

**DATED FIRST JULY 1999**

**SOUTH GLASGOW UNIVERSITY HOSPITALS  
NATIONAL HEALTH SERVICE TRUST**

**and**

**TOWN HOSPITALS (SOUTHERN GENERAL) LIMITED**

**AGREEMENT**

**in relation to a  
New Healthcare Facility at  
Southern General Hospital,  
Glasgow**

**Erskine House  
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EH2 4NF**

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## **INDEX**

### **SECTION A: GENERAL PROVISIONS**

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

### **SECTION C: PHASE II - SERVICES AND GENERAL PROVISIONS**

#### **Clause**

- 1. DEFINITIONS**
- 2. INTERPRETATION**
- 3. DURATION**
- 4. EXCLUSIVE APPOINTMENT**
- 5. PROVISION OF INFORMATION**
- 6. ASSISTANCE AND CO-OPERATION**
- 7. PREMISES AND ACCESS**
- 8. DESIGN AND CONSTRUCTION OBLIGATIONS**
- 9. CDM REGULATIONS**
- 10. APPOINTMENT OF BUILDING CONTRACTOR**
- 11. LETTER OF UNDERTAKING (WORKS)**
- 12. REVIEW OF DETAILED DESIGN**
- 13. DETAILED COMMISSIONING SCHEDULE**
- 14A. VARIATIONS - PHASE I**
- 14B. CHANGES IN LEGAL REQUIREMENTS - PHASE I**
- 15. INSPECTION, MEETINGS AND SUPPLY OF INFORMATION**
- 16. COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS**
- 17. EXTENSION OF TIME (WORKS)**
- 18. PRACTICAL COMPLETION, PRE-COMPLETION COMMISSIONING AND COMPLETION**
- 19. POST-COMPLETION COMMISSIONING**
- 20. COMMENCEMENT OF SERVICES**
- 21. LETTER OF UNDERTAKING (SERVICES)**
- 22. CONTRACT MONITORING**
- 23. INFORMATION TECHNOLOGY**
- 24. ENERGY AND BUSINESS RATES**
- 25. PAYMENT**
- 26. AVAILABILITY**
- 27. PERFORMANCE**
- 28. BENCHMARKING**
- 29A. EMPLOYMENT**
- 29B. SUITABILITY OF STAFF FOR HOSPITAL EMPLOYMENT**
- 29C. RECOGNITION AGREEMENTS**
- 30. VARIATIONS - PHASE II -TRUST CHANGES - SERVICES**
- 31. VARIATIONS - PHASE II - ADDITIONAL WORK - HOSPITAL**
- 32. VARIATIONS - PHASE II - CHANGES IN LEGAL REQUIREMENTS**
- 33. VARIATIONS - PHASE II - EXTENSIONS TO CONTRACT PERIOD**

<b>PART 9</b>	<b>CONSTRUCTION CONTRACT</b>
<b>PART 10</b>	<b>FACILITIES MANAGEMENT CONTRACT</b>
<b>PART 11</b>	<b>LETTERS OF UNDERTAKING</b>
<b>PART 12</b>	<b>CHANGE NOTICE AND CONFIRMED VARIATION INSTRUCTION</b>
<b>PART 12A</b>	<b>NOT USED</b>
<b>PART 13</b>	<b>IN THE EVENT OF REVOCATION OF PLANNING CONSENT</b>
<b>PART 14</b>	<b>RECOGNITION AGREEMENT</b>
<b>PART 15</b>	<b>INSURANCE POLICIES</b>
<b>PART 16</b>	<b>IN HOUSE CATERING</b>
<b>PART 17</b>	<b>TRUST PROCEDURES</b>
<b>PART 18</b>	<b>COMPENSATION AMOUNTS</b>
<b>PART 19</b>	<b>WARRANTIES</b>
<b>PART 20</b>	<b>AVAILABILITY PAYMENT AND PERFORMANCE RELATED PAYMENT</b>
<b>PART 21</b>	<b>SERVICE LEVEL SPECIFICATIONS AND PERFORMANCE MONITORING</b>
<b>PART 22</b>	<b>SCHEDULE OF REAL TERMINATION FEES</b>
<b>PART 23</b>	<b>FORM OF LENDERS DIRECT AGREEMENT</b>
<b>PART 24</b>	<b>ADJUSTMENT TO TOTAL PAMENT</b>

## AGREEMENT

### BETWEEN

- (1) **SOUTH GLASGOW UNIVERSITY HOSPITALS NATIONAL HEALTH SERVICE TRUST**, of 1345 Govan Road, Glasgow G51 4TF ("the Trust") such expression to include permitted successors in title to the Trust (to the extent that the Trust may lawfully bind its successors);

and

- (2) **TOWN HOSPITALS (SOUTHERN GENERAL) LIMITED**, a company incorporated in England and Wales with registered number 3781674 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 South Glasgow University Hospitals National Health Service Trust (Establishment) Order 1998 ("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 12A(1)(b) 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 inter alia to provide and manage hospital accommodation and services and the Trust is under a duty pursuant to Schedule 2 7A 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 inter alia the Southern General Hospital, Glasgow.
- (E) The Trust, having due regard to its functions and duties, wishes to make provision for a new healthcare facility at the Southern General Hospital, Glasgow and has actively sought the participation of the private sector to operate healthcare facilities at such healthcare facility and in connection therewith to provide related services pursuant to the United Kingdom Government's Private Finance Initiative.
- (F) Accordingly, on Twenty ninth March Nineteen hundred and ninety six, the Trust issued an invitation to tender for certain works comprising the design and construction of a new healthcare facility 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 both dated 1 July 1999 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 29 June 1999 and is (together with certain agreements referred to herein) to be certified as an externally financed development agreement on behalf of by the First Minister pursuant to and for the purposes of the National Health Service (Private Finance) Act 1997.
- (J) This Agreement is excluded from the provisions of the Housing Grants, Construction and Adjudication Act 1996 by virtue of the Construction Contracts (Scotland) Exclusion Order 1998 (S11998/686).

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 Part A of Part 1 of the Schedule (Definitions); those appearing as defined terms in any Service Level Specification have the meanings set out in Part B of Part 1 of the Schedule (Definitions).

### **2 INTERPRETATION**

- 2.1 Any reference to this Agreement includes the schedule to it (which is 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 or a part of a schedule shall be to the schedule or a part of the 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 (Changes in Legal Requirements - Phase 1) and Clause 32 (Variations -Phase II - Changes in Legal Requirements), include any modification re-enactment or extension thereof.

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. RTPACOMPETITION ACT 1998
  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
- SCHEDULE

- |        |                                |
|--------|--------------------------------|
| PART 1 | DEFINITIONS                    |
| PART 2 | SITE PLAN                      |
| PART 3 | LEASE AND SUBLEASE             |
| PART 4 | THE TITLES                     |
| PART 5 | BUILDING SPECIFICATION         |
| PART 6 | BASIC DESIGN                   |
| PART 7 | EQUIPMENT LIST                 |
| PART 8 | OUTLINE COMMISSIONING SCHEDULE |

- 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, The Common Services Agency, 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. In the selection of any tier of sub-contractors (which shall be at the discretion of Concessionco), Concessionco shall have due and reasonable regard to the role of the Trust as a provider of healthcare and to the ethical policy of the Trust as part of the National Health Service in Scotland
- 2.7 For the avoidance of doubt the date of this Agreement shall be confirmed as the last date of execution of this Agreement.

## **2A CONDITIONS PRECEDENT**

This Agreement, with the exception of Clauses 1 (Definitions), 2 (Interpretation), 2A (Conditions Precedent), 52 (Confidentiality), 55 (Assignment), 62 (Variations), 64 (Partnership), 65 (Entire Agreement), 66 (Proper Law & Jurisdiction), 67 (Publicity), 68 (Notices), 69 (Precedence of Terms) and 70 (Legal Requirements), shall not come into effect until:

- 2A.1 the parties to them execute:
- (a) this Agreement;
  - (b) the Construction Contract;
  - (c) the FM Contract;
  - (d) the Construction Management Contract and the Operations, Management Contract;
  - (e) the Letters of Undertaking;

- (f) the Senior Loan Agreement;
- (g) the Lenders Direct Agreement; and
- (h) the On-Loan Agreement.

2A.2 the Trust has delivered to Concessionco, in a form and substance reasonably acceptable to Concessionco:

- (a) a certified copy of the minutes of a meeting of the Trust Board, duly held and convened, authorising the Trust to undertake the Project and to execute and deliver the documents in relation to the Project to which it is a party, and approving the documents to which it is not a party;
- (b) and a list of the names and specimens of the signature of persons authorised to sign the documents on behalf of the Trust;
- (c) a certified copy of the current standing orders and standing financial instructions of the Trust;
- (d) a certified copy of the Establishment Order of the Trust;
- (e) a certified copy of the full business case for the Project as submitted to and approved by the NHSiSME;
- (f) a certified copy of the letter dated 7 April 1999 from NHSiSME to the Trust approving the full business case and the Project;
- (g) a certificate by or on behalf of the First Minister pursuant to Section 1(2) of the National Health Service Private Finance (Act 1997), certifying the documents required in connection with the Project as externally financed development agreements;
- (h) a clarification letter, addressed to the Lenders, from the Secretary of State for Scotland, clarifying the responsibilities of the Secretary of State for Scotland and the Scottish Ministers in relation to NHS Trusts and the NHS in Scotland; and
- (i) a certified copy of a letter from Greater Glasgow Health Board to the Trust confirming approval of the Project

2A.3 Concessionco has delivered to the Trust, in a form and substance reasonably acceptable to the Trust:

- (a) certified copies of resolutions of the board of directors, or equivalent corporate authorisations, of each of the following:
  - (i) Concessionco;
  - (ii) the Building Contractor (being Tarmac Construction Limited or a



permitted substitute);

(iii) the FM Contractor (being Tarmac Services Limited or a permitted substitute); and

(iv) Tarmac plc;

in each case authorising the entry into, and performance of their respective obligations, under the documents to which they are, respectively, a party in connection with the Project;

(b) certified copies of the Certificate of Incorporation (and any Certificate of Incorporation on Change of Name) and the Memorandum and Articles of Association of Concessionco;

(c) certified copies of the Forms 288a appointing the directors of Concessionco; and

(d) a list of the names and specimens of the signature of the persons authorised to sign the documents on behalf of Concessionco;

## **2B FULFILMENT OF CONDITIONS PRECEDENT**

Each party shall use reasonable endeavours to procure that the conditions set out in Clause 2A (Conditions Precedent) for which it is responsible are satisfied on or as soon as possible after the date of this Agreement. Each party shall notify in writing the other party immediately the conditions set out in Clause 2A are satisfied. If any such conditions are not satisfied by 1 July 1999 (unless waived by the Trust and Concessionco), this Agreement and the Project Agreements shall, upon giving of three Business Days notice to the other party, cease to have effect from that date, and neither party shall have any liability to the other under this Agreement.

## **3 DURATION**

This Agreement shall remain effective until the expiry of the Contract Period unless (without prejudice to Clause 44 )(Survival of Rights)) 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 (Variations - Phase II - Additional Work) and Clause 32 (Variations - Phase II - Changes in Legal Requirements)) any Additional Work and to perform the Services and (subject in particular to Clauses 27.20 and 27.21 (Performance) and 30 (Variations - Phase II - Trust Changes - Services)) Additional Services and Concessionco accepts such appointment.

Concessionco will permit the Trust to procure the provision of a confectionery and

general newsagent trolley service at the Facility at such times and on such times as shall be agreed by the parties acting reasonably. The provider of the trolley service will be deemed to be an agent of the Trust for all purposes under this Agreement.

## **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) subject to the Trust's reasonable requirements as to confidentiality, copies of the Trust's implementation plans as and when prepared;
- (f) 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 (Disputes) 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 (Force Majeure)) 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, proper and prudent exercise of its statutory functions 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 (Availability), nor to the Performance Related Payment pursuant to Clause 27 (Performance), 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 or such replacement or equivalent body or entity as fulfills in whole or in part the same function in relation to healthcare matters as 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 Part 23 of the Schedule) enter into a Lenders Direct Agreement with those Lenders upon being so requested by Concessionco.

6.4 If as a result of (and to the extent that) any negligence or default of the Trust or any act or omission of any person for whom the Trust is responsible but only to

the extent that such act or omission if it had been committed by the Trust would be a default or negligence of the Trust 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, then subject to the proviso below the Trust shall pay to Concessionco the amount of such cost, loss and/or expense and the following procedure shall apply provided always that the Trust shall not be obliged to pay such amount to Concessionco under this Clause 6.4 to the extent that any insurance proceeds under any insurances to be taken out and maintained by Concessionco pursuant to this Agreement are received by Concessionco which discharge, pro tanto such amount as a result of any such default or negligence of the Trust or act or omission of any person for whom the Trust is responsible or that such proceeds would have been received by Concessionco save for the fact that Concessionco did not make a claim under any such insurance policy (other than where the Trust and Concessionco agree that a claim should not be made) and/or any such claim has been refused on the basis that Concessionco knowingly vitiated the policy as between Concessionco and the insurer. 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 Scottish Ministers 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 Subject to the proviso below 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 act or omission of the Trust (other than an act or omission in the course of the proper and prudent exercise of its statutory functions by the Trust) or any negligence or default of the Trust or any act, omission, negligence or default of 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 or any act or omission of a patient of the Trust or visitor to the Facility but only to the extent that such acts or omissions hinder or prevent Concessionco from providing the Services but not otherwise;
- (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.

Provided however that the Trust shall be entitled to hold Concessionco liable by way of adjustment to the Availability Payment, any Performance Percentage or the Performance Related Payment where such loss is caused by an act, omission, negligence or default of the Trust in terms of sub-clause (i) above to the extent that any insurance proceeds under any insurances to be taken out and maintained by Concessionco pursuant to this Agreement are received by Concessionco as a result of any such liability or loss is caused by or arises as a result of any such default or negligence of the Trust or act or omission or negligence or default of any person for whom the Trust is responsible or that such proceeds would have been received by Concessionco save for the fact that Concessionco did not make a claim under any such insurance policy (other than when the Trust and Concessionco agree that a claim shall not be made) and/or any such claim has been refused on the basis that Concessionco knowingly vitiated the policy as between Concessionco and the insurer.

- 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**

- 7.1 On the Date of Possession the Trust will grant and Concessionco will accept the grant of the Lease. The Trust will furnish to Concessionco such documents and evidence as the Keeper may require, including a taxative plan of the Site, to enable the interest of Concessionco to be registered in the Land Register of Scotland without exclusion of indemnity under Section 12(2) of the Land Registration (Scotland) Act 1979.
- 7.2 On or prior to the Date of Possession the Trust will exhibit or deliver to Concessionco a Form 10/11 Report brought down to a date as near as practicable to the Date of Possession and showing no entries adverse to the Trust's interest in the Premises. The Land Certificate to be issued to Concessionco will disclose no entry, deed or diligence prejudicial to Concessionco's interest other than such as are created by or against Concessionco, or have been disclosed to and accepted by Concessionco prior to the Date of Possession and the Trust will deliver to Concessionco at the Date of Possession a letter of obligation in self proving from undertaking to clear the Register of any such entry, deed or diligence.
- 7.3 Immediately following the grant of the Lease, Concessionco will arrange for the Lease to be stamped and registered in the Land Register of Scotland and in the Books of Council and Session and shall provide the Trust with an extract copy of the Lease. The cost of stamping and registering the Lease will be borne by Concessionco.
- 7.4 The Trust will remove from the Site and give vacant possession of the Site to Concessionco on 3 August 1999. Notwithstanding any other provision of the Agreement any delay beyond 3 September 1999 (and not before) in giving vacant possession of the Site to Concessionco will constitute a default by the Trust in terms of Clause 6.4 and 6.6 of this Agreement.
- 7.5 Concessionco and/or Concessionco's solicitors have been supplied with copies of the documents specified in Part 4 of the Schedule ("the Titles") and (where the Titles are designated as originals in the said Part 4 of the Schedule) they have been afforded the opportunity to examine the originals of the Titles and to request sight of any document referred to in the Titles. Accordingly, Concessionco shall be deemed to have entered into this Agreement with notice of the terms and conditions of the Titles and shall not be entitled, therefore, to raise any objection or enquiry in respect of any matter contained or referred to in the Titles after the execution of this Agreement.
- 7.6 Notwithstanding the foregoing Clause 7. 5, insofar as the Trust are aware, there are no burdens, servitudes, wayleaves or similar third party rights (except for (1) the Lease and (2) rights enjoyed by any statutory undertakers, whether public or private) affecting the Site which are not disclosed in the title deeds of the Site, but no warranty is given and Concessionco shall be deemed to have satisfied itself in this respect.

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

**8 DESIGN AND CONSTRUCTION OBLIGATIONS**

8.1 Concessionco shall from the Date of Possession 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 (Review of Detailed Design)); 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 (Termination of Agreement by default of Concessionco) 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 (Termination of Agreement by default of Concessionco).

## **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 Possession 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 Part 9 of the Schedule. For the purposes of Clauses 45.1(d) (Consequences of Termination following

default by Trust), 45.3(d) and 46.1(c) (Consequences of termination without default) 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 Part A of Part 11 of the Schedule.

## **12 REVIEW OF DETAILED DESIGN**

- 12.1 By the dates and in accordance with the procedural requirements set out in Part 6 of the 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 Part 6 of the 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 purposes of Part 6 of the Schedule. 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 Concessionco's final 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 or do not constitute sufficient information to permit the Trust to comment and such comments relate solely to such matters.

- 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**

- 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 the Detailed Commissioning Schedule.
- 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 Trust Equipment shall comprise any Group 2, 3 or 4 equipment at the Facility or on the Site.
- 13.4 In the absence of agreement as to the Detailed Commissioning Schedule within 6 weeks of the first meeting of the parties for such purpose (or such longer period as the parties may agree) the Detailed Commissioning Schedule shall be determined by reference to the Disputes Resolution Procedure to give effect to Clause 13.2.

- 13.5 Concessionco warrants to the Trust that the Equipment listed as Group 1 in 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 Construction (PFI) Limited and UME Investment Co. Limited and subject to any rights which the Trust may have as landlord under the Lease) 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 in the form contained in Part 12 of the Schedule 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 (Changes in Legal Requirements - Phase I), 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 (Review of Detailed Designs) together with its estimate of the effect, if any, of the proposed variation upon the Works. The Trust shall be entitled to be reimbursed by Concessionco for the expenses properly incurred by them in appointing any consultants and/or advisers to advise upon any request made by Concessionco pursuant to Clause 14A.1 and/or 14A.2 only in circumstances where the Trust has obtained Concessionco's prior written approval (such approval not to be unreasonably withheld or delayed) to appointment of such adviser and/or consultant (and that only of appropriate disciplines) and the scopes of work and the expenses which the Trust may incur in such appointment for each such adviser and/or consultant.

- 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 in the form

contained in Part 12 of the Schedule ("Change 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;
  - (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 (Extension of Time-Works); 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.

14A.4 For the avoidance of doubt this Clause 14A shall not apply to any variation to the Basic Design which constitutes Design Development.

## **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) is enacted or otherwise takes effect within the period of forty-three Months after the Date of Possession (other than a Qualifying Change); 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 (Extension of Time - Works); 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 (Review of Detailed Design) 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 (Payment)) in respect of those parts of the obligations to be performed by 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;
  - (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 the 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 (Assistance and Co-operation)); 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 (Assistance and Co-operation)).

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 (Assistance and Co-operation));
- (b) without prejudice to the provisions of Clause 14B (Changes in Legal Requirements - Phase I) and Clause 32 (Variations - Phase II - Changes in Legal Requirements), 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;
- (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, erosion, earthquake, lightning or volcanic eruption or any direct consequence of any such occurrence;
  - (vi) the effects of fire, explosion, ionising radiation;
  - (vii) an Event of Force Majeure;
  - (viii) the discovery of any unexploded bomb or other munition;
  - (ix) any action, inaction or default by a statutory undertaker;

- (x) the discovery of any Fossil or Antiquity; or
- (xi) the occurrence of any of the circumstances set out in Part 13 of the Schedule (In the event of revocation of Planning Permission) which entitle Concessionco to an extension to the Completion Date.

Provided that the specific event in question referred to in paragraph (d) above is not due to any deliberate (other than one arising by virtue of compliance by Concessionco with its obligations under any Project Agreements) or negligent act or omission on the part of Concessionco during or prior to the Completion Date and the specific event could not reasonably have been foreseen at the date of this Agreement by an experienced building contractor.

17.3 Concessionco shall submit such further particulars to the Trust's Representative as may be reasonably necessary to supplement the notices and particulars referred to in Clause 17.1 including, without limitation, by supplying copies of any further or revised notices, particulars or estimates given by the Building Contractor to Concessionco.

17.4 The parties shall enter into minute of extension of the Lease and the Sub Lease for any period of extension so agreed or determined pursuant to this Clause 17.

## **18 PRACTICAL COMPLETION, PRE-COMPLETION COMMISSIONING AND COMPLETION**

18.1 Concessionco will give to the Trust not less than 20 Business Days' notice of the date or dates on which it intends to carry out the inspection of the Contract Works with a view to issuing the certificate of practical completion to the Building Contractor under the Construction Contract and shall allow the Trust's Representative to attend any such inspection and to make representations at any such inspection.

18.2 If the Trust's Representative, acting reasonably, shall make any such representation Concessionco shall take due regard of such representation and no certificate of practical completion shall be issued to the Building Contractor until any defects in the Contract Works have been rectified in accordance with the Construction Contract save only for any minor omissions or defects properly included in any snagging list attached to any such certificate.

18.3 In the event that any defects in the Contract Works or any part thereof shall have been identified during the course of final inspection such that any re-inspection is appropriate, the provisions of Clauses 18.1 and 18.2 shall apply also to such re-inspection save that the reference to 20 Business Days' shall be construed as 10 Business Days.

18.4 Concessionco shall undertake Pre-Completion Commissioning in accordance with the Detailed Commissioning Schedule. Concessionco shall give written notice to the Trust of 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 installed by Concessionco 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 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.
- 18.11 It is acknowledged by the parties that if the parties agree (at the absolute discretion of the Trust) that the Completion Date be brought forward, Concessionco may make a payment in accordance with Clause 19.2 of the Construction Contract. This Clause 18.11 shall not be subject to the Disputes Resolution Procedure.

## **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 installed by Concessionco 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 installing the Trust's Equipment at the Facility).

## **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 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 date of expiry 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 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) On or prior to the Services Commencement Date, the Trust will exhibit or deliver to Concessionco a Form 12/13. Report brought down to a date as near as practicable to the Services Commencement Date showing no entries adverse to the Trust's interest in the Premises.
- (d) On or prior to the Services Commencement Date, Concessionco will exhibit or deliver to the Trust a Form 10/11. Report brought down to a date as near as practicable to the Services Commencement Date and showing no entries adverse to the grant of the Sublease. The Land Certificate to be issued to the Trust will disclose no entry, deed or diligence prejudicial to the Trust's interest other than such as are created by or against the Trust, or have been disclosed to and accepted by the Trust prior to the Services Commencement Date and Concessionco will deliver to the Trust at the Services Commencement Date, a letter of obligation in self-proving form undertaking to clear the Register of any such entry, deed or diligence.
- (e) On or prior to the Services Commencement Date, Concessionco will exhibit Searches in the Charges Register and Company File of Concessionco brought down to a date as near as practicable to the Services Commencement Date and to be continued to 22 days after the Services Commencement Date or, if earlier, the date of registration of the Sublease in the Land Register of Scotland which Searches shall, save in respect of the Standard Securities and Floating Charge to be granted by Concessionco pursuant to the Funding Agreements, disclose no entries prejudicial to the grant of the Sublease and shall disclose no notice of the appointment of a liquidator, receiver or administrator or of winding-up.
- (f) Immediately following the grant of the Sublease, Concessionco will arrange for the Sublease to be stamped and registered in the Land Register of Scotland and in the Books of Council and Session and shall provide the Trust with an extract copy of the Sublease. The cost of stamping and registering the Sublease will be borne by Concessionco.
- (g) 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 Part 10 of the Schedule. For the purposes of Clauses 45.1(d), 45.3(d) (Consequences of Termination following default by the Trust) and 46.1(c) (Consequences of Termination without default) 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.
- 20.7 Notwithstanding any other provision of this Agreement if at the Services Commencement Date or at any time thereafter during the Contract Period the Trust is itself providing catering services to the Southern General Hospital then, the provisions of Part 16 of the Schedule shall apply. If at any time prior to the Services Commencement Date the Trust is no longer providing catering services to the Southern General Hospital or if at any time during the Contract Period the appointment of the Trust as Service Provider for Catering Services is terminated then a Special Benchmarking Exercise shall be carried out in accordance with the provisions of Clause 28 and the parties shall give effect to the result of such Special Benchmarking Exercise by an adjustment to the Total Payment and the provisions of Part 16 of the Schedule shall no longer apply



- 20.8 The Trust hereby grants to Concessionco and all persons authorised by it an irrevocable non-exclusive licence for the duration of the Sub-Lease to enter and occupy the Site and the Facility for the purpose of providing the Services and for exercising its rights and carrying out its obligations under and for any ancillary purposes as envisaged by the Concession Agreement and so that, for the avoidance of doubt, Concessionco and any person authorised by it shall be entitled to access to or occupy the Site on or after the date of expiry of the Sub-Lease for the purpose of exercising its rights or carrying out its obligations in terms of the Concession Agreement which requires or entitles Concessionco to take action on the Site after that date.

## **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 Part B of Part 11 of the 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 (Assistance and Co-operation)) 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 (Variations - Phase II - Trust Changes - Services), 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 (Miscellaneous consequences of termination), 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 (Payment)) 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, (Termination of Agreement by default of Concessionco).

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).

- (c) 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.
- (a) Concessionco shall invoice the Trust (when and to the extent invoiced by the Trust under the Lease) for all gas, electricity, water, telephone and sewerage services supplied to the Site at the rate paid by Concessionco for those services . The Trust shall settle such invoices in accordance with Clause 25.
  - (b) Concessionco shall make such provision at its own cost as may be necessary for the supply of low pressure gas to the Facility and shall invoice the Trust when invoiced by the supplier for the costs reasonably and properly incurred thereby. The Trust shall settle such invoices in accordance with Clause 25.
- 24.2 Concessionco shall in the provision of the Services use all reasonable endeavours to use electricity, gas, low pressure gas, 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).
- 24.3 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 (Energy and Business Rates) 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 in accordance with the terms of this Clause 25:
- (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 (Energy and Business Rates) as are to be paid by the Trust to Concessionco under this Agreement.
- 25.3 The payments referred to in Clause 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 have been 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 Subject to Clause 20.7 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 Payment Commencement Date and the Trust shall pay to Concessionco the amounts properly included in such invoice on or before the 3rd Business Day following receipt by the Trust of Concessionco's invoice; and
  - (b) in respect of each subsequent Month and the Final Period, Concessionco shall issue its invoice to the Trust no earlier than the tenth Business Day of the immediately preceding Month and in each case on or before the 1st Business Day of the Month or Final Period in respect of which the invoice is issued the Trust shall pay to Concessionco the amounts properly included in such invoice and such sums shall become due and payable on that 1st Business Day (or, if later, on or before the date 5 Business Days after the date of receipt of the invoice).
- 25.5 The adjustments (if any) to the Availability Payment for any Month shall be ascertained pursuant to Clause 26 (Availability) and the adjustments (if any) to the Performance Related Payment for any Month (or the Initial Period or the Final Period as the case may be) shall be ascertained pursuant to Clause 27 (Performance) and shall be applied as follows:
- (a) in respect of the Initial Period and each subsequent Month such

adjustments shall be taken into account in the invoice issued by Concessionco with respect to the Month after the immediately succeeding Month 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 Month immediately preceding the Final Period. Within 13 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 (Availability) and 27 (Performance) in respect of the Final Period and the immediately preceding Month. 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 to 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 (Availability) and 27 (Performance) 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 Month 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 (which shall include each of its constituent parts including the Catering Fixed Cost, the Variable Price for Breakfasts, the Variable Price for Lunches and the Variable Price for Dinners) shall be adjusted to take account of any increase or reduction in (i) GDP Deflator in respect of the Availability Payment and (ii) RPI in respect of the Performance Related Payment including its constituent parts (as aforesaid) between:

- (a) in respect of the first Review Date, 1 April 1998 and in respect of all subsequent Review Dates, the immediately previous Review Date, or, with respect to the Performance Related Payment including its constituent parts (as aforesaid) 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 (Availability) and Clause 27 (Performance) shall be deemed inclusive and in full satisfaction of any liability of Concessionco to the Trust whether in contract, delict, 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(a) The adjustments (if any) to the Availability Payment for any Month (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.

(b) References in this Clause 26 to an Area shall include a sub-Area as indicated in the Notice of Unavailability.

26.2 If one or more of the circumstances set out in Part 20 of the 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 (Co-operation and Assistance) and such circumstances shall, in the reasonable opinion of the Senior Trust Officer, cause any of the areas of the Facility identified in Part 20 of the Schedule to be unavailable for clinical use, the following procedure shall apply:

(a) the Senior Trust Officer shall complete Section 1 of a Notice of Unavailability and shall deliver such notice to Concessionco's Representative;

(b) 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 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 (a) 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 (b) (a "Section 2 Notice") in respect of any Area which is

the subject of a Section 2 Notice which has not yet expired so that at no time shall the total deduction percentage for each Area exceed the total for that Area set out in Part 20 of the Schedule in any 24 Hour Period;

- (c) subject to Clause 26.5, in any such case the relevant Area or 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 (a) above) in which the relevant Notice of Unavailability was delivered to Concessionco in accordance with paragraph (a) above provided that:
  - (i) a Section 2 Notice has been completed by the Senior Trust Officer pursuant to paragraph (b) above and delivered to Concessionco's Representative or telephone advice has been given provided that a Section 2 Notice has been completed and delivered pursuant to Clause 26.4;
  - (ii) the relevant Area or 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 of the Facility that are not the subject of a Notice of Unavailability delivered pursuant to paragraph (b) above, the Area the subject of that Notice of Unavailability;
- (d) where in any such case the relevant Area or Areas in the reasonable opinion of the Senior Trust Officer, is unavailable for clinical use at the expiry of the 24 Hour Period stipulated in such Notice of Unavailability, the procedures in paragraphs (a), (b) and (c) above shall be repeated in respect of the following 24 Hour Period;
- (e) where the Trust commences use of an Area deemed unavailable pursuant to this Clause 26 for any purpose including without limitation in exercise of the Trust's rights pursuant to Clause 27.20, other than for access to other Areas of the Facility that are not the subject of a Notice of Unavailability delivered pursuant to paragraph (b) above, then the relevant 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 (b) above in respect of the same Area;
- (f) if any Area is deemed available pursuant to the provisions of paragraph (e) above and the Trust proposes to issue any further Section 2 Notices within the 24 Hour Period when such Area, was deemed unavailable in accordance with the provisions of paragraph (c) above, then, for the purposes only of allotting deduction percentages pursuant to paragraph (b) above in any Section 2 Notice delivered before such 24 Hour Period would have expired (but for the provisions of paragraph (e) above), the Section 2 Notice first delivered in respect of such 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 shall be as set out in Part 20 of the Schedule.
- 26.4 The provisions of Clause 68 (Notices) 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 by telephone 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 provided such written notice is served on Concessionco's Representative within 3 hours 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 of the Facility identified in Part 20 of the Schedule is deemed to be unavailable for clinical use for any 24 Hour Period or part thereof, an adjustment shall be made to the Availability Payment in respect of that Area for the Month (or the Initial Period or the Final Period as the case may be) in which that 24 Hour Period or part thereof 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:

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

where:

"b" equals the number of days in the Month (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 Month (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 Part 20 of the Schedule in respect of the 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 of the Facility deemed to be unavailable for clinical use pursuant to this Clause 26.

In this Clause, " 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 of the Facility identified in Part 20 of the 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 Areas (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 Month (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 of the Facility identified in Part 20 of the Schedule where such unavailability is caused by the timely, reasonable and proper carrying out by Concessionco of Planned Preventative Maintenance.

## **27 PERFORMANCE**

### **Performance Notices**

- 27.1 Within 8 Business Days after the last day of each Month during Phase II, and within 8 Business Days after termination of this Agreement, Concessionco shall, in respect of each of the Services, provide to the Trust a notice (a "Performance Notice") which shall, subject to Clause 20.7 and subject also to Clause 27.17, list in respect of that Month:
- (a) a statement of the Performance Percentage achieved for that Service (determined pursuant to the Service Level Specification for that Service) and the corresponding adjustment to the Performance Related Payment (determined pursuant to Clause 27.5 below);
  - (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 (determined in accordance with Clause 27.13 below);
  - (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 (determined in accordance with Clause 27.14 and 27.15 below);
  - (d) a statement of the adjustment to be made to the Catering Service Performance Related Payment for Volume (determined in accordance with Clause 27.16 below);
  - (e) a statement of the adjustment of the Performance Related Payment with respect to any amount ascertained pursuant to Clause 27.18; and

- (f) the aggregate of adjustments to the Performance Related Payment (as set out in (a) to (e) above),

provided that 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 (Variations - Extensions to Contract Period) then the Performance Percentage determined for the purposes only of Clauses 27.6 to 27.19 (inclusive) shall be deemed to be the Performance Percentage unadjusted for such event.

- 27.2 Subject to Clause 27.4, in respect of the Performance Related Payment for each Month an adjustment shall be made for the purposes of Clause 25.5 (Payment). The amount of such adjustment shall be the aggregate of adjustments referred to in Clause 27.1(f) above.
- 27.3 If the Trust disputes any matter referred to in any Performance Notice then the Trust's Representative may request the opinion of any member of the Project Panel upon such matter. Concessionco 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 the Trust accordingly.
- 27.4 Without prejudice to the generality of the foregoing, in respect of the period from the Payment Commencement Date until the first day of the second Month following the Payment Commencement Date there shall be no adjustment to the Performance Related Payment in relation to any Service in respect of a failure in the performance of a Service unless a 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 (Availability).
- 27.5 The Performance Percentage and the corresponding adjustment to the Performance Related Payment for each Service shall be ascertained by application of the performance monitoring procedure in the relevant Service Level Specification having regard to the Guidance for Use of the Performance Monitoring System forming part of Part 21 of the Schedule
- 27.6. If the Performance Percentage recorded in any Performance Notice given for the same Service (but subject to Clause 27.3) is greater than 70% but less than 75% for two successive Months (disregarding in the calculation of any such Performance Percentage (unless and until resolved in the Trust's favour) any Performance 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 27.3 or the determination of any dispute relating to the same.
- 27.7 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 27.3), the Performance

Percentage recorded in any Performance Notice for such Service (but subject to Clause 27.3) in respect of both of those Months is less than 75% (disregarding in the calculation of any such Performance Percentage (unless and until resolved in the Trust's favour) any Performance 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.

- 27.8 If, following the end of the two Months referred to in Clause 27.7, the Performance Percentage recorded in any Performance Notice for any such Service (but subject to Clause 27.3) in respect of both of those Months is less than 75% (disregarding in the calculation of any such Performance Percentage (unless and until resolved in the Trust's favour) any Performance 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.
- 27.9 If the Performance Percentage recorded in any Performance Notice given for the same Service falls below 70% (but subject to Clause 27.3) in any two Months out of any three successive Months (disregarding in the calculation of any such Performance Percentage (unless and until resolved in the Trust's favour) any Performance 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.
- 27.10 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 27.10 if such breach arises as a consequence of Concessionco complying with any Legal Requirement.
- 27.11 It shall be considered a material breach of this Agreement entitling the Trust to terminate this Agreement pursuant to Clause 40.2 (Termination of Agreement by default of Concessionco) 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 27 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.

27.12 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 27.9 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 27.9 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.

#### **Adjustments for unavailability**

27.13 If by reason of a default in the performance of a Service one or more of the circumstances set out in Part 20 of the Schedule (Availability Payment) shall occur at the Facility otherwise than a result of any of the matters referred to in paragraphs (i) to (iii) of Clause 6.6, and such circumstances occur for a continuous period of at least 3 hours following notification to Concessionco by the Senior Trust Officer then the Performance Related Payment for that Service shall be adjusted in accordance with the following formula:

$$R = \frac{j \times n \times d}{k}$$

Where:

"R" = the adjustment to the relevant Service Performance Related Payment with respect to that Month

"n"= the duration of the default in hours

"j" = the Service Performance Related Payment (except that with respect to the Catering Service "j" shall be the Catering Fixed Cost)

"k" = the number of days in the relevant Month x 24

"d" = equals the percentage deduction indicated in Part 20 of the Schedule in respect of the Area of the Facility deemed to be unavailable for clinical use

pursuant to Clause 26.2

- 27.14 If by reason of a default in the performance of any Service, the Trust becomes entitled to make an adjustment to the Availability Payment pursuant to Clause 26.7, and as a result of the Trust taking an Area out of use the Housekeeping Service and/or the Estates and Maintenance Service and/or the Catering Service cannot usefully be provided, then the Service Performance Related Payment for such Service or Services shall be adjusted in accordance with the following formula:

$$R = \frac{j \times n \times d}{k}$$

Where:

"R" = the adjustment to the relevant Service Performance Related Payment with respect to that Month

"n" = the duration of the default in hours

"j" = the Service Performance Related Payment (except that with respect to the Catering Service "j" shall be the Catering Fixed Cost)

"k" = the number of days in the relevant Month x 24

"d" = equals the percentage deduction indicated in Part 20 of the Schedule in respect of the Area of the Facility deemed to be unavailable for clinical use pursuant to Clause 26.2

- 27.15 If, because the whole of the Facility is taken out of use by the Trust by reason of a default in the performance of any other Service, the Portering Service cannot usefully be provided, then the Service Performance Related Payment for the Portering Service shall be adjusted in accordance with the following formula:

$$R = \frac{j \times n}{k}$$

Where:

"R" = the adjustment to the relevant Service Performance Related Payment with respect to that Month.

"n" = the duration of the default in hours

"j" = the Service Performance Related Payment

"k" = the number of days in the relevant Month x 24

- 27.16 Subject to Clause 20.7 the adjustment for the Catering Service Performance

Related Payment for Volume with respect to any Month shall be ascertained in accordance with the following formula:

$$R = ((p-q) \times s) + ((t-u) \times v) + ((w-x) \times y)$$

Where:

"p" = 168 multiplied by the number of days in that Month

"R" = the adjustment to the relevant Service Performance Related Payment with respect to that Month.

"q" = the actual number of breakfasts served in that Month.

"s" = the Variable Price for Breakfasts.

"t" = 198 multiplied by the number of days in that Month

"u" = the actual number of lunches served in that Month

"v" = the Variable Price for Lunches

"w" = 168 multiplied by the number of days in that Month

"x" = the actual number of dinners served in that Month

"y" = the Variable Price for Dinners

Provided that if "R" is less than 5% of the Catering Performance Related Payment then for the purpose of Clause 27.1(d), the adjustment shall be zero.

### **Planned Preventative Maintenance**

27.17 Save as set out in 27.18 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.

27.18 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 27.17, 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 27.1(e). If the Trust disputes any statement of cost saving provided pursuant to this Clause 27.18, the Trust shall give advice in writing of such dispute to Concessionco within 4 Business Days of

receipt of such statement.

- 27.19 If the Trust gives advice in writing of a dispute under Clause 27.18 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.

### **Self Help**

27.20 If for any reason other than an Event of Force Majeure Concessionco

- (a) is 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 an immediate and serious threat to the health and safety of a patient 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 using all reasonable care and skill expected of a prudent NHS Trust until such time as:

- (i) in the case of (a) above, Concessionco has given notice to 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.

27.21 In any case where pursuant to Clause 27.20 the Trust shall itself perform or procure the performance of any Service, the following shall apply:

- (a) for the period during which such Service was performed by the Trust pursuant to Clause 27.20 there shall be no adjustments to the Performance Related Payment for that Service with respect to the matters giving rise to the Trust performing or procuring the performance of that Service; 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 (other than loss of any profit which Concessionco would have earned had it been providing the Service or arising as a result of any breach by the Trust (or any person for whom the Trust is responsible) 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.

- 27.22 Notwithstanding any term of Clause 27, the Trust shall not be entitled to make deductions in any Month in total greater than 100% of the Performance Related Payment which would otherwise have been payable in respect of that Month.

## **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 implemented within 12 Months of the date of the relevant benchmarking exercise, 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 implemented within said 12 Months.

## **29A EMPLOYMENT**

- 29A.1 Concessionco or any Service Provider may after notifying to 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 within six months of the effective date of such transfer (or, if later, the date of determination that such transfer has taken place) 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 (or the date falling six months after the effective date of such transfer (or, if later, the date of determination that such transfer has taken place)).
- 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 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 at its option and/or the replacement service provider are able to use by way of secondment all or any of such employees in the provision of services equivalent to the Services from such expiry date or termination date.

In such event:

- (a) Concessionco shall use reasonable endeavours to procure that such employees are encouraged to transfer their employment to the Trust and/or the replacement service providers;
- (b) the Trust shall reimburse Concessionco for the costs of employment of such employees for the period of any such secondment; and
- (c) the maximum period of any secondment pursuant to this Clause 29A.8 shall be 12 months; and
- (d) the Trust shall indemnify Concessionco in the same terms as Clause 29A.2 *mutatis mutandis* in respect of the secondment of such employees to the Trust and/or the replacement service provider.

29A.9 Where Clause 29A.7 applies, and subject as hereafter provided Concessionco shall (save where the liability arises solely 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 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 Where Clause 29A.7 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 insofar as the Regulations have the effect of transferring any employee to a replacement service provider engaged by the Trust 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 Where Clause 29A.7 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.

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 reasonably and properly 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 Appendices 1 and 2 of Part 14 of the Schedule in respect of the employees identified individually or collectively therein under the terms and for the purposes stated in a recognition agreement a copy of which forms Part 14 of the Schedule.

29C.2 Concessionco shall procure that any Service Provider who employs individuals who provide Services regularly and frequently shall recognise such trade unions for the purposes of collective bargaining, consultation and representation. Such recognition shall be in a manner consistent with such recognition agreements except to the extent that they are varied pursuant to formal negotiations between any Service Provider and the trade unions or any of them.

## **29D PRE-EMPLOYMENT SCREENING**

Concessionco shall procure that where a Service Provider undertakes recruitment for a post which may come to be filled by a New Appointee, or any New Appointee is employed by such Service Provider, such New Appointee shall, prior to undertaking provision of the Services, undertake an appropriate pre-employment health screening in accordance with Trust policy from time to time having regard to his duties and if necessary obtain a medical certificate of fitness to work confirming compliance with requirements for all necessary immunisations and Concessionco shall on request provide evidence of the same to the Trust.

## **30 VARIATIONS - PHASE II - TRUST CHANGES - SERVICES**

30.1 The Trust shall be entitled at any time during Phase II to 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 (including any such change which arises as a result of a change to the Trust Procedures (excluding any such change which arises out of a Change in the Legal Requirements); or
- (b) an addition to or, subject to Clause 34 (Variations - Reduction in size of the Facility), 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 (Contract Monitoring);

in each case which do not require the carrying out by Concessionco (or any of its subcontractors) 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 (Assistance and Co-operation), 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 (Assistance and Co-operation) 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 or 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 NHSiSME, the Scottish Ministers 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.
- 30.4 Any compensation payable or adjustment to the Total Payment to be made pursuant to a Trust Charge or Additional Service proposed by the Trust pursuant to this Clause 30 shall be calculated in accordance with the provisions of Part 24 of the Schedule.

## **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 in the form contained in Part 12 of the Schedule 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 only be entitled to decline to submit any such proposal where:- either 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 NHSiSME, the Scottish Ministers and the Treasury or Concessionco can demonstrate by notice to the reasonable satisfaction of the Trust that in its opinion:-

- (i) it is not technically feasible or otherwise impractical; or
- (ii) where the implementation of the Additional Work is dependent upon the issue of new or revised Necessary Consents which, Concessionco can demonstrate are unlikely to be obtained .
- (iii) undertaking the Additional Work would be in breach of any Legal Requirement or Necessary Consent or would be a departure from good industry practice or unsafe to any personnel or equipment on the site or the operation of the Facility or any part of the Works; or
- (iv) the Additional Work would prevent Concessionco from otherwise complying with the Building Specification; or
- (v) if the Additional Work was implemented the function or design life of the Facility would be materially adversely affected; or
- (vi) where Concessionco has not been able to secure funding therefor in terms of their respective obligations under this Clause 31; or
- (vii) it increases the risk of an Area becoming Unavailable or of failing to comply with any Legal Requirement;or

- (viii) the Additional Work comprises an increase in the size of the Facility, and a Partial Handback Variation has been previously effected in accordance with Clause 34.3; or
- (ix) the Trust Variation, if implemented, would have an adverse effect on Concessionco's ability to meet its obligations under or in connection with the Project Agreements and/or the Senior Loan Agreement and/or the Subordinated Debt and/or any other Funding Agreement in a way that cannot be compensated for by a price adjustment.

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 matter may be referred to the Disputes Resolution Procedure; 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 incurred 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) in respect of or as a result 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.
- 31.3 Any compensation or adjustment to the Total Payment to be made pursuant to Additional Work proposed by the Trust in accordance with this Clause 31 shall be calculated in accordance with the provisions of Part 24 of the Schedule.

## **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) is enacted or otherwise takes effect before or within the period of twelve Months after the or within the period of twelve Months after any Benchmark Date (in relation to those Services which are subject to the provisions of Clause 28) or within the period of twelve Months after the date of implementation of the results of any Special Benchmarking Exercise (in relation to any Services) as the case may be (other than a Qualifying Change); 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 to the date of implementation of the Change), 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 (Assistance and Co-operation), 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 (Payment)) 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) 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 (Force Majeure), 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, lockout, 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 apply for an extension to the Contract Period. If Concessionco wishes to apply for an extension then it shall give notice in writing to the Trust requesting the same as soon as reasonably practicable after the occurrence of any of the above events, and thereafter shall provide to the Trust within twenty eight days such information as the Trust shall reasonably require to verify the same. 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 (and taking into account any insurance proceeds under any insurances to be taken out and maintained by Concessionco pursuant to this Agreement received by Concessionco or such proceeds as would have been received by Concessionco save for the fact that Concessionco did not make a claim under any such insurance policy (other than where the Trust and Concessionco agree that a claim should not be made) and/or any such claim has been refused on the basis that Concessionco knowingly vitiated the policy as between Concessionco and the insurer to place Concessionco, so far as practicable, in the same financial position in which it would have been but for such occurrence and failing such agreement such matters will 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. The parties shall enter into minutes of extension of the Lease and the Sub-Lease for the period of the extension so agreed or determined.

- 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**

- 34.1 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 except as otherwise provided in this Clause 34.
- 34.2 The Trust may at any time after the eighth anniversary of the Services Commencement Date give notice ("Partial Handback Notice") to requesting a Partial Handback Variation, such Partial Handback Notice to specify:

- (a) by reference to a plan, the area of the Facility which is the subject of the Partial Handback Variation ("Handback Area"); and
- (b) the date upon which the Partial Handback Variation is to become effective, being no shorter than 24 months after the date of service of the Partial Handback Notice.

#### **Notice of Refusal**

34.3 Without prejudice to Clause 3.14 of the Lenders Direct Agreement within 60 Business Days after the giving of the Partial Handback Notice, Concessionco shall be entitled to refuse to implement the Partial Handback Variation, by notice to the Trust, on the grounds that:

- (a) the Handback Area is physically configured such that it is not capable of being, or is not suitable to be separately let to a third party whether as a whole or in parts;
- (b) the Handback Area is greater than 10% of the Original Area;
- (c) a Partial Handback Variation has previously been effected.

#### **No Refusal**

34.4 Without prejudice to Clause 3.13 of the Lenders Direct Agreement if Concessionco does not give notice under (and within the period specified in) Clause 34.3 or if it is agreed or determined pursuant to Clause 34.5 that Concessionco has no grounds for refusal in terms of Clause 34.3 then the Partial Handback Variation will, subject to the Trust giving a Partial Handback Confirmation Notice to Concessionco, be implemented in accordance with Clause 34.9.

#### **Refusal of Variation**

34.5 If Concessionco refuses to implement the Partial Handback Variation in accordance with Clause 34.3 then in its notice Concessionco shall specify the grounds for such refusal. Concessionco shall, at the request of the Trust provide such further assessments or information as the Trust may reasonably require to determine whether Concessionco may object on these grounds.

34.6 If the Trust does not accept a ground specified in a notice given by Concessionco under Clause 34.3 and no agreement is reached with Concessionco as to the implementation of the Partial Handback Variation within a period of 20 Business Days after the giving of such notice, then either Concessionco or the Trust may refer the matter to the Disputes Resolution Procedure.

34.7 If Concessionco's refusal is upheld under the Disputes Resolution Procedure, then the request for the Partial Handback Variation shall be deemed to be withdrawn.

## Withdrawal of Request

- 34.8 The Trust may withdraw the request for a Partial Handback Variation at any time prior to giving Concessionco a Partial Handback Confirmation Notice. In the case of a withdrawal (or a deemed withdrawal under Clause 34.7) Concessionco shall be entitled to be paid the reasonable costs and expenses incurred by it in satisfying its obligations under this Clause 34 in relation to the proposed Partial Handback Variation.

## Implementation

- 34.9 If the Trust gives a Partial Handback Confirmation Notice, the Partial Handback Variation will be implemented on the date specified in the Partial Handback Notice; and

- (a) Concessionco may use the Handback Area whether by itself or through a third party for any purpose and will give the Trust details of:
  - (i) the party who is to use and occupy the Handback Area;
  - (ii) the proposed use of the Handback Area; and
  - (iii) the terms of such use and occupation, whether a sub-lease is to be granted; and
- (b) the parties will enter into such documents as are necessary to give effect to the Partial Handback Variation and Concessionco's proposal for use of the Handback Area, including a partial renunciation of the Sublease quoad the Handback Area and the amendment of the Sublease to provide for any necessary rights and reservations in relation to any areas or equipment common to the Handback Area and the remainder of the Facility.

## Payment Adjustment Provisions

- 34.10 Without prejudice to Clause 3.14 of the Lenders Direct Agreement, if the Partial Handback Variation is implemented following the Trust giving a Partial Handback Confirmation Notice, then from the date of implementation of the Partial Handback Variation until the expiry of the Contract Period there will be a reduction in the Availability Payment by an amount equal to x% where:

$$x = \frac{a}{b}$$

and a = the area (expressed in square metres of Net Internal Area) of the Handback Area;

b = the area (expressed in square metres of Net Internal Area) of the Facility immediately prior to the day of implementation of the Partial Handback Variation measured on the same basis as the Original Area;

- 34.11 The Trust acknowledge that, notwithstanding any other provision of the Agreement, it will not, following implementation of a Partial Handback Variation, be entitled to request or require any increase in the size of the Facility.

## **35 WARRANTIES AND UNDERTAKINGS**

- 35.1 Each party has entered into this Agreement in reliance on the representations of the other party set out in Part 19 of the Schedule and each party warrants to the other at the date of this Agreement and at the Date of Possession that the Warranties and undertakings set out in Part 19 of the 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 either party 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 both parties in respect of all alleged breaches of Warranties hereunder (other than alleged breaches of the Warranties set out in paragraph 3 of Part 19 of the Schedule in respect of which the liability of the Trust shall be unlimited) shall be limited to ONE MILLION POUNDS (£1,000,000) 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 Possession, whichever shall be later (other than an action alleging a breach of any of the Warranties set out in paragraph 1 of Part 19 of the Schedule in respect of which no such action shall be commenced later than 12 Years from the Date of Possession and paragraph 3 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).
- 36.2 Concessionco shall procure a letter of undertaking to comply with this Clause mutatis mutandis from Tarmac Construction (PFI) Limited and UME Investment Co. Limited for their respective investments in Town Hospitals (Southern General) Holdings Limited.
- 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 Part 15 of the Schedule A and Part B 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 Part 15 of the Schedule Part C and Part D 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 Part 15 of the 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 Part 15 of the 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 Part 15 of the 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. Each party shall as soon as is reasonably practicable, provide the other party with copies of the policy documents or equivalent documentation as regards the insurances specified in Parts C and D of part 15 of the Schedule and any endorsement or other document amending the terms of such insurances.
- 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 2 Months 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 (Consequences of Termination without default) will apply (as if the same were a termination following an Event of Force Majeure) save that the amount of the proceeds of the insurance claim against the policies set out in PartA, Section 1.1 and PartB, Section 2.1 of Part 15 of the 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.
  - (C) Subject to Clause 10.5 of the Lenders Direct Agreement the Trust shall indemnify Concessionco in respect of all sums becoming due to Lenders within the 2 Month period referred to in (A) above.
- (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 (Variations - Additional Work -Hospital) 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 (Variations - Trust Changes - Services) 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 as new or repair exceeds 50% of the maximum sum which would be paid by the Trust under Clause 46.1 (Consequences of Termination without default).

(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, NHSiSME and the Scottish Ministers 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 A and B of Part 15 of the 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 Part 15 of the Schedule and include the exclusions specified in Part 15 of the 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 A and B of Part 15 of the 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 A and B of Part 15 of the Schedule, without the written consent of the Trust. Such consent not to be unreasonably withheld or delayed.

37.9 Concessionco shall procure that the insurances referred to in Part 15 of the 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.

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

37.10 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.

#### **Non avoidance of coverage**

37.11 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 Part 15 of the 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.

#### **Disclosure**

37.12 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.

### **Insurance administration and loss prevention**

37.13 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 promptly.

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 losses or events which have a financial impact which are outside the scope of the insurances.

#### **Changes in method/procedures**

- 37.15 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.

#### **Premiums**

- 37.16 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.

#### **Disputed claims**

- 37.17 If the insurers dispute any claim made under any of the insurances effected or renewed in accordance with this Clause 37 and Part 15 of the 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.

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

- 37.18 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 as separate the insurances specified in Part A, Section 1.1 and Part B Section 2.1 of Part 15 of the Schedule;
  - (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 including premiums;
  - (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 or such other period as the parties may agree 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 Part 15 of the Schedule without the prior written consent of the other party which matter shall be at that party's entire discretion.

#### **Charges and Relevant Uninsured Losses**

37.21 (a) It is hereby agreed and acknowledged by the parties that in respect of the insurance for Phase I (as set out in Part A of Part 15 of the 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 Part 15 of the 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 Part B of Part 15 of the 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 B of Part 15 of the 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 B of Part 15 of the 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 B of Part 15 of the 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 B of Part 15 of the 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 B of Part 15 of the Schedule hereto, by virtue of the application of a deductible and/or excess provided that the term "Relevant Uninsured Losses" shall not include the following:
  - (i) the first £500 of any loss (adjusted to take account of any increase or reduction in the GDP Deflator between 1 April 1998 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.

37.22.1 Each subcontractor of Concessionco shall be an insured party under:

- (a) in the case of a subcontractor 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 Part 15 of the Schedule; and

- (b) in the case of a subcontractor engaged during Phase II, all the insurances set out in the applicable Parts of Part 15 of the Schedule;

in each case to the extent that such subcontractor is not an insured party under existing insurances similar in all material respects to those set out in the applicable Parts of Part 15 of the Schedule.

- 37.21.2 The Trust shall be entitled to require Concessionco to procure that any subcontractor, 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 Part 15 of the 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 Part 15 of the Schedule.

### **Default**

- 37.22 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.

### **Insured Liability**

- 37.23 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.

### **Clinical Negligence Insurance**

- 37.24 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, disease or mental anguish including injury resulting in death, to any employee in the course of their employment, 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, consultants 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, disease or mental anguish including injury resulting in death, to any employee in the course of their employment, 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, consultants 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 within the Site, its employees, consultants, servants, agents, workmen or contractors, including, 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 disease or mental anguish to any person, including injury resulting in death arising at the Site or accessing or egressing the same, 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 disease or mental anguish 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 disease or mental anguish to any person (other than a Trust employee), 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 (Insurance) 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 (Termination of whole Agreement without default) 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 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.

**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 £200,000 (adjusted to take account of any increase or decrease in RPI from 1 April 1998) until the date of payment 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).
- (d)    the Date of Possession has not occurred on or before 3 November 1999.

41.2.1 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 or, in the case of any legislation of the Scottish Parliament, such analogous circumstances or proceedings under the procedures adopted by the Scottish Parliament.

41.2.2 For the purposes of this Clause 41.2.2 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 in the first House into which it is introduced to Parliament or, in the case of any legislation of the Scottish Parliament, such analogous circumstances or proceedings under the procedures adopted by the Scottish Parliament or which is otherwise passed by either House of Parliament at its Second Reading or by the Scottish Parliament under such analogous circumstances or proceedings under the procedures adopted by the Scottish Parliament 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 First Minister or the Scottish Ministers 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 sub paragraph (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.

41.3 Without prejudice to Clause 14B (Changes in Legal Requirements - Phase I) and Clause 32 (Variations - Phase II - Changes in Legal Requirements), 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 (Variations), 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 (Consequences of termination following default by Concessionco) shall apply.

#### **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 (Option to Terminate).

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

43.4 This Agreement shall terminate in the circumstances set out in Part 13 of the Schedule and the other provisions of that Part of the Schedule shall have effect, (Revocation of Planning Consent).

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 (default of the Trust) 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 equity and

Subordinated Debt of the aggregate of Concessionco the aggregate of:

- (i) an amount equal to the amount paid up or called in respect of such equity of Concessionco; and
- (ii) an amount equal to the principal amount of Subordinated Debt of Concessionco which is outstanding at the date of termination of this Agreement

in each case adjusted by the addition of the amount required to achieve a blended real internal rate of return of 16.8% from the period between subscription of the relevant amount and termination of this Agreement.

- (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 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 (c); and
- (d) 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.

45.2 Subject to the terms of the Lenders Direct Agreement, 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, for the avoidance of doubt, shall not entitle the Trust to set-off any amounts owing from Concessionco under this Clause 45.2 from the payment to be made to Concessionco pursuant to Clause 45.1), 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 (default of the Trust) 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 amount set out in Part [23] of the Schedule in 1 April 1998 prices (adjusted in accordance with GDP Deflator) against the relevant six-month period in which the date of termination falls;
- (d) 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: on the assumption that no event giving rise to such termination had occurred; on the assumption that the date of termination of this Agreement was to be 33 years prior to the end of the Contract Period and 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 holders of equity and Subordinated Debt in Concessionco with a blended real internal rate of return equal to 16.8% 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);
- (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 (Termination without default) (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 Subject to the terms of the Lenders Direct Agreements, 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, for the avoidance of doubt, shall not entitle the Trust to set-off any amounts owing from Concessionco under this Clause 46.2 from the payment to be made to Concessionco pursuant to Clause 46.1), 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 (default by Concessionco) or Clause 42 (Insolvency) prior to Completion, then the Trust shall pay to Concessionco an amount equal to:

- (a) £11, 533.000, 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) the costs excluding interest (including interest chargeable by any Department of HM Government) incurred by the Trust in respect of the funding required by the Trust or any replacement contractor to finance completion of the Works) reasonably anticipated by the parties as at the date of termination of this Agreement to complete the Works and for taking responsibility for the quality of the Works undertaken up to 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 (b) above, then they shall be the lower of:

- (i) the costs (excluding interest (including interest chargeable by any Department of HM Government) incurred by the Trust in respect of the funding required by the Trust or any replacement contractor to finance completion of the Works) to complete such Works and for taking responsibility in terms of paragraph (b) above, for up to 12 years 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; and
- (ii) the costs (excluding interest (including interest chargeable by the Department of HM Government) incurred by the Trust in respect of the funding required by the Trust or any replacement contractor to finance completion of the Works to complete such Works and for taking responsibility in terms of paragraph (b) above for up to 12 years 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 (default by Concessionco) or Clause 42 (Insolvency) 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 (Payment)) until the first date on which the Trust would have been entitled to exercise its option to terminate this Agreement pursuant to Clause 54 (Option to Terminate), 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 (Availability),

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 Month, provided that if in any Month 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 monthly 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 Part 20 of the 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 Month 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 Month 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 (Option to Terminate), 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 Month 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 monthly amount of £3334 (such amount to be increased or reduced in accordance with any increase or reduction in GDP Deflator between 1 April 1998 and the date of payment) being the amount of Concessionco's management costs included within the monthly 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 (Determination by Expert). 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 (Payment) 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 Subject to the terms of the Lenders Direct Agreement, without prejudice to Clause 47.1 or 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 (Energy and Business Rates)) payable (and not then paid) under this Agreement in respect of the period prior to the date of termination (which, for the avoidance of doubt, shall not entitle the Trust to set-off any amounts owing from Concessionco under this Clause 47.3 from the payment to be made to Concessionco pursuant to Clause 47.1 or Clause 47.2).

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 monthly (the first such payment to be due and payable in accordance with Clause 25.4 (Payment) in the Month 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 breakage costs as relate to any interest rate swap entered into in substitution for the Interest Rate Cap (as specified in Part 18 of the Schedule) or as part of a hedging product envisaged under the terms of that Part of the 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 Part 18 of the 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 (Extensions of Time-Works) and 33 (Variations - Extension of Contract Period) 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 Part 18 of the Schedule are to be increased, then any figure set out in the table in Part 18 of the 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).
- 47.7 If the Trust terminates this Agreement pursuant to Clause 60 (Corrupt Gifts and Payment of Commission) then the Trust shall pay to Concessionco compensation calculated in accordance with Clause 47.1 or Clause 47.2 PROVIDED ALWAYS that the amount payable shall not be less than an amount equal to 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 but in no event shall such amount be greater than the Compensation Amount (as detailed in Clause 47.4).

#### 48 MISCELLANEOUS CONSEQUENCES OF TERMINATION

- 48.1 Subject to Clause 44 (Survival of Rights), the rights of the parties expressly provided by this Agreement to terminate this Agreement and in relation to the calculation and foregoing of any amount, payable in consequence of any such termination are exclusive and are in place of (and not cumulative until and each of the parties hereby waives all other rights of termination or payment consequential thereon, whether express or implied, arising by common law, (including without limitation any rights in delict which shall include without limitation actions brought in negligence) by statute or otherwise howsoever.

##### 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 monthly 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 or, in the case of any legislation of the Scottish Parliament, such analagous circumstances or proceedings under the procedures adopted by the Scottish 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 (Consequences of Termination) 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 subcontractors engaged directly in the performance of the Works or Services shall forthwith vacate the Site 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. DISPUTE RESOLUTION PROCEDURE**

- 49.1 Any dispute or difference (references to "dispute" throughout Clauses 49 and Clause 50 shall include any difference) arising under this Agreement or with regard to any matter or thing whatsoever arising out of this Agreement or in connection therewith which is referred to the Adjudicator or to the Dispute Resolution Procedure for adjudication ("Adjudication") shall be adjudicated in accordance with the adjudication rules set out in the following Clauses 49.2 -49.51 ("the Rules").

- 49.2 The Rules meet the requirements of adjudication procedure as set out in section 108 of the Housing Grants, Construction and Regeneration Act 1996; Part I of the Scheme for Construction Contracts (Scotland) Regulations 1998 shall thus not apply.

#### **COMMENCEMENT**

- 49.3 (i) The Rules shall apply upon either Party giving written notice to the other Party requiring Adjudication, and identifying in general terms the dispute in respect of which Adjudication is required.
- (ii) Within 7 days from the date of such notice, and provided that he is willing and able to act, any agreed Adjudicator under Clause 49.6 or nominated Adjudicator under Clause 49.7 (b) or replacement Adjudicator under Clause 49.8 shall give written notice of his acceptance of appointment to both Parties.
- (iii) The date of the referral of the dispute shall be the date that the Adjudicator so confirms his acceptance.
- 49.4 Notice requiring Adjudication may be given at any time and notwithstanding that litigation has been commenced in respect of such dispute.
- 49.5 More than one such notice requiring Adjudication may be given arising out of this Agreement.

## **APPOINTMENT**

- 49.5 Where the Parties have agreed upon the identity of an Adjudicator who confirms his readiness and willingness to embark upon the Adjudication within 7 days of the notice requiring Adjudication, then that person shall be the Adjudicator.
- 49.7 Where the Parties have not so agreed upon an Adjudicator, or where such person has not so confirmed his willingness to act, then the Party who is seeking the appointment of the Adjudicator and the referral of the dispute to Adjudication may apply to the Chairman, Vice-Chairman, President or Vice-President of either the Royal Incorporation of Architects in Scotland or the Scottish Building Employers Federation or the Royal Institution of Chartered Surveyors in Scotland or the National Specialist Contractors Council ("the Nominator") for a nomination and the selection of the Nominator shall be made by the said Party at a time not earlier than when any dispute arises. The following procedure shall apply:-
- (a) The application shall be in writing, accompanied by a copy of this Agreement or other evidence of the agreement of the Parties that the Rules should apply and a copy of the written notice requiring Adjudication.
  - (b) The Nominator shall endeavour to secure the appointment of an Adjudicator and the referral to him of the dispute within 7 days from the application to the Nominator.
  - (c) Any person so appointed (and not any person named in this Agreement whose readiness or willingness is in question), shall be the Adjudicator.
- 49.8 The Nominator shall have the power by written notice to the Parties to replace the Adjudicator with another nominated person as Adjudicator if and when it appears necessary to him to do so. The Nominator shall consider whether to exercise such power if either Party shall represent to him that the Adjudicator is not acting impartially, or that the Adjudicator is physically or mentally incapable of conducting the Adjudication, or that the Adjudicator is failing with necessary despatch to proceed with the Adjudication or make his decision. In the event of a replacement under this Rule, directions and decisions of the previous Adjudicator shall remain in effect unless reviewed and replaced by the new Adjudicator, and all timescales shall be recalculated from the date of the replacement.
- 49.9 Where an Adjudicator has already been appointed in relation to another dispute arising out of this Agreement, the Nominator may appoint either the same or a different person as Adjudicator.

## **AGREEMENT**

- 49.10 An agreement to adjudicate in accordance with the Rules shall be treated as an offer made by each of the Parties to the Nominator and to any Adjudicator to abide by the Rules, which offer may be accepted by conduct by appointing an Adjudicator or embarking upon the Adjudication respectively.

## **SCOPE OF THE ADJUDICATION**

49.11 The scope of the Adjudication shall be the matters identified in the notice requiring Adjudication, together with

- (a) any further matters which both Parties agree should be within the scope of the Adjudication, and
- (b) any further matters which the Adjudicator determines must be included in order that the Adjudication may be effective and/or meaningful.

49.12 The Adjudicator may rule upon his own substantive jurisdiction, and as to the scope of the Adjudication.

## **THE PURPOSE OF THE ADJUDICATION AND THE ROLE OF THE ADJUDICATOR**

49.13 The underlying purpose of the Adjudication is to resolve disputes between the Parties that are within the scope of the Adjudication as rapidly and economically as is reasonably possible.

49.14 Decisions of the Adjudicator shall be binding until the dispute is finally determined by legal proceedings, or by agreement between the Parties.

49.15 The decision of the Adjudicator shall reflect the legal entitlements of the Parties

49.16 The Adjudicator shall have the like power to open up and review any certificates or other things issued or made pursuant to this Agreement as would a court or arbiter given such powers.

49.17 The Adjudicator shall act fairly and impartially, but shall not be obliged or empowered to act as though he were an arbiter.

## **CONDUCT OF THE ADJUDICATION**

49.18 The Adjudicator shall establish the procedure and timetable for the Adjudication.

49.19 Without prejudice to the generality of Clause 49.18, the Adjudicator may if he thinks fit:-

- (a) Require the delivery of written statements of the dispute,
- (b) Require either Party to produce a bundle of key documents, whether helpful or otherwise to that Party's case, and to draw such inference as may seem proper from such bundle that may become apparent,
- (c) Require the delivery to him and/or the other Party of copies of any documents other than documents that would be privileged from production to a court,

- (d) Limit the length of any written or oral submission,
- (e) Require the attendance before him for questioning of either Party or employee or agent of either Party,
- (f) Make site visits,
- (g) Make use of his own specialist knowledge
- (h) Obtain advice from specialist consultants, provided that at least one of the Parties so requests or consents,
- (i) meet and otherwise communicate with either Party without the presence of the other Party,
- (j) Review and revise any of his own previous directions,
- (k) Conduct the Adjudication inquisitorially, and take the initiative in ascertaining the facts and the law,

49.20 The Adjudicator shall only reach his decision after holding an oral hearing, and with or without having endeavoured to facilitate an agreement between the Parties

49.21 The Adjudicator shall exercise such powers with a view of fairness and impartiality, giving each Party a reasonable opportunity, in light of the timetable, of putting his case and dealing with that of his opponent.

49.22 The Adjudicator may not

- (a) Require any advance payment of or security for his fees,
- (b) Receive any written submissions from one Party that are not also made available to the other,
- (c) Refuse any Party the right at any hearing or meeting to be represented by a representative of that Party's choosing who is present,
- (d) Act or continue to act in the face of a conflict of interest,

49.23 The Adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the Parties after the dispute has been referred to him. The Adjudicator shall be entitled to extend the said period of 28 days by up to 14 days with the consent of the Party by whom the dispute was referred. As soon as possible after he has reached a decision, the Adjudicator shall deliver a copy of the decision to each of the Parties to this Agreement. Upon becoming aware that the dispute is the same or arises out of substantially the same facts as a dispute which has previously been referred to Adjudication under this Agreement, and a decision has been issued in that Adjudication, the Adjudicator shall immediately resign.

## **ADJUDICATOR'S FEES AND EXPENSES**

- 49.24 Save as aforesaid, the Parties shall be jointly responsible for the Adjudicator's fees and expenses including those of any specialist consultant appointed under Clause 49.19(h) (the "Costs of Adjudication") and/or the fees and expenses of any adjudicator and specialist consultant appointed in relation to the Consolidated Adjudication, and the Adjudicator shall have the discretion to make directions regarding the apportionment of the Costs of Adjudication. If no such directions are made, the Parties shall bear the Costs of Adjudication in equal shares, and if any Party has paid more than such equal share, that Party shall be entitled to contribution from other Parties accordingly
- 49.24 The Adjudicator's fees shall not exceed the rate of £1,000 per day as may be adjusted by the change in RPI from 1 April 1998 until the date of appointment of the Adjudicator, plus expenses and VAT.

## **DECISIONS**

- 49.26 The Adjudicator may in any decision direct the payment of such compound or simple interest as may be commercially reasonable.
- 49.27 All decisions shall be in writing. If requested by either Party, not later than 7 days from the date of delivery of his decision to both Parties, the Adjudicator shall provide written reasons for that decision.

## **ENFORCEMENT**

- 49.28 Every decision of the Adjudicator shall be implemented without delay. The Parties shall be entitled to such reliefs and remedies as are set out in the decision, and shall be entitled to enforcement thereof, regardless of whether such decision is or is to be the subject of any challenge or review. Neither Party shall be entitled to raise any right of set-off counterclaim or abatement in connection with any enforcement proceedings. Where either Party or the Adjudicator wishes to register the decision for execution in the Books of Council and Session, the other Party shall, on being requested to do so, forthwith consent to such registration by subscribing the decision before a witness which failing within 7 days of such request, the same may be subscribed on behalf of the defaulting Party by the Deputy Principal Clerk of the Court of Session.

## **IMMUNITY, CONFIDENTIALITY AND NON-COMPELLABILITY**

- 49.29 Neither the Nominator, nor the Adjudicator nor any employee or agent of any of them shall be liable for anything done or not done in the discharge or purported discharge of their functions, whether in negligence or otherwise, unless the act or omission is in bad faith.
- 49.30 The Adjudication and all matters arising in the course thereof are and will be kept confidential by the Parties except insofar as necessary to implement or enforce any decision of the Adjudicator or as may be required for the purpose of any subsequent proceedings.

- 49.31 In the event that either Party seeks to challenge or review any decision of the Adjudicator in any subsequent litigation, the Adjudicator shall not be joined as a party to, nor shall be cited or otherwise required to give evidence or provide his notes in such litigation.
- 49.32 Neither Party shall, save in case of bad faith on the part of the Adjudicator, make any application to the courts whatsoever in relation to the conduct of the Adjudication or the decision of the Adjudicator until such time as the Adjudicator has made his decision, or refused to make a decision.
- 49.33 All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment hereunder shall be treated as confidential by the Adjudicator and each Party to the Adjudication (save as otherwise agreed between the Parties) and shall be returned to the owner on completion of the Adjudication proceedings.
- 49.34 The Parties shall continue to comply with, observe and perform all their obligations under this Agreement regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Clause.
- 49.35 Notwithstanding Clauses 49.14 and 49.32, neither Party shall make any application whatsoever to the Court of Session in relation to the conduct of the Adjudication or the decision of the Adjudicator
- (a) after the date ninety (90) days from the decision of the Adjudicator or ninety days from Services Commencement Date (which ever is the later); and
  - (b) unless it shall involve the pursuit of a claim or a counterclaim of a monetary value in excess of £50,000 (as adjusted in accordance with the increase in RPI from the date of this Agreement until the date of the determination of the Adjudicator) or in the case of claims or counterclaims of a lesser monetary value arising out of the same facts and circumstances an aggregate monetary value in excess of £100,000 (as adjusted in accordance with the increase in RPI from the date of this Agreement until the date of the determination of the Adjudicator);
- 49.36 Notwithstanding Clause 49.14 and Clause 49.32, no party shall, save in the case of bad faith on the part of the Adjudicator make any application whatsoever to a competent Court in relation to the conduct of the Adjudication or the decision of the Adjudicator until after the Services Commencement Date or earlier termination or alleged termination of this Agreement, unless and until the prior written consent of both Concessionco and the Trust has been obtained.
- 49.37 The Rules shall be governed by and construed in accordance with the law of Scotland and the parties irrevocably submit to the exclusive jurisdiction of the Court of Session, Scotland.



## **Consolidation of Disputes**

49.38 In the event of a dispute or difference arising under, out of or in connection with this Agreement which in the opinion of Concessionco relates to a dispute or potential dispute ("**Related Dispute**") arising under, out of, or in connection with any other contract between Concessionco and a third party (all such contracts being referred to as the "**Related Contracts**") and where the Related Dispute has been referred to an adjudicator for determination under an adjudication procedure ("**the Related Procedure**") which meets the requirements set out in section 108 of the Housing Grants, Construction and Regeneration Act 1996 and is in all material respects equivalent to the adjudication procedure set out in the Rules, (and in actual fact has an Adjudicator appointed on an arms' length basis) Concessionco may or may procure that the other party to the Related Dispute or difference shall as soon as practicable, and in any case within fourteen (14) days of the referral of the dispute or difference to the Expert, give to the Expert conducting the adjudication under this Agreement and also to the other parties to the dispute or difference and the Related Dispute the particulars set out in Clause 49.39 below.

49.39 The particulars referred to in Clause 49.38 above are:

- (a) a copy of the Related Contract;
- (b) a preliminary statement from Concessionco and/or, as the case may be, the other party to the Related Dispute setting out:-
  - (i) the basis and grounds for consolidation of the Related Dispute and the dispute or difference;
  - (ii) the cases of the parties to the Related Dispute;
  - (iii) any relief sought by the parties to the Related Dispute; and
  - (iv) a list of any documents served in relation to the Related Dispute.

Any such particulars sent by Concessionco to the Expert and the other parties to the dispute or difference shall be sent at the same time to the other party to the Related Dispute.

49.40 On receiving the particulars set out in Clause 49.39 above prior to the Services Commencement Date and within fourteen (14) days of the referral of the dispute or difference to the Expert, the Expert shall, at the request of Concessionco, immediately order consolidation of the dispute or difference and the Related Dispute and shall have the authority and the power referred to in Clause 49.47 below.

49.41 On receiving the particulars set out in Clause 49.39 above on or after the Services Completion Date and within fourteen (14) days of the referral of the dispute or difference to the Expert, the Expert shall immediately request that the parties to the dispute or difference and the other party to the Related Dispute attend a meeting with the Expert with a view to determining whether or not the dispute or

difference and the Related Dispute should be consolidated.

- 49.42 Concessionco shall use its reasonable endeavours to procure that an authorised representative of the other party to the Related Dispute shall attend the meeting with the Expert referred to in Clause 49.41 above. Concessionco and the Trust each agree to send an authorised representative or nominee to any meeting of this kind under this Agreement or under a Related Contract, which they may be requested to attend. The parties hereby agree that the Trust shall be entitled to attend any meeting of the kind referred to in Clause 49.41 above, in relation to a Related Contract as Concessionco's nominee.
- 49.43 At the meeting referred to in Clause 49.41 above, the Trust's representative shall, as a preliminary matter, either:
- (a) confirm to the Expert that the Trust accepts the proposed consolidation of the Related Dispute with the dispute or difference; or
  - (b) inform the Expert that the Trust does not accept the proposed consolidation of the Related Dispute with the dispute or difference.
- 49.44 Where Clause 49.43(a) above applies, the Expert shall immediately order consolidation of the dispute or difference and the Related Dispute and shall have the authority and the power referred to in Clause 49.47.
- 49.45 Where Clause 49.43(b) above applies, the Expert shall issue within one (1) day of the meeting referred to in Clause 49.40 above his written decision, which shall not include any reasons, as to whether or not there is demonstrably no basis or ground for consolidation of the dispute or difference and the Related Dispute. If the Expert determines that there is demonstrably no basis or ground for consolidation of the dispute or difference and the Related Dispute, the dispute or difference and the Related Dispute shall not be consolidated. If the Expert determines otherwise, or if the Expert has failed or is unable to reach a decision within (1) day of the meeting referred to in Clause 49.41 above, the Expert shall immediately order consolidation of the dispute or difference and the Related Dispute and shall have the authority and the power referred to in Clause 49.47 below.
- 49.46 Notwithstanding anything to the contrary, a Related Dispute shall only be consolidated with a dispute or difference under this Agreement if the Expert receives the particulars set out in Clause 49.39 above within fourteen (14) days of the referral of the dispute or difference under this Agreement to the Expert.
- 49.47 The Expert shall have the authority and the power to consolidate the dispute or difference and the Related Dispute and to direct that all procedural and/or evidential matters arising in both the dispute or difference and the Related Dispute are consolidated in whatever manner the Expert considers shall lead to the fair and expeditious resolution of both the dispute or difference and the Related Dispute and the parties (including the party to the Related Dispute) shall thereafter abide by and implement such consolidation and any such direction.
- 49.48 In the event that the Related Dispute is consolidated with the dispute or difference,

the Expert shall reach a decision on the dispute or difference and the Related Dispute at the same time and in any event within twenty eight (28) days of the earlier of the referral of the dispute or difference or the referral of the Related Dispute, or such longer period as is agreed by the parties to the dispute or difference and the Related Dispute after the date that the Related Dispute has been consolidated with the dispute or difference. The Expert shall be entitled to extend the said period of twenty eight (28) days by up to fourteen (14) days with the consent of the party by whom the relevant dispute was referred.

49.49 Without fettering or restricting the Expert's power and authority in any way, it is the intention of Concessionco and the Trust that in the event that the Related Dispute is consolidated with the dispute or difference, the Expert shall, insofar as is relevant, practicable and appropriate, come to the same conclusion as to the facts and apply the same reasoning and analysis in reaching a decision on both the dispute or difference and the Related Dispute.

49.50 In the event that an adjudicator under a Related Contract ("the Related Expert") orders that a dispute or difference under this Agreement be consolidated with a Related Dispute with which he is dealing under the Related Contract, then:

- (a) notwithstanding anything in the Rules above, with effect from the time of such order, the Expert shall cease to have authority or jurisdiction to determine the dispute or difference which shall instead be determined by the Related Expert and the appointment of the Expert under this Agreement shall cease; and
- (b) such order shall be binding on Concessionco and the Trust and both of them shall acknowledge the appointment of the Related Expert as the adjudicator of the dispute or difference, with Concessionco procuring that the third party who is a party to the Related Contract shall with effect from the time of such order comply with the requirements of the Related Expert appointed under such Related Contract) as to the future conduct of the determination of the dispute or difference and the Related Dispute; and
- (c) notwithstanding Clause 49.24, Concessionco and the Trust shall be jointly responsible with the third party who is a party to the Related Contract for the Related Expert's fees and expenses including those of any specialist consultant appointed under the adjudication procedure in the Related Contract, in respect of the period in which the dispute or difference is consolidated with the Related Dispute pursuant to an order of the Related Expert ("**the Consolidated Adjudication Costs**"). Concessionco and the Trust agree that the Related Expert shall have the discretion to make directions to require Concessionco, the Trust and the third party who is a party to the Related Contract to pay or make contribution to the Consolidated Adjudication Costs in different proportions. If no such directions are made, Concessionco, the Trust and the third party who is a party to the Related Contract shall bear the Consolidated Adjudication Costs in equal shares, and if Concessionco, the Trust or the third party has paid more than such equal share, that party or third party shall be entitled to a contribution from the other party, parties or third party, as the case may be; and

- (d) notwithstanding anything to the contrary a dispute or difference under this Agreement shall only be consolidated with a Related Dispute, if the Related Expert receives particulars of the dispute or difference within fourteen (14) days of the referral of the Related Dispute to the Related Expert under the Related Contract.

49.51 Notwithstanding anything to the contrary, in the Rules above, Concessionco shall pay the Trust's reasonable costs arising from the consolidation of the dispute or difference and the Related Dispute in circumstances where Concessionco has requested the Expert to order consolidation of the dispute or difference and the Related Dispute and it is subsequently determined by the Expert that there was no basis or ground for Concessionco to request the Expert to order consolidation of the Related Dispute and the dispute or difference.

## **50 Fast Track Procedure**

50.1 The parties may, when both parties agree, refer certain disputes to be dealt with by the Adjudicator to a timetable using shorter time periods than those set out in this part generally ("Fast-Track Procedure").

50.2 Those disputes or differences where the Fast Track Procedure may apply are:-

- (1) Basic Design or Detailed Design
- (2) Variations
- (3) Building Specification
- (4) Termination

50.3 Notwithstanding the above, either party may, at any time, give notice to the other party, requiring that the matter of a dispute or difference, should be referred immediately to an Adjudicator under the provisions of this Clause. The Adjudicator will comply with the following timescales:-

- (1) The parties shall endeavour to secure the appointment of the Adjudicator within 2 days of the notice being served.
- (2) Within 2 days of the Adjudicator being nominated in terms of this Part, he shall accept the nomination and confirm his appointment and acceptance of the procedure contained in this part.
- (3) Within 7 days of the notice to refer, or within 14 days of the notice to refer, providing that the referring party consents or such period exceeding 7 days after the notice refers as parties may agree, the adjudication of which has determination on the dispute.
- (4) All other duties and obligations of the Adjudicator as set out in this Part shall be applicable to the Fast-Track Procedure.

## **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 (Availability) and Clause 27 (Performance). 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 (Availability) or Clause 27 (Performance), 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 (Availability) or Clause 27 (Performance) 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 1998 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 (Warranties));
- (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 (Insurance) 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 13, 23, 33, 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 ASSIGNATION**

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 assignation 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 Construction (PFI) Limited and UME Investment Co. Limited); or
- (b) to the assignation, novation or other transfer of any of the Project Agreements in accordance with the provisions of the Lenders Direct Agreement.

#### **56 COMPETITION ACT 1998**

Unless this Agreement is, or forms part of an arrangement which is, a non-notifiable agreement (as specified in paragraph 5 of Schedule 13 to the Competition Act 1998) no provision of this Agreement which is of such a nature as to make this Agreement or any arrangement of which it forms part liable to registration under the Restrictive Trade Practices Act 1976 shall take full effect until the day after that and which particulars thereof have been duly furnished to

the Director General of Fair Trading pursuant to such Act.

**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 (Changes in Legal Requirements) , 32 (Variations -Changes in Legal Requirements) and 41 (Default of the Trust), 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 (except to the extent that the amount is included in the Availability Payments and/or Performance Related Payments), in addition to such costs, fees or expenses, 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 FRAUD**

60.1 Concessionco undertakes that in entering this Agreement and performing this Agreement it has not and shall not commit any Prohibited Act.

60.2 If Concessionco or any sub-contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Acts, then the Trust shall be entitled to act in accordance with



paragraphs (a) to (g) below, namely:-

- (a) if the Prohibited Act is committed by Concessionco or by an employee not acting independently of Concessionco then the Trust may terminate this Agreement by giving notice to Concessionco;
- (b) if the Prohibited Act is committed by an employee of Concessionco acting independently of Concessionco then the Trust may give notice to Concessionco of termination and this Agreement will terminate unless within thirty days of receipt of such notice Concessionco terminates the employee's employment and (if necessary) procures performance of such part of the Services by another person;
- (c) if the Prohibited Act is committed by a sub-contractor or by an employee of that sub-contractor not acting independently of that sub-contractor then the Trust may give notice to Concessionco of termination of this Agreement and this Agreement will terminate unless within forty five days of receipt of such notice Concessionco terminates the employment of such sub-contractor and procures performance of such part of the Services by another party;
- (d) if the Prohibited Act is committed by an employee of a sub-contractor acting independently of that sub-contractor then the Trust may give notice to Concessionco of termination and this Agreement will terminate unless within thirty days of receipt of such notice Concessionco procures termination of that employee's employment with the sub-contractor;
- (e) any notice of termination under this Clause 60 shall specify:-
  - (i) the nature of the Prohibited Act;
  - (ii) the identity of the person who the Trust believes committed the Prohibited Act;
  - (iii) the date upon which this Agreement will terminate in accordance with the provisions of this Clause 60.2.

## **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 Schedule 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 this Agreement comprising of this and the preceding [ ] pages, together with the Schedule, are executed as follows:

For and on behalf of  
South Glasgow University  
Hospitals National Health  
Service Trust  
at Edinburgh  
on the 1st day of July 1999

.....  
Chief Executive

by  
Chief Executive and

.....  
Chairman

Chairman

.....  
For and on behalf of  
[Concessionco] Town Hospitals  
(Southern General) Limited  
at Edinburgh  
on the 1st day of July 1999

.....  
Director

by

in the presence of:

Witness: .....

Name: .....

Address: .....

.....

**This is the Schedule referred to in the Concession Agreement for the New Healthcare Facility at Southern General Hospital between South Glasgow University Hospitals National Health Service Trust and Town Hospitals (Southern General) Limited.**

## **THE SCHEDULE - PART I**

.....

### **PART A - DEFINITIONS**

- "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);
- "Applicable Margin"** means:
- (a) in respect of the period prior to the Completion Date, 1.10 per cent per annum;
  - (b) 1.00 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 Possession; and
  - (c) 1.05 per cent per annum in respect of the period thereafter

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 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 (Payment), 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 (Payment), 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"**

means each Area or sub-Area as categorised and identified in Part 20 of the Schedule;

**"Availability Payment"**

means the monthly amount payable to Concessionco as a consequence of the Facility being available for use by the Trust being the amount set out (in 1 April 1998 prices) in Part 20 of the Schedule, subject to indexation in accordance with Clause 25.7 (Payment) 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 Parts 5 and 6 of the Schedule and as from time to time varied pursuant to this Agreement;

**"Benchmark Date"**

means the date falling 5 Years after the Services Commencement Date and each date falling at 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 Part 5 of the 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;

**"Catering Fixed Cost"**

means the fixed element (being not dependent upon volume of meals) of the cost of providing the Catering Service;

**"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;

**"Change Notice"**

shall have the meaning ascribed to it in Clause 14A.3;

<b>"Commissioning"</b>	means the commissioning work to be carried out in accordance with the Outline Commissioning Schedule as developed into the Detailed Commissioning Schedule;
<b>"Compensation Amount"</b>	has the meaning set out in Clause 47.4;
<b>"Completion"</b>	means the completion of the Works in accordance with this Agreement as certified in accordance with Clause 18;
<b>"Completion Certificate"</b>	means the certificate issued by Concessionco pursuant to Clause 18 stating that the Works have been completed (save as provided in Clause 18.7);
<b>"Completion Date"</b>	means the date being 83 [    ] [Note: to confirm] weeks from the Date of Possession, as varied from time to time in accordance with this Agreement;
<b>"Concessionco's Post Completion Commissioning"</b>	means the Commissioning to be undertaken by Commissioning following issue of the Completion Certificate as set out in the Detailed Commissioning Schedule;
<b>"Concessionco's Representative"</b>	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;
<b>"Concessionco's IT System"</b>	means the information technology equipment and systems used by Concessionco in the provision of the Services;
<b>"Confirmed Variation Instruction"</b>	means an instruction issued by the Trust to Concessionco in the form set out in Part 12 of the Schedule confirming a variation proposed and agreed pursuant to Clause 14A, 14B or Clause 31.1 to confirm certain matters referred to in those Clauses;
<b>"Construction Contract"</b>	means the contract dated 1 July 1999 in the form set out at Part 9 of the Schedule



	entered, or to be entered, into between Concessionco and the Building Contractor for the design, construction and completion of the Contract Works;
<b>"Construction Management Contract"</b>	has the meaning ascribed to it in the Senior Loan Agreement;
<b>"Construction Manager"</b>	has the meaning ascribed to it in the Senior Loan Agreement;
<b>"Contract Period"</b>	means the period from the Date of Possession until the date which is sixty (60) Years [and fourteen (14) days] after the Completion Date subject to the provisions of this Agreement;
<b>"Contract Works"</b>	means the work to be undertaken by the Building Contractor pursuant to the Construction Contract other than Concessionco's Post-Completion Commissioning;
<b>"Contractor's Programme"</b>	has the same meaning ascribed to it in the Construction Contract;
<b>"Corporate Tax Legislation"</b>	means any of the Legal Requirements which relate to the UK taxation of the profits of corporate bodies;
<b>"Cost"</b>	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 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;
<b>"Crown Indemnity Scheme"</b>	means the extra-statutory scheme, which is administered by the Scottish Office, to enable NHS Trusts in Scotland to make provision to meet their liabilities to third parties in relation to medical negligence, or such other replacement or equivalent scheme from time to time in force;
<b>"Date of Possession"</b>	means [3 August] 1999 or, if later, the date upon which vacant possession of the Site is given to Concessionco
<b>"Design Development"</b>	means the usual development of the Basic Design into the Detailed Design in discussion between the Trust and Concessionco and shall be all developments of the Basic Design carried out pursuant to Part 6 of the Schedule and Clause 12.2 and which are not initiated by the Trust in accordance with Clause 14A.3(a);
<b>"Detailed Commissioning Schedule"</b>	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;
<b>"Detailed Design"</b>	means such working drawings and designs as show the full design of each and every part and component of the Facility and the Site in keeping with the Royal Institute of British Architects Plan of Works for Design Team Operation 1973 Edition;
<b>"Discriminatory Bill"</b>	has the meaning ascribed to it in Clause 41.2.2;
<b>"Dispute"</b>	means any dispute between the parties;
<b>"Disputes Resolution Procedure"</b>	means the procedure for the resolution of disputes, as set out in Clauses 49 and 50;
<b>"Environmental Legislation"</b>	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;
<b>"Equipment"</b>	means the equipment listed in the Equipment List;
<b>"Equipment List"</b>	means the list set out in Part 7 of the Schedule to this Agreement;
<b>"Event of Force Majeure"</b>	means one or more of the events listed in Clause 39.3;
<b>"Expert"</b>	means an appropriate expert appointed pursuant to Clause 50;
<b>"Facility"</b>	means the new healthcare facility to be constructed, commissioned, equipped and maintained pursuant to this Agreement, and includes that facility after Completion;
<b>"Fault"</b>	means, in relation to any Service, each and any of the non availability criteria set out in [Part 20] of the Schedule;
<b>"Final Period"</b>	means the period from the first day of the Month in which the Contract Period ends, to the last day of the Contract Period;
<b>"First Minister"</b>	means the First Minister for Scotland;
<b>"FM Contract"</b>	means the contract in the form set out at Part 10 of the Schedule entered, or to be entered, into between Concessionco and the FM Contractor;
<b>"FM Contractor"</b>	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;
<b>"Fossil or Antiquity"</b>	means any fossil, antiquity or other matter of archaeological interest;
<b>"Funding Agreements"</b>	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 refinancing of the Project, each as amended, supplemented and varied from time to time;
<b>"GDP Deflator"</b>	means the adjusted gross domestic product deflator at market prices prepared by the Office of National Statistics in the United Kingdom expressed as an index on a quarterly basis;
<b>"Handback Area"</b>	has the meaning given to it in Clause 34.1 (a);
<b>"Health and Safety Legislation"</b>	means any of the Legal Requirements which applies specifically to workplace, health, safety and welfare maintenance;
<b>"Health Board"</b>	means Greater Glasgow Health Board
<b>"Hedging Agreement"</b>	means any agreement made between Concessionco and the Lenders, wherein Concessionco assumes an obligation to make payment(s) to Concessionco calculated by reference to a fixed rate of interest applied to a notional principal amount and Concessionco assumes an obligation to make payments to the Borrower calculated by reference to a floating rate of interest applied to a notional principal amount including the Original Hedging Agreements
<b>"Initial Period"</b>	means the period from the Payment Commencement Date to the final day of the Month in which that date falls;
<b>"Insurance Adviser"</b>	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;
<b>"Lease"</b>	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 A of Part 3 of the 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 Health and Safety Executive) 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 Part 23 of the 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 "LIBP" page of the Reuter Monitor Money Rates Services (**"Reuters Screen LIBP page"**) (or any other page or service which may replace the Reuters Screen LIBP page for the purpose of displaying London inter-bank Sterling offered rates of leading reference banks, or, in the event that the United Kingdom enters the European Monetary Union, the Euro offered rates of such reference banks) as being the interest rate offered in the London interbank market for Sterling (or Euro, as the

case may be) 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 (or Euro, as the case may be) 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 interbank market at or about 11.00am on the first day of that Interest Period;

provided that in respect of any Interest Period beginning before the date which is ten Years after the Date of Possession, 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 proper, open and fair competitive tendering or other process;

**"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;
<b>"Net Internal Area"</b>	has the meaning given to it in the RICS Code
<b>"New Appointee"</b>	means each person whom Concessionco or any other Service Provider shall employ for the purposes of this Agreement;
<b>"NHSiSME"</b>	means the National Health Service in Scotland Management Executive and any successor body(ies) or persons fulfilling the same or substantially the same functions or part thereof;
<b>"Notice of Unavailability"</b>	means a notice in the form set out in Part 20 of the Schedule to be issued to Concessionco by the Senior Trust Officer pursuant to and in accordance with Clause 26;
<b>"Operation Management Contract"</b>	has the meaning ascribed to it in the Senior Loan Agreement;
<b>"Operation Manager"</b>	has the meaning ascribed to it in the Senior Loan Agreement;
<b>"Operational Policies"</b>	means the operational policies of the Trust relating to the delivery of healthcare;
<b>"On-Loan Agreement"</b>	means the agreement between Town Hospitals (Southern General) Holdings Limited and Concessionco governing the loan on of equity and subordinated debt subscriptions to Concessionco.
<b>"Original Area"</b>	means 5,600 square metres of net internal area of the Facility;
<b>"Original Hedging Agreements"</b>	has the meaning set out in the Senior Loan Agreement;
<b>"Outline Commissioning Schedule"</b>	means the Outline Commissioning Schedule

set out in Part 8 of the Schedule;

**"Partial Handback Confirmation Notice"** means a notice given by the Trust to Concessionco indicating that it requires Concessionco to implement a Partial Handback Variation;

**"Partial Handback Notice"** means a notice by the Trust to Concessionco proposing a Partial Handback Variation in accordance with Clause 34;

**"Partial Handback Variation"** means a handback by the Trust to Concessionco of part of the Facility in accordance with Clause 34;

**"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;

**"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 monthly amount (in 1 April 1998 or Benchmark Date prices as the case may be) set out in Part 20 of the Schedule 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 this Agreement;

**"Permitted Encumbrance"** means:-

- (a) any encumbrance granted in terms of the Financing Agreements;
- (b) any lien arising solely by operation of law in the ordinary course of business in respect of any obligation which is not [5] days overdue for settlement;



(c) any Encumbrance granted with the prior written consent of the Trust; and

(d) the Sub-Lease.

**"Phase I"**

means the period from the Date of Possession to (and including) the date [immediately prior to the Services Commencement Date];

**"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, Plant or Equipment (as defined in Part 1 of the Schedule) 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;

**"Prohibited Act"**

means

- (a) offering, giving or agreeing to give any employee of the Trust any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining a performance of this Agreement; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement.
- (b) entering into this Agreement in connection with which commission has been paid or has been agreed to

be paid to the Trust or an employee of the Trust by Concessionco or on its behalf or to its knowledge unless before this Agreement is entered into particulars of any such commission has been disclosed in writing to the Trust;

(c) committing any offence:-

(i) under the Prevention of Corruption Acts 1889 to 1916;

(ii) under legislation creating offences in respect of fraudulent acts;

(iii) at common law in respect of fraudulent acts;

in relation to this Agreement;

(d) defrauding or attempting to defraud or conspiring to defraud the Trust.

**"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 a Legal Requirement 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 or the Scottish Parliament

in relation to the provision of private finance for the funding of healthcare facilities within the National Health Service or in respect of the Project;

**"Questionnaire"**

means the questionnaire dated [1 July 1999]

**"Receivables"**

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:

- (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;
- (b) shall include only debts incurred in connection with the Project pursuant to this Agreement;
- (c) shall include any amounts payable to Concessionco under any Hedging Agreement on termination thereof;

**"Reference Banks"**

means National Westminster Bank plc and Barclays Bank plc or banks performing that function 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 37.21(h);

**"Review Date"**

means:

- (a) in respect of the Availability Payment the 1<sup>st</sup> January and the 1<sup>st</sup> July in each year.
- (b) in respect of the Performance Related Payment (including its constituent parts) the Services Commencement Date and 1<sup>st</sup> April in each year.

**"RPI"**

means the General Index of Retail Prices (all items) published in the Digest of Statistics by the Central Statistical Office of the Department of Trade and Industry or, if such index shall cease to be published, such other retail prices index as may be so published in substitution therefor, (provided that such retail prices shall be calculated by reference to the same constituent parts as the General Index of Retail Prices (all items) or in the event of there being no direct substitute such index as shall be nearest to RPI as determined by agreement or in the absence thereof by the Disputes Resolution Procedure;

**"Scottish Ministers"**

means the members of the Scottish Executive as defined in Section 44 of the Scotland Act 1998;

**"Secretary of State"**

means the Secretary of State for Scotland or the relevant Scottish Minister;

**"Section 2 Notice"**

has the meaning set out in Clause 26.2(ii);

**"Senior Loan Agreement"**

means the agreement for senior funding facilities to the Project between National Westminster Bank plc as Lenders (or any assignees or transferees) and Concessionco 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;
<b>"Service Level Specifications"</b>	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 Part 21 of the Schedule hereto;
<b>"Service Provider"</b>	means any party undertaking any Service or Services whether Concessionco or otherwise;
<b>"Services Commencement Date"</b>	means the first day after the date of issue of the Completion Certificate;
<b>"Site"</b>	means the Site as the same is more particularly set out in Part 2 of the Schedule;
<b>"Special Benchmarking Exercise"</b>	means a benchmarking exercise carried out in accordance with Clause 32;
<b>"Sublease"</b>	means the underlease to be granted by Concessionco to the Trust in accordance with Clause 20.2 in the form set out in Part B of Part 3 of the Schedule;
<b>"Subordinated Debt"</b>	means junior funding facilities made available to Concessionco by its holding company pursuant to the On-Loan Agreement;
<b>"Substitute Entity"</b>	has the meaning ascribed to it in the Lenders Direct Agreement;
<b>"Tax Credit"</b>	has the meaning ascribed to it in Clause 48.2D;
<b>"Tax Payment"</b>	has the meaning ascribed to it in Clause 48.2D;
<b>"Termination Warning"</b>	means a notice issued by the Trust pursuant to Clause 27;
<b>"Total Payment"</b>	means the sum of the Availability Payment and the Performance Related Payment as calculated pursuant to this Agreement;
<b>"Trust Equipment"</b>	has the meaning given to it in Clause [13.3];

**"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 Contractors"**

means any contractors who immediately before the Services Commencement Date are engaged in providing non-clinical services at the Trust's Premises to the Trust;

**"Trust Procedures"**

means the policies listed in Part 17 of the Schedule as amended from time to time pursuant to Clauses 30, 31 and 32 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);

**"Variable Price for Breakfasts"**

means the variable element dependent upon volume of breakfasts of the cost of providing breakfasts at the Facility established initially through the Special Benchmarking Exercise;

**"Variable Price for Lunches"**

means the variable element dependent upon volume of lunches of the cost of providing lunches at the Facility established initially through the Special Benchmarking Exercise;

**"Variable Price for Dinners"**

means the variable element dependent upon volume of dinners of the cost of providing dinners at the Facility established initially through the Special Benchmarking Exercise;

**"Warranties"**

means the representations and warranties contained in Clause 35 and Part 19 of the Schedule;

**"Works"**

means:

- (a) the design and construction of a new healthcare facility (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.

## **THE SCHEDULE- PART 1**

### **PART B - DEFINITIONS - SERVICE LEVEL SPECIFICATIONS**

#### **Catering**

Performance Measurement - shall mean the application of the performance measurement system as set out in Part 21 of the Schedule of the Concession Agreement to the Catering Service.

Performance Standard Percentage - shall equal  $(a/b) \times 100$  where a = the percentage of actual achievement of any Performance Criteria (as set out in the Performance Tables) and b = the Threshold.

Trust Operational Policies - shall mean the policies set out in Schedule 17 of the Concession Agreement.

Catering Staff - shall mean the staff employed by FM Co. or any Service Provider who are employed or substantially employed in delivering the Catering Service.

Training Plan - shall mean a personalised development plan for any employee of FM Co. or a Service Provider.

Threshold - shall mean the required level of achievement of a Performance Criteria.

Rectification Period - shall mean the period allowed following the notification of a failure to achieve a Performance Criteria before such a failure, if not remedied, is deemed a breach of the Performance Criteria.

Patient Meals - shall mean meals delivered by the FM Co. to the patients of the Trust.

Vending Service - shall mean the provision of vending machines to provide hot & cold beverages and cold snacks to visitors and Trust staff.

#### **Housekeeping**

Housekeeping (if relevant) - shall mean the service described in the Housekeeping Services Service Level Specification.

Housekeepers - shall mean the staff employed by FM Co. or any Service Provider who are employed or substantially employed in delivering the Housekeeping Service.

Ward and Departmental Level - shall mean the wards and Trust departments within the Facility.

Housekeeping Supervisor - shall mean any person of supervisory grade employed by FM Co. or any Service Provider in delivering the Housekeeping.



Trust Control of Infection Officer - shall mean a person designated by the Trust who is responsible for the formulation and implementation of the Trust control of infection policy.

Domestic Services Room - shall mean a room used solely by FM Co. for the storage and safe keeping of equipment and consumables used in the provision of the Housekeeping Services.

Nursing Staff - shall mean Trust nursing staff.

Service Centre - shall mean the help desk provided and maintained by FM Co. to where requests for the provision of non routine services are directed and actioned.

Departmental Housekeeper - shall mean any staff employed by FM Co. or any Service Provider who are employed or substantially employed in delivering the Housekeeping Service to a specific Trust department.

Cleaning Schedule - shall mean a schedule for the provision of cleaning services agreed between the Trust and FM Co.

Reactive Cleaning Services - shall mean any cleaning service provided following a request to the Service Centre.

In Patients and Day Hospital - shall mean the Facility.

Waste - shall mean any domestic or clinical waste which has been placed into Waste segregation receptacles by the Trust prior to removal from wards and departments by FM Co.

Waste segregation receptacles - shall mean receptacles designated for particular categories of waste which shall be used by Trust staff for the segregation of waste prior to removal from wards and departments by FM Co.

## **Estate Maintenance Service**

Building Management System - shall mean a system installed by the Building Contractor to monitor the operation of certain building engineering systems.

Permit to Work - shall mean a procedure designed to allow safe working on certain building engineering systems.

Safety Plan - shall mean the FM Co. safety plan developed specifically for this project.

Capital Replacement Fund Works - shall mean that element of the Planned Preventative Maintenance which is not regular maintenance or the planned replacement of elements of the building with a design life of less than three years.

Plant and Facility Equipment - shall mean any equipment or component installed within the Facility by Concession Co.

Energy Management System - shall mean a system installed by the Building Contractor to monitor the use of energy and utilities.

Helpdesk System - shall mean the Service Centre.

Grounds - shall mean the Site excluding the footprint of the Facility.

Internal and External Fabric - shall mean the Facility excluding the engineering services installation.

Condition Maintenance - shall mean regular maintenance tasks to be undertaken within the Facility.

## **Portering**

Concessionco Porter - shall mean the porter employed by FM Co. or any Service Provider who may provide the Portering Service from time to time.

Trust Portering Service - shall mean the portering service provided by or to the Trust in all areas of the hospital excluding the Facility.

CSSD - shall mean the Central Sterile Supplies Department of the Trust.

TSSU - shall mean the Theatre Sterile Supplies Unit of the Trust.

Central Collection Point - shall mean any area within the Facility designated by FM Co. for the purposes of providing the mail distribution, linen distribution and specimen collection and delivery services.

Fire Incidents - shall mean the activation of the fire alarms installed in the Facility which indicates the presence or likelihood of the presence of a fire.

Manual Handling training programme - shall mean a training programme specifically designed to instruct in relation to manual handling tasks and safe lifting.

Fire calls - shall mean any required response to a Fire Incident.

Patient Moves - shall mean any movement of a patient from one point within the Facility to another point in the Facility.

Emergencies - shall mean any incident or event which may create an immediate threat to life, health or safety.

Lock Down - shall mean the securing of all external entrances/exits to the Facility at the end of the normal Portering shift.

Concessionco (Duty) Manager - shall mean the Concessionco Representative as defined in the Concession Agreement.

**THE SCHEDULE- PART 2**  
**SITE PLAN**

**THE SCHEDULE- PART 3**  
**THE LEASE AND SUB-LEASE**

**THE SCHEDULE- PART 4**  
**INVENTORY OF TITLE DEEDS**  
**SOUTHERN GENERAL HOSPITAL**

- 1 Search for Incumbrances over Superiority of (I) 1 Rood 17 13/100 (II) 1 Rood 16 38/100 poles at Shieldhall Road, Govan
- 2 Search for Incumbrances over 10 acres, part of Shieldhall Estate, Govan
- 3 Search for Incumbrances over 748 square yards at Langlands Drive, Govan
- 4 Search for Incumbrances over 7.23 acres at Hardgate Road, Govan
- 5 Search for Incumbrances over (I) 3 acres and (II) 6 acres at Shieldhall, Govan
- 6 Search for Incumbrances over (I) 1 Rood 17 13/100 poles and (II) 1 Rood 16 38/100 poles at Shieldhall Road, Govan
- 7 Search for Incumbrances over 21 Acres 3 Rood 5 Falls called Lower Merryflats, Glasgow
- 8 Copy Interim Report on Search over (I) 10 acres 3 poles and 65/100 square yards and (II) 1349 1/9 square yards at Renfrew Road, Govan
- 9 Copy Interim Report on Search over (I) 3 acres and (II) 6 acres at Shieldhall, Govan
- 10 Copy Interim Report on Search over 748 square yards at Langlands Drive, Govan
- 11 Copy Interim Report on Search over Superiority of (I) 1 Rood 17 13/100 and (II) 1 Rood 16 38/100 poles at Shieldhall Road, Govan
- 12 Copy Interim Report on Search over (I) 1 Rood 17 13/100 and (II) 1 Rood 16 38/100 poles at Shieldhall Road, Govan
- 13 Copy Interim Report on Search over 21 Acres 3 Rood 5 Falls called Lower Merryflats
- 14 Copy Interim Report on Search over 10 Acres, part of Shieldhall Estate, Govan
- 15 Copy Interim Report on Search over 12 Acres, part of lands of Shieldhall, Govan
- 16 Copy Interim Report on Search over 7.23 Acres at Hardgate Road, Govan
- 17 Tree Preservation Order No 052 (1995)
- 18 Search for Incumbrances over 12 Acres, part of lands of Shieldhall, Govan
- 19 Notes on Titles of Southern General Hospital (1948)
- 20 Copy Certificate of Redemption of Land Tax dated 2 August 1955
- 21 Copy receipt by The Church of Scotland General Trustees dated 27 December 1956 – redemption of stipend in respect of Shieldhall Estate

- 22 Copy receipt for redemption of the surplus Teind in respect of Shieldhall Estate dated 28 November 1955
- 23 Discharge by the Commissioners of Crown Lands in favour of Shieldhall Estate Trustees of feuduties of £34.2.2d recorded GRS (Glasgow) 23 August 1955
- 24 Discharge by the Commissioners of Crown Lands in favour of the Govan Combination Parish Council of the feuduties exigible in respect of part of the lands of Merryflats in the Parish of Govan dated 9 November 1927
- 25 Copy Description of Subjects in Disposition by The Glasgow Iron & Steel Company Limited in favour of Alexander Stephen & Sons Limited dated 20 and recorded 27 May 1920
- 26 Notes on Disposition of Portion of Ground at Shieldhall, Glasgow (1927)
- 27 Valuation of Institutions – Southern General Hospital and Hawkhead Asylum
- 28 Papers relating to Moss Road widening – sewer – 1922-1923
- 29 Photocopies of:
  - (a) Disposition by John Patten WS in favour of The Parochial Board of the Parish of Govan dated 10 and 13 November 1865
  - (b) Notice of Title on behalf of the Secretary of State for Scotland (Southern General Hospital) recorded GRS (Glasgow) 21 January 1949
  - (c) Extract Registered Deed of Servitude by the Parish Council of the Parish of Govan in favour of The Corporation of the City of Glasgow over Ground in Moss Road and Govan Road dated 15 October 1923 and registered 10 January 1924
- 30 30 Notice of Title on behalf of the Secretary of State for Scotland in respect of Shieldhall Infectious Diseases Hospital recorded GRS (Glasgow) 21 January 1949
- 31 Disposition by the Corporation of the City of Glasgow in favour of the Secretary of State for Scotland of subjects 748 square yards at Langlands Drive, Glasgow recorded GRS (Glasgow) 26 April 1973
- 32 Disposition by Trustees under Minute of Agreement and Declaration of Trust entered into by the Trustees of James Reid Stewart and Others in favour of the Secretary of State for Scotland (superiority of parts of lands of Shieldhall) recorded GRS (Glasgow) 8 November 1955.
- 33 Feu Disposition by Robert Johnston in favour of James Adam & Elizabeth Cross Turnbull or Adam, Spouses, dated 9 May 1853
- 34 Disposition by Robert Cassels in favour of the Govan Kinning Park and Govan Combination Parochial Board of site for Hospital at Shieldhall, Govan dated 16 and 23 December 1881 and 7, 11, 14, 20, 21 and 23 January 1882 and recorded GRS (Glasgow) on 9 February 1882
- 35 Disposition by David Norman McNaughton and Others, Trustees of the deceased Henry Leek in favour of the Burgh of Govan, the Burgh of Kinning Park and the County Council of Lanarkshire of part of the Lands of Upper Merryflatts dated 7 and 10 August 1893 and recorded GRS (Glasgow) 30 August 1893
- 36 Notes on Titles of Shieldhall I.D. Hospital belonging to the Corporation of the City of Glasgow (1948)

- 37 Copy Lease between The Trustees of the late Alex. Reid and The Govan, Kinning Park & Govan Parish Joint Hospital of Hillock House, Govan dated 20, 21 and 23 March 1903
- 38 Proposed Valuation of Shieldhall Fever Hospital by Alex Cullen dated 5 September 1906
- 39 Copy Representations for Govan Town Council against Proposed Valuation of Mr Alexander Cullen, Architect, Hamilton of Shieldhall Fever Hospital dated 18 September 1906
- 40 Copy letter from A C Scott, Town Clerk Depute to Solicitor's Office, Departments of the Secretary of State for Scotland dated 11 November 1948
- 41 Minute of Agreement between The Burghs of Govan, Kinning Park and Govan Combination Parochial Board as to Joint Hospital dated 14 and registered 18 March 1881
- 42 Photocopy Sasine (Seisin) in favour of William McCormick recorded 13 March 1886
- 43 Wayleave consent for underground cable and duct – Post Office Telegraphs dated 1 May and 9 June 1956.
- 44 Correspondence re Casualties – Lands of Merryflats dated 14 and 31 May, 7 June and 24 September 1909.
- 45 Agreement between the Govan Combination Hospital Board and the Provost, Magistrates and Councillors of the Royal Burgh of Rutherglen dated 6 and 13 February 1911
- 46 Minute of Agreement between the Burgh of Govan, the Burgh of Kinning Park and the Lanarkshire Council as to Nomination of Arbiters dated 21 November, 6, 7 and 28 December 1898
- 47 Memorandum of Agreement between the Corporation of the City of Glasgow and Govan Town Council as to Govan Combination Hospital dated 11, 21 and 22 June 1906
- 48 Search for Incumbrances over Shieldhall Feus Nos I and II dated 4 August 1885
- 49 Papers re redemption of feuduties – Co Lanark Part of 18/9 Land in West End of Meikle Govan called Merryflats dated 24 June and 5 and 20 October 1927
- 50 Notarial Certificate that no surplus fund remains of price of subjects at Shieldhall Govan sold under powers in Bond and Disposition in Security recorded GRS (Glasgow) 13 August 1885
- 51 Articles of Roup of Subjects at Shieldhall, Govan dated 24 March, 15 April, 13 May and 10 June 1885
- 52 Discharge by The Commissioner of HM Woods and Forests in favour of the Govan Combination Parish Council (re casualties exigible in respect of lands of (part of) Merryflats) dated 7 April 1910
- 53 Precognitions in reference to Question of Right of Way between the Parochial Board of Govan and Alex. Stephen & Sons dated 1871
- 54 Bond and Disposition in security by Mrs E C Turnbull or Adam to John Scott dated 12 and recorded GRS (Glasgow) 16 August 1872
- 55 Instrument of Intimation, Requisition and Protest by John Scott to James Hutton as Trustee for the creditors of Mrs Elizabeth Cross Turnbull or Adam, and to the said Mrs Adam dated 6 January 1880



- 56 Certificate by The Publishers of the Glasgow Herald (subjects at Shieldhall, Govan) dated 15 April and 13 May 1885
- 57 Certificate by The Publishers of the North British Daily Mail (subjects at Shieldhall, Govan) dated 15 April and 13 May 1885
- 58 Certificate by the Publishers of the Glasgow Herald (subjects at Shieldhall, Govan) dated 9 June 1885
- 59 Certificate by the Publishers of the North British Daily Mail (subjects at Shieldhall, Govan) dated 9 June 1885
- 60 Copy letters re Shieldhall dated 16 May 1885
- 61 Instrument of Sasine in favour of James Adam and Elizabeth Crofts Turnbull or Adam dated 9 and recorded GRS (Glasgow) on 27, both May 1853
- 62 Minute of Agreement between The Secretary of State for Scotland and The Tobacco Research Council dated 13 and 19 August 1964
- 63 Supplementary Minute of Agreement between The Secretary of State for Scotland and The Tobacco Research Council dated 2 and 10 November 1966
- 64 Extract Registered Minute of Lease between The Secretary of State for Scotland and The South of Scotland Electricity Board dated 10 December 1968 and registered 14 January 1969
- 65 Minute of Lease between the Secretary of State for Scotland and The National Radiological Protection Board dated 23 and 27 August 1976
- 66 Minute of Lease between The Secretary of State for Scotland and The Governor and Company of the Bank of Scotland dated 5 and 13 January 1982
- 67 Minute of Variation between The Secretary of State for Scotland and Mrs Mandy Struthers dated 19 and 26 February 1992
- 68 Extract Registered Lease between The Secretary of State for Scotland and Lewis Meeson Limited dated 9 December 1992 and 11 February 1993 and registered on 9 April 1993
- 69 Search for Incumbrances over (I) 10 acres 3 poles and 6 5/100 square yards; and (II) 1349 1/9 square yards at Renfrew Road, Govan
- 70 Copy Feu Disposition by The Southern General Hospital National Health Service Trust in favour of The Scottish Ambulance Service NHS Trust
- 71 Copy Disposition by The Secretary of State for Scotland in favour of The Southern General Hospital National Health Service Trust dated 21 November 1996 and recorded GRS (Barony and Regality of Glasgow) on 21 April 1997
- 72 Disposition by Henry J Stewart & Brother Limited with consent in favour of Alexander Stephen & Sons Limited dated 4 and 12 and recorded GRS (Barony and Regality of Glasgow) on 19, all March 1952
- 73 Disposition by The Glasgow Iron & Steel Company Limited in favour of Alexander Stephen & Sons Limited dated 20 and recorded GRS (Barony and Regality of Glasgow) on 27, both May 1920

- 74 Disposition by Alexander Stephen and Sons Limited in favour of The Secretary of State for Scotland dated 20 December 1971 and recorded GRS (Barony and Regality of Glasgow) on 11 January 1972
- 75 Extract Registered Minute of Waiver by The Shieldhall Estate Trustees in favour of The Govan Combination Parish Council, H J Stewart & Bror. and Alexander Stephen & Sons Ltd dated 7 and registered on 28, both June 1929
- 76 Extract Disposition by The Glasgow Iron and Steel Company Limited to Henry John Stewart and Ralph R Stewart dated 16 and 17 and recorded on 18, all May 1904
- 77 Agreement between The Corporation of the City of Glasgow and The Govan Combination Parish Council dated 25 October and 15 November 1923
- 78 Extract of Contract of Ground Annual between William Johnston and John Wilson dated 10 November and 1 December and registered on 6 December, all 1852
- 79 Extract of Feu Contract between James Buchanan Mirrlees and Thomas Henderson dated 24 and 31 May 1899
- 80 Extract Deed of Servitude by Henry J Stewart and Ralph Robertson Stewart to The Corporation of the City of Glasgow dated 27 September 1905
- 81 Extract Deed of Servitude by Henry J Stewart and Ralph R Stewart to The Corporation of the City of Glasgow dated 2 and 6 May 1908
- 82 Extract Disposition by Trustees under Minute of Agreement and Declaration of Trust by Trustees of James R Stewart with consent to Scottish Co-operative Wholesale Society Limited dated 31 January and 7 February 1936
- 83 Notarial Instrument in favour of The Trustees of the late Matthew Alexander recorded 10 October 1871
- 84 Extract Registered Deed of Servitude by The Parish Council of the Parish of Govan in favour of The Corporation of the City of Glasgow dated 15 October 1923 and registered on 10 January 1924
- 85 Discharge by the Trustees of the late Mathew Alexander to Mrs E C Turnbull or Adam dated 2 1872 and recorded GRS (Barony and Regality of Glasgow) on 4, both December 1872
- 86 Bond and Disposition in Security of £300 by James Adam and Elizabeth Cross Turnbull or Adam dated 15 May 1860
- 87 Deed of Restriction by John Proudfoot Dick in favour of Robert Cassels dated 14 and recorded GRS (Barony and Regality of Glasgow) on 16, both May 1885
- 88 Disposition by The Corporation of the City of Glasgow in favour of The Provost, Magistrates and Councillors of the Burgh of Govan dated 9 and recorded GRS (Barony and Regality of Glasgow) on 23, both November 1906
- 89 Extract Disposition by Robert Galbraith with consents to Trustees for the firm of Samuel Stevenson & Company dated 24 February and 1 March, both 1898

- 90 Copy Minute of Agreement between Katharine H C Rowan or Dalrymple Duncan with consent of and by James Dalrymple Duncan and Donald Stevenson Thomas and Thomas Stevenson as Trustees for Samuel Stevenson and Company dated 8 and 14 April 1898
- 91 Supplementary Minute of Agreement between Katharine Hutton Connal Rowan (sometime called Katharine Hutton Connal Rowan or Dalrymple) with consent, and Others dated 8, 13 and 19 September 1905
- 92 Disposition by Trustees for the firm of Samuel Stevenson and Company with consents to David McGill dated 6, 8 and 10 May 1905
- 93 Extract Disposition by Donald Stevenson and Thomas Stevenson as Trustees for the firm of Samuel Stevenson and Company with consents to Trustees and Trustee for the firm of Wright Graham and Company dated 26, 27 and 29 July 1904
- 94 Disposition by The Scottish Co-operative Wholesale Society Limited in favour of The Secretary of State for Scotland dated 28 August and recorded GRS (Barony and Regality of Glasgow) on 8 October, both 1962
- 95 Notice of Title on behalf of The Secretary of State for Scotland recorded GRS (Barony and Regality of Glasgow) on 21 January 1949
- 96 Disposition by John Scott in favour of the Parochial Board of Govan Combination dated 31 July and 3 August and recorded GRS (Barony and Regality of Glasgow) on 13 August. all 1885
- 97 Disposition by John Patten in favour of The Parochial Board of the Parish of Govan dated 10 and 13 and recorded on 15, all November 1865
- 98 Extract Conveyance by The Secretary of State for Scotland to Glasgow Corporation dated 28 July 1971
- 99 Copy Disposition by The Secretary of State for Scotland in favour of British Gas plc dated 18 November 1988
- 100 Copy Land Certificate Title Number GLA47585
- 101 Disposition by Robert Cassels in favour of the Parochial Board of Govan Combination dated 15 and recorded GRS (Barony and Regality of Glasgow) on 16, both May 1885
- 102 Disposition by The Glasgow Iron and Steel Company Limited in favour of The Govan Combination Parish Council dated 19 and 20 and recorded GRS (Barony and Regality of Glasgow) on 21. all May 1901

**THE SCHEDULE- PART 5  
BUILDING SPECIFICATION**

*[Note: To be inserted once agreed between TB and the Trust]*

**THE SCHEDULE- PART 6**  
**BASIC DESIGN**

*[Note: to be inserted once agreed between TB and the Trust]*

**THE SCHEDULE- PART 7  
EQUIPMENT LIST**

*[Note: to be provided by TB and confirmed by the Trust]*

**THE SCHEDULE- PART 8**  
**OUTLINE COMMISSIONING SCHEDULE**

*[Note: to be inserted once agreed between TPFU, UME and the Trust]*

**THE SCHEDULE- PART 9  
CONSTRUCTION CONTRACT**

*[Note: to be inserted once agreed between Concessionco and TB]*



**THE SCHEDULE- PART 10**  
**FM CONTRACT**

*[Note: to be inserted once agreed between Concessionco and TS]*

**THE SCHEDULE- PART 11  
LETTERS OF UNDERTAKING**

*[Note: to be inserted once agreed between MGD and CLO]*

## CHANGE NOTICE

This following form of Notice must be completed by the Trust or Concessionco, as the case may be, sequentially numbered and in the case of a Notice given by the Trust Representative pursuant to Clause 14A.3 shall be valid and binding only if signed by an Executive Director of the Trust.

**CHANGE NOTICE No.**

**Date:**

**Change Requested:**

**Signed by:** .....

**Print Name:** .....

**Designation:** .....

**CONFIRMED VARIATION INSTRUCTION**

<b>Town Hospitals (South Glasgow) Ltd</b>									
<b>CONFIRMED VARIATION INSTRUCTION</b>									
South Glasgow Hospital University NHS Trust						Date:			
<b>Title:-</b> _____									
Description:-									
Supporting information:-									
Cost Impact:- <div style="display: flex; justify-content: space-between;"> <span>Change Order value</span> <span>Revised Annual Charge</span> </div> * Revised Deal - reference "Bringing the Contract to Closure Under PFI - Executive Summary - The Deal" 10 June 1998 plus Concessionco's									
Programme Impact:-									
Extension of Time required for this Change Order is _____ weeks.									
Confirmation:-									
We, Town Hospitals (South Glasgow) Ltd, confirm that the above details are correct and agree to incorporate the above into the Concession Agreement and issue FM and D&C Change Orders accordingly.									
Signed _____						for Town Hospitals (South Glasgow) Ltd			
Date _____									
<b>Change Order Approval:-</b> South Glasgow University Hospital NHS Trust We hereby instruct you to proceed with this Change Order (scope change) and confirm that the Availability Payment, Cashflow and Practical Completion Date will be adjusted to reflect the above. Signed ..... for South Glasgow University Hospitals NHS Trust. Date .....									
<b>Distribution</b>	<b>SGUHT</b>	<b>THL</b>	<b>TBS</b>	<b>TSL</b>		<b>WSA</b>	<b>DT</b>	<b>NGB</b>	

**SCHEDULE – PART 13**  
**IN THE EVENT OF REVOCATION OF PLANNING CONSENT**

- 1 In the event that at any time prior to the Operational Date an order shall be made pursuant to Section 65 and/or Section 68 of the Town and Country Planning (Scotland) Act 1997 to revoke the planning consent for the Works (the grant whereof constitutes Condition 1) or to modify it in such a way that Concessionco is unable to comply to a material and substantial extent with its obligations under this Agreement then the following provisions shall have effect:-
  - (a) Concessionco will in consultation with the Trust object to such proposal and use all reasonable endeavours to procure that such proposal shall not be granted and the Trust will at the request of Concessionco assist in so procuring.
  - (b) Concessionco may at Concessionco's discretion either simultaneously with (a) above or subsequent thereto lodge a new planning application for the Works and use all reasonable endeavours to procure that the same shall be granted in a form acceptable to Concessionco and the Trust.
  - (c) If Concessionco is successful in challenging the proposal so that the same is withdrawn then the making of the said proposal shall be deemed to be an event referred to at Clause 17.1 and the Completion Date shall be adjusted accordingly.
  - (d) if Concessionco is unsuccessful in challenging the proposal as more particularly described in (e) below but is successful in procuring the grant of a new planning consent for the Works pursuant to (b) above then the delay caused by the making of the said proposal and the obtaining of the new consent shall be deemed to be an event referred to at Clause 17.1 and the Completion Date shall be adjusted accordingly and the new consent shall be substituted for the consent which was revoked for all purposes of this Agreement.
- 2 If Concessionco is unsuccessful in challenging the proposal so that (in the case of a proposal under Section 65 aforesaid) the same is confirmed by the Secretary of State/ The First Minister pursuant to Section 66 of the Town and Country Planning (Scotland) Act 1997 or (in the case of a proposal under Section 68 aforesaid) the same is made by the Secretary of State/The First Minister under Section 68 aforesaid and (in each case) any appeal procedure open to Concessionco has been exhausted or the time limit for making any appeal or further appeal has elapsed without such appeal being lodged and no new consent for the Works is granted as referred to in (d) above then this Agreement shall terminate. In the event that the local planning authority shall submit an order pursuant to Section 71 and/or Section 73 of the Town and Country Planning (Scotland) Act 1997 to the Secretary of State/The First Minister in either case for confirmation such order providing for the discontinuance of the use of the Hospital Site as a hospital or that conditions should be imposed on such continued

use or that the Facility should be altered or removed then the following provisions shall have effect in each event:-

- (a) if Concessionco and the Trust shall agree that the conditions which it is proposed to impose on the continued use of the Hospital Site as a hospital or the proposed requirement to alter or remove the Facility are acceptable then (if and when the same shall be confirmed by the Secretary of State/First Minister) the parties will comply with the same and the same will be treated as a change in the Legal Requirements
  - (b) If the order provides for the discontinuance of the use of the Hospital Site as a hospital or Concessionco and the Trust shall agree that the conditions which it is proposed to impose on the continued use of the Hospital Site as a hospital or the proposed requirement to alter or remove the Facility are not acceptable then Concessionco will in consultation with the Trust object to such order and use all reasonable endeavours to procure that such order shall not be confirmed and the Trust will at the request of Concessionco assist in so procuring
  - (c) If Concessionco is unsuccessful in challenging the proposal so that the same is confirmed by the Secretary of State/The First Minister and any appeal procedure open to Concessionco has been exhausted or the time limit for making any appeal or further appeal has elapsed without such appeal being lodged then this Agreement shall terminate
- 3 In the event that an application for judicial review under the Act of Sederunt (Rules of the Court of Session 1994) 1994 SI No. 1443 shall be made by any third party arising from the grant of outline planning permission for the Project and/or from the grant of the planning consent for the Works (the grant whereof constitutes Condition 1) then the following provisions shall have effect:-
- (a) Concessionco will in consultation with the Trust challenge such application and use all reasonable endeavours to procure that such application shall not be granted and the Trust will at the request of Concessionco assist in so procuring
  - (b) Concessionco may at Concessionco's discretion either simultaneously with (a) above or subsequent thereto lodge a new planning application for the Works and use all reasonable endeavours to procure that the same shall be granted in a form acceptable to Concessionco
  - (c) If Concessionco is successful in challenging the application so that the same is not granted (or if the same shall be granted but the planning consent is again granted by the local planning authority and such grant is not challenged or any such challenge is finally disposed of (in each case) leaving the planning consent for the Works in place in its original form) then (if the Services Commencement Date has not occurred prior to the application being made) the period of six months from the Completion Date after which the Trust shall be entitled to terminate the Agreement

shall be extended for a period equal to the period during which the planning consent for the Works has been the subject of challenge or (if the application is made after the Services Commencement Date) the making of the original application and any subsequent proceedings shall be deemed to be an event referred to at Clause 17.1 and the Completion Date shall be adjusted accordingly.

- (d) If Concessionco is unsuccessful in challenging the application and is unsuccessful in procuring the grant of the planning consent when the same is resubmitted to the local planning authority for re-determination but Concessionco is successful in procuring the grant of a new planning consent for the Works pursuant to (b) above then (if the Services Commencement Date has not occurred prior to the application being made) the period of six months from the Completion Date after which the Trust shall be entitled to terminate this Agreement shall be extended for a period equal to the period during which the planning consent for the Works has been the subject of challenge and the new planning consent has been awaited or (if the application is made after the Services Commencement Date) the delay caused by the making of the said application and the obtaining of the new consent shall be deemed to be an event referred to at Clause 17.1 and the Completion Date shall be adjusted accordingly and the new consent shall be substituted for the consent which was revoked for all purposes of this Agreement
  - (e) If Concessionco is unsuccessful in challenging the application and is unsuccessful in procuring the grant of the planning consent when the same is resubmitted to the local planning authority for re-determination and (in each case) any appeal procedure open to Concessionco has been exhausted or the time limit for making any appeal or further appeal has elapsed without such appeal being lodged and no new consent for the Works is granted as referred to in (d) above then this Agreement shall terminate
- 3 In the event that any third party having powers of compulsory acquisition shall propose compulsorily to acquire the Hospital Site or any part thereof then the following provisions shall have effect:-
- (a) (In the case of a proposal to acquire part only of the Hospital Site) if Concessionco and the Trust shall agree that such proposed acquisition will have no material and substantial effect upon the Hospital Site and its operation as a hospital then (if and when the compulsory purchase order is confirmed) the parties will comply with the same and will take such steps in relation to the same (including but without prejudice to the generality of the foregoing surrendering the relevant part of the land demised by the Lease and/or the Sub-Lease) as they shall agree are reasonably necessary or (in case of dispute) as shall be determined pursuant to Clause 49
  - (b) In the case of a proposal to acquire the whole of the Hospital Site or (in the case of a proposal to acquire part only of the Hospital Site) if Concessionco and the Trust shall agree that such proposed acquisition will

have a material and substantial effect upon the Hospital Site and/or its operation as a hospital then Concessionco will in consultation with the Trust object to such proposal and use all reasonable endeavours to procure that such order shall not be confirmed and the Trust will at the request of Concessionco assist in so procuring

- (c) In the case of a proposal falling within (b) above if Concessionco is unsuccessful in objecting to the proposal so that the compulsory purchase order is confirmed by the Secretary of State and any appeal procedure open to Concessionco has been exhausted or the time limit for making any appeal or further appeal has elapsed without such appeal being lodged then this Agreement shall terminate.



**THE SCHEDULE- PART 14  
RECOGNITION AGREEMENT**



**SOUTHERN GENERAL HOSPITAL NHS TRUST**

**TRADE UNION RECOGNITION / COLLECTIVE DISPUTES AGREEMENT**

**INTRODUCTION**

1. The Trust Board recognises the benefits of staff representation by Trade Unions and Professional Organisations at individual, departmental and corporate level and the right of each employee of the Trust to join and remain a member of a Trade Union or Professional Organisation. The Trust operates a check-off system which facilitates the collection of Trade Union subscriptions.
2. This agreement seeks to establish a formal procedure whereby management and the staff side can discuss matters of joint interest in regard to terms and conditions of service and provide machinery for the resolution of disputes. In the interest of good industrial relations management acknowledge that organisational change or changes to terms and conditions of employment are more successfully achieved if the proposed changes and the reasons for such changes are first subject to consultation and negotiation with staff and their representatives in an attempt to reach agreement.
3. The responsibility of the staff side to represent the interest of its members, to work to improve terms and conditions of employment, promote health and safety and welfare and increase job security is also acknowledged.
4. Although recognising the benefits of consultation and negotiation with staff representatives about proposed new or revised terms and conditions of employment, either side is entirely free to choose which issue concerning terms and conditions of employment they wish to put forward for consultation and negotiation. Management will, however, if proposing to change Joint Agreements reached at either department or corporate level, consult and negotiate with the staff side prior to any changes being implemented.

**INDIVIDUAL REPRESENTATION**

5. Each employee will have the right to individual representation at formal disciplinary and grievance hearings in accordance with the Trust's Disciplinary and Grievance Procedure. Employees may choose to be represented at these formal hearings by any of the Trade Union / Professional Organisations currently recognised by the General Whitley Council and its functional councils or as otherwise specified in those agreements.

#### **LEVEL 1 - DEPARTMENTAL / OCCUPATIONAL GROUP REPRESENTATION**

6. Both management and the staff side may wish to initiate discussions concerning terms and conditions of employment to be implemented at departmental level or in respect of a specific occupational group. To facilitate this, management will formally recognise specified Trade Unions / Professional Organisations which have recognition rights at Level 1 for the purpose of consultation and negotiation. A list of the departments / occupational groups and the Trade Unions / Professional Organisations which have recognition at this level is attached at Appendix 1.

#### **LEVEL 2 - CORPORATE REPRESENTATION**

7. Both management and the staff side may wish to initiate discussions concerning the terms and conditions of employment of either all or a large proportion of the Trust's employees. To facilitate this management will formally recognise specified Trade Unions / Professional Organisations which will have recognition rights for this purpose. These are listed in Appendix 2 attached, together with examples of the issues which would be discussed at this level.
8. Where discussions concerning corporate conditions of service are initiated by either side, such discussions shall take place in a formal meeting of the Trust Negotiating Group. This group shall not consider proposals which would change the terms and conditions of employment of employees of only one department or one occupational group. Where discussions relate to proposals that would vary the terms and conditions of employees in more than one department or occupational group, such discussions may, with the agreement of both parties, take place within the Trust Negotiating Group. Otherwise any discussion would take place with the Trade Unions / Professional Organisations which are formally recognised for that purpose at Level 1.
9. The staff side at the Joint Negotiating Group shall comprise 6 members in total, including one staff representative from each of the five Trade Unions / Professional Organisations shown at Appendix 2. The sixth member shall be a Joint Consultative Committee representative appointed by that Committee from among those organisations listed in Appendix 1 which do not otherwise have representation at Level 2. (In recognition of the transitional stage of the merger of COHSE, NALGO, and NUPE into UNISON, there shall be two representatives from UNISON for the first Year, following which the position will be reviewed). The staff side shall appoint its own Secretary and Chairperson. Each representative will cease immediately upon termination of employment. The management side shall

normally be comprised of 4 Directors. A member of the management side shall Chair the meeting.

## **RIGHTS ASSOCIATED WITH FORMAL RECOGNITION**

10. The following rights result from formal recognition:-

- (i) The right for members and officials to reasonable time off work, either with or without pay, for Trade Union duties and/or activities.
- (ii) The right to information for the purposes of collective bargaining (but only in relation to those issues for which negotiating rights have been offered).
- (iii) The right to be consulted on proposed redundancies.
- (iv) The right to information and consultation and other rights in connection with the transfer of undertakings.
- (v) The right to information and consultation under the Health and Safety at Work Act.
- (vi) The right to information and consultation on occupational pensions.
- (vii) The right to hold a workplace ballot on the Trust's premises.

## **RESOLUTION OF DISPUTES**

### **General**

- 11. Both sides are committed to the resolution of disputes wherever possible on an informal basis and at a level which is as close as possible to the source of the disputes. Recourse to the formal disputes procedure should be a last resort.
- 12. In the event of the staff side submitting a formal dispute at level 1 or 2, management undertake not to unilaterally implement any new or revised terms or conditions of employment until the disputes procedure set out in this document has been exhausted. The status quo is otherwise defined as the existing contractual position prevailing immediately prior to a formal dispute being submitted. The existing contractual position will normally be the present working arrangements, except where documentary evidence relating to the individual contracts, or a joint agreement shows otherwise. Where the proposed change may be required within the existing contractual arrangements, management are committed to giving notice equivalent to that which would otherwise be required, except for temporary changes or in emergency situations. Such notice will be either the contractual or the statutory notice period, whichever is the greater. The staff side likewise undertake not to support any industrial action prior to the disputes procedure being exhausted.

13. If the staff side wish to lodge a formal dispute they must do so in writing within 7 working days of having been given formal notification of management's position, either at a meeting or in writing. Management should confirm their position in writing.
14. A formal dispute at either level will only be accepted from staff representatives of those Trade Unions / Professional Organisations who have been recognised at that level. Formal disputes from staff representatives thus recognised shall only be accepted following receipt by the staff side of formal notification of management's position as indicated in Paragraph 13, either in respect of the rejection of a proposal by the staff side, or in respect of a proposal by management to implement new or vary existing terms and conditions of service from a given date.
15. The acceptance by management of any formal dispute, and the application of the status quo in respect of that dispute, shall apply only to those employees who are directly involved in the dispute. Staff representatives when submitting a dispute must, therefore, in addition to identifying the precise basis of the dispute, also identify the number of employees from within the group who have confirmed their involvement in the dispute.
16. Following a formal dispute having been submitted both sides undertake to meet formally as soon as possible to attempt to resolve the dispute. If the staff side are unable to attend within 15 working days, either the first or subsequent formal meetings convened by management under this procedure, the disputes procedure will be regarded as having been exhausted. The period of 15 working days may be extended on receipt of a reasonable request from the full-time official of an Union / Professional Organisation, provided there are genuine difficulties in complying with that time limit.
17. In the event of a continued failure to agree at either level the services of ACAS in respect of either conciliation / arbitration may be sought with the agreement of both parties.
18. Any reference in this procedure to staff representatives shall mean an employee of the Trust who has been elected or appointed by the Trade Union or Professional Organisation to represent their members within the Trust and whose appointment has been confirmed in writing to management. Such representatives shall include Health and Safety Representatives.

#### **LEVEL 1 - DEPARTMENTAL / OCCUPATIONAL GROUP DISPUTES**

19. Formal disputes at this level shall first be considered by the line manager with direct responsibility for the staff involved. In the event of the dispute being unresolved, the staff side may refer the dispute to the appropriate Senior Manager or equivalent, as listed in Appendix 3 attached.

20. If the dispute remains unresolved the staff side may refer it to the appropriate Director / Clinical Director. The staff side may, at this stage, choose to be represented by their full-time / national officer.
21. If there is a continued failure to agree, there shall be a further formal meeting involving the same Director / Clinical Director who will be accompanied by at least two other Directors. The staff side may again choose to be represented by their full-time / national officer (not exceeding three such officers if more than one recognised organisation is involved).

## **LEVEL 2 - CORPORATE DISPUTES**

22. Formal disputes at this level shall be referred to a meeting of the Trust Negotiating Group unless the management notification referred to in Paragraph 13 was given following a meeting of this group in which case the dispute shall be dealt with under Paragraph 23.
23. If the dispute remains unresolved there shall be a formal Joint Disputes meeting with the management side comprising at least 3 Directors, and the staff side comprising 3 employee representatives and not more than 3 of their full-time / national officers.

## **JOINT CONSULTATIVE COMMITTEE**

24. In addition to consultation at level 1 and level 2, the Trust Board recognises the benefits of general joint consultation with a large number of staff representatives and therefore proposes to continue with the existing Joint Consultative Committee. Membership of the Joint Consultative Committee by a staff representative does not in any way afford that representative or the Trade Union or Professional Organisation to which he/she belongs any recognition. The constitution of the Joint Consultative Committee is attached as Appendix 4.

## **STAFF REPRESENTATIVE - TIME OFF FOR TRADE UNION DUTIES**

25. Staff representatives shall be given reasonable paid time off from work in accordance with Section 168 of TULR (C) Act 1992 and the ACAS Code of Practice on Time Off for Trade Union Duties and Activities, for the purpose of carrying out duties as such a representative, including appropriate training.
26. In all cases staff representatives must give reasonable notice to line managers of requests to take time off work for these purposes. The agreement by line managers to grant time off will be subject to the exigencies of the service and should not be unreasonably refused.
27. A separate facilities procedure will be developed and will contain more detail as to how these provisions will operate.

28. Employees should not be victimised (by either dismissal or action short of dismissal) because of Trade Union membership or for being an active member of a Trade Union. Similarly the employment conditions or professional development of staff representatives should not be adversely affected for undertaking their duties in accordance with this agreement. The Trade Union Labour Relations (Consolidation) Act 1992 enables a complaint to be made to an Industrial Tribunal in respect of alleged victimisation.

#### **LENGTH OF THIS AGREEMENT**

29. This procedure shall operate for a period of one Year and shall then be subject to review. This document is not legally binding. Although not obliged to do so, both sides undertake to give 3 months notice of any intention to withdraw from the agreement. Although binding in honour only both parties will use their best endeavours to ensure its effective operation.

#### **APPENDIX 1**

#### **RECOGNISED TRADE UNION / PROFESSIONAL ORGANISATIONS AT LEVEL 1 DEPARTMENTAL / OCCUPATIONAL GROUPS**

Medical Staff (All Departments)	BMA
Nursing Trained (All Departments) (including Nurse Management)	RCN and UNISON
Midwives	RCM (to be recognised for Midwifery Department only). RCN UNISON
Nursing Auxiliaries	UNISON
Radiographers	Society of Radiographers and MSF
Occupational Therapists	UNISON / BAOT
Physiotherapists	Chartered Society of Physiotherapists
Speech and Language Therapists	MSF
Dieticians	British Dietetic Association
Scientists (Clinical Physics)	MSF
Orthoptists	British Orthoptic Society
Psychologists	Nil

<b>Ancillary Staff</b>	UNISON at all sites with additions as follows:-
Switchboard	EEPTU
Laundry	GMB
Craftsmen (Laundry)	EEPTU
Supplies / Stores	GMB
Domestic Staff	GMB
Pharmacists	MSF
Chiropodists	Society of Chiropodists - MSF
Medical Laboratory Scientific Officers	MSF
Clinical Scientists	Association of Clinical Biochemists / Association of Micro Biologists
<b>Estates Department</b>	
Estates Officers	UNISON / MSF
Craftsmen / Maintenance Assistants/ Labourers	UNISON, EEPTU, ETU
<b>Area Maintenance</b>	
Craftsmen / Maintenance Assistants/ Labourers	UNISON / EEPTU and GMB
Administrative / Clerical (all Departments)	UNISON
Medical Technical Officers	MSF (except ALAC where the recognised trade union will be UNISON)

**APPENDIX 2****RECOGNISED TRADE UNION / PROFESSIONAL ORGANISATIONS****AT LEVEL 2 - CORPORATE REPRESENTATION**

UNISON

BMA

RCN

MSF

GMB\*

Joint Consultative Committee representative (from organisation other than those listed above).

\*subject to Domestic Services continuing to be provided by in-house team.

Examples of issues subject to discussion at this level)

- ◆ Common Annual Leave Entitlement
- ◆ Common Sick Pay / Sick Leave Entitlements
- ◆ Maternity Pay / Leave
- ◆ Disciplinary Procedures
- ◆ Pension Scheme Matters
- ◆ Trust Wide Pay Awards

***This is not an exhaustive list.***



**APPENDIX 3****TRADE UNION RECOGNITION / COLLECTIVE DISPUTES AGREEMENT****SENIOR MANAGERS OR EQUIVALENT****OPERATIONAL SUPPORT STAFF**

Hotel Services Manager  
Stores / Supplies Manager  
Estates Manager

**NURSING STAFF**

Senior Nurse Managers      -      Deputy Director of Nursing & Quality  
   -      Medical Unit  
   -      Surgical Unit  
   -      Department of Medicine for the Elderly  
   -      Institute of Neurological Sciences  
   -      Spinal Injuries Unit

Head of Midwifery Services

**MEDICAL STAFF AND TECHNICAL STAFF EMPLOYED IN LABORATORIES**

Clinical Directors

**PHARMACY STAFF**

Pharmacy Manager

**FINANCE / INFORMATION TECHNOLOGY STAFF**

Deputy Director  
Management Accountant  
Information Technology Manager

**HUMAN RESOURCES STAFF**

Deputy Director  
Senior Occupational Health Nurse

**PATIENT SERVICES AND THERAPEUTIC SERVICES STAFF**

Patient Services Manager

Including - Theatre Staff and Outpatients Staff (the latter to include ALAC and the Department of Podiatric Medicine), Radiography Staff, Speech and Language Therapy Staff, Occupational Therapy Staff, Physiotherapy Staff, Dietetic Staff, Medical Illustration Staff, ECG, EEG and TSSU staff and Orthoptists.

### **MEDICAL RECORDS MANAGER**

Medical Records Manager

**OTHER STAFF**

Clinical Physics Manager

Top Grade Psychologist

Contract Manager (Area Maintenance, Boilerhouses and Incinerators)

**NOTE**

Where a formal dispute involves nursing staff, not in line management relationships to the Director of Nursing and Quality, the Director of Nursing and Quality shall be consulted prior to the formal dispute meeting being convened.

**APPENDIX 4****SOUTHERN GENERAL HOSPITAL NHS TRUST****JOINT CONSULTATIVE COMMITTEE****C O N S T I T U T I O N**

1. The Trust Board recognises the benefits of general joint consultation with Trade Unions and Professional Organisations on a collective basis.
2. Management will be represented on the Trust Joint Consultative Committee by the Chief Executive and Executive Directors of the Trust Board. Staff will be represented by accredited lay representatives of the Trade Unions and Professional Organisations recognised at departmental or corporate level.
3. The staff side may appoint a staff side chairman and secretary, neither of which may be drawn from the same organisation. In addition each of the Trade Unions / Professional Organisations listed in Appendix 1 will have one seat on the Committee. (In recognition of the transitional staff of the merger of COHSE, NALGO and NUPE into UNISON, two seats shall be allocated to UNISON for the first Year following which the position will be reviewed).
4. Meetings of the Committee will be chaired by either the Chief Executive or the Director of Human Resources.
5. The Committee will meet on a bi-monthly basis with a formal agenda and minutes. Ad hoc meetings of the Committee may be arranged with the agreement of the Chief Executive or the Director of Human Resources. Consent will not be withheld unreasonably. Management will be responsible for organising meetings and issue of the agenda and minutes. The agenda will be agreed prior to the meeting by both sides.
6. A full-time officer may, at the request of the staff side and with the agreement of management, be allowed to attend a meeting of the Committee for particular agenda items.
7. All matters affecting the collective interests of employees of the Trust will be regarded as appropriate for consultation at Committee level.
8. Time off with pay shall be permitted for staff side representative to attend meetings of the Trust Joint Consultative Committee. The principle of reasonable time off with pay for staff side representatives to prepare for meetings of the Committee and to communicate with their members on matters arising from Committee meetings is accepted. However, staff representatives must seek permission for such time off

from their respective Heads of Department. Such permission will not be withheld unreasonably.

9. Membership of the Trust Joint Consultative Committee by a staff representative does not in any way afford that representative or the Trade Union or Professional Organisation to which he/she belongs, recognition other than that already conferred.

***APPENDIX 1*****JCC CONSTITUTION**

UNISON

RCN

RCM

MSF

SOCIETY OF RADIOGRAPHERS

BMA

CHARTERED SOCIETY OF PHYSIOTHERAPISTS

BRITISH DIETETIC ASSOCIATION

BRITISH ORTHOPTIC SOCIETY

EEPTU

GMB

SOCIETY OF CHIROPODISTS

ASSOCIATION OF CLINICAL BIOCHEMISTS

ETU

HOSPITAL PHYSICISTS ASSOCIATION

BAOT

## **THE SCHEDULE- PART 15**

### **INSURANCE**

#### **PART A - PHASE I**

#### **1. INSURANCE DURING CONSTRUCTION AND MAINTENANCE**

##### **1.1 CONSTRUCTION ALL RISKS**

###### **The Insured**

- (a) The Trust, Concessionco and the Building Contractor, and where appropriate pursuant to Clause 37.21 its sub-contractors of any tier and other contractors and their sub-contractors of any tier engaged on the Project;
- (b) Where appropriate pursuant to Clause 37.21, suppliers, architects, surveyors and consulting engineers for their site activities only; and
- (c) the Lenders;

each for their respective rights and interests.

###### **The Insured Property**

All permanent and temporary works, materials and goods and all other things used for or intended for incorporation within the Facility, the subject of the Project together with all ancillary and associated works thereto.

###### **Interest:**

###### **Section 1 - Material Damage**

###### **Item 1**

Works, temporary works, materials for incorporation therein together with all associated and ancillary works used or for use in connection with the Project.

###### **Item 2**

Contractor's plant, tools, equipment, temporary buildings and other things including employees' tools and personal effects for use in connection with the Project, the property of the Building Contractor or for which they accept responsibility.

**Geographical limits:**

The Site and anywhere else in the United Kingdom in connection with the Concession Agreement, including inland transit and offsite temporary storage.

**Sum Insured:**

The total of the estimated Construction Price, replacement value of equipment described in item 2 above and the reinstatement value of the equipment to be produced and delivered to the Facility by the Trust prior to Completion (or such other value as the parties may from time to time agree).

**Indemnity:**

All risks of physical loss of or damage to any part of the Insured Property from any cause not excluded.

**Period of Insurance:**

From the date of the Concession Agreement until the date of issue of the Completion Certificate (as defined in the Concession Agreement) plus the Defects Liability Period under the Construction Contract and any further period of extension as may be agreed.

**Main Exclusions:**

The Insurers shall not be liable for:-

1. War
2. Radioactive Contamination
3. Wear and Tear
4. Unexplained Shortages
5. Consequential Losses not otherwise specified
6. Sonic Bangs
7. Defects

7.1 The cost of replacing repairing or rectifying:

- (a) Insured Property which is in a defective condition caused by a defect in design plan specification, materials or workmanship;
- (b) Insured Property lost or damaged to enable the replacement repair or rectification of any part of the Insured Property excluded by (a) above.



Exclusion (a) above shall not apply to other Insured Property which is free of the defective condition but is damaged in consequence thereof.

At the option of the Building Contractor (which option may be exercised at the time of making the claim) Insurers shall waive Exclusion 7.1. If the Building Contractor opts to waive Exclusion 7.1 and apply Exclusion 7.2, Insurers shall be entitled to exercise any rights of recovery available to the Building Contractor against any sub-contractor, supplier, architect, surveyor or consulting engineer except to the extent that the contractor, supplier, architect, surveyor or consulting engineer is otherwise entitled to receive an indemnity under the terms of the policy.

7.2 The cost of replacing, repairing or rectifying:

- (a) Insured Property which is in a defective condition caused by a defect in design plan specification, materials or workmanship;
- (b) Insured Property lost or damaged to enable the replacement, repair or rectification of any part of the Insured Property excluded by (a) above

but should damage to any part of the Insured Property (other than damage as defined in (b) above) result from such defect then this Exclusion shall be limited to the costs resulting from improvements to the original design plan specification materials or workmanship PROVIDED ALWAYS THAT Insurers shall not be liable for the first 10% of each and every event payable under Exclusion 7.1 and 7.2 subject to a minimum of £100,000 and a maximum of £500,000.

For the purposes of Exclusions 7.1 and 7.2 the Property Insured shall not be regarded as lost or damaged solely by virtue of the existence of any defect in design plan specification materials or workmanship in the Property Insured or any part thereof.

8. Maintenance/Defects Liability Period

Loss or damage to any part of the Insured Property from the date of issue of the Completion Certificate (as defined in the Concession Agreement) unless such loss or damage:

- (a) is caused by the Building Contractor and/or sub-contractors in the course of any operations carried out by them for the purpose of complying with any obligation under the defects liability clause(s) of the Construction Contract; or

- (b) arises from a cause occurring prior to the commencement of the Defects Liability Period (as defined in the Construction Contract); or
- (c) results from faulty design, defective materials or casting and/or bad workmanship at manufacturers premises occurring prior to the commencement of the Defects Liability Period (as defined in the Construction Contract) but excluding:
  - (i) costs the Insured would have incurred for rectifying the original fault had such fault been discovered before the loss occurred;

Provided always that any portion of the Insured Property shall not be deemed damaged solely by virtue of the existence of any defect of material, workmanship, design, plan or specification; and

  - (ii) loss or damage for which an indemnity is provided under Concessionco's annual insurances and for which the Building Contractor and/or sub-contractors can not be held responsible;

9. Terrorism above £100,000

10. Loss or damage to equipment to be installed in the Facility which occurs prior to Concessionco accepting responsibility for such equipment.

#### **Maximum Deductibles**

£50,000 in respect of each and every loss (subject to the specific deductible specified below in relation to "additional costs of completing").

#### **Main Extensions/Conditions**

- Additional costs of completing unbuilt portion of the Project caused solely by delays following loss or damage to built portions of works and/or existing structures etc. which is covered subject to a lower limit of not less than £1,000,000 and subject also to a deductible of 20% of any loss otherwise recoverable under the extension or £10,000 whichever is the greater.
- Debris removal (subject to a limit of not less than 115% of the indemnity otherwise provided)
- Expediting expenses (up to a limit of not less than 135% of the indemnity otherwise provided)

- Professional fees to normal scale
  - Temporary repairs (limited to not less than 10% of actual cost of repair)
  - Automatic reinstatement of Sum Insured
  - Increase clause (up to 20% of estimated contract price)
  - Plans or specifications of the Insured Property
  - Seventy Two Hour Clause
  - Silent Risks (for a period of 6 months) Where the works cease, for whatever reason, the Insurer will continue cover without interruption for a period of up to six months thereafter. Insurers shall be entitled to charge an additional premium pro rata for each additional month or part thereof. The Insured shall ensure that the site is regularly inspected and maintained and that such steps as may be reasonably practicable shall be taken by the Insured to safeguard the Site from loss or damage.
- N.B. This cover would be provided subject to the right to increase the policy excess for malicious damage, theft and water and the right to review and make recommendations on site security
- Including inland transit and storage
  - Guarantee Maintenance
  - ABI Fire Code of Practice
  - Buyback Terrorism Limit (full reinstatement value)
  - 
  - Public Authorities
  - Non Vitiating

## **1.2 ADVANCE LOSS OF PROFITS**

### **The Insured:**

Concessionco, the Lenders each for their respective rights and interests.

### **Period of Insurance:**

From the date of the Concession Agreement until the date of issue of the Completion Certificate (as defined in the Concession Agreement) and any further period of extension as may be agreed.

**Indemnity:**

If any of the Insured Property under 1.1 be lost, destroyed or damaged by any of the risks insured under 1.1 above including loss or damage, which would be indemnifiable but for the application of any deductible, causing an interference in the construction work resulting in a delay to the anticipated Completion Date or such later date on which the Insured Business would have been operational but for the physical loss or damage to the Insured Property then this insurance will indemnify the Insured in respect of Loss of anticipated Gross Earnings (which, for all the purposes of this

Part 15 of the Schedule shall mean the amount by which the value of the Turnover exceeds the amount of the Specified Working Expenses;

and

“Increased Cost of Working” - the additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing delay which, without such expenditure, would have taken place, but not exceeding the amount of Loss of anticipated Gross Earnings thereby avoided less any sums saved during the Indemnity Period in respect of such costs as may cease or be reduced in consequence of the delay;

which occur during the Indemnity Period.

“Turnover” means the amount of money (less discounts allowed) paid or payable to the Insured for accommodation rented or other service rendered in the course of the Insured Business conducted at the Site.

“Specified Working Expenses” means any payments to the FM Contractor and variable costs, including without limitation costs incurred for the acquisition of goods, materials, supplies and services (unless required for the upkeep of operations) and any expenditure for, but without limitation to, Turnover tax, purchase tax, licence fees and royalties, in so far as such costs are dependent on Turnover.

**Sum Insured:**

The sum sufficient to cover the sums of the subject of the Indemnity for the Indemnity Period.

**Indemnity Period:**

24 months from the scheduled Completion Date.

**Main Exclusions:**

As for 1.1 above (other than Exclusion 5) plus

The Insurers shall not be liable in respect of any loss arising directly or indirectly as a consequence of:

- (i) any restrictions on reconstruction or operation imposed by a public authority (except where the Insured is provided with an indemnity under the Public Authorities extension in 1.1. above);
- (ii) alterations, additions or improvements carried out after the occurrence
- (iii) rectification of defects or faults or elimination of any deficiencies (except to the extent such loss results directly from circumstances where the insured is provided with an indemnity under 1.1 above) cancel out after the occurrence.
- (iv) failure by the Insured to commit funds to the repair or replacement of destroyed or damaged items where such funds have been paid by the Insurers to the order of the Insured under a full or partial settlement of a claim under the insurance specified in 1.1 above;
- (v) fines or damages for breach of contract for later or non-completion of orders or for any penalties of whatever nature unless otherwise agreed;
- (vi) damage to contractors' equipment.

**Maximum Time Excess:**

30 days each and every claim subject it to an aggregate excess of 60 days during the Period of Insurance.

**Main Extensions:**

Delay caused by the occurrence of a Notifiable Disease at the Project Site.

Delay caused or contributed to by physical loss or damage to property in the vicinity of the Site which shall prevent or hinder access to or use of the Project.

Interruption caused by damage to the supply of water, gas, electricity or telecommunications system to the Site.

Non Vitiatio -.

### 1.3 PUBLIC LIABILITY

#### **The Insured:**

- (a) The Trust, Concessionco and the Building Contractor and where appropriate pursuant to Clause 37.21 its sub-contractors of any tier and other contractors and their sub-contractors of any tier engaged on the Project;
- (b) Where appropriate pursuant to Clause 37.21, suppliers, architects, surveyors and consulting engineers for their site activities only; and
- (c) the Lenders;

each for their respective rights and interests.

#### **Period of Insurance:**

As for 1.1 above

#### **Indemnity:**

The legal liability of an Insured to pay damages, costs and expenses as a result of, inter alia:

- accidental death, injury, mental anguish and disease of any person
- accidental loss or damage to any property
- obstruction, loss of amenities, nuisance, trespass, stoppage of traffic, infringement of light, easement or quasi easement, interference or any like cause.

arising out of or in the course of or in connection with the design construction, testing, commissioning or maintenance of the Facility.

#### **Geographical Limits:**

The Site and anywhere in the United Kingdom in connection with the contract, including inland transit and offsite temporary storage, but anywhere in the world in respect of visits for the purpose of the Project.

#### **Limit of Indemnity:**

£10,000,000 for any one occurrence or all occurrences arising from a single proximate cause.

**Period of Insurance:**

As for the insurance referred to in 1.1.

**Maximum Deductible:**

£10,000 of each occurrence in respect of loss or damage to property, otherwise nil.

**Main Extensions:**

- Cross Liabilities Clause - in the event of claim being made by one Insured hereunder for which another Insured is or may be liable, then this Section shall cover such other Insured against whom a claim is made, or may be made, in the same manner as if separate policies had been issued to each Insured and the Insurers shall waive all rights of subrogation against each Insured. This shall not operate to increase the Insurers limit of liability beyond the Limit of Indemnity.
- For the purposes of this section, the Insured includes the respective officers, directors, agents, servants and employees of an Insured.
- Costs in addition
- Contingent Motor Liability
- Health and Safety at Work Act
- Liability assumed under contract.
- Non Vitiating.

**Main Exclusions:**

- Death of or bodily injury to or illness or disease contracted by the employees of the Insured claiming indemnity arising out of or in the course of their employment.
- Property belonging to or in the charge or under the control of the Insured.
- Liability arising out of technical or professional advice given for a fee by the Insured or by any person acting on behalf of the Insured other than advice relating to the construction of the Project in so far as insured under paragraph 1.1.
- Liability arising out of the use of mechanically propelled vehicles for which compulsory insurance or security is required by legislation except whilst in use as a tool of trade.
- The cost of making good loss of or damage to property indemnified under the insurance referred to in paragraph 1.1.



- Liability arising from pollution or contamination unless caused by a sudden identifiable unintended and unexpected incident.
- Liability arising from ownership, possession, use or control of any aircraft or watercraft.

**1.4 COMPULSORY INSURANCES** - To comply with all statutory requirements, including inter alia Employers Liability, Motor.

## **PART B - PHASE II**

### **2. INSURANCE DURING PHASE II**

N.B. All the following insurance policies will be renewable annually or at such other period as Concessionco and the Trust may agree.

#### **2.1 MATERIAL DAMAGE ALL RISKS**

##### **The Insured:**

Concessionco the FM Contractor and the Trust, the sub-contractors and Service Providers (where appropriate pursuant to Clause 37.21) and the Lenders each for their respective rights and interests.

##### **The Insured Property:**

Property of any description owned by the Insured or for which it accepts responsibility or deems itself responsible used for or in connection with the ownership, maintenance and operation of the Facility.

##### **Geographical Limits:**

Anywhere that comprises the Site and the Facility and its environs and temporary removals elsewhere in the United Kingdom.

##### **Sum Insured:**

An amount equivalent to the total reinstatement value of the Insured Property, including allowance for professional fees and removal of debris costs.

##### **Indemnity:**

All risks of physical loss of or damage to any part of the Insured Property from any cause not excluded in the Policy.

##### **Main Exclusions:**

- war, radioactive contamination

- gradual deterioration
  - unexplained shortages
  - consequential financial losses (loss of revenue, loss of use, etc.)
  - property which is in itself defective in design, materials or workmanship
- 
- normal settlement

**Main Extensions:**

- Including damage to buildings by thieves and theft of building fixtures or fittings for which the Insured is responsible.
- Machinery and electronic breakdown (including IT and telecoms equipment) in respect of appropriate equipment.
- Including all fixed glass on the interior and exteriors of the premises including stained glass and sanitary fixtures and fittings for which the Insured are responsible regardless of whether the buildings are insured.
- Reinstatement - Day One 120% non adjustable.
- Insured events include reinstatement, repair or replacement of any property of the Insured or for which they are responsible necessarily incurred by the Insured with the consent of the Insurer, having been affected by the outbreak of any infectious or contagious disease, (excluding Acquired Immune Deficiency Syndrome) which a competent authority has stipulated shall be notified to them.
- Good faith clause - This policy shall not be invalidated by any act or omission or by any alteration whereby the risk of destruction of damage is increased unknown to or beyond the control of the Insured provided that the Insured immediately they become aware thereof shall give notice to the Insurer and pay any additional premium if required.
- Including pollution and contamination to the insured property arising from an event which itself is not otherwise excluded.

- Contract works including works and temporary works erected or in the course of erection including materials and other things for incorporation in the works up to a sum insured of £200,000.
- Terrorism limit £100,000 and Buyback - full reinstatement value.
- Goods in Transit.
- Deterioration of Stock.
- Non Vitiating

**Main Extensions:**

- Debris removal
- Automatic reinstatement of Sum Insured
- Professional Fees
- Local Authorities clause
- Replacement of computer records

**Maximum Deductibles:**

£10,000 in respect of each and every loss (other than ground movement) where higher deductibles may apply.

**Waiver of Subrogation:**

The Insurers shall waive all rights of subrogation against the person specified below in respect of damage caused by them arising out of the operation or maintenance of the Facility:

- (a) any Insured;
- (b) the respective parent company or other parents, body, affiliates, officers, directors, employees, sub-contractors, agents or representatives of any of (a) above.

## **2.2 BUSINESS INTERRUPTION**

**The Insured:**

For Concessionco, the FM Contractor and the Lenders each for their respective rights and interests.

**Indemnity:**

If any of the Insured Property under 2.1 is lost, destroyed or damaged by any of the risks insured under 2.1 above including loss which would be indemnifiable but for the application of excess/deductibles, which causes interruption to or interference with the operations of the Facility then this insurance will indemnify the Insured in respect of loss of Gross Earnings.

and

“Increased Cost of Working” - the additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing delay which, without such expenditure, would have taken place, but not exceeding the amount of Loss of anticipated Gross Earnings thereby avoided less any sums saved during the Indemnity Period in respect of such costs as may cease or be reduced in consequence of the delay;

which occur during the Indemnity Period.

**Sum Insured:**

A sum sufficient to cover the sums the subject of the Indemnity for the Indemnity Period.

**Maximum Deductible:**

10 days.

**Indemnity Period:**

24 months.

**Main Exclusions:**

As for 2.1 above other than as regards consequential financial losses.

**Main Extensions:**

- A separate Increased Cost of Working item for the benefit of the Trust subject to a limit of £1,000,000
- Interruption caused or contributed to by physical loss or damage to property in the vicinity of the Facility which shall prevent or hinder access or use.

- Interruption caused by damage to third party premises where property relating to the Facility is stored and/or worked on.
- Interruption caused by damage to the supply of water, gas, electricity or telecommunications system to the Facility.
- Interruption caused by infectious disease causing all or part of the Facility to be unusable for its purpose, including the cancellation of bookings for accommodation, surgery or treatment at the Facility in consequence of such outbreak, or the closure of the whole or part of the Facility by the order of or on the advice of a Public Authority.
- Injury or illness sustained by any person arising from or traceable to foreign or injurious matter in food or drink provided in the Facility.
- Terrorism limit £100,000 and Buyback in full reinstatement value.
- Non Vitiation.

## 2.3 PUBLIC LIABILITY

### **The Insured:**

Concessionco, the Trust, the Lenders and the FM Contractor and sub-contractors and service providers each for their respective rights and interests.

### **Indemnity:**

The legal liability of an Insured to pay damages as a result of, inter alia:

- accidental death, injury, mental anguish and disease of any person
- accidental loss or damage to any property
- obstruction, loss of amenities, nuisance, trespass, stoppage of traffic, infringement of light, easement or quasi easement, interference or any like cause.
- arising out of the ownership, maintenance and operation of the Facility.

Costs and expenses to be also covered in addition to the Limit of Indemnity.

This policy does not include cover in respect of medical/clinical malpractice/negligence nor professional negligence nor Trustees', Directors' or Officers' Liability.

### **Geographical Limits:**

Anywhere in the United Kingdom and anywhere in the world in respect of visits for the purpose of the Facility, excluding any judgement, award or settlement made within countries which operate under the laws of the United States of America and/or Canada or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part.

**Limit of Indemnity:**

Not less than £100,000,000 any one occurrence or all occurrences of a series consequent upon or attributable to one proximate cause.

**Maximum Deductibles:**

£10,000 of each and every occurrence in respect of loss of or damage to property otherwise nil.

**Main Extensions:**

- Cross Liabilities clause
- For the purpose of this section the Insured includes the respective officers, directors, agents, servants and employees of an Insured.
- To include cover for the following or their updated equivalent - Consumer Protection Act 1987, Data Protection Act 1998, Health and Safety at Work etc. Act 1974, Food Safety Act 1990 - Prosecution Defence Costs.
- Defective Premises Act 1972.
- Canteen and Welfare facilities.
- Patient to Patient liability
- Sudden and identifiable, unintended and unexpected pollution incidents.
- Contractual Liability.
- Non Vitiating.

**Main Exclusions:**

- Death of or bodily injury to or illness or disease contracted by the employees of the Insured claiming indemnity arising out of or in the course of their employment.
- Property belonging to or in the charge of or under the control of the Insured.

- Liability arising out of technical or professional advice given for a fee by the Insured or by any person acting on behalf of the Insured other than advice relating to the operation of the Facility in so far as Insured under paragraph 2.1.
- Liability arising out of the use of motor vehicles for which compulsory insurance or security is required by legislation.
- The cost of making good loss of or damage to property indemnified under the insurance referred to in paragraph 2.1.
- Liability arising from pollution or contamination unless caused by a sudden unintended and unexpected incident.
- Liquidated damages or penalties under any agreement for delay or in connection with guarantees of performance or efficiency.

**2.4 MONEY - legal liability for others' money**

**2.5 DIRECTORS AND OFFICERS LIABILITY**

**2.6 FIDELITY GUARANTEE - on stock including drugs, money and accounts for all employees of Concessionco.**

General - Compulsory insurances - Employers Liability

Motor

**PART C - PHASE I****3. TRUST'S MINIMUM INSURANCE REQUIREMENTS**

Compulsory insurances to comply with all statutory requirements, including any scheme in lieu of insurance which underwrites the Trust's employer and motor liabilities established under the direction of the Department of Health, The National Health Service Executive, the National Health Service in Scotland Management Executive or equivalent body.



**PART D - PHASE II****4. TRUST'S MINIMUM INSURANCE REQUIREMENTS**

Compulsory insurances to comply with all statutory requirements, including any scheme in lieu of insurance which underwrites the Trust's employer and motor liabilities established under the direction of the Department of Health, the National Health Service Executive, the National Health Service Management Executive in Scotland or equivalent body.

## **THE SCHEDULE- PART 16**

### **IN HOUSE CATERING**

- 1 The following Clauses in this Agreement shall not apply to the provision of the Catering Service - Clauses 20.5, 20.6, 21, 25.5, 25.7, 26, 27, 28, 29A, 29B, 29C, 29D, 40.2(b), 48.6, 48.7, 52, and 60.
- 2 For the purposes of Clause 38, in its capacity as Service Provider for the Catering Service, the Trust shall be deemed not to be a contractor of Concessionco.
- 3 The Trust shall and Concessionco shall procure that the FM Contractor shall enter into the Catering Services Contract within 12 Months of the date of this Agreement.

"The Catering Services Contract" shall mean a contract for the provision of the Catering Service based upon the terms set out in the annexation to this Part of the Schedule.

#### **Adjustments to Payments by Trust to Concessionco**

- 4 The adjustments (if any) to the Performance Related Payment for the Catering Service for any Month (or the Initial Period or the Final Period as the case may be) shall be ascertained pursuant to paragraph 5 and shall be applied as follows:
  - (a) in respect of the Initial Period and each subsequent Month such adjustments shall be taken into account in the invoice issued by Concessionco pursuant to Clause 25.4 of this Agreement with respect to the Month after the immediately succeeding Month 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 Performance Related Payment for the Catering Service;
  - (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 Month immediately preceding the Final Period. Within 13 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 Performance Related Payment pursuant to paragraph 5 in respect of the Final Period and the immediately preceding Month. In the event that the amount of such retention, when added to the retention to be held by the Trust with respect to the Performance Related Payment (excluding the Performance Related Payment for the Catering Service), is insufficient to discharge any such adjustment, when added to the adjustment to be made by the Trust with

respect to the Performance Related Payments (excluding the Performance Related Payment for the Catering Service) 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.

## **5 PERFORMANCE**

### **Performance Notices**

5.1 Within 8 Business Days after the last day of each Month during Phase II, and within 8 Business Days after termination of this Agreement, Concessionco shall, in respect of the Catering Service, provide to the Trust a notice (a "Performance Notice") which shall, list in respect of that Month

- (a) a statement of the Performance Percentage achieved for the Catering Service (determined pursuant to the Catering Service Level Specification) and the corresponding adjustment to the Performance Related Payment (determined pursuant to paragraph 5.5 below);
- (b) a statement of the adjustments to be made for Volume (determined in accordance with paragraph 6.2 below); and
- (c) the aggregate of adjustments to the Performance Related Payment as set out in (a) and (b) above.

Provided that 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 (Variations – Extensions to Contract Period) then the Performance Percentage determined for the purposes only of paragraphs 5.6 to 5.9 (inclusive) shall be deemed to be the Performance Percentage unadjusted for such event.

5.2 Subject to paragraph 5.4 in respect of the Performance Related Payment for each Month an adjustment shall be made for the purposes of paragraph 4 (Payment). The amount of such adjustment shall be the adjustment referred to in paragraph 5.1.

5.3 If the Trust disputes any matter referred to in any Performance Notice then the Trust's Representative may request the opinion of any member of the Project Panel upon such matter. Concessionco 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 the Trust accordingly.

5.4 Without prejudice to the generality of the foregoing, in respect of the period from the Payment Commencement Date until the first day of the Second Month following the Payment Commencement Date there shall be no adjustment to the Performance Related Payment in relation to the Catering Service in respect of a

failure in the performance of such Service

- 5.5 The Performance Percentage for the Catering Service shall be ascertained by application of the performance monitoring procedure in the Catering Service Level Specification having regard to the Guidance for Use of the Performance Monitoring System forming part of Part 21 of the Schedule. The corresponding adjustment to the Performance Related Payment shall be ascertained in accordance with paragraph 6.3 below.
- 5.6 If the Performance Percentage recorded in any Performance Notice given for the Catering Service (but subject to paragraph 5.3) is greater than 70% but less than 75% for two successive Months (disregarding in the calculation of any such Performance Percentage any Performance Standard for which the score to be awarded 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 paragraph 5.3 or the determination of any dispute relating to the same.
- 5.7 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 withdrawal, confirmation or modification pursuant to paragraph 5.3), the Performance Percentage recorded in any Performance Notice for the Catering Service (but subject to paragraph 5.3) in respect of both of those Months is less than 75% (disregarding in the calculation of any such Performance Percentage any Performance Standard for which the score to be awarded 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 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 the Catering Service following the end of the second of those Months.
- 5.8 If, following the end of the two Months referred to in paragraphs 5.7 the Performance Percentage recorded in any Performance Notice for the Catering Service (but subject to paragraph 5.3) in respect of both of those Months is less than 75% disregarding in the calculation of any such Performance Percentage any Performance Standard for which the score to be awarded is still being disputed then Concessionco 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 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 the Catering Service following the end of the second of those Months .
- 5.9 If the Performance Percentage recorded in any Performance Notice given for the

Catering Service falls below 70% (but subject to paragraph 5.3) in any two Months out of any three successive Months (disregarding in the calculation of any such Performance Percentage any Performance Standard for which the score to be awarded is still being disputed Concessionco 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 or within 10 Business Days after the termination of any dispute relating to the same to appoint or procure the appointment of a replacement Service Provider in respect of the Catering Service following the end of the second of those Months.

- 5.10 Upon termination of the employment of the Trust as the Service Provider for the Catering Service, and pending appointment of a replacement Service Provider, Concessionco shall be relieved from liability for breach of its obligations in respect of the Catering Service. Concessionco shall use all reasonable endeavours to effect appointment of a replacement Service Provider as soon as reasonably practicable and in any event within 45 Business Days.

## 6 PAYMENT

- 6.1 The base monthly number of meals shall be calculated as follows:

Breakfast	$\frac{210 \text{ patients} \times 365 \text{ days} \times 80\%}{12}$	=	5110
Lunch	$\frac{210 \text{ patients} \times 365 \text{ days} \times 80\%}{12}$	=	5110
Lunch (Day Hospital)	$\frac{30 \text{ day patients} \times 365 \text{ days}}{12}$	=	9113
Dinner	$\frac{210 \text{ patients} \times 365 \text{ days} \times 80\%}{12}$	=	5110
Total			= 16,423

- 6.2 The base annual price for catering services is £371,000

- 6.3 The base annual Trust price to Concessionco for Catering Services is  $\frac{£371,000}{£1.05} = £353,333$

- 6.4 The base monthly price for Catering Service is  $\frac{£353,333}{12} = £29,444$

- 6.5 The average price per meal is  $\frac{£29,444}{12} = £1.81$

16243

- 6.6 The marginal price per meal is  $\text{£}1.81 \times 0.5 = \text{£}0.90$
- 6.7 An adjustment at marginal cost will be made for meals provided in excess of an 85% occupancy level and below a 75% occupancy level within the Facility.
- 6.8 The calculated tolerance levels above and below which adjustments are as follows:
- 75% Occupancy        =        15,228 meals per Month
- 85% Occupancy        =        17,258 meals per Month
- 6.9 Adjustments will, therefore, be made for meals provided in excess of 17,258 per month and for meals provided below 15,228. For meals provided above 17,558 such adjustments will be  $\text{£}0.90$  per meal. For meals provided below 15,228 there will be a credit of  $\text{£}0.90$  per meal.
- 6.10 Notwithstanding paragraph 9 of the Guidance for Use of the Performance Monitoring System, the Performance Related Payment (after adjustment for Volume) shall be adjusted for Performance as follows:

<i>Catering Performance Percentage</i>	<b>Percentage of Catering Service for the Catering Service Performance Related Payment payable to Concessionco</b>
100 to 95	100
94	99
93	98
92	97
91	96
90	95
89	94
88	93
87	92
86	91
85	90

84	88.67
83	87.33
82	86.00
81	84.67
80	83.33
79	82.00
78	80.67
77	79.33
76	78.00
75	76.67
74	75.33
73	74.00
72	72.67
71	71.33
70	70.00

## 7 EMPLOYMENT

- 7.1 At any time during the Contract Period upon request from Concessionco, the Trust shall, so far as it lawfully may, supply to Concessionco all information reasonably required by Concessionco as to the identity and terms and conditions of employment of all employees then employed by the Trust in the business of providing the Catering Service and shall warrant the accuracy of such information.
- 7.2 The Trust undertakes to Concessionco that except with the consent of Concessionco, such consent not to be unreasonably withheld, it will not vary the conditions of employment of any employee then employed by the Trust in the business of providing the Catering Service after Concessionco shall have served notice to terminate the employment of the Trust as Service Provider for the Catering Service for any reason provided that for the avoidance of doubt nothing in this undertaking shall limit the right of the Trust to give effect to any pre-

existing contractual obligations to any employees.

- 7.3 Upon the termination of the employment of the Trust as Service Provider for the Catering Service the employees working in the provision of the Services will transfer to Concessionco or a replacement Service Provider under the Regulations to the extent that the Regulations require.
- 7.4 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 paragraph 7.4 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 (including any matter relating to or arising out of the Trust's rights, powers, duties and/or liabilities connected with such contract of employment or collective agreement) made against Concessionco 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 the Trust (and all costs and expenses thereof) which results or resulted from some act or omission which occurred while such person was employed by the Trust provided that such indemnity shall not extend to any claim made against Concessionco later than 18 months after the termination of the employment of the Trust as Service Provider for the Catering Service arising out of any allegation of sex, race or disability discrimination or any equal pay dispute.
- 7.5 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 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 the Trust arising from or connected with any failure by the Trust 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 the employment of the Trust as Service Provider for the Catering Service unless such failure is due to failure of Concessionco or any replacement Service Provider engaged by Concessionco to provide information to the Trust.



### Annexation to Part 16 of the Schedule

#### Heads of Terms for the Catering Contract between FM Contractor and the Trust

Duration:	Services Commencement Date until the first termination option date under Clause 54.1 of Concession Agreement
Price:	£371,000 ÷ 1.05 (in April 1998 prices) per annum indexed <i>mutatis mutandis</i> in the same terms specified in this Part 16 of the Schedule, or such other price intimated by the Trust in writing not less than three months prior to the Services Commencement Date or the Review Date which shall be a price based on the previous years trading account and/or adjustments based on known volume factors.
Specification of Services:	are per the Catering Service Level Specification forming part of Part 21 of the Schedule including the Performance Monitoring System and guidance note.
Performance Deductions:	Notwithstanding the guidance for the use of the Performance Monitoring System, the Performance Related Payment (after adjustment for volume) shall be adjusted as follows:-

<b>Catering Performance Percentage</b>	<b>Percentage of Catering Service Performance Related Payment payable to the Trust as</b>
100 to 90	100
89	98.70
88	97.65
87	96.60
86	95.55
85	94.50
84	93.10
83	91.70
82	90.30
81	88.90
80	87.50

79	86.10
78	84.70
77	83.30
76	81.90
75	80.50
74	79.10
73	77.70
72	76.30
71	74.90
70	70.00

- Payment Terms: monthly in advance in accordance with the following regime:-
- Performance Notice on 8<sup>th</sup> of Month X + 1 for Month X
  - Invoice for Month X + 2 minus adjustments for Month X on 10<sup>th</sup> of Month X + 1
  - Payment on 1<sup>st</sup> of Month X + 2
- Volume Risk: the Trust will accept risk on a 5% margin either side of anticipated 80% occupancy of the Facility *mutatis mutandis* on the same terms specified in this Part 16 of the Schedule but with per meal prices ÷ 1.05.
- Employment Indemnities: *mutatis mutandis* on the same terms specified in this Part 16 of the Schedule.
- Changes including Legislative Change: *mutatis mutandis* on the same terms specified in Clause 32 of the Concession Agreement.
- Force Majeure: *mutatis mutandis* on the same terms specified in the Concession Agreement
- Dispute Resolution: *mutatis mutandis* on the same terms specified in the Concession Agreement.

Termination Trigger: *mutatis mutandis* on the same terms specified in the Concession Agreement

Compensation on Termination: None.

Clauses 6.4, 6.6 and 30 of the Concession Agreement will be incorporated *mutatis mutandis* into the contract.

The Trust will indemnify Concessionco in respect of the costs incurred by Concessionco in the Special Benchmarking Exercise, in tendering for a replacement Service Provider and in putting in place and delivering interim measures to provide the Catering Service.

The "boilerplate" clause in the Concession Agreement will apply *mutatis mutandis*.

**THE SCHEDULE- PART 17**  
**TRUST PROCEDURES**

*[Note: to be inserted agreed between TS and Trust]*

**THE SCHEDULE- PART 18  
COMPENSATION AMOUNTS**

*[Note: to be inserted once Financial Model agreed]*

## **THE SCHEDULE- PART 19 WARRANTIES**

### **TRUST WARRANTIES**

#### **1. TRUST'S PREMISES**

- 1.1 The Trust is not permitted to grant and have not granted any mortgage, debenture, financial charge, lien or any right in the nature of security in respect of the Site.
- 1.2 Subject to paragraph 1.6 the Trust has not received notice of and is not aware of any breach of the requirements of any current or previous legislation or any regulations, orders, notices or directions made or issued under such legislation capable of enforcement as at the date of this Agreement which affect the Site.
- 1.3 Subject to paragraph 1.6 the Trust is not aware of any resolution, proposal, order or act made or contemplated for the compulsory acquisition of the Site or any part of the Site or any access to it by the local or other authority.
- 1.4 Subject to paragraph 1.6 the Trust is not aware of any planning proposals, orders, notices or statutory notice issued by the local authority or otherwise affecting the Site or any part of the Site.
- 1.5 There are no outstanding actions, disputes or claims affecting the Site to which the Trust is a party or which are known to the Trust in each case, that would materially adversely affect the ability of Concessionco to carry out its obligations under the Project Documents.
- 1.6 Property Enquiry Certificate prepared by SPH Property Search (Scotland) dated 10 June 1999 (Certificate Number 526776) has been exhibited to Concessionco and is referred to for its terms and Concessionco shall be deemed to be satisfied with all matters disclosed therein and there will be no claim under these warranties in respect of such matters.

#### **2. ACCOUNTS**

- 2.1 The most recently published accounts of the predecessor NHS entities to the Trust, namely Southern General Hospital NHS Trust and Victoria Infirmary NHS Trust (copies of which have been provided to Concessionco) for the two accounting reference periods preceding the date of this Agreement give a true and fair view of the state of affairs of each of the Trusts at the end of such periods.
- 2.2 All accounts, books, ledgers and financial records of not more than two Years of age of the Trust are in its possession and have been kept and completed in accordance with generally accepted accounting principles and standards and

statutory requirements and disclose with reasonable accuracy the financial and contractual position of the Trust and contain a record of its assets and liabilities.

- 2.3 For the purposes of this warranty it is acknowledged that the accounts have been prepared by the Trust under Section 86 of the National Health Service (Scotland) Act 1978 (as amended by sub-sections (3),(4),(5),(6), (7) and (8) of Section 36 of the National Health Service and Community Care Act 1990) in the form which the Secretary of State has, with the approval of the Treasury, directed.

### **3. DUE PROCEDURE**

- 3.1 The Trust is an entity formed and validly existing under the National Health Service (Scotland) Act 1978.
- 3.2 Statutory Instrument 1998 No. 2730 (SI55) ("the Statutory Instrument") comprises the Establishment Order pursuant to which the Trust was established and all amendments thereto and that there are no other statutory instruments, legislative enactments or provisions which relate to the establishment or subsequent legal existence of the Trust save for the National Health Service and Community Care Act 1990 and the National Health Service (Scotland) Act 1978 and Statutory Instruments (1999) No. 535 (S44) (Membership and Procedure of the Trust) as amended by Statutory Instrument 1999 No. 1133 (S93).
- 3.3 The Trust's Standing Orders and Standing Financial Instructions approved at a board meeting of the Trust on 27<sup>th</sup> April 1999 ("the Standing Orders") are the up to date Standing Orders of the Trust and that there are no other provisions regarding the internal management of the Trust.
- 3.4 That, in executing this Agreement and the Project Documents to which it is a party, the Trust has acted in accordance with all its relevant Standing Orders and that the Trust has the power and capacity to enter into this Agreement and the Project Documents to which it is a party and to perform each of its obligations thereunder and each such document and the Trust's signature thereof have been duly approved in accordance with all relevant regulatory requirements in respect of the constitution of the Trust.
- 3.5 No proceedings have been taken and/or discharged or to the best of the Trust's knowledge, information and belief, threatened for its winding up or dissolution.

### **4. CORRUPT GIFTS AND FRAUDS**

As at the date of this Agreement, neither Concessionco nor any sub-contractor (nor anyone employed by or acting on behalf of any of them) nor any of its or their shareholders or agents have committed any Prohibited Act

### **CONCESSIONCO WARRANTIES**

- 5 Concessionco is a limited company, validly existing and registered under the laws of England;

6. Concessionco has not, prior to the date of execution of this Agreement, acquired any assets, entered into any commitment or incurred any liability whatsoever since its incorporation and undertakes that it shall not during the Contract Period enter into any material obligations other than pursuant to this Agreement or the Project except with the prior consent in writing of the Trust which consent shall not be unreasonably withheld or delayed.
7. For the purposes of paragraph 1, the term "material obligation" shall be construed as an obligation pursuant to which Concessionco may have or incur a liability in excess of TWENTY THOUSAND POUNDS (£20,000)
8. Concessionco undertakes that it will not sell, transfer, lease, lend or otherwise dispose of any assets, except for sale of current assets in the ordinary and prudent course of its business on arms length terms.



**THE SCHEDULE- PART 20**  
**AVAILABILITY PAYMENT AND PERFORMANCE RELATED PAYMENT**

**Availability Payment**

The Availability Payment shall be as follows:

- (a) In the period commencing with the Payment Commencement Date and ending on the date which is 33 years prior to the end of the Contract Period, the Availability Payment shall be [            ] per month.
- (b) Thereafter, until the end of the Contract Period, if later, the monthly Availability Payment shall, from time to time, be calculated by Concessionco to reflect, and include:
  - (i) any changes or variations instructed by the Trust pursuant to Clauses 30 (Variations - Phase II - Trust Changes - Services), 31 (Variations - Phase II - Additional Work - Hospital), 32 (Variations - Phase II - Changes in Legal Requirements) and 34 (Variations - Phase II - Reduction in Size of the Facility) of the Agreement including any changes or variations required in respect of capital refurbishment and alteration if the Trust does not exercise any option to terminate when available arising under Clause 54 of the Agreement;
  - (ii) the cost of finance reasonably obtainable on the market (at such rates for such periods, and subject to such terms as may be reasonably obtainable);
  - (iii) the monthly operating cost of Concessionco including a reasonable return to cover reasonable overheads and profit;
  - (iv) an appropriate return on capital cost of equity being such rate as is reasonably available in the market at such rates, for such period and subject to such terms as may be obtained for projects of a similar size, nature and type;
  - (v) the reasonable and proper costs to Concessionco to implement Planned Preventative Maintenance (including life cycle costs) for the period up to the following Operating and Maintenance Review Date, including a reasonable allowance for Concessionco's overheads and profit;
  - (vi) the cost of finance reasonably obtainable in the market to fund Planned Preventative Maintenance.

All sums shall be proposed by Concessionco, acting reasonably not less than one (1) Year prior to any of the dates which are 13, 23 or 33 Years prior to the end of the Contract Period ("the Operating and Maintenance Review Dates") to have effect for the period from the relevant Operating and Maintenance Review Date until the next Operating and Maintenance Review Date. Following such proposals

the parties shall meet and act in good faith and shall seek to reach an agreement in relation thereto but failing agreement within three months of the date of the first meeting for such purpose then the matter shall be determined by reference to the Dispute Resolution Procedure.

#### Availability Areas

Availability Area		Deduction Percentages (%)	
		%	Daily Availability fee in April 1998 prices (£)
Wards	1	12%	
	2	12%	
	3	12%	
	4	12%	
	5	12%	
	6	12%	
	7	12%	
Other	Radiology Day Hospital	6%	
		10%	
Total		100%	

If the Area can be subdivided into discrete areas and a discrete area is declared unavailable then the deduction will be adjusted on a pro rata basis.

#### Unavailability Criteria

- 1 Failure to provide a constant power supply to the levels as set out in the Building Specification.
- 2 Failure to provide a constant water supply (including hot water where appropriate) to the standard set out in the Building Specification.
- 3 Failure to provide a constant and safe sewage system to the standard set out in the Building Specification.
- 4 Failure to provide constant medical gases pipeline system as set out in the Building Specification.

- 5 Failure to provide air changes to the required design flow and extract rates set out in the Building Specification.
- 6 Failure to maintain temperatures above the minimum levels set out in the Building Specification.
- 7 Failure to maintain lighting levels above the minimum levels set out in the Building Specification.
- 8 Failure in communications network provided by Concessionco as set out in the Building Specification which would prevent the Trust from carrying out its functions in that Area of the Facility.
- 9 Failure to comply with Health and Safety Legislation including the provision of fire alarms, fire escapes and statutory security requirements.
- 10 Failure to maintain a safe water supply to a level certified by the Public Health Laboratory Service.
- 11 Failure to maintain cleanliness and building fabric quality which would seriously jeopardise the life or health of patients, visitors or staff in the Facility.
- 12 Any other failure of the provision of the Service which would seriously jeopardise the life or health of the patients, visitors or staff in the Facility.
- 13 Failure to maintain appropriate access and egress.

**Notice of Unavailability**

To: .....  
 Concessionco's representative

From: .....  
 the Senior Trust Officer of South Glasgow University Hospitals NHS Trust ("the Trust").

**Section 1 - Notice under Clause 26.2(a)**

Take this form as confirmation of a notice given under Clause 26.2(a) of the Concession Agreement dated [ ] between the Trust and Town Hospitals Ltd that as notified to you by me at the date(s) and time(s) indicated being the date(s) and time(s) shown on the reverse of this notice, circumstance(s) as set out in the reverse of this notice have arisen in the specified areas or sub-areas of the Facility.

Take notice that in accordance with Clause 26.2(b) if the circumstance(s) as set out on the reverse of this notice are unremedied for a continuous period of:

- \* three hours with respect to the following area or sub-area:
- \* one hour with respect to the following area or sub-area:

from the time(s) shown on the reverse of this notice, the relevant area(s) and/or sub-area(s) of the Facility may be taken out of use. The confirmation of the area(s) and/or sub-area(s) being taken out of use will be in the form of a copy of this notice with section 2 below duly completed.

- \* delete as applicable

Signed .....  
 as the Senior Trust Officer of the Trust

Date .....

Time .....

## Section 2 - Notice under Clause 26.2(b)

Take notice that further to the above Section 1 notice, the circumstances reported and confirmed above in respect of the areas/sub-areas listed below have remained unremedied for a continuous period of at least three/one hour(s) and accordingly the following area(s)/sub-area(s) is/are being taken out of use by the Trust with immediate effect.

Signed .....  
as Senior Trust Officer of the Trust

Date .....

Time .....

## Performance Related Payment

The Performance Related Payment for each of the Services is:-

Catering: £30,917.00.....

Housekeeping: £30,529.00.....

Estates: £25,717.17.....

Portering: £3,916.67.....

Total £91,081

in each case adjusted in accordance with Clauses 25.7 and 28.

The Performance Related Payment equates to the sum of the Performance Related Payments for each of the Services.

## Total Payment

The annual Total Payment will be the sum of the annual Availability Payment [£ ] and the annual Performance Related Payment [ ] totalling [ ] as per the Financial Model referred to in the Senior Loan Agreement.

## **THE SCHEDULE- PART 21 SERVICE LEVEL SPECIFICATIONS**

**South Glasgow University Hospitals NHS Trust**

**PFI Scheme – Medicine for the Elderly**

### **Guidance for Use of the Performance Monitoring System in Part 21 of the Schedule**

- 1 Each service is divided into service elements:
  - Statutory compliance
  - Systems and safeguards
  - Service delivery
  
- 2 Each service element has a percentage of the total service fee, for that service, allocated to it. The allocated percentages are:
  - Statutory compliance – 20%
  - Systems and safeguards – 20%
  - Service delivery – 60%
  
- 3 Each service element consists of a number of performance standards. The exact number of performance standards in each service element and the percentage of the total percentage allocated to the service element is set out e.g. within the Estates Services 20% of the service element is allotted to systems and safeguards. Of that 20%, 4% is allocated to PPM system, 3% is allocated to "Permits to Work", etc. The percentage relating to each performance standard defines the portion of the total service fee which is at risk if performance falls below agreed criteria.
  
- 4 Each performance standard defines the output required and the performance criteria which will be used to judge performance. Each performance standard has a performance measurement definition i.e. an agreed basis for measuring the performance for that particular standard.
  
- 5 There is a performance threshold for each performance standard. The performance threshold determines the point at which the performance is deemed to be satisfactory i.e. a 95% performance against a 95% performance threshold will mean the payment of 100% of the monthly service fee attributable to the performance standard ; a 94% performance against a 95% performance threshold will mean the deduction of 1% of the monthly service fee attributable to that performance standard.

- 6 For certain performance standards a 100% performance threshold has been set.
- Of these:
- (a) Where only one breach is the threshold, any failure within the month on that particular standard may result in a deduction from the unitary charge of an amount equating to the total service fee attributed to that performance standard;
  - (b) where performance measurement is a percentage of failures against an agreed target then the percentage score will be calculated by dividing the actual achieved score by the target score multiplied by 100%;
  - (c) The performance measurement definition determines how the deduction is calculated.
- 7 Rectification periods have been set for some performance standards. If Concessionco fails to rectify a performance failure within the agreed rectification period then this shall be counted as a failure on the overall calculation of performance.
- 8 With respect to each performance standard, where a score of less than the performance threshold but more than 80% has been achieved, the fee attributable to that performance standard shall be reduced on a percentage for percentage basis. Where the achieved score is 70% or less, the fee payable with respect to that performance standard will be equivalent to the percentage achieved score. For scores of 71% to 80%, the fee payable shall be calculated on a pro-rata basis. Examples of the fee calculation are set out below:

<b>Performance Threshold</b>	<b>Achieved Score</b>	<b>Percentage of Service percentage payable</b>
100%	100%	100%
	95%	95%
	90%	90%
	80%	80%
	75%	75%
	70%	70%
95%	100%	100%
	95%	100%
	90%	95%
	80%	85%
	75%	77.5%
	70%	70%
90%	100%	100%
	95%	100%

	90%	100%
	80%	90%
	75%	80%
	70%	70%

- 9 For the purposes of Clause 27 of the Concession Agreement, the Performance Percentage shall, subject to paragraphs 12, 13 and 14 below be determined by dividing the sum of the fees payable with respect to all of the performance standards for that Service ascertained from the performance monitoring system by the Performance Related Payment for that Service and multiplying by 100. The corresponding adjustment to the Performance Related Payment shall be ascertained by deducting the sum of the fees payable with respect to all of the performance standards for that Service from the Performance Related Payment for that Service.
- 10 Subject to Clause 20.7 of the Concession Agreement, all percentage scores with respect to the Catering Service will be calculated on the basis of the baseline Catering Performance Related Payment. The adjustment to the Catering Service Performance Related Payment with respect to performance shall be established by multiplying the product of 100 minus the Performance Percentage by the Catering Service Performance Related Payment after it has been adjusted for Volume in accordance with Clause 27 of the Concession Agreement.
- 11 Without prejudice to the above, if Concessionco meets the obligations set out in respect of the Service, it shall be awarded a performance percentage of 100% and, subject to adjustment in accordance with Clauses 27.1(b) to (e) of the Concession Agreement, shall be entitled to be paid the Performance Related Payment for that Service.
- 12 On the basis that continued performance at that level will lead to replacement of the Service Provider concerned, a Performance Percentage of less than 75% shall only be awarded if Concessionco fails to meet all or substantially all of the obligations set out in the Service Level Specification for that Service.
- In the event that the Performance Percentage determined in accordance with paragraph 9 is less than 75%, but Concessionco has met all or substantially all of the obligations set out in the Service Level Specification for that Service, then the Performance Percentage awarded shall be 75% and, subject to adjustment in accordance with Clauses 27.1(b) to (e) of the Concession Agreement, Concessionco shall be entitled to be paid 75% of the Performance Related Payment for that Service.
- 13 If Concessionco meets none of the obligations set out in the Service Level Specification for any Service, then the Performance Percentage for that Service in that month shall be zero.



- 14 No adjustment shall be made in respect of any *de minimis* failure to comply with any performance standard.
- 15 To assist in the interpretation of this guidance note, marked examples of the performance monitoring system are attached.

**SOUTH GLASGOW UNIVERSITY  
HOSPITALS NHS TRUST**

**NEW HEALTHCARE FACILITY**

**SERVICE LEVEL SPECIFICATIONS  
AND PERFORMANCE TABLES**

***29<sup>TH</sup> JUNE 1999***

**FINAL**

**SOUTH GLASGOW UNIVERSITY HOSPITALS NHS TRUST**

**MEDICINE FOR THE ELDERLY UNIT**

**Service Level Specifications - General Assumptions**

This Scope of Service, the general and specific Standards of Service and the standards set out in the Performance Tables have been established on the following assumptions:-

- (i) Number of patients using the Facility are 210 In patients @ 80% occupancy, and 30 Out patients.
- (ii) Tasks are as described in the Scope of Services.
- (iii) The hours during which the services are required to be available are as described in this Scope.
- (iv) The response taken for ad hoc and reactive tasks are as described in this Scope of Services in particular but with limitation.

Where, in particular, but with limitation any of the assumptions above described are changed, varied or adjusted in any way, this will be deemed a Trust Change and subject to the procedure set out in Clause [ ] of the Concession Agreement, this Scope, the general; and specific standards of services, the performance standards set out in the Performance Tables will be adjusted as necessary.

SOUTH GLASGOW UNIVERSITY HOSPITALS NHS TRUST

**MEDICINE FOR THE ELDERLY UNIT**

**PORTERING SERVICES**

**1 Scope of Service**

1.1 Concessionco will perform those routine and ad hoc activities set out below between the hours of 0900 to 1530 each day.

1.1.1 Routine tasks

- Pre-planned movement of patients, within the Facility. For the avoidance of doubt, Concessionco Porter will not move patients external to the Facility which will be the responsibility of the Trust's own portering service. Required X-rays and medical records will, where available, move with the patient. The Trusts own Portering service will be responsible for any routine X-ray collection from and delivery to the main X-ray department in the SGUH NHS Trust
- Routine re-ordering and replenishment of medical gas cylinders stock. The Trust will arrange for the delivery of gas cylinders to the store within the Facility.
- Routine delivery of consumable stores within the building. Pharmacy, Catering, CSSD, laundry, TSSU and dry goods will be delivered to the wards by the Trust departments responsible for these services.
- Uplift and distribution of internal and external mail to/from Central Collection Point, (CCP), to pre-determined points within the facility. For the avoidance of doubt, all mail will be pre-sorted by the Trust staff.
- Removal of dirty linen from wards and return to the CCP within the Facility. Delivery of clean linen to the Facility and to the final point of use will be by others.
- Collection of waste from ward disposal rooms and delivery to the loading bay for disposal in accordance with Trust Waste Disposal policy, as advised and updated on a regular basis to Concessionco by the Trust.
- Collection and delivery of medical records within the Facility.
- Clean refuse disposal area

- Planned preparation of rooms for meetings, subject to 4 hours notice of requirements.
- Specimen uplift/delivery to ward and departmental areas from/to CCP within the Facility by the Concessionco porter. Specimen collection will normally be coincidental with mail delivery.

#### 1.1.2 Ad hoc tasks.

- Patients will be escorted between internal departments on an as required basis. Admission and delivery to the first point of contact in the Facility will be the responsibility of the relevant Ambulance Service or Trust personnel.
- Movement of portable equipment.
- Ad hoc delivery of consumable stores within the building.
- Delivery of X-ray and medical records within the Facility as required
- Assistance in the movement of deceased patients during attendance hours. Outside attendance hours this task will be undertaken by the Trust Portering Service, at Trust expense.
- Emergency and ad-hoc specimens/X-rays/medical records will be transported/collected to/from the originating departments out-with the scheduled collection/delivery times. If such request involves the porter leaving the facility then he will be released from any performance obligations arising from his related absence.
- Attendance at Fire Incidents
- Car park monitoring in the vicinity of the Facility.
- Ad hoc preparation of rooms for meetings.

## 2 Standards of Service Delivery

### 2.1 *General Service Standard*

- 2.1.1 Both parties acknowledge the fact that there will only routinely be one porter on duty. His job is to perform the routine tasks to a pre-arranged schedule and to perform other (ad-hoc) tasks at a time that will not normally interrupt his routine duties. There will be occasions when ad-hoc tasks will necessarily interrupt routine tasks. By arrangement between the parties this should be kept to a minimum, but when it does occur, and the priority is set by the Trust, the porter will break off the routine task and perform the ad-hoc task, releasing him from the performance obligations of the routine task. He will be expected to resume the routine task at the earliest available opportunity. Where the level of ad-hoc activity is such that the porter cannot complete his routine tasks within the work period, then the situation shall be reported to the Concessionco Duty Manager who will liaise with the Trust Representative in agreeing the appropriate action to be taken in the circumstances.

The Trust will use it's best endeavours to limit ad hoc tasks to times when routine tasks are not being performed.

Priorities for routine and ad hoc tasks will be in accordance with a pre-agreed protocol.

- 2.1.2 Concessionco staff will be courteous, polite and professional in all duties involving service delivery
- 2.1.3 The porter will receive appropriate training and instruction so that the tasks can be performed to the required level of competency
- 2.1.4 All equipment required to provide any element of the service will be maintained in a safe, serviceable and hygienic manner at all times, subject always to fair wear and tear.
- 2.1.5 Systems of communication will be established with Trust representatives to ensure all Portering requirements are correctly recorded and processed. These systems will be reviewed at agreed time intervals
- 2.1.6 Appropriate aspects of the Portering service will be covered by a Manual Handling training programme

- 2.1.7 Concessionco will be responsible for ensuring that the porter is available by use of a suitable radio communications system. It is proposed that this system will link to the existing Trust system. The cost of personal pagers will be met by Concessionco.
- 2.1.8 Concessionco will use reasonable endeavours to improve and optimise the use of available portering resource
- 2.1.9 Concessionco will provide the services detailed 365(6) days per year in accordance with the specified attendance hours

## 2.2 *Specific Service Standards*

### 2.2.1 Patient Moves

At all times patient moves will be performed in accordance with Trust Operating Procedures, as advised and updated as required to Concessionco, and in a co-operative manner with relevant Trust personnel

All internal patient moves, including those requiring wheelchair or trolley movement, will be requested by a daily schedule or by paging the Concessionco Porter for non-scheduled movements.

### 2.2.2 Delivery and Collection of Specimens

The Concessionco porter will fulfil the task of delivery and collection of specimens from Centralised Collection Points (CCP) within the Facility. These tasks will be performed in accordance with agreed schedules or on an ad hoc basis by requests to the Concessionco Porter. Both parties will endeavour to ensure that, where possible, recurrent activities are pre-scheduled. Schedules for this activity will be agreed between the Concessionco Representative and the relevant Departmental Manager. Response times for ad hoc requests will be in accordance with the times agreed between Concessionco and the Trust. Emergency and ad-hoc specimens will be transported/collected to/from the originating departments within the facility outside the specified attendance hours by the Trust's staff or the Trust's supplier of portering services. For the avoidance of doubt this will include completed specimen reports and X-ray films and reports.

### 2.2.3 Waste Collection and Delivery

Concessionco will collect waste from ward and departmental disposal areas on a scheduled basis for delivery to a CCP within the Facility. These schedules will be agreed between the Concessionco Manager and the relevant Trust Departmental Manager.

Concessionco will ensure, that at all times, the equipment used for performing these tasks complies with the Provision and Use of Work Equipment Regulations.

Concessionco will use reasonable endeavours to ensure that the central refuse collection area is clean and tidy at all times and that waste does not spill over to surrounding areas. All spillages will be promptly cleaned. For the avoidance of doubt, all waste will be segregated by Trust staff at the point of entering the disposal system, and such segregation shall be maintained by Concessionco throughout the process to the final removal from the Facility.

### 2.2.4 Non-Patient Moves – General

Concessionco will use reasonable endeavours to ensure that these services are provided to agreed response criteria based on the nature of move requested

### 2.2.5 Mail Services - Internal and External

Routine times of operation Monday to Friday, 09.00 to 17.30 and Saturday 09.00 to 12.30. Mail collections and deliveries from the CCP within the building, will be performed to agreed schedules twice each day, Monday to Friday and once on Saturday within the times stated above. These schedules will be agreed, and reviewed at regular intervals, by the Concessionco Manager and the appropriate Trust departmental representatives. Franking and payment for external postage will be the responsibility of the Trust.

### 2.2.6 Medical Gases



Concessionco will assist the Trust in the management of the receipt into the Facility and storage in the designated safe location of all medical gas requirements. Concessionco staff will check the availability of Medical Gas Cylinder stocks in such location and report this information to the Trust for replenishment action. At all times these services will be provided under the guidance and Trust Operating Procedures detailed by the Trust Representative for medical gas management and provided to Concessionco free of charge.

The Concessionco Porter will be responsible for transporting individual cylinders to their point of use and for connecting these supplies to the various medical gas lines. Concessionco staff will also be responsible for returning empty cylinders to a suitable designated storage area to await collection by others.

Full training, to approved Trust standards, as provided to Concessionco, will be given to Concessionco staff performing these tasks

Agreed operating procedures for these tasks will be agreed between the Concessionco Representative and the Trust Pharmacy Manager.

#### 2.2.7 Medical Records

The Concessionco porter will collect and deliver within the Facility medical and X-ray records on behalf of the Trust.

#### 2.2.8 Food Distribution

For the avoidance of doubt, The Concessionco porter will have no responsibility whatsoever for the patient meal service.

#### 2.2.9 Linen Collection / Delivery (including patient clothing)

The Concessionco porter will at scheduled times, to be agreed between the Concessionco Representative and the Trust Representative transport dirty linen from patient areas, to a CCP within the facility

The Concessionco porter will be trained to agreed standards to operate any equipment required to fulfil this task. All equipment required to provide these tasks will be maintained in a safe, serviceable and hygienic condition suitable for use, subject to fair wear and tear. .

### 2.2.10 Mortuary Duties

The Concessionco porter will assist Trust staff with the removal of deceased patients to the Mortuary during attendance hours. Whilst performing these duties the Concessionco porter will ensure appropriate standards of dignity and respect for the deceased are maintained at all times. Out-with attendance hours movement of deceased persons will be undertaken by Trust staff.

### 2.2.11 Room Preparation

Concessionco will provide a service to prepare rooms for meetings. The service will generally be provided by means of a pre-booking procedure through the service centre of at least 4 working hours before the task is required to be completed..

### 2.2.12 Abnormal Requests

Abnormal requests for support from the Porter such as :

- the use of the porter in support of a clinical department for a protracted period
- office and departmental moves

should be passed to the Concessionco Representative and agreed with the Trust Representative prior to work commencing. Such requests may be subject to an additional charge to the Trust if they fall outside the scope of this Agreement.

### 2.2.13 Equipment (wheelchairs / trolleys)

The Concessionco porter will use reasonable endeavours to ensure that wheelchairs and trolleys used for the performance of his duties are kept in good and safe working order, subject to fair wear and tear, notifying defects to the Trust at the earliest opportunity, and will clean them periodically by wash / damp wiping them and lightly oiling the wheels.

The Trust will be responsible for any initial supply/repairs/replacement of patient wheelchairs and trolleys and any other Trust equipment.

Concessionco will not be responsible for the maintenance / replacement of patient lifting equipment or beds. This will be a Trust responsibility

#### 2.2.14 Fire and Security

The Concessionco Porter will respond to security requests for assistance from Trust staff within the building.

The Concessionco Porter will attend all Fire Calls and will assist Trust staff with evacuation procedures when requested to do so.

Other Concessionco staff will secure the Facility at the end of the working day.

Lock down will take place at a time to be agreed during late evening.. Access from then on will be by CCTV operated by the Trust's switchboard. For the avoidance of doubt, CCTV will be supplied by Concessionco.

### 3 **Methods of obtaining the service**

3.1 In general the Portering Service will be accessed by one of three methods:

- Direct contact via pager
- Routine planned services
- Service Centre requests

A table showing initial means of access and routine times of service availability is shown at Schedule 1 attached.

### 4 **Response times**

#### 4.1 Standard Response Times

Ad hoc requests will be met using the following maximum response times :

- Patient movements - 20 minutes
- Specimens - 20 minutes
- X-rays - 30 minutes
- Medical Records - 30 minutes
- Medical Gases - 20 minutes
- Room preparation - 4 hours

#### 4.2 Urgent Response Times

Urgent, **patient-related** ad hoc requests will be met within a maximum of 10 minutes. The degree of urgency will be defined by the requesting clinical department. TSL will use its best endeavours to meet the requested requirements within the agreed response times but will be relieved of its performance obligations if the number of requests received exceeds the number of minutes of portering time available to meet the number of requests received.

## SOUTH GLASGOW UNIVERSITY HOSPITALS NHS TRUST

## PORTERING SERVICE - PERFORMANCE TABLES

	1. PERFORMANCE STANDARD	2. SERVICE PERCENTAGE	3. PERFORMANCE CRITERIA	4. PERFORMANCE MEASUREMENT
1.0	STATUTORY COMPLIANCE	20%		
1.1	Health and Safety (Health and Safety at Work Act and other relevant legislation)	15%		
1.1.1	Concessionco will comply with all Health and Safety legislation and Operational Policies at all times.	15%	Any breach of the Health and Safety legislation and Operational Policies that has the potential to cause harm or injury or prosecution.	Measurement by Monthly report by Concessionco and Trust inspection report, RIDDOR report and Health and Safety Executive action.  The Performance Measurement is that one or more attributable and material breaches in any Month will result in a Performance Measurement for that Month of 0%.  Rectification Period is NIL Threshold 100%.
1.2	Infection Control	5%		
1.2.1	Concessionco will comply with all Operational Policies for Infection Control at all times in	5%	Any attributable material breach of Operational Policies for Infection Control.	Measurement by Monthly report by Concessionco and Trust inspection report, incident/accident report and

	all activities undertaken.			<p>Health and Safety Executive action.</p> <p>The Performance Measurement is that one or more attributable material breaches in any Month will result in a Performance Measurement for that Month of 0%.</p> <p>Rectification Period is NIL Threshold 100%.</p>
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	1. PERFORMANCE STANDARD	2. SERVICE PERCENTAGE	3. PERFORMANCE CRITERIA	4. PERFORMANCE MEASUREMENT
<b>2.</b>	<b>SYSTEMS &amp; SAFEGUARDS</b>	<b>20%</b>		
<b>2.1</b>	<b>Training</b>	<b>10%</b>		
2.1.1	All Portering Staff must have an appropriate training plan and must receive training in accordance with that training plan.	10%	Any failure of a member of the Portering Staff to have a training plan and to receive training in accordance with that training plan.	Measurement by Monthly report by Concessionco and Trust audit.  Performance Measurement the proven failure to maintain records to the appropriate standards.  Rectification Period is 1 week.  Training Plan preparation - Threshold 100%  Training Plan execution - Threshold 95%
<b>2.2</b>	<b>Record Keeping</b>	<b>5%</b>		
2.2.1	Selection, appraisal and other appropriate records will be maintained up to date for all Portering Staff.	3%	Any failure to maintain up to date personnel records for each member of Portering Staff.	Measurement by Monthly report by Concessionco and Trust audit.  Performance Measurement is the number of members of Portering Staff whose records are up to date as a percentage of the total number of

				members of Portering Staff. Rectification period 1 week. Threshold 100%
2.2.2	All records required for any compliant aspects of the Portering Services will be maintained up to date and be available for audit by the Trust at all times subject to one Business Day's notice of intention to audit, Concessionco or its sub-contractors to be invited to attend the audit to provide guidance on location of material.	2%	Any failure to maintain accurate and reliable records that adequately represent the performance of the portering service.	Measurement by Monthly report by Concessionco and Trust audit. Performance Measurement is the number of required records maintained up to date as a percentage of all required records.1 Rectification 1 week. Threshold 100%
<b>2.3</b>	<b>Quality Monitoring System</b> Completion of standard documentation and timely availability of individual reports and monthly returns to the Trust	<b>5%</b> 5%	Any failure to provide complete, up to date information or reports that are necessary for the operation of the performance monitoring system. within agreed time-scales.	Measurement by Monthly Report by Concessionco and Trust Audit. Performance Measurement is the number of quality monitoring system information sets produced in the agreed format within the specified period as a percentage of all quality monitoring system information sets required..





	1. PERFORMANCE STANDARD	2. SERVICE PERCENTAGE	3. PERFORMANCE CRITERIA	4. PERFORMANCE MEASUREMENT
<b>3.</b>	<b>SERVICE DELIVERY</b>	<b>60%</b>		
<b>3.1</b>	<b>Internal Deliveries</b>	<b>30%</b>		
3.1.1	All routine scheduled or ad-hoc deliveries will be undertaken within the agreed timescales.	30%	Any failure to carry out routine scheduled or ad hoc deliveries within the specified timescales.	Measurement by Monthly report by Concessionco and Trust audit.  Performance Measurement is the number of routine scheduled and ad hoc deliveries undertaken within the specified timescales as a percentage of all routine scheduled and ad hoc deliveries undertaken.  Rectification Period as per Service Level Specification.  Threshold 90%
<b>3.2</b>	<b>Patient Movements</b>	<b>5%</b>		
3.2.1	All Patient moves pursuant to this Service Level Specification will be responded to no later than 15 minutes after the time required by Trust staff.	5%	Any failure to complete Patient moves pursuant to this Service Level Specification no later than 15 minutes after the time required by Trust staff.	Measurement by Monthly report by Concessionco and Trust audit.  Performance Measurement is the number of Patient moves pursuant to this Service Level Specification completed no later than 15 minutes

				after the time required by Trust staff as a percentage of all Patient moves completed in the same reporting period.  Rectification Period is 15 minutes.  Threshold 100%
<b>3.3</b>	<b>Emergencies</b>	<b>5%</b>		
3.3.1	All Emergencies will be responded to in accordance with the terms of this Service Level Specification subject to making safe the current task.	5%	Any failure to respond to Emergencies in accordance with the terms of this Service Level Specification.	Measurement by Monthly report by Concessionco and Trust audit.  Performance Measurement is that one or more failures to respond in accordance with the SLS in any Month will result in a Performance Standard Percentage for that Month of 0%.  Threshold 100%.
<b>3.4</b>	<b>Preparation of Rooms</b>	<b>2%</b>		
3.4.1	Preparing rooms and arranging furniture and equipment for meetings, training sessions and presentations as required by the Trust and so that the prepared room is ready for the Trust's use at least 30 minutes before the required time, provided that a	2%	Any failure to prepare rooms and arrange furniture and equipment for meetings, training sessions or presentations as required by the Trust such that the prepared room is ready for the Trust's use at least 30 minutes before the required time.	Measurement by Monthly report by Concessionco and Trust audit.  Performance Measurement is the number of requests for preparing rooms and arranging furniture and equipment for meetings, training sessions and presentations carried out

	minimum of 4 hours notice has been given.				as required by the Trust and so that the prepared room is ready for the Trust's use at least 30 minutes before the required time as a percentage of all similar requests performed in the same reporting period.  Rectification Period is 30 minutes.  Threshold 100%.
<b>3.5</b>	<b>Security</b>				Measurement by Monthly report by Concessionco and Trust audit.
3.5.1	Concessionco shall lock external doors and windows of the Facility at the times and in accordance with the regime agreed with the Trust.	5%		Any failure to carry out a lock up procedure at the times and in accordance with the regime agreed with the Trust.	Performance Measurement is the number of lock up procedures carried out at the times and in accordance with the regime agreed with the Trust as a percentage of the number of lock up procedures required <sup>3</sup> in the monitoring period.  Rectification Period is 1 hour.  Threshold 100%.
<b>3.6</b>	<b>Medical Records</b>	5%			Measurement by Monthly report by Concessionco and Trust audit.
3.6.1	Concessionco to collect and deliver medical records at the agreed times.	5%		Any failure to collect or deliver medical and X-ray records within the agreed timescales.	

				<p>Performance Measurement is the number of occasions medical and X-ray records collected or delivered within the agreed timescales as a percentage of the number of completed requests within the same reporting period.</p> <p>Rectification Period is 30 minutes.</p> <p>Threshold 100%.</p>
<b>3.7</b>	<b>Waste Segregation &amp; Handling</b>	<b>8%</b>		<p>Measurement by Monthly report by Concessionco and Trust audit.</p> <p>Performance Measurement is the number of occasions on which waste is not removed within the specified timescales expressed as a percentage of all waste moves routinely conducted in that same reporting period.</p> <p>Rectification Period is 1 hour.</p> <p>Threshold 100%.</p> <p>Measurement by Monthly report by</p>
3.7.1	Removal of Waste from wards and departments in accordance with the terms of this Service Level Specification.	4%	Any failure to remove Waste from wards and departments in accordance with the terms of this Service Level Specification.	
3.7.2	Waste Segregation Receptacles	4%	Any attributable failure to observe the waste segregation protocol in accordance with Trust policy.	

				<p>Concessionco and Trust audit.</p> <p>Performance Measurement is any clear and attributable failure to comply with the agreed policy within the measurement period.</p> <p>Rectification Period is NIL</p> <p>Threshold 100%.</p>
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SOUTH GLASGOW UNIVERSITY HOSPITALS NHS TRUST

MEDICINE FOR THE ELDERLY UNIT

ESTATE MAINTENANCE SERVICE

**1 Scope of Service**

- 1.1 Concessionco will provide an estates maintenance service to provide a safe Facility and secure environment that is capable of being used by the Trust for the intended purpose for the delivery of Healthcare.
- 1.2 To enable this objective to be achieved, Concessionco will operate both planned and reactive maintenance systems and a Building Management System (BMS)..
- 1.3 The service will be provided by a core service comprising an appropriate mix of technicians, craftsmen and semi-skilled staff, supplemented by external contractors as necessary
- 1.4 The estates maintenance service will generally operate from 08.00 hours to 17.00 hours, Monday to Friday. An emergency service outside these hours will be provided 365 (6) days per year (on-call)

**2 Trust Obligation**

The Trust undertakes to exercise its best endeavours at all times to ensure that all faults and damage are reported without delay to Concessionco using the agreed reporting system. The Trust will ensure that any parties employed by, or on behalf of, the Trust to carry out work, on or in the Facility, will comply with the Permit to Work system in operation by Concessionco

**3 Standards of Service**

- 3.1 In providing the agreed service standards contained within the Service Level Specification (SLS), Concessionco will comply with the following standards
  - 3.1.1 All staff will be courteous, polite and professional in the execution of their duties.
  - 3.1.2 All staff will receive appropriate training, instruction and supervision to enable them to perform their tasks to the required level of competency
  - 3.1.3 All equipment required to provide any element of service will insofar as is practicable be maintained in a safe and hygienic manner.

- 3.1.4 Systems of communication will be established with the nominated Trust representatives to establish all Estates requirements ,which will be regularly reviewed and maintained
- 3.1.5 All Trust and Concessionco policies and procedures will be made available to all staff to enable provision of service in accordance with the service level specifications.
- 3.1.6 Concessionco will work with the Trust representatives to use all reasonable means to minimise disruption to routine operation of the Trust functions in the building, whilst routine and reactive maintenance tasks are undertaken

## 3.2 Specific Standards of Operation

### 3.2.1 Maintenance Team

- a) Concessionco will have a site based maintenance team of skilled staff to provide this service. To support this team, Concessionco will establish contracts with all necessary external companies who supply specialist services
- b) The Estates Maintenance service will operate between the hours of 08.00 hours to 17.00 hours Monday to Friday. A System will be established for emergency or priority events outwith the core hours only, as defined in the Service Level Specification (SLS)

### 3.2.2 Compliance with Regulations / Document Control

- a) All aspects of the Estates Maintenance service provision, whether provided by the site based team or a sub-contractor, will be provided in compliance with all the relevant Health and Safety regulations and guidance
- b) To assist this process, Concessionco will retain an up-to-date and easily accessible library, containing the following:
  - Copies of all relevant Health and Safety regulations
  - Risk assessments
  - Statutory compliance records
  - Health Technical Memorandum
  - Hospital Building Notes



- Safety Action Bulletins

- c) In addition to the above information, Concessionco will retain relevant maintenance information stored adequately, to both aid maintenance planning and provide performance data to the Trust. Concessionco will also provide a Safety Plan and other information necessary to ensure compliance with the needs of the Department of Health and any other relevant Government Department. Concessionco will also undertake to provide the Trust with completed statutory and mandatory returns in accordance with the time-scales required by the Trust for submission to regulatory agencies.
- d) Both Concessionco and the Trust, undertake to circulate relevant technical notices and NHS guidance material which either party might receive and which are relevant to the other party and their obligations as soon as is reasonably practical.

### 3.2.3 Maintenance

- a) Concessionco will provide a maintenance service as described in the scope, It will include:-
  - Maintenance of the building fabric, mechanical and electrical services in the building and the site infrastructure.
  - Maintenance of agreed hard and soft landscaping, access roads, and car parking areas associated with the building.
  - Maintenance of the means of utilities from point of metering to the building.
  - Maintenance of fire and security systems fitted at the time of build or amended with the subsequent agreement of both parties.
- b) Both Planned Preventative Maintenance (PPM) and reactive maintenance will be provided by Concessionco. All reactive maintenance tasks are to be undertaken in accordance with the table at paragraph 3.2.7

- c) PPM will be undertaken during the hours of 08.00 hours to 17.00 hours, Monday to Friday. However in exceptional circumstances PPM may be undertaken outside of these hours if appropriate and agreed.
- d) The level of maintenance provided will ensure the Facility meets the availability criteria.

#### 3.2.4 Specialist Electrical Services

Concessionco will carry out Portable Appliance Testing (PAT) on all registered non-clinical portable electrical appliances made known by the Trust in accordance with guidance and maintain a register of such equipment. The Trust undertake to ensure that Concessionco are informed of all such equipment before it is taken into use. Medical equipment will be tested by the Trust. Concessionco shall not be responsible for the tracking the movement of equipment or for tracing it's whereabouts, and can only maintain that equipment that is in the location specified by the Trust.

#### 3.2.5 Grounds and Gardens Maintenance

- a) Concessionco will maintain and keep up agreed areas of external landscaping associated with the Facility.. The agreed areas of external landscaping are as described in Drawing No LS 3644/SG/1, Drawing No LS 3644/SG/2, Drawing No LS 3644/SG/3
- b) Work undertaken in this activity will be both in accordance with the agreed schedules and reactive nature
- c) Specific areas covered by this element of service will be as listed below:-
  - Hard landscaping, including paths, roads, car parks and street furniture
  - Soft landscaping
  - All external signs
  - Litter clearance
  - Snow and ice clearance and gritting of areas associated with the building, as required.

#### 3.2.6 Decoration

- a) Concessionco will undertake repairs to minor damaged areas of building decoration which, in the reasonable opinion of the Trust, have a significant cosmetic impact, on an ad-hoc basis. Work will commence within seven (7) working days of notification by the Trust. This will not include rectification of general deterioration and/or wear and tear in the appearance of surfaces, which will be Capital Replacement Fund works.
- b) The Trust undertakes to ensure that it's staff do not fix temporary signs, notices, pictures or other decoration to walls and other surfaces in any way which could damage the surface without the prior written consent of Concessionco.

### 3.2.7 Response Times

- a) The Estates team will respond to requests for reactive maintenance in accordance with the agreed response times as set out below, or as otherwise agreed:

<b>Category of situation</b>	<b>Normal hours 08.00 – 17.00 (Mon-Fri) (via service centre)</b>	<b>Out of hours 17.00 – 08.00 (weekend and bank holiday) (on-call)</b>
<i>Emergency</i>	Immediate	Immediate acknowledgement, and attend on-site within 1 hour at the latest, if required
<i>Very Urgent</i>	Within 30 minutes	Within 2 hours
<i>Urgent</i>	Within 2 hours	Within 4 hours
<i>Routine</i>	Within 3 working days	Within 3 working days

### Definitions

*Response Times* – The length of time taken from receiving notification, correctly reported, to the Service Centre to the time remedial action commences

*Emergency* – An event which creates an immediate and serious risk to life or to health and safety or to the integrity of the fabric of the building

*Very Urgent* - An event which if not rectified promptly is likely to give rise to an Emergency condition or which causes an immediate material disruption to the activities of the Trust

*Urgent* – An event which, if not rectified, is reasonably likely to give rise to material disruption to, the normal activities of the Trust

*Routine* – An event other than an event which is emergency or very urgent or urgent.

*Remedial Action* – May comprise some or all of the following actions:

- I.     **Make safe**
- II    Halt deterioration
- III   Notify Trust and / or other relevant agencies
- IV    Initiate rectification
- V     Advise Trust of rectification programme
- VI.   Meet availability criteria if breached

### 3.2.8 Fire Safety

The management of fire safety will be undertaken jointly in accordance with the Trusts own Policy and Procedures. For the avoidance of doubt, it should be noted that the statutory Nominated Officer for Fire, ('NOF'), will be a Trust officer. Concessionco will participate in routine tests and arrange for the inspection of the fire system as a maintenance task. For the avoidance of doubt Concessionco will be responsible for the shutting down and re-setting of alarms howsoever triggered during normal attendance hours. Outside normal hours Concessionco technical staff in co-operation with the Trust Response Team will silence and re-set alarms once authorised to do so by the NOF, or his nominated deputy.

Weekly testing of the fire alarm system will be conducted and the results recorded, in accordance with the Trust whole site policy.

# **SOUTH GLASGOW UNIVERSITY HOSPITALS NHS TRUST**

## **ESTATES SERVICE - PERFORMANCE TABLES**

	<b>1. PERFORMANCE STANDARD</b>	<b>2. SERVICE PERCENTAGE</b>	<b>3. PERFORMANCE CRITERIA</b>	<b>4. PERFORMANCE MEASUREMENT</b>
<b>1.0</b>	<b>STATUTORY COMPLIANCE</b>	<b>20%</b>		
<b>1.1</b>	<b>Health and Safety</b>	<b>15%</b>		
<b>1.1.1</b>	Concessionco will comply with all Legal Requirements (Building, Statutory and Health Guidance) and Trust Operational Policies relating to Health and Safety at all times.	15%	Any attributable material breach of the Legal Requirements or Operational Policies relating to health and safety that have the potential to cause harm or injury and prosecution.	Measurement by Monthly Report by Concessionco, Trust inspection report, incident / accident report, RIDDOR report and Health and Safety Executive action.  The Performance Measurement is that one or more attributable material breaches of the Legal Requirements or Operational Policies relating to Health and Safety in any Month will result in a Performance Standard Percentage for that Month of 0%.

					Rectification Period is NIL Threshold Percentage 100%.
<b>1.2</b>	<b>Insurance Examinations</b>	<b>5%</b>	<b>5%</b>	Any failure to carry out inspections of insurable Plant and Facility Equipment required by the Legal Requirements.	Measurement by Monthly Report by Concessionco and Trust Audit.  Performance Measurement is that one or more failures to carry out inspections of insurable Plant and Facility Equipment required by the Legal Requirements in any Month will result in a Performance Standard Percentage for that Month of 0%.  Rectification Period is NIL Threshold Percentage 100%.
1.2.1	Concessionco will comply with all Legal Requirements to ensure that the required inspections of insurable Plant and Facility Equipment are undertaken.				

	1. PERFORMANCE STANDARD	2. SERVICE PERCENTAGE	3. PERFORMANCE CRITERIA	4. PERFORMANCE MEASUREMENT
2.	<b>SYSTEMS &amp; SAFEGUARDS</b>	20%		
2.1	<b>Permit to work</b>	5%		
2.1.1	Concessionco shall establish and maintain a permit to work system for any person working within the Facility that requires such permits to be issued to comply with legal or Trust operational policies. <sup>4</sup>	5%	Any failure to establish and maintain a system for providing Estates and Maintenance Staff and authorised Contractors with the required work permits required by the Legal and operational requirements.	Measurement by Monthly Report by Concessionco and Trust Audit.  Performance Measurement is the number of occasions Estates and Maintenance Staff issued with work permits as a percentage of the number of occasions Estates and Maintenance Staff that should have been issued with work permits as determined by the Legal Requirements and Trust Operational Policies.  Rectification Period is NIL  Threshold Percentage 100%.

2.2	Training	2%		
2.2.1	All Estates and Maintenance Staff must have an appropriate training plan and must receive training in accordance with their training plan, such training to include security and fire training provided by the Trust.	2%	Any failure of a member of the Estates and Maintenance Staff to have an appropriate training plan and to receive training in accordance with their training plan.	<p>Measurement by Monthly Report by Concessionco and Trust Audit.</p> <p>Performance Measurement is the number of members of Estates and Maintenance Staff to have an appropriate training plan and to receive training in accordance with their training plan as a percentage of the total number of members of Estates and Maintenance Staff.</p> <p>Rectification Period is 1 week.</p> <p>Training Plan prepared - Threshold Percentage : 100%</p> <p>Training Plan executed - Threshold Percentage 95%.</p>



2.3	<b>Building and Energy Management Systems</b>	<b>5%</b>		
2.3.1	Building and energy management systems shall be established and maintained to monitor and control the environmental condition and energy usage of the Facility to ensure that Concessionco can provide the Trust with the agreed reports that the Trust requires in relation to the same at the agreed times.	5%	Any failure to establish and maintain building and energy management systems to monitor and control the environmental condition and energy usage of the Facility so that Concessionco can provide the Trust with the agreed reports that the Trust requires in relation to the same at the agreed times.	Measurement by Monthly Report by THL and Trust Audit.  Performance Measurement is the number of occasions Concessionco has provided the Trust with the agreed reports at the agreed time as a percentage of all similar and related reports to be provided by Concessionco.  Rectification Period is 4 days for Energy Management System and 7 days for Building Management System.  Threshold Percentage 100%.
2.4	<b>Service Centre</b>	<b>4%</b>		
2.4.1	Establish and maintain the [Service Centre] in accordance with the provisions of this Service Level Specification.	4%	Any failure to establish and maintain the Service Centre in accordance with the provisions of this Service Level Specification.	Measurement by Monthly Report by Concessionco and Trust Audit.  Performance Measurement is [the amount of time that the

				Service Centre was available for use by the Trust as a percentage of the amount of time that the Service Centre should have been available for use by the Trust] as set out in this Service Level Specification.
				Rectification Period is 4 hours. Threshold Percentage 95%.

2.5	Record Keeping	2%		
2.5.1	All agreed records required for any compliant aspects of the Estates and Maintenance Services will be maintained up to date and be available for audit by the Trust at all times subject to at least one Business Day's notice of intention to audit, Concessionco or its sub-contractors to be invited to attend the audit to provide guidance on location of material.	1%	Any failure to maintain the agreed required records up to date.	Measurement by Monthly Report by Concessionco and Trust Audit.  Performance Measurement is the number of agreed required records maintained up to date as a percentage of all agreed required records.  Threshold Percentage 95%.
2.5.2	Selection, appraisal and other appropriate records will be maintained up to date for all Estates and Maintenance Staff	1%	Any failure to maintain up to date records for each member of the Estates and Maintenance Staff.	Measurement by Monthly Report by Concessionco and Trust Audit.

	including vetting (in accordance with the provisions of Clause 29A and 29D of this Agreement) as required			Performance Measurement is the number of agreed required records maintained up to date as a percentage of all agreed required records.  Threshold Percentage 95%.
<b>2.6</b>	<b>Quality Monitoring System</b>	<b>2%</b>		
2.6.1	Completion of standard documentation and timely availability of individual reports and monthly returns to the Trust.	2%		Measurement by Monthly Report by Concessionco and Trust Audit.  Performance Measurement is the number of agreed required records maintained up to date as a percentage of all agreed required records.  Rectification Period is 24 hours.  Threshold Percentage 100%.
	<b>1. PERFORMANCE STANDARD</b>	<b>2. SERVICE PERCENTAGE</b>	<b>3. PERFORMANCE CRITERIA</b>	<b>4. PERFORMANCE MEASUREMENT</b>
<b>3.</b>	<b>EMERGENCY SERVICE DELIVERY</b>	<b>60%</b>		
<b>3.1</b>	<b>Urgent and Routine Reactive</b>	<b>20%</b>		

	<b>Breakdown Maintenance</b>			
3.1.1	All Emergency, Very urgent, Urgent and Routine reactive breakdown Maintenance requests will be responded to within the agreed times as set out in this Service Level Specification after the failure or want of repair is reported.	20%	Any failure to respond to Emergency, Urgent or Routine requests for reactive breakdown Maintenance within the agreed timescales as set out in this Service Level Specification.	<p>Measurement by Monthly Report by Concessionco and Trust Audit.</p> <p>Performance Measurement is the number of Emergency, Very urgent, Urgent or Routine requests for reactive breakdown Maintenance responded to within the agreed timescales as set out in this Service Level Specification after the failure or want of repair is reported as a percentage of all Emergency, Very Urgent, Urgent and Routine requests for reactive breakdown Maintenance made by the Trust in the monitoring period.</p> <p>Rectification Period is nil for emergency tasks, 1 hour for Very Urgent tasks, 4 hours for urgent tasks and 2 working days for routine tasks.</p> <p>Threshold Percentage 100%.</p>

3.2	<b>Grounds Maintenance</b>	<b>10%</b>		
3.2.1	Concessionco will ensure that the Grounds are Maintained in accordance with the agreed frequencies and standards as set out in this Service Level Specification.	10%	Any failure to maintain the Grounds in accordance with the agreed frequencies and agreed standards as set out in this Service Level Specification.	Measurement by Monthly Report by Concessionco and Trust Audit.  Performance Measurement is the number of agreed Grounds maintenance tasks carried out to the agreed standards as set out in this Service Level Specification as a percentage of the number of agreed Grounds maintenance tasks that should have been carried out.  Rectification period 1 week  Threshold Percentage 100%.
3.3	<b>Scheduled Maintenance and Planned Preventive Maintenance Programmes.</b>	<b>30%</b>		
3.3.1	Concessionco will ensure that the Internal and External fabric of the building and its associated Services are Maintained in accordance with the agreed frequencies and standards as set	20%	Any failure to maintain the fabric of the building in accordance with the agreed frequencies and agreed standards as set out in this Service Level Specification.	Measurement by Monthly Report by Concessionco and Trust Audit.  Performance Measurement is the number of agreed Condition Maintenance tasks carried out to the

	out in this Service Level Specification.			agreed standards as set out in this Service Level Specification as a percentage of the number of agreed Condition Maintenance tasks that should have been carried out.  Rectification period 1 month Threshold Percentage 100%.
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	1. PERFORMANCE STANDARD	2. SERVICE PERCENTAGE	3. PERFORMANCE CRITERIA	4. PERFORMANCE MEASUREMENT
3.3.2	Concessionco will ensure that the use of energy and utilities is both efficient and cost effective.	5%	Failure to accurately monitor and record energy and utility consumption. Failure to track energy and utility consumption and highlight variance from predicted performance and/or from recognised performance standards.	Quarterly report detailing all energy and utility consumption and comparing actual performance against predicted performance.  Performance measurement is any unexplained pattern of consumption determined as unaccounted for energy/utility expressed as a percentage of total consumption in that quarterly period.  Rectification period 1 week Threshold 95%
3.3.3	Concessionco will maintain a planned preventative maintenance system sufficient to ensure the proper management and control of planned maintenance activities.	5%	Failure to provide and maintain a reliable system adequate for the prescribed purpose.	The performance measurement is the total number of days within the reporting period that the system is unavailable expressed as a percentage of the total days in that same period.  Rectification period 1 day Threshold 95%

## SOUTH GLASGOW UNIVERSITY HOSPITALS NHS TRUST

### MEDICINE FOR THE ELDERLY UNIT

#### HOUSEKEEPING SERVICES

##### **1 Scope of Service**

- 1.1 Concessionco will provide a responsive Housekeeping to ensure a clean and hygienic environment for all patients, visitors and staff
- 1.2 The Housekeeping team will consist of two main staff groups and will routinely operate from 07.00 hours to 19.30 hours, on 365(6) days of the year , unless specific departmental requirements are agreed otherwise, when the service requirements and the effect on standards will be agreed. The tasks of the Housekeepers will be :
  - a) to provide scheduled, reactive and isolation cleaning and related duties on all wards and departments in the building.
  - b) to provide specialist and heavy maintenance activities such as wall washing, entrance cleaning, carpet extraction and upholstery cleaning in accordance with a schedule, to be agreed between Concessionco and the Trust..

##### **2 General Standard of Service**

- 2.1 In providing the agreed service standards contained within the Service Level Specification, Concessionco will comply with the following standards:-
  - 2.1.2 All staff will be courteous and polite in all duties involving service delivery
  - 2.1.3 All staff will receive appropriate training, instruction and supervision to enable them to perform their tasks to the required level of competency
  - 2.1.4 All equipment required to provide any element of service subject to routine maintenance will be maintained in a hygienic manner at all times, subject to fair wear and tear, in accordance with the Trust Control of Infection procedures, as advised to Concessionco as advised by the Trust.
  - 2.1.5 All Trust and Concessionco Policies and Procedures will be made available to all staff to enable provision of service in accordance with Service Level Specifications



- 2.1.6 An appropriate supervisory structure consisting of trained personnel will be established and consistently reviewed to ensure all issues raised at Ward and Departmental level can be resolved speedily and efficiently
- 2.1.7 A suitable communication system will be established between the Housekeeping Supervisor and the Trust Control of Infection Officer to enable the Trust to check that all procedures and systems adopted are acceptable to the Trust
- 2.1.8 All cleaning chemicals and equipment required to provide the service to the agreed standards will be provided by Concessionco

## 2.2 *Specific Service Standards*

### 2.2.1 Categories of Cleaning

To clean to appropriate cleanliness standards, each area of the Facility will have an agreed schedule of tasks and frequencies, and will be categorised into one of three categories:

#### a) **Clinical Areas**

- Day Hospital
- Wards
- Out Patient Departments
- Radiology

#### b) **Non-Clinical Areas**

- Toilets
- Ward Kitchens
- Main public and circulation areas and thoroughfares
- Corridors and stairs
- Public and staff toilets
- On-call rooms
- Conference facilities

#### c) **Other Non-Clinical Areas**

- Offices
- Storage areas
- Staff changing facilities
- Plant areas
- Lifts

These categories will be used as a base from which cleaning standards and schedules will be developed and agreed for each area..

The frequency and level of cleaning will be determined and agreed between the Housekeeping Supervisor and the nominated Trust representative and shall be generally be in accordance with the benchmark standard. In the event of disagreement, the benchmark standard should be that which the Trust is currently providing.

#### 2.2.2 Ward Cleaning Service

Concessionco will provide a cleaning service to each ward. The time of cleaning for each ward will be agreed between the Housekeeping Supervisor and the Trust Representative, but will be provided between 07.00 hours and 19.30 hours

#### Departmental Cleaning Service

- 2.2.3 Concessionco will provide departmental cleaning services to all Trust Departments within the facility. This service will be provided between the hours of 07.00 hours and 19.30 hours, with specific location requirements, and schedules agreed between the Housekeeping Supervisor and the Trust Representative

#### 2.2.4 Materials Handling / Chemicals Supplies

- a) Concessionco will ensure systems are established to provide a timely, efficient and cost effective provision of all necessary cleaning chemicals and other related consumables. Concessionco will be responsible for monitoring usage and re-ordering as necessary.
- b) These chemicals will be contained within the Domestic Services Room (DSR) and an adequate supply will be maintained at all times. DSR's will be secured when not in use.
- c) Concessionco will ensure all staff required to handle chemicals as part of their routine duties will receive comprehensive training on the use and control of chemicals to comply with the COSHH Regulations 1994 and which comply with the Trust Control of Infection guidance.

- d) The Trust will procure and maintain such supplies of toilet rolls, soap, disposable towels, plastic bags, disposal bags and paper towels as are required to service those areas of the Facility occupied by the Trust. The Trust will also supply cleaning chemicals for use by Nursing staff in ward/clinic areas.

#### 2.2.6 Feminine Hygiene Services

Concessionco will ensure that adequate facilities are available for the proper disposal of feminine hygiene products

#### 2.2.7 Spillage of Body Fluids

In patient areas spillages of body fluids will be removed and cleaned by nursing staff to a state where risk of infection is negligible. Then Concessionco shall carry out a follow-up to normal standards of cleanliness. In public, non-patient areas, where the same standards of hygiene and cleanliness shall apply, such spillages should be reported to Concessionco without delay. During core hours Concessionco staff will remove the spillage and clean the affected area within 20 minutes of notification to the Service Centre.

For the avoidance of doubt, any spillage of body fluids in areas of the Facility that occur outside the Housekeeping core hours will be attended to by Trust staff, with Concessionco dealing with any remedial work in the next duty period.

#### 2.2.8 Cleaning/Routine/Schedules

The Housekeeping Supervisor will agree cleaning routines and schedules with the nominated Trust representatives for each specific location. All areas will be cleaned to the schedules agreed pursuant to clause 2.2.1. Concessionco will maintain a comprehensive file of all agreed schedules

All schedules will be arranged between the hours of 07.00 hours and 19.30 hours, and the frequency, timing and type of cleaning required will be dependent on the type of area to be cleaned and the frequency of use.

Schedules will be reviewed at a minimum frequency of annually or when significant changes to the location or operating mode necessitate a review

#### 2.2.9 Ad-hoc Cleaning Routines

- a) In addition to all routine scheduled cleaning, as described above,
- b) Concessionco will undertake reactive ad hoc cleaning tasks as requested by the Trust within agreed timescales.

- c) To enable the smooth provision of this service Concessionco will ensure a Service Centre operates during normal hours of operation (07.00 hours to 19.30 hours). Beyond these hours an emergency response service will be established in accordance with clause 3.2.7 a) in the Estates Service level specification.

Preparation of six beverage trolleys each day and washing beverage crockery six times a day. The Trust will wash the last beverage crockery each night. The Catering supplier is responsible for washing the crockery for the three main meals each day.

#### 2.2.10 Control of Infection

- a) Concessionco will comply with the Trust Control of Infection Policy.
- b) Liaison meetings will be established between the Housekeeping Supervisor and the Trust Control of Infection Officer to monitor compliance with the Trust policy.

#### 2.2.11. Heavy Duty Cleaning

Concessionco will undertake heavy duty cleaning tasks by agreement with the Trust. Heavy duty cleaning tasks will include :

- Wall washing
- Carpet cleaning
- Hard floor surface polish replacement

These tasks will be scheduled through the Service Centre.

#### 2.2.12 Window Cleaning Contract

- a) Concessionco will arrange and monitor a window-cleaning contract for external windows. Internal glazing in doors will be cleaned so as to be free from dust, smears and fingermarks.
- b) The schedule and frequency of internal glass clean will be as agreed between the Housekeeping Supervisor and the nominated Trust representative. External window cleaning will take place (4) four times per year

- c) If there are any ad-hoc individual requirements for window cleaning due to spillage etc., these will be the responsibility of the specific Ward/Departmental Housekeeper

#### 2.2.13 Pest Control

Concessionco will arrange and monitor a pest control contract in accordance with Trust Operating Policy. The specific requirements of this contract will be agreed between the Housekeeping Supervisor and the nominated Trust representative

### 3 Method of Obtaining the Service

3.1 In general, the Housekeeping service will be accessed by:

- Routine scheduled service
- As required ad-hoc requests (routine operating hours)
- In the event of a disaster recovery situation, on-call arrangements will be as per the Estates SLS.

All reactive ad-hoc or additional tasks should, in the first instance, be made through the Service Centre.

### 4 Corrective Action

- 4.1 Any corrective action that is identified by means of either routine operation or ad-hoc investigation will in the first instance be the responsibility of the Housekeeping Supervisor or duty representative to resolve
- 4.2 In all cases any actions required should be completed to the satisfaction of the originator within the terms of the rectification criteria time scale

## SOUTH GLASGOW UNIVERSITY HOSPITALS NHS TRUST

## HOUSEKEEPING SERVICE — PERFORMANCE TABLES

	1. PERFORMANCE STANDARD	2. SERVICE PERCENTAGE	3. PERFORMANCE CRITERIA	4. PERFORMANCE MEASUREMENT
1.0	STATUTORY COMPLIANCE	20 %		
1.1	Food Hygiene (Food Safety Act 1990 and subsequent regulations).	5%		
1.1.1	Concessionco will comply with all Food and Hygiene legislation.	5%	Any attributable breach of the Food Hygiene legislation.	Measurement by monthly report by Concessionco and supplemented by Environmental Health Officer and Trust Inspection Report.  Rectification period is nil.  Threshold is 100%  The Performance Measurement is that one or more attributable breaches in any month will result in a Performance Standard percentage for that month of 0%.

<b>1.2</b>	<b>Health and Safety (Health and Safety at Work Act and other relevant legislation.</b>	<b>10%</b>			
1.2.1	Concessionco will comply with all Health and Safety legislation and the Trust Operational Policies at all times.	10%		Any attributable material breach of the Health and Safety legislation and/or Operational Policies.	Measurement by Monthly report by Concessionco, Trust inspection report, incident/accident report and Health and Safety Executive action.  Rectification Period is NIL  Threshold 100%.  The Performance Measurement is that one or more attributable material breaches in any Month will result in a Performance Standard Percentage for that Month of 0%.
<b>1.3</b>	<b>Infection Control</b>	<b>5%</b>			
1.3.1	Concessionco will comply with all Operational Policies for Infection Control at all times in all activities undertaken.	5%		Any attributable material breach of Operational Policies for Infection Control.	Measurement by Monthly report by Concessionco and Trust inspection report,





				<p>number of members of Housekeeping Staff to have an appropriate training plan and to receive training in accordance with their training plan as a percentage of the total number of members of Housekeeping Staff.</p> <p>Rectification Period is 1 week.</p> <p>Training Plan prepared - Threshold 100%</p> <p>Training Plan executed - Threshold 95%.</p>
2.2	Quality Monitoring System	5%	<p>Any failure to provide complete, up to date records or reports within agreed time-scales that are necessary for the operation of the performance monitoring system.</p>	<p>Measurement by Monthly report by Concessionco and Trust audit.</p> <p>Performance Measurement is the number of agreed records maintained up to date as a percentage of all agreed required records.</p>

					Rectification Period is 24 hours. Threshold 100%.
<b>2.3</b>	<b>Record Keeping</b>	<b>5 %</b>			
2.3.1	All records required for any compliant aspects of the Housekeeping Services will be maintained up to date and be available for audit by the Trust at all times subject to one Business Day's notice of intention to audit, Concessionco or its sub-contractors to be invited to attend the audit to provide guidance on location of material.	3%		Any failure to maintain the required records up to date.	Measurement by Monthly report by Concessionco and Trust audit.  Performance Measurement is the number of required records maintained up to date as a percentage of all required records.  Threshold 95%.
2.3.2	Selection, appraisal and other appropriate records will be maintained up to date for all Housekeeping Staff including vetting (in accordance with the provisions of Clause 29B and 29D of this Agreement) as required.	2%		Any failure to maintain relevant and up to date records for each member of Housekeeping Staff.	Measurement by Monthly report by Concessionco and Trust audit. Performance Measurement is the number of Housekeeping



				Threshold 100%.
3.1.2	Urgent requests, clearly notified as such by the Trust, for Reactive Cleaning Services responded to within 20 minutes of notification to the Help Desk by the Trust within the core hours	10%	Any failure to respond in an appropriate manner to urgent requests for Reactive Cleaning Services within 20 minutes of notification by the Trust.	Measurement by Monthly report by Concessionco and Trust audit.  Performance Measurement is the number of urgent requests for Reactive Cleaning Services responded to within 20 minutes of notification by the Trust as a percentage of all urgent requests for Reactive Cleaning Services notified by the Trust.  Rectification Period is 20 minutes.  Threshold 100%.
3.1.4	External windows and glazing together with associated frameworks cleaned in accordance with the agreed frequencies and standards.	Ground floor, 1% First floor, 1%	Any failure to clean external windows and glazing together with associated frameworks in	Measurement by Quarterly report by Concessionco and Trust

			accordance with the agreed frequencies and standards.	audit. Performance Measurement is an agreed failure between the Trust and Concessionco. Rectification Period is 1 month. Threshold 100%.
3.2.				
3.2.1	Beverage Service & Washing Up Collection and washing up at ward level of crockery and cutlery should be commenced within 30 minutes of completion of beverage service.	7% 5%	Any failure to commence washing up of crockery and cutlery within 30 minutes of completion of beverage service.	Measurement by monthly report by Concessionco and Trust audit.  Performance measurement is the number of occasions on which washing up of crockery and cutlery was commenced within 30 minutes of collection and completed to the agreed standard as a percentage of the total number of
3.2.2				

				occasions on which washing up was required. Rectification period is 30 minutes. Threshold 100% Measurement by monthly report by Concessionco and Trust audit. Performance Measurement is the number of trolleys prepared within 30 minutes of the agreed time as a percentage of the total number of trolleys that should have been prepared. Rectification period is 30 minutes. Threshold 100%
			2%	Any failure to prepare beverage trolley within 30 minutes of the agreed time.
		Preparation of beverage trolleys for Inpatients and Day Hospital in accordance with the agreed schedule.		
<b>3.3</b>	<b>Waste Removal</b>		<b>10%</b>	
3.3.1	Removal of Waste from wards and departments in accordance with the terms of this Service Level Specification.		5%	Any failure to remove Waste from wards and departments in accordance with the terms of this
				Measurement by Monthly report by Concessionco and Trust

			Service Level Specification..	audit.
3.3.2	Waste Segregation Receptacles.	5%	Any attributable failure to segregate waste in accordance with Trust policy.	<p>Performance Measurement as a % of the uplift frequency for the Facility.</p> <p>Rectification period is 1 hour. Threshold 100%</p> <p>Measurement by monthly report by Concessionco and Trust audit.</p> <p>Performance Measurement is no receptacles inappropriately disposed of in the incorrect waste stream.</p> <p>Rectification period is nil.</p> <p>Threshold 100%</p>

## **SOUTH GLASGOW UNIVERSITY HOSPITALS NHS TRUST**

### **MEDICINE FOR THE ELDERLY UNIT**

#### **CATERING SERVICES**

#### **1. Scope of Service**

- 1.1 Concessionco will provide a catering service ('the Catering Service') for patients and visitors to the Trust. The constituent parts will be as follows:

Patient Meal Service.  
24 hour vending facilities.

- 1.2 Where the Trust or any Contractor employed by the Trust provide the Catering Service they will do so in accordance with this Scope, the general and specific standards of service set out herein and the standards set out in the Performance tables

- 1.3 The methods of access to the Catering services are as described in this scope.

#### **2. Standards of Service Delivery**

##### **2.1 General Service Standards**

In providing the Catering Service Concessionco will comply with the following basic standards.

All staff will be courteous, polite and professional in all duties involving service delivery.

All staff will receive appropriate training, instruction and supervision to enable them to perform their tasks to the required level of competency.

All equipment required to provide any element of service will be maintained in a hygienic manner.

The Catering Service will be delivered in accordance with an Assured Safe Catering programme.

Concessionco will be responsible for the sourcing, purchasing and storage of all provisions required for providing the Catering Service. The Trust will be responsible for the provision of dry goods to wards.



Operatives to be trained to Elementary Food Hygiene Certificate standard within 13 weeks of commencing employment and Supervisors and Managers will be so trained at the earliest opportunity.

## 2.2 Specific Service Standards

### 2.2.1 Menu Preparation and Control

#### Menu Cards

Menu cards will operate on a not less than 14 day menu cycle and each menu card will contain sections for completion by the patient for each meal each day.

Menus will be agreed between Concessionco and the Trust dietician with the object of achieving compliance with basic nutritional guidelines.

Menu cards will be presented in a format to be agreed between the parties.

All menus will be reviewed at six monthly meetings between Concessionco and designated Trust personnel

#### Modified Diets

Concessionco will ensure within the agreed menu arrangements that all reasonable requirements, in respect of modified diets are catered for as agreed between Concessionco and the Trust dietician. This may include a separate children's menu, soft diets, low salt and renal choices.

Concessionco will also ensure all reasonable requests in respect of ethnic meal requirements are appropriately catered for within the service provided.

The range and volumes of modified and ethnic dietary requirements are not anticipated to materially change from those required by the Trust at the outset of this agreement.

### 2.2.2 Patient Services

#### *Meal Service*

Meals will be provided three times per day (breakfast, lunch and dinner), 365 (6) days of the year. Special arrangements will be agreed with the Trust for Christmas Day and Boxing Day and a maximum of six (6) other special days.

#### *Ward Kitchens*

Ward kitchens will have shared use by Trust and Concessionco staff. Both parties undertake to keep and leave the kitchen clean, tidy and hygienic after their use. The ultimate responsibility for hygiene standards will rest with Trust staff.

### *Breakfast Service (0730 hrs - 0900 hrs)*

Patient Breakfast will be of continental style and will consist of a selection, but to include hot porridge, all provisions to be provided by Concessionco.

Individual Patient meals will be collected from the ward kitchen area by Trust staff for service by Trust staff.

Breakfast waste will be returned to the ward kitchen area by Trust staff to be disposed of by Concessionco staff. Trust staff will be responsible for the return of all crockery, cutlery and trays to the ward kitchen. Concessionco staff will tidy kitchens after the breakfast service.

### *Lunch and Dinner Service*

Lunch, between 1200 hrs - 1400 hrs (times to be agreed)

Dinner, between 1700 hrs - 1800 hrs (times to be agreed)

Lunch and Dinner will be selected daily by completion of a menu card by the patient, under the supervision of Trust staff, at breakfast for lunch and dinner on the same day. Completed Menu cards must be collected by the Catering Department from the Trust in accordance with agreed schedules. .

Trust staff are responsible for delivering the completed meal tray to the patient and for returning the used trays and food waste to the ward kitchen.

### *Ad-hoc Requests*

Ad-hoc requests for breakfast, lunch or dinner for patients admitted after menus have been completed will be dealt with on a daily basis by systems agreed between the Concessionco Catering Manager and the Trust. Between 0800 - 1800 hrs, ad-hoc requests will normally be met within 30 minutes of agreed time.

### *2.2.3 Staff and Visitor Services*

Concessionco will provide a staff and visitor catering service through the following arrangements.

Self service tea-bar facility (24 hours a day, 365 (6) days per year)  
Vending facilities

## **3. Methods of Obtaining the Service**

The Catering Service will be accessed by one of two methods:

routine planned services  
ad hoc services through the service centre.

Contained within the table below is the initial method of access for all key elements of service together with routine times of service availability.

Key Element	Times Available	Accessed By
Patient meal service	0730 hrs to 1930 hrs, daily	Routine service
Ad-hoc service	0800 to 1800 hrs, daily	Service centre
Functions bookings	0900 hrs to 1700 hrs, daily	Service centre

To support all of the above elements Concessionco will ensure a manager is contactable via the Service Centre for any emergencies which may arise.

Concessionco staff will have full access to Trust catering facilities on the same basis as Trust staff.

When no Catering staff are on duty, it will be the responsibility of Concessionco Housekeeping staff to ensure that the ward kitchens are clean and tidy.

## SOUTH GLASGOW UNIVERSITY HOSPITALS NHS TRUST

## CATERING SERVICE - PERFORMANCE TABLES

	1. PERFORMANCE STANDARD	2. SERVICE PERCENTAGE	3. PERFORMANCE CRITERIA	4. PERFORMANCE MEASUREMENT
1.0	STATUTORY COMPLIANCE	20 %		
1.1	Food Hygiene (Food Safety Act 1990 and subsequent regulations)	15 %		
1.1.1	Concessionco will comply with all Food Hygiene legislation.	15%	Any attributable material breach of the Food Hygiene legislation.	Measurement by Monthly report by Concessionco and supplemented by Environmental Health Officer and Trust inspection report.  Rectification Period is NIL.  Threshold 100%.  Performance Measurement is that one or more material attributable breaches in any Month will result in a Performance Standard Percentage for that Month of 0%.
1.2	Health and Safety (Health and Safety at Work Act and other relevant legislation)	5 %		
1.2.1	Concessionco will comply with all Health and Safety legislation and Trust Operational Policies at all times.	5%	Any attributable material breach of the Health and Safety legislation and/or Trust Operational Policies.	Measurement by Monthly report by Concessionco and Trust inspection report, incident/accident report, RIDDOR report and Health and Safety Executive action.

					Rectification Period is NIL.  Threshold 100%.  Performance Measurement is that one or more attributable material breaches in any Month will result in a Performance Standard Percentage for that Month of 0%.
					4. PERFORMANCE MEASUREMENT
2.0	1. PERFORMANCE STANDARD	2. SERVICE PERCENTAGE	3. PERFORMANCE CRITERIA		
	SYSTEMS AND SAFEGUARDS	25 %			
2.1	Training	10 %			
2.1.1	All Catering Staff must have an appropriate training plan and must receive training in accordance with their training plan.	10 %	Any failure of a member of the Catering Staff to have an appropriate training plan and to receive training in accordance with their training plan.	Measurement by Monthly report by Concessionco and Trust audit .  Performance Measurement is the number of members of Catering Staff to have an appropriate training plan and to receive training in accordance with their training plan as a percentage of the total number of members of Catering Staff.  Rectification Period is 1 week.  Training Plan preparation -Threshold 100%.  Training Plan execution - Threshold 95%	
2.2	Nutritional Standards	5 %			

2.2.1	Compliance with Department of Health nutritional guidelines on hospital catering.	5 %	Any failure to comply with Health Department of nutritional guidelines on hospital catering.	Measurement by Quarterly report by Concessionco and Trust audit.  Failure to satisfy the standard menu in terms of nutritional protein content.  The performance measurement is that menu as a percentage of the total menus within that menu cycle Rectification Period is NIL.  Threshold 100%.
2.3	<b>Quality Monitoring System</b> Completion of standard documentation and timely availability of individual reports and monthly returns to the Trust	5% 5%	Any failure to provide complete, up to date records or reports within agreed time-scales.	Measurement by Monthly Report by Concessionco and Trust Audit.  Performance Measurement is the number of agreed required records maintained up to date as a percentage of all agreed required records.  Rectification Period is 24 hours.  Threshold Percentage 100%.
2.4	<b>Record Keeping</b>	5 %	Any failure to maintain the required records up to date.	Measurement by Monthly report by Concessionco and Trust audit.  Performance Measurement is the number of required records maintained up to date as a percentage of all required records.  Threshold 95%.
2.4.1	All records required for any compliant aspects of the Catering Services will be maintained up to date and be available for audit by the Trust at all times subject to one Business Day's notice of intention to audit, Concessionco or its sub-contractors to be invited to attend the audit to provide	3 %		

2.4.2	<p>guidance on location of material.</p> <p>Selection, appraisal and other appropriate records will be maintained up to date for all Catering Staff including vetting (in accordance with the provisions of Clause ?? of this Agreement) as required.</p>	2%	Any failure to maintain up to date records for each member of Catering Staff.	<p>Measurement by Monthly report by Concessionco and Trust audit.</p> <p>Performance Measurement is the number of members of Catering Staff whose records are up to date as a percentage of the total number of members of Catering Staff.</p> <p>Threshold 95%.</p>
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	1. PERFORMANCE STANDARD	2. SERVICE PERCENTAGE	3. PERFORMANCE CRITERIA	4. PERFORMANCE MEASUREMENT
<b>3.0</b>	<b>SERVICE DELIVERY</b>	<b>55 %</b>		
<b>3.1</b>	<b>Patient Meal delivery</b>	<b>25%</b>		
3.1.1	Delivery of Patient Meals to the wards within the agreed times.	25 %	Any failure to deliver Patient Meals to wards within the agreed times.	Measurement by Monthly report by Concessionco and Trust audit.  Performance Measurement is the number of occasions Patient Meals delivered to wards within the agreed times as a percentage of the total number of occasions Patient Meals should have been delivered to wards.  Rectification Period is 30 minutes.  Threshold 100%
<b>3.2</b>	<b>Patient Meal choice</b>	<b>25%</b>		
3.2.1	Patient receives meal requested on menu card.	15 %	Any failure to provide meal selected.	Measurement by Monthly report by Concessionco and Trust audit.  Performance Measurement is the number of Patient Meals which are not the subject of valid complaints by the Trust as a percentage of all Patient Meals provided.  Rectification Period is 30 minutes.  Threshold 100%.
<b>3.2</b>	<b>Meal within agreed range</b>	<b>5%</b>		



<b>3.2.2</b>	<b>Meal appropriately presented and garnished.</b>	<b>5%</b>	<b>Any failure to present a meal appropriately.</b>	Measurement by Monthly report by Concessionco and Trust audit.  Performance Measurement is the number of Patient Meals which are not the subject of valid complaints by the Trust as a percentage of all Patient Meals provided.  Rectification Period is 30 minutes.  Threshold 98%.
<b>3.3</b>	<b>Meetings/Conferences and Meals for Special Occasions</b>	<b>5%</b>		Measurement by Monthly Report by Concessionco and Trust audit.
<b>3.3.1</b>	Delivery of food and/or drink for meetings, conferences and meals for special occasions at the times specified by this Service Level Specification and to the agreed specifications.	2%	Any failure to provide food and/or drink for meetings, conferences or meals for special occasions at the times specified by this Service Level Specification and to the agreed specifications.	Performance Measurement is the number of requests by the Trust for food and/or drink for meetings, conferences or meals for special occasions provided at the times required by this Service Level Specification and to the agreed Specification as a percentage of the number of such requests made by the Trust.  Threshold 95%.
<b>3.4</b>	<b>Provision of Vending Service</b>	<b>5%</b>		Measurement by Monthly Report by Concessionco and Trust audit.
<b>3.4.1</b>	Provision of a Vending Service on a 24 hours per day, 7 days per week basis to the agreed specification.	3%	Any failure to provide Vending Services at the times specified by this	

			Service Specification and to the agreed specifications.	Level	Performance Measurement is the number of days in the monitoring period the vending service is provided as required by the SLS as a percentage of the number of days in the monitoring period on which vending services should be provided..
					Rectification Period in accordance with agreed maintenance schedule..
					Threshold 100%.

**THE SCHEDULE- PART 22**  
**NOT USED**

**THE SCHEDULE- PART 23**  
**FORM OF LENDERS DIRECT AGREEMENT**

*[Note: to be inserted once agreed between MGD, LL, CLO]*

## THE SCHEDULE - PART 24

### *CHANGE ADJUSTMENTS*

<b>"Base Cost"</b>	means those financial projections in the form set out in the Financial Model as at the Execution Date;
<b>"Change"</b>	means Additional Work or change in the Legal Requirements for which the Trust is responsible arising from Clause 31 and 32;
<b>"Change Adjustments"</b>	means any adjustments to the Payment made in accordance with Availability, Clause 31 (Additional Work) and Clause 32 (Changes in Legal Requirements);
<b>"Costs"</b>	means a reasonable estimate of the proper and reasonable sums that Concessionco would be likely to incur excluding Performance Related Payments in implementing changes in accordance with Clauses 31 and 32 including without limitation any loss of revenue and any cost of financing and incorporating in such estimate all such information including quantities as the Trust may reasonably require to enable it properly to evaluate such costs;
<b>"Execution Date"</b>	means the last date of execution of this Agreement;
<b>"EquityIRR"</b>	means the real post tax blended rate of return to the holders of equity and subordinated debt in Concessionco as set out the base case financial model (16.8%);
<b>"Financial Model"</b>	means the Financial Model as defined in the Senior Loan Agreement as at the date of this Agreement.
<b>"Savings"</b>	means a reasonable estimate of the proper and reasonable sums that Concessionco would be likely to save excluding savings to the Performance Related Payment as a result of implementing a Change and incorporating in such estimate all such information including quantities as the Trust may reasonably require to enable it to properly evaluate such savings; Wherever this Agreement provides for a Change Adjustment the Compensation payable by the Trust or alteration to the Availability Payment shall be made in accordance with the following provisions of this Part 24 of the Schedule.

## **Financial Adjustments**

- 1.1 If a Change is made the Parties shall seek to agree the Costs or Savings, if any, consequential on implementing the Change (including any consequential costs). If the Parties cannot reach agreement on such matters prior to the implementation of the Change either Party shall be entitled to refer the matter for determination by the Dispute Resolution Procedure.
- 1.2 As an alternative to the operation of this Part 24, the Trust may pay cash to Concessionco in respect of the capital and revenue cost of the Change in question as such payment and costs may be agreed between the Parties and at the time agreed between the Parties.

## **Costs**

- 2 Where costs are agreed or determined in accordance with Paragraph 1 of this Part 24, adjustments shall be made to the Availability Payment in accordance with Paragraph 4 of this Part 24 to compensate Concessionco for the amount of such Costs.

## **Savings**

3. Where Savings are agreed or determined in accordance with Paragraph 1 adjustments shall be made to the Availability Payment in accordance with Paragraph 4 of this Part 24 to compensate the Trust for the amount of such Savings.

## **Adjustments to the Availability Payment**

4. (a) Where in accordance with Paragraphs 1.1, 1.2, 2 and 3 this paragraph applies the Parties shall re-run the Financial Model amended by the inclusion in the Base Case of the aggregate of the amounts of:-
  - (i) the Costs incurred or likely to be incurred by Concessionco and the date or dates when such costs were incurred or will be likely to be incurred and/or
  - (ii) the amount of the Savings as a saving in expenditure by Concessionco and the date or dates when such saving was achieved or will be likely to be achieved; and/or
  - (iii) such other expenditure or saving achieved by Concessionco through the effect of the Change Adjustment and the date or dates when such expenditure or saving was incurred or achieved will be likely to be incurred or achieved; and/or

- (iv) where Concessionco requires to borrow or otherwise raise additional finance to fund the relevant expenditure, such additional finance and the date when it will be likely to be borrowed or otherwise raised.

The Parties shall then seek to agree in relation to the Change such factor or factors as, when applied to the Availability Payment as from the next relevant Review Date or from such other date as the parties may agree following the date at which the amount of the relevant expenditure or saving is agreed or determined (or from such other date as the Parties may agree), will result in the following being identical:-

- (i) the Equity IRR derived from a further re-run of the so amended Financial Model using the same tax assumptions and substituting the Availability Payment multiplied by such factor or factors in place of the Availability Payment used in the Base Case; and
- (ii) the Equity IRR derived from the Base Case without such amendment and substitution;

and the following also being identical

- (iii) the Debt Service Cover Ratio derived from a further re-run of the so amended Financial Model substituting the Availability Payment multiplied by such factor or factors in place of the Availability Payment used in the Base Case; and
- (iv) the Debt Service Cover Ratio derived from the Base Case without such amendment and substitution;

and the following also being identical

- (v) the Loan Life Cover Ratio derived from a further re-run of the so amended Financial Model substituting the Availability Payment multiplied by such factor or factors in place of the Availability Payment used in the Base Case; and
- (vi) the Loan Life Cover Ratio derived from the Base Case without such amendment and substitution.

- (b) If the Parties fail to agree on such factor or factors or on the application of this Clause in any other way either Party shall be entitled to refer determination of the same to the Dispute Resolution Procedure.

5. Concessionco shall use all reasonable endeavours to mitigate Costs and maximise Savings in circumstances when this Part 24 applies.

6. **Debt Service Cover Ratio** and **Loan Life Cover Ratio** have the meanings respectively ascribed to them in the Senior Loan Agreement .
7. A Change Adjustment may be made at any time during a this Agreement and shall take effect from the following relevant Review Date on such other date as the parties may agree.



**THE SCHEDULE- PART 25**  
**REAL TERMINATION FEES**

[Note: to be inserted once Financial Model agreed]