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**PART 1 OF THE SCHEDULE**

**Section 1: Definitions**

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In this Agreement unless the context otherwise requires:

"5 Year Maintenance Plan" means the plan, to be prepared by or on behalf of Project Co, for any works for the maintenance or repair of the Facilities, including the renewal or replacement of plant or equipment as necessary, during each five year period for the duration of the Project Term, which shall be updated in accordance with the provisions of Clause 28.11;

"Abandons" means Project Co is wilfully carrying out no Works at the Site (where required to do so under this Agreement) for a continuous period in excess of thirty (30) Business Days or a cumulative period of sixty (60) Business Days in aggregate in any period of ninety (90) Business Days other than as a result of an event of Force Majeure, a Relief Event, a Compensation Event, a Trust Service Variation, a Trust Works Variation or a Relevant Change in Law or where no Works are programmed during the period;

"Accessibility Condition" has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Accommodation Schedule" means the schedule of accommodation set out in Appendix 1 to the Trust Construction Requirements;

"Actual Completion Date" means the date on which:

- (a) the Facilities are Available;
  - (b) the Trust's Construction Requirements have been met in all respects save in respect of any Snagging Matters; and
  - (c) Project Co has mobilised sufficient resources which are available to commence delivery of the Services;
- as such date shall be stated in the Certificate of Practical Completion or, in the event of dispute, as such date may be determined in accordance with Part 26 of the Schedule (*Dispute Resolution Procedure*);

"Actual Liability" has the meaning given in Clause 48.7(c)(i) (*Compensation on Termination*);

"Additional De Minimis Amount" has the meaning given in Clause 39.6(a) (*Changes in Law*);

"Adjusted Estimated Fair Value of the Agreement" has the meaning given in Section 6 of Part 23 of the Schedule (*Definitions*);

"Adjusted Highest Compliant Tender Price" has the meaning given in Section 6 of Part 23 of the Schedule (*Definitions*);

"Adverse Law" means any Change in Law which would if passed into Law:

- (a) have a material adverse effect upon the Trust's legal capacity (or obligation) to perform any of its material obligations in relation to the Project which are material to the interests of Project Co and/or its Funders; or
- (b) amend or repeal (without re-enactment, consolidation or replacement by Law having an equivalent effect) the National Health Service (Residual Liabilities) Act 1996 or the National Health Service (Private Finance) Act 1997,

provided that, in the circumstances referred to in paragraph (a), where a Change in Law would have the effect of transferring the legal capacity of the Trust in relation to such material obligations to a new entity (a "Trust Substitute"), the relevant Law shall not be an Adverse Law if:

- (i) either:
  - (aa) the provisions of the National Health Service (Residual Liabilities) Act 1996 and the National Health Service (Private Finance) Act 1997 (together the "Protective Legislation") apply to such Trust Substitute in full (as applied to the Trust as at the date of this Agreement); or
  - (bb) the relevant Law imposes obligations equivalent to the Protective Legislation on the Trust Substitute; and
- (ii) the relevant Law does not otherwise have any adverse material effect on the legal capacity or obligation of the Trust Substitute which affects (or could reasonably be expected to affect) the Trust Substitute's ability to perform any material obligations owed to Project Co and/or the Funders in relation to the Project which are material to the interests of Project Co and/or its Funders, when compared to the material obligations of the Trust under this Agreement;

"Affected Days"

has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Agreed Form"

means the form of that document approved by the Parties and signed or initialled for and on behalf of each Party for the purposes of identification;

"Agreement"	means this agreement together with the Schedule in 29 Parts annexed and signed as relative hereto as the same may be amended from time to time in accordance with the terms of this Agreement;
"Allowable Expenses"	has the meaning given in Clause 39.7 ( <i>Change in Law</i> );
"Ancillary Documents"	means the Construction Contract, the Service Contracts and the Performance Guarantees, all as the same may be amended or replaced from time to time;
"Annual Service Payment"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Approved Purposes"	shall have the meaning given in Clause 51.1 ( <i>Project Data</i> );
"Approved RDD Item"	means an item of Reviewable Design Data which has been returned or has been deemed to have been returned endorsed either "Level A - no comment" or "Level B – proceed subject to amendment as noted" by the Trust's Representative pursuant to the provisions of Clause 17.5 ( <i>Design, Construction and Commissioning Process</i> ) and Part 10 of the Schedule ( <i>Review Procedure</i> ) (provided that in the case of any item of Reviewable Design Data which has been returned or has been deemed to have been returned endorsed "Level B – proceed subject to amendment as noted" Project Co has taken account of the Trust's Representative's comments), as such item of Reviewable Design Data may be varied or amended from time to time in accordance with Part 22 of the Schedule ( <i>Variation Procedure</i> );

"Area Weighting Percentage"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Assigned Employee"	means any employee of Project Co or any Sub-Contractor who is wholly or mainly assigned to the provision of the Services;
"Associated Companies"	means, in respect of a relevant company, a company which is a Subsidiary, a Holding Company or a company that is a Subsidiary of the ultimate Holding Company of that relevant company, and in the case of Project Co shall include each of the Shareholders, and the terms "Associate" and "Associates" shall be interpreted accordingly;
"Authorised Person"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Availability Condition"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Availability Deduction Mechanism"	means the deduction mechanism set out in Paragraph 10 Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Available"	means not Unavailable and the term "Availability" shall be construed accordingly;
"Base Date"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Beneficiary"	has the meaning given in Clause 8.3 ( <i>Conduct of Claims</i> );

"Business Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of Glasgow;
"Capital Cost of the Facilities"	has the meaning given in Clause 39.7 ( <i>Change in Law</i> );
"Capital Expenditure"	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> );
"Category A Failure Event"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Category B Failure Event"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Category C Failure Event"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Category D Failure Event"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"CDM Regulations"	has the meaning given in Section 2 of Part 8 of the Schedule ( <i>Construction Matters</i> );
"Certificate of Practical Completion"	means the certificate to be issued by the Trust in accordance with Clause 22.12 ( <i>Completion Certificate</i> ) in the form set out in Part 28 of the Schedule ( <i>Certificates</i> );
"Cessation of Services"	means Project Co ceases, for whatever reason, to provide (either directly or through the Service Provider) the Services;
"Change in Control"	means any sale or other disposal of any legal, beneficial or

equitable interest in any or all of the equity share capital of a corporation (including the control over the exercise of voting rights conferred on that equity share capital or the control over the right to appoint or remove directors);

"Change in Law"

means the coming into effect or repeal (without re-enactment or consolidation) in Scotland of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in Scotland in each case after the date of this Agreement;

"Clinical Functionality"

- (a) the following matters as shown on the 1:200 scale General Arrangement Plan drawing number L (20)001 Revision A:
  - (i) the points of access to and within the Site and the Facilities;
  - (ii) the adjacencies between different Hospital departments;
- (b) the following matters as shown on the 1:200 scale Fire Strategy Plan drawing number (20)02 Revision B:
  - (i) the points of access to and within the Site and the Facilities;
  - (ii) the adjacencies between different departments within the Facilities; and
  - (iv) the adjacencies between rooms within the Hospital departments;
- (c) the quantity, description and areas (in square metres) of those rooms and spaces shown on the Accommodation Schedule;
- (d) the location and relationship of equipment, furniture, fittings and user terminals as shown on the 1:25 scale

room layout plans in respect of:

- (i) all bed and trolley positions;
  - (ii) internal room elevations; and
  - (iii) actual ceiling layouts; and
- (e) The location of and the inter-relationships between rooms within a department, but only insofar as each of the matters listed in (a) to (d) above relation to or affect Clinical Use;

"Clinical Services"	means management, responsibility, administration and carrying out of the clinical and medical services provided at the Facilities by the Trust from time to time and which are not services to be provided by Project Co to the Trust under this Agreement;
"Collateral Agreements"	means the Contractor's Collateral Agreement and the Service Providers' Collateral Agreements;
"Commencement Date"	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> );
"Commissioners"	has the meaning given in Clause 53.3 ( <i>VAT</i> );
"Commissioning End Date"	means the date by which the parties' commissioning activities are to be completed in accordance with the Final Commissioning Programme;
"Compensation Date"	has the meaning given in Section 6 of Part 23 of the Schedule ( <i>Definitions</i> );
"Compensation Event"	has the meaning given in Clause 41 ( <i>Delay Events</i> );



"Compensation Payment"	has the meaning given in Clause 48.6 ( <i>Compensation on Termination</i> );
"Competent Person"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Completion Date"	means 30 April 2004 as amended from time to time in accordance with Clause 41.1;
"Compliant Tender"	has the meaning given in Section 6 of Part 23 of the Schedule ( <i>Definitions</i> );
"Compliant Tenderer"	has the meaning given in Section 6 of Part 23 of the Schedule ( <i>Definitions</i> );
"Condition B"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Confidential Information"	shall have the meaning given in Clause 52.1 ( <i>Confidential Information</i> );
"Connected Load"	means the electrical load of the electrical equipment situated in the Facilities used in delivering the Trust Retained Services at the Facilities calculated by reference to the Trust's asset register and PAT testing register at the Actual Completion Date;
"Consents"	means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorisations required by Law, and all necessary consents and agreements

from any third parties (including, without limitation, any Planning Permission), needed to carry out the Project Operations in accordance with this Agreement;

"Construction Contract" means the design and build contract dated the same date as this Agreement between Project Co and the Contractor as amended from time to time in accordance with this Agreement;

"Construction Quality Plan" means the document at Section 7 of Part 8 of the Schedule (*Construction Matters*);

"Contamination" means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waster or residue (whether in solid, semi-solid or liquid form or a gas or vapour) and including without limitation genetically modified organisms;

"Contingent Funding Liabilities" means any contingent liabilities of the Shareholders in respect of financial obligations owed to Project Co and the Senior Funders under the Funding Agreement;

"Contract Day" has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Contract Month" means each calendar month in any Contract Year provided that the first Contract Month shall be deemed to begin on the date of execution of this Agreement and end on the last day of the same calendar month, and the last Contract Month shall begin on the first day of the month in which the Expiry Date occurs and shall end on the Expiry Date;

"Contract Year"	means each period of twelve (12) months duration commencing on 1 April in each calendar year and expiring on 31 March in the succeeding year, provided that the first Contract Year will be deemed to begin on the date of this Agreement and end on 31 March next falling, and the last Contract Year will be deemed to begin on 1 April of the year in which the Agreement ends and ends on the Expiry Date;
"Contracting Associate"	means the Contractor and any Service Provider;
"Contractor"	means Dawn Construction Limited engaged by Project Co to carry out the Works and any substitute design and/or building contractor engaged by Project Co as may be permitted by this Agreement;
"Contractor's Collateral Agreement"	means the collateral agreement between the Trust, Project Co and the Contractor in the form set out in Part 11 of the Schedule ( <i>Collateral Agreements</i> );
"Contractor's Site Manager"	means the manager to be appointed by the Contractor for purposes of supervision of all day-to-day activities on Site;
"Contractor's Site Rules"	means the Contractor's rules, applicable on Site to the Trust, Project Co, the Contractor and their respective sub-contractors and suppliers of every tier during the construction of the Facilities;
"Convictions"	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions and cautions (including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of

	the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);
"Corrupt Gift Termination Sum"	has the meaning given in Section 6 of Part 23 of the Schedule ( <i>Definitions</i> );
"Cumulative Allowable Expenses"	has the meaning given in Clause 39.7 ( <i>Changes in Law</i> );
"Custodian"	means Shepherd+ Wedderburn, Saltire Court, 20 Castle Terrace, Edinburgh EH1 2ET or any new custodian appointed by the Trust pursuant to this Agreement from time to time;
"De Minimis Amount"	has the meaning given in Clause 39.6(a) ( <i>Changes in Law</i> );
"Deduction Mechanisms"	means the Payment Mechanism;
"Deemed Liability"	has the meaning given in Clause 48.7(c)(ii) ( <i>Compensation on Termination</i> );
"Deemed New Agreement"	has the meaning given in Section 6 of Part 23 of the Schedule ( <i>Definitions</i> );
"Default Interest Rate"	means 2% over LIBOR;
"Defects"	means any defect or fault in the Works and/or the Facilities (not being a Snagging Matter) which occurs due to a failure by Project Co to meet the Trust's Construction Requirements and/or Project Co's Proposals or otherwise to comply with its obligations under this Agreement;

"Delay Event"	has the meaning given in Clause 41.3 ( <i>Delay Events</i> );
"Design Data"	means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing and/or operation of the Facilities;
"Design Quality Plan"	means the document at Section 7 of Part 8 of the Schedule ( <i>Construction Matters</i> );
"Direct Losses"	means, subject to the provisions of Clause 9.1 ( <i>Limits on liability</i> ), all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;
"Directive"	has the meaning given in Section 1A of Part 22 of the Schedule ( <i>Variation Procedure</i> );
"Disclosed Data"	means any Design Data and any other written information, data and documents (including, to avoid doubt, data and documents concerning the Title Deeds and any rights of any person in respect of the Site) made available or issued to Project Co or any Project Co Party in connection with the Project by or on behalf of the Trust (or any Trust Party) whether before or after the execution of this Agreement;
"Discriminatory Change in Law"	means any Change in Law the effect of which is to discriminate directly against:

- (a) hospitals whose design, construction, financing and operation are procured by a contract under the PFI (or any similar successor programme) in relation to other similar hospital projects; or
- (b) companies undertaking projects procured by contracts under the PFI (or any similar successor programme) in relation to other companies undertaking similar projects; or
- (c) the Hospital in relation to other hospitals; or
- (d) Project Co in relation to other companies,

save that:

- (i) such action shall not be a Discriminatory Change in Law where it is in response to any act or omission on the part of Project Co which is illegal (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
- (ii) such action shall not be deemed to be discriminatory solely on the basis that its effect on Project Co is greater than its effect on other companies; and
- (iii) a change in taxes or the introduction of a tax affecting companies generally or a change in VAT shall be deemed not to be discriminatory in any circumstances (to avoid doubt, such changes being given effect in accordance with Clause 53 (*Taxation*));

"Dispute"

has the meaning given in paragraph 1 of Part 26 of the Schedule (*Dispute Resolution Procedure*);

"Dispute Resolution Procedure"	means the procedure set out in Part 26 of the Schedule <i>(Dispute Resolution Procedure)</i> ;
"Distribution"	has the meaning given in Part 29 of the Schedule <i>(Refinancing)</i> ;
"District Valuer"	has the meaning given in Section 1 of Part 14 of the Schedule <i>(Service Requirements)</i> ;
"Economic Reinstatement Test"	has the meaning given in the Lenders' Direct Agreement;
"Equipment"	has the meaning given in Section 1 of Part 14 of the Schedule <i>(Service Requirements)</i> ;
"Equipment Adjustment Event"	means (i) that the Trust have increased or decreased the Connected Load within the Facilities; and (ii) such increase has lead to an increase or decreased in electricity consumptions greater than five percent of the Base Consumption for electricity as shown in the table at Clause 35.10.3 for that Contract Year;
"Equity IRR"	has the meaning given in Part 29 of the Schedule <i>(Refinancing)</i> ;
"Estate Services"	has the meaning given in Section 1 of Part 14 of the Schedule <i>(Service Requirements)</i> ;
"Estate Site"	has the meaning given in Section 1 of Part 14 of the Schedule <i>(Service Requirements)</i> ;

"Estimated Fair Value of the Agreement"	has the meaning given in Section 6 of Part 23 of the Schedule ( <i>Definitions</i> );
"Estimated Increased Maintenance Costs"	has the meaning given in Clause 28.7 ( <i>Maintenance</i> );
"Event"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Excusing Cause"	has the meaning given in Clause 8.7 ( <i>Excusing Causes</i> );
"Executive"	has the meaning given in Section 1A of Part 22 of the Schedule ( <i>Variation Procedure</i> );
"Exempt Refinancing"	has the meaning given in Part 29 of the Schedule ( <i>Refinancing</i> );
"Expert"	means the individual(s) appointed in accordance with Part 26 of the Schedule ( <i>Dispute Resolution Procedure</i> );
"Expiry Date"	means the date on which this Agreement will terminate in accordance with Clause 46.3 ( <i>Non-Default Termination</i> );
"Facilities"	means the Hospital, buildings and other facilities, together with all supporting infrastructure (including the Plant and the Group 1 Equipment) and amenities located on the Site as required to enable Project Co to comply with its obligations under this Agreement, all as the same may be varied, amended or supplemented from time to time in accordance with this Agreement;



"Failure Event"	has the meaning given in Section 1 of Part 18 of the Schedule <i>(Payment Mechanism)</i> ;
"Failure Event Category"	has the meaning given in Section 1 of Part 18 of the Schedule <i>(Payment Mechanism)</i> ;
"Failure Event Deduction"	has the meaning given in Section 1 of Part 18 of the Schedule <i>(Payment Mechanism)</i> ;
"Failure Event Deduction Percentage"	has the meaning given in Section 1 of Part 18 of the Schedule <i>(Payment Mechanism)</i> ;
"Fair Value"	has the meaning given in Section 6 of Part 23 of the Schedule <i>(Definitions)</i> ;
"Fast Track Dispute Resolution Procedure"	means the procedure referred to in paragraph 6 of Part 26 of the Schedule <i>(Dispute Resolution Procedure)</i> ;
"Financial Close"	has the meaning given in Part 29 of the Schedule <i>(Refinancing)</i> ;
"Final Commissioning Programme"	means the programme to be jointly developed and agreed by the Trust and Project Co in accordance with the provisions of Clause 22.2 <i>(Pre-Completion Commissioning and Completion)</i> ;
"Financial Model"	means the computer spreadsheet model for the Project incorporating statements of Project Co's cashflows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions,

calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model, as amended from time to time in accordance with the terms of Clause 37 (*Custody of Financial Model*), which shall be delivered to the Trust on the date of this Agreement whether embodied on tape, disk or other electronic storage medium together with the printed output from the Financial Model in the Agreed Form;

- "Fire Certificate" has the meaning given in Section 1 of Part 14 of the Schedule (*Service Requirements*);
- "First Party" has the meaning given in Clause 53.3 (*VAT*);
- "Force Majeure" has the meaning given in Clause 43 (*Force Majeure*);
- "Force Majeure Termination Sum" has the meaning given in Section 6 of Part 23 of the Schedule (*Definitions*);
- "Functional Area" has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);
- "Funder" means all or any of the persons who provide financing or funding in respect of the Project Operations under the Funding Agreements including the Governor and Company of the Bank of Scotland and, where the context so permits, prospective financiers or funders;
- "Funding Agreements" means all or any of the agreements or instruments to be entered into by Project Co or any of its Associates relating to

the financing of the Project Operations (including the Initial Funding Agreements and any agreements or instruments to be entered into by Project Co or any of its Associates relating to the rescheduling of their indebtedness or the refinancing of the Project Operations);

"Funding Shortfall"

has the meaning given in Section 1A of Part 22 of the Schedule (*Variation Procedure*);

"General Procedure"

has the meaning given in Section 1A of Part 22 of the Schedule (*Variation Procedure*);

"Good Industry Practice"

means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

"Government"

means the government of the United Kingdom;

"Ground Physical and Geophysical Investigation"

means the investigation of all the conditions of and surrounding the Site and of any extraneous materials in, on or under the Site (including its surface and subsoil) to enable the Facilities to be designed and constructed and the Works to be carried out with due regard for those conditions and the seismic activity (if any) in the region of the Site;

"Grounds & Gardens"

has the meaning given in Section 1 of Part 14 of the Schedule (*Service Requirements*);

"Grounds & Gardens Maintenance Service"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Group 1 Equipment"	means the equipment marked "1" in Column 4 of the table set out in Part 13 of the Schedule, such equipment to be provided and installed by Project Co in order to satisfy the Trust's Construction Requirements and Room Data Sheets;
"Group 2 Equipment"	means the equipment marked "2" in Column 4 of the table set out in Part 13 of the Schedule, such equipment to be provided by the Trust and installed by Project Co in order to satisfy the Trust's Construction Requirements and Room Data Sheets;
"Handback"	means the return of the Facilities by Project Co to the Trust on the Expiry Date in accordance with this Agreement;
"Handback Amount"	has the meaning given in Part 24 of the Schedule ( <i>Handback Procedure</i> );
"Handback Bond"	has the meaning given in Part 24 of the Schedule ( <i>Handback Procedure</i> );
"Handback Certificate"	means the certificate of confirmation that the Facilities comply with the Handback Requirements to be issued by the Trust in accordance with Part 24 of the Schedule ( <i>Handback Procedure</i> );
"Handback Procedure"	means the procedure for Handback described in Part 24 of the Schedule ( <i>Handback Procedure</i> );
"Handback Programme"	has the meaning given in Part 24 of the Schedule ( <i>Handback</i>

	<i>Procedure</i> );
"Handback Requirements"	has the meaning given in Part 24 of the Schedule ( <i>Handback Procedure</i> );
"Handback Works"	has the meaning given in Part 24 of the Schedule ( <i>Handback Procedure</i> );
"Head Lease"	means a lease in respect of the Site to be entered into between the Trust as landlord and Project Co as tenant pursuant to Clause 14 ( <i>Nature of Land Interests</i> ) in the form set out in Part 7 of the Schedule ( <i>Land Matters</i> );
"Head of Department"	has the meaning given in Paragraph in Paragraph 4 of Appendix 2 of Part 10 of the Schedule ( <i>Review Procedure</i> );
"Health and Safety Regime"	means the Food Safety Act 1990 (and associated regulations), the Health and Safety at Work Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act 1990, the Water Industry (Scotland) Act 2002 and any similar or analogous health, safety or environmental legislation in force from time to time;
"Health Board"	means a Health Board established under Section 2 of the National Health Service (Scotland) Act 1978 (or any successor to any such body or a body established with substantially the same powers and duties);
"Helpdesk"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );

"High Priority Quality Failure"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"H&S Conviction"	has the meaning given in Clause 44.1(f) ( <i>Project Co Events of Default</i> );
"Holding Company"	has the meaning given to it in Section 736 of the Companies Act 1985, as amended by Section 144 of the Companies Act 1989;
"Hospital"	means the building and other facilities to be built on the Site to form a hospital to be known as Stonehouse Hospital;
"Hospital Manager"	means Project Co's duty manager who shall be present at the Facilities in accordance with the Output Requirements;
"Immediate"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Indemnifier"	has the meaning given in Clause 8.3 ( <i>Conduct of Claims</i> );
"Indirect Losses"	has the meaning given in Clause 9.1 ( <i>Limits on Liability</i> );
"Infrastructure Services"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Initial Funding Agreements"	means <ol style="list-style-type: none"><li>1. the Senior Funders Agreement;</li><li>2. a floating charge granted by Project Co in favour of the Funder,</li></ol>

3. a standard security granted by Project Co in favour of the Funder,
4. a corporate guarantee by Pacific Shelf 1117 Limited and others in favour of the Funder,
5. an assignation in security by Project Co in favour of the Funder, and
6. the Lenders' Direct Agreement;

"Insurance Proceeds Account" means the account opened in the joint names of Project Co and the Trust opened pursuant to Clause 36.18 (*Application of Proceeds*);

"Insurances" means, as the context requires, all or any of the insurances required to be maintained by Project Co pursuant to this Agreement;

"Intellectual Property" means all registered or unregistered trade marks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered designs, the sui generis rights of extraction relating to databases, trade secrets and other confidential information or know-how;

"Intellectual Property Rights" means the Intellectual Property which (or the subject matter of which) is created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for the use by or on behalf of or for the benefit of Project Co) for the purposes of the design or construction of the Facilities, the operation, maintenance, improvement and/or testing of the Facilities or the conduct of any other Project Operation or otherwise for the purposes of this Agreement;

"Invoice Date"	has the meaning given in Section 6 of Part 23 of the Schedule <i>(Definitions)</i> ;
"IRR"	has the meaning given in Section 1A of Part 22 of the Schedule <i>(Variation Procedure)</i> ;
"Junior Debt"	has the meaning given in Section 6 of Part 23 of the Schedule <i>(Definitions)</i> ;
"Key Scope Documents"	has the meaning given in Clause 32.5 <i>(Trust Policies)</i> '
"Law"	means: <ul style="list-style-type: none"><li>(a) any applicable statute or proclamation or any delegated or subordinate legislation;</li><li>(b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</li><li>(c) any applicable guidance, direction or determination with which the Trust and/or Project Co is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to Project Co by the Trust; and</li><li>(d) any applicable judgement of a relevant court of law which is a binding precedent in Scotland,</li></ul> in each case in force in Scotland;
"Leases"	means the Head Lease and the Sub Lease;
"Lenders' Direct Agreement"	means the agreement to be entered into between the Trust, the Senior Funders and Project Co in the form set out in Part 6 of the Schedule <i>(Lenders' Direct Agreement)</i> ;



"Liaison Committee"	means the committee referred to in Clause 12 ( <i>Liaison</i> );
"Liaison Procedure"	means the procedure referred to in Clause 12 ( <i>Liaison</i> );
"LIBOR"	means the rate per annum determined by the Bank of Scotland to be the offered rate for six month sterling deposits in the London interbank market which appears on Telerate Page 3750 (or such other page as may replace that page on the Dow Jones Telerate service);
"Life Statement"	has the meaning given in Paragraph 1.1 of Part 24 of the Schedule ( <i>Handback Procedures</i> );
"Liquid Market"	has the meaning given in Section 6 of Part 23 of the Schedule ( <i>Definitions</i> );
"Losses"	means all losses, liabilities, claims, actions, damages, proceedings, demands, costs, charges, legal costs on an indemnity basis and expenses;
"Low Priority Quality Failure"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Maintenance"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Maintenance Schedule Submission Date"	means the date for submission of the Schedule of Programmed Maintenance under Clause 28.1;
"Maintenance Users"	has the meaning given in Section 1 of Part 14 of the Schedule

*(Service Requirements);*

"Maintenance Works"	means any works for maintenance or repair of the Facilities that are necessary to ensure that the Facilities are maintained in accordance with Output Requirements and Method Statements for grounds maintenance, estates maintenance, utilities services and pest control and that the Facilities comply with the Trust's Construction Requirements and Project Co's Proposals (including, without limitation, the renewal or replacement of any Plant or equipment) throughout the Project Term;
"Market Value Availability Deduction Amount"	has the meaning given in Section 6 of Part 23 of the Schedule <i>(Definitions);</i>
"Market Value of the Agreement"	has the meaning given in Section 6 of Part 23 of the Schedule <i>(Definitions);</i>
"Maximum Service Payment"	has the meaning given in Section 6 of Part 23 of the Schedule <i>(Definitions);</i>
"M.D.A."	has the meaning given in Section 1 of Part 14 of the Schedule <i>(Service Requirements);</i>
"Mechanical and Electrical Services"	has the meaning given in Section 1 of Part 14 of the Schedule <i>(Service Requirements);</i>
"Medical Contamination"	means a disease carrying agent which cleaning and prevention of infection or contamination techniques in use in accordance with Good Industry Practice and this Agreement cannot substantially prevent or cannot substantially remove with the

result that:

- (a) it is unsafe to admit patients or staff to the relevant area or to use the area for the purpose for which it is intended; and
- (b) the area cannot be made safe for the admission of patients or staff;

"Medium Priority Quality Failure"

has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Method Statements"

means the method of providing a Service as agreed between the Parties in accordance with Clause 27A of this Agreement as amended from time to time in accordance with Clause 40 (*Variation Procedure*) and Clause 27 (*The Services*);

"Minimum Agreed Availability Conditions"

has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Modelled Insurance Costs"

means the sum of TWENTY FIVE THOUSAND POUNDS STERLING (£25,000) index linked from 1 June 2003;

"Monitoring Output"

means:

- (a) to determine whether the Services are being delivered in accordance with Part 14 of the Schedule (*Service Requirements*);
- (b) to identify Service Failures;
- (c) to provide basis for changes in the Service Quality Plan;
- (d) to substantiate the Payment Report;
- (e) to demonstrate that Project Co is striving to improve the delivery of the Services; and
- (f) to provide an audit trail to satisfy the Trust's audit

requirements (both internal and external) from time to time;

"Minimum Deduction" has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Monthly Payment" means the monthly payment for the Facilities calculated in accordance with Paragraph 1 of Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"National Health Service Trust" or "NHS Trust" means a body established pursuant to Section 12A of the National Health Service (Scotland) Act 1978;

"New Agreement" has the meaning given in Section 6 of Part 23 of the Schedule (*Definitions*);

"New Project Co" has the meaning given in Section 6 of Part 23 of the Schedule (*Definitions*);

"New Service Provider Start Date" has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"NHS" means the National Health Service;

"NHS Requirements" means:  
(a) in relation to the Works, Health Building Notes and Health Technical Memoranda and such other requirements as are designated as NHS Requirements in the Trust's Construction Requirements; and

(b) in relation to the Project Operations (other than the Works), Health Building Notes, Health Technical Memoranda, all Executive Letters, Health Service Guidelines, Health Circulars of the NHS and any similar official requests, requirements and guidance having similar status for the time being in force, but only to the extent the same are published and publicly available or the existence and contents of them have been notified to Project Co by the Trust;

"NHS Specific Change in Law"

means any Change in Law which principally affects or principally relates only to the provision or operation of healthcare premises and any change in a NHS Requirement (other than any NHS Requirement which merely gives effect to Law generally and does not principally affect or principally relate to the provision or operation of the Hospital or healthcare premises);

"No Default Interest Rate"

has the meaning given in Section 6 of Part 23 of the Schedule (*Definitions*);

"Non-Available/Non-Availability"

has the meaning given in Part 18 of the Schedule (*Payment Mechanism*);

"Normal Working Hours"

has the meaning given in Paragraph 1 of Appendix 2 of Part 10 of the Schedule (*Review Procedure*);

"Operational Term"

means the period from the Actual Completion Date until the end of the Project Term;

"Other Items"

has the meaning given in Paragraph 1.1 of Part 24 of the

Schedule (*Handback Procedure*);

"Outline Commissioning Programme" means the programme setting out the standards, specifications, procedures and other requirements for the carrying out and completion of the commissioning activities of the parties set out in outline in Part 12 of the Schedule (*Outline Commissioning Programme*);

"Output Requirements" means the requirements of the Trust set out in Section 1 of Part 14 of the Schedule (*Service Requirements*) as amended from time to time in accordance with Clause 40 (*Variation Procedure*);

"Parties" means the parties to this Agreement and the term "Party" shall be construed accordingly;

"Payment Commencement Date" means the later of the Completion Date (or such earlier date as may be agreed by the parties in their absolute discretion) and the Actual Completion Date;

"Payment Mechanism" means the payment mechanism set out in Part 18 of the Schedule (*Payment Mechanism*);

"Payment Month" means each Calendar Month during the Service Period save for (i) the first Payment Month (which shall be the period beginning on the Payment Commencement Date and ending on the last day of the same Contract Month) and (ii) the final Payment Month (which shall begin on the first day of the Contract Month in which the Expiry Date occurs and end on the Expiry Date);

"Payment Report"	has the meaning given in Clause 35.2 ( <i>Invoicing</i> );
"Performance Guarantees"	means any guarantees to Project Co in respect of the Construction Contract and the Service Contracts;
"Performance Monitoring Period"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Performance Monitoring Report"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Performance Monitoring System"	has the meaning given in Part 16 of the Schedule ( <i>Performance Monitoring System</i> );
"Performance Parameters"	means the monitoring requirements set out in column 2 of Table 1 of Part 16 of the Schedule ( <i>Performance Monitoring System</i> );
"Performance Period"	means each successive period of 3 Contract Months the first such period commencing on the second Contract Month of the Contract Period;
"Personnel Records"	means complete personnel records including the job title, role, length of service, name, employee number, location, grade, date of birth, status, contracted hours, remuneration, qualifications, training record and pension entitlement and all such personnel records required to be maintained by Law, for each Project Co Employee;
"Permanent Repair"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );

"Pest Control Service"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Pests"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"PFI"	has the meaning given in Recital E;
"Planned Preventative Maintenance Programme"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Planning Approval"	means detailed planning consent for the Project issued by South Lanarkshire Council Reference: HM/03/0080;
"Planning Permission"	means any planning permission, approval of reserved matters, listed building consent, conservation areas consent and/or other consent or approval reasonably required from time to time for construction and/or operation of the Facilities (including without limitation for any Trust Additional Works Item or Variation to the Works and the Planning Approval);
"Plant"	means the infrastructure, building, fixed and immoveable equipment, and systems installed pursuant to this Agreement (excluding Equipment) and as replaced from time to time;
"Post Termination Service Amount"	has the meaning given in Section 6 of Part 23 of the Schedule ( <i>Definitions</i> );
"Pre-Employment Health Check Questionnaire"	means all such health questionnaires which have been carried out by Project Co and approved by the Trust in respect of any



Prospective Employee;

"Pre-Refinancing Equity IRR"	has the meaning given in Part 29 of the Schedule ( <i>Refinancing</i> );
"Prescribed Health Function"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Prescribed Operational Function"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Prescribed Operational Function Condition"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Procurement Legislation"	means the Public Works Contracts Regulations 1991, the Public Supply Contracts Regulations 1995, the Public Services Contracts Regulations 1993 and any other legislation or rules which may from time to time regulate the procurement activities of the Trust;
"Programme"	means the programme set out in Part 9 of the Schedule ( <i>The Programme</i> ) as revised and issued by Project Co (or on its behalf) from time to time pursuant to Clause 19 ( <i>Programme and Dates for Completion</i> );
"Programmed Maintenance"	means the maintenance work which Project Co is to carry out in accordance with the Schedule of Programmed Maintenance;
"Programmed Maintenance Information"	has the meaning given in Clause 28.3 ( <i>Maintenance</i> );

"Prohibited Act"	has the meaning given in Clause 54 ( <i>Corrupt Gifts</i> );
"Project"	has the meaning given in Recital B;
"Project Co Employee"	means any employee of Project Co or any Sub-Contractor who is assigned to the provision of the Services;
"Project Co Event of Default"	has the meaning given in Clause 44 ( <i>Project Co Events of Default</i> );
"Project Co Party"	means Project Co's agents and contractors (including without limitation the Contractor and the Service Providers) and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and "Project Co Parties" shall be construed accordingly;
"Project Co's Post-Completion Commissioning"	means Project Co's commissioning activities carried out in accordance with Clause 23.1 ( <i>Post-Completion Commissioning</i> );
"Project Co's Pre-Completion Commissioning"	means Project Co's commissioning activities to be carried out in accordance with Clause 22 ( <i>Pre-Completion Commissioning and Completion</i> );
"Project Co's Proposals"	means the proposals provided by ProjectCo in the Agreed Form as amended from time to time in accordance with Clause 40 ( <i>Variation Procedure</i> );
"Project Co's Representative"	means the person appointed by Project Co pursuant to Clause 11 ( <i>Representatives</i> );

- "Project Data" means:
- (a) all Design Data;
  - (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Services; and
  - (c) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Operations or this Agreement;
- "Project Documents" means the Ancillary Documents and the Funding Agreements;
- "Project Operations" means the carrying out of the Works, the carrying out of Project Co's Pre-Completion Commissioning and Project Co's Post-Completion Commissioning, the maintenance of the Facilities (including the renewal or replacement of Plant), the management and provision of the Services and the performance of all other obligations of Project Co under this Agreement from time to time;
- "Project Term" means the period commencing at midnight on the date of this Agreement and expiring at midnight on 30 April 2034 or on such other date as may be determined in accordance with this Agreement;
- "Proposal" means:
- (a) in the case of a bill, the bill being introduced by the Government or receiving the support of the Government at its second reading in the first House of Parliament into which it is introduced or the bill passing a second reading in the first House of Parliament into which it is introduced and/or the equivalent to the

above for the Scottish Parliament; or

- (b) in the case of subordinate legislation, the proposed statutory instrument or order being laid before Parliament in draft; or
- (c) in the case of a directive, regulation or decision of the European Union, its adoption;

"Prospective Employee" means any person proposed to be engaged or employed by Project Co or any Sub-Contractor in connection with the provision of the Services;

"Qualification Criteria" has the meaning given in Section 6 of Part 23 of the Schedule (*Definitions*);

"Qualifying Bank" has the meaning given in Part 29 of the Schedule (*Refinancing*);

"Qualifying Bank Transaction" has the meaning given in Part 29 of the Schedule (*Refinancing*);

"Qualifying Refinancing" has the meaning given in Part 29 of the Schedule (*Refinancing*);

"Qualifying Variation" has the meaning given in Section 1A of Part 22 of the Schedule (*Variation Procedure*);

"Quality Failure" has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Quality Failure Category" has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Quality Failure Category Percentage"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Quality Manager"	means the quality manager appointed pursuant to Clause 25 ( <i>Quality Assurance</i> );
"Quality Plans"	means the Design Quality Plan and Construction Quality Plan, prepared in accordance with Section 7 of Part 8 of the Schedule ( <i>Construction Matters</i> ), and the Services Quality Plan, prepared in accordance with Section 3 of Part 14 of the Schedule ( <i>Service Requirements</i> ), as required to be implemented by Project Co in accordance with Clause 25 ( <i>Quality Assurance</i> );
"Reactive Maintenance"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Re-commissioning Period"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Rectification"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Rectification"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Rectification Confirmation Notice"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );

"Rectification Costs"	has the meaning given in Section 6 of Part 23 of the Schedule <i>(Definitions)</i> ;
"Rectification Time"	has the meaning given in Section 1 of Part 18 of the Schedule <i>(Payment Mechanism)</i> ;
"Redundancy Payments"	has the meaning given in Section 6 of Part 23 of the Schedule <i>(Definitions)</i> ;
"Refinancing"	has the meaning given in Part 29 of the Schedule <i>(Refinancing)</i> ;
"Refinancing Gain"	has the meaning given in Part 29 of the Schedule <i>(Refinancing)</i> ;
"Relevant Change in Law"	has the meaning given in Clause 39 <i>(Change in Law)</i> ;
"Relevant Item"	has the meaning given in Paragraph 1.1 of Part 24 of the Schedule <i>(Handback Procedure)</i> ;
"Relevant Person"	has the meaning given in Part 29 of the Schedule <i>(Refinancing)</i> ;
"Relevant Tax Liability"	has the meaning given in Clause 48.7(c) <i>(Compensation on Termination)</i> ;
"Relevant Works Change in Law"	has the meaning given in Clause 39.6 <i>(Change in Law)</i> ;
"Relief"	has the meaning given in Clause 48.7(a) <i>(Compensation on Termination)</i> ;
"Relief Event"	has the meaning given to it in Clause 42 <i>(Relief Events)</i> ;

"Response"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Restricted Person"	means either:  (a) a person providing or proposing to provide healthcare services of a similar nature to those provided or contemplated by the Trust at the time in question; or  (b) any person who has a material interest in the production of tobacco products and/or alcoholic beverages;
"Return Date"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Review Procedure"	means the procedure set out in Part 10 Schedule ( <i>Review Procedure</i> );
"Reviewable Design Data"	means the Design Data listed at Section 5 of Part 8 of the Schedule ( <i>Construction Matters</i> );
"Room Data Sheets"	means the room data sheets in the Agreed Form to be updated by agreement between the Parties;
"RPI"	means the Retail Prices Index (All Items) as published by the Office for National Statistics from time to time, or failing such publication, such other index as the parties may agree, or as may be determined in accordance with Part 26 of the Schedule ( <i>Dispute Resolution Procedure</i> ), most closely to resemble such index;

"Safety Condition"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Schedule"	means the schedule in 29 Parts annexed and signed as relative to this Agreement;
"Schedule Small Works Rates"	means the schedule of small works rates provided by Project Co in terms of Paragraph 2 of Section 4 of Part 22 of the Schedule ( <i>Small Works</i> );
"Schedule of Programmed Maintenance"	means the programme referred to in Clause 28.1 ( <i>Maintenance</i> ) to be submitted to the Trust's Representative by Project Co in accordance with Part 10 of the Schedule ( <i>Review Procedure</i> );
"Second Party"	has the meaning given in Clause 53.3 ( <i>VAT</i> );
"Security Interest"	means any mortgage, charge, assignation or assignment by way of security, pledge, hypothecation, lien or other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same, or any agreement to sell or otherwise dispose of any asset on terms whereby such asset is or may be leased to or re-acquired by the person selling or disposing of it;
"Senior Debt Amount"	shall have the meaning given in Section 6 of Part 23 of the Schedule;
"Senior Funder"	means The Governor and Company of the Bank of Scotland and any permitted successor, assignee or transferee of The



Governor and Company of the Bank of Scotland provided the same is (a) a bank or other financial institution, and (b) a Qualifying Bank;

"Senior Funder's Agent" has the meaning given in Section 6 of Part 23 of the Schedule (*Definitions*);

"Senior Funders Agreement" has the meaning given in Section 6 of Part 23 of the Schedule (*Definitions*);

"Sensitive Information" has the meaning given in Clause 52.6 (*Confidentiality*);

"Service Contracts" means the contracts dated the same date as this Agreement between Project Co and each Service Provider, by which Project Co will procure the performance of the Services (as amended or replaced from time to time in accordance with this Agreement);

"Service Failure" has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Service Failure Points" has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Service Payment" has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Service Period" means the period from the Payment Commencement Date to the Expiry Date;

"Service Provider" means each of FES Limited and FES FM Limited or any other

person engaged by Project Co from time to time as may be permitted by this Agreement to procure the provision of the Services (or any of them);

"Service Providers' Collateral Agreements"

means the collateral agreements between the Trust, Project Co and each Service Provider in the form set out in Part 11 of the Schedule (*Collateral Agreements*);

"Service Request"

has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Service Response"

has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Service Response Time"

has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Service Standards"

has the meaning given in Section 1 of Part 14 of the Schedule (*Service Requirements*);

"Service Variation"

has the meaning given in Section 1A of Part 22 of the Schedule (*Variation Procedure*);

"Service Weighting Percentage"

has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Services"

means the services to be provided and/or procured by Project Co for the Trust in accordance with Part 14 of the Schedule (*Service Requirements*) as subsequently amended or adjusted in accordance with this Agreement;

"Services Quality Plan"	means the services quality plan in the Agreed Form;
"Service Users"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Shareholder(s)"	means a party listed in Part 27 of the Schedule ( <i>Project Co Information</i> ) as changed from time to time in accordance with this Agreement;
"Shareholders Agreements"	means the agreement or agreements (if any) between the Shareholders relating to Project Co, including any agreement relating to the subscription of equity (or other shareholder funding) by the Shareholders in Project Co;
"Site"	means the land made available to Project Co for the Project and shaded in red on the plan set out in Part 7 of the Schedule ( <i>Land Matters</i> );
"Site Conditions"	means the condition of the Site including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions;
"Site Fire Procedures Policy"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Small Works"	has the meaning given in Section 1A of Part 22 of the Schedule ( <i>Variation Procedure</i> );
"Snagging Matters"	means minor items of outstanding work (including in relation to landscaping) which would not materially impair the Trust's use and enjoyment of the Facilities or the carrying out by the Trust

of the Clinical Services or the performance of the Services by Project Co;

"Snagging Notice" means the notice to be issued by the Trust's Representative in accordance with Clause 22.13 (*Completion Certificate*);

"Special Health Board" means a special body established by the Scottish Ministers for the purposes of performing any functions which he may direct that body to perform on his behalf or on behalf of a Health Board;

"Specialist Services" has the meaning given in Section 1 of Part 14 of the Schedule (*Service Requirements*);

"Staff" has the meaning given in Section 1 of Part 14 of the Schedule (*Service Requirements*);

"Sub-Contractors" means any third party (including the Contractor and a Services Provider) who enters into any Sub-Contract;

"Sub-Contractor Losses" has the meaning given in Section 6 of Part 23 of the Schedule (*Definitions*);

"Sub-Contracts" means any contract entered into by or between Project Co, the Contractor and/or a Service Provider and other third parties in relation to any aspect of the Project Operations;

"Sub Lease" means the sub lease in respect of the Site to be entered into between the Trust as sub-tenant and Project Co as tenant pursuant to Clause 14 (*Nature of Land Interests*) in the form set out in Part 7 of the Schedule (*Land Matters*);

"Submitted Item"	has the meaning given in Paragraph 1 of Part 10 of the Schedule ( <i>Review Procedure</i> );
"Subsidiary"	has the meaning given to it in Section 736 of the Companies Act 1985, as amended by Section 144 of the Companies Act 1989;
"Suitable Substitute Contractor"	has the meaning given in Section 6 of Part 23 of the Schedule ( <i>Definitions</i> );
"Suitably Qualified Person"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Tender Costs"	has the meaning given in Section 6 of Part 23 of the Schedule ( <i>Definitions</i> );
"Tender Process"	has the meaning given in Section 6 of Part 23 of the Schedule ( <i>Definitions</i> );
"Tender Process Monitor"	has the meaning given in Section 6 of Part 23 of the Schedule ( <i>Definitions</i> );
"Temporary Alternative Accommodation"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Temporary Rectification"	has the meaning given in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
"Temporary Repair"	has the meaning given in Section 1 of Part 18 of the Schedule ( <i>Payment Mechanism</i> );

"Termination Date"	means the date on which termination of this Agreement takes effect in accordance with its terms;
"Third Party Shareholder"	means Mackenzie Investment (Stonehouse) Limited registered number SC48580 having their registered office at 130 St Vincent Street, Glasgow G2 5HF;
"Threshold Equity IRR"	has the meaning given in Part 29 of the Schedule ( <i>Refinancing</i> );
"Title Deeds"	means the title deeds to the Site which have been supplied to (and examined by) Project Co and with which Project Co is deemed by its execution of this Agreement to be satisfied with regard to their content, validity and completeness;
"Transfer Assistance Period"	means the period beginning on the date that the Project Co becomes aware that the Agreement will be terminated or gives or receives notices of termination of the Agreement, whichever is the earlier, and the date of the Cessation of Services;
"Transfer Regulations"	means the Transfer of Undertaking (Protection of Employment) Regulations 1981 (SI No. 1794);
"Trust Additional Works Confirmation"	has the meaning given in Section 1A of Part 22 of the Schedule ( <i>Variation Procedure</i> );
"Trust Additional Works Enquiry"	has the meaning given in Section 1A of Part 22 of the Schedule ( <i>Variation Procedure</i> );
"Trust Additional Works Item"	has the meaning given in Section 1A of Part 22 of the

Schedule (*Variation Procedure*);

- "Trust Additional Works Variation" has the meaning given in Section 1A of Part 22 of the Schedule (*Variation Procedure*);
- "Trust Default Termination Sum" has the meaning given in Section 6 of Part 23 of the Schedule (*Definitions*);
- "Trust Emergency Plan" means the Trust Emergency Plan in the agreed form;
- "Trust Events of Default" has the meaning given in Clause 45.1 (*Trust Events of Default*);
- "Trust Party" means any of the Trust's agents, contractors and sub-contractors of any tier and its or their directors, officers and employees and/or other healthcare providers or the Facilities with the authority of the Trust but excluding Project Co, any Project Co Party and statutory undertakers and utilities and "Trust Parties" shall be construed accordingly;
- "Trust Policies" means:
- (i) instructions or directives from the Scottish Executive or NHS Lanarkshire relating to policies to be observed by the Trust; and
  - (ii) any relevant rules, regulations and requirements of the Trust relating to the conduct of staff (including those in respect of security arrangements).
- "Trust Service Variation" has the meaning given in Section 1A of Part 22 of the Schedule (*Variation Procedure*);

"Trust Service Variation Enquiry"	has the meaning given in Section 1A of Part 22 of the Schedule ( <i>Variation Procedure</i> );
"Trust Works Variation"	has the meaning given in Section 1A of Part 22 of the Schedule ( <i>Variation Procedure</i> );
"Trust Works Variation Confirmation"	has the meaning given in Section 1A of Part 22 of the Schedule ( <i>Variation Procedure</i> );
"Trust Works Variation Enquiry"	has the meaning given in Section 1A of Part 22 of the Schedule ( <i>Variation Procedure</i> );
"Trust's Commissioning"	means the Trust's pre-completion commissioning activities to be carried out by the Trust in accordance with Clause 22 ( <i>Pre-Completion Commissioning and Completion</i> );
"Trust's Construction Requirements"	means the requirements of the Trust set out or identified in Section 3 of Part 8 of the Schedule ( <i>Construction Matters</i> ) as amended from time to time in accordance with the terms of this Agreement;
"Trust's Cost Share"	has the meaning given in Clause 39.7(d) ( <i>Changes in Law</i> );
"Trust's Post Completion Commissioning"	means the Trust's post-completion commissioning activities to be carried out by the Trust in accordance with Clause 23.1 ( <i>Post Completion Commissioning</i> );
"Trust's Representative"	means the person so appointed by the Trust pursuant to Clause 11 ( <i>Representatives</i> );
"TUPE Regulations"	means the Transfer of Undertakings (Protection of



Employment) Regulations 1981 (as amended) and the Acquired Rights Directive EC77/187;

"Unavailable" has the meaning given in Section 1 of Part 18 of the Schedule (*Payment Mechanism*);

"Uninsurable Risk" means a risk against which Project Co is required to insure by Clause 36.1 or 36.2 (*Insurance*) (other than any risks insured under any professional indemnity insurances) and for which, after the date of this Agreement:

- (a) insurance is not available within the worldwide insurance market with reputable insurers of good standing in respect of that risk; or
- (b) the terms offered in respect of that risk are such that the risk is not generally being insured against in the worldwide insurance market,

to the extent that Project Co and other prudent contractors in the health sector or in the same or substantially similar businesses would cease to operate such businesses in order to mitigate or manage the effect of that risk becoming uninsured and Project Co has demonstrated this to the Trust;

"Unprogrammed Maintenance Works" has the meaning given in Clause 28.8 (*Maintenance*);

"Unreasonable Act" means any act or omission which is contrary to any reasonable instruction, guidance or rules for the operation or management of the Facilities;

"Unsuitable Person" has the meaning given in Clause 30.6;

"Use Condition" has the meaning given in Section 1 of Part 18 of the Schedule

*(Payment Mechanism);*

"Use Parameters" has the meaning given in Section 1 of Part 18 of the Schedule  
*(Payment Mechanism);*

"Utilities" has the meaning given in Section 1 of Part 14 of the Schedule  
*(Service Requirements);*

"Utilities Management Service" has the meaning given in Section 1 of Part 14 of the Schedule  
*(Service Requirements);*

"Utility Adjustment" means the utility adjustment to be calculated in accordance  
with Clause 35.10 of this Agreement;

"Utility Company" has the meaning given in Section 1 of Part 14 of the Schedule  
*(Service Requirements);*

"Utility User(s)" has the meaning given in Section 1 of Part 14 of the Schedule  
*(Service Requirements);*

"Variation" has the meaning given in Section 1A of Part 22 of the  
Schedule *(Variation Procedure);*

"Variation Confirmation" has the meaning given in Section 1A of Part 22 of the  
Schedule *(Variation Procedure);*

"Variation Enquiry" has the meaning given in Section 1A of Part 22 of the  
Schedule *(Variation Procedure);*

"Variation Procedure" means the procedure set out in Part 22 of the Schedule

*(Variation Procedure);*

- "VAT" means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;
- "VAT Sum" has the meaning given in Clause 53.5 (VAT);
- "Viability Statement" means a case made by the Trust and accepted in writing by Lanarkshire Health Board (or any other commissioner from time to time of the Trust's healthcare services) and the Scottish Executive that the Facilities (or substantially all of them) are no longer needed on the grounds of the healthcare needs of the Trust's geographical area;
- "Warning Notice" has the meaning given in Clause 29.4 (*Monitoring of Performance*);
- "Works" means the design (including the preparation of all Design Data), construction, testing, commissioning and completion of the Facilities (including any temporary works) and the installation of Group 1 Equipment and Group 2 Equipment to be performed by Project Co in accordance with this Agreement (as varied, amended or supplemented from time to time in accordance with this Agreement);
- "Works Variation Capital Limit" has the meaning given in Section 1A of Part 22 of the Schedule (*Variation Procedure*); and
- "Works Variation Delay Limit" has the meaning given in Section 1A of Part 22 of the Schedule (*Variation Procedure*).

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## PART 1 OF THE SCHEDULE

### Section 2: Interpretation

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This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

1. The headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement.
2. Except where the context expressly requires otherwise, references to Clauses, Sub-clauses, paragraphs, sub-paragraphs, parts and the Schedule are references to Clauses, Sub-clauses, paragraphs, sub-paragraphs and parts of and the Schedule to this Agreement and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Agreement.
3. The Schedule to this Agreement is an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedule.
4. Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.
5. Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
6. The language of this Agreement is English. All correspondence, notices, drawings, Design Data, test reports, certificates, specifications and information shall be in English. All operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Agreement shall be in English.
7. References to any agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments to agreements or documents) a

- reference to that agreement or document as amended, supplemented, substituted, novated or assigned.
8. References to any Law are to be construed as references to that Law as from time to time amended or to any Law from time to time replacing, extending, consolidating or amending the same provided that the provisions of this paragraph shall be without prejudice to the operation of Clause 39 (*Changes in Law*) and Part 22 of the Schedule (*Variation Procedure*) which shall operate in relation to a Change in Law on the basis set out in this Agreement.
  9. References to a public organisation (other than the Trust) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Trust) shall include their successors and assignees.
  10. References to a deliberate act or omission of the Trust or any Trust Party shall be construed having regard to the interactive nature of the activities of the Trust and of Project Co and the expression shall exclude acts or omissions carried out in the ordinary course of the Trust's activities including delivery of facilities management services provided by the Trust or which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
  11. The words in this Agreement shall bear their natural meaning. The parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
  12. Reference to "parties" means the parties to this Agreement and references to "a party" mean one of the parties to this Agreement.
  13. In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
  14. All of Project Co's obligations, duties and responsibilities shall be construed as separate obligations, duties and responsibilities owed to the Trust and to be performed at Project Co's own cost and expense.

15. References to amounts or sums expressed to be "index linked" are references to amounts or sums in April 2003 prices which require to be adjusted whenever the provision containing the amount or sum is given effect in accordance with this Agreement to reflect the effects of inflation after that date. The adjustment shall be measured by changes in the relevant index published for that Contract Year as calculated in accordance with the following formula:

$$\frac{\text{Amount or sum in April 2003 prices} \times \text{RPI}_d}{\text{RPI}_0}$$

Where  $\text{RPI}_d$  is the value of the Retail Prices Index published or determined with respect to the month most recently preceding the date when the provision in question is to be given effect and  $\text{RPI}_0$  is the value of the Retail Prices Index in respect of April 2003.

16. Reference to a document being in the Agreed Form is a reference to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf.
17. Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of Business Days after a stipulated date or event the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.
18. Where this Agreement states that an obligation shall be performed "no later than" or "by" a prescribed number of Business Days before a base date or "by" a date which is a prescribed number of Business Days before a base date, the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.
19. The operation of the Act (referred to in Recital F of the Agreement) upon any Project Document shall not affect the rights or obligations of the parties under this Agreement.