General Hospital,
Glasgow**

DRAFT - 06/07/98

| | |
|-----|--|
| 33. | VARIATIONS - PHASE II - EXTENSIONS TO CONTRACT PERIOD |
| 34. | VARIATIONS - PHASE II - REDUCTION IN SIZE OF THE FACILITY |
| 35. | WARRANTIES AND UNDERTAKINGS |
| 36. | TRANSFER OF SHARES |
| 37. | INSURANCE |
| 38. | INDEMNITY |
| 39. | FORCE MAJEURE |
| 40. | TERMINATION OF AGREEMENT BY DEFAULT OF CONCESSIONCO ... |
| 41. | TERMINATION OF WHOLE AGREEMENT BY DEFAULT OF
THE TRUST |
| 42. | TERMINATION OF WHOLE AGREEMENT BY INSOLVENCY |
| 43. | TERMINATION OF WHOLE AGREEMENT WITHOUT DEFAULT |
| 44. | SURVIVAL OF RIGHTS |
| 45. | CONSEQUENCES OF TERMINATION FOLLOWING
DEFAULT BY THE TRUST |
| 46. | CONSEQUENCES OF TERMINATION WITHOUT DEFAULT |
| 47. | CONSEQUENCES OF TERMINATION FOLLOWING DEFAULT BY
CONCESSIONCO |
| 48. | MISCELLANEOUS CONSEQUENCES OF TERMINATION |
| 49. | DISPUTES |
| 50. | DETERMINATION BY EXPERT OR THE COURT |
| 51. | PROJECT PANEL |
| 52. | CONFIDENTIALITY |
| 53. | LIMITATION OF LIABILITY |
| 54. | OPTION TO TERMINATE |
| 55. | ASSIGNMENT |
| 56. | RTPA |
| 57. | DATA PROTECTION..... |
| 58. | INVALIDITY |
| 59. | VAT |
| 60. | CORRUPT GIFTS AND PAYMENTS OF COMMISSION |
| 61. | DISCRIMINATION |
| 62. | VARIATIONS |
| 63. | WAIVER |
| 64. | NO PARTNERSHIP |
| 65. | ENTIRE AGREEMENT |
| 66. | PROPER LAW & JURISDICTION |
| 67. | PUBLICITY |
| 68. | NOTICES |
| 69. | PRECEDENCE OF TERMS |
| 70. | LEGAL REQUIREMENTS |

SCHEDULES

| | |
|---------------------|---|
| SCHEDULE 1 | DEFINITIONS |
| SCHEDULE 2 | SITE PLAN |
| SCHEDULE 3 | LEASE AND UNDERLEASE - |
| SCHEDULE 4 | [NOT USED] |
| SCHEDULE 5 | BUILDING SPECIFICATION |
| SCHEDULE 6 | BASIC DESIGN |
| SCHEDULE 7 | EQUIPMENT LIST |
| SCHEDULE 8 | OUTLINE COMMISSIONING SCHEDULE - |
| SCHEDULE 9 | CONSTRUCTION CONTRACT |
| SCHEDULE 10 | FACILITIES MANAGEMENT CONTRACT - |
| SCHEDULE 11 | LETTERS OF UNDERTAKING |
| SCHEDULE 12 | EMPLOYEES |
| SCHEDULE 12A | MANPOWER PLANNING |
| SCHEDULE 13 | IN THE EVENT OF REVOCATION OF PLANNING CONSENT |
| SCHEDULE 14 | RECOGNITION AGREEMENT |
| SCHEDULE 15 | [NOT USED] |
| SCHEDULE 16 | INSURANCE POLICIES |
| SCHEDULE 17 | TRUST PROCEDURES |
| SCHEDULE 18 | COMPENSATION AMOUNTS |
| SCHEDULE 19 | WARRANTIES |
| SCHEDULE 20 | AVAILABILITY PAYMENT |
| SCHEDULE 21 | SERVICE LEVEL SPECIFICATIONS |
| SCHEDULE 22 | [NOT USED] |
| SCHEDULE 23 | FORM OF LENDERS DIRECT AGREEMENT |
| SCHEDULE 24 | AVAILABILITY AREAS |
| SCHEDULE 25 | FORM OF NOTICE OF UNAVAILABILITY |
| SCHEDULE 26 | REAL TERMINATION FEES |

THIS AGREEMENT is made the ● day of 1998⁹

BETWEEN

- (1) SOUTHERN GENERAL HOSPITAL NATIONAL HEALTH SERVICE TRUST, of 1345 Govan Road, Glasgow G51 4TF ("the Trust") such expression to include successors in title to the Trust (to the extent that the Trust may lawfully bind its successors);

and

- (2) [] LIMITED, a company incorporated in England and Wales with registered number [] whose principal office is at Construction House, Birch Street, Wolverhampton WV1 4HY ("Concessionco") such expression to include the successors in title to Concessionco and its assignees and transferees permitted by this Agreement.

RECITALS:

- (A) The Trust was established by the Southern General Hospital National Health Service Trust (Establishment) Order 1992 ("the Order"), in exercise of the powers conferred on the Secretary of State for Scotland by the National Health Service (Scotland) Act 1978 ("the 1978 Act") (as amended by the National Health Service and Community Care Act 1990) ("the 1990 Act").
- (B) The Trust's purpose pursuant to Section 12(1) of the 1978 Act and paragraph 3 of the Order is to provide and manage hospitals or other establishments or facilities.
- (C) The Trust's functions pursuant to paragraph 3 of the Order are to provide and manage hospital accommodation and services and the Trust is under a duty pursuant to Schedule 2 to the 1990 Act to carry out such functions effectively, efficiently and economically.
- (D) Pursuant to paragraph 3 of the Order, one of the Trust's functions is to provide and manage hospital accommodation and services at the Southern General Hospital, Glasgow.
- (E) The Trust, having due regard to its functions and duties, wishes to make provision for a new Acute Medical Facility for the elderly at the Southern General Hospital, Glasgow and has actively sought the participation of the private sector to operate healthcare facilities at such Acute Medical Facility and in connection therewith to provide related services pursuant to the United Kingdom Government's Private Finance Initiative.
- (F) Accordingly, on [], the Trust issued an invitation to tender for certain works comprising the design and construction of a new Acute Medical Facility for the elderly and for the provision of certain services at such Facility, and the tender in response thereto by the promoters of Concessionco was successful.
- (G) This Agreement sets out the terms and conditions subject to which Concessionco will operate certain healthcare facilities (more particularly described in this Agreement) and

provide (or procure the provision of) related services at such Facility together with the terms and conditions upon which Concessionco will carry out (or procure the carrying out of) the works necessary to provide such healthcare facilities for such operation and provision of services.

- (H) In order to perform its obligations under this Agreement Concessionco has entered into conditional contracts respectively dated [] 1998 and [] 1998 with Tarmac Construction Limited for the design, construction and commissioning of the Facility and with Tarmac Services Limited for the provision of facilities management services.
- (I) The entering into of this Agreement by the Trust was approved at a meeting of the Trust held on [] and is (together with certain agreements referred to herein) to be certified as an externally financed development agreement by the Secretary of State for Scotland pursuant to and for the purposes of the National Health Service (Private Finance) Act 1997.

NOW IT IS HEREBY AGREED as follows:

SECTION A: GENERAL PROVISIONS

1. DEFINITIONS

Words and expressions appearing as defined terms in this Agreement have the meanings set out in Schedule I Part I; those appearing as defined terms in any Service Level Specification have the meanings set out in Schedule I Part II.

2. INTERPRETATION

- 2.1 Any reference to this Agreement includes the schedules to it (which are hereby incorporated as part of this Agreement), any reference to the number of a clause or sub-clause shall be to a clause or sub-clause of this Agreement and any reference to a schedule shall be to a schedule to this Agreement, unless otherwise expressly stated.
- 2.2 Clause and other headings are for convenience only and shall not affect the construction hereof.
- 2.3 Each of the items falling within the definition of Legal Requirement will, subject to Clause 14B and Clause 32, include any modification re-enactment or extension thereof.
- 2.4 Any reference in this Agreement to this Agreement or to any other agreement or instrument or any term of this Agreement or any other agreement or instrument, are references to this Agreement or to that other agreement or instrument or term as in effect and as varied, supplemented, novated or assigned from time to time.
- 2.5 Except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting any gender include all genders, words denoting persons include partnerships, National Health Service Trusts, Local Authorities, Health

Boards, Special Health Boards, Common Services Agencies, unincorporated associations and corporations and vice versa.

- 2.6 Any reference to any obligation of Concessionco under this Agreement shall permit the carrying out of such obligation by Concessionco, the Building Contractor, the FM Contractor, any Service Provider or any of its or their respective sub-contractors as appropriate in accordance with good industry practice and as Concessionco shall in its sole discretion decide, provided that, as between the parties to this Agreement only, Concessionco shall be responsible for the acts, omissions, default and neglect of the Building Contractor, the FM Contractor, any Service Provider or any of its or their respective sub-contractors which relate to such delegation of obligations as if they were the acts, omissions, default or neglect of Concessionco.

3. **DURATION**

This Agreement shall remain effective until the expiry of the Contract Period unless (without prejudice to Clause 44) previously terminated in accordance with its terms.

4. **EXCLUSIVE APPOINTMENT**

Subject to this Agreement the Trust hereby appoints Concessionco so that Concessionco shall have the exclusive right to finance and undertake the Works and (subject in particular to Clause 31 and Clause 32) any Additional Work and to perform the Services and (subject in particular to Clause 30) Additional Services and Concessionco accepts such appointment.

5. **PROVISION OF INFORMATION**

- 5.1 Concessionco shall provide to the Trust within a reasonable time, being not less than 15 Business Days of a written request therefor, such information as the Trust may reasonably require regarding the performance of the Works or the Services, including without limitation any information which may be required by the Trust for the purpose of supplying any information to any Health Board, the Scottish Office, or any other government department to which the Trust may be required to supply information as a matter of law or may be invited to supply information as a matter of practice, but excluding confidential commercial information.
- 5.2 The Trust shall supply to Concessionco, at such times and in such manner as Concessionco may reasonably require, the following:
- (a) copies of the Trust's annual reports and related financial information and accounts;
 - (b) information as to the extent to which the Trust has met its statutory financial obligations;
 - (c) copies of the Health Board's health improvement programme;

- (d) information as to the Trust's patient activities;
- (e) information as to any potential material uninsured claims against or other litigation involving the Trust;
- (f) subject to the Trust's reasonable requirements as to confidentiality, copies of the Trust's implementation plans as and when prepared;
- (g) information as to all insurances taken out and maintained by the Trust, including information regarding the Crown Indemnity Scheme.

6. **ASSISTANCE AND CO-OPERATION**

6.1 Subject to Clause 6.2 each party (the "First Party") undertakes to co-operate in good faith with the other (the "Second Party") in order to facilitate the performance of the Project Agreements and in particular will:

- (a) use reasonable endeavours to avoid unnecessary complaints by, disputes with and claims against the Second Party;
- (b) comply strictly with the provisions of Clause 49.1 in relation to any such complaints, disputes and claims;
- (c) not interfere with the rights of the Second Party in performing its obligations under the Project Agreements, nor in any other way hinder or prevent the Second Party from performing those obligations;
- (d) assist the Second Party in performing those obligations, so far as is reasonably practicable; and
- (e) take all reasonable steps to mitigate any foreseeable losses and liabilities of the Second Party which are likely to arise out of any failure by the First Party to take any of the steps referred to in paragraphs (a) to (d) (inclusive) above.

6.2 Nothing in Clause 6.1 shall:

- (a) interfere with the right of each of the parties to arrange its affairs in whatever manner it considers fit in order to perform its obligations under the Project Agreements in the manner which it considers to be the most efficient and effective; or
- (b) oblige either party to incur any additional cost or expense, or suffer any loss of profit; or
- (c) relieve either party from any obligation under any indemnity contained in the Project Agreements (subject to Clause 38.9) or from any obligation to pay any debt due and payable under the Project Agreements.

6.3 The Trust shall render all reasonable assistance to Concessionco in relation to the performance of the Works, the Services and any Additional Work and in particular the Trust shall:

- (a) comply with the applicable Legal Requirements;
- (b) take such steps and make such representations as may be reasonable and necessary in connection with the procurement of the Necessary Consents by the earliest possible date;
- (c) perform its obligations in respect of Commissioning as set out in the Outline Commissioning Schedule and the Detailed Commissioning Schedule;
- (d) supply to Concessionco such information as may from time to time be reasonably required by Concessionco in relation to the performance of Concessionco's obligations under the Project Agreements and which is within the care or control of the Trust save to the extent that the Trust is restricted by law or by any confidentiality agreement or undertaking from supplying such information;
- (e) ensure that at all times a duly authorised officer or representative of the Trust is appointed to perform the duties and functions of the Trust's Representative under this Agreement and that his identity is notified to Concessionco and procure that such appointee shall perform such duties and functions in a proper and timely manner;
- (f) ensure that the Trust's employees, agents, sub-contractors, any Additional Service Contractor and any persons for whom it and/or they are responsible shall not (whether by act or omission) obstruct, hinder or prevent Concessionco, the Building Contractor, the FM Contractor, or any Service Provider, or any employee, agent or sub-contractor of any of them or any person authorised by any of them from carrying out any of their obligations under the Project Agreements or under any subcontract, or otherwise in relation to the Works, the Services or any Additional Work or any other activity authorised under the Project Agreements, provided that:
 - (i) no liability under this Clause 6.3(f) shall attach to the Trust unless and until Concessionco shall have given written notice of such obstruction, hindrance or prevention to the Trust and the Trust shall have failed to remove such obstruction, hindrance or prevention within 36 hours of receipt by the Trust of such notice or within such shorter period as Concessionco may specify in such notice, being such period as may be reasonable in all the circumstances; and
 - (ii) no liability under this Clause 6.3(f) shall attach to the Trust in respect of any such obstruction, hindrance or prevention which arises in the course of the reasonable, proper and prudent use of the Facility by the Trust; and

(iii) pending removal by the Trust of such obstruction, hindrance or prevention there shall be no downward adjustment to the Availability Payment pursuant to Clause 26, nor to the Performance Related Payment pursuant to Clause 27, to the extent that such adjustment would have arisen as a consequence of such obstruction, hindrance or prevention;

(g) throughout the Contract Period remain a member of the Crown Indemnity Scheme and comply with directions from the Scottish Office in relation to the Crown Indemnity Scheme or any other replacement medical negligence insurance arrangements; and

(h) negotiate in good faith with any Lenders with whom Concessionco may from time to time require to enter into Funding Agreements after the date hereof, and (subject to such negotiations and subject also to the Trust being under no obligation to enter into any such agreement which is not substantially in the form set out in Schedule [] enter into a Lenders Direct Agreement with those Lenders upon being so requested by Concessionco.

6.4 If as a direct result of any negligence or default of the Trust or any person for whom the Trust is responsible including without limitation any breach by the Trust of any of its obligations under the Project Agreements, other than any of its obligations under Clause 6.5, Concessionco incurs any additional cost, loss and/or expense in carrying out and completing the Works, Services or any Additional Work or exercising its rights under or performing any of its other obligations under the Project Agreements, the Trust shall pay to Concessionco the amount of such cost, loss and/or expense and the following procedure shall apply. Concessionco shall submit details of such cost, loss and/or expense to the Trust's Representative and as soon thereafter as may be reasonably practicable the parties shall meet in good faith and use all reasonable endeavours to agree the amount thereof, provided always that the Trust shall not be liable to pay to Concessionco under this Clause any amount in respect of any additional cost, loss and/or expense which Concessionco would not have incurred if Concessionco had acted reasonably in all the circumstances. In the absence of agreement, such amount shall be determined by reference to the Disputes Resolution Procedure on application by either party. The amount so agreed or determined shall be paid to Concessionco by the Trust within 20 Business Days of receipt by the Trust of Concessionco's invoice therefor.

6.5 The Trust shall at all times use all reasonable endeavours to:

- (a) satisfy the requirements of those commissioning healthcare services;
- (b) seek to ensure efficient utilisation of the Facility and the Services; and
- (c) notify Concessionco forthwith if at any time it becomes or anticipates becoming unable to meet any of its financial obligations and in such case inform and keep Concessionco informed of any course of action to remedy the situation recommended or required by the Secretary of State or other competent authority.

provided always that, subject to Clause 6.6, Concessionco shall have no rights or remedies against the Trust in respect of any breach or alleged breach of the obligations contained in this Clause 6.5 and in particular Concessionco shall have no entitlement to any damages, indemnity, extension of time or rights of termination in respect of such breach or alleged breach.

6.6 The Trust shall not hold Concessionco liable by way of adjustment to the Availability Payment, any Performance Percentage or the Performance Related Payment for any loss arising from failure on the part of Concessionco to fulfil any obligation under any of the Project Agreements to the extent that such liability or loss is caused by or arises as a consequence of :

- (i) any negligence, default, act or omission of the Trust (other than an act or omission in the course of the reasonable, proper and prudent use of the Facility by the Trust) or any person for whom the Trust is responsible including, for the avoidance of doubt, any Additional Service Contractor or any person (other than Concessionco) undertaking any Additional Work or any statutory undertaker, or provider of utilities to the Facility or the Site including without limitation any breach by the Trust of any of its obligations and/or undertakings under the Project Agreements;
- (ii) any loss or damage to, or malfunction or failure of, or failure to replace, renew or provide any equipment which Concessionco is not obliged to maintain, repair, replace or renew pursuant to the provisions of this Agreement; or
- (iii) the instructions of any member of the Trust's medical, nursing or clinical staff pursuant to any of the Service Level Specifications to any Service Provider that a particular activity or particular activities to be performed pursuant to such Service Level Specification should cease.

6.7 Concessionco shall ensure that at all times a duly authorised officer or representative of Concessionco is appointed to perform the duties and functions of Concessionco's Representative under this Agreement and that his identity is notified to the Trust and Concessionco shall procure that such appointee shall perform such duties and functions in a proper and timely manner.

7. PREMISES AND ACCESS

On the date of this Agreement the Trust will grant and Concessionco will accept the grant of the Lease in accordance with the provisions of Schedule [] Part [] *[which provisions together with the provisions of Part I of Schedule [] are hereby incorporated into this Clause 7 as though the same were set out herein in extenso in order to satisfy the requirements of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989]*.

**SECTION B: PHASE I - CONSTRUCTION, COMPLETION AND
PRE-COMPLETION COMMISSIONING**

8. DESIGN AND CONSTRUCTION OBLIGATIONS

8.1 Concessionco shall from the date of this Agreement commence and proceed with the Works and shall (subject to the provisions of this Agreement) carry out and complete the Works in accordance with the Basic Design (as the same may be developed into the Detailed Design in accordance with Clause 12); and

- (a) in accordance with the Necessary Consents (for the avoidance of doubt it shall be the responsibility of Concessionco to obtain such Necessary Consents as are required for the performance of the Works) and the Legal Requirements;
- (b) in a good and workmanlike manner to a good quality using suitable materials with high standards of workmanship;
- (c) in compliance with the Trust Procedures; and
- (d) generally in accordance with this Agreement.

In the event of any inconsistency between this Agreement and the Building Specification the former shall prevail.

8.2 Concessionco undertakes that:

- (a) there will not be used in relation to the Works and any Additional Work (other than Additional Work carried out by any person other than Concessionco) materials which are not in accordance with relevant British Standards or Codes of Practice or any materials generally known to be deleterious either to the integrity of a building or to the well-being of those using or maintaining a building or which do not otherwise accord with good building practice or techniques at the time of use;
- (b) the Building Contractor shall (subject to Clause 40) observe and perform its duties and obligations and shall proceed regularly and diligently to carry out and complete the Contract Works under and pursuant to the Construction Contract;
- (c) it has checked the Building Specification and agrees to accept responsibility for the content thereof;
- (d) in carrying out its design obligations in relation to the Works and any Additional Work, Concessionco shall exercise or procure that there is exercised the reasonable skill and care to be expected of a professionally qualified and competent designer experienced in carrying out work of a similar size and complexity to the Facility; and

- (e) subject to the provisions of this Agreement, it will complete the Works by no later than the Completion Date, provided that if Concessionco fails to comply with this provision the Trust shall have no remedy except as provided in Clause 40.

9. CDM REGULATIONS

- 9.1 Concessionco shall, for the purposes of The Construction (Design & Management) Regulations 1994 (the "CDM Regulations") be the Client (as defined in the CDM Regulations) and Concessionco shall serve a declaration to that effect in respect of the Works on the Health & Safety Executive within 5 Business Days after the date of this Agreement and shall simultaneously provide a copy of such declaration to the Trust.
- 9.2 For the purposes of the CDM Regulations, Concessionco will not be the agent of the Trust.
- 9.3 Concessionco shall comply with its obligations under the CDM Regulations as Client in relation to the Works and shall procure compliance with the CDM Regulations by the Building Contractor and such consultants as it may appoint in relation to the Works.
- 9.4 Upon Completion Concessionco shall provide a certified copy of the full and complete Health and Safety File (as defined in the CDM Regulations) to the Trust and Concessionco hereby grants to the Trust an irrevocable, royalty free and non-exclusive licence to use and reproduce any information or documents contained at any time within such Health and Safety File for any purpose connected with the Works, the Services and the Facility. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.
- 9.5 Insofar as the beneficial ownership of copyright and all other intellectual property and design rights in any information or documents to be contained at any time in the Health and Safety File will be vested in any person other than Concessionco, Concessionco shall procure, as a condition precedent to the appointment of such beneficial owner, that he grants to the Trust an irrevocable, royalty free and non-exclusive licence to use and reproduce the Health and Safety File for any and all purposes connected with the Works, the Services and the Facility. Such licence shall carry the right to grant sub-licences and shall be transferable to the third parties.
- 9.6 Concessionco shall, for the duration of Phase I, compile, maintain and update the Health and Safety File and ensure its availability for use in connection with such future works as may be carried out to the completed Works.

10. APPOINTMENT OF BUILDING CONTRACTOR

- 10.1 The Construction Contract shall be in the form set out in Schedule []. For the purposes of Clauses 45.1(d), 45.3(d) and 46.1(c) the Trust acknowledges and agrees that Concessionco and the Building Contractor and Concessionco and the Construction Manager have entered into the Construction Contract and the Construction Management Contract respectively on an arms length basis.

- 10.2 Concessionco shall comply with the terms of and promptly carry out all its duties under the Construction Contract provided that breach of this Clause 10.2 shall entitle the Trust only to those remedies expressly provided in this Agreement.
- 10.3 Concessionco shall not without the Trust's prior written consent, which consent shall not be unreasonably withheld or delayed, compromise or waive any claim it may have against the Building Contractor in any way which would or might materially adversely affect the interests of the Trust.

11. LETTER OF UNDERTAKING (WORKS)

Concessionco shall procure and deliver to the Trust a duly executed letter of undertaking by the Building Contractor in the form set out at Schedule [], Part 1.

12. REVIEW OF DETAILED DESIGN

- 12.1 By the dates and in accordance with the procedural requirements set out in Schedule [] Concessionco shall submit to the Trust's Representative and the Trust's Representative shall review Concessionco's proposals for the Detailed Design. In the event of any failure by the Trust or the Trust's Representative to review, approve and/or make comment upon information submitted by Concessionco in accordance with the requirements of Schedule [] such information shall be deemed to have been approved by the Trust or the Trust's Representative (as the case may be). For the avoidance of doubt Concessionco shall not be entitled to any extension of time and/or any additional payment in relation to any such failure.
- 12.2 Upon receipt by the Trust's Representative of such proposals the Trust's Representative shall within 10 Business Days (or such other period as the parties may agree) return such proposals to Concessionco marked either "Received", "Received with Comments", or "Comments". In the event that such proposals are returned marked "Received", Concessionco may proceed with that part of the Works to which such proposals relate. In the event that such proposals are returned marked "Received with Comments", Concessionco may proceed with that part of the Works to which such proposals relate but only subject to such comments. In the event that such proposals are returned marked "Comments", the part of such proposals to which such comments relate shall be resubmitted by Concessionco to the Trust amended to take account of such comments and Concessionco shall not proceed with the Works to which such comments relate (otherwise than at Concessionco's own risk) until such amended proposals have been returned by the Trust's Representative marked "Received" or "Received with Comments" and the Trust's Representative shall return such amended proposals within 10 Business Days (or such other period as the parties may agree) of receipt. Provided always that when carrying out its review of any proposals submitted by Concessionco pursuant to this Clause, the Trust may only return such proposals marked "Received with Comments" or "Comments" where such proposals are not in accordance with the Basic Design or the Legal Requirements and such comments relate solely to such matter.

- 12.3 In the event that the Trust's Representative shall fail to return any proposal submitted by Concessionco pursuant to Clause 12.1 within the time and/or in accordance with the procedure specified in Clause 12.2 such proposal shall be deemed to have been returned by the Trust's Representative marked "Received".
- 12.4 In the event that Concessionco on reasonable grounds does not consider any comment of the Trust's Representative made pursuant to Clause 12.2 to be suitable or appropriate with respect to the provisions of this Clause the matter shall, failing resolution by agreement between the Trust's Representative and Concessionco, be referred to the Disputes Resolution Procedure.
- 12.5 The proposals made by Concessionco pursuant to Clause 12.1, once marked (or deemed pursuant to this Clause 12 to be marked) "Received" or "Received with Comments" by the Trust's Representative shall (as amended if marked "Received with Comments") comprise the Detailed Design for the Works.
13. **DETAILED COMMISSIONING SCHEDULE AND MODIFIED GROUPS 2, 3 AND 4 EQUIPMENT LIST**
- 13.1 Not less than 26 weeks before the date anticipated for Completion in the Contractor's Programme the parties shall meet in good faith and use all reasonable endeavours to agree:
- (a) the Detailed Commissioning Schedule;
 - (b) the Modified Groups 2, 3 and 4 Equipment List.
- 13.2 The Detailed Commissioning Schedule shall be developed by the parties from the Outline Commissioning Schedule and shall include modifications and additions to the Outline Commissioning Schedule to show and describe the steps necessary, the party responsible for taking each of such steps and the timing and sequence of each of such steps in order to demonstrate:
- (a) that the Works will be completed by the Completion Date in accordance with this Agreement; and
 - (b) that Concessionco's Post-Completion Commissioning and the Trust's Post-Completion Commissioning will be completed by the Payment Commencement Date so that the Facility is commissioned in accordance with this Agreement.
- 13.3 The Modified Groups 2, 3 and 4 Equipment List shall be developed by the parties from the Equipment List and shall show the Equipment to be procured by the Trust and installed at the Facility by Concessionco or the Trust as the case may be.
- [13.4 *The Trust Equipment shall comprise the equipment which is owned by, or is in the exclusive possession of, the Trust at the date of this Agreement and shown in Groups 2, 3 and 4 on the Equipment List as modified from time to time to take account of such*

items of equipment as may be removed or replaced by the Trust between the date of this Agreement and the date which is not less than 20 weeks before the date anticipated for Completion in the Contractor's Programme or such other period as may be agreed by the parties in respect thereof.

We believe this clause is not necessary for this Project.]

- 13.5 In the absence of agreement as to the Detailed Commissioning Schedule and/or the Modified Groups 2, 3 and 4 Equipment List within 6 weeks of the first meeting of the parties for such purpose (or such longer period as the parties may agree) the following shall apply:
- (a) the Detailed Commissioning Schedule shall be determined by reference to the Disputes Resolution Procedure to give effect to Clause 13.2; and
 - (b) the Modified Groups 2, 3 and 4 Equipment List shall comprise such items as the Trust may determine acting reasonably and in a timely and efficient manner taking into account all the relevant circumstances including without limitation the respective rights and obligations of the parties with respect to Completion and Commissioning, such determination to be made by no later than 20 weeks prior to the date anticipated for Completion in the Contractor's Programme.
- 13.6 Concessionco warrants to the Trust that the Equipment in *Part I of the Equipment List* shall (subject to the provisions of the Funding Agreements and of the agreements with the providers from time to time of Subordinated Debt, other than Tarmac PFI Limited and [*UME Investments Limited*]) be and remain vested free from all encumbrances in Concessionco.

14.A. VARIATIONS - PHASE I

- 14A.1 Concessionco may at any time during Phase I, subject to giving reasonable prior notice to the Trust, make variations to the Basic Design or the Detailed Design which:
- (a) will not adversely affect the quality, appearance or function of the Facility or the ability of the Facility to meet the Trust's requirements and will not unreasonably delay the date by which the Works would otherwise have been completed, provided that if the Trust shall, having received any such notice, contend by notice in writing to Concessionco (such notice to be served within 10 Business Days) that any such variation will or may cause any such adverse effect or unreasonable delay, Concessionco shall take no steps to effect such variation until the same shall be agreed by the Trust or the dispute determined by reference to the Disputes Resolution Procedure, or
 - (b) are necessary to implement a Change in the Legal Requirements but which do not, pursuant to Clause 14B, entitle Concessionco to compensation from the Trust.

- 14A.2 Except as provided in Clause 14A.1, during Phase I Concessionco may make variations to the Basic Design and/or the Detailed Design only with the Trust's consent (such consent not to be unreasonably withheld or delayed) and provided that in relation thereto Concessionco submits to the Trust's Representative proposals for review in accordance with Clauses 12.1 and 12.2 together with its estimate of the effect, if any, of the proposed variation upon the Works.
- 14A.3 The Trust may itself at any time during Phase I propose variations to the Basic Design and/or, the Detailed Design in which event the following procedure shall apply:
- (a) The Trust's Representative shall give to Concessionco notice indicating the nature of the proposed variation and as soon thereafter as may be reasonably practicable the parties shall meet in good faith to discuss such proposed variation, the Trust providing such further information as Concessionco may reasonably require including, without limitation, detailed information as to the Trust's requirements and its proposals for their implementation.
 - (b) Within a reasonable period after the receipt by Concessionco of the notice and information referred to in Clause 14A.3(a) Concessionco shall, acting reasonably and in good faith (but subject to the proviso below) submit to the Trust's Representative:
 - (i) proposals for review in accordance with Clauses 12.1 and 12.2 (*mutatis mutandis*) and where necessary proposals for modification to the Outline Commissioning Schedule and/or the Detailed Commissioning Schedule and/or any Service Level Specification; and
 - (ii) proposals as to the basis for compensation (which shall include, without limitation an adjustment to the Total Payment, or if, after using reasonable endeavours, Concessionco is unable within 30 Business Days after receipt of the notice referred to in Clause 14A.3(a) to secure sufficient additional funding on reasonable commercial terms, such other basis of compensation as Concessionco may propose) in respect of the proposed variation which proposals shall reflect the anticipated cost (such costs to include without limitation the anticipated cost of funding where appropriate) reasonably and necessarily to be incurred by Concessionco over the Contract Period as a consequence of complying with the proposed variation;
 - (iii) proposals as to the length of any extension of time pursuant to Clause 17; and
 - (iv) such other proposals (including without limitation amendments to the Project Agreements) as may in the reasonable opinion of Concessionco be necessary for the implementation of the proposed variation or as a consequence thereof.

Provided always that Concessionco shall not be obliged to submit any such proposals if Concessionco serves notice on the Trust's Representative that, in its reasonable opinion, the proposed variation would adversely affect the structure, design life or function of the Facility. Any such notice shall be accompanied by Concessionco's grounds for such opinion and, in the event that the Trust's Representative questions such opinion or grounds, the parties shall meet and acting in good faith shall use reasonable endeavours to reach agreement in relation thereto, failing which the decision of Concessionco on the matter shall be final and binding on the parties and shall not be referable to the Disputes Resolution Procedure.

- (c) In the event that Concessionco's proposals submitted pursuant to Clause 14A.3(b) are agreed then (without prejudice to the provisions of Clause 12) the Trust's Representative shall issue a Confirmed Variation Instruction in respect thereof and Concessionco shall give effect thereto. The Trust's Representative shall grant an extension or extensions of time of the agreed length(s) (if any) and effect shall be given to the agreed basis of compensation in such manner as may be agreed between the Trust's Representative and Concessionco.
- (d) If no agreement can be reached in relation to the proposals referred to in Clause 14A.3(b) the parties shall meet and, acting in good faith, shall use reasonable endeavours to reach agreement in relation thereto failing which no Confirmed Variation Instruction shall be issued by the Trust's Representative in respect thereof and the Trust's proposed variation shall be deemed to have been withdrawn.
- (e) If in either such case no Confirmed Variation Instruction shall be issued within 20 Business Days after submission of Concessionco's proposals pursuant to Clause 14A.3(b) Concessionco shall submit to the Trust's Representative details of the costs reasonably and necessarily incurred by Concessionco in preparing its proposals pursuant to Clause 14A.3(b) and the Trust shall pay such costs to Concessionco (in such manner as the parties may agree, including without limitation by way of an adjustment to the Total Payment or, failing such agreement within 20 Business Days from submission by Concessionco of such details and Concessionco's invoice in respect thereof).
- (f) If the Trust's Representative issues notice of a proposed variation pursuant to Clause 14A.3 no work pursuant to such proposed variation shall be commenced until such time as the Trust's Representative issues a Confirmed Variation Instruction.

14B. CHANGES IN LEGAL REQUIREMENTS - PHASE I

- 14B.1 In the event of a Change in the Legal Requirements which renders or will render any obligation to be performed by Concessionco during Phase I more costly and/or will have the effect of reducing the amount of the Total Payment otherwise payable, the following provisions shall apply

14B.2 Where any Change in the Legal Requirements:

- (a) was reasonably foreseeable by an experienced building contractor at the date of this Agreement on the basis only of draft Bills published in Government Green Papers or White Papers or other Government Departmental Consultation Papers, Bills, draft statutory instruments or draft instruments or proposals in the Official Journal of the European Communities in each case published before the date of this Agreement, provided all the aforementioned have been published in substantially the same form as such Change in the Legal Requirements takes; or
- (b) is a change in Corporate Tax Legislation (other than a Qualifying Change); or
- (c) is a change in Environmental Legislation (other than a Qualifying Change); or
- (d) is a change in Health and Safety Legislation (other than a Qualifying Change);

Concessionco shall comply with such Change in the Legal Requirements at its own expense and shall not be entitled to any compensation from the Trust in respect thereof.

14B.3 Where a Change in the Legal Requirements is not a Change in the Legal Requirements falling within the categories listed in Clause 14B.2, the Trust shall compensate Concessionco in respect thereof and the following procedure shall apply:

- (a) Concessionco and the Trust's Representative shall forthwith meet in good faith and use reasonable endeavours to agree the steps necessary and appropriate to give effect to such Change in the Legal Requirements; and
- (b) subject to (a) above such Change in the Legal Requirements shall be treated as a variation proposed by the Trust under Clause 14A.3 save that the Trust shall not be entitled to withdraw such variation; and
- (c) accordingly, Concessionco shall, acting reasonably and in good faith (but subject to the proviso below) submit to the Trust's Representative:
 - (i) proposals for review in accordance with Clauses 12.1 and 12.2 (*mutatis mutandis*) and where necessary proposals for modification to the Outline Commissioning Schedule and/or the Detailed Commissioning Schedule and/or any Service Level Specification; and
 - (ii) proposals as to the basis for compensation (which shall include, without limitation an adjustment to the Total Payment, or, if after using reasonable endeavours, Concessionco is unable within 30 Business Days of the first meeting convened pursuant to (a) above to secure sufficient additional funding on reasonable commercial terms, such other basis of compensation as Concessionco may propose) in respect of such Change in the Legal Requirements which proposals shall reflect the anticipated costs (such costs to include without limitation the anticipated cost of

funding where appropriate) reasonably and necessarily to be incurred by Concessionco over the unexpired Contract Period as a consequence of complying with such Change in the Legal Requirements;

- (iii) proposals as to the length of any extension of time pursuant to Clause 17; and
- (iv) such other proposals (including amendments to the Project Agreements) as may in the reasonable opinion of Concessionco be necessary for the implementation of such Change in the Legal Requirements or as a consequence thereof.

14B.4 In the event that Concessionco's proposals submitted pursuant to Clause 14B.3(c) are agreed then (without prejudice to compliance by both parties with Clause 12) the Trust's Representative shall issue a Confirmed Variation Instruction in respect thereof and Concessionco shall give effect thereto. The Trust's Representative shall grant an extension or extensions of time of the agreed length(s) (if any) and effect shall be given to the agreed basis of compensation in such manner as may be agreed between the Trust's Representative and Concessionco.

14B.5 If in relation to any such matter the parties fail to reach agreement within 20 Business Days of the first meeting of the parties for such purpose or within such other period as the parties may agree, including without limitation regarding the amount of compensation payable by the Trust to Concessionco in respect of such variation then either party may at any time refer such dispute to the Disputes Resolution Procedure for determination on the basis set out in Clause 14B.6.

14B.6 Financial compensation in respect of a Change in the Legal Requirements payable by the Trust to Concessionco pursuant to this Clause 14B shall include:

- (i) all the anticipated costs (such costs to include without limitation (without prejudice to (ii) below) the anticipated costs of funding as appropriate which shall, while any monies under the Senior Loan Agreement are still outstanding, be paid over a period extending no longer than the final maturity of the senior loan made under the Senior Loan Agreement) reasonably and necessarily to be incurred by Concessionco over the unexpired Contract Period as a consequence of complying with such Change in the Legal Requirements; and
- (ii) if, after using reasonable endeavours, Concessionco is unable within 30 Business Days of the first meeting convened pursuant to Clause 14B.3(a) to secure sufficient additional funding on reasonable terms, such funding from the Trust as would fully reimburse Concessionco in respect of any capital expenditure (as such term is interpreted in accordance with generally accepted accounting principles in the United Kingdom from time to time) properly incurred by virtue of any Change in the Legal Requirements, against invoices (submitted in accordance with Clause 25.10) in respect of those parts of the obligations to be performed by

- (c) all Necessary Consents;
- (d) minutes of the meetings referred to in Clause 15.4;
- (e) all test certificates and commissioning reports; and
- (f) all notices and certificates issued under or pursuant to the Construction Contract.

16. COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS

- 16.1 Concessionco undertakes to the Trust that in the design and construction of the Works and any Additional Work it will not infringe and will not permit any infringement by its employees, agents or sub-contractors (including without limitation, the Building Contractor) of any copyright or other intellectual property or design right and Concessionco shall indemnify the Trust from and against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever in any way arising from any breach of such undertaking.
- 16.2 Concessionco hereby grants in respect of copyright and all other intellectual property or design rights in the same (or shall procure that the person who can grant with full title guarantee in respect thereof shall grant) to the Trust an irrevocable, royalty free and non-exclusive licence or licences to use and reproduce any and all designs, as-built drawings and maintenance and operational information and documentation relating to the Works and any Additional Work prepared by or on behalf of Concessionco (or as the same may be otherwise amended, improved, modified, or redesigned from time to time) for any purpose connected with the Trust's use or occupation of the Facility or any part thereof pursuant to this Agreement or its interest in the Facility. Each such licence shall carry the right to grant the sub-licences for any such purpose and shall be transferable to third parties.

17. EXTENSION OF TIME (WORKS)

- 17.1 If it becomes apparent to Concessionco that the progress of the Works is being or is likely to be delayed by reason of any one or more of the events set out at Clause 17.2, the following procedure shall apply:
 - (a) Concessionco shall give to the Trust's Representative notice of the cause and circumstances thereof;
 - (b) as soon as reasonably practicable thereafter Concessionco shall give to the Trust's Representative particulars of the anticipated consequences of such event including, without limitation, the anticipated delay to the Completion Date;
 - (c) such particulars shall include copies of all notices, particulars and estimates given by the Building Contractor to Concessionco in respect thereof;

- (d) the Trust's Representative shall, as soon as reasonably practicable following receipt of the notice and particulars referred to in sub-clauses (a) to (c) above and having regard to the sufficiency of such notice and particulars, notify Concessionco of such adjustment to the Completion Date (if any) as may be fair and reasonable in all the circumstances (but without prejudice to Concessionco using all reasonable endeavours to mitigate such delay and the effects thereof in accordance with Clauses 6.1 and 6.2); and
- (e) the Trust's Representative shall from time to time, upon submission by Concessionco of further particulars, authorise such further adjustments to the Completion Date (if any) as may be fair and reasonable in all the circumstances (but without prejudice to Concessionco using all reasonable endeavours to mitigate such delay and the effects thereof in accordance with Clauses 6.1 and 6.2).

For the avoidance of doubt any dispute as to any adjustment to the Completion Date shall be referred to the Disputes Resolution Procedure.

17.2 The events referred to at Clause 17.1 are as follows:

- (a) any negligence, default, act or omission of the Trust or any person for whom the Trust is responsible including without limitation any breach by the Trust of any of its obligations under the Project Agreements (other than any breach by the Trust of any of its obligations under Clause 6.5);
- (b) without prejudice to the provisions of Clause 14B and Clause 32, any Change in the Legal Requirements or any change in the Necessary Consents;
- (c) any variation pursuant to Clauses 14A.1 and/or 14A.2 or the issue of a Confirmed Variation Instruction; and
- (d) the occurrence of any of the following events:
 - (i) any civil disorder, civil disturbance, riot, blockade or embargo (and which does not constitute an event of Force Majeure);
 - (ii) any official or unofficial strike, lock out, go slow or other labour dispute which shall not apply only to Concessionco and/or the Building Contractor;
 - (iii) any accident at sea, in the air or on land;
 - (iv) any failure or shortage of power, fuel or transport;
 - (v) the effects of weather, flood, drought, tempest, corrosion, earthquake, lightning or volcanic eruption or any direct consequence of any such occurrence;

Concessionco as a consequence of any Change in the Legal Requirements requiring capital expenditure which have been completed.

15. INSPECTION, MEETINGS AND SUPPLY OF INFORMATION

- 15.1 At all reasonable times during Phase I, the Trust and any person authorised by the Trust may enter the Site and inspect the Contract Works (subject to giving reasonable prior notice to Concessionco and the Building Contractor and subject also to complying with Concessionco's and the Building Contractor's reasonable instructions) to view the state and progress of the Contract Works, to inspect workmanship, goods and materials used or intended to be used in the Contract Works and to ascertain generally that provisions of this Agreement have been and are being complied with.
- 15.2 The Trust may notify Concessionco of any non-compliance with this Agreement found upon such inspection and make representations to Concessionco generally concerning the state and progress of the Contract Works.
- 15.3 Concessionco will procure that any non-compliance with the terms of this Agreement in relation to the performance of the Works is promptly remedied and that any materials, goods or workmanship which are not in accordance with the terms of this Agreement are rectified or replaced promptly.
- 15.4 Not less frequently than once in every Month and on 5 Business Days notice given to the Trust (which notice shall specify the date, time, place and agenda for such meeting) Concessionco shall convene meetings with the Building Contractor relating to the Contract Works to which the Trust's Representative shall be entitled to attend.
- 15.5 Concessionco will procure that during Phase I the Building Contractor provides the Trust upon reasonable request and at no cost to the Trust with such details, drawings and other information (other than confidential commercial information) including method statements, cash flow statements, programmes and health and safety policies/procedures as the Trust may reasonably require in connection with the Contract Works.
- 15.6 The liability of Concessionco under this Agreement shall not be in any way affected by any approval, comment, representation, consent, enquiry or inspection into any relevant matter which may be made or carried out by or on behalf of the Trust or by any failure to give or carry out any such approval, comment, representation, consent, enquiry or inspection.
- 15.7 Concessionco shall procure that the Trust's Representative is provided with copies of the following as and when the same are prepared, executed or issued:
 - (a) the Construction Contract (including all amendments thereto or variations issued thereunder from time to time);
 - (b) the Building Contractor's master programme (and any modification thereof from time to time) for the Contract Works;

the commencement of Pre-Completion Commissioning and shall ensure that the Trust's Representative is invited to witness all Pre-Completion Commissioning and is provided with all information he may reasonably require in relation thereto.

- 18.5 If the Trust's Representative, acting reasonably, makes any reasonable comment in relation to the carrying out of the Pre-Completion Commissioning such comment shall be taken into account by Concessionco.
- 18.6 The items of the Trust Equipment which are, as set out in the Detailed Commissioning Schedule, to be transferred and/or installed by Concessionco to and/or at the Facility in the course of Pre-Completion Commissioning shall be made available by the Trust to Concessionco at such times and in such manner as may be specified in the Detailed Commissioning Schedule or as may be reasonable in all the circumstances and the Trust shall provide such assistance and co-operation in relation thereto as Concessionco may reasonably require.
- 18.7 When the Works have been completed in accordance with this Agreement, (subject to minor snagging items which do not adversely affect the beneficial occupation of the Facility and/or the provision of the Services) Concessionco shall issue to the Trust the Completion Certificate and Completion shall be deemed to have taken place on the date of issue of the Completion Certificate but without prejudice to any rights of the Trust in respect of any defects in the Works.
- 18.8 The Completion Certificate shall state the Payment Commencement Date which shall be the date falling 14 days after the date of issue of the Completion Certificate.
- 18.9 Any minor snagging items shall be set out in a list attached to the Completion Certificate and shall be completed or made good, as the case may be, to the reasonable satisfaction of the Trust's Representative as soon as practicable after Completion.
- 18.10 As soon as it is available, and in any event before issue of the Completion Certificate, Concessionco shall provide to the Trust a copy of the as-built Building Specification.

19. POST-COMPLETION COMMISSIONING

- 19.1 Concessionco and the Trust shall, within the period of 14 days following the date stated in the Completion Certificate respectively undertake and complete Concessionco's Post-Completion Commissioning and the Trust's Post-Completion Commissioning in accordance with the Detailed Commissioning Schedule.
- 19.2 Concessionco shall ensure that the Trust's Representative is provided with all information he may reasonably require in relation to Concessionco's Post-Completion Commissioning and the Trust shall ensure that Concessionco's Representative is provided with all information he may reasonably require in relation to Trust's Post-Completion Commissioning.

- 19.3 If the Trust's Representative, acting reasonably, makes any reasonable comment in relation to the carrying out of Concessionco's Post-Completion Commissioning such comments shall be taken into account by Concessionco and if Concessionco's Representative acting reasonably, makes any reasonable comment in relation to the carrying out of the Trust's Post-Completion Commissioning such comment shall be taken into account by the Trust.
- [19.4 The items of the Trust Equipment which are, as set out in the Detailed Commissioning Schedule, to be disconnected or dismantled, transferred and/or installed by Concessionco to and/or at the Facility in the course of Concessionco's Post-Completion Commissioning shall be identified and made available by the Trust to Concessionco at such times and places and in such manner as may be specified in the Detailed Commissioning Schedule or as may be reasonable in all the circumstances and the Trust shall provide such assistance and co-operation in relation thereto as Concessionco may reasonably require. The Trust acknowledges that the suitability and fitness for purpose of the Trust's Equipment is the sole responsibility of the Trust (but without prejudice to Concessionco's obligation to use all proper care in transferring and/or installing the Trust's Equipment to and/or at the Facility).

Likely that this clause will not be required]

SECTION C: PHASE II - SERVICES AND GENERAL PROVISIONS

20. COMMENCEMENT OF SERVICES

- 20.1 Commencing on the Services Commencement Date Concessionco shall commence and proceed with the Services in accordance with and subject to this Agreement. In the period from the Services Commencement Date to the Payment Commencement Date Concessionco shall perform the Services subject to such modifications as to the scope, manner and timing of their performance as may be necessary and appropriate in all the circumstances (including without limitation the extent to which the Facility is in use) to take account of the carrying out during such period of the Trust's Post-Completion Commissioning and Concessionco's Post-Completion Commissioning.
- 20.2 As soon as reasonably practicable after the Services Commencement Date Concessionco will grant and the Trust will accept the grant of the Sublease in accordance with the provisions of Schedule [] Part [] *[(which provisions together with the provisions of Part [] of Schedule [] are hereby incorporated into this Clause 20.2 as though the same were set out herein in extenso in order to satisfy the requirements of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989)]* and the following shall apply:
- (a) The term of the Sublease shall commence on the Services Commencement Date and shall end subject to earlier determination as therein provided on the day *[three days before the expiry of the term of the Lease]*.
 - (b) From the Services Commencement Date until the grant of the Sublease pursuant to this Clause Concessionco shall permit the Trust, its employees, servants, agents, workmen, subcontractors, any Additional Service Contractor and those authorised

by it to enter the premises to be let by the Sublease and to use and enjoy the same and the rights [*appurtenant thereto*] as though the Sublease had already been granted subject to the Trust during such period observing and performing obligations on its part as though the Sublease had already been granted.

- (c) If this Agreement shall remain in force as at the expiry by effluxion of time of the term granted by the Sublease, then during the period commencing on the day after the expiration of the said term and expiring on the last day of the term granted by the Lease Concessionco shall permit the Trust, its employees, servants, agents, workmen, subcontractors, any Additional Service Contractor and those authorised by it to enter the premises previously let by the Sublease and to use and enjoy the same and the rights appurtenant thereto as though the term of the Sublease had not expired (subject to the Trust during such period continuing to observe and perform the obligations on its part contained in the Sublease).

20.3 (a) On the date of this Agreement, Concessionco shall enter into the FM Contract with the FM Contractor, such contract to be in the form set out in Schedule []. For the purposes of Clauses 45.1(d), 45.3(d) and 46.1(c) the Trust acknowledges and agrees that Concessionco and the FM Contractor and Concessionco and the Operation Manager have entered into the FM Contract and the Operation Management Contract respectively on an arms length basis.

- (b) Concessionco shall comply with the terms of and promptly carry out all its duties under the FM Contract provided that breach of this Clause 20.3(b) shall entitle the Trust only to those remedies expressly provided in this Agreement.

- (c) Concessionco shall not without the Trust's prior written consent, which consent shall not be unreasonably withheld or delayed, compromise or waive any claim it may have against the FM Contractor in any way which would or might materially adversely affect the interests of the Trust.

20.4 Without prejudice to Concessionco's obligations under this Agreement, Concessionco shall, and shall use all reasonable endeavours to procure that the FM Contractor and any Service Provider will during and throughout the Contract Period, comply with the Trust Procedures and with any Legal Requirements applicable to the Services and to the other obligations of Concessionco arising under this Agreement.

20.5 Concessionco shall procure that it shall be at liberty to make available and shall make available to the Trust at any time in case of emergency and otherwise within 20 Business Days such information as the Trust may reasonably require (including without limitation information as to the health of any of Concessionco's employees or of any Service Provider's employees, subject to duties of confidentiality to such employees) to enable the Trust to verify that the obligations of Concessionco under Clause 20.3 and Clause 20.4 are being complied with.

- 20.6 Concessionco shall, in the performance of the Services, use all reasonable endeavours to ensure that all staff employed by the FM Contractor and any Service Provider are suitably skilled and qualified.

21. LETTER OF UNDERTAKING (SERVICES)

Concessionco shall on the date of this Agreement procure and deliver to the Trust a duly executed letter of undertaking by the FM Contractor and any other Service Provider who may contract with Concessionco for the provision of the Services in the form set out at Schedule [] and shall, prior to the appointment by Concessionco of any further Service Provider, procure and deliver to the Trust such a duly executed letter of undertaking by such Service Provider in such form.

22. CONTRACT MONITORING

- 22.1 Concessionco will carry out the monitoring and reporting procedures for each of the Services in the manner and at the frequencies set out in the relevant Service Level Specification.
- 22.2 The Trust may at all reasonable times (and subject to Clause 6) observe, inspect and satisfy itself as to the adequacy of the monitoring procedures carried out pursuant to this Clause and carry out sample checks upon such monitoring procedures or otherwise to monitor Concessionco's performance of the Services as the Trust may reasonably consider appropriate. Concessionco shall provide the Trust with such assistance, co-operation, access, documentation, records and other information as the Trust may reasonably require in order to exercise such right.
- 22.3 Subject to Clause 30, Concessionco shall comply with all reasonable requests of the Trust to improve or alter any of its monitoring systems and procedures.
- 22.4 Concessionco's Representative and the Trust's Representative shall hold monthly meetings to discuss the provision of each of the Services (including without limitation the Planned Preventative Maintenance), such monthly meetings to be held in addition to any other meeting which may be specified in any Service Level Specification. Such meetings are to be minuted by Concessionco's Representative and copies of minutes circulated to the Trust's Representative.

23. INFORMATION TECHNOLOGY

- 23.1 Without prejudice to Clause 23.3, Concessionco shall provide a data communications network for the exclusive use of the Trust at the Facility in accordance with the Building Specification.
- 23.2 Concessionco shall not be entitled to use any part of the Trust's data communications network for any purposes without prior written consent of the Trust (such consent not to be unreasonably withheld).

23.3 Upon the termination of this Agreement (howsoever occasioned and without prejudice to the rights and obligations of the parties under Clause 48), Concessionco shall, at the Trust's written request, do any one or more of the following:

- (a) deliver up to the Trust all or any off-line storage and security copies of the Trust's data which relates to the provision of Services stored in Concessionco's IT System ("the Service Provision Data");
- (b) dump on to magnetic media (or equivalent) all or any of the Service Provision Data and deliver up such media to the Trust;
- (c) erase all or any of the Service Provision Data then in the Concessionco's possession from the magnetic media (or equivalent) on which the Service Provision Data is stored;
- (d) make and deliver up to the Trust such print-outs of the Service Provision Data as the Trust may reasonably require;
- (e) provide the Trust with all such information as it may reasonably require regarding data structure as necessary to enable it to access the Service Provision Data;
- (f) provide the Trust with such other assistance as the Trust may reasonably require in connection with the handover of the Service Provision Data;

provided always that the Trust shall reimburse (against an invoice submitted and payable in accordance with Clause 25.10) to Concessionco its reasonable costs incurred in complying with this Clause and Clause 23.4 in the event that the Agreement is being terminated for any reason other than pursuant to Clause 40.

23.4 If upon termination of this Agreement the Trust shall require Concessionco to deliver up any of the Service Provision Data on magnetic media (or equivalent) then Concessionco shall:

- (a) deliver up such Service Provision Data on industry compatible magnetic media (or equivalent) as reasonably specified by the Trust; and
- (b) supply to the Trust all information reasonably necessary to enable such magnetic media (or equivalent) to be read on another computer (but any conversion or migration of data shall be the responsibility of the Trust).

23.5 Concessionco will institute and keep in place a system for safeguarding Concessionco's IT System and any data contained therein and will at its own expense make regular back-up copies of all such data and Concessionco shall put in place appropriate disaster recovery arrangements.

24. ENERGY AND BUSINESS RATES

- 24.1 For the duration of Phase II, Concessionco shall, subject to the provisions of this Agreement maintain distribution systems for electricity, gas, telephone, water and sewerage on the Site and shall maintain the availability of all supplies of electricity, gas, and water and the integrity of sewerage systems for use at the Site.
- 24.2 (a) All such electricity, gas, telephone, water and sewerage services shall be provided by Concessionco free of charge subject to Concessionco making payment to the Trust for Concessionco's own telephone usage. Concessionco shall pay the relevant metered charges to the Trust on receipt of the Trust's invoices, which invoices shall be rendered at such intervals as the parties may from time to time agree.
- (b) Concessionco shall make such provision at its own cost as may be necessary for the supply of fuel oil to the Facility and shall invoice the Trust (at such intervals as the parties may from time to time agree) for the costs reasonably and properly incurred thereby. The Trust shall settle such invoices in accordance with Clause 25.
- 24.3 Concessionco shall in the provision of the Services use all reasonable endeavours to use electricity, gas, fuel oil, water and any other relevant utilities supplied to the Facility and the Site economically and efficiently and shall use all reasonable endeavours to ensure that the FM Contractor and all Service Providers shall do likewise (but not to the detriment of the provision of the Services).
- 24.4 All business rates payable with regard to the Site shall be apportioned between the areas underlet to the Trust pursuant to the Sublease and the remainder (if any) of the Site on a floor area basis and the apportioned amount relating to the areas underlet to the Trust shall be payable by the Trust and the apportioned amount relating to the remainder of the Site will be payable by Concessionco.

25. PAYMENT

- 25.1 With effect from (and including) the Services Commencement Date until (but excluding) the Payment Commencement Date the Trust shall pay to Concessionco:
- (a) a reasonable price in respect of the Services performed in such period (to be determined on a quantum meruit basis having regard, among other things, to the Performance Related Payment); and
- (b) such other sums arising in such period including, without limitation, amounts payable under Clause 24 as are to be paid by the Trust to Concessionco under this Agreement.
- 25.2 With effect from and including the Payment Commencement Date, the Trust shall pay to Concessionco:

- (a) the Availability Payment;
- (b) the Performance Related Payment; and
- (c) such other sums arising on and after the Payment Commencement Date including, without limitation, amounts payable under Clause 24 as are to be paid by the Trust to Concessionco under this Agreement.

25.3 The payments referred to in Clauses 25.1 and Clause 25.2 shall be made by bank transfer (in immediately available funds) to such bank account or accounts as Concessionco may from time to time direct. Except as may be agreed by the parties such payments (and any other payments payable by the Trust under any Project Agreement) shall be made in full and without set-off, counterclaim or withholding of any kind save (subject to Clause 48.1) in respect of any monies which shall be the subject of any award or decision under the Disputes Resolution Procedure or the judgment of a Court of competent jurisdiction or otherwise be indisputably payable by Concessionco to the Trust hereunder which sum shall be deductible by the Trust from any monies payable to Concessionco by the Trust hereunder.

25.4 Concessionco shall issue invoices to the Trust for sums payable by the Trust to Concessionco under this Agreement as follows:

- (a) in respect of the Initial Period, Concessionco shall issue its invoice to the Trust no earlier than the Services Commencement Date and no later than the Payment Commencement Date;
- (b) in respect of each subsequent Quarter and the Final Period, Concessionco shall issue its invoice to the Trust no earlier than 10 Business Days from the last day of the immediately preceding Quarter and in each case on or before the 3rd Business Day following receipt by the Trust of Concessionco's invoice the Trust shall pay to Concessionco the amounts properly included in such invoice and such sums shall become due and payable on that 3rd Business Day following receipt by the Trust of Concessionco's invoice.

25.5 The adjustments (if any) to the Availability Payment for any Quarter shall be ascertained pursuant to Clause 26 and the adjustments (if any) to the Performance Related Payment for any Quarter shall be ascertained pursuant to Clause 27 and shall be applied as follows:

- (a) in respect of the Initial Period and each subsequent Quarter such adjustments shall be taken into account in the invoice issued by Concessionco with respect to the immediately succeeding Quarter by addition to or deduction from (as the case may be) the amount which would but for such adjustment, have been included in such invoice in respect of the Availability Payment or Performance Related Payment (as the case may be);
- (b) in respect of the Final Period the Trust shall be entitled to withhold as a retention a sum equivalent to 5% of the amount payable to Concessionco pursuant to

Concessionco's invoice issued in the Quarter immediately preceding the Final Period. Within [] Business Days after the last Day of the Final Period, the Trust shall pay such retention to Concessionco, subject to any adjustments to be made to the Availability Payment and to the Performance Related Payment pursuant to Clauses 26 and 27 in respect of the Final Period. In the event that the amount of such retention is insufficient to discharge any such adjustment, the Trust shall issue an invoice to Concessionco for the amount necessary to discharge such adjustment and on or before the third Business Day following receipt by Concessionco of the Trust's invoice Concessionco shall pay the Trust all amounts properly included in such invoice.

- 25.6 In relation to the Initial Period and the Final Period the Trust shall pay to Concessionco the Availability Payment and the Performance Related Payment, both as adjusted pursuant to Clauses 26 and 27 respectively, and in each case multiplied by a fraction of which the numerator is the total number of days comprised in the Initial Period or the Final Period (as the case may be) and the denominator is the number of days in the Quarter in which the Initial Period or the Final Period (as the case may be) falls.
- 25.7 Upon each Review Date the Availability Payment and the Performance Related Payment shall be adjusted to take account of any increase or reduction in GDP Deflator between:
- (a) in respect of the first Review Date, [*the base date*] and in respect of all subsequent Review Dates, the immediately previous Review Date, or, with respect to the Performance Related Payment only, the later of the immediately previous Benchmark Date and the immediately previous Review Date and
 - (b) the current Review Date
- such adjustments to take effect from each Review Date.
- 25.8 For the avoidance of doubt (and without prejudice to any liability of Concessionco under Clause 38 (Indemnity) and Clause 40 (Termination) the adjustments made in calculating the Total Payment pursuant to Clause 26 and Clause 27 shall be deemed inclusive and in full satisfaction of any liability of Concessionco to the Trust whether in contract, tort, for breach of statutory duty or otherwise in respect of any failure by Concessionco to perform any of its obligations under this Agreement in relation to the performance of the Services and the availability of the Facility (save in relation to any claim against the Trust by any third party arising out of any act or default of Concessionco).
- 25.9 If any payment due from either party to the other pursuant to this Agreement shall remain unpaid after the due date for such payment, interest shall accrue on such amount on a daily basis (after as well as before judgment and/or the date of termination of this Agreement) at the Appropriate Rate.
- 25.10 Without prejudice to any other provision of this Agreement all other sums payable by the Trust to Concessionco or by Concessionco to the Trust shall be due and payable on or

before the third Business Day following receipt by the Trust of Concessionco's invoice or, as the case may be, receipt by Concessionco of the Trust's invoice in respect thereof.

26. AVAILABILITY

26.1 The adjustments (if any) to the Availability Payment for any Quarter (or for the Initial Period or the Final Period as the case may be) shall be ascertained according to the procedure set out in this Clause.

26.2 If one or more of the circumstances set out in Part A or B of the non-availability criteria set out in Schedule [] shall occur at the Facility otherwise than as a result of any of the matters referred to in paragraphs (i) to (iii) of Clause 6.6 and such circumstances shall, in the reasonable opinion of the Senior Trust Officer, cause any of the areas of the Facility identified in Schedule [] to be unavailable for clinical use, the following procedure shall apply:

- (i) the Senior Trust Officer shall complete Section I of a Notice of Unavailability and shall deliver such notice to Concessionco's Representative;
- (ii) if such circumstances (or any of them) shall remain unremedied by Concessionco for a continuous period of three hours in any 24 Hour Period [*or, in the case of an area the subject of a Notice of Unavailability delivered pursuant to paragraph (a) above of the same Area Type within such 24 Hour Period, a continuous period of one hour in any 24 Hour Period*] in each case commencing at the time when the Notice of Unavailability was delivered to Concessionco in accordance with paragraph (i) above, the Senior Trust Officer may complete Section 2 of the Notice of Unavailability and (if completed) shall deliver such notice to Concessionco's Representative [*provided that the Trust shall not be entitled to issue a Notice of Unavailability pursuant to this paragraph (ii) (a "Section 2 Notice") in respect of any Area Type if deduction percentages have been allotted from each column in Schedule [] in respect of that Area Type in other Section 2 Notices which have not yet expired so that at no time shall the total deduction percentage for each Area Type exceed the total for that Area Type set out in Schedule [] in any 24 Hour Period*];
- (iii) subject to Clause 26.5, in any such case the relevant area or areas [*or sub-area or sub-areas*] shall thereupon be deemed unavailable for clinical use for the remainder of the 24 Hour Period (calculated by reference to the number of whole hours remaining in the relevant 24 Hour Period from the time specified in the Notice of Unavailability delivered pursuant to paragraph (i) above) in which the relevant Notice of Unavailability was delivered to Concessionco in accordance with paragraph (i) above provided that (i) a Section 2 Notice has been completed by the Senior Trust Officer pursuant to paragraph (ii) above and delivered to Concessionco's Representative, (ii) the relevant area or areas [*or sub-area or sub-areas*] have been taken out of use by the Trust and (iii) the Trust does not use for any purpose, other than for access to other areas [*or sub-areas*] of the Facility that

are not the subject of a Notice of Unavailability delivered pursuant to paragraph (ii) above, the area [or sub-area] the subject of that Notice of Unavailability;

- (iv) where in any such case the relevant area or areas [or sub-area or sub-areas] remain, in the reasonable opinion of the Senior Trust Officer, unavailable for clinical use at the expiry of the 24 Hour Period stipulated in such Notice of Unavailability, the procedures in paragraphs (i), (ii) and (iii) above shall be repeated in respect of the following 24 Hour Period;
- (v) where the Trust commences use of an area [or sub-area] deemed unavailable pursuant to this Clause 26 for any purpose, other than for access to other areas [or sub-areas] of the Facility that are not the subject of a Notice of Unavailability delivered pursuant to paragraph (ii) above, then the relevant area [or sub-area] shall be deemed to be available and no further adjustment to the Availability Payment shall be made from the time that the Trust commences use unless a Notice of Unavailability is subsequently delivered pursuant to paragraph (ii) above in respect of the same area [or sub-areas];
- (vi) if any area [or sub-area] is deemed available pursuant to the provisions of paragraph (v) above and the Trust proposes to issue any further Section 2 Notices within the 24 Hour Period when such area, [or first such sub-area of any area, as applicable], was deemed unavailable in accordance with the provisions of paragraph (iii) above, then, for the purposes only of allotting deduction percentages pursuant to paragraph (ii) above in any Section 2 Notice delivered before such 24 Hour Period would have expired (but for the provisions of paragraph (v) above), the Section 2 Notice first delivered in respect of such area [or sub-area] shall be deemed not to have expired until the end of the 24 Hour Period stated in such notice.

26.3 *The deduction percentage for each [Area Type] shall be as set out in Schedule []. For the first area or sub-area of each Area Type which is unavailable as a result of the delivery of a Section 2 Notice, the deduction percentage shall be that set out in the first column (pro-rated in respect of each sub-area); for the second area or sub-area of each Area Type which is unavailable following the issue of a Section 2 Notice, the deduction percentage shall be that set out in the second column (pro-rated in respect of each sub-area); and so on, provided that (i) if any sub-area is unavailable in accordance with the provisions of Clause 26.2(iii) and such sub-area is a sub-area of the same area in respect of any other sub-areas of which other Section 2 Notices have been delivered and have not yet expired, the deduction percentage allotted in respect of such sub-area shall be as set out in the same column applicable to the first sub-area of such area the subject of a Section 2 Notice which has not yet expired (pro-rated) and the 24 Hour Period in respect of such sub-area shall be deemed to expire at the same time as the 24 Hour Period stated in the Section 2 Notice in respect of such first sub-area and (ii) subject to the provisions of Clause 26.2(vi) the Trust shall be entitled in any Section 2 Notice to allot the deduction percentage (pro-rated in respect of each sub-area) from any column in Schedule 24 in respect of that Area Type which column has not been allocated in other Section 2 Notices which have not yet expired.*

- 26.4 The provisions of Clause 68 shall not apply to the provisions of this Clause 26. Any notice given by the Senior Trust Officer under this Clause 26 shall be in writing and shall be delivered in person to Concessionco's Representative or, in the event that Concessionco's Representative is not then present at the Facility, the Senior Trust Officer shall immediately advise Concessionco's Representative of his intention to issue the Notice and shall deliver such Notice to Concessionco's Representative as soon thereafter as reasonably practicable. In any such case the notice shall be deemed to have been delivered at the time of receipt by Concessionco's Representative of such advice.
- 26.5 If Concessionco's Representative disputes any of the opinions of the Senior Trust Officer referred to in Clause 26.2 Concessionco's Representative may request the opinion on such matter of any member of the Project Panel. The Senior Trust Officer shall take proper account of such opinion and shall thereupon immediately confirm, withdraw or modify his opinion in respect of such matter and shall inform Concessionco's Representative accordingly.
- 26.6 The Trust shall procure that the Senior Trust Officer shall at all times act in good faith in carrying out his functions under Clause 26.2 and Clause 26.5.
- 26.7 If, pursuant to Clause 26.2 but subject to Clauses 6.6, 25.3, 26.5, 26.8, 26.9 and 39.5 any area [*or sub-area*] of the Facility identified in Schedule [] is deemed to be unavailable for clinical use for any 24 Hour Period, an adjustment shall be made to the Availability Payment in respect of that area [*or sub-area*] for the Quarter (or the Initial Period or the Final Period as the case may be) in which that 24 Hour Period or part of a 24 Hour Period falls, such reduction in respect of each Day in which any 24 Hour Period or part thereof falls to be equal to "R" in the following formula:

$$R = \frac{c}{b} \times d \times \frac{e}{24}$$

where:

"b" equals the number of days in the Quarter (or the Initial Period or the Final Period as the case may be) in question;

"c" equals the amount of the Availability Payment for the Quarter (or the Initial Period or the Final Period as the case may be) in question (before adjustment pursuant to this Clause);

"d" equals the percentage deduction indicated in Schedule [] in respect of the area [*or sub-area*] of the Facility deemed to be unavailable for clinical use pursuant to Clause 26.2; and

"e" equals the number of whole hours in a Day in respect of the area [*or sub-area*] of the Facility deemed to be unavailable for clinical use pursuant to this Clause 26; and

in this Clause, "a Day" means any period of 24 hours ending at midnight.

- 26.8 It is agreed that in the event that more than one of the areas [*or sub-areas*] of the Facility identified in Schedule [] shall be deemed to be unavailable for clinical use for the same 24 Hour Period or part thereof the respective adjustments to the Availability Payment for that Day or Days in which such 24 Hour Period or part thereof falls calculated pursuant to this Clause 26 shall be aggregated but so that in no event shall such aggregate adjustment in respect of all [*Area Types*] (taken together) in respect of any 24 Hour Period exceed 100% of the maximum Availability Payment payable in respect of any one Day.
- 26.9 No adjustment to the Availability Payment for any Quarter (or for the Initial Period or the Final Period as the case may be) will be made in respect of the unavailability for clinical use of any of the areas [*or sub-areas*] of the Facility identified in Schedule [] where such unavailability is caused by the timely, reasonable and proper carrying out by Concessionco of Planned Preventative Maintenance.

27. **PERFORMANCE**

- 27.1 Subject to the provisions of the Lenders Direct Agreement, the Trust and Concessionco undertake and agree that as soon as is practicable and in any event not less than 75 Business Days before the date anticipated for Completion in the Contractor's Programme they shall together develop and agree a more detailed monitoring system in respect of the Services, such monitoring to be based on the following agreed principles:
- (a) no adjustment shall be made in respect of any score to be awarded to Concessionco for any de minimis failure to comply with any scope of Service or any Minimum Service Standard;
 - (b) any adjustment to be made in respect of any one Performance Indicator or Verification Indicator (as the case may be) shall be proportionate to the whole number of Performance Indicators or Verification Indicators (as the case may be) in respect of each scope of Service or Minimum Service Standard respectively;
 - (c) the range of score to be awarded in respect of any task or activity shall be the same for each Area, save that the Trust, acting reasonably, shall be entitled to allot different weightings in respect of such Areas;
 - (d) without prejudice to any other provisions of this Agreement, if Concessionco meets the obligations set out in respect of any Service, it shall be awarded a Performance Percentage of 100 for such Service;
 - (e) only if Concessionco fails to meet all or substantially all of the obligations set out in the Service Level Specification for any Service shall the Trust be entitled to award a Performance Percentage of less than 75 for such Service;

- (f) if Concessionco meets none of the obligations set out in the Service Level Specification for any Service, the Trust shall award a Performance Percentage of zero percent for such Service.

27.2 Within 6 Business Days after the last day of each Month during Phase II, and within 6 Business Days after termination of this Agreement, the Trust shall, in respect of each of the Services, provide to Concessionco a notice (a "Performance Notice") which shall subject to Clause 27.15, list in respect of that Month:

- (a) a statement of the Performance Percentage achieved for that Service and the corresponding adjustment to the Performance Related Payment as set out in and calculated in accordance with the relevant Service Level Specification;
- (b) a statement of the adjustments to be made to the Performance Related Payment for Faults which rendered the Facility or any part thereof unavailable for use as set out in and determined in accordance with the relevant Service Level Specification;
- (c) a statement of the adjustments to be made to the Performance Related Payment for such Service where such Service was not provided as a result of a Fault in the performance of any other Service;
- (d) a statement of the adjustment to be made to the Performance Related Payment for Volume in relation to (and as defined in) the relevant Service Level Specification;
- (e) a statement of the adjustment of the Performance Related Payment with respect to any amount ascertained pursuant to Clause 27.16; and
- (f) the aggregate of adjustments to the Performance Related Payment (as set out in (a) to (e) above),

provided that:

- (i) if the Trust shall fail to provide to Concessionco a Performance Notice within the period specified in this Clause, it shall be deemed to have provided such a notice stating a Performance Percentage for each Service of the maximum possible score with no such adjustments as are referred to in paragraphs (b) and (c) above; and
- (ii) if the Trust shall fail to provide to Concessionco a Performance Notice with respect to any Month within the period provided in this Clause, then the Trust shall be entitled to include the adjustments referred to in paragraphs (a) to (e) above in a Performance Notice for the next Month but shall not be entitled to include such adjustments in a Performance Notice for any Month subsequent to the next Month; and
- (iii) where an adjustment is made to the Performance Related Payment pursuant to the provisions of this Clause as a consequence of any event set out in Clause 33.1 then the Performance Percentage determined for

the purposes of Clauses 27.8 to 27.11 (inclusive) shall be deemed to be the Performance Percentage unadjusted for such event.

- 27.3 In respect of the Performance Related Payment for each Quarter an adjustment shall be made for the purposes of Clause 25.5. The amount of such adjustment shall be the aggregate of adjustments referred to in Clause 27.2(f) above for each Month of the immediately preceding Quarter or the Initial Period or the Final Period as the case may be.
- 27.4 If Concessionco disputes any matter referred to in any Performance Notice Concessionco's Representative may request the opinion of any member of the Project Panel upon such matter. The Trust shall take proper account of such opinion and shall thereupon immediately confirm, withdraw or modify the Performance Notice in respect of such matter and shall inform Concessionco accordingly.
- 27.5 If in any Quarter in respect of any Month a Performance Percentage of 95% or higher is achieved for any Service, then the excess may, at the request of Concessionco, be allocated to any other Performance Notice for that Service during the same Quarter, in order to increase the recorded Performance Percentage for that Service where in the Performance Notice for any other Month in that Quarter a Performance Percentage of less than 95% has been recorded.
- 27.6 If in respect of any Month a Performance Percentage of 95% or higher is achieved for any Service, then the Trust shall record a Performance Percentage of 100% for such Service in the Performance Notice for the relevant Month subject to any adjustments referred to at paragraphs (b), (c), (d) and (e) of Clause 27.2.
- 27.7 Without prejudice to the generality of the foregoing, in respect of the period of one month from the Payment Commencement Date there shall be no adjustment to the Performance Related Payment in relation to any Service in respect of a Fault in the performance of such Service unless such Fault arises out of or in connection with any event which has caused a reduction in the Availability Payment for that period pursuant to and in accordance with Clause 26.
- 27.8 If the Performance Percentage recorded in any Performance Notice given or deemed to have been given for the same Service (but subject to Clause 27.4) is greater than 70% but less than 75% for two successive Months (disregarding any adjustments included in respect of a previous Month pursuant to the second proviso to Clause 27.2 and disregarding in the calculation of any such Performance Percentage (unless and until resolved in the Trust's favour) any category of scope of Service or any Minimum Standard for which the score to be awarded to Concessionco is still being disputed), the Trust will be entitled to issue to Concessionco a Termination Warning, such Termination Warning to be issued within ten days after the date of the Performance Notice in respect of which it is given or (if later) within 10 Business Days after the issue of a confirmation, withdrawal or modification pursuant to Clause 27.4 or the determination of any dispute relating to the same.

- 27.9 The Termination Warning will state that, if, for the period of two successive Months starting with the first day of the Month following the date of the issue of the Termination Warning (or, if later, the date of issue of a withdrawal, confirmation or modification pursuant to Clause 27.4), the Performance Percentage recorded in any Performance Notice for such Service (but subject to Clause 27.4) in respect of both of those Months is less than 75% (disregarding any adjustments included in respect of a previous Month pursuant to the second proviso to Clause 27.2 and disregarding in the calculation of any such Performance Percentage (unless and until resolved in the Trust's favour) any category of scope of Service or any Minimum Standard for which the score to be awarded to Concessionco is still being disputed), then the Trust shall be entitled to require Concessionco by notice in writing to be given within 10 Business Days after the issue of the Performance Notice for the second such Month in respect of such Service or within 10 Business Days after the determination of any dispute relating to the same to appoint or procure the appointment of a replacement Service Provider in respect of such Service following the end of the second of those Months.
- 27.10 If, following the end of the two Months referred to in Clause 27.9, the Performance Percentage recorded in any Performance Notice for any such Service (but subject to Clause 27.4) in respect of both of those Months is less than 75% (disregarding any adjustments included in respect of a previous Month pursuant to the second proviso to Clause 27.2 and disregarding in the calculation of any such Performance Percentage (unless and until resolved in the Trust's favour) any category of scope of Service or any Minimum Standard for which the score to be awarded to Concessionco is still being disputed) then the Trust shall be entitled to require Concessionco by notice in writing to be given within 10 Business Days after the issue of the Performance Notice for the second such Month in respect of such Service or within 10 Business Days after the determination of any dispute relating to the same to appoint or procure the appointment of a replacement Service Provider in respect of such Service following the end of the second of those Months.
- 27.11 If the Performance Percentage recorded in any Performance Notice given or deemed to have been given for the same Service falls below 70% (but subject to Clause 27.4) in any two Months out of any three successive Months (disregarding any adjustments included in respect of a previous Month pursuant to the second proviso to Clause 27.2 and disregarding in the calculation of any such Performance Percentage (unless and until resolved in the Trust's favour) any category of scope of Service or any Minimum Standard for which the score to be awarded to Concessionco is still being disputed) the Trust shall be entitled to require Concessionco by notice in writing to be given within 10 Business Days after the issue of the Performance Notice for the second such Month in respect of such Service or within 10 Business Days after the determination of any dispute relating to the same to appoint or procure the appointment of a replacement Service Provider in respect of such Service.
- 27.12 Upon the Trust requiring Concessionco to appoint or procure the appointment of a replacement Service Provider pursuant to this Clause Concessionco shall within 45 Business Days appoint or procure the appointment of such a replacement Service

Provider, provided that Concessionco shall not be in breach of this Clause 27.12 if such breach arises as a consequence of Concessionco complying with any Legal Requirement.

- 27.13 It shall be considered a material breach of this Agreement entitling the Trust to terminate this Agreement pursuant to Clause 40.2 if either (i) four Service Providers in respect of a single Service or (ii) Service Providers in respect of four different Services are replaced upon requirement of the Trust pursuant to this Clause 28 in any three year period, provided that if within three months of the end of any three year period a Service Provider is replaced in respect of a single Service for the third time in such three year period the Trust shall be entitled to terminate this Agreement pursuant to Clause 40.2 if Concessionco is not able to show to the Trust's reasonable satisfaction by the date that is three years and three months from the date the first Service Provider in such three year period was replaced that the then current Service Provider of such Service can perform the obligations set out in the Service Level Specification for that Service.
- 27.14 If in any period of three years either:
- (a) three Service Providers in respect of a single Service have been replaced upon the requirement of the Trust pursuant to Clause 27 and either a Termination Warning is given or a notice is given by the Trust pursuant to Clause 27.11 in respect of that Service; or
 - (b) Service Providers in respect of three different Services have been replaced upon the requirement of the Trust pursuant to Clause 27 and either a Termination Warning is given or notice is given by the Trust pursuant to Clause 27.10 in respect of any other Service, then Concessionco shall consult with the Trust as to how it intends to perform or procure the performance of the relevant Service or Services and shall take proper account of the opinions of the Trust in the course of such consultation.
- 27.15 Save as set out in 27.16 below, no adjustment to the Performance Related Payment in relation to any Service shall be made where the performance of any Service is prevented, hindered or discontinued, whether wholly or in part by the timely, reasonable and proper carrying out by Concessionco of any of its obligations concerning Planned Preventative Maintenance.
- 27.16 Where the avoidable costs to Concessionco in the provision of any Service are reduced in any Month due to the prevention, hindrance or discontinuance of that Service as described in Clause 27.15, a statement (with applicable supporting evidence) of such cost saving shall be presented by Concessionco to the Trust within 2 Business Days after the last day of each Month during Phase II and within 2 Business Days after the termination of this Agreement. If the Trust agrees with Concessionco's statement of cost saving, such statement will be listed in the Performance Notice pursuant to Clause 27.2(e). If the Trust disputes any statement of cost saving provided pursuant to this Clause 27.16, the Trust shall give advice in writing of such dispute to Concessionco within 4 Business Days of receipt of such statement.

27.17 If the Trust gives advice in writing of a dispute under Clause 27.16 Concessionco's Representative may request the opinion of any member of the Project Panel upon such dispute. The Trust shall take proper account of such opinion and shall within two Business Days of receipt of the opinion confirm, withdraw or modify the said advice in writing and shall inform Concessionco accordingly.

27.18 If for any reason other than an event of Force Majeure Concessionco

- (a) is in the reasonable opinion of the Trust's Representative failing to perform substantially all of its obligations under any Service Level Specification; or
- (b) fails immediately on receipt to comply with a notice properly given by the Trust under this Clause 27 to appoint or procure the appointment of a replacement Service Provider;

and in either case such failure has or will have a materially adverse effect on the ability of the Trust to provide all or substantially all of the clinical services at the Facility, then the Trust shall be entitled, upon giving written notice of such intention to Concessionco's Representative, itself to perform or procure the performance of the Services so affected until such time as:

- (i) in the case of (a) above, Concessionco has demonstrated to the reasonable satisfaction of the Trust's Representative that it is able immediately to resume the performance of such obligations; and
- (ii) in the case of (b) above, Concessionco has procured the appointment of a suitable replacement Service Provider.

27.19 In any case where pursuant to Clause 27.18 the Trust shall itself perform or procure the performance of any Service, the following shall apply:

- (a) the Trust shall procure that in the Performance Notice in respect of any such Service for the period during which such Service was performed by the Trust pursuant to Clause 27.18 there shall be recorded no adjustments to the Performance Percentage for that Service with respect to the matters referred to in Clause 27.2(a) to (e) and the Trust shall record a Performance Percentage of 100% in that Performance Notice; and
- (b) Concessionco shall reimburse the Trust its direct costs reasonably and necessarily incurred in performing such Service; and
- (c) the Trust shall perform such Service with proper skill and care and in accordance with the relevant provisions of the Service Level Specifications; and
- (d) the Trust shall indemnify and hold Concessionco harmless against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses incurred by Concessionco or arising as a result of any breach by the Trust of any of its

obligations under this Clause or as a consequence of performing or procuring the performance of any Service pursuant to this Clause.

28. BENCHMARKING

- 28.1 Subject to Clause 28.4, not less than 3 months before each Benchmark Date, Concessionco shall give to the Trust notice of the amount which it proposes for the Performance Related Payment for all of the Services for the next 5 Year period.
- 28.2 Following the Trust's receipt of such notice, the parties shall as soon as practicable commence negotiations in good faith concerning such proposals and Concessionco shall, if so required by the Trust, carry out a benchmarking exercise concerning such proposals. Insofar as is reasonably practicable, such benchmarking exercise shall be on a like-for-like basis to reflect the quality and scope of the Services and the obligations undertaken by the Service Providers.
- 28.3 Where, pursuant to Clause 28.2, a benchmarking exercise is carried out Concessionco will undertake a comparison of its proposed Performance Related Payment with comparable services in the National Health Service or (if appropriate) elsewhere through liaison with other providers, trusts, benchmarking clubs and independent benchmarking agencies as may be agreed with the Trust. To be acceptable to the Trust, a benchmarking exercise in isolation must comply with all National Health Service guidelines and Legal Requirements in force from time to time which Legal Requirements, if inconsistent with the other provisions of this Clause 28, shall prevail.
- 28.4 Where the parties agree (within 20 Business Days of the first meeting for such purpose or such other period as the parties may agree) that the result of any such benchmarking exercise is conclusive it shall be final and binding on the parties and there shall be no right of reference to the Disputes Resolution Procedure. Where the parties fail to agree (within 20 Business Days of the first meeting for such purpose or such other period as the parties may agree) that the result of any such benchmarking exercise is conclusive the matter shall be determined by a Market Testing Exercise. With effect from the Benchmark Date the Performance Related Payment for the Services for the next period of 5 Years shall (subject to indexation pursuant to Clause 25.7) be the price ascertained, agreed or determined pursuant to this Clause (whether an increase or decrease from the previous price).
- 28.5 The provisions of this Clause shall have no application to the Estates and Maintenance Service.
- 28.6 Any benchmarking exercise carried out pursuant to this Clause 28 shall be deemed to take account of Changes in the Legal Requirements reasonably foreseeable by an experienced Service Provider of the Services or any of them at the date of such exercise on the basis only of draft Bills published in Government Green Papers or White Papers or other Government Departmental Consultation Papers, Bills, draft statutory instruments or draft instruments or proposals in the Official Journal of the European Communities, in each case published before the date of the relevant benchmarking exercise, provided all the

aforementioned have been published in substantially the same form as such Change in the Legal Requirements takes, so that no Special Benchmarking Exercise pursuant to Clause 32.7 shall occur thereafter in respect of any such Change in the Legal Requirements arising from any Change in the Legal Requirements which were so foreseeable.

29A. EMPLOYMENT

- 29A.1 Concessionco or any Service Provider may after notifying the Trust terminate the contract or contracts of employment of any person whose employment is transferred from the Trust or a Trust Contractor to Concessionco or to such Service Provider pursuant to the Regulations as a consequence of this Agreement and the Trust shall indemnify and keep indemnified Concessionco fully at all times from and against all actions, proceedings, claims, damages, demands, fines, expenses, legal remedies, compensation, court or tribunal orders, awards, costs and other liabilities whatsoever in any way connected with or arising from or relating to any claim or other recourse by any such person at any time whether made against Concessionco or against any Service Provider as a result of the termination of such contracts of employment. Further, the Trust shall indemnify Concessionco in the same terms as Clause 29A.2 *mutatis mutandis* in respect of the employment by Concessionco or such Service Provider of such employees from the Services Commencement Date to the respective dates of termination of employment.
- 29A.2 Subject as hereafter provided the Trust shall indemnify and keep indemnified Concessionco against all actions, proceedings, claims, damages, demands, fines, expenses, legal remedies, compensation, court or tribunal orders, awards, costs and other liabilities whatsoever (any and all of which are referred to hereafter in this Clause 29A.2 as a "claim") in any way connected with or arising from or relating to the contract of employment or collective agreement of any person at any time employed by the Trust or by any Trust Contractor (including any matter relating to or arising out of the Trust or such Trust Contractor's rights, powers, duties and/or liabilities connected with such contract of employment or collective agreement) whether made against Concessionco or any other Service Provider at any time for breach of such contract of employment or such collective agreement, unfair dismissal, redundancy, sex, race or disability discrimination, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Trust or by any of the Trust Contractors (and all costs and expenses thereof) which result or resulted from some act or omission which occurred or commenced while such person was employed by the Trust or by such Trust Contractor provided that such indemnity shall not extend to any claim made against Concessionco or any other Service Provider later than 18 months after the Services Commencement Date arising out of any allegation of sex, race or disability discrimination or any equal pay dispute.
- 29A.3 If pursuant to any Service Level Specification the Trust shall require the suspension, removal or dismissal of an employee on health grounds and the employee shall be held to have been unfairly dismissed by virtue only of the Trust having acted unreasonably in requiring such suspension, removal or dismissal, the Trust shall indemnify and keep

indemnified Concessionco or any Service Provider from and against all actions, proceedings, claims, damages, demands, fines, expenses, legal remedies, compensation, court or tribunal orders, awards, costs and other liabilities whatsoever arising from the dismissal (whether constructive or otherwise) having been held unfair.

- 29A.4 At any time during the Contract Period upon request from the Trust and in any event upon the day which shall be 6 Months before the Contract Period shall expire by effluxion of time or pursuant to Clause 54.1, Concessionco shall, so far as it lawfully may, supply to the Trust all information reasonably required by the Trust as to the identity and terms and conditions of employment of all employees then employed by Concessionco or any other Service Provider in the business of providing the Services or any of the Services and shall warrant the accuracy of such information.
- 29A.5 Concessionco undertakes to the Trust that except with the consent of the Trust, such consent not to be unreasonably withheld, it will not and will procure that the Service Providers will not vary the conditions of employment of any employee then employed by Concessionco or any Service Provider in the business of providing the Services or any of the Services after the Trust shall have served notice to terminate this Agreement for any reason or where this Agreement is due to expire by effluxion of time within the last 6 Months thereof provided that for the avoidance of doubt nothing in this undertaking shall limit the right of Concessionco or any Service Provider to give effect to any pre-existing contractual obligations to any employees.
- 29A.6 The Trust and Concessionco agree that with respect to the obligations of the Trust under Clauses 29A.1, 29A.2 and 29A.3 to indemnify Concessionco and/or any Service Provider:
- (a) Concessionco may undertake to indemnify any relevant Service Provider in respect of any claim, recourse or liability it may incur in respect of any former employee of the Trust or any Trust Contractor and any such indemnity shall be subject to the same conditions (including but not limited to those in Clause 38.8 and 38.9) and in the same terms (*mutatis mutandis*) as those entered into by the Trust in favour of Concessionco;
 - (b) subject to Clause 38.8 and 38.9 if (and to the extent that) any Service Provider shall make any claim covered by an indemnity given by Concessionco pursuant to paragraph (a) above, Concessionco shall be indemnified by the Trust in respect of such liability pursuant to the indemnities given above by the Trust in this Clause 29A and Concessionco shall be entitled to claim under such indemnities given by the Trust as if liability were originally incurred by Concessionco.
- 29A.7 At the expiry of the Contract Period or earlier termination of the Agreement, the employees working in the provision of the Services will transfer to the Trust or a replacement service provider under the Regulations to the extent that the Regulations require.

- 29A.8 Where the Regulations do not operate to transfer such employees automatically to the Trust or a replacement service provider at the expiry of the Contract Period or date of termination of the Agreement, Concessionco shall save where the Agreement is terminated pursuant to Clause 41.1, 41.2 or 54.1 use its reasonable endeavours to ensure that the Trust and/or the replacement Service Provider are able to use all or any of such employees in the provision of services equivalent to the Services from such expiry date or termination date.
- 29A.9 Except where Clause 29A.8 applies, and subject as hereafter provided Concessionco shall (save where the liability arises because the Trust is an emanation of the State) indemnify and keep indemnified the Trust against all actions, proceedings, claims, damages, demands, fines, expenses, legal remedies, compensation, court or tribunal orders, awards, costs and other liabilities whatsoever (any and all of which are referred to hereafter in this Clause 29A.9 (as a "claim") in any way connected with or arising from or relating to the contract of employment or collective agreement of any person at any time employed by Concessionco or by any other Service Provider (including any matter relating to or arising out of Concessionco or other Service Provider's rights, powers, duties and/or liabilities connected with such contract of employment or collective agreement) made against the Trust at any time for breach of contract of employment or collective agreement, unfair dismissal, redundancy, sex, race or disability discrimination, equal pay, unlawful deductions, loss of earnings or otherwise relating to their employment by Concessionco or other Service Provider (and all costs and expenses thereof) which results or resulted from some act or omission which occurred or commenced while such person was employed by Concessionco or other Service Provider provided that such indemnity shall not extend to any claim made against the Trust later than 18 months after the end of the Contract Period or termination of the Agreement arising out of any allegation of sex, race or disability discrimination or any equal pay dispute.
- 29A.10 Except where Clause 29A.8 applies, Concessionco shall indemnify and keep indemnified the Trust from and against all actions, proceedings, claims, damages, demands, fines, expenses, legal remedies, compensation, court or tribunal orders, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to any claim or other recourse by any trade union, elected employee representative or staff associations in respect of all or any employee of Concessionco or of any Service Provider arising from or connected with any failure by Concessionco or any other Service Provider to comply with its legal obligations to such trade unions elected employee representatives or staff associations after the Services Commencement Date and on or before the date of termination of this Agreement or end of the Contract Period unless such failure is due to failure of the Trust or any replacement service provider engaged by the Trust to provide information to Concessionco or any other Service Provider.
- 29A.11 In relation to any employees transferred to the Trust or any such replacement service provider engaged by the Trust at the expiry of the Contract Period or the date of termination of this Agreement:

- (a) Concessionco undertakes that it will indemnify the Trust in like terms to the indemnities given to Concessionco by the Trust pursuant to Clause 29A.2 and Clause 29A.3;
- (b) the Trust undertakes that it will indemnify Concessionco in like terms to the indemnities given to the Trust by Concessionco pursuant to Clauses 29A.9 and 29A.10;
- (c) Save in all cases that in the relevant clauses, references to the Services Commencement Date will be read as references to the expiry of the Contract Period or the date of termination of this Agreement.

29A.12 The Trust and Concessionco agree that with respect to the obligations of the Trust under Clauses 29A.9, 29A.10 and 29A.11(a) the Trust may undertake to indemnify such replacement service provider in accordance with Clause 29A.6(a) and be indemnified by Concessionco in accordance with Clause 29A.6(b), in each case applied *mutatis mutandis*.

29A.13 Where any matter giving rise to an indemnity under any provision of this Clause 29A is a matter to be taken into account in calculating any payment to be made under any of Clauses 45 to 47, the amount so payable under Clauses 45 to 47 shall (with the intention of avoiding duplication of payment) be adjusted to take account of any amount paid pursuant to an indemnity in respect of such matter.

29A.14 Except where Clause 29A.8 applies, the Trust shall indemnify and keep indemnified Concessionco from and against all actions, proceedings, claims, damages, demands, fines, expenses, legal remedies, compensation, court or tribunal orders, awards, costs and other liabilities, whatsoever arising (save as to pensions) from any change or proposed change to the terms and conditions of the employees who would otherwise transfer to the Trust or a replacement service provider in accordance with this Agreement where such change is or is proposed to be effected by the Trust or replacement service provider following the transfer of such employees to them pursuant to the Regulations and from and against those arising from the employment or proposed employment by the Trust or replacement service provider of any such employees otherwise than on terms (save as to pensions) at least as good as those enjoyed immediately prior to such transfer or which would have been enjoyed had the employment of such employees not been terminated in the circumstances described in regulation 5(5) of the Regulations.

29B. SUITABILITY OF STAFF FOR HOSPITAL EMPLOYMENT

29B.1 Where a Service Provider other than Concessionco undertakes recruitment for a post which may come to be filled by a New Appointee or considers a New Appointee for a post or any New Appointee is employed by any such Service Provider:

- (a) Concessionco will procure that such Service Provider complies with the provisions of this Clause 29B as if any references in this Clause to Concessionco (save as the beneficiary of any indemnity) were read as referring to such Service Provider;
- (b) the Trust agrees that Concessionco may indemnify any of the Service Providers in like form (save for necessary consequential amendments) as and subject to like conditions as the indemnities in sub-clauses 29B.2(c) 29B.3(e) and 29B.6 and if a claim is made by any Service Provider under any such indemnity given by Concessionco thereunder the Trust shall indemnify Concessionco as if the original liability was incurred by Concessionco and not the Service Provider.

29B.2 Concessionco shall (save where it would be a criminal offence or otherwise unlawful so to do) in conducting the recruitment for any post which may come to be filled by a New Appointee:

- (a) indicate to all prospective applicants for employment in such a post that Concessionco or the other Service Provider and/or the Trust (as the case may be) is exempted from the Rehabilitation of Offenders Act 1974 ("the 1974 Act") and that consequently they are required to disclose all convictions for a criminal offence other than motoring offences except serious motoring offences whether or not such conviction would otherwise be regarded by the 1974 Act as spent, and that any failure to disclose such a conviction could result in dismissal or other disciplinary action by Concessionco;
- (b) require all applicants for employment in such a post to complete an application form in which they are required to disclose all such convictions and to consent to such details being made available to the Trust; and
- (c) in the event that such applicant declines to consent Concessionco shall not employ such applicant and the Trust shall fully and effectually indemnify and keep indemnified Concessionco from and against any liability which may be incurred by Concessionco or any Service Provider in respect of such matter, provided Concessionco shall have informed such prospective appointee simply that his application will not be considered further as a result of such refusal.

[Pre-employment health screening]

29B.3 Before a prospective New Appointee who has disclosed such a criminal conviction is appointed as a New Appointee, Concessionco shall, subject to any legal requirement to the contrary:

- (a) notify the Trust of the name of the prospective New Appointee and of any criminal convictions disclosed by the prospective New Appointee;
- (b) take up references from suitable referees for the prospective New Appointee in terms which ask the referees to address the suitability of the prospective New Appointee for employment in a hospital;

- (c) upon request by the Trust made within 5 Business Days of notification to the Trust under Clause 29B.3(a) supply the Trust with copies of the prospective New Appointee's application for employment, any notes of any interview with him and any references in respect of him;
- (d) in the case of a prospective New Appointee with a criminal conviction obtain the prior consent of the Trust to the appointment; and
- (e) in the event that the Trust shall refuse to consent to the appointment of a prospective New Appointee (whom Concessionco would otherwise appoint) the Trust shall fully and effectually indemnify Concessionco, from and against any liability which may be incurred by Concessionco or any Service Provider in respect of such matter by any such prospective New Appointee in respect of the failure to be so appointed.

29B.4 Concessionco shall, insofar as it is lawful to do so, notify the Trust of any conviction for any criminal offence of any New Appointee (whether committed before or after the appointment of the New Appointee by Concessionco) which comes to the attention of Concessionco after such appointment.

29B.5 The Trust may require Concessionco:

- (a) to remove any New Appointee who is or has been convicted of a criminal offence from the Services unless the conviction was known to the Trust at the time of the person's appointment and the Trust consented thereto; and
- (b) to remove (at the Trust's discretion) any New Appointee from the Services if the Trust shall reasonably consider, having regard to the need to ensure the safety and well-being of patients, staff and other people in the Facility, that the conduct or alleged conduct of the New Appointee concerned is detrimental to the operation of the Facility.

29B.6 If the Trust shall require Concessionco to remove any New Appointee or reject any prospective New Appointee as herein provided the Trust shall fully and effectually indemnify and keep indemnified Concessionco from and against any liability incurred by Concessionco or any Service Provider in respect of such matter provided that Concessionco shall consult with the Trust in relation to the Trust's requirement and follow the Trust's reasonable directions in respect thereof (Concessionco having conduct of any proceedings).

29C. RECOGNITION AGREEMENTS

29C.1 The Trust recognises the unions set out in column I of Schedule [] in respect of the employees identified individually or collectively in column 2 of Schedule [] under the terms and for the purposes stated in an agreement dated [*date of recognition agreement*] a copy of which is annexed at Schedule [].

29C.2 Concessionco shall procure that in respect of all employees of Tarmac Services Limited who will be engaged in providing any of the Services Tarmac Services Limited shall recognise [*recognised trade unions*] ("the trade unions") for the purposes of collective bargaining, consultation and representation. Such recognition shall be in a manner consistent with such recognition agreements as may be transferred to Tarmac Services Limited pursuant to the Regulations except to the extent that they are varied pursuant to formal negotiations between Tarmac Services Limited and the trade unions or any of them and may be terminated by Tarmac Services Limited and the trade unions or any of them and may be terminated by Tarmac Services Limited or the trade unions by either giving a minimum of six months' notice in writing to the other.

30. VARIATIONS - PHASE II - TRUST CHANGES - SERVICES

30.1 The Trust may at any time during Phase II propose a change (a "Trust Change") in or relating to any of the Services including without limitation:

- (a) a change in the provisions of any Service Level Specification; or
- (b) an addition to or, subject to Clause 34, reduction in the scope or quantity of any Service (including without limitation, and subject to Clause 30.3, any Additional Service);
- (c) an improvement or alteration of Concessionco's monitoring systems and procedures pursuant to Clause 22

in each case which do not require the carrying out by Concessionco (or any of its sub-contractors) of any Additional Work.

30.2 The following procedure shall apply in the event of a proposed Trust Change:

- (a) The Trust's Representative shall give to Concessionco notice indicating the nature of the proposed Trust Change and as soon thereafter as may be reasonably practicable the parties shall meet in good faith to discuss such proposed Trust Change, the Trust providing such further information as Concessionco may reasonably require including without limitation detailed information as to the Trust's requirements and its proposals for their implementation.
- (b) Within a reasonable period after the receipt by Concessionco of the notice and information referred to in Clause 30.2(a) Concessionco shall, acting reasonably and in good faith submit to the Trust's Representative:
 - (i) proposals for implementing the proposed Trust Change;
 - (ii) proposals in respect of the proposed Trust Change as to the basis for compensation to Concessionco (including without limitation an adjustment to the Total Payment) or allowance to the Trust (including without limitation an adjustment to the Performance Related Payment) in each case such adjustment to take effect from the 1st April following

the proposed date of implementation of the proposed Trust Change, or such other basis of compensation as Concessionco may propose and such proposals shall reflect all the anticipated costs reasonably and necessarily to be incurred or saved by Concessionco in complying with the proposed Trust Change; and

- (iii) such other proposals (including without limitation amendments to the Project Agreements) as may in the reasonable opinion of Concessionco be necessary for the implementation of the proposed Trust Change or as a consequence thereof;

provided always that, without prejudice to its obligations under Clause 6.1, Concessionco shall when considering such proposals:

- (i) use all reasonable endeavours to identify means of undertaking the proposed Trust Change at no additional cost to the Trust; and to that intent
 - (ii) review its operating practices and staffing levels and implement any changes to them which can be implemented reasonably practicably.
- (c) Subject to paragraph (d) below, the Trust and Concessionco shall as soon as may be reasonably practicable following receipt by the Trust of Concessionco's proposals pursuant to Clause 30.2(b) (and in accordance with Clause 6.1) meet and acting in good faith shall use all reasonable endeavours to reach agreement as to the matters contained in such proposals, but if in relation to any such matter the parties fail to reach agreement either party may (without prejudice to Clause 30.3) at any time refer such dispute to the Disputes Resolution Procedure for determination on such basis as is fair and reasonable in all the circumstances and forthwith upon such agreement or determination the Trust shall either:
- (i) issue written confirmation of the Trust Change setting forth the terms of such agreement or determination, and such Trust Change shall be implemented by the parties; or
 - (ii) notify Concessionco that it does not intend to proceed with the proposed Trust Change in which case Concessionco shall submit to the Trust's Representative details of the costs reasonably and necessarily incurred by Concessionco in preparing and submitting its proposals pursuant to Clause 30.2(b) and the Trust shall pay such costs to Concessionco in such manner as the parties may agree, including without limitation an adjustment to the Total Payment of failing such agreement upon submission by Concessionco of such details and Concessionco's invoice, in accordance with Clause 25.10 (*mutatis mutandis*).
- (d) Notwithstanding any other provision to the contrary, Concessionco shall be entitled to refuse any proposed Trust Change (i) if the Trust is unable to

demonstrate to Concessionco's reasonable satisfaction that it has the financial resources to fund any such Trust Change including evidence, where necessary, of the approval of the Management Executive and the Treasury and (ii) unless and until all Necessary Consents have been obtained in respect of such Trust Change.

30.3 If at any time the Trust shall require any Additional Service the following shall apply:

- (a) The Trust shall in respect of such Additional Service propose a Trust Change in accordance with Clause 30.1.
- (b) If, as provided in Clause 30.2(c), the parties shall fail to reach agreement as to any matter contained in the relevant proposals submitted by Concessionco pursuant to Clause 30.2(b) neither party may refer such dispute to the Disputes Resolution Procedure and the provisions of Clause 30.2(c)(i) and (ii) shall not apply.
- (c) If the Trust shall nevertheless require such Additional Service to be undertaken the Trust shall afford Concessionco a non-exclusive opportunity to tender in competition with others for the right to provide such Additional Service.
- (d) If any such tender duly submitted by Concessionco, reasonably and objectively assessed, is the most favourable to the Trust, the Trust shall issue written confirmation of the Trust Change setting forth the terms of such tender as accepted by the Trust and such Additional Service shall thenceforth be a Service.
- (e) If any such tender duly submitted by Concessionco, reasonably and objectively assessed, is not the most favourable to the Trust, the Trust may, subject to Clause 30.3(f), appoint an Additional Service Contractor to undertake such Additional Service.
- (f) If any Additional Service Contractor shall be appointed by the Trust, the Trust shall indemnify Concessionco against any actions, proceedings, claims, demands, loss (other than loss of any profit which Concessionco would have earned had it been appointed by the Trust in respect of such Additional Service), damage, cost, liability and/or expense suffered or incurred by Concessionco as a result of the provision of such Additional Service by any Additional Service Contractor.

31. VARIATIONS - PHASE II - ADDITIONAL WORK - HOSPITAL

31.1 The Trust may at any time during Phase II propose that Additional Work be carried out at the Site. In this event the following procedure shall apply:

- (a) The Trust's Representative shall give to Concessionco notice indicating the nature of the proposed Additional Work and as soon thereafter as may be reasonably practicable the parties shall meet in good faith to discuss such proposed Additional Work, the Trust providing such further information as Concessionco may reasonably require including without limitation detailed information as to the Trust's requirements and its proposals for their implementation.

- (b) Within such reasonable period as the parties may agree after the receipt by Concessionco of the notice and all information referred to in Clause 31.1(a), Concessionco shall, acting reasonably and in good faith (but subject to the provisos below), submit to the Trust's Representative:
- (i) proposals for the design of the proposed Additional Work; and
 - (ii) proposals in respect of the proposed Additional Work as to the basis for compensation (which may include, without limitation an adjustment to the Total Payment, such adjustment to take effect from the 1st April following the proposed date of implementation of the proposed Additional Work, or, after using reasonable endeavours Concessionco is unable within 30 Business Days after receipt of the notice referred to in Clause 31.1(a) to secure sufficient additional funding on reasonable commercial terms, such other basis of compensation as Concessionco may propose) in respect of the proposed Additional Work and such proposals shall reflect the anticipated costs (such costs to include without limitation any loss of revenues during the implementation of the proposed Additional Work and the anticipated cost of funding as appropriate which shall, while any monies under the Senior Loan Agreement are still outstanding, be paid over a period extending no longer than the final maturity of the senior loan made under the Senior Loan Agreement) reasonably and necessarily to be incurred by Concessionco in implementing the proposed Additional Work (with appropriate evidence where reasonably required by the Trust) and shall take account, *inter alia*, of the unexpired Contract Period; and
 - (iii) such other proposals (including amendments to the Project Agreements) as may in the reasonable opinion of Concessionco be necessary for the implementation of the proposed Additional Work or as a consequence thereof;

provided always that Concessionco shall not be obliged to submit any such proposals if (i) Concessionco serves notice on the Trust's Representative that, in its reasonable opinion, the proposed Additional Work would adversely affect the structure, design life or function of the Facility, such notice to be accompanied by Concessionco's grounds for such opinion and, in the event that the Trust's Representative questions such opinion or grounds the parties shall meet and acting in good faith shall use reasonable endeavours to reach agreement in relation thereto, failing which the decision of Concessionco on the matter shall be final and binding on the parties and shall not be referable to the Disputes Resolution Procedure or (ii) the Trust is unable to demonstrate to Concessionco's reasonable satisfaction that it has the financial resources to fund the proposed Additional Work including evidence, where necessary, of the approval of the Management Executive and the Treasury; and

provided further that the obligations of the Trust and Concessionco in relation to the proposed Additional Work shall be subject to the Legal Requirements applicable to the procurement of works and services.

- (c) In the event that Concessionco's proposals submitted pursuant to Clause 31.1(b) are agreed then the Trust's Representative shall issue a Confirmed Variation Instruction in respect thereof and Concessionco shall give effect thereto and effect shall be given to the agreed basis of compensation in such manner as may be agreed between the Trust's Representative and Concessionco.
- (d) If no agreement can be reached in relation to the proposals referred to in Clause 31.1(b) the parties shall meet and, acting in good faith, shall use reasonable endeavours to reach agreement in relation thereto failing which no Confirmed Variation Instruction shall be issued by the Trust's Representative in respect thereof and the provisions of Clause 31.1(e) shall take effect.
- (e) If in any such case either such proposals are not submitted and Concessionco serves notice under the proviso to Clause 31.1(b) or a Confirmed Variation Instruction is not issued within 20 Business Days of submission of proposals by Concessionco pursuant to Clause 31.1(b):
 - (i) Concessionco shall submit to the Trust's Representative details of the costs reasonably and necessarily incurred by Concessionco in preparing its proposals, if any, pursuant to Clause 31.1(b) and the Trust shall pay such costs to Concessionco (in such manner as the parties may agree, including without limitation an adjustment to the Total Payment or, failing such agreement, upon submission by Concessionco of such details and Concessionco's invoice, in accordance with Clause 25.4); and
 - (ii) the Trust may itself undertake (or procure) the proposed Additional Work and shall indemnify Concessionco against any actions, proceedings, claims demands, loss, damage, cost, liability and/or expense by Concessionco (other than loss of any profit which Concessionco would have earned had it been appointed by the Trust in respect of such Additional Work and/or its implementation).

31.2 If the Trust's Representative issues notice of proposed Additional Work pursuant to Clause 31.1(a) no work pursuant to such proposal shall be commenced until such time as the Trust's Representative issues a Confirmed Variation Instruction and unless and until all Necessary Consents have been obtained.

32. VARIATIONS - PHASE II - CHANGES IN LEGAL REQUIREMENTS

32.1 In the event of a Change in the Legal Requirements which renders or will render the performance of any obligation to be performed by Concessionco during Phase II more or less costly and/or will require Additional Work to be carried out at the Site during Phase II and/or will have the effect of increasing or reducing the amount of the Total Payment otherwise payable, the following provisions shall apply.

32.2 Where any Change in the Legal Requirements:

- (a) was reasonably foreseeable at the date of this Agreement or at any Benchmark Date by an experienced provider of the Services affected thereby on the basis only of draft Bills published in Government Green Papers or White Papers or other Government Departmental Consultation Papers, Bills, draft statutory instruments or proposals in the Official Journal of the European Communities in each case published before the date of this Agreement or, in relation to any Benchmark Date, before that Benchmark Date, provided all the aforementioned have been published in substantially the same form as such Change in the Legal Requirements takes; or
- (b) is a change in Corporate Tax Legislation (other than a Qualifying Change); or
- (c) is a change in Environmental Legislation (other than a Qualifying Change) bringing about a requirement for Additional Work to be carried out at the Site coming into effect within 5 Years from the Services Commencement Date; or
- (d) is a change in Health and Safety Legislation (other than a Qualifying Change) bringing about a requirement for Additional Work to be carried out at the Site coming into effect within 5 Years from the Services Commencement Date;

but in the case of (c) and (d) above, only to the extent that the aggregate and cumulative Cost to implement any such change or changes in Environmental Legislation or Health and Safety Legislation in such 5 Year period does not exceed a total of £200,000 (in prices as at the Services Commencement Date and thereafter increased or decreased in accordance with the GDP Deflator), Concessionco shall comply with such Change in the Legal Requirements at its own expense and shall not be entitled to any extension of the Contract period nor any compensation from the Trust in respect thereof. Any excess over such total shall be borne by the Trust in accordance with the provisions of Clause 32.3.

32.3 Where there is a Relevant Change in the Legal Requirements the Trust shall compensate Concessionco or adjust the Performance Related Payment (as applicable) in respect thereof in accordance with this Clause 32. Concessionco and the Trust's Representative shall forthwith meet in good faith and use reasonable endeavours to agree the necessary and appropriate steps to be taken by Concessionco in order to give effect to such Change in the Legal Requirements and the parties shall follow the procedures in Clause 32.4 to 32.8, as applicable.

32.4 Where a Relevant Change in the Legal Requirements constitutes a Qualifying Change (or does not constitute a Qualifying Change but will require Additional Work to be carried out at the Site during Phase II) Concessionco shall, acting reasonably and in good faith, submit to the Trust's Representative:

- (a) proposals as to the steps necessary in order to comply with the Relevant Change in the Legal Requirements;

- (b) proposals in respect of the Relevant Change in the Legal Requirements as to the basis for compensation (including without limitation an adjustment to the Total Payment, such adjustment to take effect from the 1st April following the date on which the Relevant Change in the Legal Requirements took effect or, if after using reasonable endeavours, Concessionco is unable within 30 Business Days of the first meeting convened pursuant to Clause 32.3 to secure sufficient additional funding on reasonable commercial terms, such other basis of compensation as Concessionco may propose) in respect of the Change in the Legal Requirements and such proposals shall reflect the anticipated costs (such costs to include without limitation any loss of revenues during or arising as a consequence of the implementation of the proposed Additional Work and the anticipated cost of funding as appropriate which shall, while any monies under the Senior Loan Agreement are still outstanding, be paid over a period extending no longer than the final maturity of the senior loan made under the Senior Loan Agreement) reasonably and necessarily to be incurred by Concessionco over the unexpired Contract Period in complying with the Relevant Change in the Legal Requirements, provided that no such adjustment shall be made to the Total Payment nor to any other form of compensation payable to Concessionco to the extent that such costs are absorbed by any indexation increase in the Performance Related Payment provided by this Agreement, or by provision made by Concessionco in relation to Planned Preventative Maintenance; and
- (c) such other proposals (including without limitation amendments to the Project Agreements) as may in the reasonable opinion of Concessionco be necessary in respect of or as a consequence of the Relevant Change in the Legal Requirements.

Provided always that:

- (i) without prejudice to its obligations under Clause 6.1, Concessionco shall when considering such proposals use all reasonable endeavours to identify means of complying with such Relevant Change in the Legal Requirements referred to in Clause 32.3 at no additional cost to the Trust and shall review its operating practices and staffing levels and implement any changes to them which can be implemented reasonably practicably;
- (ii) where such Relevant Change in the Legal Requirements referred to in Clause 32.3;
- (A) will require Additional Work to be carried out in Phase II and as a result of such Additional Work the cost reasonably and necessarily incurred by Concessionco in the performance of any Service is or will be reduced; or
- (B) is a Qualifying Change not involving Additional Work,

then the Trust may at any time in the case of such Additional Work after its completion but prior to the date which is 3 months before the next

Benchmark Date after its completion or, in the case of a Qualifying Change not involving Additional Work, prior to the date which is 3 months before the next Benchmark Date, require a Special Benchmarking Exercise to be carried out in relation to such Service pursuant to Clause 32.9.

- 32.5 In the event that Concessionco's proposals submitted pursuant to Clause 32.4 are agreed then the Trust's Representative shall issue a written confirmation in respect thereof and Concessionco shall give effect thereto. If in relation to any matter referred to in Clause 32.4 the parties fail to reach agreement within 20 Business Days of the first meeting of the parties for such purpose or within such other period as the parties may agree including without limitation regarding the amount of compensation payable by the Trust to Concessionco in respect of the Change in the Legal Requirements then either party may at any time refer such dispute to the Disputes Resolution Procedure for determination on the basis set out in Clause 32.6.
- 32.6 The financial compensation in respect of a Relevant Change in the Legal Requirements payable by the Trust to Concessionco pursuant to this Clause 32 shall include:
- (i) all the anticipated costs (such costs to include without limitation any loss of revenues during the implementation of any proposed Additional Work and (without prejudice to (ii) below) the anticipated costs of funding as appropriate which shall, while any monies under the Senior Loan Agreement are still outstanding, be paid over a period extending no longer than the final maturity of the senior loan made under the Senior Loan Agreement) reasonably and necessarily to be incurred by Concessionco over the unexpired Contract Period in complying with the Relevant Change in the Legal Requirements (to the extent that such costs are not absorbed by any indexation increase in the Performance Related Payment or by provision made by Concessionco in relation to Planned Preventative Maintenance); and
 - (ii) if, after using reasonable endeavours, Concessionco is unable within 30 Business Days of the first meeting convened pursuant to Clause 32.3 to secure sufficient additional funding on reasonable commercial terms, such funding from the Trust as would fully reimburse Concessionco in respect of any capital expenditure (as such term is interpreted in accordance with generally accepted accounting principles in the United Kingdom from time to time) incurred by virtue of any Qualifying Change or Additional Work, against invoices (submitted in accordance with Clause 25.4) in respect of those parts of the obligations to be performed by Concessionco as a consequence of any Qualifying Change or Additional Work requiring capital expenditure which have been completed.
- 32.7 Where a Relevant Change in the Legal Requirements does not constitute a Qualifying Change and/or will not require Additional Work to be carried out at the Site during Phase II Concessionco shall, acting reasonably and in good faith, submit to the Trust's Representative:

- (a) proposals (including without limitation amendments to the Project Agreements) as to the steps necessary in order to comply with such Change in the Legal Requirements;
- (b) such other proposals as may in the reasonable opinion of Concessionco be necessary in respect of or as a consequence of such Change in the Legal Requirements; and
- (c) proposals for a Special Benchmarking Exercise to be carried out.

Provided always that, without prejudice to its obligations under Clause 6.1, Concessionco shall when considering such proposals use all reasonable endeavours to identify means of complying with such Change in the Legal Requirements at no additional cost to the Trust and shall review its operating practices and staffing levels and implement any changes to them which can be implemented reasonably practicably.

32.8 In the event that Concessionco's proposals submitted pursuant to Clause 32.7 are agreed then the Trust's Representative shall issue a written confirmation in respect thereof and Concessionco shall give effect thereto. If in relation to any of the matters referred to in Clause 32.7 the parties fail to reach agreement within 20 Business Days of the first meeting of the parties for such purpose or such other period as the parties may agree then either party may at any time refer such dispute to the Disputes Resolution Procedure for determination on the basis that the proposals do not comply with such Change in the Legal Requirements and/or the provisions of Clauses 32.7 and 32.9(a).

- 32.9
- (a) Where pursuant to Clause 32.8 or proviso (ii) to Clause 32.4 a Special Benchmarking Exercise is to be conducted, such exercise shall be a benchmarking exercise carried out no earlier than six months after the date on which the relevant Change in the Legal Requirements became effective but shall be carried out otherwise subject to and in accordance with the provisions of Clause 28 (except that for the purposes of this Clause, such benchmarking exercise may include benchmarking of the Estates and Maintenance Service where the Relevant Change in the Legal Requirements impacts on the provision of the Estates and Maintenance Service) and the parties shall give effect to the result of such benchmarking exercise by an adjustment to the Total Payment.
 - (b) No compensation shall be payable (nor any adjustment to the Total Payment be made) in respect of the costs associated with such change until 1st April of the Year following the Special Benchmarking Exercise implemented under Clause 32.9(a).
 - (c) Any Special Benchmarking Exercise implemented under Clause 32.9(a) shall be deemed to take account of Changes in the Legal Requirements reasonably foreseeable by an experienced service provider of the Services or any of them at such date on the basis only of draft Bills published in Government Green Papers or White Papers or other Government Departmental Consultation Papers, Bills, draft statutory instruments or proposals in the Official Journal of the European Communities in each case published before the relevant Change in the Legal

Requirements becomes law, provided all the aforementioned have been published in substantially the same form as such Change in the Legal Requirements takes so that no further Special Benchmarking Exercise shall occur in respect of any Change in the Legal Requirements arising from any Change in the Legal Requirements which were so foreseeable.

- (d) Notwithstanding the provisions of this clause, no Special Benchmarking Exercise shall be carried out prior to the date which is 5 Years after the date of this Agreement.

33. VARIATIONS - PHASE II - EXTENSIONS TO CONTRACT PERIOD

33.1 If at any time during Phase II any of the following shall occur:

- (a) any accidental loss or damage to the Site or the Facility or any roads or services serving the same;
- (b) any failure, shortage of power, fuel or transport provided the same is not due to any deliberate or negligent act or omission on the part of Concessionco;
- (c) the effects of weather, flood, drought, tempest, corrosion, earthquake, lightning or volcanic eruption or any direct consequence of such occurrence;
- (d) the effects of fire, explosion or ionising radiation;
- (e) subject to Clause 39, an event of Force Majeure;
- (f) any civil disorder, civil disturbance, riot, blockade or embargo (and which does not constitute an event of Force Majeure);
- (g) any official or unofficial strike, lock-out, go slow or other labour dispute which does not apply only to Concessionco and/or any Service Provider; or
- (h) any act, omission or default by a statutory undertaker;

and such occurrence makes the whole or part of the Facility unavailable for its normal use or inaccessible Concessionco shall be entitled to such extension to the Contract Period as may be reasonable and appropriate in all the circumstances in order to place Concessionco in the same financial position in which it would have been but for such occurrence (taking into account any payments made to Concessionco pursuant to Clause 39.5). The parties shall meet as soon as reasonably practicable after such occurrence in good faith and shall use all reasonable endeavours to agree such extension (if any) to the Contract Period as may be reasonable and appropriate in all the circumstances in order to place Concessionco, so far as practicable, in the same financial position in which it would have been but for such occurrence and failing agreement such matters shall be referred to the Disputes Resolution Procedure. The Parties agree to use all reasonable endeavours to mitigate the effects of such occurrence so that any such extension may be minimised.

- 33.2 During such time as the effects of any occurrence referred to in Clause 33.1(a) to (h) are continuing, or Concessionco is taking action to replace reinstate or otherwise replace any assets damaged by any such events, Concessionco shall not be obliged to perform any obligation hereunder which it is unable to perform as a result of such effects or the taking of such action.

34. **VARIATIONS - PHASE II - REDUCTION IN SIZE OF THE FACILITY**

In the event of a proposed Trust Change or a Change in the Legal Requirements at any time during Phase II which will or may necessitate a reduction in the size of the Facility and/or a reduction in the volume or scope of any Service the Trust shall give Concessionco not less than 6 months notice thereof. For the avoidance of doubt, no adjustment to the Availability Payment shall be made pursuant to any provision of this Agreement in respect of any such reduction in the size of the Facility and/or reduction in the volume or scope of any Service.

35. **WARRANTIES AND UNDERTAKINGS**

- 35.1 Concessionco has entered into this Agreement in reliance on the representations set out in Schedule [] and the Trust warrants to Concessionco at the date of this Agreement that the Warranties and undertakings set out in Schedule [] are true and accurate in all respects.
- 35.2 Each of the Warranties is a separate and independent warranty and without prejudice to any other Warranty.
- 35.3 No claim or claims may be brought alleging any breach of Warranty by the Trust unless the value of any such claim exceeds £50,000 or the total value in aggregate of all such claims exceeds £50,000 in which case the whole and not merely the excess is payable.
- 35.4 The total potential liability of the Trust in respect of all alleged breaches of Warranties hereunder (other than alleged breaches of the Warranties set out in paragraph 1 and paragraph 5 of Schedule [] in respect of which the liability of the Trust shall be unlimited) shall be limited to £[] million in aggregate.
- 35.5 No action alleging a breach of any of the Warranties shall be commenced later than 2 years from the Services Commencement Date or 5 years from the date of this Agreement, whichever shall be later (other than an action alleging a breach of any of the Warranties set out in paragraph 1 of Schedule [] in respect of which no such action shall be commenced later than 12 years from the date of this Agreement and paragraph 5 in respect of which no such limitation shall apply).

36. **TRANSFER OF SHARES**

- 36.1 Subject to the creation, transfer or enforcement of any security in favour of the Lenders over the share capital of Concessionco, Concessionco agrees that no transfer of any of those shares in Concessionco which at the date of transfer are not fully paid up (or credited as fully paid up) shall take place (save that this Clause shall not apply to transfers

of shares by any shareholder, to any of its subsidiaries or associates and, without prejudice to the foregoing, in the case of [] to any person in the [] or in the case of the [] to any person in the []).

36.2 Concessionco shall procure a letter of undertaking to comply with this Clause from Tarmac PFI Limited and UME Investment Co. Limited for their respective investments.

36.3 For the avoidance of doubt all the provisions of this Clause 36 relating to transfer of shares apply with equal effect where the proposed transferee is a shareholder or participant in Concessionco and where the proposed transferee is not such a shareholder or participant.

37. INSURANCE

37.1 During Phase I and Phase II Concessionco shall maintain or cause to be maintained the insurance policies listed in Schedule [] Part 1 and Part 2 provided always that such cover remains available to Concessionco from insurers of repute on commercially acceptable terms. During Phase I and Phase II the Trust shall maintain or cause to be maintained the insurance policies listed in Schedule [] Part 3 and Part 4 provided always that such cover remains available to the Trust from insurers of repute on commercially acceptable terms.

37.2 The insurance policies listed in Schedule [] shall be maintained in the joint names of the insured parties named therein, such that each party is insured for its respective rights and interests.

37.3 Without prejudice to Clause 37.1 and subject to Clause 37.8, each party agrees that during the Contract Period it will maintain or cause to be maintained such insurance policies against such risks and for such amounts of cover as more particularly set out in the applicable parts of Schedule [] (or such greater amount of cover as the other party may reasonably require by notice in writing to the other).

37.4 In the event that Losses Occurring Insurance is no longer available from insurers of repute at commercially acceptable terms and wherever there is a risk that a claim may be made after the end of the Contract Period or prior termination for whatever reason but relating to circumstances arising during the Contract Period the policies to be maintained by Concessionco as listed in Schedule [] Part 1 and Part 2 (responsibility for placement and maintenance of which policies to revert back to the Trust upon such termination) shall provide cover for at least eight Years in the joint names of both parties for their liabilities and responsibilities arising out of the Contract Period or where longer any period during which a Claimant (which may comprise either party) may claim as a result of circumstances arising during the Contract Period after the end of the Contract Period.

37.5 Each party shall upon request of the other party at any reasonable time produce to that party evidence that the applicable insurance policies referred to above are in full force and effect.

37.6 (a) Subject to the Lenders Direct Agreement, each of the parties agrees that:

(i) in respect of material damage cover (which is not Major Damage as defined in this clause) it shall forthwith upon receipt of the proceeds of any insurance claim cause the proceeds to be paid out in repairing, replacing, reinstating or recovering or otherwise remedying the items damaged by any insured risk in respect of which such claim shall have been paid or if such repair, reinstatement, renewal or remedy shall have been performed by the other party to pay the proceeds of such claim over to the other party.

(ii) in respect of Major Damage the following shall apply:

(A) in the event that the Trust can produce to Concessionco within a period of 1 Year of the Major Damage occurring a Health and Economic Viability Case the proceeds of any insurance claim shall be paid out as in sub-clause (a) (i) above as if the damage to which the insurance proceeds are applied were not Major Damage.

(B) in the event that within the said period the Trust does not produce a Health and Economic Viability Case or the Trust notifies Concessionco that it does not intend to produce a Health and Economic Viability Case this Agreement shall forthwith terminate and the provisions of Clause 46 will apply (as if the same were a termination following Force Majeure) save that the amount of the proceeds of the insurance claim against the policies set out in Part 1, Section 1.1 and Part 2, Section 2.1 of Schedule [] paid to Concessionco will be deducted from any sums payable by the Trust under Clause 46.1 of this Agreement and if the amount of such proceeds exceeds the amounts so payable the balance shall be paid to the Trust.

(b) If the proceeds of any insurance claim for Major Damage are applied as indicated in Clause 37.6(a)(ii)(A) and the Trust wishes the Facility to be reinstated or repaired with modifications to the specification of the Facility as it was immediately prior to the Major Damage occurring, the modifications shall constitute Additional Work under Clause 31 of this Agreement and the terms of Clause 31 shall be implemented in respect thereof (and to the extent that such modifications result in any change in or relating to the Services, the provisions of Clause 30 shall also be implemented in respect thereof) save that the basis of compensation payable by the Trust thereunder to Concessionco shall take no account of those costs of such Additional Work which can be paid (after payment for all works associated with the repair of the Major Damage which do not form part of the Additional Work) from the proceeds of the insurance claim paid to Concessionco or to the Lenders (or their agent). In the event of any dispute as to whether or the extent as to whether such Additional Work can be paid from the

proceeds of the insurance claim the matter will be referred to the Disputes Resolution Procedure.

(c) For the purposes of this clause the following terms have the following meanings

- (i) "Major Damage" means damage to the Facility where the cost of reinstatement or repair exceeds 50% of the maximum sum which would be paid by the Trust under Clause 46.1.
- (ii) "Health and Economic Viability Case" means a case made by the Trust and accepted in writing by the Greater Glasgow Health Board or other purchaser for the time being of the Trust's healthcare services and the Management Executive that the proceeds of the insurance claim should be applied to reinstatement or repair of the Major Damage on the grounds of the healthcare needs of the area and that the availability of the Facility to the Trust remains affordable following the Major Damage being reinstated or repaired.

37.7 The Trust and Concessionco agree to consult fully with each other in devising and implementing a cost effective insurance programme.

37.8 Without prejudice to Clause 37.1, Concessionco shall procure that the insurances referred to in Parts 1 and 2 of Schedule []:

- (a) are effected on the terms required by this Clause 37, except that if insurance on those terms is not available from insurers of repute at commercially acceptable terms and with the prior written consent of the Trust, insurances may be effected on alternative terms agreed in writing by the Trust such agreement not to be unreasonably withheld or delayed (after consultation with the Insurance Advisers) subject to the requirement that Concessionco will approach the insurance market every three months to check whether any of the terms not included in those insurances have become available from insurers of repute at commercially reasonable rates and provide the Trust and the Insurance Adviser with information on the position in the market and shall, if so required by the Trust, forthwith effect revised insurances;
- (b) include only such provision for self insurance by way of a deductible at a level no higher than those specified in Schedule [] and include the exclusions specified in Schedule [] and such other exclusions normal to that type of policy as may be reasonably acceptable to the Trust;
- (c) are placed with insurers who are acceptable to the Trust, such acceptance not to be unreasonably withheld or delayed;
- (d) in respect of delay in completion or business interruption, are increased from time to time to such amounts to adequately cover the losses likely to flow from such events as outlined in Parts 1 and 2 of Schedule [];

- (e) are otherwise increased from time to time to such amounts as would be effected by a reasonable and prudent operator (save for the provision of clinical services) of a hospital of the size of and with characteristics comparable to the Facility which does not self insure (except by means of minimum deductibles required by insurers generally), except to the extent that the Trust otherwise agrees;
- (f) shall contain no material reductions in limits or coverage (including those resulting from extensions) or increases in deductibles, exclusions or exceptions or other amendments to policy terms other than as required by insurers or otherwise than in accordance with and subject to this Clause 37 and Part 1 and 2 of Schedule [], without the written consent of the Trust.

37.9 Concessionco shall procure that the insurances referred to in Schedule [], insofar as they relate to first party material damage, cover such property for at least its reinstatement as new value increased from time to time as necessary to maintain such reinstatement as new value.

37.10 **Additional coverages - insurances by law, Project Agreements and other agreements.**

Each party shall effect and maintain in full force those insurances which each party is required to have by the terms of any other contract to which it is at any time a party and/or in accordance with the Legal Requirements.

37.11 **Non-avoidance of coverage**

Notwithstanding any other provision of this Agreement, neither party shall at any time knowingly do (or omit to do) or so far as it is able permit or allow others to do (or omit to do) any act or thing (including, without limitation, failure to disclose any fact) whereby any insurance taken out under Schedule [] may be rendered void, voidable, suspended, impaired or defeated in whole or in part and the parties agree to use all reasonable endeavours to avoid any increase in the premiums payable in respect thereof.

37.12 **Disclosure**

Subject to appropriate confidentiality, each party shall ensure that usual disclosure of the following is made to those insurers providing the insurance cover which is required to be taken out and maintained by such party pursuant to this Agreement:

- (a) all information which such party acting in accordance with good insurance practice and in accordance with the advice of such party's Insurance Adviser and/or broker, believes that insurers would require in their analysis of the risk;
- (b) all information which insurers specifically request to be disclosed; and
- (c) all other information which such party acting in accordance with good industry practice and in good faith could reasonably consider to be material to the relevant insurance cover.

Each party shall put in place appropriate internal monthly reporting procedures to ensure that full disclosure to insurers as described above is made by its relevant personnel.

37.13 Insurance administration and loss prevention

37.13.1 Concessionco shall establish procedures for

- (a) arranging and maintaining the various insurances it is contractually bound to arrange in accordance with Clause 37.1 and for reducing the likelihood of losses occurring;
- (b) advising and reporting to the board of Concessionco on insurances and loss prevention;
- (c) ensuring that full and accurate disclosure and representation of all facts that may be material is made to insurers on a regular ongoing basis and establishing internal procedures within Concessionco to achieve such disclosure and representation. Such internal procedures will include monthly collaboration with all parties engaged on the Project and an acknowledgement by all parties that they will disclose to Concessionco all information which may be material in relation to the insurances on which these parties are respectively named as insureds until the expiry of those insurances;
- (d) ensuring in consultation with the Trust that insurance matters are administered in accordance with the principles defined in this Agreement and the Lenders Direct Agreement and that the necessary procedures are established for the purpose in consultation with the Trust and the Lenders, as applicable; and
- (e) ensuring that details of any reports or surveys undertaken by insurers and made available to Concessionco are provided to the Trust.

37.14 Each of the parties agrees that:

- (a) in respect of the insurances it is required to arrange it will ensure prompt notification of incidents to insurers and will ensure the investigation of and preparation of reports to the insurers and their loss adjusters on any incident likely to give rise to a claim under the insurances; and
- (b) it will maintain reports of all incidents relating to the Facility involving either self insured claims or events which are outside the scope of the insurances.

37.15 Changes in method/procedures

Each party will advise its insurers of any material changes in its methods or procedures of working and procure that the insurers provide an acknowledgement of such advice and will upon request promptly supply the other party with a copy of the advice and the acknowledgement.

37.16 **Premiums**

Each party shall procure the prompt payment of all premiums payable under each policy in accordance with the policy terms and shall upon request of the other party promptly produce evidence of such payment.

37.17 **Disputed claims**

If the insurers dispute any claim made under any of the insurances effected or renewed in accordance with this Clause 37 and Schedule [], the claiming party shall consult with the other party and shall take such steps as that party may reasonably require to preserve or pursue the claim subject as provided under the Lenders Direct Agreement. In the absence of agreement the matter shall be referred to the Disputes Resolution Procedure.

37.18 **Renewal/Review of amounts and scope of insurances**

Each party shall, except as provided in Clause 37.19 below, not later than the date falling 30 Business Days (or such other period as the parties may agree) prior to taking out, or the renewal or expiry date in respect of each insurance, deliver to the other party and the Insurance Adviser a notice stating its proposals as to:

- (a) the changes (if any) to the insurance in the risks or liabilities to be insured.
- (b)
 - (i) the replacement value as new of all assets required to be insured;
 - (ii) the insured amounts in respect of all other risks required to be insured,
 - (iii) the amount of the deductibles applicable;
 - (iv) options available in the insurance market;
 - (v) scope of cover;
 - (vi) any change of insurers or brokers.

in each case, for the period of twelve Months (or such other period as may be agreed between Concessionco and the Trust) following the date falling 30 Business Days after making the proposals known to the other party, together with information showing in reasonable detail how the same are calculated and any other information relating thereto reasonably required by the other party.

Each party shall, upon receipt of the proposals for renewal or amendment, undertake to advise the other party within 10 Business Days as to whether or not it agrees that such proposals or notices meet the requirements of this Agreement and, if not, whether such proposals or notices are acceptable to it (acting reasonably). Neither party shall exercise its rights under this Clause 37.18 in a

manner which would prevent compliance by the other party with its obligations under this Clause 37.

37.19 In respect of the insurances to be taken out or renewed in respect of the first year of Phase II, the provisions of Clause 37.18 shall apply except that all notices to the respective parties and Insurance Adviser required thereby shall be delivered no later than the date falling three months before the date anticipated for Completion in the Contractor's Programme.

37.20 At no time during the Contract Period shall either party instal or use any Equipment at the Trust Premises (including the Facility) whether or not such equipment shall be comprised within the Equipment or be in replacement or substitution for any of the Equipment or be new equipment supplied, installed and/or used by that party, the installation, operation and use of which shall not be fully covered by insurances effected in accordance with this Agreement and Schedule [] without the prior written consent of the other party which matter shall be at that party's entire discretion.

37.21 **Charges and Relevant Uninsured Losses**

(a) It is hereby agreed and acknowledged by the parties that in respect of the insurance for Phase I (as set out in Part 1 of Schedule []) a charge by Concessionco to the Trust has been incorporated within the Availability Payment and no further payment whatsoever will be made by the Trust to Concessionco in respect of such insurance.

(b) In respect of the insurances to be taken out or renewed in respect of the first year of Phase II no later than the date falling three months before the date anticipated for Completion in the Contractor's Programme and in respect of the insurances to be taken out or renewed in respect of each subsequent year of Phase II not less than 30 Business Days prior to the anniversary in that year of the Services Commencement Date the parties shall together approach suitable insurance broker(s) in a lawful manner to agree to the scope of the insurances (and the premiums payable for such insurances) required for the Project for the next succeeding year in order to meet the requirements of this Clause 37 and Schedule []. The amount of such premiums will be paid by Concessionco in the first instance and thereafter shall be included in Concessionco's invoice to and paid by the Trust pursuant to Clause 25.10. Any dispute regarding the matters referred to in this Clause 37.21(b) shall be referred for determination to the Disputes Resolution Procedure on the basis of reference to best industry practice relevant to the construction, operation and availability of the Facility. If the parties are unable to agree the scope of such insurances (or the scope has not been determined pursuant to the Disputes Resolution Procedure prior to the date 10 Business Days prior to the date anticipated for Completion in the Contractor's Programme or the relevant anniversary of the Services Commencement Date, as applicable), subject to Clause 37.1, the insurances which shall be taken out by Concessionco in respect of the relevant year shall be those taken out by Concessionco prior to the Services Commencement Date for the first year of Phase II as set out in Parts 2 and 4 of Schedule [].

- (c) The agreement reached or determination made pursuant to Clause 37.21(b) in respect of each year will also set an allowance for Relevant Uninsured Losses the amount of which shall be ascertained pursuant to Clauses 37.21(d) to (g) inclusive and which shall be paid yearly by the Trust to Concessionco at the same time as the reimbursement for premiums is made pursuant to Clause 37.21(b).
- (d) Each year in respect of the insurances to be taken out in respect of Phase II, the parties shall use all reasonable endeavours to agree the amount of an allowance for Relevant Uninsured Losses in respect of the period of one year beginning with the Services Commencement Date, in respect of the first year of Phase II not later than 10 Business Days prior to the date anticipated for Completion in the Contractor's Programme and in respect of all subsequent years not later than 10 Business Days prior to the anniversary in that year of the Services Commencement Date. The amount of the allowance will represent the parties' bone fide estimate of the likely amount of Relevant Uninsured Losses to be suffered as a result of events covered by the insurances set out in Part 2 of Schedule [] in respect of the period of one Year beginning with the Services Commencement Date. Any dispute regarding the amount of the allowance shall be determined by reference to the Disputes Resolution Procedure.
- (e) The parties shall use all reasonable endeavours to agree the amount of an allowance for Relevant Uninsured Losses in respect of the period of one Year beginning with the first anniversary of the Services Commencement Date not later than 10 Business Days prior to the first anniversary of the Services Commencement Date. Failing agreement by 10 Business Days prior to the first anniversary of the Services Commencement Date, the amount of the allowance will equal (so far as practicable) the actual amount of Relevant Uninsured Losses suffered as a result of events covered by the insurances set out in Part 2 of Schedule [] in respect of the period of one Year beginning with the Services Commencement Date. Any dispute regarding the amount of the allowance shall be determined by reference to the Disputes Resolution Procedure.
- (f) The parties shall use all reasonable endeavours to agree the amount of an allowance for Relevant Uninsured Losses in respect of the period beginning with the second anniversary of the Service Commencement Date not less than 10 Business Days prior to the second anniversary of the Services Commencement Date. Failing agreement by 10 Business Days prior to the second anniversary of the Services Commencement Date the amount of the allowance will equal (so far as practicable) the average of the actual amounts of the Relevant Uninsured Losses suffered as a result of events covered by the insurances set out in Part 2 of Schedule [] in each of the first and second Years following the Services Commencement Date. Any dispute regarding the amount of the allowance shall be determined by reference to the Disputes Resolution Procedure.
- (g) The parties shall use all reasonable endeavours to agree the amount of an allowance for Relevant Uninsured Losses in respect of the period beginning with that anniversary of the Services Commencement Date not less than 10 Business Days prior to the third and every subsequent anniversary of the Services

Commencement Date. Failing agreement by 10 Business Days prior to the third and every subsequent anniversary of the Services Commencement Date, the amount of the allowance will equal (so far as practicable) the average of the actual amounts of the Relevant Uninsured Losses suffered as a result of events covered by the insurances set out in Part 2 of Schedule [] in each of the preceding 3 Years.

(h) For the purposes of this Clause 37.21 "Relevant Uninsured Losses" shall mean such part of any loss as is irrecoverable by Concessionco under the insurances for first party material damage (excluding loss of profits) and third party losses required for the Project as set out in Part 2 of Schedule [] hereto, by virtue of the application of a deductible provided that the term "Relevant Uninsured Losses" shall not include the following:

- (i) the first £[] of any loss (adjusted to take account of any increase or reduction in the GDP Deflator between [*the base date*] and the Review Date immediately preceding the date of the occurrence giving rise to the loss); or
- (ii) any loss not falling within (i) above for liability to other persons caused by any negligence or default of Concessionco; or
- (iii) any loss in respect of damage to the Facility or the Equipment to the extent that any repair or reinstatement falls within the scope of Concessionco's obligations under the Estates and Maintenance Service Level Specification.

37.21.1 Each sub-contractor of Concessionco shall be an insured party under:

- (a) in the case of a sub-contractor engaged during Phase I (such term to include suppliers, architects, surveyors and consulting engineers in respect only of their activities in connection with the Project), all the insurances set out in the applicable Parts of Schedule []; and
- (b) in the case of a sub-contractor engaged during Phase II, all the insurances set out in the applicable Parts of Schedule [];

in each case to the extent that such sub-contractor is not an insured party under existing insurances similar in all material respects to those set out in the applicable Parts of Schedule [].

37.21.2 The Trust shall be entitled to require Concessionco to procure that any sub-contractor, supplier, architect, surveyor or consulting engineer referred to in Clause 37.21.1 becomes an insured party under the insurances set out in the applicable Parts of Schedule [] provided always that the Trust shall act reasonably at all times in so doing. In reaching any decision under this Clause 37.21.2 the Trust shall have regard to the risks covered and the amount of cover under the relevant party's existing insurances

in comparison with the relevant insurances set out in the applicable Parts of Schedule [].

37.22 Default

In the event that either party is in default of any of its obligations to maintain or cause to be maintained insurance policies pursuant to this Clause 37, the other party shall be entitled to put in place such insurance as is required to secure the insurance cover pursuant to such obligations and such other party shall be entitled to claim such costs and expenses as are reasonably incurred in connection therewith which would otherwise not pursuant to this Agreement have been borne by the other party were it not for such default and shall invoice the defaulting party accordingly, such invoice to be paid within 3 Business Days after receipt thereof.

37.23 Insured Liability

The liability of either party to the other for any default, neglect, act or omission pursuant to this Agreement shall not be relieved by virtue of any insurance maintained in respect of the events giving rise to such liability.

37.24 Clinical Negligence Insurance

The Trust agrees and undertakes that it will use all reasonable endeavours for the period from the Services Commencement Date to procure that Concessionco and the Lenders are able to benefit from the provisions of the Crown Indemnity Scheme and any replacement or any insurance arrangements in respect of clinical negligence which endeavours shall include approaching the appropriate parties at reasonable intervals during the period when the Trust has not been able to procure that Concessionco and the Lenders are able to benefit from such provisions.

38. INDEMNITY

38.1 Concessionco shall indemnify and hold the Trust harmless from and against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses arising in connection with the performance of the Project Agreements or otherwise in respect of any injury, including injury resulting in death, to any employee, servant, consultant, agent, workman or contractor of Concessionco, notwithstanding the negligence or other breach of duty on the part of the Trust or any of its employees, servants, agents, workmen or contractors.

38.2 The Trust shall indemnify and hold Concessionco harmless from and against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses arising in connection with the performance of the Project Agreements or otherwise in respect of any injury, including injury resulting in death, to any employee, servant, consultant, agent, workman or contractor of the Trust notwithstanding the negligence or other breach of duty on the part of Concessionco, its employees, servants, agents, workmen or contractors.

- 38.3 Concessionco shall indemnify and hold the Trust harmless from and against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses (other than any indirect or consequential losses) arising in connection with the performance of the Project Agreements in respect of any loss or damage to any property, heritable or moveable of Concessionco, its employees, consultants, servants, agents, workmen or contractors including, but subject to Clause 38.4, the Facility, notwithstanding the negligence or other breach of duty on the part of the Trust, its employees, consultants, servants, agents, workmen or contractors.
- 38.4 The Trust shall indemnify and hold Concessionco harmless from and against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses (other than any indirect or consequential losses) arising in connection with the performance of the Project Agreements in respect of any loss or damage to any property, heritable or moveable of the Trust, its employees, consultants, servants, agents, workmen or contractors, including, from the Services Commencement Date, [the Trust Equipment] notwithstanding the negligence or other breach of duty on the part of Concessionco, its employees, consultants, servants, agents, workmen or contractors.
- 38.5 Subject to Clause 38.1 to Clause 38.4 (inclusive) and subject also to Clause 38.6 and Clause 38.7, Concessionco shall indemnify and hold harmless the Trust from and against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses arising in connection with the performance of the Project Agreements in respect of any loss of or damage to property heritable or moveable and any injury to any person, including injury resulting in death arising at the Site, notwithstanding the negligence or other breach of duty on the part of the Trust, its employees, consultants, servants, agents, workmen or contractors.
- 38.6 The Trust shall indemnify and hold harmless Concessionco from and against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses arising in respect of any injury to any person, including injury resulting in death arising out of or in connection with any negligence or other breach of duty on the part of the Trust, its employees, consultants, servants, agents, workmen or contractors in the provision of health care and clinical services.
- 38.7 Subject to Clause 38.1 to Clause 38.4 (inclusive) the Trust shall indemnify and hold harmless Concessionco from and against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses arising in connection with the performance of the Project Agreements howsoever arising in respect of any loss of or damage to property heritable or moveable and any injury to any person, including injury resulting in death arising out of or in connection with any negligence or breach of duty on the part of the Trust, its employees, consultants, servants, agents, workmen or contractors in excess of the limits of indemnity under the public liability insurance to be maintained by Concessionco pursuant to Clause 37 or arising in circumstances where Concessionco is unable to procure insurance in respect of such negligence or breach of duty on reasonable commercial terms.
- 38.8 Each party shall immediately notify the other of any actual or threatened claim (of whatever nature) in respect of which either may seek to be indemnified and held

harmless by the other under the provisions of this Agreement and the party receiving such notice shall have the right to conduct all negotiations and court, tribunal or other proceedings in respect thereof subject to any insurers rights under any policy of insurance. The party giving such notice shall comply with all reasonable requirements of the other party in respect of such claims and shall not admit, settle or compromise any claim in respect of which it may seek to be indemnified under this Agreement without the consent of the other party (such consent not to be unreasonably withheld or delayed).

- 38.9 Where either party makes a claim under any indemnity arising under this Agreement that party shall take reasonable steps to avoid or mitigate the loss and/or damage in respect of which such claim is made and the party against which such claim is made shall not be liable in respect thereof to the extent that the party making such claim has failed to take such steps.

39. FORCE MAJEURE

- 39.1 Neither party shall be considered to be in default or liable for breach of any obligation hereunder nor liable to the other party for any loss or damage whatsoever arising out of the prevention, hindrance or delay of the performance of any such obligation if the performance of such obligation is prevented, hindered or delayed by an event of Force Majeure.

- 39.2 On the occurrence of an event of Force Majeure the parties shall meet as soon as reasonably practicable and acting in good faith shall use all reasonable endeavours (but without incurring undue costs) to agree the measures (if any) necessary to mitigate the effects of such event of Force Majeure and/or to remedy any damage to the Contract Works, any Additional Work, the Facility or the Site and/or to resume performance of the Works, the Services and/or any Additional Work and, without prejudice to Clause 39.4, the obligations of both parties shall be suspended to the extent that they are affected by such event of Force Majeure unless and until:

- (a) the event of Force Majeure shall have ceased and any such measures shall have been agreed and the damage shall have been remedied pursuant to such agreement; or
- (b) this Agreement is terminated pursuant to Clause 39.4;

whichever shall be the earlier.

- 39.3 An event of Force Majeure shall mean one or more of the following:

- (a) war, civil war (whether declared or undeclared), riot or armed conflict arising within and affecting the United Kingdom; or
- (b) radioactive, chemical or biological contamination of the whole or part of the Contract Works or the Site arising from any of the events at (a) above or arising from an act of terrorism; or

- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; or
- (d) acts of terrorism;

save to the extent that such risks are covered by the policies of insurance maintained by the parties pursuant to Clause 37 and in force at the time of such event.

- 39.4 If notwithstanding the use of such reasonable endeavours any of Concessionco's obligations arising in Phase I, or as the case may be in Phase II, cannot be performed in all material respects for a continuous period of 6 months from the commencement of any such event of Force Majeure, either party may terminate this Agreement by notice in writing to the other to take immediate effect provided that if at any time it becomes clear that such an event will not cease and/or the effects thereof will not be remedied within 6 months either party may terminate this Agreement by 90 days' written notice to the other whereupon this Agreement shall terminate without default pursuant to Clause 43.3 with the ensuing consequences.
- 39.5 During any event of Force Majeure, the Trust shall continue to pay to Concessionco the Availability Payment and if Concessionco is able to perform or continue to perform any of its obligations under this Agreement (including without limitation any of its obligations regarding the availability of the Facility) the Trust shall also pay to Concessionco such other sums as may be fair and reasonable (to be determined on a *quantum meruit* basis) in respect of the performance of such obligations.
- 39.6 Nothing in this Clause 39 shall reduce or avoid any right of Concessionco to receive any payment whatsoever in respect of any Works or Services and/or any Additional Work provided up to the date of such event of Force Majeure.
- 39.7 If Concessionco is unable to perform the Works, Services, any Additional Work or any of them by reason of an event of Force Majeure the Trust shall be entitled during such period to perform or procure the performance of any Works, Services or Additional Work so affected itself provided always that:
- (a) in that event the Trust shall bear the costs of the performance of such Works, Services or Additional Work itself; and
 - (b) the Trust shall perform or procure the performance of any such Works or Additional Work in a good and workmanlike manner and in accordance with the relevant provisions of the Building Specification and the Detailed Design and shall perform any such Services with proper skill and care and in accordance with the relevant provisions of the Service Level Specifications; and
 - (c) the Trust shall indemnify and hold Concessionco harmless against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses incurred by Concessionco or arising as a result of any breach by the Trust of any of its obligations under Clause 39.7(b) or as a consequence of performing or procuring

the performance of any Works, Services or Additional Work pursuant to this Clause 39.7; and

- (d) if and so long as the Trust shall perform or procure the performance of any of the Services itself through the use of any employee of Concessionco or any Service Provider employed at the time of the event of Force Majeure, the Trust shall discharge the obligations of the employer towards any such employee for the period during which the services of such employee are used by the Trust or by the person the Trust has procured to carry out any of the Services and shall indemnify and keep indemnified Concessionco from and against all actions, proceedings, claims, damages, demands, fines, expenses, legal remedies, compensation, court or tribunal orders, awards, costs and other liabilities whatsoever incurred by Concessionco or the relevant Service Provider as a result of any act or omission by the Trust or the person the Trust has procured pursuant to this Clause 39.7 to carry out any of the Services in relation to any contract of employment or collective agreement concerning any such employee or in relation to any failure by the Trust or the person the Trust has procured to comply with its legal obligations to the trade unions, elected employee representatives or staff associations in respect of any such employee (unless such failure is due to the failure of Concessionco or any other Service Provider to provide information to the Trust); and
- (e) the Trust agrees that Concessionco may indemnify any of the Service Providers in like form (save for consequential amendments) as the indemnities in Clause 39.7(d) and to the extent that a claim is made by any Service Provider which is covered by any indemnity given by Concessionco to such Service Provider hereunder, Concessionco shall be indemnified by the Trust and shall be entitled to claim under such indemnity as if liability were originally incurred by Concessionco.

40. TERMINATION OF AGREEMENT BY DEFAULT OF CONCESSIONCO

- 40.1 The Trust shall have no right to terminate this Agreement by reason of default of Concessionco of its obligations under any of the Project Agreements except as provided in this Clause 40.
- 40.2 Without prejudice to the Lenders Direct Agreement the Trust may at any time by 28 days' notice in writing terminate this Agreement forthwith if:
 - (a) during Phase I either Concessionco abandons the Works for a period of 60 consecutive days or the Works remain uncompleted for the purposes of this Agreement for a period of 6 Months from the Completion Date; or
 - (b) during Phase II Concessionco is in breach of this Agreement where such breach has or will have a materially adverse effect on the ability of the Trust to provide all, or substantially all, of the clinical services at the Facility and such breach, if capable of remedy, has not been remedied, or, if incapable of remedy Concessionco has not demonstrated, to the reasonable satisfaction of the Trust, that such breach

will not be repeated, in either case within 60 days of the receipt by Concessionco of a written notice giving full details of the breach complained of.

For the avoidance of doubt, any breach by Concessionco of Clause 60 (Corrupt Gifts and Payments of Commission) shall not constitute a material breach by Concessionco for the purposes of Clause 40.2(b).

41. TERMINATION OF WHOLE AGREEMENT BY DEFAULT OF THE TRUST

41.1 Concessionco may at any time terminate this Agreement if:

- (a) any sum or sums payable by the Trust to Concessionco totalling in excess of [£100,000 - £150,000] remain unpaid at midnight at the end of the day which is 10 days from the day on which such sum or sums were due; and
- (b) Concessionco has on or after the date on which such period of 10 days has expired served a notice on the Trust that such sums remain unpaid and that it intends to invoke the provisions of this Clause 41 if such sums remain unpaid; and
- (c) such sums remain unpaid at the end of the day which is 30 days from the day on which a warning was issued pursuant to Clause 41.1 (b).

41.2 *Concessionco may at any time terminate this Agreement if the Trust fails to provide clinical services at the Facility for a continuous period of 6 months or more.*

41.3.1 Concessionco may terminate this Agreement by notice within a period of 14 days following a Discriminatory Bill passing a Second Reading in the first House into which it is introduced to Parliament.

41.3.2 For the purposes of this Clause 41.3.2 and Clause 48.3 a Discriminatory Bill is a Bill introduced by the Government or which receives the support of the Government at its Second Reading (as the same is described in Clause 41.3.1 above) or which is otherwise passed by either House of Parliament at its Second Reading which if passed into law would:

- (a) amend or repeal the National Health Service and Community Care Act 1990 or the National Health Service (Residual Liabilities) Act 1996 or the National Health Service (Scotland) Act 1978, or the Health and Medicines Act 1988 or the National Health Service (Private Finance) Act 1997 in any case in whole or part; and
- (b) either
 - (i) has the effect of removing from the Trust any material obligation under any of the Project Agreements, or its ability or any power to make or fund any payment when due from it under this Agreement (including on termination); or

- (ii) has the effect of removing from the Secretary of State any power or obligation to procure the performance of any such obligation or the making of any such payment as is referred to in paragraph (i) above, and:
 - (A) such power or obligation is not transferred to or does not otherwise become exercisable by any other person with whom Concessionco and the Lenders are able to enter into arrangements which are in all material respects as satisfactory as those previously in place; and
 - (B) the removal of such power or obligation as is referred to in subparagraph (A) above has (or can reasonably be expected to have over the remainder of the Contract Period) a material effect upon the creditworthiness of the Trust.

[effect of devolution]

41.4 Without prejudice to Clause 14B and Clause 32, if either:

- (a) any Change in the Legal Requirements first having legal effect after the date of this Agreement; or
- (b) any action of any competent authority, which shall include the decision of a court (not the subject of appeal),

renders the performance or exercise by Concessionco of any of its material rights or obligations hereunder unenforceable, void, impossible, unlawful or illegal (and not merely more expensive) Concessionco shall forthwith give notice thereof to the Trust whereafter the parties will meet in good faith and use reasonable endeavours to agree, in accordance with Clause 62, as to any variation of this Agreement necessary to render the performance or, as the case may be, exercise of such rights or obligations possible, lawful and legal. In the event that no such agreement is reached between the parties within 20 Business Days following the date of such notice, Concessionco may terminate this Agreement. From the date of Concessionco's notice until any agreement or termination pursuant to this Clause, Concessionco shall not be liable to the Trust for failure to perform any such material obligation.

In the event of a dispute between the parties as to:

- (i) whether the events referred to in Clause 41.4 (a) or (b) will render any rights or obligations of Concessionco unenforceable, void, impossible, unlawful or illegal; or
- (ii) whether the rights or obligations so affected are material,

either party may refer such matter to the Disputes Resolution Procedure.

42. TERMINATION OF WHOLE AGREEMENT BY INSOLVENCY

Without prejudice to the Lenders Direct Agreement the Trust may terminate this Agreement on the occurrence of any one of the following events: if a voluntary arrangement within Part 1 of the Insolvency Act 1986, or any other composition scheme or arrangement with (or assignment for the benefit of) its creditors is made by Concessionco or if it shall be unable to pay its debts within the meaning of Section 123(1)(c) of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver, administrator or liquidator or similar officer is appointed in respect of all or any part of Concessionco's business or assets or if a resolution of Concessionco is passed or a petition is presented and not discharged within 28 days for the winding up of Concessionco or for the making of an administration order (otherwise, in each case, than for the purpose of a bona fide solvent amalgamation or reconstruction) and upon such termination the provisions of Clause 47 shall apply.

[Scots law considerations]

43. TERMINATION OF WHOLE AGREEMENT WITHOUT DEFAULT

43.1 This Agreement shall terminate by effluxion of time at the end of the Contract Period and:

- (a) at least 10 but no more than 15 months prior to the end of the Contract Period the parties shall meet at the written request of the Trust, or if the Trust should fail to make such request at the written request of Concessionco, to discuss the arrangements for the vacation of the Site by Concessionco and for the provision of the Services following termination of this Agreement by way of expiry of the Contract Period; and
- (b) to the extent that the Services will be provided by a party other than Concessionco after expiry of the Contract Period Concessionco shall give all reasonable co-operation to such other party and to the Trust in this regard and shall in the last 10 months of the Contract Period provide such other party with all reasonable access to the Facility and with all information relating to the Services (save for any information as Concessionco may reasonably regard as commercially sensitive) as such other party may reasonably require.

43.2 This Agreement shall terminate as provided in Clause 54.1.

43.3 This Agreement shall terminate as provided in Clause 39.4 following an event of Force Majeure.

43.4 This Agreement shall terminate in the circumstances set out in Schedule [] and the other provisions of that Schedule shall have effect.

43.5 This Agreement shall terminate as provided in Clause 37.6 (a)(ii)(B).

44. SURVIVAL OF RIGHTS

Termination of this Agreement shall not prejudice or affect any right or obligation of either party which is expressed to continue after the date of termination or which, having fallen due for performance on or before the date of termination, remains to be performed or discharged at such date and, notwithstanding any other provision of this Agreement, Clauses 5.2, 16, 25.9, 25.10, 38, 41, 45, 46, 47, 48, 49, 52, 53, 55, 58, 66 and 67 shall continue in full force and effect and shall survive the termination of the Agreement.

45. CONSEQUENCES OF TERMINATION FOLLOWING DEFAULT BY THE TRUST

45.1 If Concessionco terminates this Agreement pursuant to Clause 41 prior to Completion, then the Trust shall pay to Concessionco within one year of the date of termination of this Agreement in the cases of termination pursuant to Clauses 41.1, 41.2 and 41.4 and within 60 days of the date of termination of this Agreement in the case of termination pursuant to Clause 41.3 an amount equal to the aggregate of:

(a) all outstanding amounts (including interest accruing up to and including the date of termination of this Agreement and including breakage costs) owing by Concessionco under the Funding Agreements at the date of termination of this Agreement (whether due for payment then or later) or which arise as a result of or in connection with such termination;

(b) the amount necessary to pay to each of the holders of equity in Concessionco an amount equal to the amount paid up or called in respect of such equity, adjusted by the addition of the amount required to achieve a real annual equity internal rate of return of [25.8%] for the period between subscription and termination of this Agreement, such additional amount not to be a negative sum;

[(c) on or before [back-ended equity subscription date], [£] thereafter an amount equal to the principal amount of the Subordinated Debt in Concessionco which is outstanding at the date of termination of this Agreement plus interest accrued but unpaid on such Subordinated Debt to the date of termination;

[(d) an amount equal to the amount set out in Schedule [] in [base date] prices (adjusted in accordance with GDP Deflator) against the relevant six-month period in which the date of termination falls;]

(e) amounts payable by Concessionco to third parties as at the date of termination of this Agreement or arising as a direct result of the early termination of this Agreement in respect of agreements and arrangements entered into in writing on an arms length basis with third parties relating directly to the business carried on by Concessionco at the Site; and Concessionco shall take all reasonable steps to mitigate the liability of the Trust under this sub-clause (e); and

(f) the amount of any reasonable professional fees incurred by Concessionco in respect of the termination of this Agreement;

less the amount of any Receivables owing to Concessionco (or to any other person for the account of Concessionco) at the date on which notice to terminate this Agreement is given by Concessionco, to the extent that such Receivables are not used by Concessionco to discharge any obligation under the Funding Agreements or to any third party between the date on which notice to terminate this Agreement is given by Concessionco and the date of termination of this Agreement.

[Book debts recovered after 60 days? See definition of Receivables.]

- 45.2 Without prejudice to Clause 45.1, each party shall in any such case pay to the other any amounts (other than in respect of the Availability Payment or the Performance Related Payment or amounts payable pursuant to Clause 24) payable (and not then paid) under this Agreement in respect of the period prior to the date of termination, which payment shall be paid within one year of the date of termination of this Agreement in the cases of termination pursuant to Clauses 41.1, 41.2 and 41.4 and within 60 days of the date of termination of this Agreement in the case of termination pursuant to Clause 41.3 or, in both cases, if later, the date such amounts become payable.
- 45.3 If Concessionco terminates this Agreement pursuant to Clause 41 on or after Completion, then the Trust shall pay to Concessionco within one year of the date of termination of this Agreement in the cases of termination pursuant to Clauses 41.1, 41.2 and 41.4 and within 60 days of the date of termination of this Agreement in the case of termination pursuant to Clause 41.3 an amount equal to the aggregate of:
- (a) all outstanding amounts (including interest accruing up to and including the date of termination of this Agreement and including breakage costs) owing by Concessionco under the Funding Agreements at the date of termination of this Agreement (whether due for payment then or later) or which arise as a result of or in connection with such termination;
 - (b) an amount equal to the principal amount of the Subordinated Debt in Concessionco which is outstanding at the date of termination of this Agreement plus interest accrued but unpaid on such Subordinated Debt to the date of termination;
 - (c) an amount equal to the market value of the issued shares of Concessionco as at the date of termination of this Agreement, as agreed between the parties and calculated: (i) on the assumption that no event giving rise to such termination had occurred; (ii) on the assumption that the date of termination of this Agreement was to be [] years prior to the end of the Contract Period and (iii) on the basis of the net present value of the projected discounted cashflows to the shareholders of Concessionco as at the date of termination (using a discount rate to be agreed at the date of termination). In default of agreement between the parties, the market value of the issued shares shall be as determined by an independent accountant appointed pursuant to Clause 50 but such market value will not in any event be less than the greater of.

- (i) the amount which is necessary to provide each of the shareholders in Concessionco with a real annual equity internal rate of return equal to [%] for the period between subscription and termination of this Agreement, such additional amount not to be a negative sum;
 - (ii) if the shares of Concessionco are then admitted to listing on any stock market, the market value of such shares immediately before such termination (or, if earlier, immediately before such termination was threatened);
- [(d) an amount equal to the amount set out in Schedule [] in [*base date*] prices (adjusted in accordance with GDP Deflator) against the relevant six-month period in which the date of termination falls;]
- (e) amounts payable by Concessionco to third parties as at the date of termination or arising as a direct result of the early termination of this Agreement in respect of agreements and arrangements entered into in writing on an arms length basis with third parties relating to the business carried on by Concessionco at the Site; and Concessionco shall take all reasonable steps to mitigate the liability of the Trust under this sub-clause (e); and
 - (f) the amount of any reasonable professional fees incurred by Concessionco in respect of the termination of this Agreement;

less the amount of any Receivables owing to Concessionco (or to any other person for the account of Concessionco) at the date on which notice to terminate this Agreement is given by Concessionco, to the extent that such Receivables are not used by Concessionco to discharge any obligation under the Funding Agreements or to any third party between the date on which notice to terminate this Agreement is given by Concessionco and the date of termination of this Agreement.

45.4 Without prejudice to Clause 45.3, each party shall in any such case pay to the other any amounts (other than in respect of the Availability Payment or the Performance Related Payment or amounts payable pursuant to Clause 24) payable (and not then paid) under this Agreement in respect of the period prior to the date of termination, which payment shall be paid within one year of the date of termination of this Agreement in the cases of termination pursuant to Clauses 41.1, 41.2 and 41.4 and within 60 days of the date of termination of this Agreement in the case of termination pursuant to Clause 41.3 or, in both cases, if later, the date such amounts become payable.

45.5 Any sum payable by the Trust to Concessionco pursuant to Clause 45.1 or 45.3 shall be paid as a lump sum, together with interest accruing between the date of termination and the date of payment on the outstanding amount of such sum from time to time (after as well as before judgment) being:

- (a) with respect to sums other than those payable pursuant to Clause 45.1 (b) or 45.3 (c) above, at a rate per annum equal to LIBOR plus the Applicable Margin; and

- (b) with respect to sums payable pursuant to Clauses 45.1(b) or 45.3(c) above, at a rate per annum equal to the rate set out in Clause 45.1(b).

46. CONSEQUENCES OF TERMINATION WITHOUT DEFAULT

46.1 If this Agreement is terminated in the circumstances provided for in Clause 43 (other than Clause 43.1), then the Trust shall pay to Concessionco an amount equal to the aggregate of:

- (a) all outstanding amounts (including interest accrued up to the date of termination of this Agreement and including breakage costs) owing by Concessionco under the Funding Agreements at the date of termination of this Agreement (whether due for payment then or later) or which arise as a result of or in connection with such termination;
- (b) the amount paid up or called in respect of the equity, and the principal amount of the Subordinated Debt in Concessionco (together with interest accrued on such Subordinated Debt as at the date of termination but unpaid); and
- (c) amounts payable by Concessionco to third parties as at the date of termination of this Agreement or arising as a direct result of the early termination of this Agreement in respect of agreements and arrangements entered into in writing on an arms length basis with third parties relating to the business carried on by Concessionco at the Site; and Concessionco shall take all reasonable steps to mitigate the liability of the Trust under this sub-clause (c),

less the amount of any Receivables owing to Concessionco (or to any other person for the account of Concessionco) at the date on which notice to terminate this Agreement is given by Concessionco, to the extent that such Receivables are not used by Concessionco to discharge any obligation under the Funding Agreements or to any third party between the date on which notice to terminate this Agreement is given by Concessionco and the date of termination of this Agreement.

46.2 Without prejudice to Clause 46.1, each Party shall in any such case pay to the other any amount (other than in respect of the Availability Payment or the Performance Related Payment or amounts payable pursuant to Clause 24) payable (and not then paid) under this Agreement by such Party to the other Party in respect of the period prior to the date of termination, which payment shall be paid within 60 days of the date of termination of this Agreement or, if later, the date such amounts become payable.

46.3 Any sum payable by the Trust to Concessionco pursuant to Clause 46.1 shall, at the option of the Trust, be paid either as a lump sum within 60 days of the date of termination or such other date as may be agreed between the parties or in four equal semi-annual instalments over a period of two years commencing on the date of termination of this Agreement (the first instalment to be paid on the date which is six months after that date) together with interest between the date of termination and the date of payment on the outstanding amount of such sum from time to time (as well after as before judgment) at a rate per annum equal to LIBOR plus the Applicable Margin,

such interest to be paid at the time of payment of such lump sum or (as the case may be) at the time of payment of each such instalment provided that, if any instalment is not paid then due pursuant to this Clause 46.3, default interest shall be payable pursuant to Clause 25.9 and Concessionco shall have the right to accelerate all outstanding instalments which shall immediately become due and payable and if not then paid shall also attract default interest pursuant to Clause 25.9, in addition to the interest determined pursuant to this Clause.

47. CONSEQUENCES OF TERMINATION FOLLOWING DEFAULT BY CONCESSIONCO

47.1 If the Trust terminates this Agreement pursuant to Clause 40 or Clause 42 prior to Completion, then the Trust shall pay to Concessionco an amount equal to:

- (a) [£ million], subject to adjustment on a pound for pound basis upwards or downwards to the extent that the price payable by Concessionco pursuant to the Construction Contract is increased or (as the case may be) reduced as a result of sums payable (or allowable) pursuant to Clause 14A or Clause 14B;

less the aggregate of:

- (b) (i) the costs reasonably anticipated by the parties as at the date of termination of this Agreement to complete the Works; and
- (ii) any amounts payable (and not then paid) by Concessionco to the Trust under this Agreement at the date of termination.

provided that, if the costs referred to in paragraph (b) above exceed in aggregate the amount referred to in (a) above, then Concessionco shall not be liable for such excess or any part of such excess. In default of agreement between the parties as to the costs reasonably anticipated at the date of termination of this Agreement of completion of the Works for the purposes of paragraph (c) above, then they shall be the lower of:

- (i) the costs to complete such Works on a reasonable timescale quoted in the lowest qualifying tender received following a competitive tendering process carried on by the Trust as soon as reasonably practicable following the date of termination of this Agreement and in accordance with all Legal Requirements applicable to the Trust or generally applicable to a tender for similar works; or
- (ii) the costs to complete such Works on a reasonable timescale certified by a duly qualified Quantity Surveyor appointed by the parties or in default of agreement nominated by the President of the Royal Institution of Chartered Surveyors in accordance with Clause 50.2 (*mutatis mutandis*) and the subsequent sub-clauses of that Clause.

Any sums payable by the Trust to Concessionco pursuant to this Clause 47.1 shall be, at the option of the Trust, paid either as a lump sum within 60 days of the date of termination or such other date as may be agreed between the parties or in equal semi-

annual instalments over a period commencing on the date of termination of this Agreement (the first instalment to be paid on the date which is six months after that date and the remaining instalments being paid on dates falling on six monthly intervals thereafter) and ending on the same date as the scheduled final maturity of the senior loan made under the Senior Loan Agreement (the last instalment to be paid on such scheduled final maturity date) together with interest accruing between the date of termination and the date of payment on the outstanding amount of such sum from time to time (after as well as before judgment) at a rate per annum equal to LIBOR plus the Applicable Margin, such interest to be paid at the time of payment provided that if any instalment is not paid when due pursuant to this Clause 47.1, default interest shall be payable pursuant to Clause 25.9 and Concessionco shall have the right to accelerate all outstanding instalments which shall immediately become due and payable and if not then paid shall also attract default interest pursuant to Clause 25.9 in addition to the interest determined pursuant to this Clause 47.

47.2 If the Trust terminates this Agreement pursuant to Clause 40 or Clause 42 on or after Completion, then (subject to Clause 47.4) the Trust shall pay to Concessionco:

- (a) amounts equal to the aggregate of the Availability Payments which would have been payable under this Agreement (taking into account, for the avoidance of doubt, any increase or reduction pursuant to Clause 25.7) until the first date on which the Trust would have been entitled to exercise its option to terminate this Agreement pursuant to Clause 54, such payments to be made on the dates and otherwise in accordance with, Clauses 25.3 and 25.9 and on the assumption that Concessionco had performed its obligations under this Agreement in full and without any adjustment under Clause 26,

less

- (b) without double counting and in the case of each of the items listed in paragraphs (i) to (v) below as incurred by the Trust each Quarter, provided that if in any Quarter the aggregate cost to the Trust of the items listed in paragraphs (i) to (v) below exceeds the amount payable by the Trust pursuant to paragraph (a) above, the excess amount shall be deducted from successive quarterly payments to be made by the Trust until the excess amount has been fully set off, and provided further that if the Trust elects to pay compensation in the form of a lump sum pursuant to Clause 47.5, then the costs of the items listed in paragraphs (iii) to (v) below will be those costs which it is reasonably anticipated would have been incurred:
 - (i) the amount reasonably and properly required to ensure that none of the circumstances set out in Part A or Part B of the non-availability criteria set out in Schedule [] are occurring at the Facility at the date of termination;
 - (ii) the amount of any reasonable professional fees incurred by the Trust in respect of the termination of this Agreement;

- (iii) in the case of each Quarter from the termination date until the next Benchmark Date the additional costs reasonably and properly incurred by the Trust in providing the Services (other than the Service to be provided under the Estates and Maintenance Service Level Specification) in excess of the Performance Related Payments which would have been payable for such Services assuming they had been payable in full;
- (iv) in the case of each Quarter from the termination date until the first date on which the Trust would have been entitled to exercise its option to terminate this Agreement pursuant to Clause 54, any additional costs reasonably and properly incurred by the Trust in providing the Service to be provided under the Estates and Maintenance Service Level Specification in excess of the Performance Related Payments which would have been payable during such period for such Services assuming they had been payable in full;
- (v) in the case of each Quarter from the termination date until the first date on which the Trust would have been entitled to exercise its option to terminate this Agreement pursuant to Clause 54 any costs reasonably and properly incurred by the Trust in respect of Planned Preventative Maintenance; and
- (vi) a quarterly amount of [£] (such amount to be increased or reduced in accordance with any increase or reduction in GDP Deflator between [base date] and the date of payment) being the amount of Concessionco's management costs included within the quarterly Availability Payments.

The calculation of any amount pursuant to this Clause 47.2, if not agreed between the Trust and Concessionco within 30 days of the date of termination, shall be determined by an Expert (on the application of either party) in accordance with Clause 50.3. If any instalment payable under this Clause 47.2 is not paid when due pursuant to this Clause 47.2, default interest shall be payable pursuant to Clause 25.9 and Concessionco shall have the right to accelerate all outstanding instalments which shall immediately become due and payable and if not then paid shall also attract default interest pursuant to Clause 25.9 in addition to the interest determined pursuant to this Clause 47.

47.3 Without prejudice to Clause 47.2 and whether the Trust terminates this Agreement prior to or on or after Completion, each party shall pay to the other any amounts (other than in respect of the Availability Payment or the Performance Related Payment or amounts payable pursuant to Clause 24) payable (and not then paid) under this Agreement in respect of the period prior to the date of termination, which payment shall be paid within 60 days of the date of termination of this Agreement or, if later, the date such amounts become payable.

47.4 The amounts payable under Clause 47.2 will be paid quarterly (the first such payment to be due and payable in accordance with Clause 25.4 in the Quarter after the date of termination) in accordance with Clause 25.4 until the first date on which the Trust would have been entitled to exercise its option to terminate this Agreement pursuant to

Clause 54 or, if a lesser amount is payable thereby, until such time as the "Compensation Amount" (as defined below) has been paid. The Compensation Amount shall be determined as of the date of termination and shall equal the lesser of:

- (a) the aggregate of all outstanding amounts (including interest which accrues up to and including the date of termination of this Agreement and including breakage costs but excluding such break-age costs as relate to any interest rate swap entered into in substitution for the Interest Rate Cap (as specified in Schedule []) or as part of a hedging product envisaged under the terms of that Schedule) owing by Concessionco under the Funding Agreements at the date of termination of this Agreement (whether due for payment then or later) or which arise from such termination,

less the amount of any Receivables owing (whether due for payment then or later) to Concessionco (or to any other person for the account of Concessionco) at the date on which notice to terminate this Agreement is given by the Trust, to the extent that such Receivables are not used by Concessionco to discharge any obligation under the Funding Agreements between the date on which notice to terminate this Agreement is given by the Trust and the date of termination of this Agreement; and

- (b) an amount calculated in accordance with the table set out at Schedule [], as amended pursuant hereto, less the amount of any such Receivables as are referred to in (a) above. If as a result of the occurrence of events contemplated by this Agreement, including without limitation the events referred to in Clause 17.2 and 33 but not including any deduction to the Availability Payment or the Performance Related Payment pursuant to the terms of this Agreement or delay in the progress of the Works which is not by reason of any one or more of the events set out in Clause 17.2, the categories of equity and indebtedness listed in Schedule [] are to be increased, then any figure set out in the table in Schedule [] shall be increased by an amount which equals the increased aggregate of such equity and indebtedness anticipated to be outstanding at any time shown in such table, plus an amount equal to 20 per cent of such increased aggregate of such equity and indebtedness.

47.5 If at the date of termination or at any subsequent date the Trust wishes to pay the compensation determined in accordance with Clauses 49.2 and 49.4 in the form of a lump sum, the lump sum amount shall be the lower of:

- (a) the net present value as at the date of payment of the amounts referred to in Clause 47.2, using the sum of LIBOR plus the Applicable Margin as the discount factor for such calculation; and
- (b) the Compensation Amount.

For the purposes of this Clause 47.5, LIBOR shall mean the average of the six-month London Inter-bank Offered Rate for each period from (and including) the date of calculation to (and including) the last period for which such compensation would be payable as forecast by an expert appointed for this purpose as agreed jointly by the Trust

and Concessionco or, in the absence of any such agreement, as appointed, on the application of either party, by the Chairman of the British Bankers Association. If the Chairman of the British Bankers Association declines or fails to make such appointment within 20 Business Days of being asked to make such appointment the issue of the relevant forecast for LIBOR shall be treated as a dispute and referred to the Disputes Resolution Procedure.

- 47.6 The Compensation Amount calculated in accordance with Clauses 47.4(a) and (b) shall accrue interest from time to time at a rate equal to LIBOR plus the Applicable Margin from the date of termination until the date of payment (after as well as before judgement).

48. **MISCELLANEOUS CONSEQUENCES OF TERMINATION**

- 48.1 Subject to Clause 44 the payments payable pursuant to Clauses 45 to 47 of this Agreement are in full and final settlement of any liability of either party to the other for the acts, omissions or events arising prior to the date of termination.

48.2A Where:

- (a) a lump sum payment (except a lump sum payment made pursuant to Clause 47, in which case Clause 48.2B below shall apply) is made in a single amount or pursuant to Clause 46.3 in instalments or is due to Concessionco pursuant to this Agreement; and
- (b) Concessionco has or will have an increased tax liability by reason of such payment (taking into account any tax liability which would have been paid by Concessionco had Concessionco continued to receive the Availability Payment rather than the lump sum payment or instalments pursuant to paragraph (a) above),

then the amount of such payment shall be increased to the extent necessary to ensure that after taking into account such increased tax liability, Concessionco receives a net sum equal to the amount it would otherwise have received in the absence of any such increased liability to tax.

Concessionco shall provide to the Trust such evidence as the Trust may reasonably require regarding the existence or extent of such increased liability to tax.

48.2B Where:

- (a) a payment is made pursuant to Clause 47 of this Agreement; and
- (b) Concessionco has or will have an increased tax liability by reason of such payment (taking into account any tax liability which would have been paid by Concessionco had Concessionco continued to receive the Availability Payment rather than the lump sum payment or instalments pursuant to paragraph (a) above),

then the amount of such payment shall be increased to the extent necessary to ensure that after taking into account such increased tax liability (such tax liability being determined on the assumption that (so far as not required by applicable legislation to do otherwise) Concessionco fully utilises any tax reliefs (other than the surrender of group relief by a shareholder to Concessionco pursuant to Chapter IV of Part X of the Income and Corporation Taxes Act 1988) which are available to it to offset all or part of the relevant increased tax liability but to the extent only that to so utilise any relief would not result in Concessionco becoming liable to make an actual payment of taxation in the accounting period in which the termination payment is made) Concessionco receives a net sum equal to the net amount which it would otherwise have received pursuant to such Clause in the absence of any such increased liability to tax. Concessionco shall provide to the Trust such evidence as the Trust may reasonably require regarding the existence or extent of such increased liability to tax.

48.2C All sums payable by the Trust in instalments pursuant to Clause 47.1 or by way of quarterly payments pursuant to Clauses 47.2 or 47.4 shall be paid free and clear of all deductions or withholding whatsoever for or on account of taxation save only as required by law. If any such deduction or withholding is required by law, the Trust shall be obliged to pay to Concessionco such sums as will after such deduction or withholding has been made leave Concessionco with the same amount it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

48.2D If:

- (i) the Trust makes a payment of an increased amount to Concessionco pursuant to Clause 48.2C (for the purposes of this Clause 48.2D, a "Tax Payment"); and
- (ii) Concessionco receives or obtains a refund of tax or obtains and uses a credit against any tax which it is able to identify as attributable to that Tax Payment (for the purposes of this Clause 48.2D, a "Tax Credit")

then, if it can reasonably do so without any adverse consequences for Concessionco, Concessionco shall reimburse the Trust such proportion of that Tax Credit as will leave Concessionco (after that reimbursement) in no better or worse position in respect of its tax liabilities than it would have been in if no Tax Payment had been required. Concessionco shall give the Trust access to such information as the Trust may reasonably require in relation to its tax affairs and computations in order to allow the Trust to verify the amount of the Tax Credit.

48.3 If following termination of this Agreement, a Discriminatory Bill passes a Second Reading in the first House into which it is introduced to Parliament, Concessionco shall notify the Trust thereof and within 60 days of receipt of such notice the Trust shall pay Concessionco all amounts payable to Concessionco pursuant to Clauses 45 to 47 which remain unpaid at the date of such notice.

48.4 Concessionco shall make available to the Trust for collection all data of a confidential nature relating to any patient or patients.

- 48.5 Subject always to the provisions of Clauses 29A, 45 to 48 (inclusive) and the Disputes Resolution Procedure, all payments or repayments whatsoever due to either party shall be made within twenty (20) Business Days of the effective date of such termination and interest shall be payable on such payments or repayments (after as well as before judgment) at the Appropriate Rate in respect of the period from the date of termination until the date of payment.
- 48.6 The Trust shall where necessary permit Concessionco and its employees, agents or sub-contractors as appropriate by prior appointment and subject to the reasonable conditions of the Trust access to the Facility and the Site for a period of 28 days from the effective date of such termination to allow Concessionco to remove any of its equipment provided always that:
- (a) in respect of any such equipment necessary for the operation of the Facility other than Concessionco's IT System or the provision of healthcare, the Trust shall have the right to purchase such equipment at the lower of cost or net market value; and
 - (b) in respect of any such equipment (other than the equipment referred to in Clause 48.6(a) of Concessionco which is left on the Site for a period of 28 days from the date of effective termination, the Trust shall, after giving Concessionco notice and further reasonable opportunity to remove such equipment, be entitled at the end of such period to sell any or all of such equipment to any third party and shall account to Concessionco for the proceeds of such sale, less any expenses reasonably incurred in or arising out of such sale.
- 48.7 Subject to Clause 48.6, Concessionco, its servants, agents, employees and sub-contractors engaged directly in the performance of the Works or Services shall forthwith vacate the Trust's Premises and the Facility save that in the event this Agreement shall expire by effluxion of time such period shall be extended until 7 days from the effective date of the termination of this Agreement. The foregoing provisions shall be without prejudice to the provisions of Clause 25 of the Lease.

49. **DISPUTES**

- 49.1 In the event that any dispute, difference, complaint or claim of whatsoever nature arises under, out of, in connection with or relating to this Agreement, including (without limitation) any dispute or difference regarding its existence, validity or termination, (a "Dispute") either party may give notice in writing to the other describing the nature of the Dispute. Following the giving of such notice, the parties will attempt in good faith to resolve the Dispute promptly through negotiations between appropriate officers of the parties who have authority to settle the same.
- 49.2 Any Dispute, if not resolved within 25 Business Days following the giving of the notice under Clause 49.1, shall be referred for resolution to the Board of Directors of Concessionco and the Board of Directors of the Trust (or to such of their respective members as they may each nominate for the purpose).

- 49.3 Any Dispute so referred, if not resolved within 35 Business Days following the giving of the notice under Clause 49.1 may, unless otherwise expressly stated in this Agreement, be referred to an Expert and/or to the Court for determination in accordance, with Clause 50.

50. DETERMINATION BY EXPERT OR THE COURT

- 50.1 For the purpose of this Clause 50, Disputes shall be divided into the following categories:

- (a) any Dispute of a minor or technical nature or relating to the interpretation of this Agreement which is not likely to have a financial consequence greater than £50,000 if adversely decided or any Dispute where the damages or payment claimed are, or the financial consequences of which if adversely decided are likely to be, £50,000 or less (a "Category A Dispute");
- (b) any Dispute where the damages or payments claimed are, or the financial consequences of which if adversely decided are likely to be, more than £50,000 but less than £100,000 (a "Category B Dispute"); and
- (c) any other Dispute not falling within the definitions of Category A Dispute or Category B Dispute, including any Dispute where the damages or payments claimed are, or the financial consequences of which if adversely decided are likely to be, £100,000 or more (a "Category C Dispute").

- 50.2 If any Dispute is not resolved pursuant to Clause 49, it shall be determined in the following manner:

- (a) in the case of a Category A Dispute, by an Expert in accordance with this Clause;
- (b) in the case of a Category B Dispute, by an Expert in accordance with this Clause (but subject to the provision of Clause 50.11) or by the Court at the option of the party commencing the proceedings; and
- (c) in the case of a Category C Dispute, by the Court.

- 50.3 The procedure for the appointment of the Expert shall be as follows:

- (a) the party wishing the appointment to be made shall give notice to that effect to the other party and with such notice shall give details of the Dispute which it is proposed shall be resolved by the Expert;
- (b) the parties shall meet in an endeavour to agree upon a single Expert to whom the matter in dispute shall be referred for determination;
- (c) if within 5 Business Days from the service of the notice under Clause 50.3(a) the parties have failed to agree upon the Expert then the matter may forthwith be referred by either party wishing the appointment to be made to the President for

(whether arising out of his contract of appointment or otherwise) and lay down the procedural rules to be applied, which rules shall be in accordance with the terms of this clause;

- (b) the parties shall be entitled to supply data and information and make submissions to the Expert within 10 Business Days after his appointment;
- (c) either party shall be entitled to make a reply submission within 10 Business Days of receiving the submission of the other party in accordance with paragraph (b);
- (d) subject to paragraph (c) the Expert shall ignore data, information and submissions supplied and made after such 10 Business Day period referred to in paragraph (b) unless the same are furnished in response to a specific request from him;
- (e) the Expert shall be entitled to obtain such independent professional and/or technical advice as he may reasonably require and to obtain such secretarial assistance as is reasonably necessary;
- (f) any and all communications between and submissions made by either of the parties and the Expert shall be made in writing and a copy thereof provided simultaneously to the other party and no meeting between the Expert and the parties or either of them shall take place unless both parties have a reasonable opportunity to attend any such meeting;
- (g) the Expert shall give full written reasons for his decision;
- (h) the Expert shall provide to each of the parties a draft of his decision and the parties shall be given a period of not less than 5 Business Days to make comments on such draft.

50.6 The Expert shall make his decision as soon as reasonably practicable and in any event within 40 Business Days after his appointment. If within such period the Expert shall not have rendered his decision then at the request of either party another Expert shall be appointed hereunder, and on acceptance of such appointment the appointment of the previous Expert shall cease unless prior to the date the new Expert is appointed the previous Expert shall have rendered his decision hereunder, in which case such decision shall (subject in the case of a Category B Dispute to Clause 50.11) be binding on the parties and the instruction of the new Expert shall be withdrawn.

50.7 The Expert shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Acts 1950 to 1996 (as amended from time to time) and the law relating to arbitration shall not apply to the Expert or his determination or the procedure by which he reaches his determination.

50.8 Each party shall bear the costs of providing all data, information and submissions given by it and the costs and expenses of all witnesses and persons retained by it but the costs and expenses of the Expert and any independent advisers to the Expert and any costs

of his appointment if he is appointed by the said President of the Law Society of Scotland shall be borne as to one half by the Trust and as to one half by Concessionco.

- 50.9 The decision of the Expert shall (subject in the case of a Category B Dispute to Clause 50.11) be final and binding on the parties (save in the case of fraud or manifest error and other than on points of law). The amount (if any) which becomes payable by one party to the other as a result of the Expert's decision shall become due and payable within 5 Business Days of publication of the decision. The Expert shall have the power to direct that interest on that amount, at the Appropriate Rate shall be paid by one party to the other as compensation for delay in receipt of such amount in respect of the period following the date on which the matter was referred to the Expert.
- 50.10 If the amount payable as a result of the Expert's decision is not paid within 5 Business Days of the publication of the decision, interest will accrue on that amount at the Appropriate Rate.
- 50.11 The decision of the Expert in a Category A Dispute (save in the case of fraud or manifest error and other than on points of law) shall be final and binding on the parties. The decision of the Expert in a Category B Dispute shall be final and binding unless challenged by either party by notice in writing within 20 Business Days of receipt of the Expert's decision and proceedings are issued in respect of the Dispute within 20 Business Days after such notice.
- 50.12 If Court proceedings are issued in respect of a Category B Dispute or a Category C Dispute then the Court shall have jurisdiction to determine the rights of the parties in respect of the Dispute. For the avoidance of doubt, the Court shall have full power to open up, review and revise any certificate, endorsement, decision, opinion, instruction, notice, statement of objection, finding, determination, requirement or valuation related to such Dispute and any decision of the Expert in respect of a Category B Dispute or any matter on a point of law.

51. PROJECT PANEL

- 51.1 The Board of Directors of Concessionco and the Board of Directors of the Trust shall not less than 3 Months prior to the date anticipated for Completion in the Contractor's Programme and thereafter from time to time during the remainder of Phase I meet and acting reasonably and in good faith shall appoint from the Services Commencement Date the Project Panel to fulfil the functions indicated in Clause 26 and Clause 27. If and when any member of the Project Panel is to be replaced, the Board of Directors of Concessionco and the Board of Directors of the Trust shall meet as necessary to appoint a replacement member of the Project Panel.
- 51.2 The Project Panel shall comprise such persons as the Board of Directors of Concessionco and the Board of Directors of the Trust may deem appropriate but shall consist of a minimum of 3 persons at all times.

- 51.3 The Board of Directors of Concessionco and the Board of Directors of the Trust shall agree with each appointee such terms, remuneration and such other matters as may be relevant to the appointment of the members of the Project Panel.
- 51.4 In the event that no member of the Project Panel is able to act where so requested, any matter in respect of which Concessionco's Representative may, pursuant to either Clause 26 or Clause 27, have requested the opinion of a member of the Project Panel, shall be determined by reference to the Disputes Resolution Procedure.
- 51.5 No opinion of a member of the Project Panel given pursuant to either Clause 26 or Clause 27 shall be conclusive as to any relevant matter and any such matter shall, notwithstanding such opinion, remain subject to the Disputes Resolution Procedure.

52. CONFIDENTIALITY

- 52.1 Concessionco shall maintain security safeguards no less than those used at the date of this Agreement by the Trust (details of which it will disclose to Concessionco on request) in relation to any information of a confidential nature relating to patients which it receives as a result of the performance of the Works, the Services and any Additional Work.
- 52.2 Each of the parties shall comply with its respective obligations under the Data Protection Act 1984 and other applicable Legal Requirements in respect of such data.
- 52.3 Save as required by law or rules of professional practice or as ordered by a Court of competent jurisdiction or by any competent authority or appropriate regulatory body or as reasonably required for the performance of the obligations contained in this Agreement each of Concessionco and the Trust undertakes to the other to treat as confidential all confidential or proprietary information which may be acquired by it from the other in relation to the business or any employee of the other, or the Works, the Facility, the Services, or any Additional Work which is derived from this Agreement and if so required the sub-contractors of the other shall enter into a confidentiality undertaking in a form acceptable to Concessionco or the Trust as the case may be. Each of Concessionco and the Trust undertakes to use all reasonable precautions and endeavours to ensure that all such information is treated as confidential by it, its employees, servants, agents or sub-contractors. Concessionco and the Trust may nevertheless disclose confidential or proprietary information:
- (a) with the prior written consent of the other; or
 - (b) when required to do so by any Legal Requirements; or
 - (c) to the Lenders or any prospective Lender and to any other person from time to time providing financing or funding to Concessionco and to the professional advisers and consultants of any of them, to the extent that they need to know the same; or

- (d) (in the case of Concessionco) to any person which is proposing to become a Service Provider or sub-contractor or Substitute Entity or Purchaser, upon obtaining from them in favour of the Trust an appropriate confidentiality undertaking; or
- (e) to the extent that it can be shown by one of the parties to have been in its lawful possession prior to the date of disclosure by the other party; or
- (f) to the extent that it becomes generally available to the public other than as a result of an impropriety or breach of an obligation of confidentiality to any person, including but not limited to the parties to this Agreement.

52.4 The provisions of this Clause shall survive the termination of this Agreement insofar as they remain relevant.

53. LIMITATION OF LIABILITY

No action alleging any breach of any of the Project Agreements (whether in contract, indemnity, warranty, delict (including negligence and strict or absolute liability) breach of statutory duty or otherwise) shall be commenced later than 12 months after termination of this Agreement whether by effluxion of time or otherwise ("the Cut-off Date"), save to the extent of:

- (a) any obligation which is expressed to continue after termination of this Agreement;
- (b) any breach of the Warranties (the limitation for bringing action in relation to the same being that contained in Clause 35.5);
- (c) any breach, notice of which has been duly served hereunder before the Cut-off Date; and
- (d) any breach by Concessionco consisting of the negligent performance or non-performance of any of the Works, Services or any Additional Work under this Agreement, provided that if and so long as Concessionco shall comply with its obligations to maintain the insurance policies pursuant to Clause 37 and shall fully comply with all material requirements of whatever nature imposed upon Concessionco in respect of them the liability of Concessionco after the Cut-off Date for any matter in respect of which there is a valid insurance policy or policies the proceeds of which are available to discharge such liability shall be limited to the limit of such cover under such policy or policies.

54. OPTION TO TERMINATE

54.1 The Trust may terminate this Agreement with effect on and from any of the dates which are 5, 10, 15, 20, 25, 30 or [35] Years prior to the end of the Contract Period provided:

- (a) that it shall have given Concessionco written notice of its intention to terminate not less than 1 year prior to the relevant date of termination; and

- (b) that the Trust may exercise such option to terminate only if the Board of Directors of the Trust has passed a resolution to discontinue the provision of hospital services at the Facility.

54.2 Time shall be of the essence for all the periods and dates mentioned in Clause 54.1

55. ASSIGNMENT

55.1 Subject to any express provision of this Agreement to the contrary, neither party shall, without the prior written consent of the other, assign all or any benefit, right or interest under any of the Project Agreements.

55.2 The provisions of Clause 55.1 do not apply:

- (a) to the assignment of the benefit of any of the Project Agreements by way of security in accordance with any Funding Agreement or any agreement with the providers from time to time of Subordinated Debt (other than Tarmac PFI Limited and [UME Investments Limited]); or
- (b) to the assignment, novation or other transfer of any of the Project Agreements in accordance with the provisions of the Lenders Direct Agreement.

56. RTPA

No provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which this Agreement or such arrangement is subject to registration under the Restrictive Trade Practices Act 1976 shall come into effect until the day following the date on which particulars of this Agreement and of any such arrangement have been furnished to the Office of Fair Trading (or on such later date as may be provided for in relation to any such provision) and to the extent that this Agreement is subject to registration under the Restrictive Trade Practices Act 1976 the parties hereto agree to furnish such particulars within three (3) months from the date of this Agreement.

57. DATA PROTECTION

Concessionco and the Trust shall arrange their respective registrations with the Data Protection Registrar in such a lawful manner as to enable the fulfilment of their respective obligations hereunder.

58. INVALIDITY

Without prejudice to Clauses 14B, 32 and 41, the invalidity, illegality or unenforceability in whole or in part of any of the terms and conditions of this Agreement shall not affect the validity, legality and enforceability of the remaining terms and conditions of this Agreement.

59. **VAT**

- 59.1 The consideration for any supply made by either party hereunder is exclusive of VAT or any similar tax, duty or imposition (each a "value added tax") which is or becomes chargeable thereon and if any sum is or becomes so payable in respect of any value added tax then the party to whom such supply is made shall against delivery of an appropriate VAT invoice pay the same to the other party.
- 59.2 Where pursuant to this Agreement a sum is reimbursed to Concessionco in respect of any costs, fees or expenses, the Trust shall, in addition to such amounts, pay to Concessionco such amount as equals the value added tax incurred by Concessionco in respect of the costs, fees or expenses referred to above which Concessionco (acting reasonably) certifies that it is unable after having made all reasonable efforts to recover (whether by cash reclaim, credit or set-off against output tax) from HM Customs & Excise, such certificate to be conclusive and binding save in the case of manifest error.
- 59.3 Provided that the Trust shall not be required to make any payment under Clause 59.2 above to the extent that Concessionco's ability to recover the value added tax arises as a result of any act of Concessionco other than (i) an act carried out pursuant to the terms of the Concession Agreement or any ancillary or related agreement associated with the Project or (ii) any failure of Concessionco to elect to waive exemption in respect of the Properties pursuant to Schedule 10 Value Added Tax Act 1994.

60. **CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

Neither Concessionco nor any of its employees, servants or agents, shall:

- (a) offer or give or agree to give to any person in the employ of the Trust any gift or consideration of any kind as an inducement or reward for doing or for having done or forborne to do any act in relation to the obtaining or execution of this Agreement or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; or
- (b) enter into this Agreement or any other agreement with the Trust in connection with which commission has been paid or agreed to be paid by Concessionco or on its behalf, or to its knowledge, unless before such agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the duly authorised representatives of the Trust.

61. **DISCRIMINATION**

Concessionco shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or Sex Discrimination Act 1975 or Disability Discrimination Act 1995 or any statutory modification or re-enactment thereof.

62. **VARIATIONS**

Subject to Clauses 14A, 14B, 30, 31, 32, 33 and 34 no variation of any of the terms and conditions of this Agreement shall be valid unless previously agreed in writing by the parties hereto.

63. **WAIVER**

The failure of either party at any time to enforce any provisions of this Agreement shall in no way affect its right thereafter to require complete performance by either party of all its obligations under this Agreement nor shall the waiver of any breach of any provision be taken or held to be a waiver of any past or subsequent breach of any such provision or to be a waiver of the provision itself.

64. **NO PARTNERSHIP**

Nothing in any of the Project Agreements shall be deemed to create a partnership between the parties, nor shall the relationship between the parties to this Agreement constitute a partnership for any purposes.

65. **ENTIRE AGREEMENT**

65.1 This Agreement and all the documents referred to herein (together with any document referred to in any other document referred to herein) contain the entire agreement between the parties.

65.2 Each party acknowledges to the other that it has not entered into any of the Project Agreements in reliance upon any statement, warranty or representation given by the other (whether express or implied by statute or otherwise) other than such as may be contained in any of the Project Agreements.

66. **PROPER LAW & JURISDICTION**

This Agreement shall be governed by and construed and interpreted in accordance with Scots law and the parties hereby submit to the non-exclusive jurisdiction of the Scottish Courts.

67. **PUBLICITY**

Neither party shall, save as required by law or regulation, issue any press release in relation to the provisions contemplated by this Agreement without the prior consent of the other (such consent not to be unreasonably withheld or delayed).

68. **NOTICES**

68.1 Without prejudice to the provisions of Clause 26.2, any notice or other communication given or made under this Agreement shall be in writing and, without prejudice to the

validity of any other method of service, may be delivered personally or by courier or sent by facsimile transmission or by first class prepaid letter, addressed as follows

- (a) if to the Trust, to its address shown on the first page of this Agreement and/or to such facsimile transmission number as may be notified to Concessionco from time to time, in each case marked for the attention of the Chief Executive;
- (b) if to Concessionco, to its address shown on the first page of this Agreement and/or to such facsimile transmission number as may be notified to the Trust from time to time, in each case marked for the attention of the Managing Director

or to such other address, or facsimile transmission number in the United Kingdom as the relevant addressee may hereafter by notice hereunder substitute.

68.2 Any such notice or other communication shall be deemed to have been duly served, given or made:

- (i) in the case of posting, 48 hours after the envelope containing such notice was posted and proof that any such envelope was properly addressed, prepaid, registered and posted shall be sufficient evidence that such notice or other communication has been duly served, given or made; or
- (ii) in the case of delivery, when left at the relevant address; or
- (iii) in the case of a facsimile transmission, upon receipt by the addressee of the complete text in legible form.

69. PRECEDENCE OF TERMS

Notwithstanding any other provision of this Agreement, the parties agree that the terms and conditions of Sections A to C of this Agreement shall override the terms and conditions of the Schedules attached hereto and any other document forming part of this Agreement and, in the event of any inconsistency or conflict between the provisions of Sections A to C of this Agreement and any Schedule or other document forming part of this Agreement, the provisions of Sections A to C of this Agreement shall prevail to the extent of the inconsistency or conflict.

70. LEGAL REQUIREMENTS

Concessionco shall not be in breach of any of its obligations under this Agreement to the extent such breach arose as a consequence of Concessionco complying with any Legal Requirement.

IN WITNESS whereof the parties have executed this Agreement as a Deed on the date first above written.

THE COMMON SEAL of SOUTHERN)
GENERAL HOSPITAL NATIONAL)
HEALTH SERVICE TRUST)
TRUST was affixed in the presence of:)
)

THE COMMON SEAL of)
[])
)
was affixed in the presence of:)

SCHEDULE 1

DEFINITIONS

TO THE CONCESSION AGREEMENT DATED ●

1998

BETWEEN:

**SOUTHERN GENERAL HOSPITAL
NATIONAL HEALTH SERVICE TRUST**

AND

[]

signed for identification purposes

.....
for and on behalf of Southern General Hospital NHS Trust

signed for identification purposes

.....
for and on behalf of []

SCHEDULE 1 : PART I
DEFINITIONS

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| "Additional Service" | means any service which does not form part of the Services and which the Trust requires to be undertaken at the Facility; |
| "Additional Service Contractor" | means any person (other than Concessionco) engaged by the Trust to undertake an Additional Service; |
| "Additional Work" | means any work requiring capital expenditure (as such term is interpreted in accordance with generally accepted accounting principles in the United Kingdom from time to time), other than in respect of the Works, to be carried out at or in relation to the Facility and/or the Site including any change in or addition to the kind, quality, quantity, lines, levels or dimensions of any work shown and/or detailed in the Detailed Design and/or the Building Specification (as the same may be amended from time to time pursuant to this Agreement); |
| "Agent" | means [] in its capacity as agent to the lenders under the Senior Loan Agreement, or any replacement agent under the Senior Loan Agreement; |
| "Applicable Margin" | <p>means:</p> <p>(a) in respect of the period prior to the Completion Date, [] per cent per annum;</p> <p>(b) [] per cent per annum in respect of the period from the day after the Completion Date until but excluding the 10th anniversary of the date of this Agreement; and</p> <p>(c) [] per cent per annum in respect of the period thereafter</p> <p>plus (in each case) the percentage rate per annum (if any) payable by Concessionco to the Lenders from time to time under the Funding Agreements in respect of the cost (as calculated by or on behalf</p> |

of the Lenders) of complying with the monetary control requirements of the Bank of England (or of any institution from time to time succeeding the Bank of England for the purpose of exercising monetary controls);

"Appropriate Rate"

means:

- (a) in respect of interest payable by the Trust pursuant to Clause 25.9, the rate calculated on a daily basis equal to the sum of 2½ per cent over the relevant non default rate (including any margin) that is then applicable to loans outstanding under the Senior Loan Agreement (or, if there are no such outstanding loans, 2½ per cent above the base lending rate from time to time of [National Westminster Bank Plc]);
- (b) in respect of interest payable by Concessionco pursuant to Clause 25.9, the rate calculated on a daily basis at the rate equal to 2½ per cent above the base lending rate from time to time of [National Westminster Bank Plc];

or, in the event that [National Westminster Bank Plc] ceases to calculate and/or publish a base lending rate, such other base lending rate of such other clearing bank as the Trust may reasonably nominate;

"Area Type"

means each of type A, type B and type C, as categorised and identified in Schedule [];

"Availability Payment"

means the quarterly amount payable to Concessionco as a consequence of the Facility being available for use by the Trust being the amount set out (in [*base date*]prices) in Schedule [], subject to indexation in accordance with Clause 25.7 and the adjustments provided for in this Agreement;

"Basic Design"

means the basic design criteria for the Works as described or referred to within the plans, drawings, room data sheets and other information set out in Schedules [] and [] as from time to time varied pursuant to this Agreement;

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| "Benchmark Date" | means the date falling 5 years after the Services Commencement Date and each date falling a 5 yearly intervals thereafter; |
| "Building Contractor" | means the building contractor with whom Concessionco has entered into the Construction Contract being Tarmac Construction Limited or such substitute of equivalent standing in all material respects as may be appointed by Concessionco from time to time; |
| "Building Specification" | means the specifications, standards, requirements, design criteria, room data sheets and other information described or referred to in Schedule [] and forming part of the Basic Design, (as the same may be developed into the Detailed Design) in accordance with this Agreement, and as from time to time varied in accordance with this Agreement; |
| "Business Day" | means any day other than Saturday or Sunday, Christmas Day or Good Friday and other than a bank holiday within the meaning given by Section 1 of the Banking and Financial Dealings Act 1971; |
| "Category A Dispute" | has the meaning ascribed to it in Clause 50.1; |
| "Category B Dispute" | has the meaning ascribed to it in Clause 50.1; |
| "Category C Dispute" | has the meaning ascribed to it in Clause 50.1; |
| "Change in the Legal Requirements" | means any enactment, amendment, revocation or change in interpretation (which is not the subject of an appeal) of or in respect of any of the Legal Requirements first having legal effect after the date hereof; |
| "Commissioning" | means the commissioning work to be carried out in accordance with the Outline Commissioning Schedule as developed into the Detailed Commissioning Schedule; |
| "Compensation Amount" | has the meaning set out in Clause 47.4; |
| "Completion" | means the completion of the Works in accordance with this Agreement as certified in accordance with Clause 18; |

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| "Completion Certificate" | means the certificate issued by Concessionco pursuant to Clause 18 stating that the Works have been completed (save as provided in Clause 18.7); |
| "Completion Date" | means the date being [] weeks from the date of this Agreement, as varied from time to time in accordance with this Agreement; |
| "Concessionco's Post Completion Commissioning" | means the Commissioning to be undertaken by Concessionco following issue of the Completion Certificate as set out in the Detailed Commissioning Schedule; |
| "Concessionco's Representative" | means any representative of Concessionco responsible for the day-to-day performance of the Works and/or the Services and/or any Additional Work, who shall be contactable at all times, whose identity is from time to time made known to the Trust by Concessionco; |
| "Concessionco's IT System" | means the information technology equipment and systems used by Concessionco in the provision of the Services; |
| "Confirmed Variation Instruction" | means an instruction issued by the Trust to Concessionco confirming a variation proposed and agreed pursuant to Clause 14A, 14B or Clause 31.1 to confirm certain matters referred to in those Clauses; |
| "Construction Contract" | means the contract dated [] and annexed to this Agreement at Schedule [] between Concessionco and the Building Contractor for the design, construction and completion of the Contract Works; |
| "Construction Management Contract" | has the meaning ascribed to it in the Senior Loan Agreement; |
| "Construction Manager" | has the meaning ascribed to it in the Senior Loan Agreement; |
| "Contract Period" | means the period from the date of this Agreement until the date which is sixty (60) years and fourteen (14) days after the Completion Date subject to the provisions of this Agreement; |

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| "Contract Works" | means the work to be undertaken by the Building Contractor pursuant to the Construction Contract other than Concessionco's Post-Completion Commissioning; |
| "Contractor's Programme" | has the same meaning ascribed to it in the Construction Contract; |
| "Corporate Tax Legislation" | means any of the Legal Requirements which relate to the UK taxation of the profits of corporate bodies; |
| "Cost" | means, (i) in relation to the implementation of Additional Work (A) the capital expenditure (as such term is interpreted in accordance with generally accepted accounting principles in the United Kingdom from time to time) incurred in and (B) (insofar as the same are not capital expenditure for the purposes of this definition) such other anticipated costs including without limitation any loss of revenues during or arising as a consequence of the implementation of the Additional Work (except the cost of funding) and (ii) in relation to the implementation of such Change or Changes which do not relate to the implementation of Additional Work, the anticipated costs incurred in and as a consequence of implementing any such Change or Changes but in the case of both (i) and (ii) taking into account any costs reasonably or necessarily incurred by Concessionco in the performance of any Service which is or will be reduced by reason of any such Change or Changes; |
| "Crown Indemnity Scheme" | means <i>[the scheme, established by Section 21 of the Act which is administered by the National Health Service Litigation Authority, to enable NHS Trusts to make provision to meet their liabilities to third parties in relation to clinical negligence, or such other replacement or equivalent scheme from time to time in force]</i> ; |
| "Detailed Commissioning Schedule" | means the Detailed Commissioning Schedule developed from the Outline Commissioning Schedule as it may be agreed between the parties pursuant to Clause 13.2 or determined pursuant to Clause 13.5; |

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| "Detailed Design" | means the Basic Design which has been developed and determined in accordance with Clause 12, and as from time to time varied pursuant to this Agreement; |
| "Discriminatory Bill" | has the meaning ascribed to it in Clause 41.3.2; |
| "Dispute" | has the meaning ascribed to it in Clause 49.1; |
| "Disputes Resolution Procedure" | means the procedure for the resolution of disputes, as set out in Clauses 49 and 50; |
| "Environmental Legislation" | means any of the Legal Requirements which relate to the pollution or protection of the environment or the protection of animals or plants and the management, handling, storage, production, treatment, transport or disposal of waste; |
| "Equipment" | means the equipment listed in the Equipment List; |
| "Equipment List" | means the list set out in Schedule [] to this Agreement; |
| "Event of Force Majeure" | means one or more of the events listed in Clause 39.3; |
| "Expert" | means an appropriate expert appointed pursuant to Clause 50; |
| "Facility" | means the new acute facility for the elderly to be constructed, commissioned, equipped and maintained pursuant to this Agreement, and includes that unit after Completion; |
| "Fault" | means, in relation to any Service, each and any of the non-availability criteria set out in Appendix A to the Service Level Specification for that Service; |
| "Final Period" | means the period from the first day of the Quarter in which the Contract Period ends, to the last day of the Contract Period; |
| ["Financial Close" | means the execution (with all the conditions precedent thereto satisfied or waived (save any condition requiring that this Agreement has become unconditional) of facility letters and/or credit agreements and/or equity subscription agreements and/or Subordinated Debt agreements |

and or the Lenders Direct Agreement (and all the documents required thereby or referred to therein) between Concessionco as borrower and the Lenders, and other lending institutions and/or equity providers (and, in the case of the Lenders Direct Agreement, the Trust) regulating the provision of finance to Concessionco a loan and/or loans and/or equity in relation to the Project;]

"FM Contract"

means the contract dated [] and annexed to this Agreement at Schedule [] between Concessionco and the FM Contractor;

"FM Contractor"

means the facilities management contractor with whom Concessionco has entered into the FM Contract, being Tarmac Services Limited or such substitute of equivalent standing in all material respects as may be appointed by Concessionco from time to time;

"Fossil or Antiquity"

means any fossil, antiquity or other matter of archaeological interest;

"Funders"

means Lenders;

"Funding Agreements"

means the Senior Loan Agreement and all security, hedging and direct agreements required by the terms of such agreement, any hedging transactions entered into by Concessionco after the date of this Agreement, and any agreement or instrument entered into by Concessionco to raise, secure, or enter into hedging agreements relating to, additional or substitute finance or financial facilities in any form, or relating to the rescheduling of its indebtedness or the re-financing of the Project, each as amended, supplemented and varied from time to time;

"GDP Deflator"

[KPMG to provide]

"Health and Safety Legislation"

means any of the Legal Requirements which applies specifically to workplace, health, safety and welfare maintenance;

"Health Board"

means []

"Hedging Agreement"

means []

| | |
|----------------------------|---|
| "Initial Period" | means the period from the Payment Commencement Date to the final day of the Quarter in which that date falls; |
| "Insurance Adviser" | means the specialised advisers and/or brokers appointed from time to time by the Trust in respect of this Agreement such appointment to be notified to Concessionco from time to time pursuant to the provisions of Clause 37 of this Agreement; |
| "Lease" | means the lease to be granted by the Trust to Concessionco pursuant to Clause 7.1; the same to be in the form of the draft set out in Part 1 of Schedule []; |
| "Legal Requirement" | means any law, regulation, bye-law, directive, statute, statutory instrument, or other legislative measure having the force of law, and any request, requirement, guideline, recommendation or instruction of any competent person (including, without limitation, the Scottish Office, the National Health Service in Scotland or equivalent body and the HSE) whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the request, requirement, guideline, recommendation or instruction is addressed and including the provisions of any National Patient's Charter; |
| "Lenders" | means any bank or other financial institution from time to time providing finance or funding to Concessionco in respect of the Project; |
| "Lenders Direct Agreement" | means an agreement containing all of the provisions substantially in the form set out in Schedule []; |
| "LIBOR" | means in relation to any amount or sum, in respect of the period of six months commencing on the date of termination of this Agreement, and in respect of each successive period of six months until that amount or sum is paid in full (each an "Interest Period") the rate which is quoted as at 11 a.m. (London time) on the first day of that Interest Period on the "LIBOR" page of the Reuter Monitor Money Rates Services ("Reuters Screen LIBOR page") (or any other page or service which |

may replace page the Reuters Screen LIBOR page for the purpose of displaying London inter-bank Sterling offered rates of leading reference banks) as being the interest rate offered in the London inter-bank market for Sterling deposits for the same period as the relevant Interest Period (or, if the periods are not the same, such period, if any, as the Agent (by notice to Concessionco and the Trust) determines to be substantially the same) but:

(a) if the offered rate so appearing is replaced by the corresponding rates for the same period of more than one bank, the rate shall be the arithmetic mean (rounded up, if necessary, to the next 1/16 per cent) of the respective rates so appearing and

(b) if for any other reason such offered rate for the same period does not so appear, or if the relevant page is unavailable, the rate for that Interest Period shall be the arithmetic mean (rounded up, if necessary, to the next 1/16 per cent) of the respective rates (as quoted to the Agent at its request and notified to Concessionco and the Trust) at which each Reference Bank (or, if only one of the Reference Banks is offering such deposits such Reference Bank) is offering Sterling deposits for that Interest Period in an amount comparable to the amount or sum to which that Interest Period relates to prime banks in the London inter-bank market at or about 11.00am on the first day of that Interest Period

[and (c) to cover^{} EMU];*

[provided that in respect of any Interest Period beginning before the date which is ten years after the date of this Agreement, such rate shall not exceed 9 per cent per annum;]

"Losses Occurring Insurance"

means insurance where indemnity is provided for losses that occur or are deemed to have occurred during the period of the policy;

"Market Testing Exercise"

means an exercise to be conducted by Concessionco to appoint a Service Provider on terms acceptable to Concessionco using a competitive tendering or other process;

"Minimum Service Standard"

means []

| | |
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| "Modified Groups 2, 3 and 4 Equipment List" | means the Modified Groups 2, 3 and 4 Equipment List to be developed pursuant to Clause 13.3, |
| "Month" | means a calendar month; |
| "Necessary Consents" | means all approvals, consents, licences, permissions, certificates and statutory agreements required from any competent authority and all consents and agreements from and with third parties necessary for the carrying out and completion of the Works and any Additional Work in accordance with this Agreement and so as to permit the occupation and use of the Facility including, without limitation, all necessary planning consents and all necessary building regulations consents; |
| "New Appointee" | means each person whom Concessionco or any other Service Provider shall employ for the purposes of this Agreement; |
| "Notice of Unavailability" | means a notice in the form set out in Schedule [] to be issued to Concessionco by the Senior Trust Officer pursuant to and in accordance with Clause 26; |
| "Operation Management Contract" | has the meaning ascribed to it in the Senior Loan Agreement; |
| "Operation Manager" | has the meaning ascribed to it in the Senior Loan Agreement; |
| "Operational Policies" | means the operational policies of the Trust relating to the delivery of healthcare; |
| "Original Hedging Agreements" | has the meaning set out in the Senior Loan Agreement; |
| "Outline Commissioning Schedule" | means the Outline Commissioning Schedule set out in Schedule []; |
| "Payment Commencement Date" | means the date which is specified as such in the Completion Certificate; |
| "Performance Notice" | means a notice issued by the Trust pursuant to Clause 27 containing the information referred to in that Clause; |

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| "Performance Indicator" | means []; |
| "Performance Percentage" | means in respect of each Service the score (expressed as a percentage of the maximum possible score) achieved by Concessionco for the Month in question as more particularly described in and determined pursuant to the Service Level Specifications; |
| "Performance Related Payment" | means the quarterly amount (in <i>[base date]</i> or Benchmark Date prices as the case may be) payable to Concessionco for provision of the Services as set out in the Service Level Specifications or as subsequently agreed, ascertained or determined pursuant to Clause 28 subject to indexation pursuant to Clause 25.7 and adjustment pursuant to paragraphs (a) to (d) of Clause 27.2; |
| "Phase I" | means the period from the day after the date of this Agreement to (and including) the date stated in the Completion Certificate; |
| "Phase II" | means the period from (and including) the Services Commencement Date until the expiry of the Contract Period; |
| "Planned Preventative Maintenance" | means Maintenance to be undertaken pursuant to the Estates and Maintenance Service Level Specification in relation to any Building, ⁴ Plant or Equipment (as defined in Schedule 1 Part II) regardless of whether any fault, failure or breakdown has occurred in relation to such Building, Plant or Equipment; |
| "Pre-Completion Commissioning" | means the Commissioning to be undertaken by Concessionco prior to issue of the Completion Certificate as set out in the Detailed Commissioning Schedule; |
| "Procedures Manual" | means in respect of each Service the manual annexed at Appendix [] of the respective Service Level Specification which sets out how the Services will be performed as amended from time to time by mutual agreement of the Trust and Concessionco; |

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| "Project" | means the Works, any Additional Work and the subsequent provision at the Facility of healthcare services by the Trust supported by the Services provided by Concessionco on the terms of this Agreement and any contracts, agreements or arrangements associated therewith at any time during the Contract Period; |
| "Project Agreements" | means this Agreement, the Lease and the Sublease; |
| "Project Panel" | means the panel appointed pursuant to Clause 51; |
| "Purchaser" | has the meaning ascribed to it in the Lenders Direct Agreement; |
| "Qualifying Change" | means any Change in the Legal Requirements which is a change of or in respect of any legislation which applies specifically to Concessionco, specifically to the Facility or healthcare facilities generally, specifically to the provision of health care or to the policy of HM Government in relation to the provision of private finance for the funding of health care facilities within the National Health Service or in respect of the Project; |
| "Quarter" | means any continuous period of three Months ending on either 31st January, 30th April, 31st July or 31st October; |
| "Receivables" | <p>means book debts and cash at bank owing to or held by or on behalf of Concessionco or for so long as the Funding Agreements remain in force over which the Lenders have first ranking security rights pursuant to the Funding Agreements both as at the date thereof and as the same may be varied provided that, for the purposes of this definition, book debts:</p> <p>(a) shall be included only to the extent that they shall have been paid by the date falling 60 days after the date of termination of this Agreement;</p> <p>(b) shall include only debts incurred in connection with the Project pursuant to this Agreement;</p> |

| | |
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| | (c) shall include any amounts payable to Concessionco under any Hedging Agreement on termination thereof; |
| "Reference Banks" | means [] as may be determined pursuant to the Senior Loan Agreement; |
| "Regulations" | means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) and to the extent that it is enforceable against either of the parties hereto Council Directive No. 77/187/EEC; |
| "Relevant Change in the Legal Requirements" | means a Change in the Legal Requirements not falling within the categories listed in Clause 32.2; |
| "Relevant Uninsured Losses" | has the meaning set out in Clause 37.20(h); |
| "Review Date" | means: <ul style="list-style-type: none"> (a) in respect of the Operating Fee, the Maintenance Fee (both defined in Schedule []) and the Availability Payment the 1st January and the 1st July in each year; (b) in respect of the Performance Related Payment the Services Commencement Date and 1st April in each year; |
| "Scottish Office" | means []; |
| "Secretary of State" | [GJW to provide]; |
| "Section 2 Notice" | has the meaning set out in Clause 26.2(b); |
| "Senior Loan Agreement" | means the agreement for senior funding facilities to the Project between [] as Lenders (or any assignees or transferees) or any other senior funding facilities made available to Concessionco in substitution therefor or on a refinancing; |
| "Senior Trust Officer" | means the person or persons appointed by the Trust to act in such capacity from time to time and as notified to Concessionco; |
| "Service" | means each of the Services to be provided (and being provided at any time) by Concessionco to the Trust pursuant to the Service Level |

Specifications and any Additional Service to be provided by Concessionco pursuant to Clause 30 and "Services" shall be construed accordingly;

"Service Level Specifications"

means each of the specifications setting out Concessionco's obligations in relation to each of the Services, each of them in the form set out at Schedule [] hereto;

"Service Provider"

means any party undertaking any Service or Services whether Concessionco or otherwise;

"Services Commencement Date"

means the first day after the date of issue of the Completion Certificate;

"Site"

means the Site as the same is more particularly described in Schedule [];

"Special Benchmarking Exercise"

means a benchmarking exercise carried out in accordance with Clause 32;

"Sublease"

means the underlease to be granted by Concessionco to the Trust in accordance with Clause 20.2 in the form set out in Part 2 of Schedule [];

"Subordinated Debt"

means junior funding facilities made available to Concessionco (or its holding company) by (*inter alios*) [Tarmac PFI Limited and UME Investment Company Limited];

"Substitute Entity"

has the meaning ascribed to it in the Lenders Direct Agreement;

"Tax Credit"

has the meaning ascribed to it in Clause 48.2D;

"Tax Payment"

has the meaning ascribed to it in Clause 48.2D;

"Termination Warning"

means a notice issued by the Trust pursuant to Clause 27;

"Total Payment"

means the sum of the Availability Payment and the Performance Related Payment as calculated pursuant to this Agreement;

"Trust Equipment"

[];

| | |
|---------------------------------------|---|
| "Trust Post Completion Commissioning" | means the Commissioning to be undertaken by the Trust following issue of the Completion Certificate as set out in the Detailed Commissioning Schedule; |
| "Trust's Premises" | means any or all of the properties more particularly described in Schedule []; |
| "Trust Procedures" | means the procedures set out in Schedule [] as amended from time to time pursuant to Clauses 30, 31 and 32 and the Royal Marsden Hospital Nursing Procedures Manual (3rd Edition) or such equivalent or replacement manual in force from time to time; |
| "Trust's Representative" | means any representative of the Trust responsible for the day to day monitoring of the Works and/or the Services and/or any Additional Works whose identity is from time to time made known to Concessionco by the Trust and who shall be contactable at all times; |
| "24 Hour Period" | means, in relation to a Notice of Unavailability, the period of 24 hours commencing at the time when that Notice of Unavailability was delivered pursuant to Clause 26.2(ii); |
| "Verification Indicator" | [] |
| "Warranties" | means the representations and warranties contained in Clause 35 and Schedule []; |
| "Works" | means: <ul style="list-style-type: none"> (a) the design and construction of a new acute facility for the elderly (and the associated external works) at the Site in accordance with the Basic Design (as the same may be developed into the Detailed Design); and (b) the Pre-Completion Commissioning; as varied in accordance with this Agreement and to be carried out by Concessionco in accordance with this Agreement; |
| "Year" | means a period of 12 months and "Yearly" will be construed accordingly. |

SCHEDULE 1 : PART II
DEFINITIONS - SERVICE LEVEL SPECIFICATIONS

| FULL BUSINESS CASE FOR PREFERRED OPTION | | COST FORM FB1 | |
|---|-------------------|-------------------------------------|-----------------------------|
| TRUST/PROVIDER UNIT: | | SOUTHERN GENERAL HOSPITAL NHS TRUST | |
| SCHEME: | | ELDERLY BEDS | |
| PHASE: | | ----- | |
| PROJECT DIRECTOR: | | ----- | |
| CAPITAL COSTS SUMMARY | | | |
| | Cost Exc Vat
£ | Vat
£ | Cost Inc Vat
£ |
| 1. Department Costs (from Form FB2) | 6,207,000 | 1,086,225 | 7,293,225 |
| 2. On-Costs (from Form FB3)
(22.24% of Department Costs) | 1,380,515 | 241,590 | 1,622,105 |
| 3. Works Cost Total (1+2) at 3rd 95
SP/VOP* SPSBTPI
(Tender price index level 1985 = 100
base) | 7,587,515 | 1,327,815 | 8,915,330 |
| 4. Provisional location adjustment (if
applicable) (5% of £7,587) (b) | 379,376 | 66,391 | 445,767 |
| 5. Sub Total (3+4): | 7,966,891 | 1,394,206 | 9,361,097 |
| 6. Fees (c)
(14.66% of sub total 5) | 955,230 | xxxxxxx (d) | 955,230 |
| 7. Non works costs (from Form FB4) (e)
Land
Other | 20,000 | 3,500 | 23,500 |
| 8. Equipment Cost (from Form FB2)
(% of Department Cost) | Excluded | ----- | ----- |
| 9. Contingencies 6% | 478,013 | 83,652 | 561,665 |
| 10. TOTAL (for approval purposes) | 9,420,134 | 1,648,523 | 11,068,657 |
| 11. Inflation Adjustments (f) 5% | 9,891,141 | 1,730,950 | 11,622,091 |
| 12. FORECAST OUTTURN TAKEOVER
BUSINESS CASE TOTAL | | | |
| Cash Flow | SOURCE | | £ |
| Year | EFL | OTHER
GOVERNMENT | PRIVATE |
| | | | Total Cost
(as 10 above) |
| | | | 11,068,657 |
| This form completed by: | | Date: | |
| Address:..... | | Telephone No:..... | |
| Authorised by: | | Project Director | |

See Notes Overleaf

| FULL BUSINESS CASE FOR PREFERRED OPTION | | | COST FORM FB2 | |
|--|--|-------------------------------------|----------------------------------|--------------------|
| TRUST/PROVIDER UNIT: | | SOUTHERN GENERAL HOSPITAL NHS TRUST | | |
| SCHEME: | | ELDERLY BEDS | | |
| PHASE: | | | | |
| PROJECT DIRECTOR: | | | | |
| CAPITAL COSTS: DEPARTMENT COSTS AND EQUIPMENT COSTS | | | | |
| Functional Content | Function Units/
Space Requirement (1) | N/A/C/(2) | DCG Schedule
date 3 qtr
96 | Equipment
Cost |
| | | | £ | £ |
| Wards | 7 x 30 | N | 5,162,000 | |
| Main entrance | 1 x 1 | N | 67,000 | |
| Day Hospital | 1 x 1 | N | 627,000 | |
| Radio Diagnostics | 1 x 1 | N | 143,000 | |
| Staff changing | 1 x 1 | N | 108,000 | |
| Heat source | 1 x 1 | N | 100,000 | |
| | | | | £ _____ |
| Less abatement for transferred equipment if applicable (.....%) (3) | | | | |
| Department Costs and Equipment Costs to Summary | | | £6,207,000 | £ |
| (Form FB1) | | | | See Notes Overleaf |

COST FORM FB2 (CONT.)

This form completed by: Date:

Telephone No:

Notes:

Costs should be based on Departmental Cost Guides where appropriate and include for essential complimentary accommodation and optional accommodation and services where details are not available.

Identify separately any proposed adjustment (over or under cost guidance) justifiable in value for money terms (details to be provided).

* Delete as appropriate

1. State area and rate if departmental cost guidance not available.

2. Insert:

N for new build

A for adaptation for alternative use or

C for upgrading existing building retaining current use

3. Provide details where appropriate

| | |
|--|----------------------|
| FULL BUSINESS CASE FOR PREFERRED OPTION | COST FORM FB3 |
| TRUST/PROVIDER UNIT | |
| SCHEME | |
| PHASE | |
| CAPITAL COSTS ON-COSTS | |

| | | Estimated Cost
(excl VAT) | Percentage of
Departmental Cost |
|--|---------|------------------------------|------------------------------------|
| 1. Communications | £ | | % |
| a. Space | 147,235 | | |
| b. Lifts | 110,880 | £ 258,215 | 4.16 |
| 2. 'External' Building Works (1) | | | |
| a. Drainage | 333,200 | | |
| b. Roads, paths, parking | 155,700 | | |
| c. Site layout, walls, fencing,
gates | ----- | | |
| d. Builders work for engineering
services outside buildings | 43,700 | | |
| | 532,600 | | |
| 3. 'External' Engineering Works (1) | | | |
| a. Steam, condensate, heating,
hot water and gas supply mains | 11,200 | | |
| b. Cold water mains and storage | 12,000 | | |
| c. Electricity mains, sub-stations,
stand-by generation plant | 25,500 | | |
| d. Calorifiers and associated plant | | | |
| e. Miscellaneous services | 43,900 | £ 625,200 | 10.07 |
| 4. Auxillary Buildings | -- | | |
| 5. Other on-costs and abnormals (2) | | | |
| a. Building | 426,800 | | |
| b. Engineering | 70,300 | £ 497,100 | 8.01 |
| Total On-Costs to Summary FB1 | | £1,380,515 | 22.24 |

Notes: Must be based on scheme specific assessments: attach details to define scope of works as appropriate
(identify separately any proposed additional capital expenditure justifiable in value for money terms
(details to be provided)).

* Delete as appropriate

(1) 'External' to Departments

(2) Identify any enabling or preliminary works to prepare the site in advance e.g. demolitions: service
diversions: decanting costs: site investigations and other exploratory works.

This form completed by

Telephone No

Date: