



Agreement

between

**Lanarkshire Acute Hospitals
National Health Service Trust**

and

**NORTHGATE INFORMATION ON
SOLUTIONS UK LTD**

File Ref: LT5/22/3 MM/BU

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**Scottish Health Service CLO
Trinity Park House
South Trinity Road
Edinburgh EH5 3PQ.**

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AGREEMENT

between

LANARKSHIRE ACUTE HOSPITALS
NATIONAL HEALTH SERVICE TRUST
constituted pursuant to the National Health
Service and Community Care Act 1990
and having its headquarters at Bellshill
Maternity Hospital, North Road, Bellshill,
Lanarkshire
("the Trust")

and

[]
incorporated under the Companies Acts
(Registration Number []) and
having its registered office at Boundary
Way, Hemel Hempstead, Hertfordshire,
HP2 7HU
("Northgate")

WHEREAS:

- A. The Trust was established by the Lanarkshire Acute Hospitals National Health Service Trust (Establishment) Order 1998 ("the Order") in exercise of the powers conferred on the First Minister 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

in Part 5 of the Schedule) shall be performed as specified within Part 5 of the Schedule for each Service Element;

- (6) "Agreement" means this Agreement and the Schedule hereto including all specifications, plans, drawings and other documents which are relative to and expressly incorporated herein and such variations in writing as shall subsequently be agreed between the Trust and Northgate;
- (7) "Authorised Officer" shall mean the person or persons for the time being or from time to time duly appointed by the Trust and notified in writing to Northgate to act as the Trust representative for the purpose of the Agreement or, in default of such notification, the Trust;
- (8) "Availability Payment" shall be the amounts payable by the Trust to Northgate as shown in the Payment Profile;
- (9) "Change Control Procedure" means the method provided in Part 10 of the Schedule for variation to the Agreement;
- (10) "Charges" means the charges detailed in Part 6 of the Schedule to be paid by the Trust in accordance with the Payment Profile;
- (11) "Clause" means a clause of this Agreement;
- (12) "Commencement Date" means the latest date of execution of this Agreement;
- (13) "Confidential Information" means (i) all information designated as such by either party in writing; (ii) all information relating to the identity, condition or medical history of Patients of the Trust; and (iii) all information which relates to the business, affairs, prospects, proposals, financial position, trade secrets, know-how, personnel, customers and suppliers of either party except any such information which is made available from one party to the other without restriction;
- (14) "Consumables" means the consumables to be used in provision of the Services;
- (15) "Contract Period" means the period from the Commencement Date until termination of

this Agreement (howsoever occasioned);

- (16) "Data" means all data and information including Input and Output and computer records stored on the Systems and the Legacy System in machine readable form and information arising from or in connection with the provision of the Services;
- (17) "Default" shall have the meaning ascribed to it in Clause 24;
- (18) "Detailed Implementation Plan" means the detailed plan or plans to be agreed from time to time between the Trust and Northgate for the implementation of each Service Element in terms of Clause 8;
- (19) "Dispute Resolution Procedure" means the method for resolving disputes between the parties detailed in Part 11 of the Schedule;
- (20) "Equipment" means all equipment (excluding Software but including operating systems software and firmware) and other items used by Northgate from time to time during the period of the Agreement in providing the Services as specified in the Specification and as updated from time to time during the period of this Agreement in accordance with the provisions of this Agreement;
- (21) "First Notice of Default" shall have the meaning set out in Clause 24.3;
- (22) "Handover" means the cessation of the provision of the Services by Northgate and the commencement of the provision of services equivalent to the Services by a New Contractor;
- (23) "Implemented" means in respect of each Service Element successful completion of all aspects of implementation including successful completion of Acceptance Tests to the point where payment in respect of such Service Element in terms of the Payment Profile become due;
- (24) "Index" means the [Gross Domestic Product?] General Index of Retail Prices (excluding the effect of mortgage interest) prepared monthly by the Office for National Statistics in the United Kingdom or, if such index ceases to exist such other index as may be

Index to be agreed

- agreed between the Parties;
- (25) "Indexation" means an annual review of the Charges as provided in the Payment Profile;
- (26) "Implementation Plan" means the high level plan agreed between the Trust and Northgate for Implementation of each Service Element as contained in Part 3 of the Schedule as further expanded by the Outline Project Plan also contained in Part 3 of the Schedule;
- (27) "Input" means the Data (in eye readable or machine readable form) from time to time submitted to Northgate by the Trust for inputting on to the Legacy Systems or Systems by Northgate in terms of the Specification or inputted into the Legacy Systems or Systems by the Trust;
- (28) "Intellectual Property Rights" means United Kingdom and foreign patents, registered and unregistered design rights, applications for any of the foregoing and trade or business names, copyright and other similar rights;
- (29) "Invoicing Procedure" means the procedure for submission of invoices detailed in the Payment Profile;
- (30) "Key Personnel" means those personnel of Northgate identified in the management organisation chart for Northgate contained in Part 15 of the Schedule or specific personnel of Northgate agreed between Northgate and the Trust as being Key Personnel;
- (31) "LAN" means the local area network at the Trust Premises described Part 2 of the Schedule;
- (32) "Legacy Systems" means the systems owned or licensed by the Trust listed in Part 18 of the Schedule;
- (33) "Legislation" means any legislation and/or common law insofar as applicable to the Services or any part thereof including without limitation:-
- (a) any subordinate legislation; and
 - (b) any legislative act of the European Union or the Commission of the European Community which without further enactment has legal effect within the United Kingdom;

- (34) "Minimum Service Level(s)" means the lower limit of Service provision detailed in [] of the Payment Profile;
- (35) "New Contractor" means any person or entity who is awarded an agreement to provide services equivalent to the Services in place of Northgate (including the Trust or other National Health Service Entity in the case of the provision of such services being provided in-house);
- (36) "NHS" means National Health Service in Scotland;
- (37) "Northgate" means Northgate Information Services UK Limited and its permitted assignees and successors;
- (38) "Northgate's Asset List" means the detailed list of Equipment and Software used or utilised by Northgate (including details of all agreements between Northgate and Third Parties) in providing the Services as updated from time to time during the period of this Agreement;
- (39) "Northgate's Contract Director" shall mean the person or persons for the time being or from time to time duly appointed by Northgate and notified in writing to the Trust to act as Northgate's representative for the purpose of the Agreement or, in default of such notification, Northgate;
- (40) "Northgate's Software" shall mean all Software in which the Intellectual Property Rights are owned by Northgate and used by Northgate in the provision of the Services;
- (41) "Output" means the computer output on whatever medium resulting from processing the Data on the Legacy Systems or Systems;
- (42) "Payment Profile" means the profile of payment of Charges by the Trust to Northgate contained in Part 6 of the Schedule;
- (43) "Quarter" means the three months from the Commencement Date and each three months period thereafter throughout the Contract Period;

- (44) "PC" means a personal computer, laptop computer, handheld mobile PC unit or such other device as will enable the user to access the Services;
- (45) "Performance Monitoring System" means the system detailed in Part 12 of the Schedule for monitoring performance and availability of the Services and calculating Performance Payment Reductions and Non-Availability Payment Reductions;
- (46) "Performance Payments" means the amount payable by the Trust to Northgate as set out in the Payment Profile;
- (47) "Performance Requirements" means the performance requirements for the Services detailed in, the Specification and the Service Levels;
- (48) "Phase" means those stages of implementation of the Service Elements identified as such in the Implementation Plan and any Detailed Implementation Plan;
- (49) "Planned Implementation Date" means the date specified in each Detailed Implementation Plan by which the Service Elements to which that Plan refers shall have been Implemented by Northgate;
- (50) "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 of 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 by Northgate 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; or
 - (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;
- (51) "Relief Event" (e) means:-
 - (i) failure by a statutory undertaker, utility company, local authority or other like body to carry out works or provide services;
 - (ii) any failure or shortage of power, fuel, gas, water or other utilities or transport;
 - (iii) fire, explosion, lightning strike or flood;
 - (iv) any blockade or embargo falling short of Force Majeure;
 - (v) unexploded bombs;
 - (vi) any official or unofficial strike, lock-out, go-slow or other dispute other than those involving only employees of Northgate;
 - (vii) civil disorder, civil disturbance or protest action within the United Kingdom;
 - (viii) acts of terrorism or the use of threat of terrorism and the activity of the relevant

- authorities in dealing with such acts, use or threat;
- (ix) accident in the sea, in the air or on the land, articles falling from aircraft or the impact of satellites;
- (x) outbreak of infectious diseases or epidemic which causes major disruption to the Trust Premises
- (52) "Review Date" means the date specified in the Payment Profile in each year when the Charges shall be subject to review;
- (53) "Second Notice of Default" shall have the meaning set out in Clause 24.3;
- (54) "Service Levels" means the service levels for performance and availability of the Services detailed in Part 12 of the Schedule;
- (55) "Services" means the whole range of services detailed in Part 1 of the Schedule to be provided by Northgate using the Systems as provided by Northgate;
- (56) "Systems" means the suite of systems to be used by Northgate to provide the Services as the same may be updated and upgraded throughout the Contract Period. The Equipment and Software comprising the Systems are as detailed in Northgate's Asset List;
- (57) "Schedule" means the Schedule annexed and subscribed as relative hereto;
- (58) "Security Requirements" means the security requirements detailed in Part 8 of the Schedule;
- (59) "Service Credits" means the amount by which the Charges shall be reduced as a result of failure by Northgate to meet the performance requirements as provided in Clause 16.3;
- (60) "Service Elements" means each Service Element of Implementation of the Services as set out in the Implementation Plan;
- (61) "SMR" means Scottish Morbidity Records which are existing mandatory data requirements

or any other mandatory data requirements which may from time to time be issued by the Information and Statistics Division of the Common Services Agency as applicable to the National Health Service in Scotland (for example COPPISH);

- (62) "Software" means all software (including Northgate's Software and Third Party Software), operating systems, data base management system, compilers, utilities and other programmes and associated documentation, but excluding source programmes, used by Northgate in providing the Services throughout the period of this Agreement;
- (63) "Specification" means the description and specification of the Services contained in Part 1 of the Schedule;
- (64) "Sub-Contract" shall mean any contract or agreement or proposed contract or agreement between Northgate and any third party whereby that third party agrees to provide to Northgate the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof. For the avoidance of doubt the term "Sub-Contract" shall not be regarded as including any agreement between Northgate and any third party for the provision of equipment, facilities or services necessary for the general discharge of Northgate's business;
- (65) "Sub-Contractor" means any third party listed in Part 14 of the Schedule;
- (66) "Third Party" means any person, firm, company or entity other than Northgate or the Trust;
- (67) "Transition Period" shall have the meaning ascribed to it in Clause 25;
- (68) "Trust Data" means all data provided by or on behalf of the Trust to Northgate in relation to provision of the Services;
- (69) "Trust Premises" means those premises owned and operated by the Trust comprising Monklands Hospital, Monks court Avenue,

Airdrie, Hairmyres Hospital, East Kilbride; and Wishaw District General Hospital, [] at which or to which the Services shall be performed as detailed in the Specification;

- (70) "Trust Project Director" means the person or persons for the time being or from time to time duly appointed by the Trust and notified in writing to Northgate to act as the Trust's Representative for the purpose of this Agreement or, in default of such notification, the Trust;
- (71) "Trust Property" means any equipment owned by the Trust and used by Northgate in the provision of the Services;
- (72) "Trust Responsibilities" means the responsibilities of the Trust detailed in Part 13 of the Schedule;
- (73) "Trust" means Lanarkshire Acute Hospitals National Health Service Trust, its permitted assignees and its statutory successors whomsoever;
- (74) "TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 1982 (as amended);
- (75) "UK" means the United Kingdom;
- (76) "VAT" means Value Added Tax;
- (77) "Workstation Locations" means locations within the Trust Premises each equipped with such peripherals as are appropriate and necessary to access the Systems and the Services;
- (78) "Year" means each twelve months from Commencement Date;

2. INTERPRETATION

2.1 In the Agreement, unless there is something in the subjects or context inconsistent therewith:-

- (a) words importing the masculine include the feminine and words importing the neuter include the masculine and feminine;

(b) words importing the singular include the plural and vice versa;

- 2.2 Any reference to an Act of Parliament includes any modification, extension or re-enactment thereof for the time being in force.
- 2.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 2.4 References to Clauses, the Schedule and Annexes are, unless otherwise provided, references to clauses, schedules and annexes to this Agreement.
- 2.5 In the event and to the extent only of any conflict between the Clauses and the Schedule, the Clauses shall prevail.

3. POWER TO AGREE

- 3.1 Northgate warrants and represents to the Trust that it has requisite power to enter into and perform this Agreement and that all requisite consents and approvals therefor have been obtained and that there are no statutory provisions so far as Northgate should be aware as at the date of the Agreement which would conflict with the terms herein-contained.
- 3.2 Northgate hereby warrants that it has or will have full capacity to grant the rights and licences in favour of the Trust herein-contained.
- 3.3 Northgate hereby warrants and represents that it currently has or shall, prior to the commencement of the Acceptance Period for each Service Element, obtain all and any agreements (including Software Licences) as may be required with Third Parties, both for its own and for the benefit of the Trust to perform the obligations incumbent upon it as herein-contained and use all reasonable endeavours to obtain any and all agreements or

consents required from Third Parties to permit and enable the Systems to link into any system supplied by any Third Party to enable Northgate to provide the Services in accordance with the Performance Requirement and Northgate shall deliver to the Trust prior to the Commencement Date written confirmation (including when required by the Trust copies of all relevant licences or agreements) confirming availability of all such licences and agreements.

3.4 The Trust undertakes and represents that:-

- (a) it has full authority and capacity to enter into and perform this Agreement; and
- (b) the Agreement is executed by duly authorised representatives of the Trust.

4. TERM

4.1 This Agreement shall come into effect upon the Commencement Date and shall subsist for a period of seven (7) years thereafter (“the Initial Term”).

4.2 The Agreement shall continue beyond the Initial Term for such period or periods of not less than two (2) years up to an aggregate maximum of four (4) years as specified by the Trust or as otherwise agreed between the parties (“Extension”) in the event that the Trust gives written notice of such continuation of the Agreement not less than six (6) months prior to the expiry of the Initial Term or not less than six (6) months prior to the expiry of any Extension(s) .

4.3 The Charges payable by the Trust during any Extension(s) shall be as specified in the Payment Profile or as otherwise agreed between the parties.

5. OBLIGATION TO PERFORM AGREEMENT

5.1 Northgate shall perform all of the obligations incumbent upon it pursuant to the Agreement in implementation of the Service Elements and provision of the Services in accordance with the Performance Requirements, the Implementation Plan and any Detailed Implementation Plans.

5.2 The Trust shall perform the Trust's Responsibilities.

5.3 For the period of the Agreement the Trust shall be entitled to make use of Software provided by Northgate as is required for receipt of the Services. It is understood by the parties that separate user agreements in respect of the Trust's use of any Software in accordance with this Agreement shall not be required but, if such separate user agreements are required, Northgate shall be responsible for procuring these on terms and conditions which are acceptable to the Trust, acting reasonably.

6. THE SYSTEMS AND SYSTEMS REFRESH

6.1 Northgate shall be solely responsible for the scope, design and capability of the Systems to ensure that they are fit for purpose and capable of providing the Services in accordance with the Performance Requirements. Northgate shall be responsible for configuring the Systems in such a way as to ensure that failure in any part thereof shall not cause disruption to the Services.

6.2 Throughout the Contract Period, Northgate shall provide the Services at the Trust Premises. Subject to Clause 6.3, for the purpose of providing the Services Northgate shall use the Systems.

6.3 Throughout the Contract Period Northgate shall, at no extra charge to the Trust, upgrade and replace the Systems as necessary to ensure that they are at all times at the leading edge of Northgate installable technology ("Technology Refresh"). To meet the Trust's requirements in relation to Technology Refresh:

- (a) If the Trust requires it (regardless of which version is being used by the Trust at that time) Northgate undertakes that the Trust shall forthwith have installed or be scheduled to have installed within 12 months, the latest general release version of the Software products used to provide the Services; and
- (b) Northgate must at all times ensure that the hardware being used to provide the Systems is capable of allowing full use by the Trust of all of the functionality contained within the Software products used to provide the Systems.

7. INTERFACE WITH LEGACY SYSTEMS

7.1 During Implementation and thereafter, throughout the Contract Period, Northgate shall be responsible for ensuring an effective and seamless interface between the Systems and each of the Legacy Systems.

7.2 In the event that the Trust elect to replace a Legacy System during the Contract Period, Northgate shall be consulted and the Trust shall take account of the views of Northgate regarding the effectiveness of an interface between the Systems and the proposed replacement systems.

8. IMPLEMENTATION OF SERVICES

- 8.1 Each party shall perform all of their obligations under this Agreement in accordance with the Implementation Plan or any Detailed Implementation Plan for the implementation, acceptance and provision of Services and each Service Element .
- 8.2 Detailed Implementation Plans shall be agreed between the parties in respect of implementation of each Service Element prior to the commencement of implementation of each Service Element. Once agreed and signed by the Trust's Authorised Officer and Northgate's Contract Director the obligations contained in the Detailed Implementation Plans shall become binding on the parties.
- 8.3 In the event that Northgate fails to fulfil an obligation by the date specified in the Implementation Plan or any Detailed Implementation Plan for such fulfilment Northgate shall, at the request of the Trust and without prejudice to the Trust's other rights and remedies, arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter at no additional charge to the Trust.
- 8.4 Both parties undertake to commence the Implementation Period for each Service Element at the relevant dates specified in each Detailed Implementation Plan.

9. PERIPHERALS

As at the Commencement Date, Northgate hereby confirms that it has been afforded sufficient opportunity to inspect the Trust's peripherals (both hardware and software) and warrants that these are adequate to allow full implementation

and provision of the Services by Northgate in accordance with the terms of this Agreement.

10. LOCAL AREA NETWORK ("LAN")

10.1 As at the Commencement Date Northgate hereby confirms that it has been afforded sufficient opportunity to inspect the Network Assets and as at the Commencement Date has agreed with the Trust such work of upgrading or replacement of the Network Assets as is required to render the LAN adequate for implementation and provision of the Services by Northgate pursuant to this Agreement.

Please check LAN provisions - what is Trust's intention here?

10.2 All upgrading and replacement work will be carried out by Northgate pursuant to Clause 10.1 and shall be at the expense of the Trust up to a maximum cost of [] and any work required in excess of this sum shall be carried out at the expense of Northgate.

10.3 From the Commencement Date availability and performance of the LAN shall be the responsibility of the Trust.

11. DELIVERY TO TRUST PREMISES

11.1 All deliveries of Software and Equipment to the Site shall be effected in accordance with the Implementation Plan and any Detailed Implementation Plans.

11.2 Northgate shall be responsible for delivery of any Equipment and Software to the Trust Premises and shall provide any labour, material and plant required for the off-loading and placing in position and installation of the Equipment and Software. Northgate shall promptly remove at its own

expense from the Trust Premises any packaging used for Equipment or Software save for containers for consumable stores.

12. PREPARATION OF THE TRUST PREMISES

12.1 Whilst attending at or within the Trust Premises, Northgate undertakes to comply with the Trust's appropriate on-Trust Premises rules and regulations (including security arrangements), details or copies of which shall be made available to Northgate.

12.2 Northgate hereby confirms that it has had or shall have an opportunity to inspect the Trust Premises and has:-

(a) satisfied itself that the Trust Premises are suitable for implementation and provision of the Services in a secure physical environment;

(b) advised the Trust in writing prior to the Commencement Date of any matter or aspect of the Trust Premises which is inadequate or not suitable for implementation and use of the Systems for the purpose of providing the Services; and

(c) agreed with the Trust what works are reasonably required to render the Trust Premises suitable for installation or operation of the Systems (or any part thereof to be located at the Trust Premises) and such works shall be as specified in the Trust's Responsibilities.

12.3 The Trust shall be obliged to prepare the Trust Premises for implementation and provision of the Services in accordance with the Trust Responsibilities provided always that Northgate shall be obliged in good

time to provide such information (at no cost to the Trust) as may be required by the Trust relating to preparation of the Trust Premises, to allow the Trust to meet its obligations with regard to preparation of the Trust Premises.

13. ACCEPTANCE

- 13.1 Each Service Element shall be subject to Acceptance Testing in accordance with the Acceptance Procedures.
- 13.2 Each party shall bear its own costs incurred in undertaking Acceptance Testing.
- 13.3 The Trust shall be responsible for carrying out Acceptance Testing and Northgate shall provide such assistance as the Trust may require.
- 13.4 Northgate shall be entitled to be present during any Acceptance Tests which will be carried out in accordance with the timetables set out in the Detailed Implementation Plan.
- 13.5 The Trust shall issue Acceptance Certificates in respect of each Service Element as soon as practicable after the dates upon which each stage of Acceptance Tests (as set out in Part 5 of the Schedule) are successfully completed in respect of the Service Elements and the Date of Acceptance shall be the earlier of (i) seven (7) days from the actual date of successful completion of Acceptance Tests or (ii) the date of the Acceptance Certificate.
- 13.6 In the event that completion of Acceptance Tests in respect of any Service Element is not achieved by the anticipated date set out in the Detailed Implementation Plan for that Service Element as a result solely of delay or

failure on the part of the Trust in relation to the tasks to be performed by the Trust in undertaking the Acceptance Test as set out in the Detailed Implementation Plan then Payment Acceptance shall be deemed to have occurred in respect of that Service Element and payment in respect thereof shall commence in accordance with the Payment Profile (and the Detailed Implementation Plan) and both parties will agree a revised timetable for subsequent Acceptance Tests. In the event that the subsequent Acceptance Tests are not successfully completed in accordance with the revised timetable (other than where this is solely due to delay or failure on the part of the Trust) payment will cease until such time as Acceptance is achieved.

13.7 Notwithstanding that payment may have commenced in respect of any Service Element in accordance with Clause 13.6 such Service Element shall still be subject to Acceptance Tests in accordance with this Agreement and in the event that such Service Element fails subsequent Acceptance Test, payment shall be suspended in respect of the same (with effect from the date of failure of Acceptance Tests) and payment shall again become due with effect from the next Quarter following successful completion of Acceptance Tests.

14. CONSEQUENCES OF FAILURE TO ACHIEVE ACCEPTANCE

14.1 In the event that Acceptance Tests for any stage of Acceptance (as such stages are set out in Part 5 of the Schedule) are not successfully completed within the Acceptance Period in respect of any Service Element the Trust shall extend the Acceptance Period in respect of such Phase for such reasonable period as the Trust may determine during which Northgate shall correct the fault which caused the Service Element to fail

to meet its Acceptance Criteria following which further Acceptance Tests shall be carried out. In the event that Acceptance Tests are not successfully completed in respect of the Service Element during such extended Acceptance Period, the Trust may at its option (such options not being mutually exclusive):-

- (a) extend the relevant Acceptance Period in respect of the relevant Service Element for a period or periods specified by the Trust subject to such conditions as the Trust may determine;
- (b) require Northgate to provide such equipment and/or software (including Third Party Equipment or Software) capable of ensuring that the Service Element is capable of meeting the Acceptance Criteria for the same;
- (c) require Northgate to withdraw the Service Elements from live use (as that term is defined in Part 5 of the Schedule) to require Northgate to rectify the fault(s) which caused the Service Elements to fail Acceptance and (i) agree an appropriate adjustment to the Implementation Plan; and (ii) agree such reasonable level of reimbursement to the Trust from Northgate to reimburse the Trust for any cost or expense directly incurred by the Trust as a result of such withdrawal;
- (d) accept such part of the Service Element as the Trust may determine (rejecting the remainder) and pay a pro-rated Charge therefor in such amount as shall be agreed between the parties taking due account of the failure by Northgate to perform in accordance with its obligations under this Agreement;

(e) cancel the Service Element tested without recompense being due to Northgate (such cancellation to be without prejudice to the other rights and remedies of the Trust and the other obligations hereunder of the Trust and Northgate) in which event (i) there shall be repaid to the Trust by Northgate forthwith all monies paid by the Trust to Northgate in respect of implementation of such Service Element and (ii) the Charges payable by the Trust shall be reduced by an amount calculated in accordance with the Payment Profile, and in the event that the Payment Profile is silent as agreed between the parties.

14.2 In the event that the Trust extends the Acceptance Period for a period pursuant to Clause 14.1 (a) and the Service Element in respect of which the Acceptance Period is so extended fails to meet its Acceptance Criteria by the end of that period the provisions of Clause 14.1 shall apply mutatis mutandis .

14.3 The Trust may at its option issue an Acceptance Certificate partially accepting any Service Element and make payment of the relevant Charge or a proportion thereof as agreed by the Trust and Northgate in respect of such partial acceptance. Partial acceptance shall not imply that any remaining part of the Service Element will be accepted even if live running of the Service Element or part thereof follows from such partial acceptance and the same shall remain subject to Acceptance in accordance with the provisions of this Clause 14.

14.4 In the event that Acceptance Tests are repeated pursuant to this Clause 14 as a consequence of the failure of the first Acceptance Tests as a result of fault on the part of Northgate, Northgate shall bear the whole

costs of any such repeat Acceptance including the Trust's and any Third Party instructed by or on behalf of the Trust in relation to Acceptance.

14.5 In the event that the parties fail to agree pursuant to Clauses 14.1 (c), (d) or (e) on any matter relating to Charges then either party shall be entitled to refer the matter for resolution in accordance with the Dispute Resolution Procedure.

15. TRAINING

The parties have agreed Training as contained in Part 17 of the Schedule and the parties shall perform their respective obligations as set out therein.

16. SERVICE LEVELS AND REMEDIES FOR NON-PERFORMANCE

16.1 From the Date of Acceptance in respect of each Service Element Northgate shall commence provision of and shall thereafter continue to provide the Services in that Service Element in accordance with the Performance Requirements.

16.2 If at any time after the Acceptance Date for each Service Element the Services are not supplied in accordance with the Performance Requirements, then Northgate shall at the written request of the Trust and without prejudice to the Trust's other rights and remedies arrange all such additional resources as are necessary and take all necessary remedial action to remedy such failure as soon as practicable thereafter (and in any event within any reasonable time-scale set by the Trust) and at no additional charge to the Trust provided always that the Trust has performed the Trust Responsibilities.

16.3 Without prejudice to Clause 16.2 the Charges shall be reduced by Service Credits calculated as a percentage of Availability Payments and Performance Payments all as provided in the Payment Profile (Part 6 of the Schedule) in the event that Northgate fails to provide the Services in accordance with the Performance Requirements and Part 25 of the Schedule.

17. TITLE AND RISK

Subject to discussion re: capital input

17.1 Ownership and all risk in the Systems shall at all times during the Contract Period remain with Northgate.

17.2 Ownership and all risk in the Legacy Systems shall at all times during the Contract Period remain with the Trust.

18. CHARGES

18.1 In consideration of the supply to the Trust of the Services in accordance with the terms of this Agreement, the Trust shall make payment of the Charges to Northgate in accordance with the provisions of the Payment Profile.

18.2 All Charges are exclusive of Value Added Tax, which, if payable, shall be paid by the Trust at the rate prescribed by law from time to time.

18.3 The Charges may be varied only by:-

(a) Indexation; and

(b) change in volumes as provided in the Payment Profile.

19. ROLL-OUT TO NEW SITES

It is acknowledged by both parties that during the Contract Period the Trust may transfer some of its operations and business to new sites. Northgate shall be obliged to provide the Services to the Trust at the new sites subject to the conditions of this Agreement (in addition to provision of the Services to the Trust at the Trust Premises retained by the Trust) and with effect from the first transfer to the New Site for the purposes of this Agreement any reference to "Trust Premises" shall include a new site. Both parties shall act in good faith and reasonably in agreeing any transitional arrangements which, without prejudice to the foregoing generality, shall include performance of the obligations detailed in Part 4 of the Schedule required to transfer Services from the Trust Premises to the new site.

20. WARRANTIES, UNDERTAKINGS AND REPRESENTATIONS

20.1 Northgate warrants undertakes and represents to the Trust that:-

- (a) it will complete its obligations under the Agreement ;
- (b) to the best of Northgate's knowledge and belief the provision of the Services and the Trust's use thereof shall not infringe any Intellectual Property Rights of any Third Party.
- (c) the Services shall be supplied and rendered by appropriate experienced, qualified and trained personnel with all due skill, care and diligence;
- (d) Northgate shall perform all their obligations under this Agreement throughout the Contract Period in compliance with all Legislation;
- (e) the Services shall conform to the Performance Requirements;

- (f) the Systems are fit for the purpose of providing the Services in accordance with this Agreement;
- (g) it shall discharge its obligations hereunder with all due skill, care and diligence including, but not limited to, good industry practice;
- (h) it shall not create any floating charge capable of attaching to the Systems or any part thereof;
- (i) it shall not conclude any agreement with any lender or funding body or any other Third Party which conflicts or is at variance with the terms of this Agreement;
- (j) the Services shall satisfy the Standards and Regulations specified in Part 7 of the Schedule in so far as required in terms of the Specification;
- (k) comply in all respects with the Security Requirements;
- (l) the provision of the Services shall not cause electrical interference with the operation of any equipment within the Trust Premises;
- (m) the Services shall be deemed to include the operation of any testing and monitoring instruments used in connection with the provision of the Services;
- (n) all statements and representations made to the Trust are, to the best of its knowledge, information and belief, true, accurate and not misleading and that it will advise the Trust of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;

- (o) it is expressly hereby agreed that the Trust is relying upon the expertise, specialised knowledge, skill and judgement of Northgate in the performance of this Agreement and on any advice which Northgate may at any time offer to the Trust in writing in connection with the subject matter of this Agreement;
- (p) the provision of the Services by Northgate shall not cause any interruption nor interference with services to the Trust which are outside the scope of this Agreement except as identified to and agreed with the Trust which agreement shall not be unreasonably withheld or delayed; and
- (q) the Services shall at all times during the Contract Period without additional charge to the Trust allow the Trust to comply with its requirements to provide all statutory reports (including SMRs) provided Northgate is given reasonable notification of changes to the same.

20.2 Notwithstanding any rule of law to the contrary and without prejudice to any other rights which the Trust has or may have, the Trust shall be entitled (without being required to rescind this Agreement) to claim damages from Northgate in respect of any breach of the warranties, undertakings and representations specified in Clause 20.1 and Northgate shall indemnify the Trust against any loss, claims, charges, demands, liabilities and reasonable costs and expenses incurred by the Trust which arise out of or in connection with breach of any of the warranties, undertakings or representations specified in Clause 20.1 provided that such indemnity shall be subject to the limits contained in Clause 28.

21. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 21.1 Subject always to the Trust's proper observance of its obligations under this Clause 21, Northgate shall indemnify the Trust against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement in the United Kingdom) of any Intellectual Property Rights in any item (Equipment or Software) supplied or owned by Northgate in the provision of the Services.
- 21.2 Northgate shall forthwith notify the Trust if any claim or demand is made or action brought against Northgate for infringement or alleged infringement of any Intellectual Property Rights which may affect the Services.
- 21.3 The Trust shall forthwith notify Northgate if any claim or demand is made or action brought against the Trust for infringement or alleged infringement of any Intellectual Property Rights supplied or owned by Northgate in the provision of the Services. Northgate shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Trust hereby agrees to grant to Northgate exclusive control of any such litigation and such negotiations.
- 21.4 The Trust shall at the request of Northgate afford Northgate all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Trust or Northgate for infringement or alleged infringement of any Intellectual Property Rights supplied or owned by Northgate in the provision of the Services and shall be repaid all costs and

expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) incurred in so doing.

21.5 The Trust shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights supplied or owned by Northgate in the provision of the Services.

21.6 If a claim, demand or action for infringement or alleged infringement is made of any Intellectual Property Rights supplied or owned by Northgate in the provision of the Services or in the reasonable opinion of Northgate is likely to be made, Northgate may at its own expense either:-

(a) modify any or all of the Services without reducing the performance and functionality of the same, or substitute alternative services of equivalent performance and functionality for any or all of the Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified Services or to the substitute services;
or

(b) procure such licence as is required to enable Northgate to use and provide the Services on terms which permit Northgate to comply with the obligations incumbent upon it in terms of this Agreement.

21.7 The foregoing provisions of this Clause 21 shall not apply insofar as any claim or demand or action is in respect of:-

(a) any use by or on behalf of the Trust of the Intellectual Property Rights in combination with any item not so supplied where such

use of the Intellectual Property Rights directly gives rise to the claim, demand or action unless the service is provided specifically under a combined use arrangement agreed by Northgate; or

- (b) the use by the Trust of the Services in a manner not reasonably to be inferred from the Specification or requirements of the Trust; or
- (c) the Trust's unreasonable refusal to accept modified Services or substitute services pursuant to Clause 21.6 (a).
- (d) any modification, adaptation or enhancement of the subject of Intellectual Property Rights by the Trust or any third party engaged by it.

21.8 If Northgate has availed itself of its rights to modify the Services or supply substitute services pursuant to Clause 21.6 (a) or to procure a licence under Clause 21.6 (b) and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then Northgate shall have no further liability thereafter under this Clause 21 in respect of the said claim, demand or action.

21.9 If a modification or substitution in accordance with Clause 21.6 (a) above is not possible so as to avoid the infringement or Northgate has been unable to procure a licence in accordance with Clause 21.6 (b), Northgate shall be liable for all costs incurred in procuring and implementing replacement services or facilities together with the additional costs (if any) of such substitute services or facilities during the Contract Period.

21.10 The foregoing states the entire liability of Northgate with regard to the infringement of any Intellectual Property Rights supplied or owned by Northgate in the provision of the Services.

21.11 Subject always to Northgate's proper observance of its obligations under this Agreement, the Trust shall indemnify Northgate against all claims, demands, actions, costs, expenses, losses and damages arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights in any item (Equipment or Software) supplied or owned by the Trust and used in the provision of the Legacy Services.

21.12 Northgate shall co-operate with the Trust in contesting or settling any claim or demand made or action brought against the Trust or Northgate for infringement or alleged infringement of any Intellectual Property Rights in any item supplied or owned by the Trust and used in the provision of the Legacy Services, including, without prejudice to the foregoing generality, ceasing to use any such item immediately upon receipt of written notice from the Trust.

21.13 The foregoing Clause 21.11 and 21.12 state the entire liability of the Trust with regard to the infringement of any Intellectual Property Rights supplied or owned by the Trust in the provision of the Legacy Services.

22. CONFIDENTIALITY

22.1 In consideration of the Trust executing this Agreement with Northgate, Northgate hereby undertakes that:-

- (a) Northgate (and any person employed or engaged by Northgate in connection with the Agreement) shall only use Confidential Information for the purposes of this Agreement;

- (b) Northgate (and any person employed or engaged by Northgate in connection with this Agreement) shall not disclose any Confidential Information to any third party without the prior written consent of the Trust;
- (c) without prejudice to Clauses 22.1 (a) and 22.1 (b) Northgate shall take all necessary precautions to ensure that named patient data is not passed to persons or organisations that are not covered by the provisions of the Data Protection Act and other legislation on confidentiality and security other than those to whom the Trust instructs disclosure should be made;
- (d) Northgate shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Agreement by Northgate's employees, servants, agents or sub-contractors; and
- (e) without prejudice to the generality of the foregoing neither Northgate nor any person engaged by it whether as a servant or a consultant or otherwise shall use the Confidential Information for the solicitation of business from the Trust or another part of the Crown by Northgate or by such servant or consultant or by any third party.

22.2 It is expressly stated that any and all information relating to patients of the Trust is confidential and shall not be disclosed by Northgate under any circumstances and unauthorised disclosure by Northgate or any of Northgate's personnel shall constitute a Default. Northgate shall comply

as appropriate with the requirements of the following three NHS Circulars, namely:-

- (a) NHS MEL (1992) 42;
- (b) NHS MEL (1994) 100;
- (c) NHS MEL (1999) 19.

and any amended circulars relating to patient information which may be exhibited to Northgate.

22.3 Northgate shall ensure that all its employees and those of any sub-contractors who have access to or handle personal health information sign a statement in which they undertake to keep all such information confidential. Northgate shall inform such employees in writing of the importance of the confidentiality of personal health information, the principles of protecting confidentiality and that breach of any confidentiality shall be a serious disciplinary matter. Employees of Northgate and any sub-contractor shall be required to give written acknowledgement of the foregoing in a form approved by the Trust which may include Northgate's or any sub-contractor's standard terms of employment.

22.4 The Trust:-

- (a) shall treat as confidential all Confidential Information, obtained from Northgate, including but not limited to any source code in Northgate's Software; and

(b) subject to Clause 22.6, shall not disclose to any third party without the prior written consent of Northgate any Confidential Information obtained from Northgate.

22.5 With the exception of patient information the provisions of this Clause 22 shall not apply to any information which:-

(a) is or becomes public knowledge other than by breach of this Clause 22;

(b) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;

(c) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

(d) is independently developed or available without access to the Confidential Information.

22.6 Nothing contained in this Clause 22 shall prevent the Trust from disclosing any Confidential Information wherever disclosure is required by virtue of the Trust's status as a NHS Entity to a department, office or agency of Her Majesty's Government or (subject to obtaining confidentiality undertakings in respect of the Confidential Information) to any other NHS Entity nor to any consultant, contractor or other person engaged by the Trust.

22.7 Nothing in this Clause 22 shall prevent Northgate or the Trust from using data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential

Information or an infringement by the Trust or Northgate of any Intellectual Property Rights.

23. SECURITY REQUIREMENTS

Northgate shall comply with the Security Requirements.

24. DEFAULT

24.1

- (a) "Default" in the case of Northgate means any material breach of the obligations under the Agreement by Northgate (including but not limited to fundamental breach or breach of a fundamental term) or any material default, act, omission, negligence or statement by Northgate, its employees, servants, agents or sub-Contractors in connection with or in relation to the subject matter of this Agreement and in respect of which Northgate is liable to the Trust and shall include, without prejudice to the foregoing generality,:-
- (i) any breach by Northgate of Clauses 20.1(h) (creation of floating charge), 22 (Confidentiality insofar as it relates to patient information), 31.1 (unauthorised Use of Trust's Data) and 41 (Prohibition on Assignment);
 - (ii) the provision of any Service below the Minimum Service Level;
 - (iii) failure of any Service Element to be Implemented within a period of four weeks following the Planned Implementation Date for that Service Element;

- (b) "Default" in the case of the Trust shall mean:-
- (i) failure to pay the Charges (except where the Trust dispute the amount of the same) within sixty (60) days of the same being due and payable in terms of this Agreement; and
 - (ii) dissolution of the Trust where the rights and obligations of the Trust pursuant to this Agreement are not transferred to any statutory successor of the Trust by order of the First Minister or otherwise.

24.2 The Trust may at any time by notice in writing terminate this Agreement in whole or in part as from the date of service of such notice on the basis of Default by Northgate in the event that:-

- (a) there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in Northgate provided that the Trust shall only be permitted to exercise its rights pursuant to this Clause 24.2 (a) for six (6) months after each such change of control and shall not be permitted to exercise such rights where the Trust has agreed in advance in writing to the particular change of control and such change of control takes place as proposed. Northgate shall notify the Trust within two (2) months of any change of control taking place;
- (b) that Northgate passes a resolution, or the Court makes an Order that Northgate be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of Northgate's business or any part thereof, or circumstances arise

which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court, otherwise than for the purposes of a bona fide reconstruction or amalgamation, to make a winding up Order or Northgate is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.

24.3 In the event of Default by either party ("Defaulting Party") the other ("Non Defaulting Party") may at any time serve notice upon the Defaulting Party specifying the Default(s) ("First Notice of Default") and affording two calendar months within which to remedy the Default(s) failing which the Non-Defaulting Party may serve a second notice ("Second Notice of Default") upon the Defaulting Party advising of such failure and affording a further one calendar month period within which the Defaulting Party shall remedy the Default(s).

24.4 In the event that Northgate is the Defaulting Party in terms of Clause 24.3 and the Default(s) are not remedied pursuant to a Second Notice of Default the Trust may at its sole option:-

- (a) terminate the Agreement forthwith by notice to that effect in which event the Trust may require both parties to enter a Transition Period as provided in Clause 25, or
- (b) suspend payment of the Charges (or a proportion thereof determined by the Trust) until the Default is remedied provided always that payment of Charges shall not fall due for any period during which the Default subsisted, or
- (c) withdraw any one or more individual Service(s) comprising part of the Services in respect of which Northgate may have defaulted

PROVIDED ALWAYS that in the event that the Trust elects to withdraw an individual Service the Charges shall be reduced by such amount as may be agreed between the parties or failing agreement determined in accordance with the Dispute Resolution Procedure.

- 24.5 In the event that the Trust is the Defaulting Party pursuant to Clause 24.3 and the Default(s) is not remedied pursuant to a Second Notice of Default, Northgate may terminate this Agreement forthwith by notice to that effect.
- 24.6 In the event that Northgate continues to provide the Services during any period of Notice of Default served by the Trust pursuant to Clauses 24.3 the Trust shall, during such period, make payment of the Charges to Northgate in respect of the Services so provided.
- 24.7 Termination in accordance with this Clause 24 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- 24.8 Termination of this Agreement (howsoever occasioned) shall not affect the coming into force or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 24.9 Except as expressly provided in this Clause 24 neither party shall be entitled to refer a matter to the Dispute Resolution Procedure once a First Notice of Default has been served in respect of that matter or issue.

25. TRANSITION

25.1 In the event that the Trust serves a Second Notice of Default upon Northgate pursuant to Clause 24.3 it may, at the same time, advise Northgate in writing that it wishes to enter a transition period ("Transition Period") during which Northgate shall continue to provide the Services as provided in this Clause 25 in circumstances where Northgate fails to remedy the Default(s) required by the Second Notice of Default. The Transition Period shall commence upon expiry of the Second Notice of Default.

25.2 In the event that:-

- (a) Northgate fails to remedy the Defaults specified in a Second Notice of Default and the Trust has advised Northgate to that effect; and
- (b) the Trust had advised Northgate pursuant to Clause 25.1 that it wishes to enter a Transition Period

then the following provisions of this Clause 25 shall apply.

25.3 A Transition Period shall subsist for up to two years and may be terminated at any time by the Trust during that two year period on giving three months' written notice to Northgate.

25.4 Northgate shall continue to provide the Services to the Trust during the Transition Period and the Trust shall pay the Charges to Northgate for provision of the same. The provisions of this Agreement shall apply to the provision of Services by Northgate during a Transition Period.

26. CONSEQUENCES OF TERMINATION

At termination of this Agreement (including for the avoidance of doubt termination of any Transition Period) Northgate shall remove the Systems from the Trust Premises, at Northgate's sole expense, and in so doing shall cause as little damage to the Trust Premises and interruption to the Trust's business as possible.

27. LIAISON AND PROVISION OF INFORMATION AT TERMINATION

27.1 In anticipation of termination of this Agreement (either within 24 months of natural expiry or earlier termination in accordance with its terms) the Trust may require Northgate to deliver up to the Trust any of the Trust Data on an appropriate media and, in such circumstances, Northgate shall:-

- (a) supply to the Trust within 30 days free of charge all Trust Data on an appropriate media in an industry standard format.
- (b) co-operate in all reasonable respects with the Trust or its employees in arranging for the orderly transfer of the Trust Data, on appropriate media in an industry standard format to such other party as may be identified by the Trust and in such manner as may be necessary to ensure that any interruption in the Services available to the Trust and its employees is minimised.
- (c) return or deliver to the Trust all eye readable material and procedures manuals relating to the Services in the possession of Northgate save where unavoidably prevented from so doing under the terms of any third party licence or agreement.

27.2 On termination for any reason or expiry of the Agreement, Northgate will cease to use for any purpose and will return or deliver to the Trust within twenty four hours of termination:-

- (a) all Data belonging to the Trust and related documentation in a form capable of being read by the Trust; and
- (b) all eye readable material and procedures manuals relating to the Services in the possession of Northgate save where prevented from so doing under the terms of any third party licence or agreement.

27.3 Northgate will be obliged to satisfy the Trust that it has erased all its copies of Trust Data used in connection with the provision of the Services.

27.4 Northgate will positively assist the Trust in ensuring a smooth, timely, risk-reduced transition of services to a New Contractor at the end of the Contract Period.

27.5 Upon receipt of formal written notification of termination Northgate will agree with the Trust Project Director:-

- (a) a complete list of all potentially transferable items, eg asset lists of equipment, employee information;
- (b) other information required to support a new procurement of the Services, eg sizing information;
- (c) the timescales necessary to provide the deliverables to support a new procurement and subsequent transfer to a New Contractor.

27.6 Upon notification that it has been unsuccessful in being awarded a contract for provision of the Services (or equivalent service) for a further period at expiry of the Contract Period, or in the event that Northgate chooses not to compete for subsequent service provision, Northgate will:-

- (a) appoint a project manager for a period of three months to plan and manage the Northgate transfer activities in relation to the Services;
- (b) meet with the New Contractor and representatives of the Trust to agree a transition plan, timescales, responsibilities and detailed transfer activities;
- (c) draw up a project plan, showing milestones, timescales, responsibilities and Northgate-specific activities necessary to effect the handover of responsibility for delivery of the Services to the New Contractor.

27.7 Without prejudice to any other obligation under this Agreement Northgate will provide to the New Contractor, in accordance with the timings and plan agreed with the Trust:-

- (a) complete copies of documentation relating to the Services that it has been agreed will be made available;
- (b) a copy of the Trust databases on magnetic media in industry standard format;
- (c) an asset list of equipment that may transfer to a New Contractor;
- (d) any TUPE related employee information.

27.8 Northgate will meet with the New Contractor and representatives of the Trust to discuss the possibilities of, and to agree, if possible, commercial terms appropriate to:-

- (a) the novation of any Northgate contracts and licences appropriate to the on-going supply of Trust Services;
- (b) the sale of any Northgate owned hardware and/or application software specific to Trust Services;
- (c) the transfer of any Northgate staff dedicated to delivery of Trust Services;
- (d) (other than that defined above) Northgate support to the New Contractor during any transition period.

28. LIMIT OF LIABILITY

28.1 Except as provided in this Clause 28, nothing herein contained shall limit either the liability or the remedies available to either party in terms of the Agreement.

28.2 For the purposes of this Clause 28.2 "year" shall mean a period of twelve months from the Commencement Date and each twelve month period thereafter. The aggregate liability of either party for all Defaults occurring in each year of this Agreement resulting in direct loss or damage to the tangible property or premises of the other under this Agreement shall not exceed FIVE MILLION POUNDS (£5,000,000) STERLING.

28.3 Excepting death or personal injury for which there shall be no limit, the aggregate limit of liability of either party for all Defaults resulting in direct loss or damage to the other (including but not in addition to the limit of

liability specified in Clause 28.2) shall not exceed TEN MILLION POUNDS STERLING (£10,000,000).

28.4 In no event shall either party be liable for:-

- (a) loss of profits, business, revenue, goodwill or anticipated savings;
and/or
- (b) indirect or consequential loss or damage.

29. RECOVERY OF SUMS DUE

Whenever under the Agreement any sum of money shall be recoverable from or payable by Northgate to the Trust the same may be deducted from any sum then due or which at any time thereafter may become due by the Trust to Northgate under the Agreement or any Agreement between Northgate and the Trust. Exercise by the Trust of its rights under this Clause 29 shall be without prejudice to any other rights or remedies available to the Trust under the Agreement or otherwise at law.

30. AUDIT ACCESS

30.1 The Trust has a duty to account for the disbursement of public funds. Northgate shall keep proper records in respect of the Charges due to it under the Agreement. Northgate shall allow inspection of such records at all reasonable times by the Trust or its duly authorised representatives for the sole purpose of verifying Northgate's fulfilment of its obligations under the Agreement and amounts due to Northgate therefor. Northgate shall without additional or separate charge to the Trust make available such facilities and give such assistance, including the provision of copies or extracts of such records as the Trust may reasonably request in

connection with the performance of such audit and shall afford the Trust or its duly authorised representatives (including external and internal auditors) all reasonable access to all other information, reports, documents, records and data, whether in human or machine readable form, solely relevant to the performance by Northgate of its obligations under the Agreement. Without prejudice to the foregoing, the Trust undertakes that other than in exceptional circumstances, the Trust itself will not initiate an audit on more than one occasion in each year. Representatives of the Trust who are authorised to perform such inspection shall:-

- (a) be acceptable on all reasonable grounds, to Northgate;
- (b) enter into a confidentiality undertaking in such reasonable form as Northgate may properly and reasonably require prior to such inspection;
- (c) comply with all reasonable office and security procedures of Northgate during such inspections.

30.2 All confidential information of Northgate made available to the Trust under this Clause 30 shall be treated by the Trust in accordance with Clause 22.

30.3 Northgate shall take all reasonable steps to place similar obligations on its sub-contractors in all sub-contracts entered into in relation to the Agreement to ensure access by the Trust, where appropriate, to relevant information of such sub-contractors.

31. USE AND LOSS OF DATA

- 31.1 Northgate shall make no use whatsoever of the Trust's Data, other than as may be required to provide the Services. Any unauthorised use of the Trust's Data by Northgate shall constitute a Default (not capable of remedy) by Northgate.
- 31.2 Northgate acknowledges that the Trust's Data is the property of the Trust and the Trust hereby reserves all Intellectual Property Rights which may subsist in the Trust's Data. Northgate shall not delete or remove any copyright notices contained within or relating to the Trust's Data.
- 31.3 Northgate and the Trust shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the Trust's Data and to prevent any corruption or loss of the Trust's Data.
- 31.4 As part of the Services Northgate shall:-
- (a) if the Input or any part thereof shall be lost, destroyed or damaged prior to the inputting thereof whilst in Northgate's possession then Northgate shall forthwith notify the Trust and the Trust shall supply Northgate with a copy of the Input at the cost of Northgate. Northgate shall thereupon use such copy for inputting the Input. The cost of preparing and delivering such copy of the Input shall be borne by Northgate except to the extent, if any, that such loss, damage or destruction of the Input is caused by any negligent act or omission or wilful misconduct of the Trust or its employees.

- (b) If the Output or any part thereof shall be lost, damaged or destroyed prior to the delivery thereof to the Trust then Northgate shall produce a further copy forthwith. The cost of producing such further copy shall be borne by Northgate.

31.5 Northgate shall:-

- (a) take all steps as are necessary to ensure that in the event of any corruption or loss of Trust Data, howsoever caused, it is in a position to procure the restoration of such Data to a reconstituted state suitable for continued access and use by the Trust; and
- (b) at the request of the Trust and consequent upon any loss or corruption of the Trust Data to procure the restoration of the Trust Data to a reconstituted state suitable for continued access and use by the Trust.

31.6 Northgate shall implement the obligations detailed in Clause 31.4 and Clause 31.5 at no cost to the Trust except to the extent, if applicable, that any corruption or loss of the Trust's Data is caused by the fault or negligence of the Trust in which event any steps taken by Northgate to restore the Trust's Data shall be subject to such reasonable charge as shall be agreed between the parties and subject to Northgate providing such information to the Trust as it may reasonably require to verify that any such proposed charge is reasonable.

31.7 Without limiting the generality of Northgate's obligation under Clause 31.5, Northgate shall ensure that a backup copy of the Trust's Data is provided in accordance with the terms of Part 1 of the Schedule.

32. TRUST PROPERTY

- 32.1 Nothing in this Agreement shall be taken as affecting the Trust's proprietary rights in Trust Property and such Trust Property shall be used in the performance of this Agreement and for no other purpose without the prior approval in writing of the Trust.
- 32.2 Any Trust Property made available to or otherwise received by Northgate shall be deemed to be in good condition when received by or on behalf of Northgate unless Northgate notifies the Trust in writing to the contrary within fourteen days of any Trust Property being made available to Northgate or otherwise received by it detailing any fault or damage in the Trust Property.
- 32.3 Northgate undertakes the safe custody of and due return of all Trust Property made available to or otherwise received by Northgate and Northgate shall be responsible for all loss of or damage to any such Trust Property excepting fair wear and tear and shall indemnify the Trust against such loss or damage.
- 32.4 Northgate shall be responsible for any deterioration in the Trust Property where Northgate has the responsibility for maintenance save for any deterioration resulting from its normal and proper use for the purposes of this Agreement provided that such deterioration resulting from normal and proper use is not contributed to by any want of due maintenance and repair. Any spare parts once installed in Trust Property shall be the property of the Trust.
- 32.5 Neither Northgate, nor any sub-contractor, nor any other person, shall have a lien on any Trust Property for any sum due to Northgate, sub-

contractor or other person and Northgate shall take all reasonable steps to ensure that the title of the Trust and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with Trust Property.

33. SERVICE MANAGEMENT AND PROGRESS REPORTS

33.1 The parties shall manage the provision of Services by Northgate in accordance with the provision of Part 9 of the Schedule and Northgate shall provide all information and reports required in terms of Part 9 of the Schedule.

33.2 Where progress reports are to be submitted under this Agreement, Northgate shall render such reports as to the progress of the mutual obligations under this Agreement at the time and in such form as may be specified or as otherwise agreed between the Trust and Northgate.

33.3 Submission and receipt of these reports shall not prejudice the rights of either party under this Agreement.

33.4 Northgate shall maintain Northgate's Asset List throughout the Contract Period and shall provide a copy of the same to the Trust within thirty (30) days of the Commencement Date and within ten (10) days of Northgate's Asset List being updated.

34. HEALTH AND SAFETY HAZARDS

34.1 Northgate shall notify the Trust forthwith of any health and safety hazards which may arise in connection with the performance of this Agreement.

34.2 The Trust shall notify Northgate of any health and safety hazards which may exist or arise at the Trust Premises and which may affect Northgate.

Northgate shall draw these hazards to the attention of its employees and sub-contractors or any persons engaged by Northgate in the performance of this Agreement at the Trust Premises.

34.3 Northgate shall use all reasonable endeavours to make itself aware of any health and safety hazards which are a normal part of the Trust's operations.

34.4 Northgate shall inform all persons engaged in the performance of this Agreement at the Trust Premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

35. PROTECTION OF PERSONAL DATA

35.1 Northgate's attention is hereby drawn to the Data Protection Acts 1984 and 1998 and the Computer Misuse Act 1990.

35.2 Both parties warrant that they will duly observe all their obligations under the Data Protection Acts 1984 and 1998 which arise in connection with this Agreement.

35.3 Northgate shall indemnify the Trust against any loss or cost incurred by the Trust as a consequence of breach by Northgate of its obligations under the Data Protection Acts 1984 and 1998 and the Computer Misuse Act 1990.

36. PUBLICITY

36.1 Except with the written consent of the other party which shall not be unreasonably withheld or delayed, neither the Trust nor Northgate shall make any press announcements or publicise this Agreement in any way.

36.2 Both parties shall take all reasonable steps to ensure the observance of the provisions of Clause 36.1 by all its servants, employees, agents, consultants and, sub-contractors.

37. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

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

37.2 If Northgate 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 (e) below, namely:-

- (a) if the Prohibited Act is committed by Northgate or by an employee not acting independently of Northgate then the Trust may terminate this Agreement by giving notice to Northgate;
- (b) if the Prohibited Act is committed by an employee of Northgate acting independently of Northgate then the Trust may give notice to Northgate of termination and this Agreement will terminate unless within thirty days of receipt of such notice Northgate 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 Northgate of termination of this Agreement and this Agreement will terminate unless within thirty days of receipt of such notice Northgate

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 Northgate of termination and this Agreement will terminate unless within thirty days of receipt of such notice Northgate procures termination of that employee's employment with the sub-contractor;
- (e) any notice of termination under this Clause 37 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 37.2

38. CONTRACTOR'S PERSONNEL

38.1 Northgate shall make no changes to its Key Personnel during the Contract Period without the prior written consent of the Trust which shall not be unreasonably withheld or delayed except where any change is unavoidable or for reasons outwith Northgate's control.

38.2 Northgate shall ensure that any appointment of Key Personnel shall be suitably qualified and experienced and shall be approved in advance by the Trust acting reasonably.

- 38.3 The Trust reserves the right (which shall not be unreasonably exercised) under this Agreement to refuse to admit to any Trust Premises any person employed or engaged by Northgate, or by a sub-contractor, whose admission would be, in the opinion of the Trust, undesirable.
- 38.4 If and when directed by the Trust, Northgate shall provide a list of the names of all persons based in the UK who it is expected may require access to Trust Data, systems or Trust Premises in connection with the performance of this Agreement, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Trust may reasonably require.
- 38.5 Whilst attending at the Trust Premises Northgate's representatives shall comply with the Trust's on-site rules, regulations and requirements (including those relating to security arrangements) for the conduct of personnel. The Trust shall make available to Northgate the latest version of such rules, regulations and requirements.
- 38.6 The decision of the Trust as to whether any person is to be refused admission to any Trust Premises occupied by or on behalf of the Trust shall be final and conclusive provided that the Trust shall, if requested by Northgate, advise Northgate of the reasons for its decision except in circumstances where the Trust regards such reasons as confidential and provided further that no liability shall attach to the Trust in relation to such information. Northgate agrees that it shall not disclose such information to any person including the relevant member of its personnel (but excluding any Statutory Body entitled to receive such information) without the prior written consent of the Trust.

38.7 Northgate's organisation and Service delivery structure is as set out in Part 16 of the Schedule.

39. RACIAL DISCRIMINATION

39.1 Northgate shall not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment.

39.2 Northgate shall take all reasonable steps to ensure the observance of the provisions of Clause 39.1 by all servants, employees, agents and consultants of Northgate and all sub-contractors.

40. FORCE MAJEURE AND RELIEF EVENTS

40.1 The events which are to be classified as Force Majeure events are for the purposes of this Agreement as follows:-

- (a) war, civil war, armed conflict or terrorist attack arising within and affecting the United Kingdom; or
- (b) nuclear, chemical or biological contamination of Northgate's property arising from any of the events at (a) above.

40.2 If a Force Majeure event arises during the term of the Agreement which directly causes Northgate or the Trust to be materially unable to comply with any of its obligations hereunder, Northgate and the Trust may agree such terms as are appropriate for the continued performance of the Agreement. If no such terms are agreed within seven (7) days of the commencement of the said event, and such event is continuing or its consequence remains such that Northgate or the Trust are materially unable to comply with its obligations, the parties hereby agree that this

Agreement shall thereupon terminate, with no payment or penalty being due to or by either party (other than payment of Charges for Services provided up to the date of termination). Failure by either party to comply with its contractual obligations by reason of a Force Majeure event shall not constitute a Default.

40.3 During the existence of a Relief Event, but only to the extent that the Relief Event renders performance of the Services impossible or impracticable, Northgate's obligations to provide the Services (either in whole or in part as appropriate) shall be suspended as shall the Trust's obligations to pay for those Services (either in whole or in part).

40.4 Neither Party shall be entitled to terminate this Agreement solely as a consequence of the existence of a Relief Event.

40.5 Both Parties shall use all reasonable endeavours to mitigate the consequences of any Relief Event.

40.6 For the avoidance of doubt, no event shall be treated as a Relief Event if it arose as a result of any act, neglect or omission of Northgate.

41. TRANSFER, SUB-CONTRACTING AND MANAGEMENT

41.1 This Agreement is personal to Northgate. Northgate shall not assign, novate, or otherwise dispose of this Agreement or any part thereof without previous consent in writing of the Trust which shall not be unreasonably withheld or delayed.

41.2 The Trust hereby consents to Northgate's Sub-Contracting obligations specified in Part 15 of the Schedule to the respective Sub-Contractors specified in Part 15 of the Schedule. Notwithstanding any sub-contracting

permitted hereunder, Northgate shall remain responsible for the acts and omissions of its Sub-Contractors as though they were its own.

41.3 The Trust shall be entitled to disclose to any body to whom this Agreement may be transferred pursuant to the foregoing provisions any Confidential Information of Northgate which relates to the performance of the Services by Northgate. In such circumstances, the Trust shall authorise the said transferee to use such Confidential Information only for purposes relating to the performance of the Services and for no other purposes and shall take all reasonable steps to ensure that such body accepts an obligation of confidence in terms similar to Clause 22.

42. AMENDMENTS TO THE SERVICES

42.1 The Trust shall be entitled throughout the Contract Period to require Northgate to make changes to the Services and Northgate shall be entitled to request that the Trust accepts changes to the Services ("Changes").

42.2 All Changes shall be implemented in accordance with the Change Control Procedure but without prejudice thereto Northgate shall ensure that any Change required by the Trust is made without delay or on a timetable as may be agreed between the parties after any alteration (if any) to the Charges are agreed in accordance with the provisions of this Clause 42.

42.3 If the parties are unable to agree the alteration to the Charges pursuant to any Change the matter shall be referred to the Dispute Resolution Procedure.

44. SEVERABILITY

If any provisions of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Trust and Northgate shall immediately commence good faith negotiations to remedy such invalidity.

45. WAIVER

45.1 The failure of either party to insist upon performance of any provision of this Agreement, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

45.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.

45.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of this Clause 45.

46. USE OF ACCOMMODATION

Northgate shall be entitled to occupy the Trust Premises upon a non-exclusive basis and upon the terms and conditions contained in Part 18 of the Schedule.

48.2 The Trust's interest shall be noted on any insurance so effected to the effect that the Trust shall be informed by the insurer in any circumstances where:-

(a) the policies of insurance are permitted to lapse or are varied for any reason;

(b) any claim is submitted against such insurance and any monies paid by the insurer to Northgate pursuant to such claim.

48.3 Northgate shall, on request, exhibit the policies of insurance or a Brokers Certificate relative thereto to the Trust and shall without request exhibit annual premium receipts in respect thereof.

48.4 Northgate shall procure waiver by the insurers of any subrogation rights against the Trust which may be available to them pursuant to this Agreement or otherwise.

49. DAMAGE TO SYSTEMS

49.1 Northgate shall indemnify and does hereby indemnify and hold harmless the Trust against all loss or damage to the Systems.

49.2 In the event of damage to the Systems Northgate shall with all reasonable speed, at its expense and subject to Clause 53.3 effect any repair required.

49.3 Subject to Clause 53.4 in the event of total loss of any item of the Systems ("Total Loss") which for the purpose of this Agreement shall mean damage of the Systems beyond economic repair, Northgate shall replace any such item of the Systems with substantially the same equipment and shall apply any insurance monies recovered in so doing.

49.4 In the event of loss or damage being caused to any item of the Systems by act or negligence of the Trust or its employees, agents or sub-contractors the Trust shall reimburse to Northgate the excess to be borne by Northgate on any policy of insurance against which claim is made by Northgate in respect of such loss or damage.

50. DISPUTE RESOLUTION

In the event of any dispute or difference between the parties arising pursuant to this Agreement the parties shall refer such matter to the Dispute Resolution Procedure.

51. ENTIRE AGREEMENT

This Agreement (together with agreements entered into pursuant to this Agreement and the Schedule, Appendices and Annexes attached hereto) constitute the entire understanding between the parties relating to the subject matter of this Agreement and save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect thereto.

52. LAW AND JURISDICTION

52.1 This Agreement shall be governed and construed in accordance with the Law of Scotland and both parties hereby submit to the exclusive jurisdiction of the Scottish Courts.

52.2 This Agreement is binding on the Trust and its successors and assignees and Northgate and Northgate's successors and permitted assignees: IN WITNESS these presents typewritten on this and the preceding eighty nine pages together with the Schedule in twenty five parts and the two appendices annexed are executed as follows:-

For and on behalf of Lanarkshire Acute Hospitals NHS Trust

Place	Date
Signed by	Witnessed by
Print Name	Print Name
Designation	Designation
	Address

For and on behalf of Northgate

Place	Date
Signed by	Witnessed by
Print Name	Print Name
Designation	Designation
	Address
