

DATED 16th JUNE 1998

GENERAL PROVISIONS

**relating to the Design, Build, Finance and Operate Project for the
New Law District General Hospital at Netherton**

between

LAW HOSPITAL NATIONAL HEALTH SERVICE TRUST (1)

and

SUMMIT HEALTHCARE (LAW)LIMITED (2)



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15 June 1998

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INDEX

1	Definitions and Interpretation	1
2	Monitoring Obligations	1
3	Obligations of Summit	3
4	The Trust's Payment Obligations	4
5	Other Obligations of the Trust	4
6	Changes to the Trust's Requirements	5
7	Agreement Management	5
8	Personnel	7
9	Use of Premises	9
10	Reputation of the Trust	10
11	Approved Service Providers	10
12	Market Testing	11
13	Permitted Sub-Contractors	17
14	NHS Guidance	17
15	Penalty Point Regime	18
16	Remedy by Trust	21
17	Termination	24
18	Status of Summit	25
19	Codes of Practice	25
20	Tax Deduction Scheme	26
21	Transfer of Responsibility on Termination of a Service	28
22	Security	28
23	Recovery of sums due	29
24	General	30

The Schedule - Part A	31
Payment Mechanism (Provision 4)	31
1 Definitions	31
2 Unitary Payment	36
3 The Availability Element	37
4 The Capacity Element	37
5 Usage Element	38
6 Performance Deductions - Unavailability	41
7 Performance Deductions - Performance Measurement System	47
8 Performance Deductions - Equipment Services PMS	51
9 Performance Deductions - No Substantive Service	54
10 Force Majeure and Suspension Events (post Services Commencement Date)	58
11 Payment in respect of Extension Periods	60
12 Payment Procedure	62
 APPENDICES TO PART A	 64
Appendix A	65
Calculation Table for Availability Element	65
Appendix B	66
Calculation Table for the Capacity Element	66
Appendix C	67
Calculation Table for the Usage Element	67
Appendix D	68
ISDS1 Definitions	68
Appendix E	87
Form of Unavailability Notice	87
Appendix F	88
Unavailability Table	88
Appendix G	89
Service Measurement Procedure	89
Appendix H	93
Projected Demand Measurement Procedure	93
Appendix I	94
No Substantive Service Notice	94
Appendix J	95
Form of First Required Notice	95

The Schedule - Part B	96
Penalty Points (Provision 15)	96
The Schedule - Part B	100
Appendix	100
Form of Penalty Points Notice	100
The Schedule - Part C	101
Performance Measurement System	101
Appendix to Part C	104
An Example - Catering	104
The Schedule - Part D	107
Change Provisions	107
Section 1	107
Application and Definitions	107
Section 2	117
Payment and/or Mandatory Date Adjustment Provisions	117
Section 3	127
Trust Works Change	127
Section 4	130
Trust Services Change	130
Section 5	132
Additional Works Change	132
Section 6	134
Legislative Change	134
Section 7	136
Partial Handback Change	136
Section 8	139
Summit Change	139
Section 9	140
Equipment Change	140
Section 10	143
Market Testing Change	143
The Schedule - Part E	144
Additional Works Change Procedure	144
The Schedule - Part F	147
Codes of Practice for Employees (Provision 19.3)	147
The Schedule - Part G	148
Procedure for Reinstatement Works (Clause 26.6.1 of the Project Agreement)	148
The Schedule - Part H	149
List of Documents forming original NHS Guidance	149

GENERAL PROVISIONS

between

- (1) **LAW HOSPITAL NATIONAL HEALTH SERVICE TRUST**, a body corporate established by an order (S.I. 1994 No 2929(S.263)) as amended by amendment orders (SI 1995 No. 741 (S67) and SI 1998 No. 926 (S50)) made by the Secretary of State under Section 12A of the National Health Service (Scotland) Act 1978 (the "**Trust**"); and
- (2) **SUMMIT HEALTHCARE (LAW) LIMITED**, an incorporated company registered in Scotland under No 182649 and having its Registered Office at Saltire Court, 20 Castle Terrace, Edinburgh ("**Summit**").

1 **Definitions and Interpretation**

1.1 In these General Provisions:

- 1.1.1 any word or expression which is defined in the Master Definitions Schedule shall have the same meaning when used in these General Provisions as in the Master Definitions Schedule;
 - 1.1.2 "**Master Definitions Schedule**" means the document so entitled signed by the Trust and Summit on the Execution Date and as amended or supplemented at any time; and
 - 1.1.3 a reference to "**the Agreement**" is a reference to any agreement to which these General Provisions are expressed to apply (being, at the Execution Date, the Services Agreement and (to the extent specified therein) the Equipment Agreement and (for the avoidance of doubt) may refer to more than one agreement simultaneously.
- 1.2 These General Provisions shall be construed and given effect to in accordance with paragraphs 2, 3 and 4 of the Master Definitions Schedule.

2 **Monitoring Obligations**

- 2.1 Summit shall monitor with all due care and skill that the performance of the Services under the Services Agreement meets the relevant part of the Output Specification appropriate to that Service and the Standards specified therein by undertaking or procuring the undertaking of the Services Monitoring Procedures so as to determine:-

- (a) a Service Score for each Service for each Monitoring Period during the Services Term by the application to the results of the Services Monitoring Procedures for that Service for that Monitoring Period of the Performance Measurement Model (for the purposes of paragraph 7 of Part A of the Schedule); and
- (b) the Service Delivery Percentage (for the purposes of paragraph 9 of Part A of the Schedule),

in each case within five Business Days of the end of the relevant Monitoring Period and shall within that five day period provide the Trust with a report ("**Monitoring Report**") (and the necessary data on computer disk to enable the Trust to consider whether Summit is performing the Services in accordance with the Services Agreement) setting out:

- (i) the Service Score and the Service Delivery Percentage for each Service for that Monitoring Period;
- (ii) the Service Delivery and the Service Demand for each day for each Service for that Monitoring Period;
- (iii) whether, in Summit's opinion, there has been a Period of No Substantive Service for any Service ending in that Monitoring Period and reasonable details thereof (but without prejudice to the Trust's right to give a No Substantive Service Notice under paragraph 9.8 of Part A of the Schedule); and
- (iv) any other issues regarding that Monitoring Period which Summit wishes to discuss with the Trust regarding the Services Monitoring Procedures and any other factors relative thereto.

2.2 The Trust may, within five Business Days of receipt of each Monitoring Report, dispute the Service Score and/or the Service Delivery Percentage set out in that Monitoring Report by notice in writing to Summit ("**Trust Monitoring Response**") setting out reasonable details of the reasons for such dispute (whether by reference to the results of its auditing under Provision 2.5 or otherwise) and failing service of any Trust Monitoring Response within that five day period, the Trust shall be deemed to have agreed the Service Score and the Service Delivery Percentage shown in that Monitoring Report. If the Trust serves a Trust Monitoring Response and/or Summit raises issues it wishes to discuss with the Trust in the Monitoring Report then the parties shall in good faith discuss and endeavour to resolve the dispute and/or issues raised within 2 Business Days thereafter (but without prejudice to the right of either party at any time to refer any Dispute, but only regarding any matter or issue having contractual effect, to the Dispute Resolution Procedure) and on the expiry of such 2 Business Days period no further discussion of the issues raised in the Monitoring Report referred to at Provision 2.1 (iv) above will be required, but without prejudice to similar issues being raised in a subsequent Monitoring Report.

- 2.3 The parties may amend the Services Monitoring Procedures from time to time by agreement in writing.
- 2.4 Without prejudice to Summit's obligations in the Output Specification, Summit shall procure rectification of any default in the provision of the Services identified in consequence of the Services Monitoring Procedures within the rectification period where applicable as set out in the Output Specification.
- 2.5 The Trust is entitled to audit in terms of the Performance Measurement Model and Summit shall, and shall use all reasonable endeavours to ensure that its Approved Service Providers and their Permitted Sub-Contractors shall, provide all reasonable assistance to the Trust in carrying out its auditing procedure. The Trust shall ensure that such audit process is carried out in such a way as to cause as little disruption as reasonably practicable to Summit, Approved Service Providers and Permitted Sub-Contractors.

3 Obligations of Summit

- 3.1 Summit shall, to the extent relevant for the performance of the Agreement:
- 3.1.1 comply at all times with all Applicable Laws which are applicable to the provision of the Services and, without limitation, ensure that the Buildings, and all Related Materials (other than Trust Related Materials), comply at all times with all Applicable Laws; provided that the parties acknowledge that any Legislative Changes will be dealt with under the Change Provisions and Qualifying Legislative Change may give rise to adjustments to the payments to be made to Summit in terms of Part D of the Schedule;
- 3.1.2 in the case of the Services, comply at all times with Industry Standards which are applicable to the provision of the Services subject always to Provision 14 (NHS Guidance) to the extent not in conflict with its express obligations under the DBFO Contracts;
- 3.1.3 advise the Trust of any matter of which Summit, having made enquiries (at regular intervals) of its Approved Service Providers and Permitted Sub-Contractors, is aware or has been made aware (and of which the Trust could not reasonably be expected to be aware) which is likely to materially adversely affect the performance of the Services and (without prejudice to Summit's obligations and liabilities under the DBFO Contracts) advise and consult with the Trust as to any actions which Summit proposes to take to mitigate the effect of any such matter;
- 3.1.4 as soon as reasonably practicable notify the Trust of any material claim brought against Summit arising out of or relating to Summit's performance of its obligations in relation to the Services; and
- 3.1.5 ensure that the obligations of Summit under the Services Agreement are performed in accordance with Good Industry Practice.

- 3.2 Summit shall, at all times, whether before or after termination of these Provisions or any of the DBFO Contracts, and shall use all reasonable endeavours to procure that all Approved Service Providers and Permitted Sub-Contractors and all Personnel (being Personnel who have access to confidential information relating to patients) shall, keep as confidential all information relating to all patients in the Hospital, not use (save for the purpose of performing any of its obligations under the DBFO Contracts) or disclose any of that information and make every reasonable effort to prevent the use (save as aforesaid) or disclosure of any of that information by a third party, and comply with the reasonable requirements of all Trust procedures from time to time notified in writing to Summit and the Approved Service Provider in relation to patient confidentiality. The provisions of Clause 12.2 of the Project Agreement shall apply to this Provision in the same manner as they apply to Clause 12.1 of the Project Agreement.
- 3.3 Summit will provide reasonable assistance to the Trust in relation to the performance by the Trust of its obligations under the Services Agreement (consistent with the obligations (except for this Provision 3.3) of Summit under the Services Agreement).
- 3.4 In the formulation of operational policies relating to the Services, Summit will, and will procure that its Approved Service Providers and Permitted Sub-Contractors will, have regard to the provision by the Trust of its clinical services and functions at the Hospital as then provided in a manner consistent with generally accepted practice without (save as specified in this Provision 3.4) increasing or disrupting the performance by Summit of the obligations of Summit under the DBFO Contracts.

4 The Trust's Payment Obligations

In consideration of the provision of the Services, the provision of the Utilities and the Pass Through Services and the Equipment Services by or on behalf of Summit under the DBFO Contracts, the Trust shall make payments to Summit in accordance with Part A of the Schedule (as such payments may be adjusted from time to time in accordance with Part D of the Schedule).

5 Other Obligations of the Trust

- 5.1 The Trust will provide reasonable assistance to Summit, its Approved Service Providers and Permitted Sub-Contractors in relation to the performance by Summit of its obligations under the DBFO Contracts (consistent with the obligations (except for this Provision 5.1) of the Trust under the DBFO Contracts).
- 5.2 The Trust will, as soon as reasonably practicable, inform Summit of any breach by the Trust of Clause 8.1.5 of the Project Agreement (after the Services Commencement Date) of which it is aware and which is likely to impact upon the provision of the Services or the Equipment Services, and of the steps being taken by the Trust to remedy or mitigate the same.

6 Changes to the Trust's Requirements

- 6.1 Unless specifically stated otherwise in the Services Agreement and subject to the terms of Clause 8 of the Project Agreement, no guarantee is given by the Trust in respect of the levels of demand for the Services which the Trust will require during the Services Term or any period during the Services Term.
- 6.2 Eligible Changes shall be dealt with in accordance with Part D of the Schedule.

7 Agreement Management

- 7.1 Each party shall procure that day-to-day management of the Agreement shall be carried out by that party's Contract Officer from time to time. The identity of each party's first Contract Officer shall be notified to the other party no later than 3 months prior to the Services Commencement Date.
- 7.2 If a party changes its Contract Officer it shall promptly notify the other party of the change. Summit shall consult generally with the Trust in relation to the appointment or removal of Summit's Contract Officer and shall not appoint any person as its Contract Officer without the Trust's prior written consent, not to be unreasonably withheld or delayed.
- 7.3 Summit shall, and shall procure that the Approved Service Provider(s) and Permitted Sub-Contractor(s) shall, comply with all reasonable requests and directions of the Trust's Contract Officer in respect of the practical implementation of the provision of the Services provided that such requests and directions are consistent with the obligations of Summit under the DBFO Contracts (including the Liaison Procedures) and his powers under Provision 7.5.
- 7.4 Summit shall address any material enquiries and notify any material difficulties about procedural or contractual matters in writing to the Trust's Contract Officer.
- 7.5 The Trust's Contract Officer shall exercise the functions and the powers which are identified in the DBFO Contracts as functions or powers to be carried out or exercised by the Trust's Contract Officer. The Trust may by notice to Summit confer upon the Trust's Contract Officer other functions of the Trust under the DBFO Contracts. Such change shall have effect on the date specified in the notice (which date shall, other than in the case of an emergency, be such date as will not cause material inconvenience to Summit in the execution of its obligations under the DBFO Contracts).
- 7.6 Subject to the provisions of Provisions 7.7 and 7.8, Summit shall take instructions and directions only from the Trust's Contract Officer.
- 7.7 This Provision shall apply to the delegation by the Trust's Contract Officer of his functions and powers:-
- (a) the Trust's Contract Officer may from time to time by notice in writing to Summit authorise any other person (or persons) to be responsible to him and

to act on his behalf either generally in respect of the Services or the Equipment Services or specifically in respect of a specified part of the Services or the Equipment Services. The Trust's Contract Officer may delegate his powers and functions to such person (or persons) generally or the delegation may be limited to functions and powers arising out of particular provisions of the DBFO Contracts. Any act of any such person (or persons) in his (or their) delegated authority shall for the purposes of the DBFO Contracts constitute an act of the Trust's Contract Officer and all references to the Trust's Contract Officer in the DBFO Contracts (apart from this Provision) shall be taken as references to such person (or persons) so far as they concern matters within the scope of his (or their) authority as so advised. Such authorisation shall continue in force until such time as the same is determined by notice in writing to Summit (without affecting the validity of any matter undertaken or not undertaken by Summit with reference to such authorisation prior to receipt by Summit of determination of such authority);

- (b) the Trust's Contract Officer shall not, without the prior written consent of Summit, delegate his responsibilities in relation to the award of Penalty Points, the Payment Mechanism, the Deduction Provisions or the exercise by the Trust of its rights under Provision 16.2; and
- (c) no person exercising delegated powers may make or authorise the making of any Change.

- 7.8 During any period when the Trust's Contract Officer has not been appointed or is through illness, incapacity or any other reason unable or unwilling to carry out or exercise his functions hereunder, the Trust shall appoint another person of suitable seniority to carry out or exercise the relevant functions on an interim basis by notice in writing to Summit. The Trust shall ensure that the Trust's Contract Officer or his replacement, notified to Summit under this Provision 7.8, is available on Site during Normal Working Hours and is contactable by Summit for the purposes of the DBFO Contracts outwith Normal Working Hours.
- 7.9 Where the DBFO Contracts impose an obligation on the Trust's Contract Officer by requiring him to take some action or otherwise the Trust shall procure that the Trust's Contract Officer (or his replacement pursuant to Provision 7.8 or any person to whom he or his replacement delegates authority under Provision 7.7) discharges such obligation, in accordance with its terms.
- 7.10 Summit's Contract Officer shall have authority to represent Summit in relation to all matters arising out of or in connection with the DBFO Contracts for which he has been given delegated authority as notified in writing to the Trust subject to the terms and conditions of such delegation.
- 7.11 The Trust's Contract Officer shall act as an agent of the Trust and accordingly, as between the Trust and Summit, the Trust will be responsible for the acts or omissions of the Trust's Contract Officer under the DBFO Contracts to the same extent to which

the Trust would be responsible under the DBFO Contracts, if they were its own acts or omissions.

8 Personnel

8.1 Summit shall include in its contracts with (a) any suppliers of goods or services to be supplied to Summit (if any) entered into in connection with the Services Agreement, and (b) any Approved Service Provider providing Services (and shall procure the inclusion in any contract with a Permitted Sub-Contractor providing Services) a written undertaking to pay for the relevant goods and/or services within 30 days, or such longer period as (i) may result in commercial benefit to the Project, or (ii) the Trust, acting reasonably, may agree, of receipt of the supplier's invoice and (provided that such goods and/or services have been supplied in accordance with the relevant agreement and such liability to pay has arisen and there is no dispute in good faith and in accordance with the conditions of the relevant contract for resolution of disputes regarding the amount due), shall comply with the undertaking to pay.

8.2 Summit shall take and use all reasonable endeavours to ensure that Approved Service Providers and Permitted Sub-Contractors shall take all reasonable steps such as would be taken by a prudent employer to ensure that:

8.2.1 no Personnel engaged in the provision of the Services are claiming any benefit, where payment of that benefit is precluded due to earnings;

8.2.2 no Personnel who are not EU nationals are engaged in the provision of the Services unless legally entitled to be resident in the United Kingdom and hold a valid work permit;

and Summit shall as soon as reasonably practicable after becoming aware that Provisions 8.2.1 or 8.2.2 are not being complied with take all such reasonable steps as a prudent employer would take in the circumstances (including, if appropriate) the termination of the employment of any such Personnel.

8.3 Summit shall require that sufficient Personnel are utilised to ensure that the Services are provided in accordance with the DBFO Contracts.

8.4 Summit shall, and shall ensure that any Approved Service Provider and Permitted Sub-Contractor will, only engage and permit to work on the Site, Personnel engaged in the performance of the Services who:

8.4.1 are appropriately skilled and competent (save for an appropriate level of properly supervised trainees);

8.4.2 are appropriately trained and qualified (save for an appropriate level of properly supervised trainees);

8.4.3 are in good health and have a high standard of personal hygiene; and

- 8.4.4 are not (a) showing active signs of, or so far as the relevant employer is aware, under treatment for, any infectious or communicable disease, or (b) known carriers of such a disease in each case unless permitted by the policy to be agreed with the Trust in accordance with Provision 8.5.

The Trust shall procure that at the Transition Commencement Date the Employees satisfy the criteria specified in Provisions 8.4.1 to 8.4.4.

- 8.5 Summit and the Trust shall agree a policy relating to the deployment of Personnel who have any infectious or communicable disease.

- 8.6 All Personnel engaged in the provision of the Services shall wear appropriate, adequate and hygienic protective clothing and be readily identifiable with an appropriate identification badge and photograph supplied by the Trust and may accordingly be refused admission or be obliged to leave the Trust's premises forthwith at the request of the Trust if not in possession of the relevant identification. Summit shall procure that such identification is returned to the Trust when Personnel cease to be involved in the performance of the Services.

- 8.7 Summit shall submit to the Trust for approval (the Trust being bound to act reasonably) from time to time, in accordance with the Trust Objection Procedure, the disciplinary provisions in the contracts of employment of Personnel engaged in the provision of the Services and disciplinary policy and procedures of Summit and all Approved Service Providers and Permitted Sub-Contractors employing such Personnel which shall include provision where appropriate, for termination of employment and/or removal from the Site in the circumstances set out in Provisions 8.8.1 to 8.8.3 (inclusive) (in the case of the Employees, only to the extent that their contracts of employment so comply at Transition Commencement Date) and Summit shall, and shall use all reasonable endeavours, to ensure that Approved Service Providers and Permitted Sub-Contractors engaged in the performance of the Services shall, where entitled to do so, and reasonable in the circumstances enforce the terms of such disciplinary provisions and policies.

- 8.8 The Trust (acting reasonably) may require that Summit remove, and exclude from the Site, Personnel engaged in the provision of the Services:

- 8.8.1 to whom Provisions 8.2.1 or 8.2.2 apply;
- 8.8.2 who do not at any time satisfy the criteria in Provision 8.4.4;
- 8.8.3 who commit an act of gross misconduct; or
- 8.8.4 where required under Applicable Laws;

and Summit will ensure that such Personnel are removed and excluded from the Site (a) in case of a failure to satisfy the criteria in Provision 8.4.4 in accordance with the policy referred to in Provision 8.5 or (b) otherwise promptly after completion of the disciplinary procedures under the contract of employment of such Personnel (if such

procedure allows such action to be taken or should have done if Summit had complied with Provision 8.7 where the outcome of that procedure permits the employer of such Personnel to remove and exclude such Personnel) and that the relevant employer shall diligently and expeditiously pursue such disciplinary procedures.

9 Use of Premises

- 9.1 Subject to the terms of the Head Lease and the Sub-Lease and unless otherwise agreed in writing between the parties, any land or premises made available to Summit by the Trust in connection with the provision of the Services or the Equipment Services shall be made available to Summit free of charge and without exclusive possession and shall be used by Summit solely for the purpose of providing the Services or the Equipment Services, as the case may be, and for any ancillary purposes as envisaged by the DBFO Contracts.
- 9.2 For the purposes of Provision 9.1 and the DBFO Contracts, subject to the terms of Clause 23 of the Project Agreement, the Trust hereby grants to Summit, its Approved Service Providers and Permitted Sub-Contractors and any other persons for whom Summit is responsible in terms of Clause 9.2 of the Project Agreement an irrevocable non-exclusive licence for the Term (subject to the terms of the DBFO Contracts) to enter and occupy the Site and the Trust's Facilities for the purpose of providing the Services or the Equipment Services, as the case may be, and for exercising its rights and carrying out its obligations under and for any ancillary purposes as envisaged by the DBFO Contracts, provided that the Trust may restrict or deny Summit, its Approved Service Providers and Permitted Sub-Contractors access to the Site or any part(s) thereof, from time to time, in accordance with the Liaison Procedures; and so that
- (a) for the avoidance of doubt Summit acknowledges that neither it nor any Approved Service Provider or Permitted Sub-Contractor or person authorised by it shall save where the Trust vacates the Site in accordance with Clauses 24 or 25 of the Project Agreement be entitled to access to or occupy the Site on or after the date of expiry of the Term or termination of the DBFO Contracts, except for the purpose of exercising its rights or carrying out its obligations in terms of Clause 23 of the Project Agreement or any other provision of the DBFO Contracts which requires or entitles Summit to take action on the Site after that date; and
 - (b) the Trust will be entitled to require the removal from the Site of any person who should have been, but has not been, approved by the Trust under the DBFO Contracts on or after the expiry of 15 Business Days after receipt from the Trust of written notice requiring such person to be removed from the Site unless Summit rectifies the failure to obtain such approval within that period.
- 9.3 Summit shall ensure that all Personnel engaged in the performance of the Services co-operate so far as may be reasonably necessary with the Trust's employees, patients, visitors and other licensees and the Trust shall procure similar co-operation by the persons for whom it is responsible in accordance with Clause 8.2 of the Project

Agreement with all Personnel engaged in the performance of the Services. Summit shall further use its reasonable endeavours to ensure that the Personnel carry out their duties and behave while on the Trust's Facilities in such a way as to cause no unreasonable or unnecessary disruption to the routines and procedures of the Trust.

- 9.4 Summit shall ensure that all Personnel engaged in the performance of the Services, comply with all reasonable written rules and regulations from time to time issued to Summit by the Trust relating to the use and/or security of the Trust's Facilities, consistent with Summit's rights and obligations hereunder.
- 9.5 Accidents to Personnel engaged in the performance of the Services which occur on the Trust's Facilities and which are ordinarily required to be reported in accordance with the Health and Safety at Work Etc Act 1974, shall be reported by Summit as soon as practicable in writing to the Trust's Contract Officer.
- 9.6 No advertisement, sign or notice of any description shall be exhibited by Summit on the Trust's premises otherwise than with the Trust's prior written consent which consent will not be unreasonably withheld in the case only of internal (not obstructing any windows or glass doors) signs or advertisements relating to the provision of catering to the public.

10 Reputation of the Trust

Summit shall not, and shall use all reasonable endeavours to procure that no Personnel shall, knowingly do or omit to do anything in relation to the Agreement or otherwise which may bring the standing or reputation of the Trust or the Hospital into disrepute or attract adverse publicity to the Trust or the Hospital, provided that nothing in this Provision shall prevent Summit any Approved Service Provider or Permitted Sub-Contractor or such Personnel taking any actions against the Trust to protect or enforce any rights they may have against the Trust whether under the DBFO Contracts or otherwise.

11 Approved Service Providers

- 11.1 Subject to the prior written approval of the Trust (not to be unreasonably withheld or delayed) Summit has the right to appoint Approved Service Providers to carry out any or all of or any part of any of the Services or the Equipment Services in accordance with sub-contracts which will be in terms of (a) the Original Sub-Contracts with such amendments as Summit is or would have been entitled to make without the consent of the Trust in terms of Clause 10.3 of the Project Agreement, and (b) otherwise with the consent of the Trust whose consent will not be unreasonably withheld or delayed and will be subject to Part 3 of the Schedule to the Project Agreement (Trust Objection Procedure) and in any event such sub-contracts will comply with and be consistent with the relevant terms of these Provisions and the other DBFO Contracts.
- 11.2 In considering whether to approve a proposed service provider the Trust may, without limitation, but subject as provided in Provision 11.1 and the Services Agreement and paragraph 2(d) of the Trust Objection Procedure take into account: -

- 11.2.1 the financial standing of the service provider;
 - 11.2.2 the technical and managerial experience and ability of the service provider; and
 - 11.2.3 the experience of the service provider and its customer references.
- 11.3 Subject as provided in paragraph 2(d) of the Trust Objection Procedure, Summit will not sub-contract the whole or any part of the provision of (a) the Services, except in compliance with Provision 11.1 and the Services Agreement, and (b) the Equipment Services, except in compliance with Provision 11.1 and the Equipment Agreement.
- 11.4 Summit shall ensure that no Approved Service Provider shall commence the provision of any of the Services or the Equipment Services until it has entered into a Services Direct Agreement or an Equipment Direct Agreement, as the case may be, with the Trust save in terms of paragraph 2(d) of the Trust Objection Procedure when such direct agreement shall be entered into as soon as reasonably practicable (but in any event within two weeks of the completion of that procedure). The Trust undertakes to execute each such agreement within 10 Business Days after receipt of such agreement Executed by the other parties thereto and so that failure by the parties, (other than the Trust), to execute such direct agreement as required under this Provision 11.4 shall be a ground for withdrawal of the Trust's approval of the relevant party as Approved Service Provider and entitle the Trust to remove such party from the Site in accordance with Provision 9.2.
- 11.5 Summit shall ensure that no Permitted Sub-Contractor to whom the employment of any Employees is to transfer (whether by operation of the Directive, the Employment Regulations or otherwise) shall commence the provision of Services until it has entered into a Services Direct Agreement with the Trust save in terms of paragraph 2(d) of the Trust Objection Procedure when such direct agreement shall be entered into as soon as reasonably practicable (but in any event within two weeks of the completion of that procedure). The Trust undertakes to execute each such agreement within 10 Business Days after receipt of such agreement Executed by the other parties thereto.
- 11.6 Notwithstanding the appointment of any Approved Service Provider or Permitted Sub-Contractor, Summit shall remain liable under the Agreement for the provision of the Services and the Equipment Services consistent with the terms of the DBFO Contracts.

12 **Market Testing**

- 12.1 Summit shall, subject as provided in Provision 12.2, market test the following Services (and any other services as agreed between Summit and the Trust, from time to time) as an integrated package on the First Market Testing Date and each seventh anniversary thereafter during the Services Term (each being referred to as "a Market Testing Date") in accordance with this Provision 12:-

Catering Services
Domestic Services
Linen Services

Portering, Transport and Waste Services
 Residential Accommodation Services
 Switchboard Services
 Security Services

(together referred to as "the Specified Services").

- 12.2.1 At least 16 months prior to a Market Testing Date, the parties shall consult with each other with a view to ascertaining whether agreement can be reached on arrangements to continue the provision of the Specified Services by Summit and its Approved Service Providers without the need for a market testing exercise, taking into account the Trust's need to demonstrate value for money and any Applicable Laws relating to procurement and the views of Summit and its Approved Service Providers (or such other providers as may be agreed), on terms to be agreed and each party shall give reasonable consideration in good faith to any changes to the Contract Specification including the matters specified in Provision 12.4(e)(ii) and/or Service Specification proposed by the other which is beneficial or not detrimental to the performance of the Services and which, in the case of a change proposed by the Trust, will not prejudice the costs or risk profile of Summit in procuring the performance of the Services (unless otherwise agreed by Summit or as implemented by a Trust Service Change under the Change Provisions and subject to the same not materially impacting on the timing of the market testing exercise to the prejudice of Summit);
- 12.2.2 if the parties reach agreement on such arrangements then that agreement shall be treated as a Market Testing Change and given effect to in accordance with the Change Provisions and this Provision 12 shall not have any further effect until the next Market Testing Date. For the avoidance of doubt, failure to so agree shall not result in a referral to the Dispute Resolution Procedure and the Trust Objection Procedure shall not apply.
- 12.3 If no agreement has been reached as envisaged in Provision 12.2 by the date which is 12 months prior to a Market Testing Date, then a market testing exercise shall be undertaken of the Specified Services in accordance with Provision 12.4.
- 12.4 Each party shall co-operate with the other in relation to the market testing of the Specified Services with a view to this being undertaken efficiently and economically and with all due diligence and to ensure a smooth handover from the existing to the new Approved Service Provider as at the relevant Market Testing Date. Such market testing shall be undertaken in accordance with the following procedure (or as may otherwise be agreed between the parties) and in accordance with any Applicable Laws relating to such procurement or other relevant matters at that time:
- (a) Summit shall advertise as widely as reasonably practicable the requirement for the provision of the Specified Services;
 - (b) on responses being received to that advertisement, the Trust and Summit shall jointly pre-qualify an appropriate number of tenderers, up to a maximum of four, on the basis of criteria to be agreed, to include:-

- (i) track record and experience in the provision of services similar to the Specified Services to healthcare bodies;
 - (ii) financial substance and resources;
 - (iii) ability to meet the standards set out in the relevant Contract Specification and the Service Specification throughout the contract period; and
 - (iv) independent accreditation relevant to the provision of the Specified Services;
- (c) either party shall be entitled to exclude any person with which it (or an Associated Company) is in dispute (or has been in dispute in the last five years) where such dispute is material in the context of the proposed provision of the Specified Services. The parties acknowledge that Summit will have responsibility to the Trust for the performance by the successful tenderer of the Specified Services on it becoming an Approved Service Provider and that the pre-qualification criteria will require to address Summit's reasonable requests to minimise any such exposure it may have, consistent with the terms of the DBFO Contracts and the Contract Specification;
- (d) Summit shall issue an invitation to tender for the Specified Services to the bidders selected under sub-paragraphs (b) and (c) above and (subject to satisfactory performance by it, as agreed between Summit and the Trust taking into account their respective interests, and to the requirements of Applicable Laws relating to procurement) to the Approved Service Provider then providing the Specified Services ("**the Existing Approved Service Provider**"), inviting each such person to tender for the provision of the Specified Services on the basis set out in the invitation;
- (e) the invitation to tender shall be based on the following requirements unless otherwise agreed or (subject to the same not materially impacting on the timing of the market testing exercise to the prejudice of Summit) as required by the Trust under the Change Provisions:
 - (i) the service specification ("**the Service Specification**") for each of the Specified Services shall, save as specified in sub-paragraph (iv) below, be as set out in the Output Specification (as current at that time);
 - (ii) the terms of the contract ("**the Contract Specification**") to be awarded to the successful tenderer shall, save as specified in sub-paragraph (iv) below, be on the terms of the Sub-Contract between Summit and the Existing Approved Service Provider (as current at that time including such terms as relate to the terms of payment, (but not the quantum of the payment itself) liquidated

damages and limits in liability) and excluding such provisions as relate to the Estates Maintenance Services, being the initial contract approved by the Trust and any amendments to such contract pursuant to Provision 11.1, including any requirements to comply with the Method Statements and any amendments requisite to comply with Clause 16 (Employees) of the Project Agreement;

- (iii) Summit will ensure that any Related Materials previously provided by Summit are made available to the incoming service provider on the same contractual terms as previously provided to the Existing Approved Service Provider (and the Trust will, for the avoidance of doubt, continue to provide the Trust Related Materials) and the incoming service provider shall be obliged to purchase the Related Materials of the Existing Approved Service Provider, subject to such Related Materials being in an appropriate and satisfactory condition and not excessive in quantity, redundant or obsolete and reasonably suitable for their purpose at a price to be agreed or, failing agreement, at their market value and save that any Transferring Related Materials shall transfer to the incoming service provider at nil value; and
 - (iv) each party shall give reasonable consideration in good faith to any changes to the Contract Specification including the matters specified in Provision 12.4(e)(ii) and/or Service Specification proposed by the other which is beneficial or not detrimental to the performance of the Services and which, in the case of a change proposed by the Trust, will not prejudice the costs or risk profile of Summit in procuring the performance of the Services (unless otherwise agreed by Summit or as implemented by a Trust Service Change under the Change Provisions and subject to the same not materially impacting on the market testing exercise to the prejudice of Summit);
- (f) upon receipt of responses to the invitation to tender, Summit and the Trust shall (taking into account their respective interests) jointly evaluate those responses to identify the tenderer offering the best value for money in accordance with criteria to be agreed, including the following:-
- (i) compliance with, as a minimum, the Service Specification and the Contract Specification amended, if applicable, pursuant to sub-paragraph (e) (iv) above; and
 - (ii) the ability to meet the standards set out in the Service Specification and Contract Specification amended, if applicable, pursuant to sub-paragraph (e) (iv) above throughout the contract period, taking into account, in particular, the tender price in comparison with the tender price quoted by other tenderers;

Provided that the Trust may at that stage instigate a Trust Services Change in accordance with the Change Provisions (subject to the same not materially impacting on the timing of the market testing exercise to the prejudice of Summit) or the parties may agree with any tenderer as part of the evaluation process changes to the Service Specification and/or Contract Specification as agreed between the Trust and Summit in accordance with Provision 12.4(e)(iv); and

- (g) Summit shall appoint the tenderer selected by the Trust and Summit (taking into account their respective interests) in accordance with sub-paragraph (f) above as its Approved Service Provider for the provision of the Specified Services to the Service Specification and on the terms of the Contract Specification (or to such other specification and on such other terms as may be agreed among Summit, the Trust and that tenderer) with effect from the relevant Market Testing Date (but without prejudice to Summit's obligation to provide the Specified Services under the DBFO Contracts) until the next following Market Testing Date or the expiry of the Term (whichever is earlier) and on that basis the Trust shall be deemed to have approved that tenderer as an Approved Service Provider and the terms of its appointment by Summit for the purposes of these General Provisions.
- 12.5 Any increase or decrease in the cost of the provision of the Specified Services subsequent to a Market Testing Date as a result of agreement under Provision 12.2 or a market testing exercise shall be borne by and be for the benefit of the Trust and agreement under Provision 12.2 or the completion of the market testing procedure in accordance with this Provision 12 will be a Market Testing Change in terms of Part D of the Schedule. Summit's other rights and obligations under the DBFO Contracts shall otherwise continue in full force and effect, save where amended in accordance with the foregoing provisions of this Provision 12.
- 12.6 Summit shall procure that the Existing Approved Service Provider shall co-operate with and provide such information and documents (other than Proprietary Information) to Summit, the Trust and potential tenderers as they may reasonably request to facilitate the market testing procedure.
- 12.7.1 If the market testing exercise fails for any reason (other than as a result of a substantive breach by Summit in carrying out its obligations under this Provision 12 notified in writing by the Trust to Summit within a reasonable period after the Trust shall have become aware, or should reasonably have become aware, of the default (in which event the market testing exercise or relevant part thereof will be repeated at Summit's cost and without prejudice to Summit's continuing obligation to provide the Services)) to produce a new service provider willing to provide the Specified Services (notwithstanding any changes effected in accordance with Provisions 12.4(e)(iv) or 12.4(f) or pursuant to any Eligible Change instructed by the Trust), then the parties shall discuss in good faith and use all reasonable endeavours to procure a resolution of such issue which may include the parties agreeing the price and terms upon which Summit will provide the Specified Services but if there is no such resolution of such issue by the Market Testing Date or such later date as the parties acting reasonably agree then Provision 12.7.2 will apply.

For the avoidance of doubt, no failure to reach agreement as aforesaid shall be capable of referral to the Dispute Resolution Procedure.

- 12.7.2 Summit shall have no further obligation to provide the Specified Services (or those Services within the Specified Services in respect of which agreement has not been reached for the continued provision thereof by Summit pursuant to Provision 12.7.1) ("the Deleted Services") under the DBFO Contracts after the date from which Provision 12.7.1 applies and shall use all reasonable endeavours to procure a smooth handover of the Deleted Services from the Existing Approved Service Provider to the Trust with effect from that date and which event will be a Market Testing Change on the basis that the Trust will no longer have any responsibility to pay any Capacity Element or Usage Element in respect of the Deleted Services and hence the Deduction Provisions will have no application thereto and the Management Portion relative thereto will cease to be payable and the DBFO Contracts will be amended accordingly through the Change Provisions.
- 12.8 Each party shall subject to Provision 12.9 bear its own costs in respect of each market testing exercise save that any reasonable costs properly incurred by either party due to any third party in connection with such market testing shall be borne equally unless the marketing testing exercise has to be rerun due to Summit's default as provided in Provision 12.7.1.
- 12.9 Summit may, in conjunction with any market testing under Provision 12.4, make tender arrangements in respect of the provision of the Estates Maintenance Services provided that:-
- (a) the cost (including third party costs) of doing so shall be borne by Summit and any increase or decrease in the cost of provision of that Service shall be borne by or be for the benefit of Summit; and
 - (b) Summit shall ensure (insofar as it is able) that responses to such invitation to tender are kept separate from responses to the invitation to tender in respect of the Specified Services.
- 12.10 In the event of Default Market Testing of one or more Services pursuant to Provision 15, Summit will:
- (a) subject to Clause 12 of the Project Agreement provide to the Trust a copy of all relevant documentation and correspondence in relation to the Default Market Testing;
 - (b) keep the Trust fully advised throughout the process;
 - (c) obtain the Trust's consent to the identity of the proposed new Approved Service Provider in accordance with Provision 11; and
 - (d) ensure that the new Sub-Contract complies with the DBFO Contracts, including without limitation Provision 11.1 and Clause 16 (Employees) of

the Project Agreement, and is in respect of the period until the next Market Testing Date;

and further that Summit will remain responsible for each of its Approved Service Providers, including without limitation, co-ordination and liaison between or amongst them and shall be responsible for all the costs of that market testing exercise and shall bear any increase or have the benefit of any decrease in the cost of the provision of that Service and so that such Default Market Testing will not be an Eligible Change.

12.11 For the avoidance of doubt, the Equipment Services will not be the subject of market testing except as provided in Clause 24 (Termination of contract with Approved Service Provider and consequences) of the Equipment Agreement.

12.12 Subject to Provision 12.7.1 any disputes in connection with the market testing of the Specified Services shall be referred to the Dispute Resolution Procedure.

13 Permitted Sub-Contractors

13.1 Any Approved Service Provider may further sub-contract the provision of all or any part of any of the Services or the Equipment Services in respect of which it has been appointed, and Summit may sub-contract part of the Estates Maintenance Services to be performed by it (rather than through an Approved Service Provider) but only:

13.1.1 (a) with the prior written consent of the Trust, which consent will not be unreasonably withheld or delayed; and

(b) on the basis that such sub-contracts comply with any express requirements of the DBFO Contracts requiring provision to be made in such sub-contracts; or

13.1.2 if such sub-contract has a value or an annual value of less than (a) £100,000 (Indexed from Financial Close) in respect of the Equipment Services and (b) £50,000 (Indexed from Financial Close) in respect of the Services provided sub-paragraph (b) of Provision 13.1.1 has been fulfilled.

13.2 No other sub-contracting of the provision of the Services or the Equipment Services by any Approved Service Provider or the Estates Maintenance Service by Summit shall be permitted except as specified in the Equipment Agreement.

13.3 Without prejudice to the Trust's entitlement to sub-lease or share occupation of the Hospital in terms of the Sub-Lease, the Trust shall not be entitled to sub-contract any of its obligations under the DBFO Contracts without the prior written consent of Summit.

14 NHS Guidance

14.1 If the Trust wishes Summit to comply with any amendments or supplements to any Original NHS Guidance or with any other rules, regulations, guidance, codes of practice or other provisions which are specific and applicable to the NHS or to hospitals

(including the Hospital) and which are applicable to the Services, but do not constitute Statutory Requirements ("New Guidance") the Trust may (but need not subject as provided in Provision 14.2) give written notice to Summit and supply to Summit a full written statement of those requirements and an indication of the effect the requirements may have on and the extent to which changes in the Services may in the future be required and any such changes shall become subject to the Change Provisions, any adjustment to the Trust's payment obligations to Summit being solely determined in accordance with Part D of the Schedule. Summit will be given a reasonable time in which to implement any such change having regard to the nature, rationale and extent of the New Guidance.

- 14.2 If no notice is given pursuant to Provision 14.1 Summit will not be obliged to comply with the relevant New Guidance (irrespective of whether it comes to its notice) but will continue to comply with any superseded Original NHS Guidance (with which it was bound to comply immediately before the issue of the New Guidance) as if the superseded guidance had remained extant and in full effect unless this would cause Summit to be in breach of any Statutory Requirements or a duty of care to third parties arising by operation of law or any provision of the DBFO Contracts in which case it will not be obliged to comply with the superseded Original NHS Guidance, but will comply with relevant New Guidance and the Trust shall be obliged to instruct a Change under Provision 14.1.

15 **Penalty Point Regime**

- 15.1 The provisions of Part B of the Schedule will apply to determine at any time:
- 15.1.1 the number of Service Penalty Points awarded to each Approved Service Provider (a) in respect of each Service which that Approved Service Provider is providing and (b) in aggregate in respect of all Services which are being provided by it and that both in respect of each Monitoring Period and in aggregate for any relevant period; and
- 15.1.2 the number of Master Penalty Points awarded to Summit (a) in respect of each Service and (b) in aggregate (including Master Penalty Points awarded for other reasons) for any relevant period.
- 15.2 If, in respect of any Service, 50 or more Service Penalty Points are accumulated in any period of 12 consecutive months the Trust may within one month thereafter issue a Warning Notice to Summit.
- 15.3 In the event of the issue of a Warning Notice under Provision 15.2 in respect of a Service the Trust shall have the right to require Summit to undertake increased monitoring in accordance with the Service Monitoring Procedures; Provided that the parties will review the position quarterly from and after the date of the Warning Notice and so that if at any such review the aggregate score for the Service for the preceding 12 consecutive months is less than 50 Service Penalty Points the monitoring will revert to its frequency prior to the giving of the Warning Notice.

- 15.4 If, in respect of any Service (other than the Estates Maintenance Services), 90 Service Penalty Points are accumulated in any period of 12 consecutive months, Summit will be entitled by written notice given to the Trust within 3 months thereafter to trigger Default Market Testing for that Service.
- 15.5 If, in respect of any Service (other than the Estates Maintenance Services) 120 Service Penalty Points are accumulated in any period of 12 consecutive months, the Trust will be entitled by written notice to Summit given within 3 months thereafter to trigger Default Market Testing for that Service.
- 15.6 If, in respect of any Approved Service Provider there are accumulated in any period of 12 consecutive months the Summit Threshold Points then Summit will be entitled by written notice to the Trust given within 3 months thereafter to trigger Default Market Testing of all Services then provided by that Approved Service Provider.
- 15.7 If, in respect of any Approved Service Provider there are accumulated in any period of 12 consecutive months the Trust Threshold Points then the Trust will be entitled by written notice to Summit given within 3 months thereafter to trigger Default Market Testing of all Services (other than the Estates Maintenance Services) then provided by that Approved Service Provider.
- 15.8 For the purposes of Provisions 15.6 and 15.7:

"**Summit Threshold Points**" means if the Approved Service Provider is providing the number of Services (other than the Estates Maintenance Services) set out in Column 1, the number of Service Penalty Points set out in Column 2 opposite that number in Column 1 in the table below; and

"**Trust Threshold Points**" means if the Approved Service Provider is providing the number of Services (other than the Estates Maintenance Services) set out in Column 1, the number of Service Penalty Points set out in Column 3 opposite that number in Column 1 in the table below.

Column 1	Column 2	Column 3
1	90	120
2	160	210
3	205	270
4	250	330
5	275	360
6	300	390
7	320	420

- 15.9 If Default Market Testing is triggered in accordance with this Provision 15 then Summit will carry out the same promptly thereafter in accordance with Provision 12.10.
- 15.10 If in respect of any Service (other than Estates Maintenance Services) within any period of 36 consecutive months an Approved Service Provider has been replaced through Default Market Testing in respect of that Service and in respect of a subsequent Approved Service Provider providing that Service (a) the threshold for Default Market Testing under Provision 15.4 has been reached and Summit gives notice to the Trust that it intends to trigger Default Market Testing or (b) the threshold for Default Market Testing under Provision 15.5 has been reached in respect of that Service then in either case the Trust will have the option of proceeding or permitting Summit to proceed with Default Market Testing or by written notice given to Summit within 10 Business Days of Summit's notice in case of Provision 15.4 or within the 3 months referred to in Provision 15.5 to withdraw that Service from Summit and if the latter option is exercised Provision 15.12 will apply. If the Trust proceeds or permits Summit to proceed with Default Market Testing it shall be deemed to have waived its right to withdraw that Service from Summit on that occasion but without prejudice to the further operation of this Provision 15.10.
- 15.11 If the Threshold Master Penalty Points are accumulated in respect of any period of 36 consecutive months in respect of the Services provided by any individual Approved Service Provider (other than Estates Maintenance Services) ("the Defaulted Services") then the Trust will be entitled by written notice given to Summit within 3 months thereafter to withdraw the Defaulted Services from Summit and Provision 15.12 will apply and for this purpose, the **Threshold Master Penalty Points** means if the number of the Defaulted Services are as shown in Column 1, the number of Master Penalty Points set out in Column 2 opposite that number in Column 1 in the table below:

Column 1	Column 2
1	300
2	500
3	625
4	750
5	825
6	900
7	960

- 15.12 If a notice is given to withdraw a Service or Services in accordance with Provision 15.10 or 15.11 such notice will have effect as if the Trust had instructed and Summit had accepted a Default Deletion Change to delete the Defaulted Service or Defaulted Services (as the case may be) with effect from 20 weeks after the date of the notice

("the Handover Date") and so that from the Handover Date Summit will no longer provide such Defaulted Service or the Defaulted Services (as the case may be) and Provision 17 will apply and the Unitary Payment will be adjusted to remove the Service Amount (including the Management Portion) in respect of the Defaulted Service or each of the Defaulted Services as the case may be which Service Amount for each such Defaulted Service will not be payable by the Trust after the Handover Date and so that for the avoidance of doubt there will not be either a Change in Costs or Change in Revenues and, without limitation, Summit will be solely responsible for termination of its contract with the Approved Service Provider and all costs associated therewith save as otherwise expressly provided in the DBFO Contracts.

- 15.13 If 1,500 or more Master Penalty Points are accumulated in any period of 36 consecutive months then the Trust shall be entitled to terminate the DBFO Contracts in accordance with Clause 22.1.5 of the Project Agreement.

16 Remedy by Trust

- 16.1 Summit undertakes to the Trust, and shall ensure at all times, that all goods supplied in connection with performance of the Services are of satisfactory quality and free from material defects in design, material and workmanship.
- 16.2 If Summit fails to meet any of the Standards specified in the Output Specification and, if capable of remedy, such failure has not been remedied by Summit within the remedy time periods provided for in the Output Specification in relation to the relevant Service, failing which provision in the Output Specification, within a reasonable period then:-
- 16.2.1 the Trust shall notify Summit, where practicable in writing or if orally, followed as soon as practicable thereafter by notice in writing, of the failure to perform and may in that notice require Summit to remedy such failure to perform, without additional charge to the Trust, within such reasonable period as specified in the notice;
- 16.2.2 subject to Provision 16.2.4, if Summit fails to remedy such failure to perform within that timescale, the Trust may, but is not bound to, itself or through a third party remedy such failure to perform whether in whole or in part (and in relation to any partial remedy, it being acknowledged that the Trust will be entitled to take temporary or emergency measures consistent with such remedy required to continue to provide its clinical services from the Hospital) and may invoice Summit for the reasonable costs (including the Trust's reasonable mobilization costs and administration costs, which administration costs will be subject to a maximum of 10% of the other costs incurred by the Trust in effecting such remedy) properly incurred by the Trust in effecting such remedy and Summit shall pay such invoice within five Business Days after (a) the date of receipt of such invoice or, (b) if Summit disputes such invoice or the Trust's right to effect such remedy under this Provision 16.2 within that period by reference to the Dispute Resolution Procedure, the date of the determination under the Dispute Resolution Procedure where such determination is in favour of the Trust (but with interest from the date of the invoice) but without prejudice to any further rights of Summit under the Dispute Resolution Procedure;

- 16.2.3 the Trust shall and shall procure that any relevant third party shall, in effecting any remedy under Provision 16.2.2 and/or 16.2.4:
- (a) in relation to the Estates Maintenance Services comply with the standards imposed on Summit under that part of the Output Specification relative to the Estates Maintenance Services so far as relevant to the matter being remedied and having regard to the fact that the Trust will be entitled to effect an emergency repair and not proceed to fully or permanently remedy the want of repair provided that if the Trust does proceed to fully or permanently remedy the want of repair it shall comply in all respects with the standards imposed on Summit under that part of the Output Specification relative to the Estates Maintenance Services; and
 - (b) comply with Good Industry Practice, Applicable Laws and undertake such remedy with due care and skill;
- 16.2.4 the Trust shall only be entitled to remedy any failure to perform the Standards specified in the Output Specification relative to the Estates Maintenance Services:
- (a)
 - (i) in case of emergency where the failure to remedy is likely to cause injury to or be an immediate threat to the health and safety of any person; or
 - (ii) where the failure to remedy is materially and adversely affecting the provision of clinical services by the Trust at the Hospital or is a failure to remedy any of the Standards regarding IT;

and, in effecting any such remedy, the Trust shall only be entitled to effect temporary repairs to the Hospital in accordance with Clause 16.2.3;
 - (b) subject to Provision 16.2.5 in any other case where it is agreed or determined, by reference to the Dispute Resolution Procedure, that there has been a breach of a Standard within the Output Specification relative to the Estates Maintenance Services which has not been remedied by Summit in accordance with this Provision 16.2 and such remedial action by the Trust is herein referred to as "Permanent Repairs".
- 16.2.5 Summit will only be liable to make payment to the Trust under Provision 16.2.2 in respect of Permanent Repairs as and when there are Distributable Reserves available and for this purpose "Distributable Reserves" means at any time the sum standing to the credit of the Equity Reserve Account;
- 16.2.6 if the Trust shall be entitled to carry out or procure the carrying out of Permanent Repairs then it shall be entitled at any time thereafter prior to the date upon which the Permanent Repair shall have been completed but, where the Trust has the funds or access to funds to effect the Permanent Repair, ending three months after agreement or determination in accordance with Clause 16.2.4(b) to give notice to Summit intimating the sum which is or, in its reasonable estimation, will become due under Provision

- 16.2.2 ("the Relevant Amount") and after receiving such notice Summit will ensure that there is transferred from the Equity Reserve Account into an Estates Trust Account the lesser of the sum then standing at the balance of the Equity Reserve Account and the Relevant Amount; Provided that on each occasion on which sums are credited to the Equity Reserve Account then further sums will promptly be transferred to the Estates Trust Account to the extent necessary to ensure that in aggregate there will have been transferred the Relevant Amount plus interest due in terms of Clause 16.2.8 and once the Trust has been fully paid in respect of any Permanent Repairs any sums remaining in the Estates Trust Account will thereupon be released to Summit but without prejudice to the further application of this Provision 16.2.6;
- 16.2.7 the Trust will be entitled to withdraw from the Estates Trust Account such sums as are agreed or determined in accordance with Provision 16.2.2 as required to satisfy sums properly due to it in respect of Permanent Repairs;
- 16.2.8 if at any time the Trust incurs costs in respect of Permanent Repairs (which are recoverable under Provision 16.2.2) but there are insufficient Distributable Reserves or sums at credit in the Estates Trust Account for payment to be made in full then interest will run at the Interest Rate on outstanding sums from the date such costs are paid by the Trust until payment is received by the Trust, such interest only being payable by Summit when there are sufficient Distributable Reserves or sums to the credit of the Estates Trust Account for such payment to be made.
- 16.3 In effecting or procuring any remedy under Provision 16.2, the Trust shall, and shall procure that any relevant third party shall, use all reasonable endeavours to mitigate any costs incurred by it.
- 16.4.1 Summit shall advise the Trust if it anticipates that there will be a material deviation from the required provision of any Service within the timescales specified in the Output Specification and at the same time, or as soon as reasonably practicable thereafter, shall provide proposals to the Trust as to how it proposes to remedy such failure. Summit and the Trust shall consult together with a view to agreeing an action plan ("Action Plan") based on those proposals, for Summit to remedy such failure. Summit shall implement any action plan agreed with the Trust at its discretion in accordance with its terms. The Action Plan, shall, *inter alia*, provide for the manner in which any penalties arising as a result of such failure shall or shall not apply having regard to the extent to which the Action Plan achieves the requirements of the Output Specification.
- 16.4.2 Implementation by Summit of any Action Plan shall be deemed to be performance by Summit of its obligations under the Output Specification in respect of the matters detailed in the Action Plan, subject as provided in the Action Plan.
- 16.4.3 If Summit fails to comply with the Action Plan in accordance with its terms then the Trust shall be entitled to exercise its rights under Provision 16.2 in accordance with the provisions thereof.
- 16.4.4 Summit shall, when required by the Trust, acting reasonably, provide reports regarding the implementation of any Action Plan.

- 16.5 If the Trust intends to exercise its right to remedy any failure by Summit (whether in whole or in part) in accordance with Clause 16.2, it shall advise Summit as to the extent of such proposed remedy and the PMS will be suspended, but only so far as it relates to that part during the period while the Trust is exercising such right to remedy. For the avoidance of doubt, the Service Delivery Percentage will be measured at all times by reference to the acts or omissions of Summit (or its Approved Service Provider or Permitted Sub-Contractor) alone, irrespective of whether the Trust is exercising its right of remedy.

17 Termination

- 17.1 The Trust may terminate the provision of any one of the Services, other than the Estates Maintenance Services, if either of the following occurs by notice in writing to Summit within four months of the happening of such event:

- 17.1.1 the occurrence of an act of insolvency (as defined in Clause 22.1.1 of the Project Agreement but making the necessary changes) in relation to any Approved Service Provider providing that Service unless Summit either elects to perform that Service itself (and can demonstrate to the Trust (acting reasonably) its ability to so perform) or replaces the insolvent party with a party approved pursuant to the DBFO Contracts within 3 months and continues to provide the Service in the interim;

- 17.1.2 Summit commits a material breach (not otherwise listed in Provisions 15 or 17) of its obligations in respect of that Service under the Services Agreement, a material breach for this purpose being:-

a material and substantial breach of the terms of the Services Agreement in relation to that Service which is not dealt with and cannot be dealt with by the award of Penalty Points but which has a material adverse effect on the carrying out, by the Trust, of clinical activities from the Site and in respect of which:-

- (a) notice is given by the Trust to Summit within 120 days of the Trust becoming aware of the breach giving reasonable details of the matter complained of; and
- (i) if capable of remedy Summit has not commenced and thereafter completed remedial action within a reasonable period from the date of receipt of the notice from the Trust as specified in the notice; or
- (ii) if irremediable Summit has not compensated the Trust (in terms which are reasonably satisfactory to the Trust) for the loss or damage it shall have incurred as a consequence of such breach within a reasonable period from the date of receipt of the notice from the Trust; and

- (b) the issue of whether a material breach has occurred and/or whether the remedy period given to Summit is reasonable has (in the case of any dispute) first been resolved by the Dispute Resolution Procedure.
- 17.2 The provisions of Clause 15 and Part B of the Schedule shall apply as regards the deletion of one or more Services under the Change Provisions as a result of the accumulation of Penalty Points.
- 17.3 Termination of the Services Agreement and the Equipment Agreement shall be governed by Clause 22 of the Project Agreement and, in the case of the Equipment Agreement, by Clause 25 of the Equipment Agreement.
- 18 **Status of Summit**
- 18.1 Except as expressly provided for in the DBFO Contracts:
- 18.1.1 in carrying out its obligations under the Agreement and the other Project Documents Summit acknowledges that in so doing it is acting as principal and not as the agent of the Trust;
- 18.1.2 Summit shall not say or do anything that would or is likely to lead any other person to believe that Summit is acting as the agent of the Trust.
- 19 **Codes of Practice**
- 19.1 In carrying out its obligations under the Services Agreement Summit shall not commit an act of discrimination rendered unlawful by the Sex Discrimination Act 1975 or the Race Relations Act 1976.
- 19.2 Where any of Summit's obligations under the Services Agreement are carried out by an Approved Service Provider or a Permitted Sub-Contractor, Summit shall use all reasonable endeavours to ensure that in carrying out those obligations the Approved Service Provider or Permitted Sub-Contractor complies with this Provision 19.
- 19.3 In carrying out the Services Agreement Summit shall, and shall procure that its Approved Service Providers and Permitted Sub-Contractors and, where appropriate, their respective Personnel will, comply with the provisions of (a) that party's codes of practice in relation to employees which have been previously approved in writing by the Trust (who will act reasonably) or (b) (failing said approval) with the reasonable requirements of the Trust's codes of practice as listed in Part F of the Schedule in relation to such matters which have previously been issued in writing to Summit ("the Trust's Codes of Practice").
- 19.4 If Summit fails to comply with any such code of practice (including repeated minor breaches) the Trust may serve a notice on Summit requiring the failure or failures to be remedied (so far as remediable) and requiring Summit to ensure that no further failure to comply occurs.

20 **Tax Deduction Scheme**

20.1 In this Provision :-

20.1.1 the "Act" means the Income and Corporation Taxes Act 1988;

20.1.2 "the Regulations" means the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1993 (SI 1993/743);

20.1.3 "Contractor" means a person who is a contractor for the purposes of the Act and the Regulations;

20.1.4 "Evidence" means such evidence as is required by the Regulations to be produced to a contractor for the verification of a sub-contractor's tax certificate;

20.1.5 "statutory deduction" means the deduction referred to in Section 559(4) of the Act or such other deduction as may be in force at the relevant time;

20.1.6 "Sub-Contractor" means a person who is a sub-contractor for the purposes of the Act and the Regulations; and

20.1.7 "Tax Certificate" is a certificate issuable under Section 561 of the Act.

20.2 The provisions of this Provision 20 shall apply throughout the Term save for any period during the Term in respect of which the Trust has received unconditional written confirmation from the Inland Revenue in a form which is reasonably satisfactory to the Trust that it is not a contractor (in which event only Provision 20.13 shall apply). The Trust shall use all reasonable endeavours as soon as reasonably practicable after Financial Close to obtain such confirmation.

20.3 Not later than two months before the first payment under this Agreement is due to be made to Summit or after this Provision applies for the first time and on each occasion when this Provision applies following a period when it has not so applied Summit shall either:

20.3.1 provide the Trust with the evidence that Summit is entitled to be paid without the statutory deduction; or

20.3.2 inform the Trust in writing that it is not entitled to be paid without the statutory deduction.

20.4 If the Trust is not satisfied with the validity of the Evidence submitted in accordance with Provision 20.3.1, it shall within 28 days of Summit submitting such Evidence notify Summit in writing that it intends to make the statutory deduction from payments due under the DBFO Contracts to Summit and gives its reasons for that decision. Failing such notification, the Trust shall be deemed to be satisfied with the Evidence. Any disputes shall be referred to the Dispute Resolution Procedure.

- 20.5 Where Provision 20.3.2 applies Summit shall immediately inform the Trust if it obtains a Tax Certificate, and thereupon Provision 20.13 shall apply.
- 20.6 If the period for which the Tax Certificate has been issued to Summit expires before the final payment is made to Summit under the DBFO Contracts and provided that this Provision 20 applies at that time, Summit shall not later than 28 days before the date of expiry either:
- 20.6.1 provide the Trust with evidence that Summit from the said date of expiry is entitled to be paid for a further period without the statutory deduction, in which case the provisions of Provision 20.4 shall apply if the Trust is not satisfied with the evidence; or
- 20.6.2 inform the Trust in writing that it will not be entitled to be paid without the statutory deduction after the said date of expiry.
- 20.7 Summit shall immediately inform the Trust in writing if its current Tax Certificate is cancelled and give the date of such cancellation.
- 20.8 The Trust shall, as a "Contractor" in accordance with the Regulations, send promptly to the Inland Revenue any voucher which, in compliance with the obligations of Summit as a "sub-contractor" under the Regulations, Summit gives to the Trust.
- 20.9 If at any time the Trust is of the opinion (whether because of the information given under Provision 20.3.2 or of the expiry or cancellation of Summits tax certificate or otherwise) that it will be required by the Act to make a statutory deduction from any payment due to be made the Trust shall immediately so notify Summit in writing and require Summit to state not later than 7 days before each future payment becomes due (or within 10 days of such notification if that is later) the amount to be included in such payment which represents the direct cost to Summit and any other person of materials used or to be used in carrying out the Works.
- 20.10 Where Summit complies with Provision 20.9 it shall indemnify the Trust against loss or expense caused to the Trust by any incorrect statement of the amount of direct cost referred to in Provision 20.9
- 20.11 Where Summit does not comply with Provision 20.9 the Trust shall be entitled to make a fair estimate of the amount of direct cost referred to in Provision 20.9.
- 20.12 Where any error or omission has occurred in calculating or making the statutory deduction the Trust shall correct that error or omission by repayment to, or by deduction from payments to Summit as the case may be, subject only to any statutory obligation on the Trust not to make such correction.
- 20.13 Summit shall at the request of the Trust produce to the Trust the original of any current Tax Certificate which it holds and shall permit the Trust to make a copy of such Tax Certificate and/or to record such details in respect of such Tax Certificate as the Trust may consider appropriate.

21 **Transfer of Responsibility on Termination of a Service**

- 21.1 Summit shall, at no cost to the Trust subject to the operation of the Change Provisions (where applicable), provide such assistance and comply with such timetable as the Trust may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of a Service upon the transfer of responsibility of a particular Service from Summit under Provisions 12.7.2 and 17 or the deletion of a Service (other than the Estates Maintenance Services) under the Change Provisions.
- 21.2 Such assistance may include (without limitation) so far as permitted by law delivery of:
- 21.2.1 documents and data in the possession or control of Summit which relate to performance, monitoring, management and reporting of that Service, but excluding Proprietary Information of Approved Service Providers and Permitted Sub-Contractors, (but without prejudice to Clause 20 of the Project Agreement), provided that the Trust shall permit or procure there is given to Summit and its agents and representatives, Approved Services Providers and Permitted Sub-Contractors reasonable access to such documents subsequent to such transfer;
- 21.2.2 data relating to the terms and conditions of employment and the employment records of those Personnel who may be affected by the Employment Regulations and/or the Directive upon any transfer of responsibility for the provision of a Service.
- 21.3 Summit undertakes that it shall not knowingly do or omit to do anything which is likely to materially adversely affect the ability of the Trust to ensure an orderly transfer of responsibility for provision of that Service.

22 **Security**

- 22.1 Save to the extent expressly provided in the DBFO Contracts, Summit shall be responsible for the security of all Related Materials and the Equipment and any other goods and equipment belonging to Summit, its Approved Service Providers or Permitted Sub-Contractors relating to the provision of the Services or the Equipment Services.
- 22.2 All property of Summit (and that of Approved Service Providers and Permitted Sub-Contractors) whilst on the Trust's premises shall be there at the risk of Summit or the relevant Approved Service Provider or Permitted Sub-Contractor subject to the provisions of Clause 27.2 (Indemnities) of the Project Agreement, and as otherwise expressly provided in the DBFO Contracts.
- 22.3 Not less than three months prior to the scheduled Services Commencement Date, Summit shall make available to the Trust Summit's policy in respect of health and safety. The Trust may request changes to such policy and shall be entitled to require Summit to comply with its requested changes, if reasonably necessary to ensure compliance with the DBFO Contracts (including the Output Specification and Method Statements).

23 Recovery of sums due

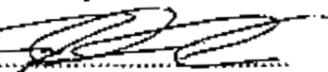
Subject to Clause 24.9 of the Project Agreement, wherever any sum of money is recoverable (or considered by the Trust to be recoverable) from Summit or payable by Summit to the Trust, (including deductions under the Deduction Provisions) the Trust may not set off, counterclaim, withhold or deduct the same from any sum then due to Summit or which at any time thereafter may become due to Summit under the DBFO Contracts unless such sum has been determined pursuant to the Dispute Resolution Procedure to be due and payable or previously agreed by Summit in writing to be due and payable.

24 General

The provisions of Clauses 28 to 31 (inclusive) and 33 of the Project Agreement shall apply to these General Provisions as therein provided.

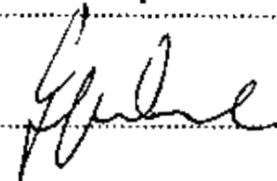
IN WITNESS WHEREOF these presents consisting of this and the preceding 29 pages are, together with the Schedule annexed hereto and the appendices referred to therein, executed as follows:

Subscribed for and on behalf of
LAW HOSPITAL NATIONAL
HEALTH SERVICE TRUST
at Glasgow
on the 16th day of June 1998
by Ian Andrew Ross, Chief Executive
and James Gemmell Dunbar,
Chairman in the presence of:

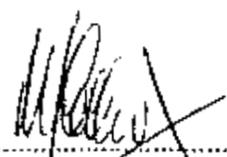
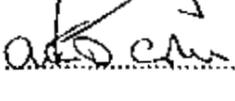
Witness: 

Name Ian Andrew Ross

Address 66-73, Queen Street
Edinburgh


..... Chief Executive

..... Chairman

Subscribed for and on behalf of
SUMMIT HEALTHCARE (LAW) LIMITED
at London
on the 16th day of June 1998
by Michael John Colledge,
Director, and
David Campbell Sec Ltd
Director/Secretary


..... Director

..... Director/Secretary

Rory Christie Witness.
RORY CHRISTIE
56 SOUTH TRINITY ROAD
EDINBURGH

This is the Schedule referred to in the foregoing General Provisions between Law Hospital National Health Service Trust and Summit Healthcare (Law) Limited

The Schedule - Part A

Payment Mechanism (Provision 4)

1 Definitions

In this Part A of the Schedule the following terms shall bear the meaning set out opposite them:-

Affected Area means each Single Facility or Facility Area which is Unavailable in respect of any Unavailability Period; and

Affected Areas will be construed accordingly;

Affected Area Deduction has the meaning given to it in paragraph 6.8;

Available means not Unavailable and includes deemed to be Available;

Availability Payment Period means each Quarter in respect of which the Availability Element is to be paid in accordance with paragraph 3 of this Part A;

Breakfast means a breakfast to be provided to a patient at the Hospital;

Calculation Table means (a) in respect of the Availability Element the table set out in Appendix A to this Part A, (b) in respect of the Capacity Element the table set out in Appendix B to this Part A, and (c) in respect of the Usage Element the table as set out in Appendix C to this Part A, in each case as amended from time to time in accordance with the Change Provisions;

Contract Year means any Year (or part thereof) during the Term;

Current Index means in respect of any amount payable in respect of a Payment Period in accordance with this Part A, the Index published in the month of March immediately prior to the commencement of the Contract Year in which the Payment Period falls;

Day case discharge means a day case discharge as defined in Chapter 2 of the ISDS1 Definitions;

Day case episode means a day case episode as defined in Chapter 2 of the ISDS1 Definitions;

Deduction Period means in relation to each Unavailability Event (in respect of which the Affected Area is still Unavailable at the expiry of the Remedy Period) a period expressed in hours commencing on the receipt or deemed receipt by Summit of an Unavailability Notice from the Trust's Contract Officer identifying the Unavailability Event (and so that for the avoidance of doubt the Deduction Period will include the Remedy Period) or if later on the receipt or deemed receipt by Summit of a First Required Notice from the Trust's Contract Officer identifying when the Affected Area is First Required and ending at the time when the Affected Area ceases to be Unavailable and Summit so notifies or is deemed to notify the Trust but so that (1) only hours within Operational Hours will be counted and (2) there will be deducted any applicable periods in accordance with paragraphs 6.5 and 6.6. If the period includes part only of an Operational Hour then each such part will be deemed to be an Operational Hour;

Emergency Theatres means, if at any time (and only during the period when) there are 11 or 12 theatres Unavailable, the eleventh and, if applicable, the twelfth to be Unavailable;

Equipment Index means in relation to each Index Year the number **EI** calculated on the basis that:-

- (a) in the Index Year commencing on 1 April 1996, **EI** is the Initial Index;
- (b) in each Index Year (Index Year n) commencing on or after 1 April 1997 and ending before 1 April in the Year in which Services Commencement Date occurs, **EI** for that Index Year (EIn) is

$$EI(n-1) \left(1 + \frac{RPI_n}{100}\right)$$

where

$EI(n-1)$ is the Equipment Index with respect to the immediately preceding Index Year (Index Year $(n-1)$)

RPI_n is the percentage change in the Index between that published or determined with respect to Index Year $(n-1)$ and that published or determined with respect to Index Year n (such change being expressed as a figure and not as a percentage so that, by way of example only, where the change is 5%, RPI_n will equal 5 and not 0.05);

- (c) in the Index Year (Index Year n) in which the Services Commencement Date occurs and each of the four Index Years thereafter (each of such 5 Years being Index Year n) **EI** for that Index Year (EIn) is

$$EI(n-1) \left(1 + \frac{RPI_{n-1/2}}{100}\right)$$

where

$EI(n-1)$ is Equipment Index with respect to the immediately preceding Index Year (Index Year $(n-1)$)

RPI_n is the percentage change in the Index between that published or determined with respect to Index Year $(n-1)$ and that published or determined with respect to Index year n (such change being expressed as a figure and not as a percentage, so that by way of example only, where the change is 5% RPI_n will be equal to 5 and not 0.05);

- (d) in each Index Year (each Index Year n) commencing on or after 1 April in the Year immediately following the last year to which (c) above applies and for the remainder of the Term EI for that Index Year (EI_n) is

$$EI(n-1)\left(1 + \frac{RPI_n}{100}\right)$$

where

$EI(n-1)$ equals the Equipment Index with respect to Index Year $(n-1)$

RPI_n is the percentage change in the Index between that published or determined with respect to Index Year $(n-1)$ and that published or determined with respect to Index Year n (such change being expressed as a figure and not as a percentage so that by way of example only where the change is 5%, RPI_n will equal 5 and not 0.05);

Facility Area means an area of the Hospital as all of such areas are described in column 1 of the Unavailability Table;

Final Services Year means the period commencing on 1 April immediately prior to the end of the Term until and including the last day of the Term;

First Services Year means the period commencing on the Services Commencement Date and ending on 31 March next following;

First Required has the meaning given to it in paragraph 6.7;

First Required Notice means a notice substantially in the form to that set out in Appendix J to this Part A;

Index means the General Index of Retail Prices (All Items) exclusive of mortgage interest published by the Office for National Statistics (or by any government department

or successor body upon which duties in connection with such index shall have devolved), or if such index ceases to be published or the basis upon which such index is calculated is substantially changed or rebased, such substitute or alternative index most likely to achieve an equivalent result as agreed by the Trust and Summit or determined pursuant to the Dispute Resolution Procedure;

Index Year means each Year commencing on 1 April in 1996 and thereafter throughout the Term;

Initial Index means the Index published in March 1996;

Inpatient Nights in respect of any period means the aggregate of all midnights included in all Inpatient episodes during that period and **Inpatient Night** means a single midnight so included;

Inpatient episode means an inpatient episode as defined in Chapter 1 of the ISDS1 Definitions commencing for a patient with an Inpatient admission and ending with an Inpatient discharge as such terms are defined in Chapter 1 of the ISDS1 Definitions;

Interdependent Facilities means the Single Facilities or Facility Areas which are interdependent on other Facility Areas or Single Facilities as set out in Column 6 of the Unavailability Table and **Interdependent** will be construed accordingly;

ISDS1 Definitions means the definitions in Appendix D to this Part A;

Lunch means a lunch to be provided to a patient at the Hospital;

Modality has the meaning given to it in the Equipment Agreement;

Modality Payment means in respect of any Equipment PMS Period the proportion of the Capacity Element payable for the Equipment Services attributable to that Modality;

Month means a calendar month, except that:

- (a) if the Services Commencement Date does not occur on the first day of a Month, the Month in which it occurs shall be deemed to have started on the Services Commencement Date and ended on the last day of that Month; and
- (b) if the Term does not end on the last day of a Month, the last Month of the Term shall be deemed to have ended on the end of the Term;

No Substantive Service has the meaning given to it in paragraph 9.2 of this Part A;

Operational Days means in relation to each Facility Area (a) 7 days a week in each case where the number in Column 10 of the Unavailability Table is 7 and (b) Mondays to Fridays inclusive in each case where the number in Column 10 of the Unavailability Table is 5;

Operational Hours means in relation to each Operational Day those hours specified in Column 9 of the Unavailability Table declaring that a reference to 12 hours is a reference to the hours between 8am and 8pm;

Outpatient Attendance means a New Outpatient from 1.10.1992 as defined in Chapter 4, Section 9 of the ISDS1 Definitions;

Pass Through Costs means the costs calculated in accordance with paragraph 5.3 of this Part A;

Payment Period means an Availability Payment Period or a Services Payment Period;

Priority means in relation to each Facility Area or Single Facility the priority relative thereto as set out in column 5 of the Unavailability Table;

Projected Demand Measurement Procedure means the procedure set out in Appendix H of this Part A;

Quarter means any period of three months commencing on a Quarter Day, except that:

- (a) if the Services Commencement Date does not occur on a Quarter Day, the Quarter in which it occurs shall be deemed to have started on the Services Commencement Date and ended on the last day of that Quarter; and
- (b) if the Term does not end on the last day of a Quarter, the last Quarter of the Term shall be deemed to have ended on the end of the Term;

Quarter Day means 1 April, 1 July, 1 October and 1 January in each year;

Relevant Deduction has the meaning given to it in paragraph 9.4 of this Part A;

Remedy Period means in respect of each Unavailability Event the time commencing when an Unavailability Notice is or is deemed to be received by Summit and expiring in relation to each Priority (as set out column 5 of the Unavailability Table) at the end of the appropriate period as follows but, in any case, extended by any Extended Remedy Period:-

Priority	Remedy Period
A	2 hours
B	4 hours
C	12 hours

Service Amount means, in respect of each Service (excluding, for the avoidance of doubt, the Pass Through Services described in paragraph 5.3) for each Monitoring Period the aggregate of the Capacity Element and the Usage Element payable for that Service

(excluding for the purposes of the Deduction Provisions, the Pass Through Costs) in that Monitoring Period taking no account of any deductions under this Part A;

Service Delivery Percentage has the meaning given to it in paragraph 9.3 of this Part A;

Service Delivery and Service Demand Measurement Procedure means the procedure set out in Appendix G of this Part A;

Services Payment Period means each Month in respect of which the Service Amount and the Indexed Equipment Amount is to be paid in accordance with paragraphs 4 and 5 of this Part A;

Single Facility means each area into which each Facility Area is capable of sub-division (where it is so capable) as described in column 2 of the Unavailability Table;

Supper means a supper to be provided to a patient at the Hospital;

Unavailable has the meaning given to it in paragraph 6.4 of this Part A;

Unitary Payment has the meaning given to it in paragraph 2 of this Part A;

Unavailability Deduction has the meaning given to it in paragraph 6.9 of this Part A;

Unavailability Event means in relation to each Affected Area that the whole or any part thereof is Unavailable;

Unavailability Notice means a notice substantially in the form to that set out in Appendix E to this Part A;

Unavailability Table means the table set out in Appendix F to this Part A;

Uptime Score shall have the meaning given to it and be calculated as set out in Clause 15 of the Equipment Agreement;

Utilised means in respect of an Affected Area in relation to any period of time, used and/or occupied by the Trust or any person for whom the Trust is responsible in terms of Clause 8.2 of the Project Agreement for a purpose related to the provision of the Trust's clinical services or its other functions or activities; and

Year means any period commencing on 1 April and expiring on 31 March.

2 Unitary Payment

Subject to the provisions of paragraphs 6 to 12 (inclusive) of this Part A the Trust shall pay to Summit in respect of each Month during the Services Term in accordance with the provisions of this Part A, the sum ("the Unitary Payment") being the aggregate of the

following amounts (each adjusted so far as applicable by the Change Provisions) for that Month:

- 2.1 the Availability Element;
- 2.2 the Capacity Element; and
- 2.3 the Usage Element.

3 **The Availability Element** shall be payable in advance in respect of the Quarter in which the Services Commencement Date occurs and in respect of each Quarter thereafter during the Services Term and shall be due on the first Business Day of each Quarter in respect of that Quarter during the Services Term and shall, subject to the Change Provisions, be the aggregate of:

3.1 $x + y$

where

3.1.1 $x = a \times b$

3.1.2 $a =$ the Daily Non Indexed Portion in respect of the Contract Year in which the Availability Payment Period falls as determined in accordance with the Calculation Table;

3.1.3 $b =$ the number of days in the Availability Payment Period;

3.1.4 $y = \frac{(c \times b) \times e}{f}$

where

$c =$ the Daily Indexed Portion for the Contract Year in which the Availability Payment Period falls as determined in accordance with the Calculation Table;

$e =$ the Current Index; and

$f =$ the Initial Index

4 **The Capacity Element**

The **Capacity Element** shall be payable in respect of the Month in which the Services Commencement Date occurs (subject to Clause 6 of the Equipment Agreement and the Commissioning Procedure) and in respect of each Month thereafter during the Services Term and shall, subject to the Change Provisions, be the aggregate of the Indexed Services Total and the Indexed Equipment Amount where:

4.1 **Indexed Services Total** means the sum calculated by the formula:

$$\frac{y \times e}{f}$$

where y = the Services Total as stated in the Calculation Table unless the Services Payment Period is shorter than a calendar month in which event:

$$y = \frac{\text{the Services Total} \times g}{h}$$

where

g = the number of days in the Services Payment Period;

h = the number of days in the calendar month in which the Services Payment Period occurs;

e = the Current Index; and

f = the Initial Index;

4.2 **Indexed Equipment Amount** means the sum calculated by the formula:

$$\frac{z \times j}{f}$$

z = the Equipment monthly capacity element as set out in the Calculation Table unless the Services Payment Period is shorter than a calendar month in which event:

$$z = \frac{\text{the Equipment monthly capacity element} \times g}{h}$$

j = the Equipment Index

f = the Initial Index; and

4.3 there shall be calculated as necessary the indexed monthly amounts for each Service for the purpose of calculating the maximum deductions in accordance with paragraph 7 of this Part A.

5 Usage Element

The Usage Element shall be payable in respect of the Month in which the Services Commencement Date occurs and in respect of each Month thereafter during the Services Term and shall, subject to the Change Provisions, be the product of the following calculation:

$$5.1 \quad ((K \times IPN) + (L \times DCD) + (M \times OPA) + (N \times Br) + (O \times Lu) + (P \times Su) + (Q \times W) + (R \times X)) \times \frac{e}{f} + PTC + UP$$

where:

- K = the Services Total of the Inpatient Night amount for the Contract Year in which the Month arises as set out in the Calculation Table being the aggregate amounts per Inpatient Night for each of the Catering Services, the Domestic Services, the Switchboard Services, the Portering, Transport and Waste Services, the Security Services and the Residential Accommodation Services as set out in the Calculation Table
- IPN = the number of Inpatient Nights in the Services Payment Period as determined in accordance with paragraph 5.2
- L = the Services Total of the Day case discharges amount for the Contract Year in which the Month arises as set out in the Calculation Table being the aggregate amounts per Day case discharges for each of the Catering Services, the Domestic Services, the Switchboard Services, the Portering, Transport and Waste Services, the Security Services and the Residential Accommodation Services as set out in the Calculation Table
- DCD = the number of Day case discharges in the Service Payment Period as determined in accordance with paragraph 5.2
- M = the Services Total of the Outpatient Attendances amount for the Contract Year in which the Month arises as set out in the Calculation Table being the aggregate amounts per Outpatient Attendances for each of the Catering Services, the Domestic Services, the Switchboard Services, the Portering, Transport and Waste Services, the Security Services and the Residential Accommodation Services as set out in the Calculation Table
- OPA = the number of Outpatient Attendances in the Services Payment Period as determined in accordance with paragraph 5.2
- N = Services Total of the Catering Variable Breakfast (being the amount specified in the Calculation Table)
- O = Services Total of the Catering Variable Lunch (being the amount specified in the Calculation Table)
- P = Services Total of the Catering Variable Supper (being the amount specified in the Calculation Table)
- Q = the Clinical Waste Variable Amount (being the amount specified in the Calculation Table)

- W = Number of metric tonnes of clinical waste collected from the Hospital and disposed of off-site pursuant to the Portering Transport and Waste Services
- R = the Non-clinical Waste Variable Amount (being the amount specified in the Calculation Table)
- X = Number of metric tonnes of non-clinical waste collected from the Hospital and disposed of off-site pursuant to the Portering Transport and Waste Services
- Br = the number of Breakfasts delivered to wards pursuant to the ordering system in the Output Specification for Catering Services in that Month
- Lu = the number of Lunches delivered to wards pursuant to the ordering system in the Output Specification for Catering Services in that Month
- Su = the number of Suppers delivered to wards pursuant to the ordering system in the Output Specification for Catering Services in that Month
- e = the Current Index
- f = the Initial Index
- PTC = Pass Through Costs for the Service Payment Period as determined in accordance with paragraph 5.3
- UP = Utilities Payment for the Service Payment Period as determined in accordance with paragraph 5.4

- 5.2 The Trust will keep accurate records in its hospital information system of the number of Inpatient Nights, Day case discharges and Out patient Attendances and Breakfasts, Lunches and Suppers delivered in each Month during the Services Term and provide a certified record of the same to Summit within 5 Business Days after the end of each Month. Summit shall be entitled from time to time to audit, in a reasonable manner, such records on reasonable notice to the Trust.
- 5.3 In determining the Pass Through Costs to be paid by the Trust pursuant to the DBFO Contracts in respect of the pass through element identified in the Output Specification for Estates Maintenance Services for winter maintenance and pest control ("the Pass Through Services") the following procedure shall apply :-
- (a) Summit, or its Approved Service Provider shall enter into, in its own name or through an Approved Service Provider, all contracts (which contracts will require to be approved by the Trust acting reasonably) with the relevant service providers, or Summit or its Approved Service Providers shall themselves provide the Pass Through Services in accordance with relevant provisions of the DBFO Contracts;

- (b) the Trust shall meet the costs of the Pass Through Services against delivery to the Trust of reasonable evidence thereof and that such sums are properly due by Summit in terms of the contracts therefor previously approved by the Trust and the Trust will pay such sums to Summit 5 Business Days prior to the due date for payment by Summit under deduction only of such sums as are due on account of a breach by Summit or its Approved Service Provider in relation to the Pass Through Services and not on account of a breach by the Trust.
- 5.4 In respect of the supply of Utilities by Summit to the Trust in accordance with Part 2 of the Schedule to the Services Agreement, the Trust will pay to Summit the Utilities Payment on the following basis: -
- 5.4.1 not less than one month prior to the commencement of each Contract Year during the Services Term the parties will agree or failing agreement there will be determined by Dispute Resolution Procedure an estimate of the Utilities Payment for that Contract Year and in each Services Payment Period there will be payable by the Trust one twelfth of that estimate;
- 5.4.2 if at any time Summit considers that the costs incurred by it under the Utilities Contracts (excluding any sums due by Summit under paragraphs 2.1, 3.2 and 6 of Part 2 of the Schedule to the Services Agreement) ("Utilities Costs") will be greater than sums payable or paid under paragraph 5.4.1 then Summit will be entitled to include within the Utilities Payment for any Service Period its reasonable estimate of such additional costs and will provide such supporting evidence as the Trust may reasonably require and the Trust will pay such Utilities Payment as part of the Usage Element for that Service Payment Period; and
- 5.4.3 at the end of the Contract Year, Summit will provide to the Trust a reconciliation of the total amount of the Utilities Payment for that Contract Year and the aggregate of all Utilities Costs and the Utilities Payment for the next Contract Year will be reduced by any excess or increased by any deficit of the Utilities Payment over the Utilities Costs and there will be an appropriate reconciliation at the end of the Term with any balancing payment being due to or by the Trust.
- 6 Performance Deductions - Unavailability**
- 6.1 The Availability Element as calculated in accordance with paragraph 3 of this Part A shall be reduced where necessary in accordance with this paragraph 6.
- 6.2 Subject to the provisions of this paragraph 6 in respect of each Affected Area which is Unavailable during a Deduction Period there will be calculated an Affected Area Deduction and an Unavailability Deduction and the Trust will be entitled, subject to paragraphs 12.7 and 12.9, to deduct the amount of the Unavailability Deduction for each Availability Payment Period.
- 6.3 The Trust acknowledges that if it uses or occupies an Affected Area which is Unavailable such use or occupation will be at its own risk in respect of the defect or deficiency or other condition which has been identified in the Unavailability Notice

as rendering the Affected Area Unavailable or a defect or deficiency or other condition of which the Trust is aware or its notified or which is a reasonably foreseeable consequence of the existence of such defect or deficiency and shall indemnify Summit against all damages, losses, liabilities, claims, demands and expenses which are sustained by Summit or any of its sub-contractors as a result of claims from the Trust or third parties against Summit as a result an Affected Area being used or occupied by the Trust while the Affected Area remains Unavailable.

- 6.4 An Affected Area will be deemed to be Unavailable at any time any of the following conditions apply:-
- 6.4.1 the Buildings or any entrances, doorways, halls, lobbies, reception areas, unloading bays, corridors, lifts, staircases or other common parts of the Buildings or any of them, are subject to any physical obstruction or failure which prevents access to or from the Affected Area by the means and route envisaged by the Trust Requirements and the Specification as such means and route may be amended through the Change Provisions or another appropriate means and route by the Trust's staff, patients (including, where such access is so envisaged, by patients in wheelchairs or trolleys) or any lawful visitors;
 - 6.4.2 there is a provision of Statutory Requirement or NHS Guidance other than a provision for which the Trust (or any person for whom the Trust is responsible under the terms of Clause 8.2 of the Project Agreement) is responsible or a legal claim against Summit or (where Summit is joined in the relevant claim) against the Trust relating thereto which in any case prevents or prohibits access to, occupation or use of the Affected Area for the purpose for which it is intended according to the Trust Requirements and the Specification as such purpose may have been amended through application of the Change Provisions;
 - 6.4.3 the Buildings have suffered physical destruction or deterioration or failure which has caused loss of performance or functionality or other damage such that the Affected Space cannot be accessed, occupied or used by the Trust's staff, patients or any lawful visitors for the purpose for which the Affected Area is intended according to the Trust Requirements and the Specification as such purpose may have been amended through application of the Change Provisions;
 - 6.4.4 access to or occupation of the Building would be in breach of any provision of a Statutory Requirement or NHS Guidance (other than a provision for which the Trust (or any person for whom the Trust is responsible in terms of Clause 8.2 of the Project Agreement) is responsible);
 - 6.4.5 there is a failure to provide an appropriate power supply to serve the Trust, its patients, staff and lawful visitors;
 - 6.4.6 there is a failure to provide constant hot and cold water supply at a safe and appropriate temperature;
 - 6.4.7 there is a failure to provide a safe sewage system;

- 6.4.8 there is a failure to provide piped medical gases to HTM 2022;
- 6.4.9 there is a failure to provide gas scavenging to HTM 2022;
- 6.4.10 there is a failure to provide mechanical ventilation (a) in oncology and theatres to the standard specified or referred to in the Developed Specification as amended by the Change Provisions (b) within any Priority A Facility Areas or Single Facilities within a tolerance of 15% below the level as specified or referred to in the Developed Specification as amended by the Change Provisions and (c) in other areas to a safe and appropriate level;
- 6.4.11 there is a failure to provide and maintain heating within 4°C below the temperature specified or referred to in the Final Room Data Sheets or the Developed Specification as amended by the Change Provisions;
- 6.4.12 there is a failure to maintain cooling in areas where cooling is to be provided to within +/- 4°C of the temperatures specified or referred to in the Final Room Data Sheets or the Developed Specification as amended by the Change Provisions;
- 6.4.13 there is a failure to provide lighting to within 20% below the level specified or referred to in the Developed Specification as amended by the Change Provisions;
- 6.4.14 the Affected Area is Interdependent on another Affected Area to which any of the conditions in Paragraphs 6.4.1 to 6.4.13 apply;

Provided that an Affected Area will be deemed to be Available if it would otherwise have been Available, save only as a result of or the consequences of:-

- (a) any act (other than an act requiring Summit, its Approved Services Providers or Permitted Sub-Contractors to comply with the Liaison Procedures under exception of paragraph 5 thereof but subject to paragraph 6 thereof but including the exercise of the rights of the Trust pursuant to Clauses 15.2 and 15.6 of the Project Agreement and Provision 2.4 of the General Provisions), omission or default or breach of the DBFO Contracts by the Trust or any person for whom the Trust is responsible in terms of Clause 8.2 of the Project Agreement;
- (b) planned preventative maintenance or planned repair or replacement of assets being carried out at times and in accordance with the Maintenance Procedures and the Liaison Procedures other than paragraph 5 thereof, but subject to paragraph 6 thereof;
- (c) an instruction by the Trust's Contract Officer to Summit and/or its Approved Service Providers or Permitted Sub-Contractors to cease any works or services other than an instruction to comply with the Liaison Procedures other than paragraph 5 thereof, but subject to paragraph 6 thereof;
- (d) implementation (within any timescale agreed or determined in terms of the Change Provisions) of any works relating to an Eligible Change or Legislative Change;

- (e) loss or damage to, or malfunctions or failure of, any assets or equipment for which the Trust or any person for whom it is responsible pursuant to Clause 8.2 of the Project Agreement is responsible;
 - (f) the Trust exercising its step-in rights under Provision 16 of the General Provisions and/or Clause 23 of the Equipment Agreement whereby the Trust or any person for whom the Trust is responsible in terms of Clause 8.2 of the Project Agreement by its acts or omissions causes an Affected Area to become Unavailable;
 - (g) the acts, omissions or default of statutory undertakers, local authorities, providers of utilities or persons (other than Summit or its Approved Service Providers or Permitted Sub-Contractors) carrying out works on or off the Site, other than the Works or any works for which Summit is responsible in terms of the DBFC Contracts;
 - (h) the existence or danger of infections or diseases on the Site such that the Trust's Contract Officer instructs Summit and/or its Approved Service Providers or Permitted Sub-Contractors, or a Statutory Requirement or NHS Guidance recommends or requires, that access to or occupation of the Affected Area is denied or significantly restricted;
 - (i) the inability of Summit or its Approved Service Provider(s) or Permitted Sub-Contractor(s) to obtain telecommunications or sewerage services or supplies to serve the Site by reason of the failure of the service supplier or otherwise;
 - (j) the inability of Summit and/or its Approved Service Providers or Permitted Sub-Contractors to obtain gas, electricity, oil, water services or supplies arising from failure on the part of the relevant provider of such services or supplies to serve the Site by reason of default of the relevant provider or otherwise save to the extent that the Relevant Affected Area would not have been Unavailable, for that reason, had Summit complied with its obligations under the Utilities Contingency Provisions;
 - (k) denial of access for Summit and/or its Approved Service Providers or Permitted Sub-Contractors pursuant to paragraph 5 of (but subject to paragraph 6 of) or otherwise in breach of the Liaison Procedures;
 - (l) the acts, omissions or default of the Linen Sub-Contractor;
 - (m) a major accident or incident affecting the Site and/or the provision of healthcare services at the Hospital save to the extent that the Relevant Affected Area would not have been Unavailable, for that reason, had Summit complied with its obligations under Clause 3.1(c)(ii) of the Service Agreement; or
 - (n) planned installation, commissioning, removal, alteration, modifications, maintenance, repair or replacement of Equipment in accordance with the PMA Procedures approved by the Trust in accordance with Clause 10.4 of the Equipment Agreement or compliance with Clause 7.6 of the Equipment Agreement.
- 6.5 If the works of repair required to remove the Unavailability cannot reasonably be carried out without the Trust vacating the Affected Area or a specified part thereof ("the

Relevant Part") then there will be deducted from the Deduction Period any period (an "Extended Remedy Period") within Operational Hours (i) between the time at which Summit requests through the Help Desk that the Trust vacates the Relevant Part and (ii) the time at which the Relevant Part is vacated by the Trust.

- 6.6 There will be deducted from each Deduction Period the period (if any) within Operational Hours during which the Trust Utilised the Affected Area provided that for the avoidance of doubt the Remedy Period will run subject to paragraph 6.5 irrespective of whether or not the Trust Utilises any Affected Area.
- 6.7 For the purpose of triggering the commencement of a Deduction Period (whether at or at any time during or after the Unavailability Event) it must be demonstrated (and identified to Summit in the First Required Notice) that the Trust or any of its agents or employees would have required to use the Affected Area if it had been Available by reference to the following criteria and the first time at which any of the following apply is (in the absence of evidence to the contrary) when the Affected Area is "First Required" provided that an Affected Area will be deemed to be First Required at 00.01 on the day on which it is first required:
 - 6.7.1 for Affected Areas where there is a booking system (such as operating theatres, educational facilities, out-patients) if there is a list of cancellations of appointments for such Affected Areas as a result of Unavailability or if there is a demonstrable material change in shift/operating routines for such Affected Areas as a result of Unavailability;
 - 6.7.2 for Affected Areas where there is a queuing system as opposed to a formalised booking system (such as imaging facilities and labs) if there is a backlog of demand of 10% or above for such Affected Areas as a result of Unavailability compared with the average backlog of demand for a similar period during the immediately preceding year during which period the Affected Areas was not Unavailable;
 - 6.7.3 for Affected Areas with an incumbent user/use, such as administrative offices and reception areas, such Affected Areas are required unless alternative facilities of equivalent specification are made available by Summit;
 - 6.7.4 if any patient within an Affected Area is discharged from the Hospital early as a result of Unavailability of such Affected Area;
 - 6.7.5 if the elective admission of any patient to an Affected Area is cancelled as a result of Unavailability of the Affected Area;
 - 6.7.6 if any clinical operations/procedures to be performed in an Affected Area are materially and substantially restricted as a result of Unavailability of the Affected Area;
 - 6.7.7 if patients are not admitted as a result of Unavailability of the Affected Area;
 - 6.7.8 if patients are transferred to other parts of the Hospital as a result of Unavailability of the Affected Area which transfer results in the Trust's ability to treat the patient being

materially impaired or the facilities which would otherwise be available to treat such patients and which are required by the Trust being reduced;

- 6.7.9 if any patients are transferred to any other hospitals or health care facilities as a result of Unavailability of the Affected Area;
- 6.7.10 in the case of any Affected Area not covered by paragraphs 6.7.1 to 6.7.9 (inclusive) if the Trust or any of its agents or employees would have required to use the Affected Area if it had been Available;

Declaring that in the event of any dispute regarding evidence that the Affected Area was required, senior Trust clinical staff to be nominated by the Trust for this purpose and notified in writing to Summit will be consulted to determine the facts of the case and the consequent action taken. In case of dispute either party may refer the same to the Dispute Resolution Procedure provided that Summit will not be entitled to challenge any exercise of discretion by the Trust's senior clinicians which is in accordance with accepted clinical practice in UK hospitals or the Trust's reasonable operational policies which have previously been notified in writing to Summit as regards the use of any Affected Area.

- 6.8 In respect of each Affected Area (the calculation being done separately for each in case of coterminous Unavailability Events (and that whether or not the circumstances giving rise to Unavailability are the same)) there will be calculated the Affected Area Deduction (AAD) in accordance with the formula;

$$AAD = RP \times DP \times NOH$$

where

DP = Daily Portion applicable to the Operational Hours during the Deduction Period determined in accordance with the Calculation Table;

RP = the Relevant Percentage for the Affected Area for an Operational Hour as set out in Column 11 of the Unavailability Table;

NOH = the number of Operational Hours for that Affected Area in the Deduction Period

Provided that (1) for any Affected Area for any Operational Hour there shall not be more than one Affected Area Deduction (comprising DP x RP) and (2) the maximum Affected Area Deduction for all Affected Areas for any week shall not exceed seven times the Daily Portion. Provided that the foregoing is without prejudice to deductions in respect of an Affected Area which is interdependent on an Affected Area to which any of the circumstances in paragraphs 6.4.1 to 6.4.13 apply.

- 6.9 Within 10 Business Days of the end of each Availability Payment Period Summit shall aggregate all Affected Area Deductions for all Unavailability Events during that period

and the aggregate sum thereby calculated is herein called "**the Unavailability Deduction**" for that period.

7 Performance Deductions - Performance Measurement System

7.1 The Trust shall be entitled to reduce the Unitary Payment applicable in any Month subject to paragraphs 12.7 and 12.9 by an amount ("**the PMS Deduction**") equal to, for that Month, the lesser of (1) ten per cent of the aggregate of all Service Amounts and (2) the aggregate of the following deductions:-

7.1.1 the Catering Services Deduction;

7.1.2 the Domestic Services Deduction;

7.1.3 the Switchboard Services Deduction;

7.1.4 the Portering, Transport and Waste Services Deduction;

7.1.5 the Security Services Deduction;

7.1.6 the Linen Services Deduction;

7.1.7 the Residential Accommodation Services Deduction; and

7.1.8 the Estates Maintenance Services Deduction;

where **Catering Services Deduction** means the aggregate of:

$$\begin{array}{r} \frac{\text{Financial Penalty A}}{100} \quad \times (\text{Service Amount minus Variable Amount}) \\ \text{plus} \quad \frac{\text{Financial Penalty B}}{100} \quad \times \text{Variable Amount} \end{array}$$

Domestic Services Deduction means

$$\frac{\text{Financial Penalty}}{100} \quad \times \text{Service Amount}$$

Switchboard Services Deduction means

$$\frac{\text{Financial Penalty}}{100} \quad \times \text{Service Amount}$$

Portering, Transport and Waste Services Deduction means

$$\frac{\text{Financial Penalty}}{100} \quad \times \text{Service Amount}$$

Security Services Deduction means

$$\frac{\text{Financial Penalty}}{100} \times \text{Service Amount}$$

Linen Services Deduction means

$$\frac{\text{Financial Penalty}}{100} \times \text{Service Amount}$$

Residential Accommodation Services Deduction means

$$\frac{\text{Financial Penalty}}{100} \times \text{Service Amount}$$

Estates Maintenance Services Deduction means

$$\frac{\text{Financial Penalty}}{100} \times \text{Service Amount}$$

PROVIDED that for the avoidance of doubt, the maximum Financial Penalty for each Service is 20 in respect of any Monitoring Period.

Financial Penalty means, in respect of each Service, the financial penalty determined in accordance with the following table by reference to the Service Score for that Service, in respect of the Month to which the Service Amount relates:-

SERVICE SCORE	FINANCIAL PENALTY
100	0
99	0
98	0
97	0
96	0
95	0
94 - 94 . 99	1
93 - 93 . 99	2
92 - 92 . 99	3
91 - 91 . 99	4
90 - 90 . 99	5
89 - 89 . 99	6
88 - 88 . 99	7
87 - 87 . 99	8
86 - 86 . 99	9
85 - 85 . 99	10
84 - 84 . 99	12

83 - 83 . 99	14
82 - 82 . 99	16
81 - 81 . 99	18
80 - 80 . 99	20

Financial Penalty (A) means in relation to the Catering Services, the Financial Penalty calculated on the basis of the Service Score including all relevant service failures identified during the Monitoring Period;

Financial Penalty (B) means in relation to the Catering Services, the Financial Penalty calculated on the basis of the Services Score including all relevant service failures excluding those directly related to the failure to deliver a Breakfast, Lunch or Supper; and Variable Amount means that part of the Service Amount calculated by aggregating $(N \times Br) + (O \times Cu)$ and $(P \times Su)$ in paragraph 5.1.

7.2 In determining the Service Score for any Service under the Services Monitoring Procedures, failures which arise as a result of or the consequences of any of the following matters shall not be taken into account:

- (a) any act (other than an act requiring Summit, its Approved Service Providers or Permitted Sub-Contractors to comply with the Liaison Procedures under exception of paragraph 5 thereof, but subject to paragraph 6 thereof, but including the exercise of the rights of the Trust pursuant to Clauses 15.2 and 15.6 of the Project Agreement and Provision 2.4 of the General Provisions), omission or default or breach of the DBFO Contracts by the Trust or any person for whom the Trust is responsible in terms of Clause 8.2 of the Project Agreement;
- (b) planned preventative maintenance or planned repair or replacement of assets being carried out at times and in accordance with the Maintenance Procedures and the Liaison Procedures other than paragraph 5 thereof, but subject to paragraph 6 thereof;
- (c) an instruction by the Trust's Contract Officer to Summit and/or its Approved Service Providers or Permitted Sub-Contractors to cease any works or services other than an instruction to comply with the Liaison Provisions under exception of paragraph 5 thereof, but subject to paragraph 6 thereof;
- (d) implementation (within any timescale agreed or determined in terms of the Change Provisions) of any works relating to an Eligible Change or Legislative Change;
- (e) loss or damage to, or malfunctions or failure of, any equipment for which the Trust or any person for whom it is responsible pursuant to Clause 8.2 of the Project Agreement is responsible;
- (f) the Trust exercising its step-in rights under Provision 16 of the General Provisions and/or Clause 23 of the Equipment Agreement whereby the Trust or

any person from whom the Trust is responsible in terms of Clause 8.2 of the Project Agreement by its acts or omissions causes the failure in the Service;

- (g) the acts, omissions or default of statutory undertakers, local authorities, providers of utilities or other persons (other than Summit or its Approved Service Provider(s) or Permitted Sub-contractor(s)) carrying out works on or off the Site other than the Works or any works for which Summit is responsible in terms of the DBFO Contracts;
- (h) the existence or danger of infections or diseases on the Site such that the Trust's Contract Officer instructs Summit, and/or its Approved Service Providers or Permitted Sub-contractors, or a Statutory Requirement or NHS Guidance recommends or requires, that access to or occupation of the Affected Area is denied or significantly restricted;
- (i) the inability of Summit or its Approved Service Provider(s) or Permitted Sub-contractor(s) to obtain telecommunications or sewerage services or supplies to serve the Site by reason of the failure of the service supplier or otherwise;
- (j) the inability of Summit and/or its Approved Service Providers or Permitted Sub-contractors to obtain gas, electricity, oil, water, services or supplies arising from failure on the part of the relevant provider of such services or supplies to serve the Site by reason of default of the relevant provider or otherwise save to the extent that there would not have been a service failure had Summit complied with its obligations under the Utilities Contingency Provisions;
- (k) denial of access for Summit and/or its Approved Service Providers or Permitted Sub-Contractors pursuant to paragraph 5 of (but subject to paragraph 6 of) or otherwise in breach of the Liaison Procedures;
- (l) the acts, omissions or default of the Linen Sub-contractor; or
- (m) a major accident or incident affecting the Site and/or the provision of healthcare services at the Hospital save to the extent that there would not have been a Service failure had Summit complied with its obligations under Clause 3.1(c)(ii) of the Services Agreement.

7.3 Notwithstanding the foregoing in respect of deductions which would otherwise fall to be made under this paragraph 7 (PMS deductions) ("**PMS Deductions**") (a) in respect of the period until the later of (i) 20 weeks after the Operational Date and (ii) the date upon which the Trust ceases to provide to any material extent clinical services at the Existing Sites no PMS Deductions will be made and (b) in respect of the succeeding 6 weeks any PMS Deductions will be reduced by 50% but without prejudice to the Trusts' other remedies including the right to make deductions under paragraph 6 (Availability), paragraph 8 (Equipment Services PMS) and paragraph 9 (No Substantive Service and industrial action) and any other provisions of the DBFO Contracts.

8 Performance Deductions - Equipment Services PMS

8.1 The Trust shall be entitled, subject to paragraphs 12.7 and 12.9 to reduce the Unitary Payment payable in respect of (a) the First Service Year and (b) each Contract Year thereafter and the Final Service Year by the aggregate of the following amounts ("the **Equipment PMS Deduction**"):

- 8.1.1 the Ultrasound Deduction;
- 8.1.2 the Screening and Interventional Deduction;
- 8.1.3 the CT Deduction;
- 8.1.4 the Mammography Deduction;
- 8.1.5 the General Deduction;
- 8.1.6 the PACS Deduction; and
- 8.1.7 the Transferred Equipment Deduction; and

where **Ultrasound Deduction** means

$$\frac{\text{Financial Penalty}}{100} \quad \times \text{Modality Payment}$$

Screening and Interventional Deduction means

$$\frac{\text{Financial Penalty}}{100} \quad \times \text{Modality Payment}$$

CT Deduction means

$$\frac{\text{Financial Penalty}}{100} \quad \times \text{Modality Payment}$$

Mammography Deduction means

$$\frac{\text{Financial Penalty}}{100} \quad \times \text{Modality Payment}$$

General Deduction means

$$\frac{\text{Financial Penalty}}{100} \quad \times \text{Modality Payment}$$

PACS Deduction means

$$\frac{\text{Financial Penalty}}{100} \times \text{Modality Payment}$$

Transferred Equipment Deduction means

$$\frac{\text{Financial Penalty}}{100} \times \text{Modality Payment}$$

Financial Penalty means, in the case of each Modality, the financial penalty determined in accordance with the following table by reference to the Uptime Score for that Modality, determined in accordance with Clause 15 of the Equipment Agreement, in respect of the twelve months to which the Unitary Payment relates and:-

- (a) in the case of each Modality (other than Transferred Equipment and subject to paragraph (b)) the financial penalty shall be as set out in column A;
- (b) in the case of PACS for the first 6 months of the First Service Year the financial penalty shall be as set out in column B and thereafter the financial penalty shall be as set out in column A; and
- (c) in the case of the Transferred Equipment the financial penalty shall be as set out in column C.

UPTIME SCORE %	FINANCIAL PENALTY		
	A	B	C
100	0	0	0
99	0	0	0
98	0	0	0
97 - 97.99	1	0	0
96 - 96.99	2	0	0
95 - 95.99	3	0	0
94 - 94.99	4	1	0
93 - 93.99	5	2	0
92 - 92.99	6	3	0
91 - 91.99	7	4	1
90 - 90.99	8	5	2
89 - 89.99	9	6	3

UPTIME SCORE %	FINANCIAL PENALTY		
	A	B	C
88 - 88.99	10	7	4
87 - 87.99	11	8	5
86 - 86.99	12	9	6
85 - 85.99	13	10	7
84 - 84.99	15	12	8
83 - 83.99	17	14	9
82 - 82.99	19	16	10
81 - 81.99	21	18	11
80 - 80.99	23	20	12
79 - 79.99	25	22	13
78 - 78.99	27	24	14
77 - 77.99	29	26	15
76 - 76.99	31	28	16
75 - 75.99	33	30	17
74 - 74.99	35	32	18
73 - 73.99	37	34	19
72 - 72.99	39	36	20
71 - 71.99	41	38	21
70 - 70.99	43	40	22
69 - 69.99	46	43	23
68 - 68.99	49	46	24
67 - 67.99	52	49	25
66 - 66.99	55	52	26
65 - 65.99	58	55	27
64 - 64.99	61	58	28
63 - 63.99	64	61	29
62 - 62.99	67	64	30
61 - 61.99	70	67	31

UPTIME SCORE %	FINANCIAL PENALTY		
	A	B	C
60 - 60.99	73	70	32
59 - 59.99	76	73	33
58 - 58.99	79	76	34
57 - 57.99	82	79	35
56 - 56.99	85	82	36
55 - 55.99	88	85	37
54 - 54.99	91	88	38
53 - 53.99	94	91	39
52 - 52.99	97	94	40
51 - 51.99	100	97	41
50 - 50.99	100	100	42
0 - 49.99	100	100	91-43(1)

NOTE(1) the Financial Penalty in Column C for 49-49.99% is 43 and the Financial Penalty then increases by 1 for each further 1% reduction in Uptime Score.

9 Performance Deductions - No Substantive Service

The Trust shall be entitled to reduce the Unitary Payment applicable in any Month subject to paragraphs 12.7 and 12.9 as follows.

The Service Amount as calculated in accordance with paragraphs 4 and 5 of this Part A shall be reduced in respect of one or more Services where necessary in accordance with this paragraph 9.

- 9.1 If in any period of not less than 15 consecutive days (each a "Period" and declaring that the Trust will identify the beginning and end of each such Period in a No Substantive Service Notice to be given in terms of Clause 9.8) Summit's performance in respect of one or more Services constitutes No Substantive Service, the Trust shall be entitled to reduce the Unitary Payment by the aggregate of all Relevant Deductions in respect of the Month or Months to which the Period or Periods relates (any allocation of such deductions between Months being on a pro rata basis), subject to paragraphs 12.7 and 12.9.
- 9.2 **No Substantive Service** means in respect of any of the Services that the Service Delivery Percentage for that Service for a Period is less than 75% and so that No Substantive Service will be measured separately for each Service in accordance with this paragraph 9.

9.3 The Service Delivery Percentage for a Service shall be:-

$$\frac{\text{Service Delivery}}{\text{Service Demand}} \times 100\%; \text{ where}$$

9.3.1 Service Delivery is calculated in accordance with the Service Delivery and Service Demand Measurement Procedure;

9.3.2 Service Demand is calculated in accordance with either the Service Delivery and Service Demand Measurement Procedure or the Projected Demand Measurement Procedure whichever is applicable pursuant to paragraph 9.5 below.

9.4 If there is No Substantive Service in respect of any Service the **Relevant Deduction** for that Service will be:

$$(100\% - b) \times a$$

where, for the Period in question for a Service:

9.4.1 a is the aggregate of the Service Amount attributable to that Service assuming, for this purpose only, that each of 'N', 'O', 'P', 'Q' and 'R' as described in paragraph 5.1 if applicable to that Service are £Nil; and

9.4.2 b is the Service Delivery Percentage;

and the calculation will be carried out for each Service to which a No Substantive Service Notice is issued.

9.5 For the purposes of calculating the Service Demand for each Service in accordance with paragraph 9.3.2, the Service Delivery and Service Demand Measurement Procedure will be applied unless the Trust has become entitled pursuant to paragraph 6.2 to deduct or recover, in respect of a period of 15 consecutive days, a sum in excess of 25% of the Availability Element for that period which Summit would otherwise have been entitled to receive, in which event the Projected Demand Measurement Procedure will be applied in substitution for the Service Delivery and Service Demand Measurement Procedure for the period commencing at the expiry of the said 15 consecutive day period until the Trust ceases to be entitled to deduct or recover more than 25% of the Availability Element (calculated on a daily basis).

9.6 In calculating the Service Delivery Percentage for any Service failures which arise as a result of or the consequences of any of the following matters shall not be taken into account:

- (a) any act (other than an act requiring Summit, its Approved Service Providers or Permitted Sub-Contractors to comply with the Liaison Procedures under exception of paragraph 5 thereof, but subject to paragraph 6 thereof, but including the exercise of the rights of the Trust pursuant to Clauses 15.2 and 15.6 of the

Project Agreement and Provision 2.4 of the General Provisions), omission or default or breach of the DBFO Contracts by the Trust or any person for whom the Trust is responsible in terms of Clause 8.2 of the Project Agreement;

- (b) planned preventative maintenance or planned repair or replacement of assets being carried out at times and in accordance with the Maintenance Procedures and the Liaison Procedures other than paragraph 5 thereof but subject to paragraph 6 thereof;
- (c) an instruction by the Trust's Contract Officer to Summit or its Approved Service Providers or Permitted Sub-contractors to cease any works or services other than as instruction to comply with the Liaison Provisions under exception of paragraph 5 thereof, but subject to paragraph 6 thereof;
- (d) implementation (within any timescale agreed or determined in terms of the Change Provisions) of any works relating to an Eligible Change or Legislative Change;
- (e) loss or damage to, or malfunctions or failure of, any equipment for which the Trust or any person for whom it is responsible pursuant to Clause 8.2 of the Project Agreement is responsible;
- (f) the Trust exercising its step-in rights under Provision 16 of the General Provisions and/or Clause 23 of the Equipment Agreement whereby the Trust or any person for whom the Trust is responsible in terms of Clause 8.2 of the Project Agreement by its acts or omissions causes a failure in the Service;
- (g) the acts, omissions or default of statutory undertakers, local authorities, providers of utilities or other persons (other than Summit or its Approved Service Providers or Permitted Sub-Contractors) carrying out works on or off the Site other than the Works or any works for which Summit is responsible in terms of the DBFO Contracts;
- (h) the existence or danger of infections or diseases on the Site such that the Trust Contract Officer instructs Summit, and/or its Approved Service Providers or Permitted Sub-Contractors, or a Statutory Requirement or NHS Guidance recommends or requires, that access to or occupation of the Affected Area is denied or significantly restricted;
- (i) the inability of Summit or its Approved Service Providers or Permitted Sub-Contractors to obtain telecommunications or sewerage services or supplies to serve the Site by reason of the failure of the service supplier or otherwise;
- (j) the inability of Summit and/or its Approved Service providers or Permitted Sub-contractors to obtain gas, electricity, oil, water services or supplies arising from failure on the part of the relevant provider of such services or supplies to serve the Site by reason of default of the relevant provider or otherwise save to the

extent that there would not have been a service failure had Summit complied with its obligations under the Utilities Contingency Provisions;

- (k) denial of access for Summit and/or its Approved Service Providers or Permitted Sub-Contractors pursuant to paragraph 5 of (but subject to paragraph 6 of) or otherwise in breach of the Liaison Procedures;
- (l) the acts, omissions or default of the Linen Sub-contractor; or
- (m) a major accident or incident affecting the Site and/or the provision of healthcare services at the Hospital save to the extent that there would not have been a service failure had Summit complied with its obligations under Clause 3.1(c)(ii) of the Services Agreement.

- 9.7 The Performance Measurement System and the deductions under paragraph 7 (PMS Deduction) will not apply in respect of any Service during a Period of No Substantive Service for that Service.
- 9.8 If at any time the Trust considers that No Substantive Service has occurred in respect of any Service, then the Trust shall be entitled at any time (prior to the expiry of 5 Business Days after the Trust receives from Summit the Monitoring Report referred to in Provision 2.1 of these General Provisions) to give a No Substantive Service Notice which will be substantially in the form set out in Appendix I to this Part A and shall specify therein the Service to which the Notice relates and the date of commencement and expiry of the Period and if there is any dispute as to whether or to what extent there was No Substantive Service or as to the duration of the Period, the same may be referred prior to the expiry of 5 Business Days after receipt by Summit of the No Substantive Service Notice for determination under the Dispute Resolution Procedure.
- 9.9 If any Personnel engaged in performing the Services exercise any form of industrial action such that in terms of their contracts of employment the employer is not required to pay (and does not pay) the full amount of the emoluments which would otherwise be due to such Personnel, then unless such action relates to a Service during a Period of No Substantive Service and provided that for the period of the industrial action ("the Relevant Period") there would be No Substantive Service if calculated on the basis that the Relevant Period is substituted for the period of at least 15 consecutive days referred to at paragraph 9.1 above then there shall be deducted from the Unitary Payment subject to paragraphs 12.7 and 12.9 such sum (if any) as equals the amount by which the employer has benefitted financially as a consequence of such industrial action assuming the employer had itself incurred any PMS Deductions or other financial remedy of the Trust incurred by Summit as a consequence of the industrial action and all additional costs of whatever nature directly incurred by the employer in providing the Services as a consequence of such industrial action, but not the settlement thereof (except to the extent (if any) to which as part of the settlement payments have been made to employees in respect of the period of the industrial action itself), and any steps taken by it to provide the Services by an alternative means but so that in no circumstances will any sums be due by the Trust.

10 Force Majeure and Suspension Events (post Services Commencement Date)

- 10.1 The Payment Provisions including the Deduction Provisions (to reflect the absence of or lower standard of the Services and the Equipment Services) will apply notwithstanding the occurrence of any event of Force Majeure or any Suspension Event, subject to the remaining provisions of this paragraph 10 and paragraphs 12.7 and 12.9.
- 10.2 To the extent that an event of Force Majeure would, but for this paragraph 10.2, result in a deduction from any Availability Element in accordance with paragraphs 6 and 10.1 above (the amount of such deduction being a "FM Availability Deduction") then that FM Availability Deduction shall be calculated under deduction of a sum ("the Additional Bond Service Amount") calculated according to the formula:

$$ABSA = \frac{a}{b} \times c$$

Where ABSA = the Additional Bond Service Amount

a = the lower of (1) all payments (including payments of interest and principal and any amounts payable thereunder by way of fees or expenses) which Summit and/or the Subsidiary (for so long as it remains a subsidiary of Summit) is due to pay to the Finance Providers (or any of them) under or pursuant to the terms of the Finance Facilities Agreements (and excluding for the avoidance of doubt any sum to be paid into any Reserve Account or any other account (whether or not charged) held by Summit) on the basis that the principal advanced thereunder has been no greater than the principal amount referred to in the definition of Approved Financiers Amount and the interest rate payable except in case of default will be the Approved Rate, and the default rate of interest, any broken funding costs, banking fees, payments, costs and expenses will be no greater than under the Initial Finance Facilities Agreements or otherwise on reasonable market terms and as certified by the Lead Financier (except in case of demonstrable error) and which certificate will require to include the basis of calculation of the sum due; and (2) the Availability Element;

b = the Availability Element

c = the FM Availability Deduction

- 10.3 To the extent that an event of Force Majeure would, but for this paragraph 10.3 result in a deduction from the Services Amount for any Service ("the Services Element") in accordance with paragraphs 7 and/or 9 and 10.1 (the amount of such deduction being for each Service an "FM Services Deduction") then, subject to paragraph 10.6, that FM

Services Deduction will be calculated under deduction of a sum ("the **Additional Unavoidable Services Operating Costs**") calculated according to the formula:

$$AUSOC = \frac{a}{b} \times c$$

- Where AUSOC = the Additional Unavoidable Services Operating Costs
- a = the lower of (1) the Unavoidable Operating Costs which Summit or its Approved Service Providers incurred relative to the provision of the Services for the period in each case to which the Services Element relates and (2) the Services Element
- b = the Services Element
- c = the FM Services Deduction

- 10.4 To the extent that an event of Force Majeure results in a deduction from the Capacity Element relative to the Equipment Service ("the **Equipment Element**") in accordance with paragraphs 8 and 10.1 (the amount of such deduction being an "FM **Equipment Deduction**") then, subject to paragraph 10.6, that FM Equipment Deduction will be calculated under deduction of a sum ("the **Additional Unavoidable Equipment Operating Costs**") calculated according to the formula:

$$AUEOC = \frac{a}{b} \times c$$

- Where AUEOC = the Additional Unavoidable Equipment Operating Costs
- a = the lower of (1) the Unavoidable Operating Costs which Summit or its Approved Service Providers have incurred relative to the provision of the Equipment Services for the period in each case to which the Equipment Element related and (2) the Equipment Element
- b = the Equipment Element
- c = the FM Equipment Deduction

- 10.5 "Unavoidable Operating Costs" means (1) all costs reasonably, properly and necessarily incurred by Summit in respect of the period in question for the purposes of the Project and in compliance with the JBFO Contracts on the basis that Summit and its Approved Service Providers have an obligation to mitigate such costs and, in so doing, comply with the reasonable instructions of the Trust and excluding, for the avoidance of doubt, all loss of profit of Approved Service Providers and Permitted Sub-Contractors, the Bond Service

Amount and all amounts due in respect of the Approved Equity or (2) if less the Capacity Element for the relevant period.

- 10.6 Whereas Summit has agreed to bear the first six weeks of Unavoidable Operating Costs in respect of each event of Force Majeure, paragraphs 10.3 and 10.4 will not apply during any such six week period when the full amount of the FM Services Deduction and/or FM Equipment Deduction will be deducted.

11 Payment in respect of Extension Periods

- 11.1 For the purposes of this paragraph 11, the following terms and expressions shall have the following meanings :-

11.1.1 **Anticipated SCD** means in relation to any Extension Period the date upon which it is agreed or determined by reference to the Dispute Resolution Procedure the Services Commencement Date would have occurred but for the delay attributable to that Extension Period;

11.1.2 **Bond Service Amount** means all payments (including payments of interest and principal and any amounts payable thereunder by way of fees or expenses) due from the Summit or the Subsidiary to the Finance Providers (or any of them) under or pursuant to the terms of the Finance Facilities Agreements (and excluding for the avoidance of doubt any sum to be paid into any Reserve Account or any other account (whether or not charged) held by Summit) on the basis that the principal advanced thereunder has been no greater than the principal amount referred to in the definition of the Approved Financiers Amount and the interest rate payable except in cases of default will be no greater than the Approved Rate, and the rate of default interest, any broken funding costs, banking fees, payments, costs and expenses will be no greater than under the Initial Finance Facilities Agreements or otherwise on reasonable market terms and as certified by the Lead Financier (except in case of demonstrable error) and which certificate will require to include the basis of calculation of the sum due.

11.1.3 **Unavoidable Operating Costs** has the meaning given to it in paragraph 10.5.

11.1.4 **Loss and Expense** means the aggregate of:

- (a) the aggregate of the Availability Element and the Management Portions of each of the Capacity Element and the Usage Element (assuming then projected levels of patient activity set out in the Financial Model) which would have been payable in respect of the period from Anticipated SCD to the Services Commencement Date if the Services Commencement Date and Operational Date had occurred on Anticipated SCD and assuming no performance payment deductions were to apply; and
- (b) all amounts which Summit is reasonably, properly and necessarily obliged to pay to its Approved Service Providers as a consequence of the Services Commencement Date and Operational Date not occurring on Anticipated SCD

on the basis that its Approved Service Providers are obliged to mitigate their loss, and in so doing, comply with the reasonable instructions of the Trust.

- 11.2 If a Force Majeure Extension Period or Relevant Discoveries Extension Period is agreed or determined in accordance with Clause 4.2 of Development Agreement then subject to paragraphs 11.4 and 11.5 the Trust will pay to Summit the Bond Service Amount, and Unavoidable Operating Costs from the Anticipated SCD relating to the relevant Extension Period for a period equal to the Force Majeure Extension Period or Relevant Discoveries Extension Period as the case may notwithstanding that the Services Commencement Date may then not have occurred.
- 11.3 If a Trust Breach Extension Period or an Eligible Change Extension Period is agreed or determined in accordance with Clause 4.2 of the Development Agreement then the Trust will pay to Summit Loss and Expense, from Anticipated SCD relating thereto until the expiry of the Trust Breach Extension Period or the Eligible Change Extension Period (as the case may be) notwithstanding that the Services Commencement Date may then not have occurred.
- 11.4 The Trust's obligations to pay Summit Unavoidable Operating Costs pursuant to paragraph 11.2 in respect of each event of Force Majeure shall be suspended unless and until (and then to the extent that) the aggregate of the Force Majeure Extension Period or Force Majeure Extension Periods resulting from the event of Force Majeure exceeds 6 weeks.
- 11.5 The Trust's obligation to pay Summit the Bond Service Amount and Unavoidable Operating Costs pursuant to paragraph 11.2 in respect of a Discoveries Extension Period shall be suspended unless and until (and then to the extent that) the aggregate of such Discoveries Extension Period exceeds 90 days.
- 11.6 [Not Used]
- 11.7 Payments due under this Clause 11 will be made by the Trust by the later of (a) within 10 Business Days receipt of a invoice addressed to the Trust and (b) the date upon which the sum falls due.
- 11.8 If the Trust is obliged pursuant to this paragraph 11 to pay to Summit:
 - (a) the Bond Service Amount, such amount will be payable in advance in respect of the remainder of the Quarter in respect of which such obligation first arises and in respect of each Quarter thereafter and shall be due on the first Business Day after such obligation first arises in respect of the remainder of that Quarter and thereafter on the first Business Day of each successive Quarter in respect of each such Quarter;
 - (b) Unavoidable Operating Costs, such amount will be payable in respect of the remainder of the Month in respect of which such obligation first arises on the first Business Day after the end of that Month and in respect of each Month thereafter on the first Business Day after the end of each such Month;

- (c) Loss and Expense, such amount will be payable as follows: -
- (i) the Availability Element will be payable in advance in respect of the remainder of the Quarter in respect of which such obligation first arises and in respect of each Quarter thereafter and shall be due on the first Business Day after such obligation first arises in respect of the remainder of that Quarter and thereafter on the first Business Day of each successive Quarter in respect of each such Quarter;
 - (ii) the Management Portions of each of the Capacity Element and Usage Element and all amounts referred to in paragraph 11.1.4(b) shall be payable in respect of the remainder of the Month in respect of in which such obligation first arises on the first Business Day after the end of that Month and in respect of each Month thereafter on the first Business Day after the end of each such Month.

PROVIDED THAT if the Services Commencement Date occurs such that any amounts the Trust is obliged to pay to Summit pursuant to this paragraph 11 have either been overpaid because they have been pre-paid or under paid because they have accrued but have yet to become due for payment, any such over payments and under payments will be taken into account in the next invoice raised by Summit pursuant to the DBFO Contracts or, so far as unsatisfied thereby, any subsequent invoice.

12 Payment Procedure

- 12.1 Summit shall provide the Trust not later than 10 Business Days prior to the Business Day on which the Availability Element for each Availability Payment Period is due under paragraph 3 of this Part A with an invoice for such Availability Element and any amounts subject to paragraphs 12.7 and 12.9 to be deducted therefrom pursuant to paragraph 6 and where applicable 10 of this Part A.
- 12.2 Summit shall provide the Trust as soon as reasonably practicable and in any event within 10 Business Days of the final day of each Month with an invoice for the Capacity Element applicable for that Month and the Usage Element and any amounts subject to paragraphs 12.7 and 12.9 to be deducted therefrom pursuant to paragraphs 7 to 9 (inclusive) and (where applicable) 10 of this Part A.
- 12.3 The Trust shall pay to Summit the amounts payable by the Trust to Summit pursuant to this Part A in the case of the Availability Element on the date payment is due under paragraph 3 of this Part A or, if later, within 10 Business Days of receipt by the Trust of the invoice issued pursuant to paragraph 12.1 and in the case of the Capacity Element and the Usage Element on or prior to the end of the Month following the Month to which the payment relates or, if later, within 10 Business Days after receipt by the Trust of the invoice issued pursuant to paragraph 12.2.
- 12.4 The Trust shall pay to Summit any amounts payable by the Trust to Summit under the DBFO Contracts, not being amounts expressly referred to otherwise in this paragraph 12, within 10 Business Days after receipt by the Trust of an invoice in respect thereof.

- 12.5 Each of the Trust and Summit shall have the right at reasonable hours and on giving reasonable notice to the other to examine the books and records of the other party and Approved Service Providers and the Contractor to the extent necessary to verify the accuracy of any information provided pursuant to this Part A.
- 12.6 Within 10 Business Days after the Termination Date Summit will pay to the Trust any overpayment of the Unitary Payment as a consequence of payment having been made in advance or any deductions under paragraphs 6 to 10 (inclusive) not having been made (subject as provided in paragraphs 12.7 and 12.9) and the Trust will pay to Summit any part of the Unitary Payment due or accrued in respect of the period prior to the Termination Date in each case except that and to the extent that any such overpayment has been effectively reimbursed to the Trust and/or paid to Summit in terms of Clause 24 and Part 10 of the Schedule to the Project Agreement.
- 12.7 Without prejudice to Provision 23, the Trust will not be entitled to claim any deductions under paragraphs 6, 7, 8, 9 or 10 in respect of any payment of the Unitary Payment unless the Trust has agreed or been deemed to have agreed in accordance with Provision 2.2 such deductions with Summit or has given Summit written notice that it will refer the Dispute to the Dispute Resolution Procedure before: -
- 12.7.1 in respect of deductions under paragraph 6 or, if applicable, paragraph 10.2, the expiry of 10 Business Days after receipt by the Trust from Summit of Summit's quantification of the Unavailability Deduction pursuant to paragraph 6.9;
- 12.7.2 in respect of deductions under paragraphs 7, 9 or, if applicable, 10.3, the expiry of 10 Business Days after the Trust receives from Summit the Monitoring Report referred to in Provision 2.1 of these General Provisions;
- 12.7.3 in respect of deductions under paragraph 8 or, if applicable, paragraph 10.4, the expiry of 10 Business Days after the Trust receives from Summit the report referred to in Clause 15.5 of the Equipment Agreement.
- 12.8 The Trust will be entitled to deduct from the Unitary Payment any sum which falls to be deducted therefrom in terms of Clause 6 of the Equipment Agreement and/or the Commissioning Procedure but only to the extent such amounts have not already been accounted for in calculating the Capacity Element pursuant to paragraph 4 of this Part A.
- 12.9 Subject as provided in Provision 23, where any amounts are due by Summit to the Trust under the DBFO Contracts the Trust shall only be entitled to recover such sums from Summit by way of reduction from payments otherwise due to Summit under the DBFO Contracts provided that, without prejudice to Clause 12.7, the Trust will no longer be entitled to make any deductions under paragraphs 6 to 10 (inclusive) to the extent that these have been agreed or determined and remain unrecovered 6 months after such agreement or determination.

APPENDICES TO PART A

- A Availability Calculation Table
- B Capacity Calculation Table
- C Usage Calculation Table
- D ISDS1 Definitions
- E Unavailability Notice
- F Unavailability Table
- G Service Delivery and Service Demand Measurement Procedure
- H Projected Demand Measurement Procedure
- I No Substantive Service Notice
- J First Required Notice

Appendix A

Calculation Table for Availability Element

This is the Calculation Table for the Availability Element

In any Contract Year:

(a) the Non Indexed Portion shall be the aggregate of:

- (i) the Senior Debt Service; and
- (ii) the Mark-up

under deduction of:

- (i) the Financing Saving; and
- (ii) the Construction Cost Inflation Sharing

for that Contract Year each as identified in the pages headed "Availability Fee Schedule" of the Original Financial Model, and the Daily Non Indexed Portion shall be $\frac{1}{365}$ (or $\frac{1}{366}$ in a Leap Year) of such amount;

(b) the Indexed Portion shall be £764,284 and the Daily Indexed Portion shall be $\frac{1}{365}$ (or $\frac{1}{366}$ in a Leap Year) of such amount; and

(c) the Daily Portion for that Contract Year shall be:

(the Daily Indexed Portion $\times \frac{e}{f}$) + the Daily Non Indexed Portion

where

e = the Current Index; and

f = the Initial Index

Appendix B**Calculation Table for the Capacity Element**

The Calculation Table for the Capacity Element is separately annexed.

Appendix C**Calculation Table for the Usage Element**

The Calculation Table relative to the Usage Element is separately annexed.

Appendix D

ISDS1 Definitions

1 ISDS1 - Definitions Inpatient Episode: -

1.1 Inpatient admission

An inpatient admission marks the start of an **inpatient episode**. The patient undergoes the full **admission** procedure and is accepted by the hospital, the specialty and the consultant for **inpatient care**. The full admission procedure may be defined as the completion of all registration documents including the recording of the patient's name in the admission register or system. The patient may be admitted from:

- locations external to the NHS.
- another NHS inpatient or daycare service.

When the patient is admitted from another inpatient or **daycare** service, the admission is an **inpatient transfer-in**. Hence inpatient admissions include inpatient transfers-in.

Note

Inpatient admissions are classified as either emergency admissions, urgent admissions or routine admissions (see **Admission Type**).

1.2 Admission type 1-4-96

An **inpatient admission** is categorised as an emergency, urgent or routine inpatient admission except for Maternity and Neonatal admissions. The appropriate admission category depends on the clinical condition of the patient as assessed by the receiving consultant. The patient may or may not be on a **waiting list**.

See COPPISH.SMR Data Manual for codes and values.

(a) Emergency admission:

An emergency admission occurs when, *for clinical reasons*, a patient is admitted at the earliest possible time after seeing a doctor.

Note

- (1) The patient may or may not be admitted through Accident & Emergency.
- (2) Emergency admissions from a waiting list can be identified from the patient's **waiting list type** code

(b) Urgent admission:

An urgent admission is a type of emergency admission where the admission is delayed for hospital/patient reasons and the patient's condition is such that he/she is not clinically compromised or disadvantaged by the short delay. An example of an urgent admission is a patient who attends for an outpatient appointment at which the doctor decides there is a clinical need to admit the patient within the next few days.

Note

If the patient is not already on a waiting list, he/she is NOT placed on one for the duration of the delay. Urgent admissions from a waiting list can be identified from the patient's Waiting List Type code.

(c) Routine admission:

A routine admission occurs when a patient is admitted as planned.

(d) Other Admission:

Other admission is a type of admission which is either not emergency, urgent or routine, or pertains to Maternity and Neonatal admissions.

1.3 Elective admission

Synonym Waiting list admission

1.4 Waiting List Admission

A waiting list admission occurs when a patient whose name was on an inpatient or day case waiting list for the specialty is admitted to that specialty as planned. Waiting list admissions therefore cover all patients whose names were on a true waiting list, a deferred admission waiting list or a planned repeat admission waiting list for the specialty and who are admitted as planned.

Note

- (1) A waiting list admission is a type of inpatient or day case admission.
- (2) Types of waiting list admission are true waiting list admission, deferred waiting list admission and planned repeat waiting list admission.

[See diagrams on pages 1.2-2 and 1.4-2]

1.5 True waiting list admission

A true waiting list admission occurs when a patient whose name was on the **true waiting list** for the specialty, is admitted, as planned, to the specialty as an **inpatient or day case**.

Note

- (1) A true waiting list admission is a sub-type of **inpatient or day case admission**.

[See diagrams on pages 1.2-2 and 1.4-2]

1.6 Deferred admission

A deferred admission occurs when a patient whose name was on the **deferred admission waiting list** for the specialty, is admitted, as planned, to the specialty as an **inpatient or day case**.

Note

- (1) A deferred admission is a sub-type of **inpatient or day case admission**. [See diagrams on pages 1.2-2 and 1.4-2]

1.7 Planned repeat admission

A planned repeat admission occurs when a patient whose name was on the **planned repeat admission waiting list** for the specialty, is admitted as planned to the specialty as an **inpatient or day case**.

Note

- (1) A planned repeat admission is a sub-type of **inpatient or day case admission**.

[See diagrams on pages 1.2-2 and 1.4-2]

1.8 Revolving Door admission

A revolving door admission is a term used to describe a special type of **planned repeat admission**. It is used for a person who, on a continuous basis, alternates between spending two weeks in hospital as an **inpatient** and two weeks at home. Each two weeks spent in hospital is an **inpatient episode**.

Note

- (1) Frequently two patients are paired to spend alternate fortnights in hospital, making use of the same bed
- (2) Revolving door admissions occur mainly in geriatric and psychogeriatric specialties.

1.9 Inpatient transfer in

An inpatient transfer-in occurs when a patient moves between two services as follows:

- an **inpatient** moves between two specialties in the same hospital.
- an inpatient moves between NHS hospitals (including contracted beds in non-NHS institutions).
- an inpatient changes **significant facility**.
- an inpatient moves to the care of a different consultant in the same specialty in the same hospital for medical reasons.
- a **daycase** moves from a daycase service to an inpatient service

EXCEPT WHERE:

- (a) the daycase is an **embedded daycase**.
- (b) the patient was originally admitted as a daycase but has to remain overnight or longer under the SAME consultant in the SAME specialty (see note under **Daycase Transfer-Out**).

Note

Transfers where a patient moves between wards in a hospital with NO change of consultant, significant facility or specialty are excluded from the definition and from national statistics. However, they can be recorded locally if required.

1.10 Inpatient transfer out

An inpatient transfer-out occurs when a patient moves between two services as follows:

- an **inpatient** moves between two specialties in the same hospital EXCEPT when the patient goes on pass for the purpose of moving to another specialty (see note 2 and **patient on pass**).
- an inpatient moves between NHS hospitals (including contracted beds in non-NHS institutions) EXCEPT when the patient goes on pass for the purpose of moving to another specialty (see note 2).
- an inpatient changes **significant facility**.
- an inpatient moves to the care of a different consultant in the same specialty in the same hospital for medical reasons.

- an inpatient moves from an inpatient service to a **daycase** service and there is **NO** expectation of return to the same consultant in the same inpatient service (ie the daycase is not an **embedded daycase**).

Note

- (1) Transfers where a patient moves between wards in a hospital with **NO** change of consultant, significant facility or specialty are excluded from the definition and from national statistics. However, they can be recorded locally if required.
- (2) Only patients in Mental Health specialties or Geriatric Long Stay may go on pass for the purpose of moving to another specialty.

1.11 Patient on pass

A patient on pass is an **inpatient** who is temporarily absent from a ward, by arrangement, for 24 hours or more because:

- (1) (s)he has been allowed to go home temporarily.
- (2) (s)he has been transferred to another hospital and is expected to return.
- (3) (s)he has been transferred from a long stay specialty to another specialty in the same hospital and is expected to return.

A patient who is absent for less than 24 hours is also counted as being on pass if absent overnight.

Note

- (1) For non-Mental Health specialties the definition applies only when the length of absence does not exceed five nights.
- (2) For Mental Health specialties the definition applies only when the length of absence does not exceed twenty eight nights. An exception to this rule is the practice of revolving door admissions.
- (3) If a patient is absent longer than specified in 1) and 2) above, (s)he should be treated as a discharge. Thus, psychiatric patients admitted under Section 18 of the Mental Health (Scotland) Act 1984 who are on leave from the hospital under Section 27 of the Act are regarded as patients on pass in ISD information systems for a period of up to 28 days. After 28 days they are discharged on ISD systems, though, legally they are inpatients.
- (4) When a patient on pass is in another hospital, or another specialty within the same hospital, the time spent in the other hospital or other specialty is a **separate inpatient episode**.

1.12 Discharge

A discharge marks the end of an **episode of care**.

Note

- (1) Types of discharge are **inpatient discharge, day case discharge, day patient discharge, outpatient discharge and PAM discharge**.

1.13 Inpatient discharge

An inpatient discharge marks the end of an **inpatient episode** and occurs when the patient:

- is discharged to a **location** external to the NHS.
- is transferred to another NHS **inpatient** or **daycase** service.
- dies.

Hence inpatient discharges include **deaths** and **inpatient transfers-out**.

1.14 Inpatient Case

1. Hospital Inpatient Case

A person is counted as one hospital inpatient case during the time (s)he is an **inpatient** in a **specific hospital**, ie between date of admission to hospital and date of discharge from hospital.

2. Specialty Inpatient Case

A person is counted as one specialty inpatient case during the time (s)he is an **inpatient** in a **specific specialty** within a specific hospital, ie between the date of admission to the specialty and the date of discharge from the specialty.

Note

- (1) The terms "hospital inpatient case" and "specialty inpatient case" may be used as a basis for comparing inpatient costs for acute specialties at hospital and specialty level, respectively.
- (2) If a person is admitted into one specialty in a hospital and then transferred into another, (s)he will be counted as one hospital inpatient case, one specialty inpatient case in specialty 1 and one specialty inpatient case in specialty 2.

1.15 Continuous inpatient stay

A continuous inpatient stay is an unbroken period of time that a patient spends as an **inpatient**.

Note

- (1) A patient may change consultant, significant facility, specialty, hospital and/or provider unit during a continuous inpatient stay.

1.16 Readmission

A readmission occurs when a patient is admitted as an **inpatient** to any specialty in any hospital within a specified time period following discharge from a **continuous inpatient stay**.

Note

For statistical purposes, the time period conventionally adopted for the calculation of readmission rates is 28 days. For example, emergency readmission rate is calculated as the proportion of stays in hospital after which an emergency readmission occurs within 28 days of discharge

1.17 Bedside consultation - medical

A bedside consultation is a visit by a medical/dental consultant to an **inpatient** in another specialty for the purpose of consultation, treatment, counselling or advice. The visit is usually initiated by the consultant in charge of the **inpatient episode**.

Note

- (1) A bedside consultation is *not* an **outpatient** attendance unless the inpatient is already receiving outpatient care in the second specialty. Then the meeting is an **outpatient attendance**, not a bedside consultation.

1.18 Bedside consultation - specialist nurse

A specialist nurse bedside consultation is a visit by a specialist nurse to an **inpatient** for the purpose of consultation, treatment, counselling or advice. The visit is usually initiated by the consultant in charge of the **inpatient episode**.

Note

- (1) Specialist nurses include stoma nurses, mastectomy nurses, nurse counsellors, diabetic nurses and dialysis nurses. This is *not* an exhaustive list.
- (2) All nursing care which is an integral part of the inpatient episode is *excluded*.

2 ISDS1 Definitions Daycase Episode: -

2.1 Day case 1-10-1991

A daycase is a patient who makes a planned attendance to a specialty for clinical care, sees a doctor or dentist and requires the use of a bed or trolley in lieu of a bed. The patient is not expected to, and *does not*, remain overnight. Many of these patients require anaesthesia (see note 6).

Note

- (1) The emphasis in the definition is on planned attendance and requiring the use of a bed. Planned means that the patient has an appointment and was asked to attend.
- (2) Daycase care should be regarded as an alternative to inpatient care. In deciding whether a patient is a daycase or an outpatient it is useful to consider whether (s)he would need to be admitted as an inpatient if daycase care were not available.
- (3) A daycase requires the use of a hospital bed because of the nature of the investigation or procedure, or because of the condition of the patient. Some patients only requiring a physical examination may use a bed or trolley as a matter of convenience because an examination couch is not available, but this is *not* considered to constitute requiring a bed for the examination. A trolley is not being used in lieu of a bed when transporting a patient. Trolleys being used in lieu of beds are normally grouped together in **day bed units** or other short stay facilities, or adjacent to theatres.
- (4) A daycase normally comes from outwith the hospital but may be an inpatient from another specialty.
- (5) Mothers who deliver in hospitals and are admitted and discharged between successive bed counts are defined as inpatients and are therefore *excluded* from this definition.
- (6) Anaesthesia: in deciding whether a patient who requires an anaesthetic is a daycase or outpatient, the following guidelines should be applied. The patient should be regarded as a daycase if, *in addition to the main criteria above*:
 - (a) a general anaesthetic is given
 - or
 - (b) the type of anaesthetic given requires the presence of an anaesthetist
 - or

- (c) the patient is sedated and requires a recovery period
- or
- (d) a local anaesthetic is given and a bed is used.

2.2 Day case episode

A daycase episode is the occasion of a **daycase** attending for treatment within a specialty, either in a **Day Bed Unit**, an **inpatient ward** or other designated area.

Note

A daycase episode starts with a **daycase admission** and ends with a **daycase discharge**.

2.3 Admission

An admission marks the start of an **inpatient episode** or **day case episode**.

Note

- (1) Types of admission are **inpatient admission** and **day case admission**.

2.4 Day case admission

A daycase admission marks the start of a **daycase episode**. The patient may be:

- admitted from **locations external** to the NHS.
- admitted from an NHS **inpatient service**. This is called a **daycase transfer-in**; hence daycase admissions include daycase transfers-in.

Note

Daycase admissions (except for a small percentage of day case transfers-in) are **waiting list admissions** and thus may be sub-classified as **true waiting list**, **deferred** or **planned repeat admissions**

2.5 Waiting list admission

A waiting list admission occurs when a patient whose name was on an **inpatient** or **day case waiting list** for the specialty is admitted to that specialty as planned.

Waiting list admissions therefore cover all patients whose names were on a **true waiting list**, a **deferred admission waiting list** or a **planned repeat admission waiting list** for the specialty and who are admitted as planned

Note

- (1) A waiting list admission is a type of **inpatient** or **day case admission**.
- (2) Types of waiting list admission are **true waiting list admission**, **deferred waiting list admission** and **planned repeat waiting list admission**.

[See diagrams on pages 1.2-2 and 1.4-2]

2.6 **True waiting list admission**

A true waiting list admission occurs when a patient whose name was on the **true waiting list** for the specialty, is admitted, as planned, to the specialty as an **inpatient** or **day case**.

Note

- (1) A true waiting list admission is a sub-type of **inpatient** or **day case admission**.

[See diagrams on pages 1.2-2 and 1.4-2]

2.7 **Deferred admission**

A deferred admission occurs when a patient whose name was on the **deferred admission waiting list** for the specialty, is admitted, as planned, to the specialty as an **inpatient** or **day case**.

Note

- (1) A deferred admission is a sub-type of **inpatient** or **day case admission**.

[See diagrams on pages 1.2-2 and 1.4-2]

2.8 Planned repeat admission

A planned repeat admission occurs when a patient whose name was on the **planned repeat admission waiting list** for the specialty, is admitted as planned to the specialty as an **inpatient** or **day case**.

Note

- (1) A planned repeat admission is a sub-type of **inpatient** or **day case admission**.

[See diagrams on pages 1.2-2 and 1.4-2]

2.9 Embedded daycase

An embedded daycase is one which occurs during a single **inpatient episode**

- *either* in a different specialty under the same or a different consultant
- *or* in the same specialty under a different consultant.

[See diagram on page 1.4-3.]

Note

- (1) A separate SMR record is generated for the daycase episode
- (2) If the patient transfers back to a *different* consultant from the original one, the original inpatient episode is terminated and a *new* inpatient episode commences (and a new SMR record generated) under the new consultant. This is *not* an embedded daycase.

2.10 Day case transfer in (Inpatient - Day case transfer)

A daycase transfer-in occurs when an **inpatient** in a specialty is admitted as a **daycase** to:

- another specialty in the same hospital
- a different consultant in the same specialty and hospital for medical reasons.
- any specialty in another NHS hospital.

Note

Patients who transfer in as above are usually **embedded daycases** ie they transfer back to the same inpatient service at the end of the **daycase episode**. The transfers are recorded in the daycase record, but not in the inpatient record which remains unbroken [see Figure 2 on page 1.4-3]. However, when there is NO expectation of the patient

transferring back to the same inpatient service. the inpatient episode is closed and the **inpatient transfer-out** recorded [see Figures 3 and 4 on page 1.4-3].

2.11 Day case transfer out (Day case - Inpatient transfer)

A daycase transfer-out occurs when, at the end of a **daycase episode**, the patient is transferred to **inpatient** care in the same or another NHS hospital under the following circumstances:

- the patient is an **embedded daycase** (ie returns to resume an inpatient stay under the same consultant in the same inpatient specialty). The transfer-out is recorded in the **daycase** record, but not in the inpatient record which remains unbroken [see Figure 2 on page 1.4-3].
- the patient transfers to an inpatient service **EXCEPT** if the patient was originally admitted as a daycase and is retained overnight or longer under the care of the **SAME** consultant in the **SAME** specialty.

Note

Patients originally admitted as daycases and retained overnight or longer are **NOT** regarded as transferring out. Instead the entire episode becomes **one inpatient episode**. Prior to Coppish such patients, if admitted to a **Day bed unit**, generated 1 daycase *and* 1 inpatient record.

2.12 Discharge

A discharge marks the end of an **episode of care**.

Note

- (1) Types of discharge are **inpatient discharge, day case discharge, day patient discharge, outpatient discharge** and **PAM discharge**.

2.13 Day case discharge

A day case discharge marks the end of a **day case episode**. The **day case** leaves hospital for a location external to the NHS or is transferred to an NHS **inpatient** service, or dies. Hence day case discharges include day case **transfers out** and deaths.

[See diagrams on pages 1.4-2 and 1.4-3.]

3 ISDS1 Definitions Outpatient Episode: -

Outpatients and related terms

Outpatient

The term outpatient has in the past been used interchangeably to describe patients who attend specialty clinics and patients from outwith the hospital who attend PAM departments.

It was decided that a distinction should be made. Patients receiving specialty care should be known as outpatients whilst patients attending PAM departments should be known primarily as PAM patients and then subdivided into PAM outpatients, PAM direct access patients etc

This section does not cover PAM patients - for these definitions see Chapter 1, section 7.

The definition of outpatient has been amended to include any patient who attends a specialty clinic and any patient who is seen outwith a clinic by a consultant or senior member of his team at any location including the patient's home. See definitions for detail. Outpatients can be distinguished from ward attendances by the fact that ward attenders are usually seen by junior members of the team. The definition of outpatient now includes those patients visited in their own homes.

Certain types of service contacts in hospitals such as bedside consultations and ward attendances are defined in Chapter 1. These have been identified in surveys as particularly relevant for specialties such as mental illness and in children's wards. The collection of national statistics on ward attendances will commence from 1st April 1996 on the revised ISD(S) 1 return, and a COPPISH SMR Ward Attender Record Type is scheduled for introduction in April 1997. The collection of national statistics on other types of service contacts may be introduced in the future, but in any case the definitions should always be applied in local systems which currently record these data. Bedside consultations and ward attendances are defined *in addition* to outpatient attendances; ie they are all mutually exclusive

Accident & Emergency (A&E)

Note that in the new specialty and clinical facility coding lists there is both a specialty of A&E and the facilities A&E department and A&E ward.

The specialty of A&E is a specialty recognised by the Royal College of Surgeons. The A&E department is a clinical facility used by the specialty of A&E, other specialties (eg ophthalmology and orthopaedics) and other health professions.

List of Terms

Outpatient
 Outpatient referral
 Outpatient referral category
 Referral type
 New outpatient
 Follow-up (return) outpatient
 Outpatient episode

Outpatient discharge
 Outpatient department

Outpatient attendance
 Attendance type
 Attendance status
 Attendance follow-up
 Joint specialty indicator

Ward attender - medical
 Ward attender - nurse only
 Nurse only clinic attendance

4 Outpatient from 1-10-1992

An outpatient is a patient who attends a **consultant** or **other medical clinic** or has an arranged meeting with a consultant or a senior member of his team outwith a **clinic session**. Outpatients are categorised as **new outpatients** or **follow-up (return) outpatients**.

Note

- (1) A clinic may be held in a hospital **outpatient department**, a **ward**, a **health centre** or any other location.
- (2) Outpatient attendances outwith clinic sessions may occur at any location including the patients home. Those which take place outwith a clinic session on a ward are distinguishable from **ward attendances** by the fact that the meetings is with a consultant or a senior member of his team rather than with a junior doctor.
- (3) Patients attending clinics usually come from outwith the hospital but may be **inpatients**. If they are inpatients then usually the inpatient specialty is different from the specialty of the clinic.
- (4) **Bedside consultations** are not outpatient attendances

4.1 Outpatient referral from 1-10-1992

An outpatient referral occurs when a patient is referred, usually by a health professional, to specialist **outpatient services**. The patient's first appointment with the consultant is requested usually by means of a standard outpatient referral letter.

The main source of referral is the patient's General Medical Practitioner

Others include:

- an A&E doctor

- a General Dental Practitioner
- a community Dental Officer
- another consultant in a different specialty
- another consultant in the same specialty on medical grounds
- a consultant referring the patient to himself in a different specialty
- a consultant referring the patient to a joint specialty clinic, whether or not he takes part in the joint specialty clinic
- self referral

See **new outpatient, outpatient episode, referral**

4.2 Outpatient referral category

Outpatient referral category is the classification of an **outpatient referral** into urgent, soon and routine as perceived by the source of referral.

- | | | |
|---------|---|--|
| urgent | - | for clinical reasons, a patient requires an appointment at the earliest possible opportunity. |
| soon | - | for clinical reasons, a patient requires an earlier appointment than he/she would receive if given the next available routine appointment. |
| routine | - | a patient requires the next available routine appointment. |

4.3 Referral type

Referral type gives a brief description of the service requested for a patient who has been referred for care. See COPPISH SMR Data Manual for codes and values.

Note

When management is approved following a "consultation only" referral, this is seen as one referral and one episode.

4.4 New Outpatient from 1-10-1992

An **outpatient** is categorised as a new outpatient at his first meeting with a consultant following an **outpatient referral**. The meeting normally takes place at a **consultant clinic** but may take place outwith a **clinic session** at any location.

Outpatients whose first attendance at a consultant clinic follows an **inpatient episode** are excluded. They are defined as **follow-up (return) outpatients**. This situation may occur for patients who have been admitted as emergencies or who have been placed on a **waiting list** and then admitted without having been seen by the consultant on an outpatient basis.

Note

- (1) The care of an outpatient may be transferred from one consultant and/or specialty to another consultant and/or specialty. A formal letter indicates the transfer of responsibility. The outpatient is new after transfer if
 - (a) the referral is to another consultant in a different specialty or
or
 - (b) the referral is to another consultant in the same specialty on medical grounds
or
 - (c) a consultant is recognised in more than one specialty and refers the patient to himself in another specialty.
- (2) Change of location (including change of provider) on its own does *not* mean that the patient is new at the second location.
- (3) If a patient is referred more than once to a consultant (ie a **re-referral**), for the same ailment or for a new ailment, he/she becomes a **new outpatient** regardless of the length of time since the last episode.

4.5 Follow-up (return) Outpatient from 1-10-1992

An **outpatient** is categorised as a follow-up (return) outpatient at

- (1) his/her second and subsequent attendances following an **outpatient referral**.
- (2) his/her first and subsequent attendances following an **inpatient episode**

4.6 Outpatient episode from 1-10-1992

An outpatient episode is the care provided by a consultant within a specialty to an **outpatient** over a period of time. The episode comprises one or a series of meetings between the patient and the consultant or a member of his team. The outpatient episode is initiated by an **outpatient referral**, in which case the patient is a **new outpatient** at the first meeting, or by an **inpatient episode** in which case the patient is a **follow-up (return) outpatient** at the first meeting

Note

- (1) The meetings usually take place at clinics but may take place outwith clinic sessions at any location.
- (2) The emphasis of this definition is on "consultant within a specialty". Hence a change of consultant marks the start of a new episode. This usually involves a change of specialty but in some cases the patient is referred to another consultant in the same specialty on medical grounds. A change of specialty also marks the start of a new outpatient episode. This usually involves a change of consultant but in some cases a consultant may have more than one recognised specialty and may refer a patient to himself in another specialty.
- (3) The number of contacts per episode varies considerably and depends to a great extent on the specialty.

4.7 Outpatient discharge from 1-10-1992

An outpatient discharge marks the end of an outpatient episode.

Note

- (1) An outpatient discharge is usually formal, ie, the consultant takes the decision on medical grounds. However it may be less formal. For example in the absence of a planned review date the patient is discharged if he/she fails to attend for a specified period defined by local policy.
- (2) Outpatient discharges include
 - deaths
 - referrals to a consultant in another specialty
 - referrals to another consultant in the same specialty on medical grounds
 - referrals to the same consultant but in a different specialty
 - patients who have defaulted on a number of appointments

4.8 Outpatient department

An outpatient department is a hospital department which is primarily designed to enable consultants and members of their teams to see outpatients at consultant clinics.

It consists of one or more consulting rooms and associated support accommodation, eg nurses station, treatment rooms, waiting areas.

Note

- (1) Consultants and members of their teams may see outpatients in the outpatient department outwith formal clinic sessions.
- (2) Outpatient departments may also be used by PAMs and nurses to hold clinics.
- (3) It is usual for associated treatment and investigation departments, eg X-ray, ECG, Surgical appliance department, to be located near the outpatient department.

4.9 Outpatient attendance from 1-10-1992

An outpatient attendance is the occasion of a patient attending a consultant or other medical clinic or meeting with a consultant or senior member of his team outwith a clinic session. If the patient is a new outpatient then the attendance is a new outpatient attendance, otherwise it is a follow-up (return) outpatient attendance.

Note

- (1) Bedside consultations are *not* outpatient attendances.
- (2) Ward attendances are *not* outpatient attendances.

See Chapter 3, General rules for recording attendances.

4.10 Attendance type

This indicates whether the patient's attendance is a new outpatient attendance or a follow-up (return) outpatient attendance.

4.11 Attendance status 1-4-96

Attendance status indicates whether the patient attended for his/her appointment. See COPPISH SMR Data Manual for codes and values.

4.12 Attendance follow-up 1-4-96

Attendance follow-up is a brief record of a patient's planned care following, or as a result of, an outpatient attendance. See COPPISH SMR Data Manual for codes and values.

4.13 Joint specialty indicator

This indicates whether the outpatient attendance was in a joint specialty clinic setting.

Note

A COPPISH SMR00 is completed for EACH involved specialty in the joint specialty clinic.

4.14 **Ward attender - medical**

A ward attender (medical) is a patient from outwith the hospital or an **inpatient** from another specialty who attends a **ward** on an individual basis, by appointment or casually and is seen by a junior doctor with or without a nurse present.

Note

- (1) Ward attenders may be distinguished from **outpatients** by the fact that the ward attendances are outwith **clinic sessions** and the patients are usually seen by a junior doctor rather than by a consultant or a senior member of his team

4.15 **Ward attender - nurse only**

A ward attender (nurse only) is a patient from outwith the hospital or from another specialty, who attends a **ward** on an individual basis, either by appointment or casually, and is seen by a member of the nursing staff.

Note

A ward attendance (nurse only) is distinguished from a **nurse only clinic attendance** by the fact that the ward attendance is not part of a **clinic**.

4.16 **Nurse only clinic attendance**

A nurse only clinic attendance is the occasion of a patient attending a **nurse only clinic**.

Appendix F**Unavailability Table**

The Unavailability Table is separately annexed

Appendix G

Service Measurement Procedure

Service Delivery and Service Demand Measurement Procedure

- 1 Service Delivery in respect of any period in respect of each of the Services noted below is "a" in paragraphs 1.1 to 1.7 (inclusive) below and calculated in accordance with paragraph 2 below.

Service Demand in respect of any period in respect of each Service noted below is "b" in paragraphs 1.1 to 1.7 (inclusive) below and calculated in accordance with paragraph 2 below.

in respect of:

1.1 Catering Services:

a = number of Breakfasts, Lunches and Suppers supplied within the period.

b = the number of Breakfasts, Lunches and Suppers requested in the period.

1.2 Portering, Transport and Waste Services:

a = number of portering tasks, both scheduled and unscheduled, carried out within the period;

b = number of portering tasks, both scheduled and unscheduled, required to be made within the period;

1.3 Domestic Services:

a = total number of Relevant Cleaning Events undertaken within the period;

b = total number of Relevant Cleaning Events for which Summit is responsible, required to be made within the period.

1.4 Security Services:

a = number of control points attended within the period;

b = number of control points for which Summit is responsible, attended within the period;

1.5 Estates Maintenance Service:

a = number of requests for reactive maintenance responded to within the period;

b = number of requests for reactive maintenance made within the period.

1.6 Switchboard Services

a = number of calls answered through the switchboard within the period.

b = total number of calls through the switchboard within the period.

1.7 Linen Services :

a = number of items of Patient owned clothing processed within the period.

b = number of items of Patient owned clothing requested to be processed within the period.

2 For the purpose of calculating a and b for each of the Services referred to in paragraph 1 above, the following procedures will be followed:-

2.1 Catering Services

b will be calculated as follows:-

The total number of Breakfasts, Lunches and Suppers which are ordered by reference to the completed patient menu cards and other agreed systems for that period together with ad hoc requests.

a will be calculated as follows:-

The actual number of Breakfasts, Lunches and Suppers delivered within 50 minutes of the agreed time as determined by reference to the Porter Management System within the period.

2.2 Portering, Transport and Waste Services

b will be calculated as follows:-

The total number of porterage tasks which Summit is responsible for responding to for each category of planned, unplanned and emergency porterage requests made by the Trust within the period.

a is calculated as follows:-

The actual number of planned, unplanned and emergency porterage requests responded to by Summit within 60 minutes for planned/unplanned and 20 minutes for emergency by reference to the Porter Management System or the Ward Order Communication System for that period.

2.3 Domestic Service

b will be calculated as follows:-

A Relevant Cleaning Event means each area or item, which Summit is responsible to clean and where an area or item is to be cleaned more than once in the same day each time it is cleaned will count as a separate Relevant Cleaning Event . The total number of Relevant Cleaning Events is the aggregate of the number of scheduled Relevant Cleaning Events specified in the Cleaning Schedules and the number of requests for reactive cleaning made to the Help Desk in the period as captured within the Cleaning Inspection checklist and Cleaning Monthly Inspection Process Checklist.

a is calculated as follows:-

The actual number of Relevant Cleaning Events cleaned and in accordance with the frequency specified in the Cleaning Schedules in the period by reference to the Cleaning Inspection Checklists and the Cleaning Monthly Inspection Process Checklists.

2.4 Security Services

b will be calculated as follows:-

The total number of different control points which Summit is scheduled to attend by reference to the Morse Watchman System (or similar system substituted therefor by Summit).

a is calculated as follows:-

The actual number of control points attended within the period will be measured by reference to the Morse Watchman System (or similar system substituted therefor by Summit).

2.5 Estate Maintenance Services

b is calculated as follows:-

The total number of requests for reactive maintenance made to the Help Desk by the Trust within the period as captured within the Management Information System.

a is calculated as follows:-

The actual number of reactive requests in respect of which response and ensuing action occurs within a period 50% beyond the time agreed with the Trust in accordance with the Output Specification for Estates Maintenance Services which will be measured by reference to the Management Information System;

2.6 Switchboard Services

b is calculated as follows:-

The total number of calls which Summit will be responsible for answering by reference to the monthly Telephone Call Report.

a is calculated as follows:-

The actual number of calls answered within 10 rings by reference to the monthly Telephone Call Report.

Appendix H

Projected Demand Measurement Procedure

The Service Delivery and Service Demand Measurement Procedure will be applied to measure Service Demand varied in each case as follows:

- “b = the projected demand for the relevant Service on the assumption that all Affected Areas are Available calculated as far as applicable in accordance with paragraph 2 of the Service Delivery and Service Demand Measurement Procedure taking into account usual patient activity from time to time and all other relevant factors including historical comparisons and taking into account seasonal variations.

The Schedule - Part B

Penalty Points (Provision 15)

1 PMS Penalty Points

- 1.1 Subject to paragraph 1.3, in respect of each Service if the Service Score achieved by Summit in respect of that Service in any Monitoring Period is less than 95%, then Penalty Points shall be awarded being Service Penalty Points to the Approved Service Provider providing that Service and the same number of Master Penalty Points will be awarded to Summit to count towards both that Service and the aggregate number of Master Penalty Points by notice in writing from the Trust to Summit in the form of the Penalty Points Notice within 5 Business Days of agreement or determination of the Service Score for that Service for that Monitoring Period under Provision 2 as illustrated by the following table:-

SERVICE SCORE	PENALTY POINTS
100	0
99	0
98	0
97	0
96	0
95	0
94 - 94 . 99	1
93 - 93 . 99	2
92 - 92 . 99	3
91 - 91 . 99	4
90 - 90 . 99	5
89 - 89 . 99	6
88 - 88 . 99	7
87 - 87 . 99	8
86 - 86 . 99	9
85 - 85 . 99	10
84 - 84 . 99	12
83 - 83 . 99	14
82 - 82 . 99	16
81 - 81 . 99	18
80 - 80 . 99	20

But so that the number of Penalty Points will be calculated by reference to the actual Service Score and will not be limited to 20 in each Monitoring Period.

- 1.2 The Service Score for each Service for each Monitoring Period will be determined under the Performance Measurement System.
- 1.3 If in any Monitoring Period there is or has been a Period of No Substantive Service in respect of which Penalty Points have been awarded for that Monitoring Period in accordance with paragraph 2 below (a "Relevant No SS Period") then the number of Penalty Points to be awarded pursuant to paragraph 1.1 will be adjusted (or as applicable recalculated) in accordance with the formula:

$$APP = \frac{a}{b} \times PP$$

Where

APP = the adjusted (or recalculated) Penalty Points

a = the number of days in the Monitoring Period outwith the Relevant No SS Period

b = the number of days in the Monitoring Period

PP = the number of Penalty Points which would have been awarded in accordance with paragraph 1 above (but for this paragraph 1.3).

and any such adjustment or recalculation shall be made upon agreement or determination of the adjusted Service Penalty Points (and an equivalent adjustment shall be made to the accumulated total of Master Penalty Points) backdated to the end of the relevant Monitoring Period.

2 No Substantive Service Penalty Points

In respect of each Period of No Substantive Service for each Service, Penalty Points will be awarded, (being Service Penalty Points to the Approved Service Provider providing that Service and an equal number of Master Penalty Points to Summit) by notice in writing from the Trust to Summit in the form of the Penalty Points Notice within five Business Days of agreement or determination that there has been a Period of No Substantive Service as follows:-

- 2.1 in respect of each (if more than one) period of 15 consecutive days comprised within the Period of No Substantive Service 40 Penalty Points will be awarded; and
- 2.2 each 40 Penalty Points will be awarded by reference to the Monitoring Period in which the relevant 15 day period ended.

3 Unavailability

In respect of each Month Master Penalty Points will be awarded to Summit by notice in writing from the Trust to Summit in the form of the Penalty Points Notice within 5

Business Days of agreement or determination of the deductions under Paragraph 6 of Part A of the Schedule for that Month, such Penalty Points to be on the basis of five Master Penalty Points for each one percentage point or part thereof deduction in the Availability Element (if any) referable to that Month (and such calculation will be done separately by reference to each Month within the Availability Payment Period).

4 Permanent Repairs

On each occasion upon which the Trust becomes entitled to carry out a Permanent Repair in accordance with Provision 16.2.4(b) there will be awarded Master Penalty Points to Summit by notice in writing from the Trust in the form of the Penalty Points Notice on the basis of 20 Master Penalty Points for each Monitoring Period during which the defect or want of repair subsists but Penalty Points shall cease to accrue as aforesaid where the Trust has effected the Permanent Repair and recovered the cost thereof from Summit or the cost thereof is in the Estates Trust Account.

5 Equipment Agreement

On each occasion upon which either the Equipment Sub-Contract is terminated on default of the Approved Service Provider in accordance with Clause 24 of the Equipment Agreement or the Equipment Agreement itself is terminated by the Trust in accordance with Clause 25 of the Equipment Agreement, 150 Master Penalty Points will be awarded by notice in writing from the Trust in the form of the Penalty Points Notice provided that where the Equipment Sub-Contract is terminated as a result of or contemporaneously with the Equipment Agreement being terminated there will be no Master Penalty Points for termination of the Equipment Sub-Contract being terminated (but without prejudice to the award of Master Penalty Points in respect of Equipment Agreement).

6 Resetting of Service Penalty Points

6.1 If Default Market Testing of a Service is triggered in accordance with Provision 15 then no further Service Penalty Points (and corresponding Master Penalty Points) under the PMS will be awarded until the earlier of the date (1) occurring 20 weeks after the triggering of the Default Market Testing and (2) on which a new Approved Service Provider is appointed pursuant to the Default Market Testing; provided that nothing in this paragraph 6.1 will affect the award of Service Penalty Points (and corresponding Master Penalty Points) for No Substantive Service or Master Penalty Points for any other reason or the operation of the Deduction Provisions.

6.2 Where an Approved Service Provider ceases to provide a Service on market testing in accordance with Provision 12 and whether that is scheduled or Default Market Testing the Service Penalty Points incurred by that Approved Service Provider in respect of that Service will be deleted and any replacement Approved Service Provider will begin provision of the Service with a Penalty Point total of 0 (zero), but for the avoidance of doubt the number of Master Penalty Points will not be reset, but will remain unaltered.

7 Force Majeure and Suspension Events

No Penalty Points will be awarded in respect of any failure in the Services or the Equipment Services which is attributable to Force Majeure or Suspension Events subject to Summit complying with its obligation under Clause 26 and to the provisions of Clause 26.6.3 each of the Project Agreement.

8 Disputes

- 8.1 Summit may within (but not after) 10 Business Days of receipt of any Penalty Points Notice awarding Penalty Points under this Part B by notice to the Trust object to the award of any such Penalty Points. If the Trust and Summit do not reach agreement on any such matter within 5 Business Days after the date of receipt of such notice by the Trust, either party may refer the Dispute for resolution under the Dispute Resolution Procedure. Any Penalty Points the subject of the Dispute shall be held in abeyance and not counted for the purposes of these General Provisions or the Project Agreement until the Dispute has been resolved.
- 8.2 If Summit does not give a notice of objection within the period specified in paragraph 8.1 above Penalty Points will be automatically awarded to Summit at the end of such period in accordance with the notice from the Trust awarding Penalty Points.
- 8.3 If a determination is made under the Dispute Resolution Procedure that a circumstance justifying the award of Penalty Points has arisen, Penalty Points will automatically be awarded to Summit at the time of and in accordance with such determination (the award to take effect retrospectively as at the date of the notice from the Trust awarding Penalty Points in respect of the circumstance in question) and otherwise the original notice from the Trust awarding Penalty Points shall otherwise be of no further effect.

The Schedule - Part B**Appendix****Form of Penalty Points Notice**

[Note: Any Dispute arising from this Notice must be referred to Dispute Resolution Procedure within 10 Business Days]

To: *[Summit Healthcare (Law) Limited]*

FAO: []

[Date]

Dear Sir

**Law Hospital PFI
Penalty Points**

This Notice is issued pursuant to Part B of the Schedule to the General Provisions dated [] 1998 between law Hospital NHS Trust and Summit Healthcare (Law) Limited.

The Trust hereby gives notice of the following Penalty Points in the following circumstances: -

Monitoring Period/Month: [insert details]

Penalty Points: [insert number]

Event: [insert event giving rise to Penalty Points i.e. PMS Penalty Points, No Substantive Service Penalty Points, Unavailability, Permanent Repairs, Equipment Agreement]

Words and expressions used in this Notice shall have the same meaning ascribed to them in the General provisions unless the context otherwise requires.

Yours faithfully

TRUST CONTRACT OFFICER

The Schedule - Part C

Performance Measurement System

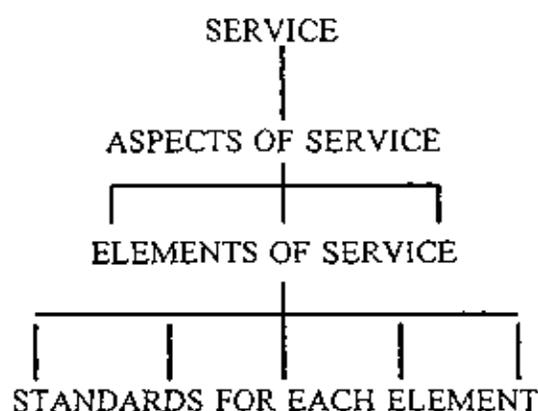
1 Performance Monitoring

- 1.1 In accordance with Provision 2 and the Services Monitoring Procedures, Summit will monitor that performance of each Service meets the standards ("the Standards") set out in Section 4 of that part of the Output Specification applicable to that Service by undertaking the monitoring tests and procedures applicable to that Service as set out in the relevant Part of the Services Monitoring Procedures.
- 1.2 The Trust will be entitled, but not bound, to audit the results of Summit's monitoring referred to at paragraph 1.1 above in accordance with Provision 2.5 and the audit procedures to be developed by the Trust in consultation with Summit and approved by Summit (such approval not to be unreasonably withheld or delayed) and so that such audit will include the entitlement of the Trust if it wishes jointly to monitor with Summit its monitoring tests and procedures.
- 1.3 Summit, in consultation with the Trust will use the results derived from the application of those tests and procedures to calculate the Service Score for each Service for each Monitoring Period by the application to those results of the procedure set out in this Part using the relevant weightings applicable to the Standards set out in the Output Specification.
- 1.4 The monitoring period ("the Monitoring Period") for each Service will be one Month (excluding in respect of any Service any Period or part of a Period of No Substantive Service occurring within that Month).

2 The Performance Measurement Model

- 2.1 The Performance Measurement Model works on four levels:
- The Service
 - Aspects of Service
 - Element(s) of Service for each Aspect
 - Standard(s) for each Element of Service

The structure of the Performance Measurement Model is shown below:



2.2 Scoring of Aspects of Service, Elements of Service and Standards

Each Aspect of Service has a number of Elements which are weighted in relation to each other as set out in the Output Specification. Each Element has a number of Standards that will be monitored for compliance in accordance with the procedures set out in the relevant Parts of the Services Monitoring Procedures. These Standards are also weighted relative to each other.

Summit in conjunction with the Trust (through its audit) in accordance with the Services Monitoring Procedures will monitor compliance with each of the Standards in accordance with the appropriate procedures set out in the Services Monitoring Procedures in order to determine a score for that Standard which is hereinafter referred to as the Recorded Score. If the Recorded Score meets or exceeds the score required for that Standard (as shown in brackets at the end of that Standard) ("the Requisite Score"), Summit will be awarded an Actual Mark of 100% for that Standard in that Monitoring Period. If Summit fails to meet the Requisite Score it will receive an Actual Mark equal to the Recorded Score.

For example in the Catering Service, one Aspect of Service is Patient Meal Service, and one of the Elements of this Service is Menu System. There are two Standards that can be measured. One is accuracy where the Requisite Score is 95%. If the Recorded Score is above, at, or below the Requisite Score the Actual Mark will be as follows:

		Requisite Score	Recorded Score	A c t u a l Mark
1.	Above Requisite Score	95%	96%	100%
2.	At Requisite Score	95%	95%	100%
3.	Below Requisite Score	95%	85.5%	85.5%

The weighted average of the Actual Marks for both the Standards for that Element can then be determined to achieve the Elemental Score (see the example for Catering).

The weighted average of all the Elemental Scores gives the Aspect of Service Operating Score.

The Service Score is the average of the Aspect of Service Operating Scores.

2.3 The Service Score

The Service Score as agreed or determined under Provision 2 will be used to judge the overall performance of the Service during that Monitoring Period and to determine any PMS Deductions in accordance with paragraph 7 of Part A of the Schedule to the General Provisions.

Appendix to Part C

An Example - Catering

An example of the application of the Performance Measurement Model for the Catering Service is given below. The step by step analysis at the end of this Part C of the Schedule shows the figures in detail.

For each of the Aspects of Service there are Elements of Service. Each Element has a relative weighting, out of a total of 40. In this case:

Aspect of Service	Elements of Service	Relative Weighting
Product Sourcing	Procurement	20
	Storage	<u>20</u>
		<u>40</u>
Patient Meal Service	On-Site distribution	13
	Menu system	12
	Food Quality	10
	Ad hoc requests	<u>5</u>
		<u>40</u>
Nutrition and dietetics	Composition	40
		<u>40</u>
Non-patient service	Restaurant	15
	Vending	14
	Functions	3
	Customer Care	<u>8</u>
		<u>40</u>
Hygiene, health & safety	Documentation	13
	Legislation	16
	Environmental health	<u>11</u>
		<u>40</u>

For each of the Elements of Service the Output Specification identifies Standards and Requisite Scores. For example, the Menu System aspect of the Patient Meal Service has two Standards that need to be monitored. Each of these Standards is weighted relative to 100. In this case:

Standards	Requisite Scores	Weight
1. Meal Order Timing	95%	50
2. Patient Meal Ordered Accuracy	95%	50

Summit will monitor performance of Standards against the Requisite Scores in accordance with the Services Monitoring Procedures and record the results, subject to audit by the Trust in accordance with Provision 2.5 and the Performance Measurement Model.

In the example provided, Recorded Scores have been entered for each Standard, and Actual Marks calculated. Summit fails to achieve the Requisite Score on four Standards all within the Non-Patient Service Aspect of Service. For this Aspect of Service Summit does not achieve an Operating Score of 100%. Its Operating Score is 94.70%.

For all other Aspects of Service, the Operating Score is 100%.

The Service Score is 98.94%.

6. Performance Measurement Model - Diagrammatic Representation

	Recorded Score	Weight	Element Score	Relative Weight	Operating Score	Service Score
<u>Product Sourcing</u>						
1. Procurement	100	100	100	20	100	
2. Storage	100	100	100	20		
<u>Patient Meal Service</u>						
1. On Site Dist. (a)	100	50	100	13	100	
(b)	100	50				
2. Menu System (a)	100	50	100	12		
(b)	100	50				
3. Food Quality	100	100	100	10		
4. Ad-hoc requests	100	100	100	5		
<u>Nutrition and Dietetics</u>						
1. Composition (a)	100	30	100	40	100	
(b)	100	30				
(c)	100	40				
						98.94
<u>Non Patient Services</u>						
1. Staff Restaurant	93	100	93	15	94.7	
2. Vending	100	100	100	14		
3. Functions (a)	91	50	91	3		
(b)	91	50	90	8		
4. Customer Care(a)	90	50				
(b)	90	50				
<u>Health & Safety</u>						
1. Documentation	100	100	100	13	100	
2. Legislation	100	100	100	16		
3. Environmental Health	100	100	100	11		

The Schedule - Part D

Change Provisions

Section 1 Application and Definitions

1 Application

Wherever a reference is made to the application of the Change Provisions or the Payment Adjustment Provisions in these General Provisions or in any other DBFO Contract, the provisions of Section 2 of this Part D shall apply.

2 Definitions

2.1 In this Schedule, unless otherwise specified or the context requires otherwise:

- | | |
|--|---|
| "Additional Capital" | means in respect of any Eligible Change such sum as is required by Summit to meet expenditure of a capital rather than a revenue nature (including any Capital Expenditure) but excluding any funding costs in respect of that Eligible Change; |
| "Additional Capital Service" | has the meaning given to it in Paragraph 7.2 of Section 2 of this Part D; |
| "Additional Works Change" | means a change to carry out works on the Site involving a change to the design, physical structure or layout of the Hospital or a change to the repair or reinstatement of the Hospital pursuant to Clause 26.6.2 of the Project Agreement which does not (when aggregated with any other Additional Works Changes) result in a reduction in the size of the net internal clinical area (expressed in square metres) of the Hospital from the Original Area by more than 20% without the written consent of Summit and the Lead Financier, which consent will not be unreasonably withheld or delayed) which the Trust requests Summit to carry out or procure in accordance with Part E of this Schedule after the Contractual Practical Completion Date provided that, unless otherwise agreed, such change directly relates to the provision of a district general hospital on the Site; |
| "Additional Works Change Procedure" | means the procedure set out in Part E of this Schedule. |

- "Affected Contract Year"** means a Contract Year in respect of which there is a Change in Costs and/or Change in Revenues as a consequence of an Eligible Change (and so that for the purpose of this definition and the definitions of Change in Costs and Change in Revenues "Contract Year" shall mean in the case of the first Contract Year the period commencing on the Execution Date and ending on the 31 March first occurring thereafter and in the case of every succeeding year the period commencing on 1st April and ending on 31 March in the next following year or, if earlier, on the last day of the Term);
- "Bond Service Amount"** has the meaning given to it in paragraph 11.1.2 of Part A of the Schedule to these General Provisions;
- "Capital Expenditure"** means any expenditure in implement of any individual Legislative Change relating to:-
- (a) the Site (including appropriate treatment or removal of Contamination), or to an asset or assets forming part of the fabric or structure of the Buildings or Group 1 Equipment which is capable of being used for more than one year and which involves expenditure of more than £5,000 in aggregate in implement of that individual Legislative Change;
 - (b) the Transferred Equipment; or
 - (c) any Equipment other than the Transferred Equipment which shall have been installed at the Site when the applicable Legislative Change first has legal effect;
- "Capital Legislative Change"** means a Legislative Change which creates an obligation on Summit or its Approved Service Providers or Permitted Sub-contractors or the Contractor to incur Capital Expenditure;
- "Change"** means Eligible Changes, a Summit Change or a Legislative Change (which is not a Qualifying Legislative Change);
- "Change in Costs"** means, in respect of any Eligible Change any net increase or decrease in the actual or anticipated costs (whether of a one off or recurring nature)

calculated where applicable in accordance with the provisions of paragraph 9.4 of Section 2 of this Part D including as separate elements Capital Expenditure, Additional Capital Service, Life Cycle Costs Variation, Service Cost Variation, Equipment Cost Variation) in each case incurred or to be incurred by Summit or the Contractor or Approved Service Providers or Permitted Sub-Contractors in respect of a Contract Year as a direct or indirect consequence of such Eligible Change;

"Competitive Rate"

means the rate of interest which is obtained by Summit in relation to Additional Capital having complied with Summit's obligations under Paragraph 7.1 of Section 2;

"Change in Revenues"

means, in respect of any Eligible Change the subject of a notice under paragraph 1 of Section 2 of this Part D, any net increase or decrease in the actual or anticipated revenues (whether of a one-off or recurring nature) calculated (where applicable) in accordance with paragraph 9.4 of Section 2 (including the Unitary Payment, any other payments from the Trust and any revenues from other commercial operations) in each case received or anticipated to be received by Summit in respect of a Contract Year as a direct or indirect consequence of such Eligible Change but for the avoidance of doubt, excluding, for this purpose, any such net increase or decrease caused by the application of Section 2 of this Part D (the Payment Adjustment Provisions) to such Eligible Change;

"Default Deletion Change"

means withdrawal of a Service or Deleted Services from Summit in accordance with Provision 15.

"Discriminatory Legislative Change"

means a Legislative Change which:

- (a) applies principally to hospitals, the procurement of which is funded by private finance or discriminates against such hospitals in relation to hospitals the procurement of which is funded using public finance;
- (b) applies principally to the Hospital or discriminates against the Hospital in relation to other hospitals;

- (c) applies principally to or discriminates against companies entering into an Externally Funded Development Agreement (as such phrase is defined in the National Health Service (Private Finance) Act 1997 or successor agreements developed under successor legislation;
- (d) applies principally to Summit or discriminates against Summit in relation to other companies; or
- (e) has the effect that Summit cannot elect to waive exemption from VAT in relation to any supply made to the Trust under Schedule 10 paragraph 2 of the Value Added Tax Act 1994 as a consequence of the Trust no longer being in occupation of the land for eligible purposes;

"Eligible Change"

means any one or more of the following:

- (a) an Additional Works Change ;
- (b) a Market Testing Change;
- (c) a Default Deletion Change;
- (d) a Partial Handback Change;
- (e) a Qualifying Legislative Change;
- (f) a Trust Services Change;
- (g) a Trust Works Change;
- (h) an Equipment Change; or
- (i) any circumstance where, pursuant to the DBFO Contracts the parties have agreed that a change will be reflected through the Change Provisions and that on the basis that any Change in Costs or Change in Revenues will be reflected pursuant to the provisions of Section 2 of this Part D;

"Equipment Change"

means:-

- (a) the notification by the Trust, pursuant to Clause 23.1 of the Equipment Agreement, that Summit is no longer required or obliged to provide PACS ("PACS Default");
- (b) the notification by the Trust, pursuant to Clause 14.6 (a) of the Equipment Agreement, that Summit is no longer required or obliged to provide a specified item or items of Equipment on a Planned Replacement Date on the basis that the Trust no longer has a clinical need for that item or those items of Equipment ("Surplus Removal");
- (c) the notification by the Trust, pursuant to Clause 14.6 (b) of the Equipment Agreement, that Summit is no longer required or obliged to provide a specified item or items of Equipment ("Trust Removal");
- (d) the application of Clause 24.2(e) of the Equipment Agreement such that the Payment Adjustment Provisions apply as from the third anniversary of the New Equipment Sub-Contract ("Substitute Provider");
- (e) the institution by the Trust of a change to the Equipment Specifications or the Investment Plan by reason of an early replacement of an item of Equipment pursuant to, respectively, Clauses 3.3.4 and 14.3 of the Equipment Agreement or there being excess usage pursuant to Clause 16.2(b) of the Equipment Agreement or the application of any Eligible Change which otherwise affects the Equipment Services ("Specification Variation").

"Equipment Cost Variation"

means in respect of any Eligible Change the net increase or decrease as a consequence of such Change in the actual or anticipated cost to Summit of the Equipment Services (excluding the

- Management Portion but including so far as appropriate, any cost of a capital as well as a revenue nature) in any Affected Year as calculated in a manner consistent with Section 2 of this Part D and the remaining provisions of Part D;
- "Financial Model"** means the Original Financial Model as the same may be amended from time to time in accordance with this Part D;
- "Legislative Change"** means any enactment, amendment, revocation or change in interpretation of or in respect of any Applicable Law first having legal effect after Financial Close including, but not limited to the enactment of the Scotland Bill 1998 and in the case of any laws, legislation, subordinate legislation or orders of the Scottish Parliament after the enactment of the Scotland Bill 1998, any decision or ruling to the effect that any of the same or any provision thereof is outside the legislative competence of the Scottish Parliament and in the case of Taxes (including Value Added Tax) a change by the Inland Revenue or Customs and Excise in their application or interpretation of any Applicable Law applying thereto;
- "Life Cycle Costs"** means all costs (including, without limitation, all costs of acquisition, design, installation and commissioning) of and associated with the replacement and renewal (but for the avoidance of doubt not the initial provision as part of the Works or when implementing the Eligible Change) of assets having a planned life cycle notwithstanding when such costs are incurred or whether such costs are incurred in whole or any one or more parts, or more frequently than planned;
- "Life Cycle Cost Variation"** means in respect of any Eligible Change the increase or decrease as a consequence of such Change in Costs incurred or anticipated by Summit in respect of Life Cycle Costs;
- "Market Testing Change"** means:
- (a) in relation to the Specified Services (as defined in Provision 12.1 of the General Provisions) the entering into of a new Sub-contract with an Approved Service Provider pursuant to a market testing

exercise under Provision 12 (but excluding for the avoidance of doubt Default Market Testing); or

- (b) the agreement between the parties to re-appoint the existing Approved Service Provider in accordance with Provisions 12.2;

"Management Portion"

means, in relation to any Service, the Management Portion identified in Appendices B and C of Part A of the Schedule to these General Provisions referable thereto forming part of the Capacity Element or the Usage Element which, in the case of the Services, shall be Indexed in the same manner in which the Indexed Services Total and the Usage Element is Indexed and, in the case of the Equipment Services Indexed in the same manner in which the Indexed Equipment Amount is Indexed (each as identified in Part A);

"NHS Specific Legislative Change"

means any Legislative Change which applies principally to:

- (a) the National Health Service or any equivalent or successor bodies; and/or
- (b) NHS Trusts or equivalent or successor bodies; and/or
- (c) the Trust;

or which affects the design, construction, financing or operation of the Hospital or hospitals generally but which principally affects the health sector;

"Original Area"

35,408 square metres of net internal clinical area of the Hospital;

"Output Specification"

means the Output Specification including reference where appropriate to any part of the Output Specification referable to one or more individual Service;

"Partial Handback Change"

means any handback by the Trust to Summit of part of the Hospital in accordance with Clause 19.2 of the Project Agreement and Section 7;

"Proposed Trust Change"

means a Trust Change which is proposed by the

Trust giving notice in accordance with Paragraph 1 of Section 3 or Paragraph 1 of Section 4 of Part D and the date of such notice will be the date of proposal;

"Qualifying Capital Legislative Change"

means:

- (a) any Capital Legislative Change which comes into effect on or after the Threshold Date or pertains to the Transferred Equipment; or
- (b) in respect of a Capital Legislative Change which comes into effect prior to the Threshold Date if and to the extent that Summit has incurred in aggregate Changes in Cost (including Capital Expenditure) exceeding £2,000,000 as a direct consequence of one or more Capital Legislative Changes;

"Qualifying Legislative Change"

means:

- (a) Discriminatory Legislative Change; or
- (b) Qualifying Capital Legislative Change; or
- (c) NHS Specific Legislative Change; or
- (d) New Guidance which is the subject of a notice by the Trust requiring Summit to comply with the same in terms of Provision 14.1 of these General Provisions ; or
- (e) a change in Statutory Requirements to the extent provided in Clause 7.14 of the Equipment Agreement;

"Revision Date"

has the meaning given in paragraph 6.4 of Section 2 of this Part D;

"Service Cost Variation"

means in respect of any Eligible Change the increase or decrease as a consequence of such Change in the cost to Summit of the Services (excluding Life Cycle Costs and the Management Portion);

"Summit Change"

means any change proposed by Summit and

- accepted by the Trust in accordance with Section 8 of this Part D;
- "Threshold Date"** means the date occurring 5 years after Financial Close;
- "Trust Change"** means an Additional Works Change, Equipment Change, Trust Services Change or Trust Works Change;
- "Trust Confirmation Date"** has the meaning given to it in paragraph 7.3 of Section 2 of this Part D;
- "Trust Services Change"** means, in relation to any Service, a change in the Output Specification applicable to that Service without, in the case of the Estates Maintenance Service, substantially affecting the nature or extent of such Service, a change in Normal Working Hours if it triggers an Eligible Change (in accordance with the definition of Normal Working Hours) or the deletion of a Service (other than the Estates Maintenance Service) in each case which is requested by the Trust by notice given to Summit in accordance with paragraph 1 of Section 4 of this Part D provided that such change relates to or is ancillary to the Service in question;
- "Trust Works Change Certificate"** means a certificate to be given under the Trust Works Change Procedure or the Additional Works Change Procedure instructing a Trust Works Change or an Additional Works Change; and
- "Trust Works Change"** means a change to the Works prior to the Contractual Practical Completion Date requested by the Trust in accordance with Section 3 of this Part D provided that such change directly relates to the provision of a district general hospital on the Site and does not result in a reduction in the size of the net internal clinical area (expressed in square metres) of the Hospital from the Original Area without the consent of Summit and the Lead Financier, which consent will not be unreasonably withheld or delayed.

- 2.2 Capitalised terms used in this Part D which are defined in Section 1 of Part A of this Schedule shall have the same meaning in this Part D as they have in Section 1 of Part A of this Schedule.

3 Eligible Changes and Payment Adjustments

- 3.1 The parties acknowledge the long term nature of the arrangements comprised within the DBFO Contracts and that appropriate adjustments may only be made to the Unitary Payment pursuant to the terms of these General Provisions.
- 3.2 Arrangements for the making of such adjustments are set out in this Part D and in Part E of this Schedule.

4 Time for Completion of an Eligible Change

The period for completion or implementation of any works required by an Eligible Change will be where applicable as agreed or determined in accordance with the implementation of the procedures in this Part D, in case of a Legislative Change having effect prior to the Contractual Practical Completion Date the time for completion will be prior to the Mandatory Date as the same may be extended pursuant to Clause 4.3.4 of the Development Agreement and in any other case such reasonable period as may be agreed or determined under the Dispute Resolution Procedure.

The Schedule - Part D

Section 2

Payment and/or Mandatory Date Adjustment Provisions

1 Notification of Eligible Change

Where a party believes that an Eligible Change or a Proposed Trust Change will give rise to a Change in Costs and/or a Change in Revenues and/or an Extension Period it shall give a notice to the other party in accordance with paragraph 2 below (and the Party who gives the notice shall be the "Proponent" and the recipient of the notice shall be the "Other Party"). The Parties shall be obliged to comply with the procedure set out in this Section 2 notwithstanding and subject to resolution of any dispute as to whether a Change is an Eligible Change and notwithstanding any notice of refusal or objection to the implementation of an Eligible Change or Proposed Trust Change issued pursuant to the provisions of the other Sections of this Part D. In relation to a proposed Trust Works Change Summit shall be obliged to issue such a notice within 14 Business Days of receipt of the proposed Trust Works Change notice issued pursuant to paragraph 1.2 of Section 3 of this Part D.

2 Detail of Notice

Any notice given under paragraph 1 above shall:

- 2.1 identify the relevant Eligible Change or Proposed Trust Change;
- 2.2
 - (a) if given by Summit set out the Proponent's estimate of the Change in Costs and/or Change in Revenues in respect of each Affected Contract Year which has resulted or will result from the relevant Eligible Change or Proposed Trust Change (having regard to the obligation to mitigate set out in paragraph 9.1 below) and providing the information set out in 9.2 below and an estimate of how long the Eligible Change or Proposed Trust Change will take to implement and the extent of any Extension Period which is likely to arise therefrom;
 - (b) if given by the Trust, oblige Summit to provide the information in sub-paragraph (a) of this paragraph 2.2 which Summit will provide as soon as reasonably practicable and no later, except to the extent that is manifestly impracticable, than 14 Business Days thereafter; and
- 2.3 be accompanied by such evidence as is necessary to support the estimates given under paragraph 2.2 above.

3 Determination of Adjustments

3.1 Upon receipt of the information provided or requested under paragraph 2 above the Trust may within 10 Business Days of receipt of such notice require that Summit provide such additional evidence as to any Change in Costs and/or Change in Revenues and/or Extension Period as the Trust may reasonably require, including without limitation by:

3.1.1 preparing a preliminary design of any changes to the Works or the Hospital which may be required by the Eligible Change or Proposed Trust Change; and/or

3.1.2 preparing more detailed costings and estimates of the matters referred to in paragraph 2.2. above by reference to Summit's obligation to mitigate under paragraph 9.1 below and in the case of a Trust Works Change or Qualifying Legislative Change occurring prior to the Contractual Practical Completion Date the basis of calculation of the Change in Costs and/ or Change in Revenues shall be by reference to paragraph 9.4; and/or

3.1.3 further information and evidence, in the case of a Trust Works Change or a Legislative Change prior to the Contractual Practical Completion Date to support any proposed Extension Period which Summit considers should be awarded by reference to that Proposed Trust Change or Eligible Change;

and Summit shall submit such additional information, documentation and evidence to the Trust as soon as reasonably practicable in order to permit each party to evaluate the consequential effects on the Project.

3.2 The Proponent and the Other Party shall use their reasonable endeavours to agree in respect of the Eligible Change or the Proposed Trust Change the matters referred to in paragraphs 2 and 3 above together with the Change in Costs and/or Change in Revenues in each case in respect of each Affected Contract Year which has resulted or will result from such Eligible Change or Proposed Trust Change (having regard to the obligation to mitigate set out in paragraph 9.1 below).

3.3 Any agreement in writing reached between the Proponent and the Other Party as to the matters referred to in paragraphs 2 and 3 above shall be binding on Summit and the Trust.

3.4 If the Proponent and the Other Party do not reach agreement on any of the matters referred to in paragraph 2 and 3 within a period of 14 Business Days after receipt of the notice under paragraph 1 or (if additional evidence has been required under paragraph 3.1) after the date on which all such evidence has been provided, then either may refer the Dispute to the Dispute Resolution Procedure.

4. [NOT USED]

5. [NOT USED]

6 Determination of Revised Payments

- 6.1 As soon as reasonably practicable and not later, except to the extent that it is manifestly impracticable, than 10 Business Days after the agreement or determination of the matters referred to in Paragraphs 2 and 3 above the Proponent shall determine and notify to the other Party the alteration to the Unitary Payment in accordance with the following procedures and requirements:
- 6.1.1 If Summit is to provide Additional Capital in accordance with Paragraph 7 then the Availability Element will be increased by the Additional Capital Service in each Affected Contract Year and so that for the avoidance of doubt such sum will not be Indexed;
- 6.1.2 the Service Amount will be adjusted by each Service Cost Variation and Equipment Cost Variation such that 100% of any Estates Maintenance Element and any Equipment Cost Variation will be recoverable through the Capacity Element and in respect of the remaining Service Cost Variations, 80% of the fixed costs thereof will be recoverable through the Capacity Element and the remaining 20% of the fixed costs and all the costs which vary directly with volumes of service delivery will be recoverable through the Usage Element in each Affected Contract Year;
- 6.1.3 the amount (and not percentage in relation to underlying costs) of the Management Portion in relation to each of the Capacity Element and the Usage Element for each Service will remain unaltered;
- 6.1.4 at a Market Testing Date the Trust's then anticipated activity levels will be substituted for Summit's then current activity assumptions in the Financial Model;
- 6.1.5 the Availability Element will be adjusted by the Life Cycle Cost Variation (if any) in each Affected Contract Year on the basis of recovering projected increased life-cycle maintenance, replacement and refurbishment costs as and when such costs are projected to be incurred (but assuming the build-up by Summit of prudent reserves for such projected costs during the remainder of the Term) and for the avoidance of doubt all such amounts shall be Indexed as from the date of agreement or determination of the alteration of the Unitary Payment as described in this paragraph 6;
- 6.1.6 any Change in Costs and/or Change in Revenues not accounted for in the remainder of this paragraph 6 shall be recoverable through the Availability Element;
- 6.1.7 any alteration in the Unitary Payment in respect of a Default Deletion Change shall be calculated in accordance with Provision 15.12.
- 6.2 If the Parties do not reach agreement upon the payment alterations referred to in Clause 6.1 within 10 Business Days after receipt of notice by the Other Party, then either Party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.

- 6.3 Save as provided in paragraph 6.5 Summit shall not be required to implement any Eligible Change until the alteration of the Unitary Payment has been agreed or determined pursuant to this paragraph 6.
- 6.4 Once the alterations to the Unitary Payment have been agreed or determined pursuant to paragraph 6.2 the Unitary Payment shall be adjusted with effect from the first day of the Month immediately following such agreement or determination ("**the Revision Date**").
- 6.5 If the alterations to the Unitary Payment have not been agreed or determined pursuant to paragraph 6.2 at the time which Summit reasonably considers that it needs to commence implementation of a Qualifying Legislative Change in order to comply therewith, then the Trust shall pay any Changes in Costs reasonably and properly incurred by Summit or the Contractor or Approved Service Providers or Permitted Sub-Contractors against invoices in respect thereof pending such agreement or determination and the adjustment to the Unitary Payment once determined in accordance with this Section 2 will give credit to the Trust for all costs so paid.

7 **Lump Sum Payment**

- 7.1 In the case of an Eligible Change (other than a Market Testing Change or an Equipment Change but without prejudice to Section 9 of this Part D) which requires Summit to incur Additional Capital of an amount in excess of the amount which it would have incurred had the Eligible Change not occurred, Summit shall, if requested to do so by the Trust (provided that the Trust will be entitled to make such a request to obtain the relevant information as to the effect on the Availability Element and subsequently to withdraw such request subject to the Trust compensating Summit for the reasonable costs and expenses incurred by it in providing such information), use all reasonable endeavours to procure its own finance to meet the Additional Capital required at a financing cost which is the most competitive rate then available to Summit on reasonable terms in the market provided that (a) the Trust acknowledges that the provision of such finance will be subject to the consent of the Financiers in terms of the Finance Facility Agreements, and (b) Summit will not be required to provide the Additional Capital unless the Trust has complied with paragraphs 11.1 and 11.2 and Summit and its professional advisers are satisfied in accordance with paragraph 11.3 Summit shall provide the Trust, on request, all such information and documentation as the Trust reasonably requires to enable the Trust to be satisfied that it has complied with the foregoing provisions.
- 7.2 If Summit is to provide the Additional Capital in respect of the Eligible Change in accordance with paragraph 7.1 then there shall be calculated the Additional Capital Service and for this purpose "**Additional Capital Service**" means the amount by which the Availability Element requires to be increased in each Affected Contract Year to repay the aggregate of the Additional Capital, the **Holding Costs** and the **Funding Costs** in respect of the Eligible Change over the remainder of the Term and for this purpose:

- 7.2.1 The date upon which the Eligible Change is due to be completed by Summit as agreed with the Trust in accordance with this Part D and Part E is the "**Contractual Change Completion Date**";
- 7.2.2 the "**Holding Costs**" will be such amount of interest as will be accrued on the basis that it will be calculated at the Competitive Rate on the Additional Capital from the respective dates upon which the Additional Capital is to be expended by Summit (in accordance with a cashflow schedule to be agreed with the Trust prior to the Revision Date) until the Contractual Change Completion Date;
- 7.2.3 the "**Funding Costs**" means such amount of interest as will be accrued on the aggregate of the Additional Capital and the Holding Costs on the basis that it is calculated at the Competitive Rate from the Contractual Change Completion Date until the expiry of the Term; and
- 7.2.4 the Additional Capital Service shall be calculated on the basis that payments by the Trust in respect thereof commence on the first day of the Month following the Month in which the Contractual Change Completion Date falls.
- 7.3 If Summit is not itself to fund the Additional Capital and the Trust gives to Summit, on or prior to 10 Business Days after it is agreed or determined that Summit is not obliged to fund the Eligible Change in terms of paragraph 7.1, a notice confirming that Summit should proceed with the Eligible Change (the date of such notice being "**the Trust Confirmation Date**") then the Trust shall pay Summit an amount equal to the Additional Capital in instalments in accordance with Paragraph 7.4, and if the Trust does not so notify Summit, it will pay Summit its reasonable costs and expenses incurred by it pursuant to paragraph 7.1;
- 7.4 If the Trust becomes obliged to make a payment of an amount equal to the Additional Capital to Summit, Summit shall, not later than the fifteenth day of each month, provide the Trust with a statement certifying the amount of the costs incurred by and to be incurred by Summit in connection with the Eligible Change during the preceding Month, the Trust shall pay to Summit an amount equal to the above certified costs at least 2 Business Days prior to the date upon which Summit is due to make payment to the relevant sub-contractor ("**the Due Date**") or if earlier within 3 Business Days of receiving the above statement (but so that in no circumstances shall the amount to be paid by the Trust in respect of capital expenditure associated with any such Eligible Change exceed the relevant Additional Capital).
- 7.5 If the Trust makes payment in accordance with paragraph 7.4 above then there will be no alteration in the Unitary Payment pursuant to paragraph 6 in respect of that Eligible Change to the extent of the Additional Capital or any Additional Capital Service.
- 7.6 For the avoidance of doubt, save as expressly provided to the contrary in these paragraphs 6 and 7, Summit shall make its own arrangements for financing the costs of implementing any Eligible Change.

8 Updating the Financial Model

- 8.1 Subject to paragraph 7 above, within 10 Business Days after the agreement or determination of the revised payments in accordance with paragraph 6 and 7.2 above Summit shall procure that the Financial Model is updated in accordance with paragraph 6.1. The Financial Model as so revised shall, with effect from the Revision Date, be the Financial Model for all purposes of these General Provisions, subject to further revision in accordance with this paragraph 8.
- 8.2 Summit shall ensure that a copy of the revised version of the Financial Model in a complete and accurate form (both in paper and computer form) is as soon as reasonably practical lodged with the Trust.
- 8.3 The reference date for indexing amounts in the Financial Model shall remain as 1 April 1996.

9 Mitigation and Cost Assumptions

- 9.1 Without prejudice to paragraph 9.4.5 below, Summit shall take all reasonable steps available to it and use all reasonable endeavours to mitigate the effects of any Proposed Trust Changes or Eligible Change so as to minimise any increase or maximise any reduction in costs (as the case may be) resulting from such Proposed Trust Changes or Eligible Change but without, in so doing, being obliged to prejudice its ability to perform its obligations under the DBFO Contracts including this Part D of the Schedule.
- 9.2 At the same time as it gives any notice to the Trust under paragraph 1 above, Summit shall without expending an unreasonable amount of time and/or effort give notice to the Trust:
- 9.2.1 setting out a range of options showing the various steps which could in the reasonable opinion of Summit be taken in order to mitigate the financial effect of the relevant Proposed Trust Changes or Eligible Change, together with the costs associated with each such option and where appropriate any savings; and
- 9.2.2 identifying which of those options it proposes to adopt in order to mitigate the financial effect of the relevant Proposed Trust Changes or Eligible Change (any such options always being consistent with and in compliance with Summit's obligations to the Trust under the DBFO Contracts).
- 9.3 [NOT USED]
- 9.4 Without prejudice to paragraph 9.2 and any express provisions in the DBFO Contracts regarding the calculation of Change in Costs and/or Change in Revenues, Summit will take the following steps to calculate each Change in Costs and/or Change in Revenues:
- 9.4.1 in relation to any Proposed Trust Changes or Eligible Change, the Change in Revenues shall be calculated to take account of all relevant consequences of the Proposed Trust Change or Eligible Change including the anticipated effects of that Proposed Trust

Changes or Eligible Change on the elements of the Unitary Payment and any other payments from the Trust to Summit and on Summit's revenue receipts from third parties;

- 9.4.2 in relation to any Proposed Trust Changes or Eligible Change, the Change in Costs shall be calculated to take account of all relevant consequences of the Proposed Trust Change or Eligible Change including the costing of any alterations to the overall risk profile of the Project to Summit including any additional risks to be borne by Summit or its contractors in carrying out their respective obligations under the DBFO Contracts or the relevant sub-contracts;
- 9.4.3 in relation to any Proposed Trust Changes or Eligible Change affecting the Works prior to the Contractual Practical Completion Date, the Change in Costs shall be calculated in accordance with the following principles: -
- 9.4.3.1 increases in costs (other than funding costs) of carrying out the Works shall be the proper and reasonable costs thereof (to be assessed in comparison to then prevailing market rates) estimated to be incurred by the Contractor including professional fees, as a result of implementing the Change (but excluding any element of profit or Contractor's head office overheads) to the amount of which there shall be added 7.5% of such amount in respect of overheads and profit; and
- 9.4.3.2 decreases in the costs (other than funding costs) of carrying out the Works shall be the proper and reasonable decrease actually achieved by the Contractor as a result of implementing the Change plus 7.5% of such amount in respect of overheads and profit included in the original contract sum.
- 9.4.4 in relation to any Eligible Change affecting the Services, the Change in Costs is to be based (having regard to reasonable comparable costs in the open market) on the incremental cost of the Eligible Change (including, for these purposes a reasonable profit margin for the existing Approved Service Provider taking into account the requirements of the Eligible Change) rather than assuming that the subject matter of the Eligible Change is separately sub-contracted by Summit to a new Approved Service Provider);
- 9.4.5 in relation to any Eligible Change affecting the Equipment Services, the Change in Costs will be calculated as follows: -
- (a) for a PACS Default, the Change in Costs will constitute a reduction by the amount of the Modality Payment for PACS;
- (b) for a Surplus Removal, the Change in Costs will constitute a reduction by the amount of the Modality Payment (in the case of the removal of a whole Modality) or the proportionate payment referable to the item or items of Equipment in the Modality identified in the Investment Plan (in the case of the removal of part only of a Modality) and an increase by the amount of

any costs reasonably, properly and necessarily incurred by Summit or its Approved Service Provider as a consequence of the Surplus Removal;

- (c) for a Trust Removal, the Change in Costs will constitute the amount necessary, taking into account an obligation of Summit and its Approved Service Provider to use reasonable endeavours to mitigate loss, to ensure that neither Summit nor its Approved Service Provider is either financially advantaged or disadvantaged as a consequence of the Trust Removal such that, for the avoidance of doubt, neither Summit nor its Approved Service Provider suffers any loss of profit on that account;
- (d) for a Substitute Provider, the Change in Costs is the difference between the Indexed Equipment Amount (less Management Portion) and the amount which Summit is required to pay under the New Equipment Sub-Contract assuming no Equipment PMS Deductions; and
- (e) for a Specification Variation, the Change in Costs will constitute an increase by the amount (if any) of the incremental change in costs (including, for these purposes, a reasonable profit margin for the existing Approved Service Provider taking into account the requirements of the Specification Variation) to the Approved Service Provider as a consequence of the Specification Variation (including, for these purposes, any variation in the Investment Plan and/or the effect upon the residual value of any item of Equipment being replaced) such increase in costs and profit margin to be reasonable taking into account the equivalent open market cost thereof assuming an equivalent risk profile and method of funding and the provision of an equivalent equipment management service PROVIDED THAT in calculating such increase in costs the Trust shall be entitled to take into account the extent to which (if any) Summit's Approved Service Provider has at such time a capital provision in the Investment Plan for the item of Equipment (if applicable) which is being replaced in excess of the open market capital cost of the replacement item of Equipment.

9.4.6 in relation to an Additional Works Change, the works required by the Eligible Change will be competitively tendered in accordance with procedure to be approved by the Trust (such approval not to be unreasonably withheld or delayed) and to comply to the extent that these are applicable for such a procurement exercise by Summit with any procurement regulations or provisions binding on the Trust and in accordance with the Additional Works Change Procedure and so that the technical input referred to in paragraph 3.5 of the Output Specification relative to the Estates Maintenance Services will be provided free of charge and hence excluded from any Change in Costs;

9.4.7 in relation to an Additional Works Change to change the repair or reinstatement of the Hospital pursuant to Clause 26.6.2 of the Project Agreement, the Change in Costs will include any effect of such change on the recovery of insurance proceeds and any increase in the duration of the relevant works not covered by the relevant business interruption insurance; and

- 9.4.8 in relation to a Trust Service Change to delete a Service, the Change in Costs will include the costs of compliance with Provision 21.
- 9.4.9 in case of an Eligible Change which is implemented prior to the Contractual Practical Completion Date, the Change in Costs and/or Change in Revenues will take into account payments to be made by the Trust under paragraph 11 of Part A of the Schedule to these General Provisions to the extent these are attributable to the Change in Costs and/or Change in Revenues associated with that Eligible Change.
- 9.5 If there is a Dispute between the parties in respect of paragraph 9.3 or 9.4 above the Dispute shall be dealt with in accordance with paragraph 5.4 above and Summit shall take such steps as are agreed or determined to be appropriate to mitigate the effect of the relevant Eligible Change.

10 Breach by Summit

Notwithstanding any provision of this Part D Summit shall not be entitled to include a sum in a Change in Costs or Change in Revenues under the Payment Adjustment Provisions in relation to an Eligible Change to the extent that such sum would not be in a Change in Cost or Change in Revenues but for a breach by Summit of any obligation under the DBFO Contracts. Either Party shall be entitled to refer any Dispute which arises under this paragraph 10 to the Dispute Resolution Procedure.

11 Funding

- 11.1 At the same time as notifying Summit of the Proposed Trust Change the Trust shall provide Summit (to the extent that the Trust is required to obtain the same in accordance with the procedures of the National Health Service) and unless otherwise agreed between the parties:
- 11.1.1 written approval to the Proposed Trust Change (and the financial consequences thereof for the Trust) by each of Her Majesty's Treasury and by the Secretary of State giving satisfactory comfort to Summit regarding affordability and Trust vires; and
- 11.1.2 letters from the principal purchasers of the Trust or their equivalent confirming their approval of the Proposed Trust Change, save where the Change in Costs is less than £100,000 Indexed from Financial Close.
- 11.2 Once, in accordance with the Part D, the terms of the Proposed Trust Change are agreed and/or determined the documentation referred to in paragraph 11.1 will be updated to reflect such agreed and/or determined Trust Change and reissued to Summit.
- 11.3 Summit will not be obliged to commence any additional works or services resulting from an Eligible Change (including for the avoidance of doubt pursuant to paragraph 7) until such time as Summit and its professional advisers are satisfied (acting reasonably) that the Trust has the financial standing and resources to fund such Eligible Changes (which financial standing shall take into account any evidence

provided by the Secretary of State or by the Trust pursuant to paragraphs 11.1 and 11.2 above).

The Schedule - Part D

Section 3

Trust Works Change

1. **Initiation of a Trust Works Change**
 - 1.1 Trust Works Changes will be instructed and implemented in accordance with this Section 3 and the remaining provisions of this Part D and the Trust shall not be entitled to carry out or procure the carrying out of a change to the Works other than by means of a Trust Works Change under this Section 3.
 - 1.2 The Trust may by notice in writing advise Summit that it proposes to instruct a Trust Works Change and will include with such notice a description of the proposed works. If the Trust believes that the proposed Trust Works Change may involve a Change in Costs and/or Revenues and/or give rise to an Extension Period the Trust shall at the same time as issuing a notice under this paragraph 1.2 issue a notice under paragraph 1 of Section 2.
2. **Notice of Refusal**
 - 2.1 As soon as reasonably practicable and not later (except to the extent that it is manifestly impracticable) than 20 Business Days after the giving of notice to Summit requesting a Trust Works Change Summit may refuse to implement a Trust Works Change on any of the grounds set out in paragraph 2 by service of notice to that effect on the Trust.
 - 2.2 Summit shall have an absolute right to refuse to implement a proposed Trust Works Change where, in its reasonable opinion, such a Change would:
 - 2.2.1 be in breach of Applicable Laws; or
 - 2.2.2 after completion of any works to implement the same, be a threat to the health and/or safety of persons for whom either Summit or the Trust is responsible in the terms of the DBFO Contract; or
 - 2.2.3 have a material adverse effect on Summit and/or its Contractor's ability to comply with their respective obligations under the Project Documents save where such a Change can be evaluated and the associated risks costed in accordance with paragraph 9.4.2 of Section 2.
 - 2.3 If Summit gives notice pursuant to paragraph 2.1 then:
 - 2.3.1 if the Trust agrees with the notice in paragraph 2.1 the proposed Trust Works Change will be deemed to be withdrawn and paragraph 5 will apply; or

2.3.2 if the Trust objects to Summit's notice the Dispute will be determined by the Dispute Resolution Procedure and if the Trust's objection is upheld then the Proposed Works Change will be implemented subject to the provisions of this Part D.

3. **Implementation of Proposed Trust Works Change**

3.1 If Summit does not give a notice under paragraph 2.1 (and within the period specified therein) or it is agreed or determined pursuant to paragraph 2.3 that Summit does not have valid grounds for objecting to the Trust Works Change then the Trust Works Change shall be implemented on the basis of:

3.1.1 the specification of the works to be comprised in the Trust Works Change as agreed or determined by the parties pursuant to the Dispute Resolution Procedure;

3.1.2 the consequential amendments to the DBFO Contracts as agreed or determined by the parties pursuant to the Dispute Resolution Procedure; and

3.1.3 (where a notice has been issued under paragraph 1 of Section 2 of this Part D) the agreed or determined in accordance with Section 2 of this Part D:

(a) Extension Periods; and/or

(b) Change in Costs and/or Change in Revenues .

3.2 Upon the matters referred to in paragraph 3.1 being agreed or determined the Trust may within 10 Business Days thereafter instruct the Trust Work Change and if it does so the Trust and Summit will each sign a Trust Works Change Certificate which will set out the matters referred to in 3.1 as agreed or determined and which will be definitive as to such matters for the purposes of both Section 2 and Section 3 of this Part D.

3.3 Summit will implement each Trust Works Change in accordance with this Part D and the Trust Works Change Certificate.

4. **No Liability**

Except as otherwise provided under the DBFO Contracts the Trust shall have no liability to make any payment in connection with or arising from a Trust Works Change other than as agreed or determined under Section 2 of this Part D or in accordance with paragraph 5 below.

5. **Withdrawal of Request**

The Trust may withdraw the notice requesting Trust Works Change at any time prior to the issue of a Trust Works Change Certificate countersigned by the Trust. In the case of a withdrawal of the notice requesting a Trust Works Change or a deemed withdrawal, Summit shall be entitled to be paid the reasonable costs and expenses incurred by it or its sub-contractors in satisfying Summit's obligations under this Part D of the Schedule in respect of the proposed Trust Works Change.

6. Consequential Amendments

The DBFO Contracts will be amended consequentially so far as necessary to give full effect to any Trust Works Change agreed or determined in accordance with this Section 3 of this Part D including any appropriate changes to the Unavailability Table set out in Appendix F to Part A of these General Provisions. If the parties are unable to reach agreement within 28 days after the issue of the countersigned Trust Works Change Certificate, then either may refer the matter for resolution under the Dispute Resolution Procedure.

The Schedule - Part D

Section 4

Trust Services Change

1 Notification

- 1.1 The Trust may, at any time before, on or after the Services Commencement Date, give notice to Summit requesting a Trust Services Change.
- 1.2 Any notice given in accordance with paragraph 1.1 above shall be accompanied by a copy of the revised Output Specification for the Service which is the subject of the Trust Services Change which the Trust considers will require to be adopted in consequence of the Trust Services Change.

2 Notice of Refusal

- 2.1 As soon as reasonably practicable and not later, (except to the extent that it is manifestly impracticable) than 20 Business Days after the giving of notice to Summit requesting a Trust Services Change, Summit may refuse to implement a Trust Services Change on any of the grounds set out in paragraph 2.2 by service of a notice to that effect on the Trust.
- 2.2 Summit shall have an absolute right to refuse to implement a proposed Trust Services Change where such a Change would:
 - 2.2.1 be in breach of Applicable Law; or
 - 2.2.2 after completion of any works requisite to implement the same, be a threat to the health and/or safety of persons for whom either Summit or the Trust is responsible in terms of the DBFO Contract; or
 - 2.2.3 have a material adverse effect on Summit and/or its Approved Service Provider's ability to comply with their respective obligations under the DBFO Contracts save where such a Change can be evaluated and the associated risks costed in accordance with paragraph 9.4.2 of Section 2.

3 No Refusal

If Summit does not give a notice under (and within the period specified in) paragraph 2.1 or if it is agreed or determined pursuant to paragraph 4 below that Summit does not have valid grounds for refusal then the Trust Services Change shall be implemented subject to the Trust giving a Confirmation Notice and to the provisions of Section 2 (Payment Adjustment Provisions) from the Revision Date.

4 Refusal to Change

- 4.1 If Summit refuses to implement the Trust Services Change in accordance with paragraph 2 above then in its notice Summit shall clarify the grounds for such refusal. Summit shall, at the request of the Trust and at no cost to the Trust except as provided in paragraph 6 below and Section 2 of this Part D, provide such assessments, calculations or information as the Trust may reasonably require.
- 4.2 If the Trust does not accept a ground specified in a notice given by Summit under paragraph 2.2 above and no agreement is reached with Summit as to the implementation of the Trust Services Change within 20 Business Days after the giving of the notice, then either Summit or the Trust may refer the matter to the Dispute Resolution Procedure.
- 4.3 If Summit's objection under paragraph 2.1 above is upheld under the Dispute Resolution Procedure, then the request for the Trust Services Change shall be deemed to be withdrawn.
- 4.4 If Summit's refusal in accordance with paragraph 2.1 above is not upheld under the Dispute Resolution Procedure, then subject to the Trust giving a Confirmation Notice Summit shall cause the Trust Services Change to be implemented subject to the provisions of Section 2 of this Part D (Payment Adjustment Provisions) from the Revision Date.

5 No Liability

Except as otherwise provided under the DBFO Contracts, the Trust shall have no liability to make any payment in connection with or arising from a Trust Services Change other than as agreed or determined under Section 2 of this Part D or in accordance with paragraph 6 below.

6 Withdrawal of Request

The Trust may withdraw the request for a Trust Services Change at any time prior to giving to Summit a Confirmation Notice. In the case of a withdrawal or a deemed withdrawal under paragraph 4.3 above Summit shall, where applicable, be entitled to be paid the reasonable costs and expenses incurred by it in satisfying its obligations under this Part D of the Schedule in relation to the proposed Trust Services Change.

7 Consequential Amendments

The DBFO Contracts shall be amended consequentially so far as necessary to give full effect to any Trust Services Change agreed or determined in accordance with this Section 4 of this Part D including appropriate changes to the Performance Measurement System. If the parties are unable to reach agreement within 28 days after the giving of notice to Summit pursuant to paragraph 2.1 or, if Summit gives notice pursuant to paragraph 2.1, the date it is agreed or determined that Summit does not have valid grounds for refusal in accordance with paragraph 3 then either party may refer the matter for resolution under the Dispute Resolution Procedure.

The Schedule - Part D

Section 5

Additional Works Change

1. **The Additional Works Change Procedure**

Additional Works Changes will be instructed and implemented in accordance with the Additional Works Change Procedure.

2. **Payment Adjustment Provisions**

If either party gives notice under Paragraph 1 of Section 2 of this Part D then the Payment Adjustment Provisions shall apply.

3. **No Liability**

Except as otherwise provided under the DBFO Contracts the Trust shall have no liability to make any payment in connection with or arising from an Additional Works Change other than as agreed or determined under Section 2 of this Part D or in accordance with paragraph 4 below.

4. **Withdrawal of Request**

The Trust may withdraw the request for Additional Works Change at any time prior to the issue of a Trust Works Change Certificate countersigned by the Trust. In the case of a withdrawal or a deemed withdrawal under the Additional Works Change Procedure, Summit shall, where applicable, be entitled to be paid the reasonable costs and expenses incurred by it in satisfying Summit's obligations under this Part D of the Schedule in respect of the proposed Additional Works Change.

5. **Notice of Refusal**

5.1 As soon as reasonably practicable and not later (except to the extent that it is manifestly impracticable) than 20 Business Days after the giving of notice to Summit requesting an Additional Works Change pursuant to the Additional Works Change Procedure, Summit may refuse to implement an Additional Works Change on any of the grounds set out in paragraph 6.2 by service of notice to that effect on the Trust.

5.2 Summit shall have an absolute right to refuse to implement a proposed Additional Works Change where such a Change would:-

5.2.1 be in breach of Applicable Laws; or

- 5.2.2 after completion of any works to implement the same, be a threat to the health and/or safety of persons for whom either Summit or the Trust is responsible in the terms of the DBFO Contract; or
- 5.2.3 have a material adverse effect on Summit and/or its Contractor's ability to comply with their respective obligations under the DBFO Contracts save where such a Change can be evaluated and the associated risks costed in accordance with paragraph 9.4.2 of Section 2.

6. **Consequential Amendments**

The DBFO Contracts will be amended consequentially so far as necessary to give full effect to any Additional Trust Works Change agreed or determined in accordance with this Section 5 of this Part D including appropriate changes to the Unavailability Table set out in Appendix F to Part A of these General Provisions. If the parties are unable to reach agreement within 28 days after the issue of the countersigned Trust Works Change Certificate, then either may refer the matter for resolution under the Dispute Resolution Procedure.

The Schedule - Part D

Section 6

Legislative Change

1 Notification

Without prejudice to the right of the Trust to give notice under paragraph 1 of Section 2 of this Part D, if Summit believes that a Legislative Change has occurred it must give a notice to that effect to the Trust and such notice will set out in reasonable detail:

- 1.1 a description of the relevant Legislative Change;
- 1.2 the date by which the relevant Legislative Change must be implemented;
- 1.3 the effect (if any) of the relevant Legislative Change on the Output Specification;
- 1.4 any works (and the manner of implementing the same) which will require to be designed and carried out by Summit to the Hospital to comply with the Legislative Change;
- 1.5 if the relevant Legislative Change is, in Summit's opinion, a Qualifying Legislative Change, its estimate of the Change in Costs and/or Change in Revenues arising from the Qualifying Legislative Change broken down into Additional Capital, Services Variation, Equipment Services Variation and Life Cycle Cost Variation; and
- 1.6 whether it considers that the Legislative Change will give rise to an Extension Period. For the avoidance of doubt any such Extension Period will be agreed or determined in accordance with the Development Agreement.

2 Notice of Objection

Within 10 Business Days after the giving of notice of a Legislative Change to the Trust the Trust may give notice to Summit that it disputes that a Legislative Change has occurred or any matter specified or referred to the notice given by Summit under Paragraph 1 in Section 2 of this Part D.

3 No Objection

If the Trust does not give a notice under (and within the period specified in) paragraph 2 above or if it is agreed or determined pursuant to paragraph 4 below that the Trust has no ground for objection, Summit shall cause the Legislative Change to be implemented in accordance with the notice given by Summit under paragraph 1 and so as to comply in all respects with the Legislative Change and unless the Legislative Change is also a Qualifying Legislative Change, at no cost to the Trust. Where the Legislative Change is a Qualifying Legislative Change (but

not otherwise), the payment adjustment provisions in Section 2 of this Part D shall apply to determine the Change in Costs and/or the Change in Revenues.

4. Objection to Change

4.1 If the Trust disputes the Legislative Change or categorisation of the Legislative Change as a Qualifying Legislative Change or any other matter in the notice given by Summit in accordance with paragraph 2 above, then in its notice the Trust shall specify the grounds for such dispute.

4.2 If no agreement is reached between the Trust and Summit within a period of 20 Business Days after the giving of such notice, then either Summit or the Trust may refer the matter to the Dispute Resolution Procedure.

4.3 If the Trust's objection is upheld under the Dispute Resolution Procedure, then the request for the Legislative Change shall be deemed to be withdrawn or alternatively implemented as determined by the Dispute Resolution Procedure.

5 No Liability etc.

Except as expressly provided under the DBFO Contracts, the Trust shall have no liability to make any payment in connection with or arising from a Legislative Change other than as agreed or determined under Section 2 of this Part D subject to paragraph 6.5 of Section 2.

6 Consequential Amendments

Summit and the Trust shall use all reasonable endeavours to agree any amendments to the DBFO Contracts necessary as a consequence of any Legislative Change. If they are unable to reach agreement within 20 Business Days after the Legislative Change takes effect, then either may refer the matter for resolution under the Dispute Resolution Procedure.

The Schedule - Part D

Section 7

Partial Handback Change

1 Notification

The Trust may at any stage after the fifth anniversary of the Operational Date give notice to Summit and the Lead Financier requesting a Partial Handback Change and such notice will specify:

- (a) by reference to a plan the area of the Hospital which is the subject of the Partial Handback Change ("the Relevant Area"); and
- (b) the date upon which the Partial Handback Change is to become effective being no shorter than 24 months thereafter.

2 Notice of Refusal

Within 20 Business Days after the giving of notice to Summit and the Lead Financier requesting a Partial Handback Change Summit or the Lead Financier may refuse to implement the Partial Handback Change by notice to the Trust but it shall only be entitled to refuse to implement on the grounds that:

- (a) the Relevant Area is physically configured such that (after allowing for reasonable works of alteration pursuant to an Additional Works Change, as for example removing partitioning or non-structural walls) the Relevant Area (together with such common right of use as the Trust is prepared to grant) is not capable of being or suitable to be separately let whether as a whole or in parts; or
- (b) that the Relevant Area when taken together with all Relevant Areas which have previously been the subject of an implemented Partial Handback Change is greater than 20% of the Original Area in which case the approval of Summit and the Lead Financier will be required and approval will not be unreasonably withheld or delayed.

3 No Refusal

If Summit or the Lead Financier does not give notice under (and within the period specified in) paragraph 2 or if it is agreed or determined pursuant to paragraph 4 that Summit or the Lead Financier has no grounds for refusal then the Partial Handback Change will subject to the Trust giving a Confirmation Notice be implemented in accordance with Clause 19.2 of the Project Agreement.

4 Refusal to Change

- 4.1 If Summit refuses to implement the Partial Handback Change in accordance with paragraph 2 above, then in its notice Summit shall specify the grounds for such refusal. Summit shall, at the request of the Trust and at no cost to the Trust except as provided in paragraph 5 below, provide such further assessments or information as the Trust may reasonably require to determine whether Summit may object on these grounds.
- 4.2 If the Trust does not accept a ground specified in a notice given by Summit under paragraph 2 above and no agreement is reached with Summit as to the implementation of the Partial Handback Change within a period of 20 Business Days after the giving of such notice, then either Summit or the Trust may refer the matter to the Dispute Resolution Procedure.
- 4.3 If Summit's refusal is upheld under the Dispute Resolution Procedure, then the request for the Partial Handback Change shall be deemed to be withdrawn.

5 Withdrawal of Request

The Trust may withdraw the request for a Partial Handback Change at any time prior to giving Summit a Confirmation Notice. In the case of a withdrawal or a deemed withdrawal under paragraph 4.3 above, Summit shall, where applicable, be entitled to be paid the reasonable costs and expenses incurred by it in satisfying its obligations under this Part D of the Schedule in relation to the proposed Partial Handback Change;

6 Payment Adjustment Provisions

- 6.1 If the Partial Handback Change is implemented by the Trust giving a Confirmation Notice, then the Payment Adjustment Provisions in Section 2 of this Part D will apply and in each Affected Year (being from the date of implementation of the Partial Handback Change until the expiry of the Term) there will be a reduction in the Capacity Element (other than the Estates Maintenance Services Element and the Equipment Services Element) of the Unitary Payment by an amount equal to $x\%$ where:

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

and

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

b = the area (expressed in square metres of Net Internal Area) of the clinical areas of the Hospital measured on the same basis

as the Original Area at the date of the Partial Handback Change;

and;

"Net Internal Area" has the meaning given to it in the RICS Code

and that irrespective of actual Change in Costs or Change in Revenues

- 6.2 The Availability Element will not be affected by a Partial Handback Change (subject to deductions in normal course under Part A of the Schedule to the General Provisions) provided that no deductions will be made in respect of the Relevant Area after a Partial Handback Change has been implemented.

The Schedule - Part D

Section 8

Summit Change

1 Notification

- 1.1 Summit may at any time give notice to the Trust requesting a change which the Trust would otherwise be entitled to request of Summit pursuant to this Part D of the General Provisions and explaining the reasons for so requesting (a "Summit Change") and if Summit believes that an Equipment Change has occurred it will give notice to that effect to the Trust.
- 1.2 The Trust may on receiving such notice require Summit to provide such further assessments or information as the Trust may reasonably required properly to assess the impact of the Summit Change.

2 Decision

No Summit Change may be implemented without the prior consent of the Trust such consent not to be unreasonably withheld or delayed in relation to Summit Changes which are proposed to deal with matters pertaining to health and safety or a request by Summit for the Trust to provide alternative Trust Related Materials in accordance with and subject to Summit's payment obligations under paragraph 1.5 of Part 1 of the Schedule to the Services Agreement. The Trust may otherwise withhold its consent at its discretion or grant it subject to such reasonable conditions as it sees fit.

3 Approval

If the Trust approves a Summit Change pursuant to paragraph 2 above, Summit shall cause the Summit Change to be implemented at no cost to the Trust in accordance with such reasonable conditions as the Trust may have imposed.

The Schedule - Part D

Section 9

Equipment Change

1 Notification

- 1.1 The Trust may, in accordance with the provisions of the Equipment Agreement (but not otherwise) at any time before, on or after the Services Commencement Date, give notice to Summit requesting an Equipment Change and if Summit believes that an Equipment Change has occurred it will give notice to that effect to the Trust.
- 1.2 Any notice given in accordance with paragraph 1.1 above shall be accompanied by a description of the relevant Equipment Change.

2 Notice of Refusal

- 2.1 As soon as reasonably practicable and not later, (except to the extent that it is manifestly impracticable) than 20 Business Days after the giving of notice to Summit requesting an Equipment Change, Summit may refuse to implement an Equipment Change on any of the grounds set out in paragraph 2.2 by service of a notice to that effect on the Trust.
- 2.2 Summit shall have an absolute right to refuse to implement an Equipment Change where such a Change would:
- 2.2.1 be in breach of Applicable Law; or
- 2.2.2 after completion of any works requisite to implement the same, be a threat to the health and/or safety of persons for whom either Summit or the Trust is responsible in terms of the DBFO Contract; or
- 2.2.3 have a material adverse effect on Summit and/or its Approved Service Provider's ability to comply with their respective obligations under or receive the benefit of its rights under the DBFO Contracts save where such a Change can be evaluated and the associated risks costed in accordance with paragraph 9.4.2 of Section 2.

3 No Refusal

If Summit does not give a notice under (and within the period specified in) paragraph 2.1 or if it is agreed or determined pursuant to paragraph 4 below that Summit does not have valid grounds for refusal then the Equipment Change shall be implemented subject to the Trust giving a Confirmation Notice and the provisions of Section 2 (Payment Adjustment Provisions) from the Revision Date.

4 Refusal to Change

- 4.1 If Summit refuses to implement the Equipment Change in accordance with paragraph 2 above then in its notice Summit shall clarify the grounds for such refusal. Summit shall, at the request of the Trust and at no cost to the Trust except as provided in paragraph 6 below and Section 2 of this Part D, provide such assessments, calculations or information as the Trust may reasonably require.
- 4.2 If the Trust does not accept a ground specified in a notice given by Summit under paragraph 2.2 above and no agreement is reached with Summit as to the implementation of the Equipment Change within 20 Business Days after the giving of the notice, then either Summit or the Trust may refer the matter to the Dispute Resolution Procedure.
- 4.3 If Summit's objection under paragraph 2.1 above is upheld under the Dispute Resolution Procedure, then the request for the Equipment Change shall be deemed to be withdrawn.
- 4.4 If Summit's refusal in accordance with paragraph 2.1 above is not upheld under the Dispute Resolution Procedure, then Summit shall cause the Equipment Change to be implemented subject to the Trust giving a Confirmation Notice and the provisions of Section 2 of this Part D (Payment Adjustment Provisions) from the Revision Date.

5 No Liability

Except as otherwise provided under the DBFO Contracts, the Trust shall have no liability to make any payment in connection with or arising from an Equipment Change other than as agreed or determined under Section 2 of this Part D or in accordance with paragraph 6 below.

6 Withdrawal of Request

The Trust may withdraw the request for an Equipment Change at any time prior to giving to Summit a Confirmation Notice. In the case of a withdrawal or a deemed withdrawal under paragraph 4.3 above Summit shall, where applicable, be entitled to be paid the reasonable costs and expenses (including management costs) incurred by it in satisfying its obligations under this Part D of the Schedule in relation to the proposed Equipment Change.

7 Consequential Amendments

The DBFO Contracts shall be amended consequentially so far as necessary to give full effect to any Equipment Change agreed or determined in accordance with this Section 9 of this Part D including appropriate changes to the Equipment PMS and/or the Investment Plan and/or the Equipment Specifications and/or PMR Procedures, Summit's obligations under Clause 6 (if the Change is instructed prior to Services Commencement Date) and the Specified Levels Usage. If the parties are unable to reach agreement within 28 days after the giving of notice to Summit

pursuant to paragraph 2.1 or, if Summit gives notice pursuant to paragraph 2.1, the date it is agreed or determined that Summit does not have valid grounds for refusal in accordance with paragraph 3 then either party may refer the matter for resolution under the Dispute Resolution Procedure

The Schedule - Part D

Section 10

Market Testing Change

1 Notification

Either party may, at any time after (i) the parties reach agreement under Provision 12.2.1 as to arrangements to continue the provisions of the Specified Services by Summit and its Approved Service Provider (2) the completion of a market testing exercise (but not for the avoidance of doubt Default Market Testing) in accordance with Provision 12 give notice to the other party that a Market Testing Change has occurred.

2 Payment Adjustments

The Market Testing Change shall be implemented subject to the provisions of Provision 12 and Section 2 (Payment Adjustment Provisions) from the Market Testing Date.

3 No Liability

Except as otherwise provided under the DBFO Contracts, the Trust shall have no liability to make any payment in connection with or arising from a Market Testing Change other than as agreed or determined under Section 2 of this Part D.

4 Consequential Amendments

The DBFO Contracts shall be amended consequentially so far as necessary to give full effect to any Market Testing Change. If the parties are unable to reach agreement within 28 days after the giving of notice pursuant to paragraph 1 then either party may refer the matter for resolution under the Dispute Resolution Procedure.

The Schedule - Part E

Additional Works Change Procedure

1 Additional Works Notice

1.1 Where the Trust requires Additional Works to be carried out it may notify Summit of its intention to require the Additional Works by means of a notice ("**Additional Works Notice**"). The Additional Works Notice shall not require that Additional Works be commenced prior to the Contractual Practical Completion Date.

1.2 The Additional Works Notice shall:

1.2.1 include a description and/or specification of the required Additional Works (which description and/or specification shall be sufficient to enable Summit to assess the nature and extent thereof and enable Summit to comply with its obligations under Paragraph 3);

1.2.2 specify the time by which the Additional Works are to be completed (which time limit must be reasonable, having regard to the nature of the Additional Works) and the level of liquidate and ascertained damages proposed by the Trust in the event of late completion; and

1.2.3 specify the time by which any comments Summit has on the contents of the Additional Works Notice must be received (which time limit must be reasonable).

2 Summit's Comments

Any comments made by Summit in accordance with paragraph 1.2.3 above shall be given due consideration by the Trust.

3 Procurement

3.1 Without prejudice to the right of Summit to give a Notice of Refusal in accordance with paragraph 5 of Section 5 of Part D if appropriate, Summit shall, within any time limit specified in the Additional Works Notice, perform such of the functions specified below in relation to the Additional Works as are described in the Additional Works Notice;

3.1.1 the preparation of all designs, documents and materials as may be necessary or required by the Trust for the purposes of the Trust inviting and obtaining tenders for the carrying out of the Additional Works (or any part thereof) in accordance with its procedures and obtaining the Trust's approval to all such designs, documents and materials;

- 3.1.2 the solicitation on behalf of the Trust of tenders on a competitive basis and in compliance with Applicable Laws for the carrying out of the Additional Works (or any part thereof);
 - 3.1.3 the provision of aid and advice to the Trust in the consideration of any tenders obtained and in the selection of a tender or tenders for acceptance;
 - 3.1.4 the negotiation of the terms of a contract or contracts to be entered into by Summit and to be in terms previously approved in writing by the Trust prior to the giving of a Trust Works Certificate for the carrying out of the Additional Works (or any part thereof) and which contract will include the appointments of all necessary professional advisers ("Additional Works Contract") with each tenderer or other contractor selected by the Trust and Summit jointly and having regard to their respective interests ("Additional Works Contractor"), the terms of any such contract to be subject to the approval of the Trust;
 - 3.1.5 the provision to any Additional Works Contractor of the documentation which it requires to enable it to proceed with the Additional Works (or any part thereof) in accordance with the terms of the Additional Works Contract;
 - 3.1.6 the provision to the Trust of such copies as it may require of all documents relating to any Additional Works Contract; and
 - 3.1.7 upon completion of any Additional Works (or any part thereof) the preparation and delivery to the Trust of:
 - 3.1.7.1 where appropriate "as built" drawings in a form acceptable to the Trust; and
 - 3.1.7.2 any other information which the Trust may require in connection with the Additional Works (or any part thereof).
 - 3.2 For the avoidance of doubt, Summit and its Associated Companies shall not be disqualified from consideration in respect of any tender or contract referred to in paragraph 3.1 merely by virtue of the existence of the contractual relationship reflected in the DBFO Contracts, subject to compliance with all Applicable Laws and subject to the existence of such arrangements as the Trust reasonably determines to be necessary to avoid any conflict of interest by Summit or any such Associated Company.
- 4 **Implementation of Additional Works**
- 4.1 If the Trust is satisfied as to the terms of the Additional Works Contract and the identity of the Additional Works Contractor and the Change in Costs has been agreed or determined it may give a Trust Works Change Certificate to confirm the instruction of the Additional Works.
 - 4.2 Subject to the giving of a Trust Works Change Certificate, Summit will carry out or procure the carrying out of the Additional Works in accordance with all Applicable Laws, Good Industry Practice and to the standards and within the

timescales specified in the Additional Works Contract and the provisions of this Part E.

- 4.3 Without prejudice to paragraph 4.2, Summit will pay to the Trust liquidate and ascertained damages at the rate set out in the Additional Works Contract if the Additional Works are not completed by the contractual date in the Additional Works Contract and will deliver to the Trust any collateral warranties to be provided pursuant to the Additional Works Contract in accordance with the timescales therein contained.

The Schedule - Part F**Codes of Practice for Employees
(Provision 19.3)**

- 1 Health and Safety Policy
- 2 Equal Opportunities Policy
- 3 Training & Development Policy
- 4 Discipline & Grievance Policy
- 5 Job Share Policy
- 6 Recruitment & Selection Policy
- 7 Early Retirement Redundancy Policy
- 8 Media/Public Relations Policy
- 9 Arrangements for Consultation and Negotiation Policy
- 10 Attendance Management Policy
- 11 Occupational Health Policy
- 12 Policy on the Management of Violence and Aggression
- 13 Policy and Procedures on Hepatitis B, HIV and Aids and Healthcare Workers
- 14 Fire Safety Strategy
- 15 Mental Health at Work Strategy
- 16 Management of Change Policy

The Schedule - Part G

Procedure for Reinstatement Works (Clause 26.6.1 of the Project Agreement)

In relation to the carrying out of Works of repair or reinstatement to which this Part G applies ("Part G Works"), Summit shall:

- 1 consult the Trust at all appropriate times and keep it informed of all matters connected with the Part G Works (or any part thereof) at such times and in such manner as the Trust (acting reasonably) may direct; and
- 2 provide the Trust with all information, documents, plans or reports in connection with the Part G Works (or any part thereof) as it shall from time to time require.
- 3 Permit the Trust to monitor and inspect the Part G Works in a manner consistent with the Monitoring Procedure.

APPENDICES TO PART A OF THE SCHEDULE
TO THE GENERAL PROVISIONS

The following are the appendices which are referred to in and form part of Part A of the Schedule to the General Provisions dated 16 June 1998 between Law Hospital National Health Service Trust Limited ("the Trust") and Summit Healthcare (Law) Limited ("Summit"):-

1. Appendix B : Capacity Calculation Table
2. Appendix C : Usage Calculation Table
3. Appendix F : Unavailability Table




For the Trust *John R. Wilson*
Manager, National Care
68-73 Queen Street
EDINBURGH

Dated 16 June 1998



Alan D. Campbell
For Summit Services Ltd

For Summit *Rory Hunter* Witness
Rory CHRISTIE
56 South TRINITY ROAD
EDINBURGH

Dated 16 June 1998

Appendix B: to Part A

This is the Calculation to the Capacity Element

Services	Monthly Capacity Element (£)	Of which Managment Portion (£)
Catering	50,167	3,716
Domestic	74,087	5,488
Switchboard	18,108	1,341
Portering	39,911	2,956
Waste	1,821	135
Transport	3,692	273
Security	9,463	701
Linen	6,054	448
Staff Residences	2,412	179
Estates management	124,588	9,229
Services Total	330,302	24,467
Equipment	86,997	6,444
Monthly Total	417,299	30,911

Appendix C to Part A

This is the Calculation relative to the Usage Element
 Figures are expressed in pounds sterling (£)

Contract Year	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011
Accommodation										
Inpatient Night (of which Management Portion)	0.778 0.039	0.798 0.040	0.821 0.042	0.840 0.044	0.860 0.045	0.869 0.046	0.873 0.046	0.875 0.046	0.877 0.046	0.880 0.046
Day Case Discharge (of which Management Portion)	3.640 0.180	3.489 0.169	3.352 0.159	3.262 0.152	3.177 0.146	3.097 0.140	3.013 0.134	2.942 0.128	2.875 0.123	2.811 0.119
Out-Patient Attendances (of which Management Portion)	0.234 0.012	0.233 0.011	0.232 0.011	0.230 0.011	0.229 0.011	0.228 0.011	0.226 0.011	0.225 0.011	0.224 0.011	0.224 0.011
Catering										
Catering Variable Breakfast	0.380	0.380	0.380	0.380	0.380	0.380	0.380	0.380	0.380	0.380
Catering Variable Lunch	1.180	1.180	1.180	1.180	1.180	1.180	1.180	1.180	1.180	1.180
Catering Variable Supper	1.180	1.180	1.180	1.180	1.180	1.180	1.180	1.180	1.180	1.180
Domestic										
Inpatient Night (of which Management Portion)	0.774 0.057	0.805 0.060	0.839 0.062	0.867 0.064	0.897 0.066	0.909 0.067	0.915 0.068	0.918 0.068	0.921 0.068	0.925 0.069
Day Case Discharge (of which Management Portion)	3.589 0.266	3.367 0.249	3.164 0.234	3.030 0.224	2.905 0.215	2.787 0.206	2.664 0.197	2.559 0.190	2.460 0.182	2.365 0.175
Out-Patient Attendances (of which Management Portion)	0.230 0.017	0.228 0.017	0.226 0.017	0.224 0.017	0.222 0.016	0.221 0.016	0.219 0.016	0.217 0.016	0.215 0.016	0.215 0.016
Switchboard										
Inpatient Night (of which Management Portion)	0.189 0.014	0.197 0.015	0.205 0.015	0.212 0.016	0.219 0.016	0.222 0.016	0.224 0.017	0.224 0.017	0.225 0.017	0.226 0.017
Day Case Discharge (of which Management Portion)	0.877 0.065	0.823 0.061	0.773 0.057	0.741 0.055	0.710 0.053	0.681 0.050	0.651 0.048	0.625 0.046	0.601 0.045	0.578 0.043
Out-Patient Attendances (of which Management Portion)	0.056 0.004	0.056 0.004	0.055 0.004	0.055 0.004	0.054 0.004	0.054 0.004	0.053 0.004	0.053 0.004	0.052 0.004	0.053 0.004
Portering, Transport										
Inpatient Night (of which Management Portion)	0.456 0.034	0.474 0.035	0.494 0.037	0.510 0.038	0.528 0.039	0.535 0.040	0.538 0.040	0.540 0.040	0.542 0.040	0.544 0.040
Day Case Discharge (of which Management Portion)	2.117 0.156	1.981 0.147	1.862 0.138	1.783 0.132	1.710 0.127	1.640 0.121	1.568 0.116	1.506 0.112	1.448 0.107	1.392 0.103
Out-Patient Attendances (of which Management Portion)	0.135 0.010	0.134 0.010	0.133 0.010	0.132 0.010	0.131 0.010	0.130 0.010	0.129 0.010	0.128 0.009	0.126 0.009	0.126 0.009
Security										
Inpatient Night (of which Management Portion)	0.099 0.007	0.103 0.008	0.107 0.008	0.111 0.008	0.115 0.008	0.116 0.009	0.117 0.009	0.117 0.009	0.118 0.009	0.118 0.009
Day Case Discharge (of which Management Portion)	0.458 0.034	0.430 0.032	0.404 0.030	0.387 0.029	0.371 0.027	0.356 0.026	0.340 0.025	0.327 0.024	0.314 0.023	0.302 0.022
Out-Patient Attendances (of which Management Portion)	0.029 0.002	0.029 0.002	0.029 0.002	0.029 0.002	0.028 0.002	0.028 0.002	0.028 0.002	0.028 0.002	0.027 0.002	0.027 0.002
Staff Residences										
Inpatient Night (of which Management Portion)	0.025 0.002	0.026 0.002	0.027 0.002	0.028 0.002	0.029 0.002	0.030 0.002	0.030 0.002	0.030 0.002	0.030 0.002	0.030 0.002
Day Case Discharge (of which Management Portion)	0.117 0.009	0.110 0.008	0.103 0.008	0.099 0.007	0.095 0.007	0.091 0.007	0.087 0.006	0.083 0.006	0.080 0.006	0.077 0.006
Out-Patient Attendances (of which Management Portion)	0.007 0.001									
Waste										
Waste	37.500	37.500	37.500	37.500	37.500	37.500	37.500	37.500	37.500	37.500
Clinical Waste	345.000	345.000	345.000	345.000	345.000	345.000	345.000	345.000	345.000	345.000

From the year 2011, the payments continue to be those specified in column 2010-2011.

APPENDIX F
THE CALCULATION TABLE
AVAILABILITY ELEMENT

COLUMN	1	2	3	4	5	6	7	8	9	10	11
	Facility Areas	No. of Facility Areas	Single Facility	No. of Single Facilities	Priority	Interdependence	% of Daily Avail. Fee for Facility Area	% of Daily Avail. Fee for Single Facility	Operational Hours	Operational Days	Relevant Percentage
	Theatres	10	Theatre - includes Scrub/Anaesthetic rooms	10	A	ITU	7,143	0.714	12	5	0.054 (Blended percentage)
	Emergency Theatres	2	Theatre - includes Scrub/Anaesthetic rooms	2	A	ITU	1,429	0.714	24	7	0.054 (Blended percentage)
	Theatre Recovery	1	Room	1	A	ITU	0.714	0.714	12	7	0.050
	Theatre Reception	1	Room	1	A		0.714	0.714	12	7	0.050
	Total Theatre	14		14			10				
	ITU / SIBDU	1	Beds	12	A	Theatres	9	0.750	24	7	0.031
	A&E	1	Room Resuscitation, Exam Cubicles	2 1	A	X-Ray	8	4.000	24	7	0.167
	CCU/MHBU	1	Beds	12	A	Medical wards	6	0.500	24	7	0.021
	Laboratories	1	Labs Major labs Minor labs	15 5 10	A		6	0.400	17	5	0.047
	Neonatal unit	1	Cots	30	A	Obstetric beds	5	0.167	24	7	0.007
	Radiology	1	Rooms	16	A		6	0.375	12	5	0.044
	Joint Admissions Ward	1	Beds	36	A	Surgical and Medical Wards	5	0.139	24	7	0.000
	TOTAL 'A' Facilities						55				
	Day Surgery Unit	1	Beds	28	B	Theatres	1	0.036	12	5	0.004
	Endoscopy	1	Rooms	2	B		1	0.500	12	5	0.058
	Surgical wards	6	Beds	134	B	Theatres	3	0.022	24	7	0.001
	Medical wards	5	Beds	120	B	CCU/MHBU	3	0.025	24	7	0.001
	Obstetrics Labour room	1	Beds	7	B	Theatres/Neonatal	1	0.143	24	7	0.006
	Obstetrics LDRP	1	Room	21	B	Theatres/Neonatal	1	0.048	24	7	0.002
	Obstetrics Birthing Pool	1	Room	2	B	Theatres/Neonatal	1	0.500	24	7	0.021
	Obstetrics wards	1	Beds	58	B	Theatres/Neonatal	1	0.017	24	7	0.001

APPENDIX F
THE CALCULATION TABLE
AVAILABILITY ELEMENT

COLUMN	1	2	3	4	5	6	7	8	9	10	11
	Facility Area	No. of Facility Areas	Single Facility	No. of Single Facilities	Priority	Interdependence	% of Daily Avail. Fee for Facility Area	% of Daily Avail. Fee for Single Facility	Operational Hours	Operational Days	Relevant Percentage
	Obstetrics Assessment Unit	1	Area Assessment Area Exam Room	3 1 2	B		1	0.333	24	7	0.014
	Women's Health Unit	1	Bed	2	B		1	0.500	24	7	0.021
	Medical Day Unit	1	Area Sleep Area Bed Treatment rooms	7 1 4 2	B		1.5	0.214	24	7	0.009
	Oncology Day Unit	1	Area Sleep Area Treatment rooms	2 1 1	D		1.5	0.750	24	7	0.031
	Paediatric Wards	2	Beds	40	D		2	0.050	24	7	0.002
	Care of Elderly / Rehabilitation	4	Beds	100	D		2	0.020	24	7	0.001
	Elderly Day Unit	1	Rooms Therapy Treatment Sleep / Dining	3 1 1 1	B		0.5	0.167	24	7	0.007
	Mental Health Wards	3	Beds	65	D		1	0.015	24	7	0.001
	Mental Health / ECT	1	Suite	1	D		0.5	0.500	24	7	0.021
	Mental Health ICU	1	Beds	4	B		0.5	0.125	24	7	0.005
	Mental Health Day Hospital	1	Rooms Therapy Treatment Sleep / Dining	3 1 1 1	B		0.5	0.167	24	7	0.007
	<u>Outpatients</u>										
	General	1	Rooms Exam Suite	7 2	D		0.43	0.061	24	7	0.003
	Orthopaedic	1	Rooms Exam Suite	4 1	D		0.43	0.107	24	7	0.004

APPENDIX F
THE CALCULATION TABLE
AVAILABILITY ELEMENT

COLUMN	1	2	3	4	5	6	7	8	9	10	11
	Facility Areas	No. of Facility Areas	Single Facility Suite	No. of Single Facilities	Priority	Interdependence	% of Daily Avail. Fee for Facility Area	% of Daily Avail. Fee for Single Facility	Operational Hours	Operational Days	Relevant Percentage
	Dental	1	Suite	1	B		0.43	0.429	24	7	0.018
	Cardiology	1	Suite	1	B		0.43	0.429	24	7	0.018
	Ophthalmology	1	Suite	1	B		0.43	0.429	24	7	0.018
	ENT	1	Suite	1	B		0.43	0.429	24	7	0.018
	Audiology	1	Suite	1	B		0.43	0.429	24	7	0.018
	Rehabilitation Medicine	1	Rooms Hydrotherapy Physio treatment Gym Occup. Therapy Speech Therapy	5 1 1 1 1 1	B		2	0.400	24	7	0.017
	Mortuary	1	Body Store	1	B		0.5	0.500	24	7	0.021
	Post Mortem	1	Room	1	B		0.5	0.500	24	7	0.021
	Pharmacy	1	Area Prep. & Store Medicine Manipulation Cytotoxic Prep	11 9 1 1	B		1	0.091	24	7	0.004
	Education Centre	1	Rooms Library Lecture hall Training Rooms	3 1 1 1	B		1	0.333	24	7	0.014
	Medical Illustration	1	Department	1	D		1	1.000	24	7	0.042
	Medical Records	1	Rooms Caretaker Library Office	2 1 1	D		2	1.000	24	7	0.042
	Office Accommodation	4	Rooms Trust Anaesthetics Social Work Dentists	4 1 1 1 1	B		1	0.250	24	7	0.010
	Computer Facilities	1	Main Computer Room	1	B		1	1.000	24	7	0.042

APPENDIX F
THE CALCULATION TABLE
AVAILABILITY ELEMENT

COLUMN	1	2	3	4	5	6	7	8	9	10	11
	Facility Area	No. of Facility Areas	Single Facility	No. of Single Facilities	Priority	Interdependence	% of Daily Avail. Fee for Facility Area	% of Daily Avail. Fee for Single Facility	Operational Hours	Operational Days	Relevant Percentage
	Occupational Health	1	Department	1	B		1	1,000	24	7	0.042
	Medical Physics	1	Department	1	B		1	1,000	24	7	0.042
	Independent patient unit	1	Beds	0	B		1	0.167	24	7	0.007
	TOTAL 'B' Facilities						40				
	Main Entrance	1	Area	3	C		1.00	0.333	24	7	0.0138
			Main Concourse	1							
			Reception	1							
			Commercial	1							
	Staff Gym	1	Department	1	C		1.00	1,000	24	7	0.0417
	Creche	1	Room	1	C		1.00	1,000	24	7	0.0417
	Residences	1	Rooms	25	C		1.00	0.040	24	7	0.0017
			Fits	24							
			Common room	1							
	Stores	1	Department	1	C		1.00	1,000	24	7	0.0417
	TOTAL 'C' Facilities	5		56			5.00				