

DATED 16th JUNE 1998

DEVELOPMENT AGREEMENT

**relating to the design, construction,
fitting out and commissioning of the
New Law District General Hospital, Netherton**

between

LAW HOSPITAL NATIONAL HEALTH SERVICE TRUST (1)

and

SUMMIT HEALTHCARE (LAW) LIMITED (2)



McGRIGOR DONALD

SOLICITORS

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70 Wellington Street
GLASGOW G2 6SB
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15 June 1998

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FAS 4833**

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AN AGREEMENT

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 (S.50)) 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").

RECITALS

- (A) The Trust has the functions conferred on it by the Statutory Instruments mentioned in the preamble.
- (B) In implementation of those functions, the Trust wishes to procure the provision of a new hospital at Netherton to be known as the New Law District General Hospital and of certain services in relation to that hospital and the Trust and Summit have agreed to enter into the DBFO Contracts, the terms of which will secure the required hospital and services for the Trust.
- (C) This Agreement sets out the terms and conditions on which Summit will undertake the design, construction, fitting out and commissioning of the New Law District General Hospital;

1 Interpretation

1.1 In this Agreement:-

- 1.1.1 any word or expression which is defined in the Master Definitions Schedule shall have the same meaning as in the Master Definitions Schedule; and
- 1.1.2 "**Master Definitions Schedule**" means the document so entitled signed by the Trust and Summit and dated the Execution Date, as amended or supplemented at any time.
- 1.2 This Agreement shall be construed and given effect to in accordance with paragraphs 2 3 and 4 of the Master Definitions Schedule.

2 **Condition Precedent**

This Agreement will have effect subject to Clause 3 of the Project Agreement.

3 **Planning and Licence to Occupy**

3.1 The Trust has, prior to the date of this Agreement, confirmed to Summit that the Detailed Decision Notice is satisfactory.

3.2 To the extent not purified before Financial Close, Summit shall provide the Trust with such information regarding the progress of the purification of any conditions attached to the Detailed Decision Notice as the Trust shall reasonably require and Summit shall ensure that all such conditions are purified within such timescales as are requisite to enable the Works to be carried out in compliance with all Applicable Laws.

3.3 The Trust will give vacant possession of the Site to Summit on Financial Close until the Contractual Practical Completion Date, but only for the purpose of enabling Summit to perform its obligations under this Agreement and the other DBFO Contracts provided that the foregoing is subject to:

3.3.1 the provisions of Clauses 22 and 23 of the Project Agreement;

3.3.2 the rights of the Trust under the DBFO Contracts, including without limitation the Monitoring Procedures and the Practical Completion Procedures; and

4 **The Works - Summit's obligations**

4.1 Summit undertakes at its own cost to design, construct, fit out and commission the Works in accordance with and in the following order of precedence:

- (a) Statutory Requirements;
- (b) this Agreement;
- (c) subject to Clause 4.2, the Trust Requirements and the Specification;
- (d) the Necessary Consents;
- (e) the Head Lease; and

in a good and workmanlike manner, in accordance with Good Industry Practice, using only materials and goods which are of sound and satisfactory quality within the timescales specified in this Agreement and so that subject as provided in Clause 4.2.3 in the event of any conflict or inconsistency between the Trust Requirements and the Specification, the Trust Requirements will prevail.

- 4.2.1 The Trust acknowledges that the Trust Requirements meet its clinical requirements (subject to the Change Provisions); For the avoidance of doubt, if the Trust wishes to instruct an alteration to the Works consequent upon any change in its clinical requirements after the Execution Date then the Trust will require to instruct a Trust Works Change.
- 4.2.2 The Trust acknowledges that the Specification is in conformity with the Trust Requirements subject to and as qualified by any comments on the Specification contained in the Trust Requirements. The Trust further acknowledges that the Specification subject to and as qualified by any comments on the Specification contained in the Trust Requirements and as developed in accordance with the Design Development Procedure contained in Part 10 of the Schedule ("the Developed Specification") will subject to the Change Provisions meet the Trust Requirements.
- 4.2.3 In the event of any conflict between the Specification and the Trust Requirements, the Trust Requirements shall prevail except: -
- (a) to the extent that the parties otherwise agree; or
 - (b) if the Specification contains a response to any of the Trust Requirements, the response shall prevail over any more general provisions in the Trust Requirements save in respect of any comments on the Specification in the Trust Requirements.
- 4.2.4 In the event of any conflict or discrepancy within the Trust Requirements, the Trust shall resolve the same at its cost and the consequences of such resolution (whether related to time or expense) to Summit shall be an Eligible Change.
- 4.3 Summit shall procure that the Works are completed so that the Contractual Practical Completion Date occurs not later than the Mandatory Date as extended in accordance with and as result of delay in the progress of the Works ("**Excusable Delay**") caused by one or more of the following events (or the consequences thereof, each an "**Excusable Event**"):-
- (a) any event of Force Majeure; or
 - (b) the implementation of any Eligible Change or any works required by a Legislative Change (irrespective of whether it is an Eligible Change) in accordance with the DBFO Contracts; or
 - (c) (i) any breach by the Trust of its obligations under the DBFO Contracts, or any acts or omissions by the Trust or persons for which the Trust is responsible in terms of Clause 8.2 of the Project Agreement (including protest activity by the Trust staff) which have an adverse effect on the progress of the Works or failure by the Trust to issue a Certificate of Contractual Practical Completion in accordance with the provisions of the DBFO Contracts or (ii) the revocation of the Detailed Decision Notice or Judicial Review (each "**Trust Breach**"); or

- (d) the occurrence of an Insured Risk; or
- (e) the discovery or presence of (including any requirements in respect of) (i) human remains or consecrated land; (ii) unexploded bombs or munitions, or (iii) fossils and antiquities (each "Relevant Discoveries").

4.3.1 Summit shall give, or procure the giving of, notice in writing to the Trust's Representative as soon as practical after it or the Contractor can reasonably foresee the occurrence of an Excusable Event or Excusable Delay or, if the same is not reasonably foreseeable, as soon as it or the Contractor shall become aware of such Excusable Event or Excusable Delay and such notice will specify and give reasonable particulars of the event which Summit believes has given or may give rise to an Excusable Event or Excusable Delay. As soon as practicable thereafter, but in any event not given later than 20 Business Days after such notification Summit shall give further written details to the Trust's Representative which shall include:-

- (a) a statement of which Excusable Event the claim is based upon;
- (b) details of the circumstances from which the Excusable Event and Excusable Delay arises;
- (c) details of the contemporary records which Summit and/or the Contractor will maintain to substantiate its claim for extra time;
- (d) details of the consequences which such Excusable Event and Excusable Delay may have upon completion of the Works insofar as those are known to Summit or the Contractor, including their best estimate(s) as to the length of any extension of time required to compensate for the effect and consequences of the Excusable Delay;
- (e) details of any measures which Summit and the Contractor have adopted or propose to adopt to mitigate the consequences of such Excusable Delay.

4.3.2 As soon as possible but in any event within 10 Business Days of Summit or the Contractor receiving, or becoming aware of, any supplemental information which may further substantiate or support Summit's claim, Summit shall submit further particulars based on such information to the Trust's Representative.

4.3.3 The Trust's Representative shall, after receipt of written or further details be entitled by notice in writing to require Summit to provide such further supporting particulars as it may reasonably consider necessary. Summit shall afford to the Trust's Representative reasonable facilities for investigating the validity of Summit's claim including, without limitation, an inspection of the relevant parts of the Site.

4.3.4 The Mandatory Date shall be extended by such period as Summit and the Trust's Representative shall, in accordance with this Clause 4.3, agree and certify is fair and reasonable in relation to the Excusable Delay and, in the case of a Trust Works Change, such period as has been agreed or determined prior to the instruction of such Change in

accordance with the Change Provisions. Provided that if Summit or the Contractor fails timeously to comply with the provisions of this Clause 4.3 to the effect that the Trust is prevented from taking action to mitigate the effects of such Excusable Delay then to the extent that the Trust is so prevented from taking action to mitigate the effects of such Excusable Delay the period of Excusable Delay will be reduced by such period as is necessary to put the Trust in the same position as if Summit or the Contractor had timeously complied with this Clause 4.3.

- 4.3.5 If the Trust's Representative declines to fix a revised Mandatory Date or if Summit considers that a different Mandatory Date should be fixed then Summit shall be entitled to refer the matter for determination in accordance with the Dispute Resolution Procedure.
- 4.3.6 The grant of any extension under this provision is without prejudice to any other rights Summit may have under the DBFO Contracts (including the payment provisions as referred to in Clause 4.3.8 below) in respect of the event giving rise to the Excusable Delay, and the aggregate periods by which the Mandatory Date is extended under this Clause 4.3 are "Extension Periods" and such Extension Periods as relate
- (a) to Force Majeure are referred to as "Force Majeure Extension Periods";
 - (b) to an Eligible Change (including a Trust Works Change) are referred to as "Eligible Change Extension Periods";
 - (c) Trust Breach are referred to as "Trust Breach Extension Periods"; and
 - (c) Relevant Discoveries are referred to as "Relevant Discoveries Extension Periods".
- 4.3.7 The Trust, Summit and, as Summit will ensure, the Contractor will in accordance with their respective responsibilities and obligations under and pursuant to the DBFO Contract and the Building Contract use reasonable endeavours to mitigate the effect of Excusable Delays on the progress of the Works.
- 4.3.8 The provisions of paragraph 11 of Part A of the Schedule to the General Provisions (Payment in respect of Extension Periods) shall apply to the extent stated therein in the event of the occurrence of an Excusable Delay.
- 4.4 Summit will ensure that no amendments or variations are made to the Specification otherwise than :-
- (a) in accordance with a Legislative Change which affects the Works or a Trust Works Change, each of which will be implemented in accordance with Part D of the Schedule to the General Provisions; or
 - (b) subject to clause 4.5, otherwise with the prior written consent of the Trust (who may withhold its approval at its discretion) to the proposed amendment or variation, as shown on plans, specification and other details which Summit

shall be obliged to submit to it with a notice seeking to amend or vary the Specification such procedure to be outwith the Design Development Procedure and on the basis that no deemed approval will apply.

- 4.5 In relation to the development of the design of the Works in a manner consistent with the Trust Requirements and the Specification (as varied in accordance with Clause 4.4) Summit and the Trust will comply with the provisions of Part 10 of the Schedule and the Design Development Procedure.
- 4.6 Summit shall procure that no substance generally known to be deleterious or not in accordance with Good Industry Practice or British or EU Standards (to the extent that the same are not inconsistent with British Standards) at the time of use will be utilised in the Works.
- 4.7 Summit shall be responsible for and shall obtain at its cost the Necessary Consents within a timescale necessary to ensure compliance with the provisions of Clause 4.3.
- 4.8.1 Summit shall:
- (a) timeously comply with the obligations undertaken by it pursuant to the Building Contract and any Appointments in respect of which it is the employer; and
 - (b) procure that the Contractor performs its obligations under the Building Contract and any Appointments in respect of which it is the employer.
- 4.8.2 Summit will not without the prior written consent of the Trust (which consent will not be unreasonably withheld or delayed and shall be given where required in consequence of a Legislative Change and/or an Eligible Change in accordance with the Change Provisions):
- (a) vary, alter or terminate the Building Contract but without prejudice to Summit's right to implement the Building Contract or grant approvals thereunder in a manner consistent with Summit's obligations under the DBFO Contracts; or
 - (b) save in so far as required to do so in terms of the Building Contract, permit the Contractor to terminate, vary or alter the Building Contract or any of the Appointments in respect of which the Contractor is the employer or permit any of the Consultants to terminate its respective Appointment, but without prejudice to the Contractor's right to implement the Appointments in accordance with their terms or grant approval thereunder in a manner consistent with the Contractor's obligations under the Building Contract.
- 4.8.3 If the Building Contract or any of the Appointments shall be terminated then (without prejudice to the Trust's rights under Clause 22 of the Project Agreement) Summit will ensure that as soon as reasonably practicable and in any event within 6 months a new Building Contract or Appointment (as the case may be) shall be entered into in a form previously approved in writing by the Trust and with a party previously approved in writing by the Trust and in each case a further Collateral Warranty (in a form previously

approved in writing by the Trust) in favour of the Trust shall be executed by the new party who has been appointed and shall be delivered to the Trust within 10 Business Days after the Building Contract or Appointment shall have been entered into.

For the purpose of this Clause 4.8.3 where the approval of the Trust is said to be required then such approval shall not be unreasonably withheld or delayed (and in absence of notification to Summit of any decision by the Trust within 5 Business Days of receipt of a request for approval, such approval will be deemed to be given (provided that the Trust has previously notified the identity of the other party and has been provided with final drafts of the documents to be approved). In respect of the form of Collateral Warranty the Trust will take due account of the terms of Collateral Warranties which are then generally acceptable in the professional indemnity insurance market.

- 4.8.4 Summit will use best endeavours to obtain (and will forthwith upon obtaining the same deliver to the Trust) Executed Sub-contractor Warranties for each Design Sub-Contractor. This obligation shall be discharged if the Contractor has used his best endeavours to obtain (and has forthwith upon obtaining the same delivered to the Trust, via Summit), Executed Sub-contractor Warranties for each Design Sub-contractor.
- 4.9 Without prejudice to Clause 3.5 of the Project Agreement and any other provisions of the DBFO Contracts notwithstanding any reports, data or opinions made available to it, or used by it for any purpose, Summit shall be deemed to have:
- 4.9.1 satisfied itself as to the suitability of the physical condition at the Site for the Works and its suitability for the construction of the Works and the nature and extent of the risk assumed by it in relation to this Agreement and any other provisions of the DBFO Contracts; and
- 4.9.2 gathered all information necessary to discharge its obligations under this Agreement and any other provisions of the DBFO Contracts including information as to the nature, location and condition of the Site (including hydrological, geological, geotechnical and sub-surface conditions), archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and obligations to be assumed as a result of the Necessary Consents and Statutory Requirements.
- 4.10 Without prejudice to Clause 3.5 of the Project Agreement and any other provisions of the DBFO Contract Summit shall not be relieved from any obligation under this Agreement should any information or documentation whether obtained from the Trust or otherwise (including information or documentation made available by the Trust) be incorrect or insufficient (whether before on or after Financial Close) and shall make its own enquiries as to the accuracy and adequacy of such information. Without prejudice to the generality of the foregoing, Summit will be fully responsible for the design and construction of the Works notwithstanding any approval or consent or deemed approval or consent or comment or failure to comment given by the Trust or its advisers or representatives pursuant to this Agreement or any of the DBFO Contracts.
- 4.11 Summit shall perform its obligations under this Agreement without recourse to the Trust, except as expressly provided in this Agreement or in any other DBFO Contracts.

- 4.12.1 Without prejudice to Summit's obligations to carry out and complete the Works so as to comply with the Statutory Requirements and the Necessary Consents, Summit shall comply with all requirements of the Construction (Design Management) Regulations 1994 (the "CDM Regulations") and with the approved Code of Practice relating to the CDM Regulations on the basis that it is the client for the purposes of the CDM Regulations in relation to the Works required to be implemented by Summit in order to fulfil this Agreement.
- 4.12.2 The parties acknowledge that the CDM Regulations should apply to Summit as a client under the CDM Regulations since:
- (a) the Trust is not a client for whom a project involving construction work is being carried out, on the basis that it will grant Summit the Head Lease of the Site and Summit will provide the Services;
 - (b) the "construction work" within the meaning of the CDM Regulations is to be carried out by Summit and not by the Trust; and
 - (c) to the extent that the Trust gives design information to Summit, Summit has discretion as to whether such design information is used.
- 4.13 Summit will prior to the Contractual Practical Completion Date:
- 4.13.1 procure that all roads, footpaths and access ways with the lighting and markings pertaining thereto, drains, sewers, pipes, wires, cables and other service transmission media to be constructed as part of the Works shall be of such a type and shall be constructed in such a manner as to comply with all Applicable Laws;
- 4.13.2 save to the extent that the same have resulted from any act, omission or default of the Trust, pay and satisfy in full, with the intent that the Trust shall accordingly be freed and relieved from, all proper claims for fees, charges, penalties, taxes (excluding business rates), outgoings and other payments whatsoever which may become payable or be properly or lawfully demanded by any Competent Authority or public service company which has jurisdiction with regard to the Works in respect of completing the Works and that no matter when such fees and the like are rendered;
- 4.13.3 within five Business Days from receipt thereof by Summit or the Contractor, transmit to the Trust's Representative a copy of any notice, consent, approval, certificate, decision, or other document received by Summit or the Contractor from any Competent Authority in respect of the Works or any part thereof and if any such document contains a requirement that something be done or not done in connection with the Works or any part thereof then, without prejudice to Summit's rights under the Schedule Part D of the General Provisions, if the same is an Eligible Change, forthwith comply fully with the same and to continue so to comply;
- 4.13.4 comply with and so free and relieve the Trust of the costs of complying with all notices required by any Statutory Requirements in relation to the Works or public service

company or Competent Authority which has jurisdiction with regard to the Works or with whose system the Works are or will be connected;

- 4.13.5 save in respect of any temporary works, access roads, footpaths or services, which are wholly within the Site and removed by Summit prior to the Contractual Practical Completion Date make good any damage to the road(s) giving access to the Site and if applicable the footpaths and any services therein, arising out of or in the course of or by reason of the execution of the Works or any part thereof and to reinstate such road, footpath or services to the reasonable satisfaction of the Trust's Representative and where appropriate the owners and the Competent Authority; and
- 4.13.6 comply with any title conditions affecting the Site. The Trust undertakes that it will not, without the prior written consent of Summit, create and shall procure that there is not created any title conditions, restrictions, burdens, charges or incumbrances affecting the Site.
- 4.14 If the Trust or the Trust's Representative shall receive any notices, consents, approval, certificate, decision or other document from any Competent Authority in respect of the Works or Part thereof, it will, within five Business Days from receipt thereof transmit a copy to Summit.

5 Trust Group 2 - Equipment

- 5.1 Summit shall install the Trust Group 2 Equipment.
- 5.2 The Trust shall provide the Trust Group 2 Equipment referred to in Final Room Data Sheets which it has undertaken to provide to Summit prior to the Contractual Practical Completion Date in accordance with the date(s) for the provision of such Trust Group 2 Equipment contained in the Construction Timetable, as revised from time to time in accordance with the provisions of this Agreement and/or Part D of the Schedule to the General Provisions save that Summit shall not bring forward any date for the provision of such Trust Group 2 Equipment without the prior written approval of the Trust.
- 5.3 In the event that the Trust is unable to provide any item(s) of Trust Group 2 Equipment in accordance with the Construction Timetable (except to the extent that such failure is due to any act, omission or default of Summit) the Trust's Representatives shall be obliged to issue an instruction forthwith to Summit to instal such item(s) of Trust Group 2 Equipment at a later date to be specified in such instruction.
- 5.4 The issue of such instruction shall be a Trust Works Change.

6 Trust Works Changes

The Trust will be entitled to instruct Trust Works Changes which will be initiated, notified and implemented as described in Sections 2 and 3 of Part D of the Schedule to General Provisions and the provisions of Part D of the Schedule to the General Provisions will have application to this Agreement.

7 **Communication and inspection**

Summit and the Trust will comply at all times with the Monitoring Procedures and the obligations incumbent on them pursuant to Part 1 of the Schedule.

8 **Contractual Practical Completion**

8.1 Summit will procure that a Certificate of Contractual Practical Completion is issued on or prior to the Mandatory Date subject to extension (if applicable) in accordance with Clause 4.3.

8.2 The Certificate of Contractual Practical Completion will be issued in accordance with the Contractual Practical Completion Procedure and the Parties will comply with their respective obligations under the provisions of Part 5 of the Schedule.

8.3 The issue of the Certificate of Contractual Practical Completion and the rights (whether or not exercised) of the Trust's Representative under this Agreement or any other approval or comment or failure to comment made by the Trust's Representative shall in no way affect or diminish the obligations of Summit pursuant to this Agreement or the other DBFO Contracts save as expressly provided in the DBFO Contracts and the Trust's Representative shall act as the agent of the Trust.

9 **Dispute Resolution Procedure**

9.1 The parties shall use their reasonable efforts to negotiate in good faith and settle amicably any Dispute which arises during the continuance of this Agreement.

9.2 Any Dispute not capable of resolution under Clause 10.1 shall become subject to the Dispute Resolution Procedure.

10 **Notices**

10.1 Any notice or other communication to be given by one party to another under, or in connection with the matters contemplated by this Agreement shall be communicated as follows:-

(a) if to the Trust, to:-

Law Hospital National Health Service Trust
Law Hospital
Carluke
Lanarkshire
ML8 5ER

Fax No: 01698 364133

Attention: Chief Executive

(b) if to Summit, to:-

Summit Healthcare (Law) Limited
c/o British Linen Bank Limited
4 Melville Street
Edinburgh
EH3 7NZ

Fax No: 0131 243 8391

Attention: Dr W Moyes

c c Sir Robert McAlpine Ltd
Eaton Court
Maylands Avenue
Hemel Hempstead
Hertfordshire
HP2 7TR

Fax No: 01442 230024

Attention: M J Collard

c c Edison Capital Europe Limited
Martin House
5 Martin Lane
London
EC4R 0DP

Fax No: 0171 650 5040

Attention: A Jessop

or, in either case, to such other addresses and/or facsimile number in the United Kingdom and/or marked for such other attention as from time to time has been notified in writing by the relevant party to the other, by notice given in accordance with this Clause 11 and provided that, in the case of notices to Summit, the notice shall be valid if properly served on Summit and failure to copy the notice to the persons stated above will not invalidate the notice or lead to any default by or claim against the Trust.

- 10.2 Any notice or other communication to be given by one party to another under, or in connection with the matters contemplated by, this Agreement or any other DBFO Contract shall, unless otherwise specified, be in writing and shall be given by letter delivered by hand or sent by first class pre-paid post or recorded delivery or registered post or by facsimile transmission and shall be deemed to have been received:-

- (a) in the case of delivery by hand prior to 4.30pm, on a Business Day, when delivered and in any other case on the Business Day following the date of delivery; or
- (b) in the case of first class pre-paid post or recorded delivery or registered post, on the second Business Day following the day of posting; or
- (c) in the case of facsimile where the transmission occurs prior to 4.30pm on a Business Day, on acknowledgement by the addressee's facsimile receiving equipment and in any other case on the Business Day following the day of acknowledgement by the addressee's facsimile receiving equipment.

11 Law and jurisdiction

This Agreement shall be governed by and construed in accordance with the law of Scotland and the parties irrevocably submit to the non-exclusive jurisdiction of the Court of Session and waive any plea of forum non conveniens. The submission in this Clause 11 is subject to Clause 9 and shall not preclude proceedings in any other court of competent jurisdiction.

12 Restrictive Trade Practices Act

Any provision of this Agreement or any agreement or arrangement of which it forms part which is subject to registration under the Restrictive Trade Practices Act 1976 shall not take effect until the date after particulars have been furnished to the Director General of Fair Trading pursuant to Section 24 of that Act.

13 Sub-Station Area, Helipad and Minerals

- 13.1.1 The Trust will use all reasonable endeavours to acquire as soon as reasonably practicable a valid, good and marketable title to the Sub-Station Area. Such title will not contain any restrictions or conditions prejudicial to Summit's ability to use the Sub-Station Area for the construction thereon of a foot pavement or any part of the Works to be built on under or through the Sub-Station Area as envisaged by the Alternative Layout Plan.
- 13.1.2 If the Trust acquire title to the Sub-Station Area as aforesaid within 6 months of Financial Close, then the parties will procure that the Head Lease and the Sub-Lease will each be amended by a Minute of Variation which will extend the subjects let by the Head Lease to include the Sub-station Area (but not otherwise vary the terms of the Head Lease or the Sub-Lease). The said Minute of Variations shall be registered by Summit in the Land Register of Scotland and the Books of Council and Session.
- 13.1.3 If the Trust does not acquire title to the Sub-station Area within the period of six months from Financial Close then the Works will be re-configured to exclude the Sub-station Area at no cost to the Trust.
- 13.2 The parties acknowledge that as reflected in paragraph 4.3.13 of the Trust Requirements it is the Trust's responsibility (as it intends to do but without any obligation to Summit

in that regard) to negotiate and enter into an access agreement ("the Helipad Agreement") to permit it to carry out any necessary works and obtain access to the Playing Field for the provision and use of a helicopter landing facility and in this regard:

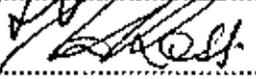
- 13.2.1 Summit's obligations to carry out any Works in the Playing Field (which do not extend to obtaining any Necessary Consents in relation to the Helipad Agreement or the helicopter landing facility) and the Trust's obligation to give access to the field to Summit for the purpose of carrying out any of the Works shall be conditional upon the Trust (1) entering into a Helipad Agreement containing necessary provisions in that regard and (2) obtaining and exhibiting the relevant Necessary Consents in terms reasonably satisfactory to Summit; and
 - 13.2.2 The Trust will give written notice to Summit enclosing a copy of the Helipad Agreement within five Business Days of entering into the same; and
 - 13.2.3 If notice is not given by the Trust within 18 months after Financial Close then the provision of that part of the Works within the Playing Field will be treated as a Trust Works Change on the basis that any Change in Costs will be measured by reference to any Change in the Costs which would have been incurred if a notice had been given prior to that date.
 - 13.3 In the event of the Trust or the Secretary of State receiving any notice from any party intending to work the mines or minerals under the Site or neighbouring land forming part of an area of protection as defined in the Railways Clauses (Scotland) Act 1845 the Trust shall procure that appropriate counter-notice(s) are served in terms of Section 72 of the Railways Clauses Consolidation (Scotland) Act 1845 (as originally enacted). In the event that compensation is payable to any such party following a service of any such counter-notice then the Trust will procure that Summit is kept free of expense in respect of such compensation.
- 14 **Miscellaneous**
- 14.1 Notwithstanding any damage to or destruction of the Works prior to the Contractual Practical Completion Date by whatever cause this Agreement will remain in full force and effect and Summit will remain responsible for carrying out and completing the Works in accordance with this Agreement.
 - 14.2 This Agreement will have effect subject to the terms of the Project Agreement.

14.3 Termination of this Agreement and the consequences of termination shall be governed by Clauses 22 and 23 of the Project Agreement.

IN WITNESS WHEREOF these presents consisting of this and the preceding 13 pages are, together with the Schedule annexed, 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 James Gemmell Dunbar, Chairman and
Ian Andrew Ross, Chief Executive
in the presence of:


.....

.....

Chairman

Chief Executive

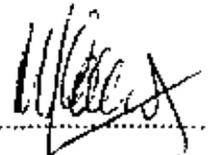
Witness 

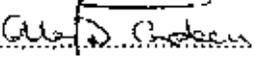
Name ~~James Gemmell Dunbar~~ Ian Andrew Ross

Address 68-73 Queen Street
Edinburgh

Subscribed for and on behalf of SUMMIT
HEALTHCARE (LAW) LIMITED

at London
on the 16th day of June 1998
by MICHAEL SOUTH COLEMAN
Director and Director/Secretary


..... Director

 Director/Secretary

Director/Secretary

Zony Christie Witness
ZONY CHRISTIE
56 SOUTH TRINITY ROAD
EDINBURGH

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

The Schedule - Part 1

Monitoring Procedures

- 1 **Quality Assurance**
- 1.1 Summit shall procure that the Contractor prepares a quality plan for the Works (**the Quality Plan for Construction**) governing the design, construction and examination of the Works. The Quality Plan For Construction shall comply with:-
 1. BS EN ISO 9000;
 2. Part 6 Section 6.0 of the Trust's Requirements; and
 3. Good Industry Practice.
- 1.2 Summit shall not commence or permit the commencement of any aspect of the Works before those parts of the Quality Plan for Construction which concern such aspect of the Works have been submitted to the Trust's Representative in accordance with the Trust Objection Procedure. The provisions of this paragraph shall not apply in respect of the Quality Plan for Construction to the extent the same has been agreed by the Trust prior to the Execution Date, which Quality Plan for Construction insofar as it has been agreed and is set out in the Schedule - Part 4.
- 1.3 Summit shall comply and shall procure that the Contractor complies with the Quality Plan for Construction.
- 1.4 Summit shall from time to time submit to the Trust's Representative in accordance with the Trust Objection Procedure any changes to the Quality Plan for Construction required for such Quality Plan to continue to comply with the requirements of this Schedule -Part 1.
- 1.5 The Trust's Representative may object to any such proposed change only on the grounds that such change would not comply with the requirements of this Schedule - Part 1 or would otherwise be inconsistent with any provisions of the DBFO Contracts.
- 1.6 The Trust's Representative may carry out periodic reviews of Summit's quality system (including without limitation the Quality Plan for Construction and any quality manuals and procedures)
- 1.7 Summit shall procure that as soon as reasonably practical after the Execution Date the Contractor appoints a quality manager who shall be independent of the project management team. The terms and conditions of engagement of the quality manager shall require him, inter alia, to:

1. ensure the effective operation of the Quality Plan for Construction;
 2. audit the Quality Plan for Construction at regular interval and copy the findings of such audit to the Trust's Representative;
 3. review the Quality Plan for Construction at intervals agreed with the Trust's Representative to ensure its continued suitability and effectiveness;
 4. liaise with the Trust's Representative on all significant matters relating to quality management.
- 1.8 Summit and its Contractors and sub-contractors will prepare and issue snagging lists and submit these to the Trust's Representative.
- 1.9 The Trust's Representative shall comply with a quality system which complies with BS EN100 9001 as approved by Summit.
- 2 Compliance with Construction Timetable**
- 2.1 The Construction Timetable at the Execution Date is reproduced in Part 2A of the Schedule and it shall be developed in accordance with Part 6 Section 7 of the Trust Requirements.
- 2.2 The Trust's Representative may notify Summit if in his reasonable opinion the actual progress of the Works does not materially conform to the Construction Timetable and may require Summit either:
1. to submit to the Trust's Representative a report identifying the reasons for the delays; and/or
 2. to produce and submit to the Trust's Representative in accordance with the Trust Objection Procedure a revised Construction Timetable showing the manner in which the Works will be carried out and the periods necessary to ensure completion of the Works before the Mandatory Date; or
 3. to produce and submit to the Trust's Representative in accordance with the Trust Objection Procedure a revised Construction Timetable showing the steps which are to be taken to eliminate or reduce the delay in reaching the projected completion date.
- 2.3 Summit may propose amendments or revisions to the Construction Timetable from time to time, subject to the Trust Objection Procedure.
- 2.4 Any revised Construction Timetable shall be in sufficient details to enable the Trust's Representative to monitor progress and likely future progress of the Works.
- 2.5 Summit shall promptly submit to the Trust's Representative a copy of any revision of the Construction Timetable subsequently varied under the Trust Objection Procedure

3 Provision of Information

- 3.1 Summit shall provide/procure that the Contractor provides to the Trust's Representative a monthly progress report confirming:-
1. the status of each of the sub contract packages;
 2. progress assessed in relation to the Construction Timetable;
 3. updated monthly construction programmes;
 4. Key date schedules; Quality; Health & Safety; Method Statements; Change Order Report.
- 3.2 Summit shall also provide the Trust's Representative with copies of all instructions given by or on behalf of Summit under the Building Contract within 5 Business Days of issue.
- 3.3 The Trust and the Trust's Representative shall at all reasonable times upon giving reasonable prior notice to Summit throughout the period of construction of the Works have access to the information and data on and from which any reports or information provided by Summit or Summit's Representative to the Trust or the Trust's Representative are based or compiled (including test results and samples taken by or on behalf of Summit), in order to inspect the same.

4 Monitoring of Performance

- 4.1 The Trust or the Trust's Representative may at all times throughout the progress of the Works upon giving reasonable prior notice to Summit enter upon the Site in order to:-
1. inspect and monitor the carrying out of the Works to ensure that Summit's obligations under the DBFO Contracts are being duly discharged;
 2. to perform any obligations or exercise any rights of the Trust under the DBFO Contracts;
 3. to witness tests that are carried out and take samples.
- 4.2 The Trust and the Trust's Representative shall at all times upon giving reasonable prior notice to Summit have access to workshops and other places under the control of Summit or the Contractor where work is being prepared or equipment or materials are being obtained for the Works and Summit shall afford and shall ensure that the Contractor shall afford every reasonable facility for and assistance in obtaining such access.
- 4.3 The Trust and the Trust's Representative shall comply at all times throughout the Works with all Applicable Laws and any relevant safety requirements notified to them at the Site;

4.4 The Trust's Representative shall be invited to attend monthly project meetings at the Site and shall receive copies of the minutes thereof.

5 **Provision of Documentation**

5.1 Summit shall provide the following to the Trust's Representative:-

5.1.1 one disk copy of all drawings produced by the Contractor in accordance with the Building Contract and two paper copies of all drawings referred to and forming part of the Reviewable Design Information as and when the same are produced by the Contractor and delivered to Summit;

5.1.2 one disk copy of the Specification after Execution of the Building Contract.

5.2 Summit shall retain on Site one set of all construction drawings, schedules, specifications and other data to which the Trust's Representative and the Financier's Technical Adviser can have shared access.

6 **Making Good of Defects**

Summit will give to the Trust's Representative not less than 5 Business Days notice of any inspection or meeting to be held in relation to the making good of defects under the Building Contract and the Trust's Representative will be entitled to attend and make representations at all such inspections and meetings and to receive a copy of all minutes and other documentation issued consequent thereon.

The Schedule - Part 2**Construction Timetable and the Mandatory Date**

- A. The Construction Timetable is an Agreed Form document.

- B. Mandatory Date means the date being 32 calendar months from Financial Close.

The Schedule - Part 3

[not used]

The Schedule - Part 4

Contractor's Quality Plan for Construction

- Project Control Plan
- Outline Method Statement

Schedule - Part 5

Contractual Practical Completion Procedure

1 Validation and Testing of the Works

- 1.1 Summit and the Trust's Representative shall, after Financial Close, develop and update as necessary, a schedule of validation and testing for the Works ("the Validation/Testing Schedule") based on the indicative validation and testing schedule attached to this Part 5 of the Schedule. That part of the Validation/Testing Schedule which relates to the commissioning of mechanical and electrical engineering services shall be completed no later than three months prior to the commencement of such commissioning, which commissioning is anticipated to commence six months before the Contractual Practical Completion Date. The Validation/Testing Schedule shall detail the extent and duration of any validation or tests to be carried out and the area or part of the Works to which they relate.
- 1.2 Summit shall give to the Trust's Representative and the Financier's Technical Adviser, 5 Business Days notice in writing of the date of when it will be ready to make the tests detailed in the Validation/Testing Schedule ("the Tests") in respect of the Works or, as the case may be, any part of the Works. The Trust's Representative and the Financier's Technical Adviser shall be entitled to attend all the Tests and Summit shall notify the Trust's Representative and the Financier's Technical Adviser of the time and place for the carrying out of the Tests. If the Trust's Representative or the Financier's Technical Adviser fails to attend at any time or place duly appointed Summit shall be entitled to proceed in its absence.
- 1.3 Summit shall carry out the Tests. Summit shall be responsible for the provision of such electricity, fuel, water and other consumable materials as may be reasonably required to carry out such tests.
- 1.4 On completion of each of the Tests Summit shall supply copies of the results of the Tests to the Trust's Representative and the Financier's Technical Adviser.
- 1.5 In the event that any element or part of the Works which was the subject of any of the Tests fails to pass its appropriate Test, Summit shall procure that any necessary corrective or remedial works are undertaken and as soon as practicable thereafter Summit shall procure that the relevant Tests are re-performed, which procedure shall be repeated as often as necessary until all parts of the Works shall have passed all the Tests and Summit shall reimburse the Trust in respect of any costs properly and reasonably incurred by the Trust in respect of any second and subsequent re-testing which is required.

2 Completion of the Works

- 2.1 Not less than 8 weeks prior to the anticipated Contractual Practical Completion Date Summit, its contractors and sub-contractors shall prepare snagging lists for work completed to that date and submit these to the Trust's Representative with a notice in writing requiring the Trust's Representative to inspect the Works or any part of them

which the Trust's Representative shall do within 5 Business Days of receipt of such notice. The Trust's Representative shall carry out such inspection with a view to identifying any matters which he considers will prevent the achievement of Contractual Practical Completion on the basis of his inspection and any lists or explanation provided by or on behalf of Summit. The Trust's Representative shall advise Summit in writing within 5 Business Days of completion of such inspection of the list of any such outstanding matters. The Trust's Representative shall repeat the inspection process under this paragraph 2.1 in respect of any such outstanding matter as soon as practical once the same has been completed.

2.2 When Summit considers that the Works are ready for Contractual Practical Completion, it may give a notice to that effect to the Trusts Representative. Within 5 Business Days of that notice, the Trust's Representative shall give a notice to Summit stating whether it believes that:-

- 1 Contractual Practical Completion has been achieved and the date on which it was achieved (being a date not earlier than Summit's notice); or
- 2 Contractual Practical Completion has not been achieved and specifying the works which, in the opinion of the Trust's Representative, require to be done by Summit in order to achieve Contractual Practical Completion.

Where the Trust's Representative has issued a notice under 1 above if Summit agrees that Contractual Practical Completion has been achieved on the date specified by the Trust's Representative, the Trust's Representative and Summit shall forthwith upon Summit receiving the notice under 1 above, jointly issue (to be evidenced by the signature thereon by a representative of both parties) a Certificate of Contractual Practical Completion stating that the whole of the Works complies with paragraph 2.4 of Part 5 of this Schedule and accordingly that Contractual Practical Completion has been achieved and the date on which it was achieved (being a date not earlier than Summit's notice referred to above).

Where the Trust's Representative has issued a notice under 2 above and Summit believes that Contractual Practical Completion has been achieved, or where Summit does not agree with the date of Contractual Practical Completion stated by the Trust's Representative in a notice given under 1 above, either party may refer such matter to be determined pursuant to the Dispute Resolution Procedure.

2.3 If the Certificate of Contractual Practical Completion in respect of the Works would not (but for this paragraph 2.3) have been issued by the Mandatory Date then if either the Trust's Representative or Summit at their respective sole discretion are of the opinion that any part of the Works shall have been substantially completed save for minor items of the type referred in paragraph 2.4 and shall have passed all Tests (or the Trust's Representative and Summit both wish to waive the requirement to pass any such Test) the Trust's Representative in its sole discretion may with the approval of Summit which approval shall be at its sole discretion jointly (to be evidenced by the signature thereon by a representative of both parties) issue a Certificate of Contractual Practical Completion in respect of that part of the works before completion of the whole of the

Works provided always that Summit undertake to complete any such minor items in accordance with Part 3.1 of this Part 5 of the Schedule.

2.4 The Works or (in the case of paragraph 2.3 above) a part thereof shall be ready for the issue of the Certificate of Contractual Practical Completion when they have been substantially completed, passed all Tests and the only items of outstanding work referred to in this paragraph are such items which either individually, or when taken together, are such that:

1. the fact that the items are not completed and that work is necessary to complete the items will not substantially inhibit any activity which is shown on the Commissioning Procedure from taking place at the time shown on the Commissioning Procedure; and
2. that it is reasonably practical, having regard to the activity shown on the Commissioning Procedure, to complete the work within 6 weeks of the Contractual Practical Completion Date .

3 Snagging Items

3.1 Within 5 Business Days after the issue of the Certificate of Contractual Practical Completion the Trust's Representative and Summit jointly shall issue a list of items of outstanding works required in order to complete the Works or any parts of the Works to which such Certificate of Contractual Practical Completion relates. Summit will ensure that such items are completed in full within 6 weeks of the Contractual Practical Completion Date.

4 Early issue of Certificate

4.1 The Trust's Representative and Summit may jointly agree to issue a Certificate of Contractual Practical Completion in respect of the Works notwithstanding that any items of outstanding work include matters which do not fall within paragraph 2.4 of this Schedule - Part 5.

5 Costs associated with inspection and testing

5.1 If the Trust's Representative is required to repeat the inspection process under paragraph 2.1 of this Schedule Part 5 or declines to issue a Certificate of Contractual Practical Completion pursuant to paragraph 2.2 of this Schedule - Part 5 Summit shall to the extent that the re-inspection shows, (or refusal to issue the said Certificate is due to), work, materials or goods not being in accordance with this Agreement reimburse the costs properly and reasonably incurred by the Trust in a further re-inspection or as a result of declining to issue the Certificate of Contractual Practical Completion.

5.2 For the avoidance of doubt: if the Trust's Representative repeats the inspection process referred to in paragraph 2.1 above (other than the re-inspection to verify completion of outstanding items) or declines to issue a Certificate of Contractual Practical Completion and any such reinspection shows that Works are in accordance with this Agreement or

the re-inspection was not reasonable in all the circumstances to establish to the reasonable satisfaction of the Trust's Representative the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance, this shall be deemed to be a breach by the Trust as detailed in Clause 4.3 of this Agreement.

6 Disputes

6.1 Any disputes or differences relating to this Part 5 of the Schedule shall be referred to the Disputes Resolution Procedures.

7 Construction Related Records

Eight (8) weeks prior to the estimated Contractual Practical Completion Date Summit shall provide a copy of the drafts of the undemoted construction related records ("the Records") to the Trust.¹

The Trust's Representative shall provide comments on the Records within four (4) weeks of receipt thereof to enable Summit to provide final copies of the Records prior to the issue of the Certificate of Contractual Practical Completion.²

- Health and Safety File which shall contain:-
- Planning Approvals
- Building Warrant
- Amendments to Building Warrant
- Building Control Completion Certificate
- Handover checklists in a form agreed by the Trust's Representative
- Validation of systems against specifications required, i.e. the function that CSA used to perform (based around HTMs CIBSE commissioning codes, etc.)
- As-built drawings including drawings showing emergency escape routes, location of emergency and fire fighting systems, services shut-off valves, switches etc.
- Handover manual containing demonstrations, training and test results
- Service Operations Maintenance Manual

¹Building Contract will require Contractor to provide 3 copies of the drafts, one for Serco, one for the Trust's Representative and one for Summit/LTA.

²Again, 3 copies of final records will be required from the Contractor for Serco, Trust's Representative and Summit/LTA.

The Service Operations Maintenance Manual shall contain:-

- A full description of each of the systems installed, written to ensure that appropriate members of the Trust's staff fully understand (or ought reasonably fully to understand) the scope and facilities provided.
- A description of the mode of operation of all systems.
- Diagrammatic drawings of each system indicating principal items of plant, equipment, valves, etc.
- A photo reduction of all record drawings to A3 size together with an index.
- Legend for all colour coded services.
- Schedules (system by system) of plant, equipment, valves, etc stating their locations, duties and performance figures. Each item must have a unique number cross referenced to the record and diagrammatic drawings and schedules.
- The name, address and telephone number of the Contractor, his sub-contractors, Suppliers and manufacturers of every item of plant and equipment together with catalogue risk numbers.
- Manufacturers technical literature for all items of plant and equipment. assembled specifically for the Works, excluding irrelevant matter and including detailed drawings, electrical circuit details and operating and maintenance instructions.
- Starting up operating and shutting down instructions for all equipment and systems installed.
- Control sequences for all systems installed.
- Schedules of all fixed and variable equipment settings established during commissioning.
- Procedures for seasonal changeovers.
- Recommendations as to the preventative maintenance frequency and procedures to be adopted to ensure the most efficient operation of the systems.
- Lubrication schedules for all lubricated items.
- A list of normal consumable items.
- Procedures for fault finding.
- Emergency procedures including telephone numbers for emergency services.

- Building Operations Maintenance Manual

The Building Operations Maintenance Manual must include:-

- Design criteria including floor loadings, installation values and other performance requirements.
- Details of all materials, components and equipment including copies of manufacturers current literature, COSHH dated data sheets and manufacturers' recommendations for cleaning and maintenance.
- The name, address and telephone number of the Contractor, his sub-contractors, Suppliers and manufacturers for each part of the Works.

The Service Operations Maintenance Manual and the Building Operations Maintenance Manual shall be contained in a series of A4 size plastic covered loose-leaf four-ring binders with hard covers, each indexed, divided and appropriately titled on the cover or other agreed suitable format. Selected drawings needed to illustrate or locate items mentioned in the manuals, where larger than A4, are to be folded and accommodated in the binders so that they may be unfolded without being detached from the rings. The as-built drawings mentioned above will form annexes to the manuals. The Trust's Representative shall be given a disc or CD Rom copy of all drawings mentioned in the Records prepared in a way which can be read and manipulated or altered and adapted for use by the Trust, any Approved Service Provider and others who use Autocad 13 AEC No. 5 Software. All drawings shall be fully co-ordinated and in such a fashion that they can be easily adapted to meet the needs of the Trust, acting reasonably.

- Certificate of Completion in respect of Electrical Installation
- Fire Certificate
- Telecom and Data Service Certificate
- National Radiology Protection Board Approvals X-Ray Shielding (if applicable)
- Test Certificates (if applicable) for
 - Internal Gas Installation
 - Mechanical Ventilation Installation
 - Pressure Vessels
 - Nurse call system
 - Anti-vibration installations (if applicable)
 - Air conditioning
 - Domestic water chlorination
 - Domestic water temperatures (Legionella risk)
 - Medical gas systems complete including gas purity test results

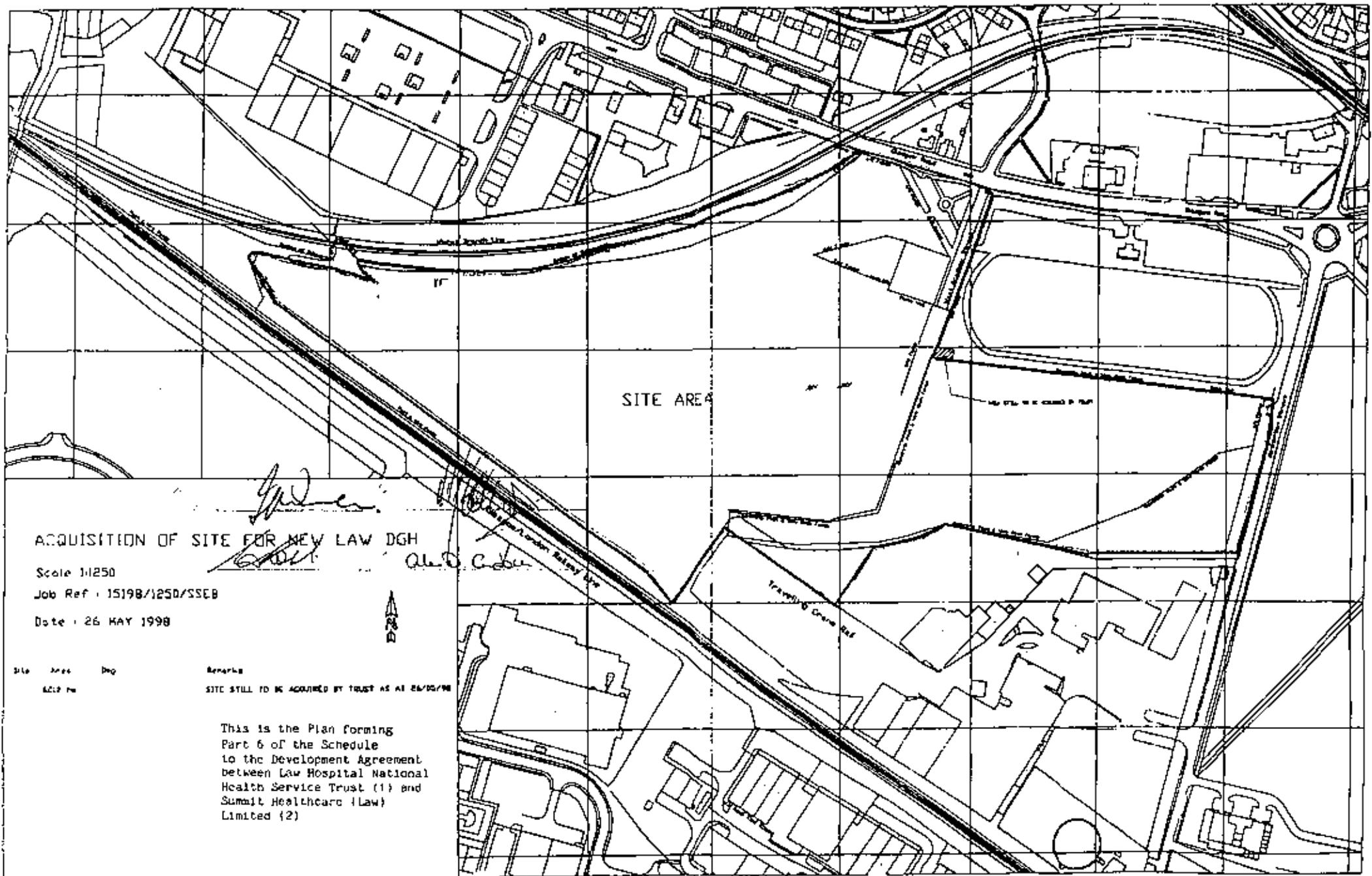
- Structured cabling installation
 - Mechanical air system performance e.g. air changes (in orthopaedic theatre)
 - Building Engineering Management System (BEMS)
 - Kitchen Facilities installed prior to Contractual Practical Completion
 - Potable water
 - Light tightness of darkrooms under operating conditions
 - Sterile environment sign off (sterile floors, walls, etc.)
 - Sign off X-Ray film illuminators for "tropical daylight"
 - Conference AV facilities
 - Waste disposal installation (if mechanical)
 - Boilers
 - Chillers
 - AHU's
 - RO/RI installation (measured at outlet points)
 - Fume cupboards, hoods and extractors. Full system integrity
 - HEPA filter installations
 - CCTV
- Schedule of manufacturers' recommended spare parts
 - Schedule of keys/key cabinets
 - Appropriate sets of tools and portable indicating instruments
 - Any manufacturers guarantees relating to any part of the Works.
 - The Approved Service Provider's Site Rules Booklet
 - Records of agreed schedules of samples, mock up rooms and sampling rooms recording the agreed standard of final finishes
 - a disk containing the then current Room Data Sheets for each part of the Works
 - a disk containing the then current Schedule of Accommodation showing the gross and net internal area of accommodation achieved

Summit's obligations pursuant to this paragraph 7 shall be deemed to have been discharged if Summit has, in the absence of complete and final copies of any of the above listed records, supplied sufficient and adequate drafts of the same to the Trust's Representative when Summit believes that the Works are ready for Contractual Practical Completion. Such drafts shall be considered to be sufficient and adequate if any omissions therefrom or incomplete items are such that they do not prevent the commissioning of the Works in accordance with the Commissioning Procedure. Any outstanding information or incomplete records shall be supplied as soon as reasonably practicable but in any event within 28 days of the issue of the Certificate of Contractual Practical Completion.

Schedule - Part 6

Plan

The Plan is separately annexed.



ACQUISITION OF SITE FOR NEW LAW DGH

Scale 1:1250

Job Ref : 15198/1250/SSEB

Date : 26 MAY 1998

Handwritten signatures and initials: J.P., A.D. Cohen

SITE AREA



Site Area 76
6212 m

Remarks
SITE STILL TO BE ACQUIRED BY TRUST AS AT 26/05/98

This is the Plan forming
Part 6 of the Schedule
to the Development Agreement
between Law Hospital National
Health Service Trust (1) and
Summit Healthcare (Law)
Limited (2)

Schedule - Part 7

Specification

1 [Not used]

2.1 Net Departmental Areas of Trust-occupied Space

This is the net areas of the Schedules of Accommodation prepared by Summit Healthcare dated 16th March 1998, page numbers 1 to 59 except for the FM Contractor and Summit areas identified, and the floor areas should be the same as the corresponding areas on the relevant 1:200 Floor Plans.

2.2 Net Departmental Areas (Summit/FM Contractor -occupied Space)

This is the FM Contractor and Summit areas of the Schedules of Accommodation prepared by Summit Healthcare dated 16th March 1998, page numbers 1 to 59, and the floor areas should be the same as the corresponding areas on the relevant 1:200 Floor Plans.

2.3 Circulation Areas (Trust- and Summit/FM Contractor- occupied space)

This is the departmental circulation areas of the Schedules of Accommodation, prepared by Summit Healthcare dated 16th March 1998, page numbers 1 to 59, and the floor areas should be the same as the corresponding areas on the relevant 1:200 Floor Plans.

2.4 Communications areas (Trust- and Summit/FM Contractor- occupied space)

This is the communication area of the Schedules of Accommodation prepared by Summit Healthcare dated 16th March 1998, page numbers 1 to 59, and the floor areas should be the same as the corresponding areas on the relevant 1:200 Floor Plans.

2.5 Plant Rooms

This is the Plant area including the Energy Centre of the Schedules of Accommodation prepared by Summit Healthcare dated 16th March 1998, page numbers 1 to 59, and the floor areas should be the same as the corresponding areas on the relevant 1:200 Floor Plans.

3.1 Room Data Sheets for Trust-occupied Space

This is the second draft room data sheets prepared by Sir Robert McAlpine consisting of:

- Volume 1 - Departments 1/1 to 4/5
- Volume 2 - Departments 6/1 to 9/1
- Volume 3 - Departments 9/2 to 11/4
- Volume 4 - Departments 12 to 17

Volume 5	- Departments 18 to 21
Volume 6	- Departments 22 to 25/6
Volume 7	- Departments 26 to 32
Volume 8	- Departments 33 to 41
Volume 9	- Departments 42 to 48
Volume 10	- Departments 49/1 to 59/2
Volume 11	- Departments 60 to 68
Volume 12	- Departments 69/1/2 to 93

and information setting out the Trust's needs with respect to:-

- (a) Activities
- (b) Personnel
- (c) Planning Relationships
- (d) Area shown is superseded by that in Schedule of Accommodation
- (e) Height (floor - ceiling) is superseded by that shown on marked up 1:200 Floor Plans
- (f) Air
- (g) Lighting
- (h) Noise
- (i) Safety
- (j) Wall - characteristics and materials
- (k) Floor - characteristics and materials
- (l) Ceiling - characteristics and materials
- (m) Doorsets
- (n) Windows
- (o) Internal glazing
- (p) Hatch
- (q) Group 1 equipment
- (r) Group 2 equipment
- (s) Group 3 equipment

3.2 Room Data Sheets for Summit/FM Contractor-occupied Space

This is the second draft room data sheets prepared by Sir Robert McAlpine consisting of:

Volume 1	- Departments 1/1 to 4/5
Volume 2	- Departments 6/1 to 9/1
Volume 3	- Departments 9/2 to 11/4
Volume 4	- Departments 12 to 17
Volume 5	- Departments 18 to 21
Volume 6	- Departments 22 to 25/6
Volume 7	- Departments 26 to 32
Volume 8	- Departments 33 to 41
Volume 9	- Departments 42 to 48
Volume 10	- Departments 49/1 to 59/2
Volume 11	- Departments 60 to 68
Volume 12	- Departments 69/1/2 to 93

and information setting out Summit/FM Contractor's needs with respect to:-

- (a) Activities
- (b) Personnel
- (c) Planning Relationships
- (d) Area shown is superseded by that in Schedule of Accommodation
- (e) Height (floor - ceiling) is superseded by that shown on marked up 1:200 Floor Plans
- (f) Air
- (g) Lighting
- (h) Noise
- (i) Safety
- (j) Wall - characteristics and materials
- (k) Floor - characteristics and materials
- (l) Ceiling - characteristics and materials
- (m) Doorsets
- (n) Windows
- (o) Internal glazing
- (p) Hatch
- (q) Group 1 equipment
- (r) Group 2 equipment
- (s) Group 3 equipment

3.3 Room Data Sheets for Communications Space & Plant Rooms

This is the second draft room data sheets prepared by Sir Robert McAlpine consisting of:

- Volume 1 - Departments 1/1 to 4/5
- Volume 2 - Departments 6/1 to 9/1
- Volume 3 - Departments 9/2 to 11/4
- Volume 4 - Departments 12 to 17
- Volume 5 - Departments 18 to 21
- Volume 6 - Departments 22 to 25/6
- Volume 7 - Departments 26 to 32
- Volume 8 - Departments 33 to 41
- Volume 9 - Departments 42 to 48
- Volume 10 - Departments 49/1 to 59/2
- Volume 11 - Departments 60 to 68
- Volume 12 - Departments 69/1/2 to 93

and information setting out Sir Robert McAlpine's proposals with respect to:-

- (a) Activities
- (b) Personnel
- (c) Planning Relationships
- (d) Area shown is superseded by that in Schedule of Accommodation
- (e) Height (floor - ceiling) is superseded by that shown on marked up 1:200 Floor Plans

- (f) Air
- (g) Lighting
- (h) Noise
- (i) Safety
- (j) Wall - characteristics and materials
- (k) Floor - characteristics and materials
- (l) Ceiling - characteristics and materials
- (m) Doorsets
- (n) Windows
- (o) Internal glazing
- (p) Hatch
- (q) Group 1 equipment
- (r) Group 2 equipment
- (s) Group 3 equipment

4 **Design Life Criteria**

This is the Design Life Criteria for all relevant elements of the building prepared by Summit dated 10th June 1998, page numbers 1 to 8.

5 **Outline Architectural & Structural Specification plus Addendum**

This is the Outline Architectural & Structural Specification Revision 1 dated 12th March 1998 pages 1 to 33, and Addendum dated 12th March 1998 pages 1 to 9 produced by Sir Robert McAlpine.

6 **M&E Services Specification plus Addendum**

This is the Outline M&E Services Specification dated 1st April 1998 pages 1 to 34 and Addendum dated 11th March 1998 pages 1 to 4 including the cover sheet, as produced by Sir Robert McAlpine.

7 **M&E Schematics**

These are the M&E Schematics produced by Sir Robert McAlpine and consists of the following drawings produced by Sir Robert McAlpine:

Electrical Drawings

HK/E10003/S/500	HV Distribution Configuration
HK/E10003/S/501	Energy Centre LV Distribution Schematic
HK/E10003/S/502	West Block LV Distribution Schematic
HK/E10003/S/503	West Block LV Distribution Schematic Section Boards W3.1 & W3.3
HK/E10003/S/504	West Block LV Distribution Schematic Section Boards W3.2 & W3.4
HK/E10003/S/505	South/North Block LV Distribution Schematic

HK/E10003/S/506	South Block LV Distribution Schematic Section Boards S3.1 & S3.3
HK/E10003/S/507	South Block LV Distribution Schematic Section Boards S3.2 & S3.4
HK/E10003/S/508	North Block LV Distribution Schematic Section Boards N3.1 & N3.3
HK/E10003/S/509	North Block LV Distribution Schematic Section Boards N3.2 & N3.4
HK/E10003/S/510	Sub-Station Earthing Arrangement
HK/E10003/S/520	Fire Alarm Schematic
HK/E10003/S/530	Radio Wiring Schematic
HK/E10003/S/540	Data and Voice Wiring Schematic
HK/E10003/S/550	Television and Wiring Schematic
HK/E10003/W/00/68/500	West Block Level 0 Electromagnetic Hold Open Device Locations
HK/E10003/W/01/68/501	West Block Level 1 Electromagnetic Hold Open Device Locations
HK/E10003/W/02/68/502	West Block Level 2 Electromagnetic Hold Open Device Locations
HK/E10003/S/00/68/503	South and Central Block Level 0 Electromagnetic Hold Open Device Locations
HK/E10003/S/01/68/504	South and Central Block Level 1 Electromagnetic Hold Open Device Locations
HK/E10003/S/02/68/505	South and Central Block Level 2 Electromagnetic Hold Open Device Locations
HK/E10003/N/01/68/506	North Block Level 1 Electromagnetic Hold Open Device Locations
HK/E10003/N/02/68/507	North Block Level 2 Electromagnetic Hold Open Device Locations
E10003/SK/L/500A	Standard Ward Lighting Layout
E10003/SK/FA/500A	Standard Ward Fire Alarm Layout
E10003/SK/SP/500	Standard Ward Small Power Layout

Mechanical Drawings

GENERAL

M10003/TYP/WARD REV.B	Typical ward layout heating and ventilation
M10003/SK/SECTION/001	Typical corridor section showing service distribution zones

HEATING

M10003/HSK/001	Energy centre heating pipework schematic layout
M10003/HSK/002	Hospital blocks heating pipework schematic layout
M10003/HSK/003	Typical plantroom heating pipework schematic layout

M10003/HSK/004	North wing heat station N1 to N3 pipework distribution
M10003/HSK/005	North wing heat station N4 to N5 pipework distribution
M10003/HSK/006	South wing heat station S1 to S3 pipework distribution
M10003/HSK/007	West wing heat station W1 to W3 pipework distribution
M10003/HSK/008	Heat station locations
M10003/HSK/NW/001	North wing level 1 heating zone layout
M10003/HSK/NW/002	North wing level 2 heating zone layout
M10003/HSK/SW/001	South wing level 0 heating zone layout
M10003/HSK/SW/002	South wing level 1 heating zone layout
M10003/HSK/SW/003	South wing level 2 heating zone layout
M10003/HSK/WW/001	West wing level 0 heating zone layout
M10003/HSK/WW/002	West wing level 1 heating zone layout
M10003/HSK/WW/003	West wing level 2 heating zone layout
M10003/HSK/WW/004	West wing level 3 heating zone layout

VENTILATION

M10003/SK/RISER002	Indicative riser details west wing south east corner
M10003(SK)010	Typical ward block tempered air ventilation schematic
M10003(SK)101	Oncology filtered a.c. ventilation schematic
M10003/TH/VENT	Ultra-clean theatre a.c. and ventilation layout
M10003/MV/001	Layout showing areas served by mechanical vent level 0
M10003/MV/002	Layout showing areas served by mechanical vent level 1
M10003/MV/003	Layout showing areas served by mechanical vent level 2
M10003/MV/004	Layout showing areas served by mechanical vent level 3

PLUMBING

M10003(SK)02 REVC	Hospital blocks water services schematic layout
M10003(SK)06	Hospital blocks water services filtration plant schematic
M10003/559/TYPWARD/PVC-C	Typical ward water services layout pvc-c pipework

PNEUMATIC TUBE

M10003(SK)27	Mechanical services pneumatic conveyancing schematic
M10003/PC/001 REVA	Pneumatic conveyancing system schematic level 0
M10003/PC/002 REVA	Pneumatic conveyancing system schematic level 1
M10003/PC/003 REVA	Pneumatic conveyancing system schematic level 2
M10003/PC/004 REVA	Pneumatic conveyancing system schematic level 3 plant rooms

MEDICAL GASES

M10003/544/WW/L2	Level 2 West Wing Medical Gas Layout
M10003/544/WW/L1	Level 1 West Wing Medical Gas Layout
M10003/HK/WW/00mg	Level 0 West Wing Medical Gas Layout
M10003/544/SW/L2	Level 2 South Wing Medical Gas Layout
M10003/544/SW/L1	Level 1 South Wing Medical Gas Layout
M10003/HK/SW/00MG	Level 0 South Wing Medical Gas Layout
M10003/544/NW/L2	Level 2 North Wing Medical Gas Layout
M10003/544/WW/L1	Level 1 North Wing Medical Gas Layout

8 1:300 Floor Plans showing position of Service Risers

These are the 1:300 floor plans produced by Sir Robert McAlpine showing the position of service risers and consist of the following drawings:

M10003/RISE/001	Indicative riser location schematic level 0
M10003/RISE/002	Indicative riser location schematic level 1
M10003/RISE/003	Indicative riser location schematic level 2
M10003/RISE/004	Indicative riser and plantroom locations schematic level 3

9 Landscaping Strategy, Concept & Drawings

This is the Landscape Strategy and Concept dated 22nd December 1997 page numbers 1 to 26 and masterplan drawing number:

LA/WS/-PP/01/01 revision C produced by Sir Robert McAlpine.

10 Lift Schedule

This is the Schedule of lift types, numbers and capacity produced by Sir Robert McAlpine consisting of a cover sheet and an A3 table dated 18th March Revision C.

11 Group 1 Equipment Specification

This specification dated 13th March 1998 and consisting of 5 pages including the cover sheet indicates the level of specification offered for Group 1 equipment together with suggested suppliers and/or catalogue numbers produced by Sir Robert McAlpine and should be read in conjunction with the Room Data Sheets.

12 1:1000 Development Control Plan

This consists of the following drawings produced by Sir Robert McAlpine:

AR/WB/00/PP/02/01	Dated February 98
AR/WB/02/PP/02/03	Dated February 98
AR/WB/03/PP/02/04	Dated February 98

13 1:1000 Site Plan

This consists of drawing number 12 revision G produced by Sir Robert McAlpine

14 1:200 Floor Plans & Typical Elevations

These consists of the following drawings produced by Sir Robert McAlpine:

1:200 Floor Plans

AR/S/00/PP/02/01	Revision 1
AR/W/00/PP/02/03	Revision 1
AR/S/01/PP/02/04	Revision 1
AR/N/01/PP/02/05	Revision 1
AR/W/01/PP/02/06	Revision 1
AR/S/02/PP/02/07	Revision 1
AR/N/02/PP/02/08	Revision 1
AR/W/02/PP/02/09	Revision 1
AR/S/03/PP/02/10	Revision 1
AR/N/03/PP/02/11	Revision 1
AR/W/03/PP/02/12	Revision 1
Drawing number 40	Revision A

1:200 Elevations

Drawing number 26	Revision D
Drawing number 28	Revision D

15 1:200 Floor Plans Commentary

This is the commentary to accompany the 1:200 floor plans dated 11th March 1998 consisting of 6 pages including the cover sheet produced by Sir Robert McAlpine.

16 **1:50 Typical Sections**

This consists of drawing number 41 dated 11.3.98 produced by Sir Robert McAlpine.

17 **1:200 Floor Plans, marked up with floor - ceiling heights**

These consists of the following 1:200 Floor Plans, marked up with floor - ceiling heights produced by Sir Robert McAlpine:

AR/S/00/PP/35/13	Dated March 98
AR/W/00/PP/35/14	Dated March 98
AR/S/01/PP/35/15	Dated March 98
AR/N/01/PP/35/16	Dated March 98
AR/W/01/PP/35/17	Dated March 98
AR/S/02/PP/35/18	Dated March 98
AR/N/02/PP/35/19	Dated March 98
AR/W/02/PP/35/20	Dated March 98
AR/W/03/PP/35/21	Dated March 98

18 **1:50 Standard Ward Room Layout Plan & Elevations**

These are the final standard ward room layout plan and elevations produced by Sir Robert McAlpine and consist of the following drawings:

1:50 Standard Ward Room Layout Plan

AR/W1/01/PP/02/01 Revision 8

Elevations

AR/-/PP/03/101	Revision 2
AR/-/PP/03/102	Revision 2
AR/-/PP/03/103	Revision 3
AR/-/PP/03/113	Revision 1
AR/-/PP/03/114	Revision 1

19 **Siemens' Requirements**

This is the information supplied to Summit by Siemens setting out their requirements for imaging and other radiology areas, and for the PACS, consisting of: Technical spreadsheets, Specifications, Drawings, Catalogue Illustrations for imaging equipment required to be fixed and/or installed within the new hospital and an A3 marked up drawing identifying the requirement for raised modular floors and screeds. This information is included within Two Books as follows:

BOOK 1

Description	Section
South Wing Level One - Layout of Imaging Department indicating extent of raised modular floor, screed and flat slab. Alan Bradbury's fax to Christine Fyfe dated 26.5.98 confirming the position on Imaging floors. Siemens' letter dated 22.5.98 to Alan Bradbury confirming A3 sketch which indicates Raised Access Floor and Screeds.	1
MRI Site Survey - Moving Train Magnetic Field Variation Study	2
Detailed Spreadsheets (4 pages) of proposals	3
General Installation Notes	4
Special Procedures Room 28.16.2 (Philips Transfer Equipment) Layout drg(s), [as built] specification	5
Barium Special Procedure Room 28.16.3 (Siemens Transfer Equipment) Layout drg(s), specification	6
Cardiac Cath. Lab Room 72.1 Layout drg(s), Engineering & Construction Data, Specification	7
CT Scanner Room 30.1 Layout drg(s), Engineering & Construction Data, Specification	8
MRI Scanner Room 3.2.1 Layout drg(s), Engineering & Construction Data, Specification	9

Note:

It should be noted that no quotations are included for Item 7 Cardiac Cath. Lab and Item 9 MRI within the information to Sir Robert McAlpine at this present time because these items are not included within the current Siemens Investment Plan. However, these are future requirements for which the hospital must be designed and built to accommodate as per the indicative drawings, indicative specifications included and the sample quotation also included for the Cardiac Cath. Lab.

BOOK 2

Description	Section
Gamma Camera Room 31.2 Layout drg(s), Engineering & Construction Data, Specification	1
Various Equipment Catalogues	2
PACS Specification	3
General Radiology Room 28.12.1 Layout drg(s), Engineering & Construction Data, Specification	4
General Radiology Room 28.12.2 Layout drg(s), Engineering & Construction Data, Specification	5
General Radiology Room 28.12.3 Layout drg(s), Engineering & Construction, Specification	6
General Radiology Room 28.12.4 Layout drg(s), Engineering & Construction, Specification	7
IVP Tomo Room 28.16.1	8
Mammography Room 28.14 Layout drg(s), Engineering & Construction Data, Specification	9
Bone Densitometry Room 28.13 Layout drg(s), Engineering & Construction Data, Specification	10
Dental Room 28.15 Layout drg(s), Engineering & Construction Data, Specification	11
Resuscitation Room Room 17.20 Layout drg(s), Engineering & Construction Data, Specification	12
Ultrasound Room 29.1.1 Specification only. No requirements other than 13A.5.5.0	13
Ultrasound Room 29.1.2 Specification only. No requirements other than 13A.5.5.0	

Note:

It should be noted that no quotation is included for Item 1, Gamma Camera within the information to Sir Robert McAlpine at this present time because this item is not included within the current Siemens Investment Plan. However, this is a future requirement for which the hospital must be designed and built to accommodate as per the indicative drawings and specifications included.

20 Fire Strategy

This is the Fire Strategy Revision F dated 1st April produced by Sir Robert McAlpine consisting of 6 pages including the front cover.

21 Trust Headline Items

The List of Headline Items dated 28th May 1998 consisting of 5 pages which is an Agreed Form document and confirms alterations and/or clarifications to the design produced by Sir Robert McAlpine, which have arisen through discussions and agreement with the Trust since the issue of second draft room data sheets.

22 Staff Residences Foundations

The foundations for the staff residences located adjacent to the entrance of the Site shall be such that:

- potential differential settlement of the ground shall be limited by ground improvement measures such that overall deflection due to bending in each of the foundation raft slabs measured from a flat plane shall be no greater than 35mm;
- the overall deflection of the foundation raft slab from the horizontal plane shall be no more than 1 in 200;
- the maximum total potential settlement shall be limited to the lesser of 50mm, or acceptable tolerances for services connections etc.

Schedule - Part 8
Trust's Requirements

The Trust's Requirements are an Agreed Form document and consist of four volumes as follows:

Volume 1 - Trust's Requirements dated 2nd June 1998 including the following page structure:

Volume of pages	No. of Pages
Cover Page	1
Contents	2
Schedule of Tables	1
Tables:	
Table 1	19
Table 2	0
Table 3	22
Table 4	2
Table 5	1
Table 6	2
Table 7	1
Table 8	0
Table 9	7
Table 10	72
Table 11	3
Table 12	0
	<u>129</u>
Trust Requirements	+86
Total	219 pages

Balance of Volume 1 plus Volumes 2, 3&4 - 1:50 room layout drawings as marked up by Percy Thomas Partnership, Sir Robert McAlpine's architect, at the last respective department meeting with the Trust and their end users prior to the 1.4.98 and notes of meetings as referred to in the Trust's Requirements as a schedule to Table 1 as follows:

<u>DEPARTMENT</u>	<u>DRAWING</u>	<u>NOTES/ CORRESPONDENCE</u>
3.1 Energy Centre	AR/EO/00/11/02/01 (Rev 1)	
3.3 Mortuary	AR/S3/00/PP/02/21 (Rev 6)	
4.1 Education & Training	AR/W5/00/PP/02/23 (Rev 1) AR/W6/00/PP/02/24 (Rev 3)	✓

4.2	Occupational Health	AR/W6/00/PP/02/24 (Rev 4)	
4.5	Creche	AR/CR/0/PP/02/02	✓
4.6	Estates/Stores	AR/W2/00/PP/02/20 (Rev 1) AR/W3/00/PP/02/21 (Rev 3) AR/W4/00/PP/02/22 (Rev 2)	
4.7	Computer Dept.	AR/W3/00/PP/02/21 (Rev 4)	
4.8	Medical Physics	AR/W4/00/PP/02/22 (Rev 2)	
5.1	Imaging	AR/S1/01/PP/02/01 (Rev 1) AR/S2/01/PP/02/02 (Rev 1) AR/S3/01/PP/02/03 (Rev 1)	✓
5.2	Medical Day Unit	AR/C1/01/PP/02/01 (Rev 1)	✓
5.3	Social Work	AR/S4/01/PP/02/04 (Rev 2)	
5.4	Joint Admissions	AR/S4/01/PP/02/04 (Rev 3) AR/S5/01/PP/02/05 (Rev 6)	
5.7	Main Entrance	AR/C2/01/PP/02/02 (Rev 3) AR/N1/01/PP/02/01 (Rev 3)	✓
6.1	General Out-Patients	AR/N1/01/PP/02/01 (Rev 1) AR/N2/01/PP/02/02 (Rev 3)	✓
6.2	Specialist Out-Patients	AR/C2/01/PP/02/02 (Rev 2) AR/N8/01/PP/02/08 (Rev 3)	✓
6.4	Elderly/Rehabilitation	AR/N2/01/PP/02/02 (Rev 2) AR/N3/01/PP/02/03 (Rev 1) AR/N4/01/PP/02/04 (Rev 1) AR/N5/01/PP/02/05 (Rev 1)	✓
6.5	Rehabilitation Department (Ward Therapy Areas)	AR/N5/01/PP/02/05 (Rev 1) AR/N6/01/PP/02/06 (Rev 1) AR/N7/01/PP/02/07 (Rev 1) AR/N3/01/PP/02/03 (Extract) AR/W6/02/PP/02/12 (Extract)	✓
7.3	C.C.U./M.H.D.U.	-	✓

8.1	Theatres	AR/S1/02/PP/02/07 (Rev 2) AR/S2/02/PP/02/08 (Rev 2) AR/S4/02/PP/02/10 (Rev 3) AR/S5/02/PP/02/11 (Rev 3) AR/S6/02/PP/02/12 (Rev 3)	✓
8.2	I.T.U./S.H.D.U.	AR/S2/02/PP/02/08 (Rev 2) AR/S3/02/PP/02/09 (Rev 2)	✓
8.3	Day Surgery	AR/S4/02/PP/02/10 (Rev 3) AR/S5/02/PP/02/11 (Rev 3) AR/S6/02/PP/02/12 (Rev 3)	
8.4	Neo-Natal Unit	AR/S3/02/PP/02/09 (Rev 1)	
9.2	Obstetric Wards/ Assessment Unit	AR/C2/02/PP/02/04 (Rev 2) AR/N5/02/PP/02/13 (Rev 2) AR/N6/02/PP/02/14 (Rev 1) AR/N7/02/PP/02/15 (Rev 1) AR/N8/02/PP/02/16 (Rev 1)	
9.3	Laboratory	AR/N2/02/PP/02/10 (Rev 6) AR/N3/02/PP/02/11 (Rev 2) AR/N4/02/PP/02/12 (Rev 2)	✓ 3 No. 3 No.
10.1	Surgical Floor	AR/W1/02/PP/02/07 AR/W6/02/PP/02/08 AR/W3/02/PP/02/09 AR/W4/02/PP/02/10 AR/W5/02/PP/02/11 AR/W2/02/PP/02/12	(Rev 2) (Rev 2) (Rev 2) (Rev 2) (Rev 2) (Rev 1)
11.1	Anaesthetic Offices	AR/S1/03/PP/02/13 AR/S2/03/PP/02/14	(Rev 1) (Rev 1)
13.1	Offices	AR/W3/03/PP/02/15 AR/W6/03/PP/02/18	(Rev 1) (Rev 1)
14.1	Residences	AR/R1/-/PP/02/01	
15.2	On-Call/Common Room	A4 Extracts	

Schedule - Part 9**Finalisation of Room Data Sheets and 1:50 Room Layout Drawings**

Following issue to the Trust of each final 1:50 Room Layout Drawing and the final Room Data Sheet relative to it the Trust shall within 20 Business Days of such issue or within 20 Business Days of issue of the final Room Data Sheet if this occurs later be entitled to require at no additional cost and without the implementation of any Trust Works Change minor changes such as the location of services outlets, the location of fitted units, the alteration of room layouts which do not require structural changes provided that any such change does not require any significant consequential change to be made to mechanical and electrical design and provided further that any such change will not delay the Contractual Practical Completion Date and/or have any material cost implication to the Contractor. Material for present purposes means a net additional cost to the Contractor of £5,000 resulting from any one minor change subject to an aggregate maximum of £50,000 and Summit will give effect to all such requirements and amend the Specification accordingly. Any dispute arising from the foregoing provisions will be subject to the Dispute Resolution Procedure.

Schedule Part 10

Design Development Procedure

1 Submission of Reviewable Design Information

1.1 Summit shall submit the Reviewable Design Information in completed packages as referred to in the Trust Requirements (each such package as submitted shall hereinafter be referred to as the "Submitted Item") to the Trust's Representative in sufficient time taking account of the procedure hereinafter referred to comply with the Construction Timetable, as revised from time to time in accordance with the provisions of this Agreement and the following procedure shall apply:

1.1.1 As soon as possible and in any event within 10 Business Days of the date of submission of the Submitted Item to the Trust's Representative (or within such longer period as the parties may have previously agreed) the Trust's Representative shall return one copy of the relevant Submitted Item endorsed "no comment" or (subject to paragraph 2 below) "comments" as appropriate;

1.1.2 Summit may proceed to full implementation (which shall include *inter alia* the carrying out of construction work) in the case of any Submitted Item which is returned from the Trust's Representative endorsed "no comment" or pursuant to paragraph 1.1.3 below. If the Trust's Representative returns the Submitted Item endorsed "comments" Summit shall:

1.1.2.1 amend the Submitted Item in accordance with the Trust's Representative's comments; or

1.1.2.2 revise the same and re-submit them to the Trust's Representative in accordance with this Schedule Part 10; or

1.1.2.3 if it disagrees with the Trust's Representative's comments, refer the matter for determination under the Dispute Resolution Procedure.

If Summit amends the Submitted Item, it shall send a copy of the Submitted Item as amended to the Trust's Representative within 10 business days (or such other period as may be practical) of receiving the comments of the Trust's Representative.

1.1.3 If the Trust's Representative fails to return any Submitted Item (including any re-Submitted Item) duly endorsed within 10 business days (or such longer period as the parties may have previously agreed) of receipt of the Submitted Item, then the Trust's Representative shall be deemed to have returned the Submitted Item to Summit marked "no comment".

1.2 If the Trust's Representative raises comments on any Submitted Item pursuant to paragraph 1.1, he shall state the ground in paragraph 3 of this Schedule Part 10 upon which such comments are based, and the evidence or other information necessary to substantiate such ground. The Trust's Representative shall state his ground specifically and not generally. To the extent that the Trust's Representative purports to comment on a Submitted Item related to Reviewable Design Information other than on the basis set out in this Schedule Part 10 or fails to comply with the provisions of this paragraph 1.2, such comments may be treated by Summit as "no comment" in which event Summit shall intimate this to the Trust's Representative and in the event of disagreement the matter will be referred for determination under the Dispute Resolution Procedure.

1.3 If the Dispute Resolution Procedure finds in favour of Summit in respect of any matter referred to it pursuant to this Schedule Part 10, then the matter shall be deemed to be an Excusable Event (comprising a Trust Breach) and the provisions of Clause 4.3 of this Agreement shall apply.

2 Further Information

2.1 Subject to paragraph 2.2 below, if the Trust's Representative reasonably so requires within 5 Business Days of the date of submission of the Submitted Item, Summit shall submit any further or other information, data or documents which may be reasonably so required by the Trust's Representative in order to determine whether he has a legitimate basis for commenting or objecting in accordance with this Schedule Part 10.

2.2 Summit shall not be required by the provisions of paragraph 2.1 to submit to the Trust's Representative any information, data or documents of a commercially sensitive nature. However, if Summit does not submit any such information, the Trust's Representative shall be entitled to:

2.2.1 Comment on the Submitted Item on the basis of the information, data and documents which have been provided; or

2.2.2 Object to the Submitted Item, where information, data and documents which are submitted would not enable an experienced and competent person fulfilling a role similar to that of the Trust's Representative to determine acting reasonably whether he has a legitimate basis for commenting or objecting in accordance with this Schedule Part 10 on the grounds that insufficient information, data and documents have been provided to enable the Trust's Representative so to determine.

3 Grounds of Objection

3.1 The expression "raises comments" in this paragraph 3.1 shall be construed to mean "raises comments or make objections" unless the contrary appears from the context. The Trust's Representative may raise comments in relation to any Submitted Item on the ground that the Submitted Item is in breach of any Applicable Laws but otherwise may raise comments in relation to the Submitted Item only as follows:-

- 3.1.1 If Summit's ability to perform its obligations under this Agreement would be materially adversely affected by the acceptance of the Submitted Item; or
 - 3.1.2 The acceptance of the Submitted Item would materially adversely affect any right of the Trust under this Agreement or its ability to enforce any such right; or
 - 3.1.3 The acceptance of the Submitted Item would materially adversely affect the Trust's ability to perform its obligations under this Agreement; or
 - 3.1.4 Subject to Clause 4.2, the Submitted Item is inconsistent with the terms of the Trust Requirements or the Specification
- 3.2 The Trust's Representative shall act properly and reasonably in raising any comments or objections in accordance with paragraph 3.1.

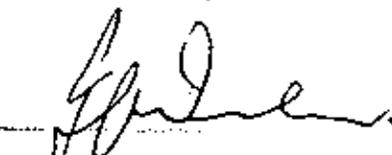
4 **No Objection**

- 4.1 To avoid doubt, a reference in this Agreement to their being "no objection" under the Design Development Procedure in relation to a particular matter means that the relevant Submitted Item shall have been submitted in accordance with the provisions of this Schedule Part 10 and returned (or deemed returned) by the Trust's Representative with an endorsement of "no comment" or returned with an endorsement "comments", in the latter case the matter having been amended by Summit in accordance with such comments.

Schedule Part 11

Trust Representative Requirements

1. **Room for Meetings:** The Trust by prior arrangement shall have shared access to the Contractor's meeting room(s) (which shall be of sufficient size to cope with Project meetings (as defined in the Building Contract).
2. **Trust's Representative Accommodation:** The Trust's Representative shall be provided with suitable furnished accommodation for 5 No. persons including cleaning adequate power, heating and lighting free of charge along with any rate payments. The details of such accommodation to be agreed between the Trust's Representative and Summit as soon as reasonably practicable after Financial Close.
3. **Sanitary Accommodation:** suitable sanitary accommodation shall be provided and maintained in a clean condition (to be shared with Summit and the Contractor's supervisory staff).
4. **Car Parking:** Three (3) spaces shall be provided for the exclusive use of the Trust's Representative.
5. **Name Board:** Summit shall obtain approval for and shall provide a suitable temporary name board displaying, inter alia, the title of the Project, the name of the Trust and of the Trust's Consultants.
6. **Telephone:** As soon as practicable after Financial Close, Summit shall provide a separate telephone line for the sole use of the Trust's Representative (number and position of extensions to be agreed).
7. **Facsimile Installation:** As soon as practicable after Financial Close, Summit shall provide a separate telephone line for a facsimile machine for the sole use of the Trust's Representative.
8. **Photocopier:** The Trust's Representative shall have reasonable limited access to use (free of charge) of an on Site photocopier.
9. **Protective Clothing:** Summit shall provide 5 sets of protective clothing for the sole use of the Trust's Representative (sizes to be agreed) as follows:-
 - safety helmets to BS EN 397, neither damaged nor time expired;
 - jackets or equivalent waterproof coats;
 - pairs of boots with steel insoles and toe-caps;
 - safety glasses



 Trust


 Alan D. Cooper
 Summit

Trust Headline Items - 28th May 1998

INTRODUCTION

- 1 This document, comprising 5 printed sheets, sets out a series of design issues which have been discussed and agreed between the Trust and Summit Health.
- 2 They are listed in this way because they either clarify, change or supersede information which is included elsewhere in the Contract Documents.
- 3 The cost implication of the information is also agreed and is given to allow a basis for any future, post contract, revision.
- 4 The cost implication is, however, allowed for in the overall Construction Price.
- 5 The items originate, either from:-

A Sir Robert McAlpine Ltd change control procedure, which has been operated during the pre-contract period,

B Value engineering exercises carried out in conjunction with the trust by SRM and their designers,

C Savings/costs identified by design development during the pre-contract period

D Savings identified by the Trust or SRM during contract discussions during April 1998

This is the list of Headline Items (consisting of 5 pages) in the Agreed Form referred to in the Development Agreement between Law Hospital National Health Service Trust ("the Trust") and Summit Healthcare (Law) Limited ("Summit") dated 16 June 1998.

McCoy on behalf of the Trust.

Rob [Signature] on behalf of Summit.

Trust Headline Items - 28th May 1998

**Sir Robert
 McALPINE**

Headline Number	origin	Ref.	Description	Total £	Commentary
1	A	001	Additional 20 bed rehab ward (QS/IAF/2/999/CCP/0035 dated 15/4/98)	13,000	It is agreed that this is a Change, originated by the Trust, and therefore will constitute an addition to the cost plan
2	A	002	Bedhead trunking in lieu of "Scottish wardrobes"	0	It is agreed that this is a Change, originated by the Trust. The cost implication has been reduced to nil by the adoption of a reduced specification suggested by the Trust and based on Cable Flow quotation or equivalent
3	B	005	Revised building heights	-90,000	This is a value engineering saving, identified by SRM. There remain some areas (about 10%) where ceiling heights remain to be agreed with the Trust and SRM accept the risk of re-engineering in these places to allow the saving to be realised. The areas which remain to be agreed with the Trust are noted in the Architectural comments included as part of the Trust Requirements.
4	C	010	Change to Pneumatic tube system	-91,000	This is the result of an agreement between the Trust and SRM, to have a greater number of stations than originally proposed by SRM, but also to use a smaller diameter system, as proposed by the Trust. The agreed solution is illustrated by Hulley & Kirkwood drawing M10003(SK)27
5	D	018	Shielding to MRI suite	0	This item has no cost implication, and exists to record the fact that the MRI suite is not fitted out (particularly with reference to shielding) before CPC. (i.e. this will not be part of SRM contract).
6	A	019	Motorised theatre doors	4,000	It is agreed that this is a Change, originated by the Trust, and therefore will constitute an addition to the Cost Plan. The requirement is now for one motorised door between Theatre No.1 and the Preparation Room
7	A	020	Swipe Card Access (altered from the CCP raised - 8 deleted and 4 added)	0	Additional Swipe Cards to :- Post Mortem Suite (2 No.), Medical Physics (1No.), Computer Suite (1No.), Labs (3 No.) and Library (1 No.)

Trust Headline Items - 28th May 1998

**Sir Robert
 McALPINE**

8	A	024	Oncology isolation ward requirements	83,000	This is for an increased specification to meet the standards seen as appropriate by the clinicians. It includes for air conditioning and filtration, and for filtration on the single line water supply, heated traps, and instantaneous water heaters.
					The Water system is detailed in Hulley & Kirkwood's proposal of 23/1/98 with the air systems contained within Hulley & Kirkwood's proposal of 15/4/98. It has been agreed that the design in this area can be revisited to reduce the scope and cost.
9	A	025	Arrangement of ceiling heating panels	0	Included as a record of the fact that SRM have agreed to adopt the Trust's preferred layout
10	A	026	Omission of internal column to Theatre 2	0	Included as a record that SRM have agreed to adopt altered layout
11	A	029	Alternative methods of water filtration	0	Included as a record of the fact that it is agreed to adopt cartridge filtration with automatic backwash
12	A	030	Theatre Floor Extension	0	Included as a record of fact that SRM have agreed to adopt the current layout
13	A	035	Compliance with new legislation (e.g. HTM81, Technical Standards)	390,000	The additional costs brought about by the introduction of new legislation. It includes for the affects of both revised building regulations and the application of the FIRECODE including HTM81 in Scotland, and this is the price for which SRM will include all risk for these items.
14	A	039.1	Additional telephone points and hand sets (amount altered from QS/IAF/0/999/CCP/0041 Date Raised 15/04/98 - additional console)	39,600	This allows for the telephone points detailed in the second issue of the room data sheets, reduced by agreement to a total of 1100 activated extensions. The number of operator consoles will be five.
15	A	039.2	Additional telephone points and hand sets (Trust request to make provisional sum for telephones - saving 1000 to £25)	-32,600	This adjustment results from an agreement to remove the SRM allowance and replace it with a provisional sum based on a net cost of £50 per handset and a total of 1000.
16	A	040	Additional data points (altered from QS/IAF/0/999/CCP/0042 Date Raised 15/04/98) Trust / H&K to work within allowance	0	It has been agreed that there will be 2928 wired data outlets of which 1950 will be active data points with 7.5% spare capacity which equates to a further 150 possible future active data points
17	A	041	Additional socket outlets	46,000	This increase in cost reflects the number of outlets within the second draft of the room data sheets further adjusted by reductions in the Trust Requirements to a maximum of 5615 twin outlets.

Trust Headline Items - 23rd May 1998

17	A	011	Additional socket outlets	16,000	This increase in cost reflects the number of outlets within the second draft of the room data sheets further adjusted by reductions in the Trust Requirements to a maximum of 5615 twin outlets.
18	A	042	Compressed air installation (altered from QS/IAF/0/999/CCP/0044 Date Raised 15/04/98 - Number of points to be reduced)	17,000	It has been agreed that compressed air installations will be supplied to the following single rooms: Medical (15 No.), Surgical (18No.), Paediatric (6No.) and Joint Admissions (2No.)
19	A	044	Additional data points to laboratories (altered from QS/IAF/0/999/CCP/0033 Date Raised 24/03/98)	8,000	It has been agreed that in addition to the data points shown on the Room Data Sheets a further 40 single data points will be supplied in the laboratories
20	A	045	Re-configuration of maternity unit	0	This item has no cost implication, and exists to record the fact that an amended layout has been incorporated at the Trust's request
21	A	046	Theatre and ITU pendants (Trust requirement for Draeger deleted - amount allowed to become Prov Sum)	0	Included as a record of the fact that SRM are to supply and fix articulated pendants of a manufacture to be agreed with the Trust, subject to an overall maximum value of £305,982.00 (this amount excludes SRM's 7.5% On Cost & Profit) for the following :- Theatre (24 No.), ITU/HDU (12 No.), CCU (12No.) and Endoscopy (2No.)
22	A	047	Pneumatic tube system changes (Trust to delete additional requirement)	0	No cost on the basis that the Trust will assist in the reconfiguration of the pneumatic tube system to eliminate the impact of additional zones and two stations and two tier bend station introduced by the Trust.
23	A	49	Relocation of internal columns		This additional cost to be absorbed within SRM cost plan, on the understanding that the Trust will discuss further with a view to accommodating the columns in their original positions if at all possible. Cols in question are - Within A & E entrance/operating theatre, ENT clinic/Obstetric ward, Rehab entrance/Obstetric ward, Hydro pool/Obstetric ward, and Gym/On call accommodation.
24	A	50	Auto attendant facility for PABX (Summit have confirmed deletion)	0	Requirement deleted
25	A	51	Telephone System Parameters (altered from QS/IAF/2/520/CCP/0046 Date Raised 22/04/98 - data link up spec, voice mail, add call management deleted, add exchange lines altered to 30 per provider)	12,000	This relates to additional requirement for 30 additional exchange lines from each of two service providers. The requirement for 100 megabit connection is reduced to 2 megabit for data transmission.

Trust Headline Items - 28th May 1998

					DPNSS Signalling and ISDN connections also to be provided with the voice mail and additional call management deleted by agreement. A Provisional Sum of £5,000.00 included for private circuits
26	A	53	Medical Records		No additional cost, as it is agreed that archive records may be located elsewhere in currently available areas.
27	D		Deletion of telephone handsets from construction contract	-65,000	The Trust have suggested, and it has been agreed, that they will supply telephone handsets at their own cost. SRM will fix those which are wall mounted. The Telephone handsets have therefore become Group Two Equipment items. The handsets will be standard ISDX or equivalent similar to those in use by the Trust.
28	D		Change in categorisation of examination lamps	-26,000	It was agreed that 16 of the 30,000 lux wall mounted lamps would now be categorised a Group 2 Equipment. It was also agreed that these items could revert to group one should mutually agreeable reductions be possible to the design of the water and air systems for the Oncology Unit
29	D		Change in number and specification of examination lamps	-66,000	It is agreed that there will be a total of 116 wall mounted examination lamps, 70 will be specified at 3,500 lux with the remaining 30 specified at 30,000 lux. The numbers and types can be altered subject to an overall maximum value of £92,400.00 (this amount excludes SRM's 7.5% On Cost & Profit)
30			Base Units		It was agreed that in all areas with the exception of the laboratory units the base units will be taken to floor level in lieu of being cantilevered from the wall
31	B		Value Engineering reduction for the omission of lifts	-190,000	This relates to the reduction in goods lifts, appendix J of the Trust's Requirements
32	-		Clinical Equipment Rail		SRM will fix, at no additional cost to Summit, 2 No. by 2m. sections of rail in each of up to 200 locations. The rail being supplied as a group 2 item by the Trust, and similar to rail specified in other locations within the ADB system

McGowan Donald

1 Form
12th - 5
for Summit

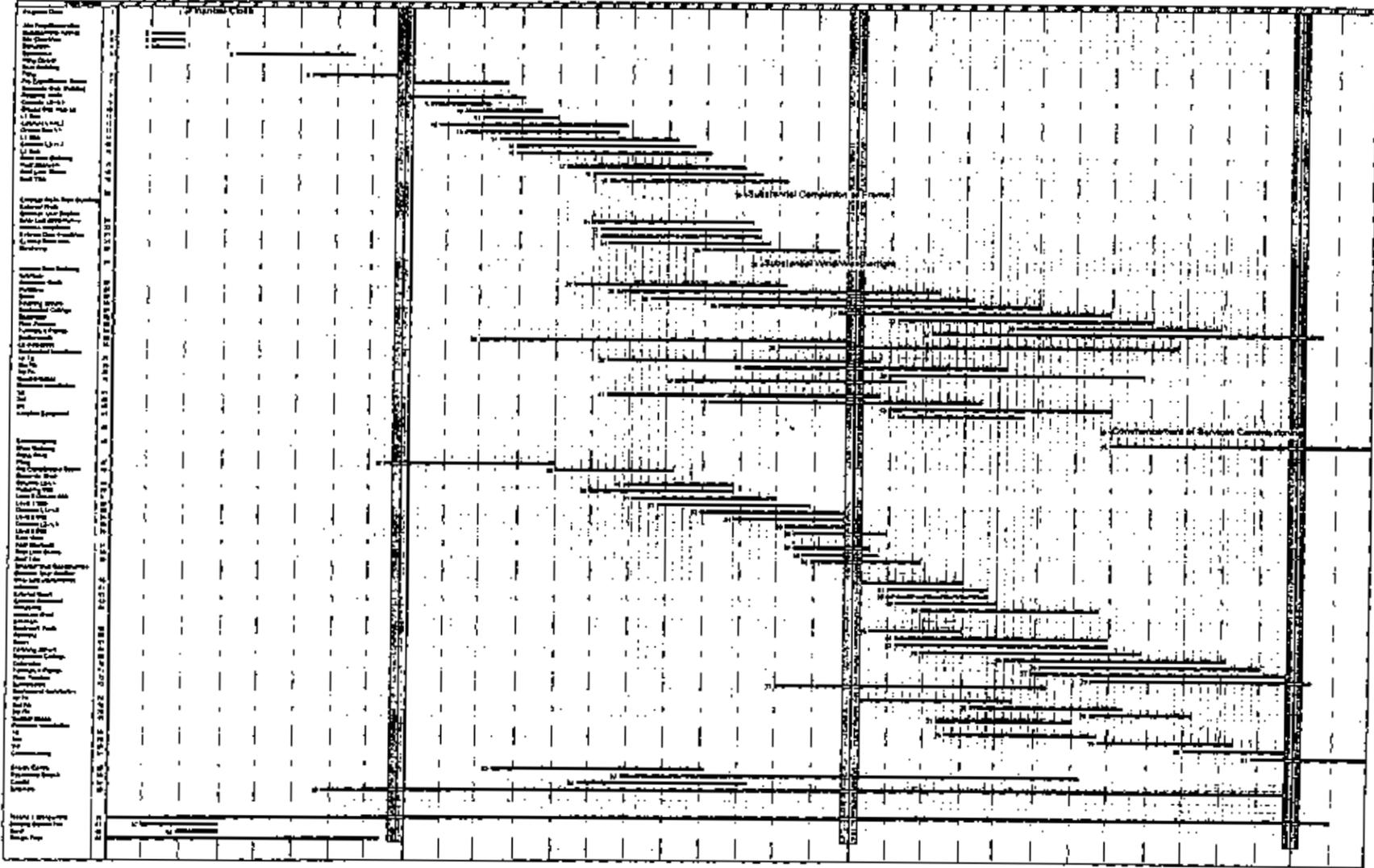
[Signature]
Director

for the Trust

Project Timetable

**Sir Robert
McALPINE**
Prog No. sm_0001

09-June-98



DATED 16 JUNE 1998

SERVICES AGREEMENT

relating to the provision of Services for
the New Law District General Hospital at Netherton

between

LAW HOSPITAL NATIONAL HEALTH SERVICE TRUST (1)

and

SUMMIT HEALTHCARE (LAW) LIMITED (2)



McGRIGOR DONALD
SOLICITORS

Pacific House
70 Wellington Street
GLASGOW G2 6SB
Tel: 0141 248 6677
Fax: 0141 221 1390

(L:PROPERTYDONNASILAWLAWSER20.AGR)

15 June 1998
FAS 4833

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AN AGREEMENT

between

- (1) **LAW HOSPITAL NATIONAL HEALTH SERVICE TRUST**, a body corporate established by an order (S.I. 1993 No 2929 (S.263)) as amended by amendment orders (SI 1995 No. 741 (S.67) 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").

RECITALS

- (A) Summit has agreed to design, build, finance and operate a new district general hospital for the Trust at Netherton, to be known as the New Law District General Hospital, on the terms of the DBFO Contracts.
- (B) The Trust and Summit have agreed to enter into the DBFO Contracts governing their relationship in connection with, and the terms of, the design, building, financing and operation of the New Law District General Hospital.
- (C) Summit has agreed to provide or procure the provision of certain services to the Trust in connection with the New Law District General Hospital, as set out in this Agreement.

IT IS AGREED as follows:

1 Definitions and Interpretation

- 1.1 In this Agreement, "**Master Definitions Schedule**" means the document so entitled executed by the parties on the Execution Date, as amended or supplemented at any time and words and expressions given a meaning in the Master Definitions Schedule shall have the same meaning when used in this Agreement and the Recitals.
- 1.2 Clauses 2, 3 and 4 of the Master Definitions Schedule shall apply in the interpretation of this Agreement.
- 1.3 The General Provisions shall form part of this Agreement.
- 1.4 The Output Specification and the Method Statements shall form part of this Agreement.

2 Conditions Precedent

This Agreement will have effect subject to Clause 3 of the Project Agreement.

3 The Services

3.1 During the Services Term Summit shall provide, or procure the provision of, the Services:

- (a) in accordance with the Output Specification and the Method Statements and, in the case of the Method Statements, subject always as provided in Clause 8;
- (b) in the quantities required by the actual demand of the Trust on a day to day basis at, or by reference to, the Hospital; and
- (c) at all times as are required to enable the Trust to operate the Trust's Facilities during Normal Working Hours;

provided that:

- (i) the Trust shall notify Summit of any likely significant change in demand as soon as reasonably practicable after it becomes aware of such possible change in demand;
- (ii) where a sudden change in demand occurs as a consequence of a major incident or a major accident and emergency situation, Summit shall be obliged to use all reasonable endeavours to meet that demand during the period of such incident and Summit will in any event comply with the Trust's Major Accident Procedure - February 1994 referenced in Part H of the Schedule to the General Provisions and subject always to amendment, supplementing or substitution solely in accordance with Provision 14 of the General Provisions; and
- (iii) if there is any variation to the Normal Working Hours (as varied by written notice by the Trust to Summit, from time to time) and any such variation represents a material variation from the then existing Normal Working Hours, then the variation will be treated as an Eligible Change, provided that Summit will not be entitled to payment of any increased costs unless the varied opening hours are inconsistent with the patterns of opening hours in the following hospitals which are used at the Execution Date by the information and statistics division of the NHSME to compare health service costs on a national basis namely: Southern General, Glasgow; Stobhill, Glasgow; Raigmore, Inverness; Crosshouse, Ayrshire; St Johns, Livingston; Royal Alexandra; Woodend General, Aberdeen; Victoria Infirmary, Glasgow; Inverclyde Royal; Victoria, Kirkcaldy; Eastern General, Edinburgh; Edinburgh City; Queen Margaret or such amended or supplemented list as represents a similar comparator from time to time.

3.2 During the Services Term, Summit and the Trust will comply with their respective obligations contained in the Output Specification and the Method Statements (subject to Clause 8 of this Agreement).

4 Related Materials

- 4.1 Summit will provide at its own expense all Related Materials (including Summit Items) except that (a) Fuel will be provided and paid for in accordance with Clause 4.2 and Part 2 of the Schedule (b) Trust Related Materials will be governed by Clause 12 and Part 1 of the Schedule and (c) Transferring Related Materials which will be transferred to Summit in accordance with Clause 4.4. Summit shall ensure that all Related Materials are used in the provision of the Services in accordance with the Output Specification, the Relevant Method Statement, Industry Standards and Good Industry Practice.
- 4.2 The provisions of Part 2 of the Schedule shall have effect with regard to the provision of Fuel and other utilities and the parties will comply with their respective obligations contained in and terms and conditions of Part 2 of the Schedule.
- 4.3 Subject to the Trust's obligations in terms of Clause 12 and Part 1 of the Schedule and Clause 27.2.2 of the Project Agreement Summit, at its own expense, shall keep all Related Materials in a serviceable and clean condition and properly maintained and shall repair or replace any Related Materials damaged (whether by the act or omission of Summit or any person for whom it is responsible in terms of Clause 9.2 of the Project Agreement through wear or tear or obsolescence or otherwise) in order to provide the Services in accordance with this Agreement, the Output Specification and the Relevant Method Statement.
- 4.4 The Trust shall at the Transition Commencement Date transfer to Summit (or, at Summit's option, to any relevant Approved Service Provider or Permitted Sub-Contractor) free of charge any moveable items of Related Materials which are owned by the Trust and being used in the provision of Services at the Existing Sites on Transition Commencement Date (other than those items equivalent to Trust Related Materials) ("**Transferring Related Materials**").
- 4.5 Risk in and ownership of the Transferring Related Materials shall pass to Summit or its nominee with effect from 00.01 hours on the Transition Commencement Date and Summit shall meet all removal costs associated with the transfer of the Transferring Related Materials and (unless the parties otherwise agree) physically arrange for the transfer thereof to the Site when appropriate consistent with its obligations under Clause 17 of the Project Agreement and this Agreement.
- 4.6 All Transferring Related Materials shall be transferred without any warranty or representation by the Trust as to condition or fitness for a purpose or in respect of anything else other than that the Trust warrants that it has good title to the Transferring Related Materials.

5 Obligations of Summit

During the Services Term Summit shall:

- 5.1 seek appropriate professional advice and assistance in all cases when a prudent supplier of the Services with the knowledge and experience of Summit or its Approved Service Providers, as the case may be, would seek such professional advice, to ensure compliance at all times with the Output Specification and the Method Statements;

- 5.2 monitor the demand for each Service on a day to day basis in consultation with the Trust in order to provide the Services to meet such demand in accordance with this Agreement;
- 5.3 inform the Trust Contract Officer of any act or omission or proposed act or omission of the Trust of which Summit is aware which will, or may, prevent, hinder or affect the provision of the Services by Summit in accordance with this Agreement as soon as practicable after becoming so aware, although nothing in this Clause 5.3 shall release, diminish or in any way affect the obligations of Summit under this Agreement;
- 5.4 procure that the Summit Contract Officer consults the Trust Contract Officer on a regular basis and as often as is necessary with a view to ensuring the efficient provision of the Services in accordance with this Agreement;
- 5.5 ensure that the Services are carried out by Summit and/or its Approved Service Provider(s) and/or Permitted Sub-Contractor(s) and by no other person unless expressly permitted in terms of the DBFO Contracts;
- 5.6 ensure compliance with reasonable instructions given by the Trust, the police and the fire service in relation to imminent threats or dangers to safety on the Site; and
- 5.7 comply with the requirements of the Output Specification regarding the maintenance of health and safety information.

6 Approved Service Providers and Permitted Sub-Contractors

Summit may procure the provision to the Trust of all (or any part of) the Services and any of the obligations of Summit under the DBFO Contracts by any one or more Approved Service Providers or Permitted Sub-Contractors. The appointment of any Approved Service Provider or Permitted Sub-Contractor and the provision of Services by any Approved Service Provider or Permitted Sub-Contractor does not diminish, release or in any way affect the obligations of Summit under the DBFO Contracts.

7 Transition Arrangements

The parties acknowledge that during the Transition Period, the Transition Arrangements will apply in accordance with the Project Agreement.

8 Method Statements

- 8.1 The Method Statements indicate the general manner in which Summit is to carry out the Services and must not contradict the Output Specification. Summit shall not be liable to the Trust, nor shall any Approved Service Provider or Permitted Sub-Contractor be so liable, for failure to comply with the detail as opposed to the substance of any provision of the Method Statements provided that the Output Specification is complied with and Summit has either; (a) given not less than five Business Days prior notice to the Trust of the manner in which it intends to depart from the Method Statements and the Trust has no valid reason for wishing Summit to comply precisely with the Method Statements which it notifies in writing to Summit within five Business Days after such notification; or (b) previously discussed with the Trust the manner in which it intends to depart and the Trust has agreed to such proposed action. If there is any inconsistency between the

Method Statements and the Output Specification, or any omission from the Method Statements, the Output Specification shall prevail.

- 8.2 At any time before or after the Services Commencement Date, Summit may make amendments to the Method Statements provided that a draft of the proposed amended Method Statement (highlighted to show the changes from the existing version) has been submitted to the Trust in accordance with the Trust Objection Procedure, and the Trust has approved, or has not objected to, the proposed amendment in accordance with Part 3 of the Schedule to the Project Agreement within the timescale therein specified or it is determined by the Dispute Resolution Procedure to be a failure to approve or an objection which the Trust was not entitled to make. In any such case, Summit shall, unless it shall notify the Trust in writing to the contrary within five Business Days thereafter, implement the proposed amendment to the Method Statements (or such other amendment as may have been agreed). The Trust may, acting reasonably, withhold its approval or object to the amendment if the amendment would result in a lesser standard of service being provided to the Trust or the Trust being likely to incur additional costs or significant inconvenience or obstruction in the provision of its clinical services.
- 8.3 Any reference in the DBFO Contracts to the Method Statements shall be construed as a reference to the Method Statements as amended from time to time in accordance with this Clause 8 and the amendments will be incorporated and the revised Method Statements will come into force from the date specified in the documents approved or deemed to be approved under the Trust Objection Procedure or as otherwise agreed. Any disputes under this Clause 8 shall be resolved under the Dispute Resolution Procedure.

9 Help Desk

9.1 Throughout the Services Term Summit shall:

- (a) provide a help desk within the Site which will be attended by at least one member of Personnel at all times or such other appropriate mechanism as shall have been previously approved by the Trust (who will act reasonably) from time to time (which manned help desk or other mechanism is, in the DBFO Contracts, referred to as "the Help Desk") for receiving instructions, requests, notices and directions (whether oral or written) in respect of the Services; and
- (b) record all instructions, requests and directions in writing or on computer disc indicating the date and time of receipt, brief details of action taken and advice given and whether or not an emergency was involved and the identity of the person at the Trust who gave the instruction, request or direction and the person on behalf of Summit who received the instruction, request or direction.

- 9.2 The Trust shall ensure that any such instructions, requests, notices or directions referred to in Clause 9.1 shall be given only by the Trust's Contract Officer, his replacement under Provision 7.8 and/or any person authorised by him under Provision 7.7 in respect of a matter within the scope of their delegated authority. Summit may disregard any instruction, request, notice or direction given by any other person unless validated by the Trust's Contract Officer or his replacement under Provision 7.8 or any such authorised person in respect of matters within the scope of his delegated authority.

10 Obligations of the Trust

Throughout the Services Term the Trust shall:

- (a) provide access 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 to the Site and the Trust's Facilities at all times pursuant to the non-exclusive licence granted under Provision 9.1 and 9.2 of the General Provisions (subject as therein provided); and
- (b) advise Summit of any unusual risks to health and safety at the Trust's Facilities of which it is aware, as soon as reasonably practical after it becomes so aware.

11 Alternative Materials

If materials of the required specification or standard to perform the obligations of Summit under this Agreement are unavailable, Summit may request that the Trust approves (such approval not to be unreasonably withheld or delayed) alternative materials of at least equal quality and performance. Any such approval shall not relieve Summit of its obligations under this Agreement except to the extent that such approval amends the Output Specification or the Relevant Method Statement.

12 Groups 2 to 4 Equipment

The parties will comply with their respective obligations set out in Part 1 of the Schedule. For the avoidance of doubt, title to Trust Related Materials and Trust Group 2 and 3 Equipment and all items or consumables falling within Group 4 which are provided by the Trust will remain vested in the Trust.

13 Alteration in nature or scope of Services

- 13.1 The Trust shall be entitled at any time during the Term to request solely through and in accordance with the Change Provisions an alteration in the Output Specification, (but excluding additional services unless with the agreement of Summit) or the Normal Working Hours or to remove a Service from the Output Specification other than the Estates Maintenance Services.
- 13.2 Nothing in this Agreement shall prevent the Trust from entering into arrangements with third parties for the provision of any service which is not a Service (or has ceased to be a Service by virtue of the Change Provisions or the provisions of Provision 15 of the General Provisions (Penalty Points Regime) or Provision 17 of the General Provisions (Termination) or Provision 12.7 of the General Provisions (failure of market testing exercise)) (including for the avoidance of doubt the Trust's arrangement with the Linen Sub-Contractor for the Linen Sub-contracted Element), and the Trust is not obliged to offer the provision of such services to Summit first or at all provided that the Trust will first consult with Summit with regard to its requirements for such service consistent with the timescale within which such services are required and provided that for the avoidance of doubt the providers of such services shall be persons for whom the Trust is responsible in the terms of Clause 8.2 of the Project Agreement.

13.3 The Trust will not during the Services Term by itself or through a third party provide any Service subject only to Provision 15 of the General Provisions (Penalty Points Regime), Provision 17 of the General Provisions (Termination), the Change Provisions, Clause 12.7 of the General Provisions (failure of Market Testing) and Provision 16.2 of the General Provisions (Remedy by the Trust).

14 Termination

14.1 Termination of this Agreement and the consequences of termination shall be governed by Clause 22 and Clauses 23.1.4 and 24, respectively, of the Project Agreement.

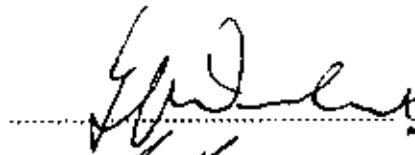
14.2 Termination of a particular Service or Services and the consequences of that termination shall be governed by Provisions 15 and 17 of the General Provisions.

15 General

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

IN WITNESS WHEREOF these presents consisting of this and the preceding 6 pages are, together with the Schedule annexed hereto, 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
James Gemmell Dunbar, Chairman and
Ian Andrew Ross
Chief Executive in the presence of:


.....Chairman

.....Chief Executive

Witness 

Name *Andrew Ross*

Address *68-73 Queen Street
Edinburgh*

Subscribed for and on behalf
of SUMMIT HEALTHCARE (LAW) LIMITED
at London
on the 16th day of June 1998
by *Michael J. Colvard*
Director, and *David Compney* Secretary
Director/Secretary


.....Director
David Compney Director/Secretary
Rory Hunter Witness
Rory Hunter

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

The Schedule - Part 1

Groups 2 to 4 Equipment

1 Trust Related Materials

- 1.1 The Trust, at its own cost, will provide to Summit on or before Services Commencement Date at the Site, the Trust Related Materials in accordance with a programme for transfer and/or for procurement to be agreed between Summit and the Trust having regard to the continued provision of clinical services by the Trust at the Existing Sites (or, in the case of Trust Group 2 Equipment, as provided in the Development Agreement) and Summit will use the same solely in the provision of the Services and will exercise reasonable care in the storage and use of the same.
- 1.2 "**Trust Related Materials**" means (1) all those Related Materials (which need not be new but will be in a serviceable condition and suitable for the provision of the Services) as fall within Groups 2 or 3 and as are reasonably required by Summit for the provision of the Services at Services Commencement Date and having regard to those items which would normally be supplied within the NHS and the provisions of the Output Specification and the Method Statements including, for the avoidance of doubt, no less than three electric tugs, but excluding all Summit Items and (2) such renewals, replacements, additions or deletions therefrom as are provided by the Trust in accordance with paragraphs 1.5 and 2 below.
- 1.3 Not less than 6 months prior to Services Commencement Date the Trust will submit to Summit for approval by Summit (acting reasonably) a list of its proposals for the Trust Related Materials to be supplied in accordance with paragraph 1.1 above and if the list is not agreed within one month thereafter, then the finalisation of the list will be referred to the Dispute Resolution Procedure.
- 1.4 "**Summit Items**" means (1) the following items namely: (a) patient meal trolleys and (b) the central dishwasher and ward pantry dishwashers and (2) all items set out in Part 1A of the Schedule.
- 1.5 The Trust will only be obliged to replace Trust Related Materials with items having the same specification. If at any time Summit, whether as a consequence of any change to any Method Statement or otherwise, would prefer different or additional items it may make a written request to the Trust who will act reasonably in relation to such proposal, provided that such request will be a Summit Change. The Trust shall notify Summit of the additional costs which would be payable by the Trust for the initial provision and maintenance and if Summit does not withdraw the request within 5 Business Days of being so advised, the additional costs will be paid by Summit within 5 Business Days of written demand by the Trust.

- 1.6 Summit shall include in its Asset Register details of Trust Related Materials insofar as the original information is supplied by the Trust in a format to be agreed which will be updated regularly as new items are added or replaced and such details will include, for reference, the age and the Trust's estimate of the likely replacement date of the relevant item.
- 1.7 The Trust shall pay Summit:
- (a) one month prior to the Services Commencement Date, the sum of £8,796 (Indexed from 1 April 1996) in respect of the initial costs of supply by Summit of the ward pantry dishwashers; and
 - (b) on each occasion the ward pantry dishwashers are replaced (the times of such replacement and the specification of the replacing items to be agreed between the Trust and Summit, both acting reasonably), a sum of x% of the purchase price incurred by Summit in such replacement of each such dishwasher (Summit providing the Trust with such evidence of such cost as may reasonably be requested by the Trust) provided that the Trust shall be under no obligation to pay any such sums if the replacement is required due to an act, default or omission of Summit or those persons for whom it is responsible in terms of Clause 9.2 of the Project Agreement, and where x% is calculated as follows:

$$\frac{a}{b} \times 100\%$$

where a = the sum paid by the Trust to Summit pursuant to paragraph 1.7(a)

b = the total aggregate purchase price paid by, or incurred on behalf of, Summit in the initial supply of the ward pantry dishwashers (as demonstrated to the Trust).

2 Maintenance and Replacement of Trust Related Materials and Trust Group 2 and 3 Equipment

In relation to the maintenance and renewal of Trust Related Materials and Trust Group 2 and 3 Equipment ("Relevant Items") the following provisions will apply:-

- 2.1 Summit will be responsible for First Line Maintenance in accordance with the Output Specification for Estates Maintenance Services.
- 2.2 Summit will keep the Trust periodically advised as to the state of repair of Relevant Items and will advise the Trust if it considers that any items may require to be replaced in advance of the dates set out in the Asset Register in order to avoid an excess level of maintenance in so far as can reasonably be ascertained from First Line Maintenance or from Summit's use of the relevant items.
- 2.3 The Trust will ensure that the Trust Related Materials are maintained and where necessary replaced so that they are in a serviceable condition and in compliance with Applicable Laws so as to enable compliance with the Output Specification (subject to paragraph 2.4) and the standard of repair and maintenance of Trust Group 2 and 3

Equipment will be a matter for the Trust, subject to compliance with its obligations under the DBFO Contracts.

- 2.4 If any Relevant Item is misused, abused or damaged by Summit or any party for whom it is responsible in Clause 9.2 of the Project Agreement or Summit or any such party fails to take reasonable care of any Relevant Item Summit will, within 10 Business Days after written demand by the Trust pay to the Trust the cost of any necessary repairs to or replacement of any such Relevant Item.
- 2.5 Subject to paragraph 2.3 it will be for the Trust to decide the timing and extent of the repair, maintenance and replacement of any Relevant Item, having regard to the Trust's budgetary requirements.
- 2.6 If any Relevant Item requires to be repaired beyond First Line Maintenance or replaced in terms of this paragraph 2, the Trust may either:
- 2.6.1 excluding medical or clinical equipment, instruct Summit to carry out the repair, reinstatement or replacement, in which event the Trust will provide, at the Trust's cost, all spare parts required for such repair, reinstatement or replacement and pay Summit the Relevant Cost as calculated in accordance with paragraph 2.7 within 10 Business Days of receipt of a VAT invoice for that sum provided that Summit may refuse to do so, acting reasonably, if this could result in Summit incurring liability to patients; or
- 2.6.2 arrange for the repair, reinstatement or replacement itself or through a third party.
- 2.7 "**Relevant Costs**" means such reasonable cost for the repair, reinstatement or replacement of the Relevant Item, having regard to the actual marginal costs incurred by Summit together with a margin of 8½% of the market price of such repair or replacement as shall be agreed between the parties and failing agreement determined by reference to the Dispute Resolution Procedure; declaring that Summit will submit to the Trust, for approval by the Trust, from time to time, a schedule of rates for carrying out appropriate categories of repair and to the extent that and for so long as these are approved by the Trust the same will be used in or towards calculating such reasonable cost.

3 Consumables

Each party will provide at its own cost consumables in respect of the items within any Group for which it is responsible, except where otherwise expressly provided in the Output Specification.

4 Group 4 Items

- 4.1 The Trust will be responsible for the items within Group 4 which it requires for use in its clinical or other activities.
- 4.2 Summit will be responsible for the items within Group 4 which it requires to perform its obligations under the DBFO Contracts.

**The Schedule - Part 1A
Summit Items**

The following items are included within Summit Items irrespective of their Group:

1 ESTATES

Portable equipment and hand tools.
Grounds maintenance (hand mowers and hand tools).
Painting and decorating equipment (low level only).

2 DOMESTICS

Items used by Approved Service Provider's staff (for example mops, buckets, wringers, vacuum cleaners and other cleaning equipment).

3 CATERING

Small utensils, cutlery and crockery, tray, menu card holder, cooking utensil replacement but excluding ward based cooking equipment eg toasters.

4 TRANSPORT

2 vans.

5 SECURITY & CAR PARKING

Morse Watchman.
Security passes camera.
Two way communication system for porters and security staff.

6 PORTERS

Communication system.

7 WASTE MANAGEMENT

Hire of skip and compactor.
Waste storage receptacles.
All items required for removal and disposal of waste outwith the Site excluding all waste receptacles provided by the Trust in terms of the Output Specifications and/or the Method Statements.

8 RESIDENTIAL ACCOMMODATION

Cleaning equipment used by staff of Summit or Approved Service Provider.

9

GENERAL

Computers, printers and software for staff of Summit or Approved Service Provider.

Mobile phones for staff of Summit or Approved Service Provider.

Vehicles for staff of Summit or Approved Service Provider.

The Schedule - Part 2

Utilities

1 Energy Procurement

- 1.1 Summit shall, from time to time, in consultation with the Trust, negotiate and enter into, in its own name, all contracts (1) for the supply of gas, electricity, liquid petroleum gas and diesel fuel and/or such other appropriate fuel as may be specified by notice in writing from the Trust to Summit or approved in writing by the Trust from time to time (herein collectively referred to as "Fuel") required for the operation of the Hospital including the provision of the Services and the Equipment Services and compliance with the Utilities Contingency Provisions during the Services Term to ensure a continuous supply of appropriate Fuel to the Hospital ("the Energy Contracts") and (2) for the supply of telephone services, (excluding payphones), from a utility provider in terms of a contract to be approved by the Trust acting reasonably ("Telephone Contracts") (the Energy Contracts and the Telephone Contracts being collectively "Utility Contracts") provided that the Trust has first approved in writing each Utility Contract which consent will not be unreasonably withheld or delayed by the Trust on the basis that the parties acknowledge that the Utility Contracts are to be entered into so as to provide the most economically advantageous price and contract terms available on the market. Summit will not agree any amendment to such Utility Contracts without the prior written approval of the Trust (such approval not to be unreasonably withheld or delayed). The Trust and Summit may agree written procedures for the entry into by Summit of Utility Contracts in which case Summit and the Trust will comply with those requirements of those procedures and Summit acknowledges that it will in any event comply with the reasonable requirements of the standing financial instructions of the Trust as intimated to Summit in writing from time to time.
- 1.2 Summit shall provide to the Trust all such information as the Trust may reasonably request to determine whether or not to approve an Energy Contract or any amendments to the terms thereof in terms of paragraph 1.1, including details of negotiations with alternative suppliers, and shall comply with the Trust's reasonable requests, at the cost of the Trust, in relation to the procurement of such Fuel supplies including obtaining quotes from at least 3 suppliers to enable the Trust to demonstrate value for money. Summit will provide the Trust with a copy of any such Utility Contract within 5 Business Days of the same being entered into.
- 1.3 Summit will pay all sums due under the Utility Contracts in sufficient time to take advantage of all early settlement discounts and such discounts will be reflected in the sums due by the Trust to Summit (except and to the extent that Summit cannot pay timeously due to failure by the Trust to pay in terms of paragraph 5.3 of Part A of the Schedule to the General Provisions).
- 1.4 Summit will (at the cost of the Trust) comply with its obligations and enforce at the direction of the Trust its rights under the Utility Contracts for the benefit of the Trust and the Trust will reimburse to Summit the costs reasonably and properly incurred by it in enforcing such rights at the direction of the Trust as aforesaid.
- 1.5 Summit will not terminate any Utility Contract without the consent of the Trust (acting reasonably) but will do so if requested by the Trust to do so in writing (acting

reasonably) to enable a substitute Utility Contract to be entered into either pursuant to paragraph 1.1 or as required by the Trust in writing; Provided that there will be included in the sums payable pursuant to paragraph 1.4 above any costs properly payable under the Utility Contract or otherwise consequent upon such termination required by the Trust.

2 Interruption of Interruptible Gas Supply

- 2.1 Summit acknowledges that the Trust will be entitled to require that the Energy Contract for gas should contain provisions whereby the gas supplier will be entitled on giving verbal notice to Summit (or to such person at the Site as Summit shall specify by notice in writing to the Trust) of not less than 4 hours (or such shorter period as Summit may at its discretion agree) require that the gas supply be interrupted. On each occasion when such notice is given Summit will ensure that appropriate action is taken so that the gas supply will be timeously interrupted and Summit will comply with any procedure set out in the Energy Contract in relation to the interruption (the terms of such procedure to be in advance approved by Summit (acting reasonably)) and back up provided in accordance with the Utilities Contingency Provisions. Summit will pay to the Trust, within 10 Business Days of written demand, any additional sums due in terms of the Energy Contract at any time as a consequence of the gas supply not being timeously interrupted, subject to a maximum liability of £25,000 (Indexed from Financial Close) in respect of each failure by Summit under this paragraph 2.1.
- 2.2 Summit will reconnect the gas supply after any period of interruption as soon as reasonably practicable after it is permissible to do so in terms of the Energy Contract.

3 Energy and Water Efficiency

- 3.1 Summit and the Trust shall, and shall use all reasonable endeavours to procure that their subcontractors shall, carry out their respective activities at the Hospital in an energy and water efficient manner (consistent in the case of Summit with its obligations under the DBFO Contracts and in case of the Trust with the provision of its clinical and other activities at the Site) and shall provide training to their respective staff in this regard and shall co-operate in the development and implementation of energy and (if required by the Trust) water efficiency programmes.
- 3.2 Without prejudice to paragraph 3.1, if at any time during the Services Term the Trust demonstrates that costs in excess of those which would be incurred (but for Summit's breach as aftermentioned) have been incurred in respect of the provision of Fuel due to a breach by Summit of any provision of the DBFO Contracts then Summit will pay to the Trust such additional costs subject to a maximum aggregate liability under this paragraph 3.2 of £50,000 per annum (Indexed from Financial Close).

4 Monitoring of Usage

- 4.1 Summit shall, during the Services Term, monitor energy consumption at the Hospital (including monitoring sub-meters to be provided in accordance with the Trust Requirements) and provide to the Trust such reports in such format and at such times as the Trust may reasonably request in respect of the results of such monitoring.
- 4.2 Summit will and will use all reasonable endeavours to ensure that its Approved Service

Providers and Permitted Sub-Contractors will provide all reasonable assistance to the Trust in the completion of any reports to be provided to the NHSME or the NHS in Scotland Estates Environment Forum Annual Energy Returns.

5 Water and Sewerage

The Trust will pay whether through rates or otherwise for the cost of water and sewerage supplied to the Hospital.

6 Telephones

6.1 There will be excluded from the Utilities Costs call charges in respect of the use of telephones by Summit or any party for whom it is responsible in terms of Clause 9.2 of the Project Agreement in respect its own use and purposes not directly associated with the provision of the Services.

6.2 The Trust shall be responsible for payphones (including payment of line rental and call charges in respect thereof) and shall be entitled to the benefit of all revenue derived from such pay phones at the Site. The Trust may enter into concession arrangements with a third party in respect of such pay phones and shall be entitled to the benefit of all revenue derived from any such concession.

**The Schedule - Part 3
Normal Working Hours**

DEPARTMENT	NORMAL STAFF HOURS	NORMAL DEPARTMENT HOURS OF OPENING	COMMENTS
S.H.D.U	24 hrs (7 days)	24 hrs (7 days)	
Rehabilitation - Accommodation for Physiotherapy, Occupational and Speech Therapy	7.30 am - 5.00pm	7.30am - 5.00pm	some evenings until 7.30pm
Medical Records	8.00am - 6.00pm	24 hrs (7 days)	On Call staff standby 24 hrs (7 days)
Occupational Health	8.30am - 5.00pm	8.30am - 5.00pm	Monday - Friday. Occasional/evening weekend work as required
Catering Department	8.00am - 7.00pm	8.30am - 7.30pm	7 days.
Independent Patients Unit	24 hrs (7 days)	24 hrs (7 days)	
Imaging Ward	8.30am - 7.30pm	8.30am - 7.30pm	Monday - Friday but 2 general rooms and a dental room will provide 24 hrs 7 day service. Other ad hoc outwith normal hours
Surgical Ward	24 hrs (7 days)	24 hrs (7 days)	
Mental Illness Ward	24 hrs (7 days)	24 hrs (7 days)	
Mental Illness Ward - Psychogeriatric	24 hrs (7 days)	24 hrs (7 days)	

DEPARTMENT	NORMAL STAFF HOURS	NORMAL DEPARTMENT HOURS OF OPENING	COMMENTS
Mental Illness Intensive Care Unit	24 hrs (7 days)	24 hrs (7 days)	
Mental Illness ECT Suite	9.00am - 5.00pm	9.00 - 5.00pm	2/3 session per week
Accident & Emergency	24 hrs (7 days)	24 hrs (7 days)	
Joint Admissions (A & E Ward)	9.00am - 5.00pm	9.00am - 5.00pm	
Orthopaedic Out-patient Department	24 hrs (7 days)	24 hrs (7 days)	
Day Hospital - Acute Mental Illness	7.30am - 5.00pm	8.00am - 4.30pm	Monday - Friday
Day Hospital - Care of the Elderly	7.30am - 5.00pm	8.00am - 4.30pm	Monday - Friday
ITU Department	24 hrs (7 days)	24 hrs (7 days)	
Medical Cardiology	8.00am - 5.00pm 8.00am - 4.00pm	8.00am - 5.00pm 8.00am - 4.00pm	Monday - Friday 8.00am - 5.00pm Saturday 8.00am - 4.00pm
General OPD Suites: Dietics Dental Suite Ophthalmology Suite Audiology Department Dermatology Department Gen OPD	8.30am - 5.30pm 8.30am - 5.30pm 8.30am - 5.30pm 8.30am - 5.30pm 9.00am - 5.00pm 9.00am - 5.00pm	9.00am - 5.00pm 9.00am - 5.00pm 9.00am - 5.00pm 9.00am - 5.00pm 8.30am - 5.30pm 9.00am - 5.00pm	All Monday - Friday, flexible hours may be organised where appropriate

DEPARTMENT	NORMAL STAFF HOURS	NORMAL DEPARTMENT HOURS OF OPENING	COMMENTS
Maternity Assessment Unit	7.00am - 8.00pm (7 days)	7.00am - 8.00pm (7 days)	
Neo-Natal ICU	24 hrs (7 days)	24 hrs (7 days)	
Adult Acute Wards	24 hrs (7 days)	24 hrs (7 days)	
Clinical Biochemistry Haematology Histopathology Microbiology	8.00am - 8.00pm (7 days)	24 hrs (7 days)	Limited number of staff on call at all times
Post Mortem Suite	24 hrs	24 hrs	Staff on call 24 hrs 7 days
Medical Physics	9.00am - 5.00pm	9.00am - 5.00pm	Monday - Friday and emergency duty work may be required
Medical Illustration	9.00am - 5.00pm	9.00am - 5.00pm	Monday - Friday. Occasionally public holidays if clinics are running
Education Centre	8.30am - 6.30pm	9.00am - 5.00pm	Monday - Friday, some evening functions as and when required
Office Accommodation (Trust)	8.30am - 6.00pm	9.00am - 5.00pm	Monday - Friday. Occasional weekend work
Computer Facilities	24 hrs (7 days)	24 hrs (7 days)	
Creche	7.00am - 6.00pm	7.00am - 6.00pm	
Personal Clothes Laundry			Serco Area
Paediatrics	24 hrs (7 days)	24 hrs (7 days)	
Estates			Serco Area

DEPARTMENT	NORMAL STAFF HOURS	NORMAL DEPARTMENT HOURS OF OPENING	COMMENTS
Medical Oncology (Day)	8.30am - 5.00pm	9.00am - 5.00pm	Monday - Friday, flexible where necessary
Pharmacy	8.00am - 6.00pm (7 days)	8.00am - 6.00pm (7 days)	On Call system will operation outside pharmacy hours
General Stores	24 hrs (7 days)	24 hrs (7 days)	
Therapies Area	9.00am - 4.00pm	9.00am - 5.00pm	Monday - Friday
Women's Health Unit	24 hrs	24 hrs	Monday - Friday
Cardio Cath Lab	8.00am - 5.00pm	9.00am - 5.00pm	Monday - Friday
Gymnasium	8.00am - 6.00pm (7 days)	8.00am - 6.00pm (7 days)	
Elderly Wards	24 hrs (7 days)	24 hrs (7 days)	
Obstetrics Department	24 hrs (7 days)	24 hrs (7 days)	
Medical Day Unit	7.30am - 7.00pm	8.00am - 7.00pm	Monday - Friday
Oncology (In Patients)	24 hrs (7 days)	24 hrs (7 days)	
Day Surgery	8.00am - 8.00pm	8.00am - 8.00pm	Monday - Friday
Operating Theatres (including Endoscopy/Day Surgery and Obstetrics)	8.00am - 8.00pm	8.00am - 8.00pm	Emergency cover outwith
CCU/MH DU	24 hrs (7 days)	24 hrs (7days)	

NOTE: In the columns of Normal Department Hours of Opening and Normal Staff Hours, the periods of opening are for 5 days (Mondays to Fridays, inclusive) a week unless otherwise noted as 7 days a week.

DATED 16 JUNE 1998

EQUIPMENT AGREEMENT

relating to the provision and transfer of Equipment
for the New Law District General Hospital at Netherton

between

LAW HOSPITAL NATIONAL HEALTH SERVICE TRUST (1)

and

SUMMIT HEALTHCARE (LAW) LIMITED (2)



McGRIGOR DONALD

ESTABLISHED 1843

Pacific House
70 Wellington Street
GLASGOW G2 6SB
Tel: 0141 248 6677
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(L:\PROPERTY\DONNASLAW\EQUIP22.AGR)

15 June 1998
FAS 4833

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AN AGREEMENT

between

- (1) **LAW HOSPITAL NATIONAL HEALTH SERVICE TRUST**, a body corporate established by an order (S.I. 1993 No 2929 (s.263) as amended by amendment orders (S.I. 1995 No 741 (s.67)) and (S.I. 1998 No. 926 (s.50)) 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").

RECITALS

- (A) Summit has agreed to design, build, finance and operate a new district general hospital for the Trust at Netherton, to be known as the New Law District General Hospital, on the terms of the DBFO Contracts.
- (B) The Trust and Summit have agreed to enter into the DBFO Contracts governing their relationship in connection with, and the terms of, the design, building, financing and operation of the New Law District General Hospital.
- (C) Summit has agreed to provide, whether by procurement or transfer, certain items of Equipment for use by the Trust at the New Law District General Hospital and to maintain and replace the same all on the terms of this Agreement.

IT IS AGREED as follows:

1 Interpretation

- 1.1 In this Agreement "**Master Definitions Schedule**" means the document so entitled executed by the parties on the Execution Date, as amended or supplemented at any time and words and expressions given a meaning in the Master Definitions Schedule shall have the same meaning when used in this Agreement and in the Recitals.
- 1.2 Clauses 2, 3 and 4 of the Master Definitions Schedule shall apply in the interpretation of this Agreement.
- 1.3 The Investment Plan and the Equipment Specifications shall, subject to the terms hereof, form part of this Agreement.

2 Conditions

This Agreement will have effect subject to Clause 3 of the Project Agreement.

3 Procurement of Equipment

3.1 Summit undertakes to procure the Equipment for the exclusive use of the Trust at the Hospital, subject to the provisions of Clause 4 of this Agreement.

3.2 Summit shall fulfil its obligations set out in Clause 3.1 by:

- (a) procuring all New Equipment as new in accordance with the relevant specification applicable thereto as determined in accordance with Clause 3.3.1; and
- (b) complying with the provisions of Clause 4 in relation to Transferred Equipment.

3.3.1 Each item of New Equipment (including for the avoidance of doubt all replacements of Transferred Equipment) to be supplied at any time will:

- (a) as a minimum fulfil the technical and other specifications and functionality of the relevant item of Equipment as detailed in the Equipment Specifications;
- (b) incorporate all technological advances made after the Execution Date to the relevant item of Equipment which have been accepted as standard features for such item of Equipment of that specification at the time of procurement of that item of New Equipment; and
- (c) comply with all Statutory Requirements applicable at the time of procurement of that item of New Equipment;

all without any additional payment being due by the Trust, save:

- (i) if an alteration to the design, physical structure or layout of the Hospital is required prior to the Contractual Practical Completion Date as a result of technological advances made, after the Execution Date, to any item of New Equipment the Trust will pay Summit, within 10 Business Days of demand, any costs in excess of £100,000 (Summit paying all costs up to and including £100,000) which are properly, reasonably and necessarily incurred by Summit (Summit providing the Trust with all evidence reasonably required by the Trust to verify such costs) to effect such alteration (and Summit will take all reasonable steps available to it and use all reasonable endeavours to mitigate any such costs); and
- (ii) as provided in Clause 7.1 or under the Change Provisions provided that Summit shall only be obliged to incorporate technological advances under Clause 3.3.1(b) which require a change to the design, physical structure or layout of the Hospital where the Trust has agreed to instruct an Additional Works Change.

Except as expressly stated in, and subject to the terms of this Agreement, all conditions and warranties whether express or implied by statute, common law or otherwise relating to the provision of the Equipment and the Equipment Services are hereby expressly excluded to the extent permitted by law.

- 3.3.2 The Trust acknowledges that Summit may itself select the relevant item of New Equipment provided Summit complies with Clauses 3.3.1, 3.3.3 and 3.3.4.
- 3.3.3 At the relevant Equipment Annual Review (but in any event at least six months prior to each Planned Replacement Year) Summit will identify to the Trust, in writing, the item(s) of New Equipment which it intends to supply to the Trust (the "Proposed New Equipment") in that Planned Replacement Year in accordance with the Investment Plan.
- 3.3.4 Within ten Business Days of Summit notifying the Trust of the Proposed New Equipment, the Trust may, by notice in writing to Summit (a "Trust New Equipment Notice") request such additional information as it shall reasonably require from Summit to decide whether to institute a Change to the Equipment Specifications. Summit shall respond to any such request for information within 20 Business Days (or such other period as may be agreed between the parties, acting reasonably) of the date of receipt of the Trust New Equipment Notice. If either no Trust New Equipment Notice is given to Summit within the ten Business Day period referred to above or, as the case may be, no Change is instituted by the Trust within twenty Business Days (or such other period as may be agreed between the parties, acting reasonably) of receipt by the Trust of the information requested in the Trust New Equipment Notice, Summit shall supply the Proposed New Equipment on the Planned Replacement Year on the terms stated in the original notification in terms of Clause 3.3.3. If the Trust does institute a Change within that twenty Business Day period (or such other period as may be agreed between the parties, acting reasonably), the Change Provisions shall apply and, for the avoidance of doubt, if necessary an extension to the original Planned Replacement Year shall be made as a consequential amendment under paragraph 7 of Part D of Section 9 of the Change Provisions.
- 3.4 Save as provided herein, the Equipment shall be available to the Trust, for use by the Trust at the Site for 24 hours each day and for 365 days (or 366 days in a leap year) each year during the Services Term on the terms set out in this Agreement (except in the case of the Special Procedures Room which will remain at the Existing Sites until transferred pursuant to Clause 6.3).
- 3.5 Summit and the Approved Service Providers and Permitted Sub-Contractors shall have access to the Equipment only on giving reasonable notice to the Trust or, in case of an emergency, on giving such notice as may be practical in the circumstances, in accordance with the PMR Procedures to inspect the Equipment and in order to comply with its maintenance and other obligations to the Trust under this Agreement.
- 3.6 The Equipment shall remain the property of Summit (or where relevant an Approved Service Provider or Permitted Sub-Contractor or the lessor of the Equipment) and title to the Equipment (including Transferred Equipment formerly owned by the Trust) will

at no time pass to the Trust during or on the expiry or termination of this Agreement, unless subsequently acquired by it in accordance with Clause 23 of the Project Agreement or the Equipment Services Direct Agreement, notwithstanding that the Equipment may become affixed to the Hospital. This Clause shall survive termination or expiry of this Agreement.

- 3.7 The Investment Plan and the Equipment Specifications may only be varied in accordance with the Change Provisions or as otherwise expressly provided in this Agreement.

4 Equipment Transfer

- 4.1 The Transferred Equipment will be purchased by Summit from the Trust (free from all encumbrances, charges or liens and in reliance on the representations of the Trust in Clause 4.2) for the aggregate sum of £1 and completion of the sale and purchase of each item of the Transferred Equipment will take place on the date on which the relevant item of Transferred Equipment is made available by the Trust and removed by Summit from the Existing Sites in accordance with Clause 6.2 or, in the case of the Special Procedures Room, Clause 6.3 (each date in respect of each item of the Transferred Equipment being hereafter referred to as "the Equipment Requirement Date").

- 4.2 The Trust warrants to Summit that as at the Execution Date and, in relation to each item of Transferred Equipment, this warranty shall be deemed to be repeated immediately prior to the Equipment Requirement Date for that item of Transferred Equipment:-

- (a) it has good title to the Transferred Equipment, free from any encumbrance and that such Transferred Equipment is not the subject of any leasing, hiring or hire purchase agreement or agreement for payment on deferred terms or assignment or factoring or other similar agreement;
- (b) it has disclosed to Summit all (if any) relevant documentation relating to the Transferred Equipment including, *inter alia*, all applicable warranties, guarantees, manufacturer's recommendations and software licences;
- (c) it has taken all steps necessary to prevent any corruption, by any equipment, data, or software for which the Trust is responsible, of the data or software owned or supplied by Summit, or for which it is responsible, under the terms of this Agreement including, but not limited to, the introduction of a virus;
- (d) it has maintained the Transferred Equipment and rectified any damage to or malfunction in the Transferred Equipment in accordance with manufacturers' recommendations, and Statutory Requirements relating to health and safety and the Transferred Equipment complies with all Statutory Requirements relating to health and safety and its technical specification; and
- (e) it has taken all necessary steps to ensure that neither the performance nor the functionality of the Transferred Equipment nor any software affecting the provision of the Equipment Services (except in so far as Summit is responsible

for the same under the terms of this Agreement) will be adversely affected by the advent of the year 2000 and beyond.

For the avoidance of doubt, no warranty or representation, express or implied, is given by the Trust as to the condition or fitness for purpose of the Transferred Equipment or that it is of satisfactory quality or otherwise save as specified in this Clause 4.2.

- 4.3 The Trust shall permit Summit and any Approved Service Provider reasonable access to each item of the Transferred Equipment a reasonable period prior to the relevant Equipment Requirement Date to verify compliance by the Trust with Clause 4.2(d) and any dispute regarding such compliance shall be determined under the Dispute Resolution Procedure. The Trust shall indemnify Summit or, on demand by Summit, any Approved Service Provider or Permitted Sub-contractor on demand from and against any additional costs reasonably, necessarily and properly incurred by them in the performance of Summit's obligations under this Agreement as a result of breach by the Trust of Clause 4.2.
- 4.4 Risk and ownership in each item of Transferred Equipment shall pass to Summit with effect from removal of that item of Transferred Equipment by Summit from the Existing Site on the relevant Equipment Requirement Date. Summit shall be responsible for arranging and implementing, and shall meet all costs associated with, the transfer of the Transferred Equipment to the Site.

5 General Provisions

The terms of Provisions 3.2 (Patient Confidentiality), 7 (Agreement Management) (other than Provision 7.3), 9.1 and 9.2 (Use of Premises) 10 (Reputation of the Trust), 11 (Approved Service Providers), 13 (Permitted Sub-Contractors), 22.1 and 22.2 (Security) and the Change Provisions shall apply to the provision of the Equipment Services but, for the avoidance of doubt, other than the Payment Provisions, the Penalty Points Regime and the Deduction Provisions, no other provisions of the General Provisions shall apply to the Equipment Services.

6 Installation of Equipment for Services Commencement Date and Remedies

Installation

- 6.1 The Equipment (subject to Clauses 6.2, 6.3 and 6.12) shall be made available by Summit at the Site:-
- (a) Operational at least 6 weeks prior to the Services Commencement Date; and
 - (b) on the terms of this Agreement for the provision of clinical services from the Services Commencement Date and throughout the Services Term unless this Agreement is sooner terminated (but subject to the terms of the Equipment Direct Agreement).

Summit shall advise the Trust in writing if it envisages any delays in meeting this timescale together with details as to how it proposes to remedy or mitigate the situation.

- 6.2 The Trust shall make the Transferred Equipment (subject to Clause 6.3) available to Summit for the purposes of Clause 6.1 on such date or dates as may be agreed being no later than 11 weeks prior to the Services Commencement Date. If there is any failure by the Trust to make available any item of Transferred Equipment on such date Summit will procure that the relevant item of Transferred Equipment is Operational as soon as reasonably practicable following the Trust making available such item of Transferred Equipment.
- 6.3 Without prejudice to Clauses 6.1 and 6.2, the Trust will give Summit written notice specifying the date, after the Services Commencement Date, on which the Special Procedures Room is to be made available to Summit for transfer to the Site and Summit will procure that the Special Procedures Room will be Operational within a period of 5 weeks of such date.
- 6.4 Summit may, if it is unable to procure that any item of Equipment is Operational in accordance with Clause 6.1, provide a suitable temporary alternative item of Equipment to the Trust (the "Temporary Alternative"), provided that such alternative:
 - (a) is satisfactory to the Trust, acting reasonably;
 - (b) other than PACS, meets the requirements of the Equipment Specifications for functionality in all material respects;
 - (c) other than the CT Scanner, is Operational at least one week prior to the Services Commencement Date; and
 - (d) in the case of a Temporary Alternative for the CT Scanner, (i) which requires training by users, is Operational at least three weeks prior to the Services Commencement Date, or (ii) which is made available fully staffed, is Operational from the Services Commencement Date.
- 6.5 If any Temporary Alternative is provided by Summit pursuant to Clause 6.4:
 - (a) Summit shall use all reasonable endeavours to have the relevant item of Equipment Operational in place of the Temporary Alternative as soon as reasonably practicable;
 - (b) the Trust will be under no obligation to make any payment to Summit for the provision or maintenance of the Temporary Alternative;
 - (c) the Trust will be under no obligation to make any payment to Summit for any item of Equipment which is not Operational at the Services Commencement Date until it is so Operational and the Trust shall be entitled to deduct, from the Unitary Payment, the price for that item of Equipment (on the basis of the annual

prices per item of Equipment set out in Part 2 of the Schedule) for such period during which such item of Equipment is not Operational; and

- (d) the Equipment PMS in respect of such item of Equipment will only commence when such item is Operational.

For the avoidance of doubt, paragraph (c) will also apply where any Temporary Alternative is not provided (and the item of Equipment is not Operational).

Remedies

6.6 Without prejudice to Summit's obligations pursuant to Clause 6.1, it is recognised by the Trust and Summit that the Trust requires, as a minimum, certain items of Equipment to be Operational within certain periods prior to the Services Commencement Date to enable the Trust to be able to commence clinical services at the Site from the Services Commencement Date. If such items of Equipment are not so Operational, the Trust will incur loss as:-

- (a) the Trust is required to make payment to Summit of part of the Unitary Payment from Services Commencement Date, notwithstanding that the Trust may not then have occupied the Site and be providing clinical services from the Site;
- (b) the Trust will incur certain costs at the Existing Sites which would not otherwise be incurred if the Trust was able to occupy the Site as at the Services Commencement Date; and
- (c) the Trust will have certain liabilities to other parties and incur certain costs due to the Trust being unable to occupy the Site and commence clinical services.

Therefore, Summit and the Trust have agreed that the Trust's sole and exclusive financial remedies in respect of the failure by Summit to comply with the terms of Clauses 6.1(a) and 6.3 (save as provided in Clause 6.12) will be as specified in Clauses 6.7 (subject as provided in Clause 6.8) and 6.9 (and, where applicable, Clause 6.5) and Clause 23 (Remedy by the Trust). The parties acknowledge that careful and detailed consideration has been given to the financial remedies available to the parties under this Agreement in order to balance the rights, interests and expectations of the parties and to reflect a reasonable pre-estimate of the Trust's losses and that the provisions of this Clause are reasonable in the circumstances.

6.7 If:-

- (a) Summit has not made Operational:
 - (i) the CT Scanner and PACS, at least 6 weeks prior to the Services Commencement Date; and
 - (ii) the Critical Equipment (as listed or referred to in Part 5 of the Schedule), at least 4 weeks prior to the Services Commencement Date,

then, subject to Clauses 6.8 and 6.12, for each Business Day, or part thereof, following the Services Commencement Date on which all of such Equipment is not Operational or Temporary Alternatives made available, the Availability Element shall be reduced by £20,000 and no Capacity Element shall be paid for such period but Unavoidable Operating Costs, excluding for these purposes any amounts payable to the Approved Service Provider providing the Equipment Services, will be paid in accordance with Part A of the Schedule to the General Provisions; and

- (b) if Summit has not made Operational the 2 Non-Critical General Rooms (being two of the remaining General Rooms not forming part of the Critical Equipment) at least 2 weeks prior to the Services Commencement Date then, subject to Clause 6.12, the Availability Element payable from and after the Services Commencement Date shall be reduced by £2,000 per Business Day for each Business Day or part thereof on which the said 2 Non-Critical General Rooms are not Operational or Temporary Alternatives made available in the period from 2 weeks prior to the Services Commencement Date to 5 weeks thereafter, but for the avoidance of doubt, the Capacity Element will be paid;

provided that the maximum aggregate reduction in the Availability Element under this Clause when aggregated with any reductions made pursuant to paragraph 5 of the Commissioning Procedures shall be limited to and shall in no event exceed £500,000.

6.8 If Summit can 6 weeks prior to the Services Commencement Date:-

- (a) in the case of PACS demonstrate to the satisfaction of the Trust (acting reasonably) that either PACS will be Operational at least 4 weeks prior to the Services Commencement Date or that a Temporary Alternative will be Operational at least 1 week prior to the Services Commencement Date; and
- (b) in the case of the Critical Equipment (other than the CT Scanner), demonstrate to the satisfaction of the Trust (acting reasonably) that such items or Temporary Alternatives will be Operational at least one week prior to the Services Commencement Date; and
- (c) in the case of the CT Scanner, demonstrate to the satisfaction of the Trust (acting reasonably) either (i) that such item or a Temporary Alternative on which training is required will be Operational at least three weeks prior to the Services Commencement Date, or (ii) that a fully staffed Temporary Alternative will be made available at Services Commencement Date,

then the Trust will only be entitled to reduce the Unitary Payment in accordance with Clause 6.7 if Summit fails to provide the CT Scanner, PACS and the Critical Equipment (or, where relevant, the Temporary Alternatives) within the periods specified in, and otherwise in accordance with, this Clause 6.8. If, notwithstanding any failure by Summit under this Clause 6, the Trust commences clinical operations at the Site, then with effect from the date of such commencement, no further reductions shall be made to the Unitary Payment in terms of Clause 6.7.

- 6.9 If PACS is not Operational 6 weeks after the Operational Date Summit may, (acting reasonably) with the prior written consent of the Trust (acting reasonably), terminate the Approved Service Provider's entitlement to provide and maintain PACS. Summit shall procure that the sub-contract with the Approved Service Provider entitles such termination, without prejudice to the remaining provisions and obligations of the Approved Service Provider in relation to the Equipment Services which shall remain in full force and effect (subject to the terms of the relevant sub-contract).
- 6.10 If pursuant to Clause 6.9 Summit terminates the entitlement of the Approved Service Provider to provide PACS, Summit shall then within a period of 3 calendar months from the date of such termination provide the Trust with a plan demonstrating, to the satisfaction of the Trust (acting reasonably), that PACS will (at no extra cost to the Trust) be Operational by the first anniversary of the Services Commencement Date, failing which the provisions of Clause 23 (Remedy by the Trust) will apply.
- 6.11 If the Ultrasound is not Operational by the Services Commencement Date, the provisions of Clause 23 (Remedy by the Trust) will apply.
- 6.12 Summit will not be in breach of any of its obligations under this Clause to the extent it is unable to perform its obligations as a result of or the consequences of:-
- (a) any delays or other acts, omissions or defaults of the Trust or persons for whom it is responsible in terms of Clause 8.2 of the Project Agreement; or
 - (b) any of the circumstances referred to in Clause 15.1.8(c), (d), (e), (g), (h), (i), (j), (l), (o), (r), (s) (t) and (u).
- 6.13 If any of the periods referred to in this Clause 6 include any of the period from 20 December to 2 January (inclusive) then Summit shall be entitled to an extension of the number of days within such period within which Summit would otherwise have been performing obligations under this Agreement up to a maximum of two weeks in which to perform the relevant obligation.
- 6.14 During any period in which the Trust is entitled to make deductions from the Unitary Payment pursuant to Clause 6.7(a), Summit shall be under no obligation to provide the Equipment Services, save in respect of any obligations which would otherwise require to be performed or undertaken by Summit prior to the Operational Date.

7 Obligations of Summit

During the Services Term (unless a different period is specified in this Clause 7) Summit shall:

- 7.1 without prejudice to Clause 6, during the Commissioning Period and the Services Term carry out all works to transfer, install and commission all Equipment (including for the avoidance of doubt, all Transferred Equipment and New Equipment) at such times and in such manner as provided for in the PMR Procedures or as otherwise agreed, from time to time, and in a manner which causes as little disruption as reasonably practicable

to the routines and procedures of the Trust (but in any event during Equipment Working Hours) and has regard to the provision by the Trust of its clinical services and functions at the Hospital and, in any event, such installation will be carried out within such time as is reasonable in the circumstances. All costs (including, without limitation, any costs incurred in connection with an alteration to the Hospital or the Site) associated with or arising pursuant to the installation, reinstatement and commissioning of all Equipment will be met by Summit save in the case of installation and commissioning of Equipment pursuant to an Eligible Change (including an Additional Works Change consequent upon technological advances to New Equipment as provided in Clause 3.3.1) in which case any relevant costs will be met by the Trust;

- 7.2 maintain an accurate asset register ("**Equipment Asset Register**") (available for inspection by the Trust at all reasonable times) identifying all the Equipment;
- 7.3 acquire or procure the acquisition of all New Equipment (including all replacement Equipment) with the benefit of all applicable warranties and guarantees;
- 7.4 maintain in safe custody all relevant documentary evidence which relates to the Equipment (including invoices, bills of sale, product warranties, and guarantees and maintenance agreements provided that the same have been supplied by the Trust in the case of the Transferred Equipment) from the date same is obtained and for a period of one month after the date of termination of this Agreement or the expiry of the Term or replacement of the item of Equipment, whichever is earlier, and allow the Trust (where reasonably required) reasonable access on reasonable notice to inspect and take copies of such product warranties, guarantees or maintenance records;
- 7.5 provide to the Trust for use by the Trust's authorised employees, subcontractors, agents and representatives all necessary instructions and technical manuals and all other documentation necessary for the operation of all New Equipment (provided that the Trust reimburses Summit for the cost of any replacement manuals and documentation required by the Trust if the Trust damages, destroys or misplaces such manuals and documentation);
- 7.6 subject to the Change Provisions comply with all minor product modification instructions supplied by any manufacturer or supplier of Equipment from time to time and, during the period of any such modification, there shall be no deductions under the Equipment PMS in respect of such Equipment provided that Summit shall use all reasonable endeavours to minimise any disruption to the Hospital and the provision of clinical services by the Trust;
- 7.7 where, if permitted under Clause 7.8, any Equipment is acquired by Summit on a basis that creates a third party interest or reserves title or an interest in title to that Equipment to the supplier or any other third party, keep full particulars of all such interests of which Summit is, or ought reasonably to be, aware in the Equipment Asset Register;
- 7.8 ensure that all Equipment is owned at all times legally and beneficially by Summit or where relevant an Approved Service Provider or Permitted Sub-Contractor and not create or permit to subsist any third party interest in any Equipment (including, but not

limited to, any lease, charge pledge, lien, right of pre-emption, encumbrance or security interest of any kind or other type of preferential arrangement having similar effect) except:

- (a) with the consent of the Trust, acting reasonably, such consent not to be unreasonably withheld or delayed (the Trust being entitled to object on the basis of the financial covenant of such third party) and where such consent is given in respect of a lease, loan or hire Summit shall ensure that the terms of such agreement preserve the Trust's rights under the Equipment Services Direct Agreement; or
- (b) if the third party executes an Equipment Services Direct Agreement before the third party interest is created; or
- (c) in favour of a Financier or financier of any Approved Service Provider (including Siemens Finance Limited) or Permitted Sub-Contractor (subject to the Trust's rights being preserved under the Equipment Services Direct Agreement); or
- (d) a retention of title until payment or similar term in the normal course of business;

7.9 provide or procure the provision of all appropriate training and familiarisation in respect of the use of the New Equipment:

- (a) to key trainers nominated by the Trust (acting reasonably) in the period six weeks (extended, if applicable, pursuant to Clause 6.12.2) prior to the Services Commencement Date in accordance with a training programme to be agreed by Summit and the Trust (such training to be of a sufficient standard to enable the key trainers to operate the New Equipment and train other members of the Trust's staff); and
- (b) during the Services Term;

and, for the avoidance of doubt, any failure by Summit in terms of this Clause 7.9 will not result in any deductions from the Unitary Payment in terms of Clause 6;

7.10 supply, without cost to the Trust, software updates integral to the New Equipment within a reasonable time of release of the same which enhance throughput and ease of use of the New Equipment but not, for the avoidance of doubt, software upgrades which are an addition to the fundamental operational capabilities of any system (which will only be supplied at the Trust's request and cost and on terms to be agreed by the parties acting reasonably);

7.11 procure that Summit's Contract Officer consults the Trust's Contract Officer on a regular basis and as often as is necessary to facilitate the efficient provision of the Equipment Services in accordance with this Agreement;

7.12 provide reasonable assistance and advice to the Trust on any matters relating to the provision of the Equipment Services or otherwise in connection with this Agreement

- whether of a technical or non-technical nature to ensure the provision of the Equipment Services in accordance with this Agreement, provided that such assistance and advice would not result in a material departure from Summit's obligations under this Agreement or prove to be unduly burdensome to Summit;
- 7.13 ensure that the Equipment Services are carried out by Summit, Approved Service Provider(s) and/or Permitted Sub-Contractor(s) and by no other person unless expressly permitted in terms of the DBFO Contracts provided that, for the avoidance of doubt, this shall not cover the supply of goods and services to Summit and its Approved Service Providers in the provision by them of the Equipment Services;
- 7.14 carry out any modifications or adjustments required to ensure compliance of any Equipment with Statutory Requirements directly applicable to such Equipment. In the period of five years from and after Financial Close, modifications or adjustments to New Equipment shall be at Summit's cost (subject as provided in this Agreement). In the case of modifications or adjustments to Transferred Equipment (including the Laser Imagers and Processor) at any time or to New Equipment after that five year period (and in the case of New Equipment only, after the same is made Operational by Summit) Summit shall be compensated for such modifications or adjustments in accordance with the Change Provisions. In each case, Summit shall be entitled to any phasing in provisions, specified in such Statutory Requirements;
- 7.15 ensure compliance with reasonable instructions given by the Trust, the police and the fire service in relation to imminent threats or dangers to safety on the Site consistent with Summit's rights and obligations under this Agreement;
- 7.16 carry out the PMR Procedures specified in Clause 10 of this Agreement;
- 7.17 in the formulation of operational policies relating to the Equipment Services, have regard (and will procure that its Approved Service Providers and Permitted Sub-Contractors have regard) to the provision by the Trust of its clinical services and functions at the Hospital without (save as specified in this Clause) increasing the obligations of Summit under, or impairing the performance by Summit of, this Agreement;
- 7.18 ensure that all Personnel performing Equipment 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 Site, provided this does not result in a material departure from, or addition to, its other obligations under this Agreement, or give rise to significant costs or disruption for Summit and/or its Approved Service Providers or sub-contractors and Permitted Sub-Contractors;
- 7.19 ensure that all Personnel performing Equipment Services co-operate so far as may be reasonably necessary with the Trust's employees, patients, visitors and other licensees and use its reasonable endeavours to ensure that such Personnel carry out their duties and behave while on the Site in such a way as to cause no unreasonable or unnecessary disruption to the routines and procedures of the Trust but without increasing the

obligations of Summit under, or impairing the performance by Summit of, this Agreement;

7.20 report as soon as practicable in writing to the Trust Contract Officer accidents to Personnel performing Equipment Services which occur on the Site and which are ordinarily required to be reported in accordance with the Health and Safety at Work Act 1974; and

7.21 without prejudice to Clauses 20.1 and 20.2 of the Project Agreement, procure (at no additional cost to the Trust) that the Trust is granted all licences, sub-licences or rights of use of all Intellectual Property integral to the New Equipment necessary to enable the Trust to use the Equipment Services (and whether such Intellectual Property is vested in an Approved Service Provider or its sub-contractors, Permitted Sub-Contractor or other person) and without prejudice to Clause 13.11 (and Clause 20.3 of the Project Agreement shall not apply to the Agreement), and if requested by Summit the Trust will register as a registered user.

8 PACS Back-up

8.1 The Trust shall sell to Summit, and Summit shall purchase, on such date as may be agreed, or failing agreement, on the date occurring eleven weeks prior to the Services Commencement Date, for the aggregate consideration of £1, the following items:-

(a) a 2180 Laser Imager with associated 180LP Processor (Serial No.s KO39135 and KO39136) and a 2180 Laser Imager with associated 180LP Processor (Serial No.s KO 47051 and KO 47164) (together the "Laser Imagers" and each a "Laser Imager"); and

(b) a Processor 460RA (Serial No. K39536) ("the Processor");

and title to and ownership and risk in the Laser Imagers and the Processor shall pass to Summit or its nominee with effect from that date and Summit shall be responsible for the removal of the Laser Imagers and the Processor from the Existing Sites and transfer to the Site and all costs associated therewith. The Trust warrants that it has good title to the Laser Imagers and the Processor (free from all encumbrances, charges and liens) but no warranty is given by the Trust as to the condition or suitability for any purpose of the Laser Imagers and/or the Processor.

8.2 Summit shall make available to the Trust, and shall maintain in accordance with Statutory Requirements in relation to health and safety and the relevant manufacturer's recommendations, a suitable alternative in the event that PACS suffers Downtime such alternative to be (unless otherwise agreed by the Trust acting reasonably):-

(a) one of the Laser Imagers; and

(b) the Processor;

and Summit will supply, at its cost, all spare parts, x-ray film, processing chemistry and optical discs required for the operation of such alternative (the "PACS Back-up").

The Trust may use the PACS Back-up at any time when it requires non-digital images for the provision of clinical services in which case the provisions of Clause 10.2(ii) will apply in respect of such use.

- 8.3 If PACS suffers Downtime, for a duration in excess of that in which it is able to store records in its memory, and the Trust uses the PACS Back-up, the Trust may (acting reasonably) require Summit, at Summit's cost (provided that where Downtime is Permitted Downtime it shall be at the Trust's sole cost and risk), to procure that all x-ray films and images produced, while using the PACS Back-up, are digitized and transferred as soon as reasonably practicable to PACS to provide a consistently digitized patient records system provided the Trust has a genuine clinical requirement to require such digitisation.
- 8.4 The Trust shall mitigate any requirement for the PACS Back-up and the digitisation of x-ray films and images under this Clause. For the avoidance of doubt, but without prejudice to Summit's obligations under Clause 8.2, the Trust shall be responsible for the start up and operation of the PACS Back-up when required.

9 Disposal of Waste

Summit shall throughout the Services Term be responsible for the management of disposal of used x-ray film, processing chemicals and associated silver recovery at the Site in respect of the Equipment Services in accordance with Statutory Requirements relating to health and safety and will indemnify the Trust against all claims, costs, damages and liabilities incurred by the Trust as a result of, or the consequences of, failure by Summit to so comply, up to a maximum aggregate amount per year of £5,000 (and this shall be the Trust's sole and exclusive remedy in respect of any failure by Summit in its obligations under this Clause).

10 Maintenance

During the Services Term Summit shall:

- 10.1 maintain the Equipment in accordance with Statutory Requirements relating to health and safety and the relevant manufacturer's recommendations (in the case of the Transferred Equipment only to the extent that such recommendations have been disclosed in writing to Summit or the Approved Service Provider prior to Financial Close) in accordance with the PMR Procedures;
- 10.2 supply:-
- (i) all spare parts, ultra sound probes (subject to Clause 10.3), on-going applications support, x-ray tubes and glassware; and

- (ii) all x-ray film and processing chemistry (other than that used in the PACS Back-up which will be provided in accordance with Clause 8.2) and optical discs;

required for the operation of all Equipment, in the case of items specified in Clause 10.2(i), at its cost and in the case of items specified in Clause 10.2(ii) at its cost up to an aggregate annual value of such items supplied of £20,000 (Indexed from Financial Close) and thereafter the Trust will meet the costs (being the cost to Summit without any margin or administration costs) of such items referred to in Clause 10.2 (ii) in excess of £20,000 Indexed as aforesaid in accordance with Clause 13.7 (and Summit will provide the Trust with such evidence as the Trust reasonably requires to confirm such costs);

- 10.3 replace ultra-sound probes damaged by the Trust which require replacement the cost of the first such probe so damaged being met by Summit and the cost of all other probes so damaged will be met by the Trust in accordance with Clause 13.7;
- 10.4 develop, prior to the Services Commencement Date, in consultation with the Trust, and update annually for each Annual Equipment Review (or as may be required following the supply of New Equipment) PMR Procedures for all Equipment to comply with its obligations under Clause 10.1 setting out timetables for scheduled maintenance and responding to faults notified to Summit by the Trust under Clause 11 and procedures for dealing with emergency and unplanned maintenance (including appropriate access to Summit and its Approved Service Providers and Permitted Sub-Contractors to the Equipment), such PMR Procedures and updates to such procedures to be subject to Trust approval, not to be unreasonably withheld or delayed. The PMR Procedures will, *inter alia*:
 - (a) set out timetables for scheduled maintenance, in accordance with Clause 10.1;
 - (b) set out timetables and procedures for the next Planned Replacement Year for replacement of Equipment, which replacement shall be in accordance with the Investment Plan and the terms of this Agreement;
 - (c) set out procedures for reporting faults, emergency maintenance and unplanned maintenance; and
 - (d) provide that all maintenance and replacement will be carried out at times and in a manner which causes as little disruption as reasonably practicable to the routines and procedures of the Trust but in any event during Business Days;
- 10.5 provide the Trust, as soon as the same are completed, with copies of the PMR Procedures developed pursuant to Clause 10.4;
- 10.6 record in writing or computer disk all maintenance and replacement which has been carried out and all work in repairing any faults notified to Summit by the Trust under Clause 11, and the dates and times spent on all such maintenance, replacement and repair;

- 10.7 retain the records referred to in Clause 10.6 in relation to each item of Equipment until such item of Equipment is replaced or for such longer period as may be required by Applicable Law or to enable the Uptime Score to be calculated in accordance with Clause 15; and
- 10.8 without prejudice to Clause 10.6, at the end of each month provide the Trust's Contract Officer with a written record of the work performed (including time spent thereon) pursuant to this Agreement, in such format as the Trust shall reasonably require, in the immediately preceding calendar month.

11 Instructions, Requests, etc

11.1 In relation to the Equipment Services, throughout the Services Term Summit shall:

- 11.1.1 respond to faults to the Equipment reported by the Trust in accordance with the PMR Procedures and in any event respond to:-
- (a) Priority One faults within six Equipment Working Hours of notification (and for this purpose only Equipment Working Hours for PACS will be 8am to 6pm, 7 days a week);
 - (b) Priority Two faults within three Business Days of notification; and
 - (c) Priority Three faults at the next planned maintenance date in accordance with the PMR Procedures (or in accordance with an appropriate plan which sets out the matters to rectify the Priority Three fault and the time at which the rectification will be carried out); and

for these purposes "notification" means:-

- (i) in the case of PACS, the time such fault is reported in accordance with Clause 13.3; and
- (ii) in the case of all other items of Equipment where notification is during the relevant Equipment Working Hours for that item of Equipment, the time such fault is reported in accordance with Clause 13.3 or otherwise at the start of the next following Equipment Working Hour relevant to that item of Equipment;

provided that the Trust acknowledges that a response will be by an engineer on Site unless the fault may be identified and/or rectified by computer link and the appropriate action taken and that the Trust will undertake the initial response and first line maintenance for PACS, where appropriate in consultation with Personnel providing Equipment Services;

- 11.1.2 provide a telephone (which may be outwith the Site) manned during Equipment Working Hours (and 24 hours a day, seven days a week in the case of PACS for notification of faults, first line maintenance and remote diagnostics) for receiving and responding to the Trust's oral requests, instructions and queries in relation to repair,

maintenance and otherwise in relation to the operation of the Equipment from the Trust's Contract Officer or his alternate or persons authorised by him under Provision 7 in relation to the Equipment Services in respect of matters within the scope of their delegated authority (and Summit may disregard instructions, requests and queries from other persons unless validated by the Trust's Contract Officer); and

- 11.1.3 record all requests, instructions and queries in writing or on computer disc indicating the date and time of receipt, brief details of action taken and advice given (including response time) and the category of maintenance which was involved and the identity of the person at the Trust (where given) who gave the requests, instructions and queries and the person on behalf of Summit who received the requests, instructions and queries. Any Dispute between the parties as to the correct priority of any fault shall be referred, by either party, to the Dispute Resolution Procedure for determination.
- 11.2 The Trust shall ensure that the Trust's Contract Officer delegates responsibility for PACS under Provision 7 to one or more PACS manager(s) who shall be contactable by Summit at all times regarding PACS and notification to the PACS manager that access is required to PACS shall constitute sufficient notice under Clause 3.5 and the Trust shall ensure such access is made available.

12 Personnel

- 12.1 Summit shall, and shall ensure that any Approved Service Provider and Permitted Sub-Contractor will, only engage and permit to work on the Site in the provision of the Equipment Services, Personnel who:-
- (a) are appropriately skilled, competent, trained and qualified (save for an appropriate level of properly supervised trainees); and
 - (b) so far as the relevant employer is aware are not (i) showing signs of or under treatment for, any serious infectious or communicable disease or (ii) known carriers of such a disease, save where permitted in terms of policies agreed between Summit and the Trust.
- 12.2 The Trust may require that Summit and any Approved Service Provider or Permitted Sub-Contractor remove and exclude from the Site Personnel who do not at any time satisfy the criteria in Clause 12.1(b).
- 12.3 All Personnel engaged in the provision of the Equipment Services shall wear appropriate, adequate and hygienic clothing and be readily identifiable (with an appropriate identification badge and photograph) and may accordingly be refused admission or obliged to leave the Trust's premises forthwith at the request of the Trust if not in possession of appropriate identification.

13 Obligations of the Trust

Throughout the Services Term the Trust shall:

- 13.1 take all reasonable care of the Equipment and related consumables and require the persons for whom it is responsible pursuant to Clause 8.2 of the Project Agreement to take reasonable care in relation to the Equipment and related consumables without prejudice to the provisions of Clause 27 of the Project Agreement;
- 13.2 comply with, and shall procure that the persons for whom it is responsible pursuant to Clause 8.2 of the Project Agreement comply with, all the reasonable instructions, operating manuals and guidance provided by Summit, Approved Services Providers and Permitted Sub-contractors associated with the use of the Equipment and permit use of the Equipment only by authorised users of the relevant Equipment;
- 13.3 report faults to the Equipment in accordance with the PMR Procedures (identifying the priority of any fault as specified in Clause 11.1, acting reasonably) and not use Equipment which is unsafe to use or where use would result in further damage to the Equipment; for the avoidance of doubt any identification of the priority of any fault by the Trust shall not be final but may be disputed by Summit;
- 13.4 monitor levels of stock relating to the Equipment, including but not limited to x-ray film, and notify Summit when stocks are low in sufficient time to enable Summit to replenish such stocks where that is the responsibility of Summit under this Agreement;
- 13.5 keep the Equipment free from any diligence, distress, execution or other legal process and shall not lend, hire, sell, dispose of or part with possession or control of the Equipment;
- 13.6 not alter, add to or improve the Equipment;
- 13.7 pay to Summit within 20 Business Days of demand all costs which are the responsibility of the Trust in terms of Clauses 10.2 and 10.3;
- 13.8 ensure that persons for whom it is responsible in terms of Clause 8.2 of the Project Agreement co-operate so far as may be reasonably necessary and do not interfere with Personnel performing Equipment Services;
- 13.9 transfer to Summit, at the relevant Equipment Requirement Date, all ultra-sound probes then owned by the Trust in relation to the Ultrasound, at no cost to Summit;
- 13.10 comply with the reasonable requirements of Summit regarding security of (a) the Equipment provided this does not result in a material departure from or addition to its other obligations under this Agreement or give rise to significant costs or significant disruption to the Trust but provided always that the Trust shall keep the Equipment in secure locked premises when unattended by an authorised user and (b) data, materials and documents including arrangements for the backing-up and subsequent recovery of information stored in electronically retrievable form at all times;
- 13.11 procure, at no cost to Summit, the provision to Summit and/or its Approved Service Providers and Permitted Sub-Contractors (or ensure that Summit and/or its Approved Service Providers and its sub-contractors and Permitted Sub-Contractors may be

authorised users and, if requested by the Trust, Summit and/or its Approved Service Providers and its Sub-Contractors and Permitted Sub-Contractors shall register as registered users) of all licenses or sub-licenses of Intellectual Property necessary to enable them to provide the Equipment Services (save to the extent the responsibility of Summit in terms of Clause 20 and 20.3 of the Project Agreement or Clause 7.21 of this Agreement) on such terms as they may reasonably request, such terms to include an indemnity from the Trust against all claims made or brought by any persons for or on account of actual or alleged infringement of such Intellectual Property save to the extent that such infringement is due to failure by Summit or any such person, as the case may be, to comply with the reasonable instructions of the Trust in the use of such Intellectual Property or use by Summit, or any such person, as the case may be, of such Intellectual Property for a purpose for which it was not licensed in terms of this Clause;

- 13.12 to the extent that any of the Intellectual Property referred to in Clause 13.11 is generated by or maintained on a computer or in any other machine readable format, the Trust shall procure that (subject always to the provisions of the Data Protection Act 1984) Summit and the persons specified in Clause 13.11 may use any database to enable Summit, or such persons to access and otherwise use that data for the purposes set out in this Agreement;
- 13.13 promptly upon installation of the Equipment at the Site, arrange the certification procedure of the Equipment as compliant with radiation safety guidelines in force from time to time and deliver (or make available) to Summit evidence of such certification;
- 13.14 not by itself or through a third party provide any Equipment Services, but subject always to Clauses 14.7.3, 18 and 23; and
- 13.15 where notice is required to be served on Summit in terms of this Agreement until otherwise notified in writing by Summit, serve such notice direct on the Approved Service Provider (and not Summit but with a copy to Summit save in case of notices under Clause 25.1 which shall be served only on Summit, and the Trust shall not be in breach of any obligation for failure to give a copy of any such notice as aforesaid provided the notice itself has been properly served).

14 **Obligation to Replace**

- 14.1 Except as otherwise provided herein, Summit shall replace the Equipment in the relevant Planned Replacement Year shown in the Investment Plan subject to Clause 14.3, with no adjustment to the payments due by the Trust under the General Provisions.
- 14.2.1 If any item of New Equipment has had any Priority One fault (which is not a fault caused by Permitted Downtime) on at least three occasions in a period of three consecutive months then, following the third of such faults the matter will be referred, as soon as reasonably practicable by either party, to the Technology Committee, such referral to be in writing setting out in reasonable detail the matter referred to and providing such documentation as may be appropriate in the circumstances. Summit may also, at its option, provide the Trust and the Technology Committee with a plan showing how Summit intends to remedy the situation.

14.2.2 The Technology Committee shall endeavour to agree, within 15 Business Days of the date of any such referral and taking into account the nature and extent of the Priority One fault(s):

- (a) whether the plan, if any, provided by Summit is reasonable in the circumstances and can reasonably be considered by the Technology Committee to adequately address the matter and reasonably be capable of remedying the situation; or
- (b) if the plan is either not provided or not deemed reasonable in the circumstances whether Summit should replace the item of New Equipment; or
- (c) what other action the Technology Committee in its opinion acting reasonably deems reasonable in the circumstances to rectify the situation;

and the Technology Committee shall, once such agreement has been reached, immediately inform Summit and the Trust of its decision and:

- (i) if the decision is to implement the plan provided by Summit, Summit shall implement such plan in the timescale specified in the plan; or
- (ii) if the decision is to replace the relevant item of New Equipment Summit shall, as soon as practicable thereafter, replace the relevant item of New Equipment (whether or not such replacement occurs in the Planned Replacement Year) at the cost of Summit and such replacement shall not entail any adjustment to the payment provisions of the General Provisions (except where the necessity for early replacement has been caused by any act or omission of the Trust or a person for whom the Trust is responsible in terms of Clause 8.2 of the Project Agreement or a breach by the Trust of its obligations under the DBFO Contracts in which case the early replacement shall be deemed an instruction by the Trust under Clause 14.3) and the appropriate amendments will be made to the Investment Plan and, for the avoidance of doubt, any such replacement shall be with Equipment of a specification to comply with Clause 3.3.1; or
- (iii) if the decision is to implement such other action, Summit shall so implement such action or decision of the Technology Committee within any time scales stipulated by the Technology Committee or as soon as reasonably practicable thereafter.

For the avoidance of doubt, such decision must include a statement specifying the Uptime Guarantee which will apply to such item of New Equipment thereafter.

14.2.3 If the Technology Committee cannot so agree the action to be taken (within the said period of 15 Business Days) then the relevant matter may be referred, by either party, to the Dispute Resolution Procedure. If Summit has provided to the Technology Committee a plan under Clause 14.2.1 which the Technology Committee has not accepted, then the Expert shall either accept that plan or substitute such plan as he deems to be reasonable in the circumstances (which may include replacement of the item).

- 14.2.4 For the avoidance of doubt, Summit may, in its absolute discretion, bring forward the Planned Replacement Year of any item of Equipment at any time and at its own cost.
- 14.3 In addition to the terms of Clause 14.2, the Trust may request a replacement by Summit of an item of Equipment in a year which is earlier than a Planned Replacement Year by giving at least six months notice in writing to Summit to institute a Change to the Investment Plan under the Change Provisions in which case the Change Provisions will apply. For the avoidance of doubt, any such replacement shall be with Equipment of a specification to comply with Clause 3.3.1.
- 14.4 Notwithstanding Clause 14.1 if any item of Equipment does not need to be replaced by Summit in a Planned Replacement Year as a result of its useful life being longer than that anticipated (as set out in the Investment Plan) the Trust may request Summit to, in which case Summit shall, provide an estimate of any adjustment in the Payment Provisions consequent upon deferring the Planned Replacement Year for that item of Equipment but the Trust shall not be permitted to defer any such replacement other than with the prior written agreement of Summit (acting in its absolute discretion) and on such terms as may be agreed.
- 14.5 All Equipment to be replaced by Summit under this Clause shall be replaced with New Equipment as provided in Clause 3.3 unless otherwise agreed in writing by the Trust.
- 14.6 The Trust may, by written notice to Summit at least six months prior to the Planned Replacement Date for an item of Equipment require Summit not to replace that item of Equipment in a Planned Replacement Year by instituting a Change to the Investment Plan. If:-
- (a) the Trust can demonstrate to Summit (acting reasonably) that it no longer has a clinical need for such item of Equipment or a substitute or alternative item of imaging equipment whether of the same, a different or new modality then adjustments to the payment provisions shall be made in terms of paragraph 9.4.5(b) of Section 2 of the Change Provisions and the item of Equipment shall be deleted from the Investment Plan;
 - (b) otherwise, adjustments to the payment provisions shall be made in accordance with paragraph 9.4.5(c) of Section 2 of the Change Provisions and the item of Equipment shall be deleted from the Investment Plan.

From the Planned Replacement Year Summit shall cease to have any obligations in relation to the item of Equipment otherwise due to be replaced and may enter the Hospital (on reasonable notice) to remove such item and shall take reasonable care in respect of such removal.

- 14.7.1 If the Trust, at any time, requires an item of equipment which has been deleted from the Investment Plan under Clause 14.6(a), or any substitute or alternative item as referred to in Clause 14.6(a), the Trust shall request Summit to, in which case Summit shall, notify the Trust of the price for the provision of such item of equipment by Summit.

Within 20 Business Days of receipt by the Trust of such notification the Trust shall either:

- (a) notify Summit that it accepts such price; or
 - (b) notify Summit that it does not accept such price in which case the matter shall be referred by either party to an independent valuer (agreed by both parties, acting reasonably or failing which appointed by the Technology Committee) to determine the price (taking into account the lost investment opportunity for Summit or its Approved Service Provider as a result of the original deletion).
- 14.7.2 If the Trust notifies Summit of acceptance of the price under Clause 14.7.1(a) or if Summit accepts the price determined under Clause 14.7.1(b) Summit shall, as soon as reasonably practicable, provide the relevant item of equipment and procure that it is made Operational at the Site and appropriate adjustments will be agreed between the parties, acting reasonably, to the Investment Plan, the Equipment Specifications, the Payment Provisions and the Equipment PMS.
- 14.7.3 If Summit does not accept the price determined under Clause 14.7.1(b), Summit shall notify the Trust and shall be under no obligation to provide the item of equipment and the Trust may obtain the item itself or through a third party.

15 Equipment Performance Measurement System

15.1 For the purposes of this Agreement:-

- 15.1.1 **"Downtime"** means, as the context requires, Equipment Downtime and/or PACS Downtime;
- 15.1.2 **"Equipment Downtime"** for any Equipment PMS Period means, in respect of each item of Equipment the aggregate of the following periods, calculated in hours, occurring during the Equipment Working Hours relative to that item of Equipment in that Equipment PMS Period:-
- (a) (i) in respect of a Priority One fault in respect of that item of Equipment the period from notification (as defined in Clause 11.1) of such fault until such fault is remedied;
 - (ii) in respect of a Priority Two fault, in respect of that item of Equipment (1) the period during which repair or diagnostics work is being undertaken on the Equipment following notification (as defined in Clause 11.1) of that fault or, (2) failing response by Summit within 3 Business Days following notification, the period from the expiry of those 3 Business Days until such response and during the repair or diagnostic work as aforesaid;
 - (iii) in respect of a Priority Three fault in respect of that item of Equipment (1) the period during which repair work is being undertaken on the Equipment at the next scheduled maintenance visit following notification

(as defined in Clause 11.1) of that fault or, (2) if an appropriate plan is put in place as set out in Clause 11.1.1(c), the time during which the rectification work is being carried out or if the rectification work is not undertaken by the time specified in such plan, then the period from such time until rectification;

- (b) the period(s) during which that item of Equipment cannot be used by the Trust due to Summit installing, commissioning, removing, altering, maintaining or replacing the Equipment (other than in response to a Priority One, Two or Three fault where Downtime is calculated in accordance with (a) above);
- (c) the period(s) during which the Single Facility/Facility Area in which the item of Equipment is situated is Unavailable and the Equipment cannot reasonably be moved from such Single Facility/Facility Area into a Single Facility/Facility Area which is Available and is satisfactory to the Trust (acting reasonably) for the use of the Equipment in the provision of clinical services; and
- (d) all other period(s) during which that item of Equipment is not present at the Site other than as provided in Clause 6.5(d) or where such removal is with the consent of the Trust;

excluding in any such case (other than as a result, and to the extent, of a failure specified in (a)(ii)(2) and (a)(iii)(2)), any periods during which the Equipment is used by the Trust;

15.1.3 "Equipment Working Hours" means:-

- (a) in respect of all Modalities other than the CT Scanner and PACS, 9am to 5pm on each Business Day;
- (b) in respect of the CT Scanner, 8am to 6pm on each Business Day; and
- (c) in respect of PACS, 24 hours a day, 7 days a week;

15.1.4 "Equipment PMS Period" means each successive period of 12 months commencing on the Operational Date, and the period from the end of the immediately preceding Equipment PMS Period to termination or expiry of this Agreement;

15.1.5 "Maximum Uptime" for any Equipment PMS Period means, in respect of an item of Equipment, the total number of Equipment Working Hours for such item of Equipment in that Equipment PMS Period;

15.1.6 "Modality" means each of the modalities listed in Part 3 of the Schedule and Transferred Equipment;

15.1.7 "PACS Downtime" means Equipment Downtime for PACS calculated on the same basis as and in accordance with Clause 15.1.2 and if during a period of Equipment Downtime for PACS: -

- (a) either the Laser Imagers or the Processor cannot be used by the Trust in the provision of clinical services due to an act, omission or default of Summit or any person for whom it is responsible in terms of Clause 9.2 of the Project Agreement then such period of Equipment Downtime will be doubled; and
- (b) neither the Laser Imagers nor the Processor can be used by the Trust in the provision of clinical services due to an act, default or omission of Summit or any person for whom it is responsible in terms of Clause 9.2 of the Project Agreement, such period of Equipment Downtime shall be quadrupled;

15.1.8 "Permitted Downtime" for any Equipment PMS Period means, in respect of each item of Equipment, the period, calculated in hours, during Equipment Working Hours, in respect of which there would not otherwise have been Downtime for such item of Equipment save only as a result of or the consequences of:

- (a) any act (other than an act requiring Summit, its Approved Service Providers or Permitted Sub-Contractors to comply with this Agreement and/or the PMR Procedures), 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 (including, for the avoidance of doubt, the IT Subcontractor) including breakage of probes/glassware;
- (b) planned installation, commissioning, removal, alteration, modifications, maintenance, repair or replacement of Equipment in accordance with the PMR Procedures for that Equipment PMS Period approved by the Trust in accordance with Clause 10.4 or arising from compliance with Clause 7.6;
- (c) an instruction by the Trust Contract Officer or person to whom he has delegated authority under Provision 7 in relation to the Equipment Services to Summit and/or its Approved Service Providers or Permitted Sub-Contractors (i) to cease any planned installation, removal, alteration, modifications, maintenance, repair or replacement of Equipment (other than an instruction to comply with the Liaison Procedures and/or the PMR Procedures) (ii) pursuant to or in compliance with Clauses 7.15, 7.18 or 7.19 or (iii) which otherwise makes the Equipment incapable of use by the Trust for the provision of clinical services;
- (d) implementation (within any timescale agreed or determined in terms of the Change Provisions and in the absence of an agreed timescale within a reasonable period) of any works relating to an Eligible Change or a 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 3.2 of the Project Agreement (including the IT Subcontractor) is responsible;
- (f) the Trust exercising its step-in rights under Provision 16 of the General Provisions, and/or Clause 23 of this Agreement whereby the Trust or any person

for whom the Trust is responsible in terms of Clause 8.2 of the Project Agreement (including the IT Subcontractor) by its acts or omissions causes Downtime;

- (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 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 an NHS Guidance or other NHS or Trust policy or procedure recommends or requires, that access to or occupation of the Affected Area is denied or restricted;
- (i) the inability of Summit or its Approved Service Provider(s) or Permitted Sub-Contractor(s) to obtain telecommunications services 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) the implementation of Equipment updates, minor modifications and software updates which improve system performance and which cannot be carried out during routine maintenance and have been scheduled by mutual agreement between the Trust and Summit;
- (l) denial of access for Summit and/or its Approved Service Providers or sub-contractors or Permitted Sub-Contractors / due to any act, omission, or default by the Trust or any person for whom it is responsible under Clause 8.2 of the Project Agreement;
- (m) the acts, omissions or default of the Linen Sub-Contractor or the IT Software Supplier or the IT Subcontractor;
- (n) failure by the Trust pursuant to Clause 13.4 to notify Summit that supplies of spare parts and stocks are low in good and sufficient time to enable Summit to satisfy its obligations in terms of this Agreement;
- (o) failure of the HISS or HISS Interface or failure by the Trust to make available the necessary computers or other assets, facilities, hardware, software or other equipment to utilise or be used in conjunction with PACS or any other Equipment

or other such facilities, software, hardware or other equipment (in all such cases to the extent there would not otherwise be Downtime);

- (p) failure of the Trust or its authorised users to comply with instruction manuals or guidance supplied by Summit or its Approved Service Providers or unauthorised attempts by the Trust or any person for whom it is responsible under Clause 8.2 of the Project Agreement to rectify or repair any fault to the Equipment;
- (q) 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 otherwise have been Downtime and that Summit has complied with its obligations under Clause 3.1(ii) of the Services Agreement);
- (r) without prejudice to Clause 7.2.1, election by the Trust not to pay for a licence of Intellectual Property from a third party which results in the Trust being unable to use the Equipment;
- (s) the performance or functionality of the Transferred Equipment or software owned or supplied by the Trust (which affects the provision of the Equipment Services and except in so far as Summit is responsible for the same under the terms of this Agreement) is adversely affected by the Year 2000 and beyond;
- (t) the corruption, by any equipment, data or software for which the Trust is responsible, of the data or software owned or supplied by Summit, or for which it is responsible under the terms of the Agreement, including, but not limited to the introduction of a virus; or
- (u) Contamination arising due to an act, default or omission of the Trust or any person for whom the Trust is responsible in terms of Clause 8.2 of the Project Agreement;

15.1.9 "Priority One" means a fault in the item of Equipment which results in:-

- (a) the Equipment (other than PACS) being unsuitable for use, either because it is physically incapable of being used, or if its use could be potentially dangerous to any operator or patient; and
- (b) in the case of PACS, the loss of ability to receive/transfer digital images in any of the following departments: HDU, ITU, CCU, SCBU, Theatres, Accident and Emergency, Joint Administration Ward and Radiology;

15.1.10 "Priority Two" means a fault in the item of Equipment such that the item of Equipment can be used but cannot be used at full functionality (for example an automatic function must be done manually) and is not such that the repair of the fault can be scheduled at the next planned maintenance date and which is not a Priority One fault;

15.1.11 "Priority Three" means a fault in respect of the item of Equipment which is neither a Priority One nor a Priority Two fault;

15.1.12 "Uptime" for any Equipment PMS Period means, in respect of each Modality, the number of hours calculated in accordance with the following formula:-

$$a - b + c$$

where:

a means the aggregate Maximum Uptime for all items of Equipment in that Modality for that Equipment PMS Period;

b means the aggregate Downtime for all items of Equipment in that Modality for that Equipment PMS Period; and

c means the aggregate Permitted Downtime for all items of Equipment in that Modality for that Equipment PMS Period;

15.1.13 "Uptime Score" for any Equipment PMS Period means, in respect of each Modality the percentage calculated according to the formula:-

$$\frac{x}{y} \times 100\%$$

where:

x means the Uptime for that Modality for that Equipment PMS Period; and

y means the aggregate Maximum Uptime for all items of Equipment comprised in that Modality for that Equipment PMS Period.

- 15.2 Summit shall monitor with all due care and skill the performance of the Equipment Services (including, without limitation, pursuant to Clauses 10.6 and 11.1.3 and the PMR Procedures) so as to determine the Uptime Score for each Modality in each case within 20 Business Days of the end of each Equipment PMS Period. The Trust will be entitled, from time to time, to audit the monitoring by Summit of the Equipment Services 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 such auditing procedure.
- 15.3 Within 20 Business Days of the end of each Equipment PMS Period, Summit will provide the Trust, in such format as the Trust may reasonably require, a report setting out the Uptime and the Uptime Score for each Modality (and each item of Equipment in that Modality) in respect of such Equipment PMS Period together with such additional information as the Trust may reasonably require in relation to the calculation of the Uptime Score for each Modality.

- 15.4 Within 10 Business Days of receipt by the Trust of the report and additional information specified in Clause 15.3, the Trust may dispute the Uptime Score for any Modality by notice in writing to Summit that the Trust will refer the matter to the Dispute Resolution Procedure failing which the Trust shall be deemed to have agreed the Uptime Score.
- 15.5 Following agreement or determination of the Uptime Score for each Modality in respect of the relevant Equipment PMS Period the Trust may, if the Uptime Score is less than 98% for any Modality (or 92% for Transferred Equipment) or, in the case of PACS in the first 6 months after the Operational Date, 95% (and thereafter, 98%) (all such percentages representing the Uptime Guarantee in respect of such Modalities), be entitled to reduce the Unitary Payment in accordance with paragraph 8 of Part A of the Schedule to the General Provisions (Performance Deductions - Equipment Services PMS).
- 15.6 If the Trust uses an item of Equipment in the period between notification of a Priority One fault and rectification of such fault, the Trust shall indemnify Summit against all claims, costs and liabilities suffered or incurred by Summit as a result of such use including but not limited to third party claims and damage caused to the Equipment.

16 Usage

- 16.1 The Trust acknowledges that Summit has priced the provision of the Equipment on the basis of the following specified anticipated usage ("**Specified Usage Levels**"):

<i>Modality</i>	<i>Number of examinations</i>
Ultrasound	8,000 examinations per year;
Screening and Interventional	2,500 examinations per year;
CT	3,000 examinations per year;
Mammography	1,000 examinations per year;
General	75,000 examinations per year.

- 16.2 The Trust acknowledges that, if actual usage in respect of any Modality in any year (being each 12 month period commencing on the Operational Date) is in excess of 5% (or in respect of the first year from and after the Operational Date, 10%) above those levels specified in Clause 16.1, Summit will incur increased costs of maintenance (including labour) and consumables and the Planned Replacement Years for any such items of Equipment may require to be brought forward. Accordingly, the Trust undertakes to Summit to maintain complete and accurate records of the usage of all items of Equipment and to make such records available to Summit and if the actual usage of any Modality of Equipment over any yearly period is:

- (a) in excess of 5% (or in respect of the first year from and after the Operational Date, 10%) but less than 30% above the Specified Usage Level relevant to that Modality then the Trust will pay Summit the additional maintenance (including labour) and consumable costs incurred by or on behalf of Summit during that year calculated in accordance with the table set out in Part 4 of the Schedule ("Additional Costs") provided that Summit will endeavour to minimise the Additional Costs consistent with its obligations hereunder and will provide all information to the Trust reasonably required for the Trust to audit such Additional Costs; or
- (b) greater than 30% above the Specified Usage Level relevant to that Modality then Summit shall have the right to require adjustments to the Payment Provisions and the relevant Planned Replacement Date for any relevant Equipment in that Modality and the Uptime Guarantee in accordance with the Change Provisions.

Such usage calculations shall be undertaken in conjunction with the calculation of Uptime under Clause 15 and payment shall be made by the Trust to Summit of any Additional Costs agreed or determined under Clause 16.2(a) within 20 Business Days of demand by Summit.

17 Sub-Contracting

17.1 Summit may procure the provision to the Trust of all or any part of the Equipment Services and any of the obligations of Summit under this Agreement by any one or more Approved Service Providers or Permitted Sub-Contractors appointed in accordance with this Agreement and Provisions 11 and 13 of the General Provisions but not otherwise. The appointment of any Approved Service Provider or Permitted Sub-Contractor and the provision of Equipment Services by any Approved Service Provider or Permitted Sub-Contractor (or transfer of Transferred Equipment to in accordance with Clause 17.2) does not diminish, release or in any way affect the obligations of Summit under this Agreement.

17.2 Summit may further transfer any Transferred Equipment, the Laser Imagers and/or the Processor to any such Approved Service Provider or Permitted Sub-Contractor or require the Trust to transfer any Transferred Equipment, the Laser Imagers and/or the Processor directly to such Approved Service Provider or Permitted Sub-Contractor.

18 Additional Equipment

- 18.1 Subject to Clause 14.7, if the Trust determines from time to time that it has a requirement for additional equipment, ("Additional Equipment") then it may at its option:
- (a) request Summit to provide such equipment (on terms to be agreed provided that Summit shall be under no obligation to provide such equipment but if it does so provide it may only provide it through the Approved Service Provider and not otherwise); or

- (b) provide such equipment itself, or
 - (c) require a third party to procure such equipment.
- 18.2 For the avoidance of doubt, the provisions of this Agreement shall only apply to Additional Equipment if the parties expressly agree in writing and subject as may be provided in any such agreement.
- 19 Technology Committee**
- 19.1 To assist the clinical efficiency of the Trust, Summit and the Trust shall establish a Technology Committee as soon as reasonably practicable after Financial Close to review all aspects of this Agreement in light of the ongoing clinical needs of the Trust, changes in healthcare delivery and emerging technology and to *inter alia* identify all items of New Equipment to be supplied to the Trust in accordance with Clause 3.3 and review such other matters concerning the Equipment Services as may be appropriate or agreed between the parties.
- 19.2 The Technology Committee shall consist of three representatives of the Trust and three representatives of Summit (including two representatives of the Approved Service Provider) or such other number as may be agreed provided that the Trust and Summit have equal representation. A representative nominated by the Trust and a representative nominated by Summit shall alternatively (meeting by meeting) chair the Technology Committee. The Technology Committee shall meet once in every year (such meetings being referred to in this Agreement as the "Equipment Annual Review") on dates to be agreed or as often as may be required pursuant to Clause 14.2.
- 19.3 The Technology Committee may make recommendations to Summit and the Trust in relation to this Agreement but, save as provided in Clause 14.2, such recommendations shall not be binding on either the Trust or Summit and the Technology Committee shall have no power to amend this Agreement or any of the documents referred to in it. To the extent not otherwise provided in this Clause, the provisions of Clauses 11.3, 11.5 (save as provided in Clause 14.2), 11.6 and 11.8 of the Project Agreement shall apply equally to the Technology Committee as they apply to the Joint Operating Group, as if references therein to the Joint Operating Group were references to the Technology Committee, unless otherwise agreed in writing between the parties.
- 20 Information and Guidance**
- 20.1 The Trust may request, and Summit shall provide upon reasonable request, reports and information relating to the Equipment Services, which reports and information shall be compiled with all due care and diligence, be accurate (in all material respects) and not misleading (in any material respect) provided this does not result in a material departure from or addition to its other obligations under this Agreement or give rise to significant costs or significant disruption to Summit (or any Approved Service Provider or Permitted Sub-Contractor), and excluding financial information on which the Payment Provisions in relation to the provision of the Equipment Services is based save where expressly provided for under this Agreement or the Change Provisions.

- 20.2 The Trust shall on reasonable notice make available to Summit such information within the Trust's possession or control or which it is entitled to receive from a third party (using reasonable endeavours to procure the same) and such assistance as Summit may reasonably request in such form and at such time or times as Summit may reasonably request in relation to the performance of Summit's obligations under this Agreement provided this does not result in a material departure from or addition to the Trust's other obligations under this Agreement or give rise to significant costs or significant disruption to the Trust.
- 20.3 The Trust may, by notice in writing to Summit require Summit to comply with any rules, regulations, guidance or other provisions which are specific to the NHS or to hospitals (including the Hospital) but not constituting Statutory Requirements provided:-
- (a) it indemnifies Summit to its reasonable satisfaction against any additional costs or liabilities properly, reasonably and necessarily incurred as a result of the implementation of such requirement; and
 - (b) Summit (acting reasonably) does not object to the implementation of that requirement (and Summit shall be deemed to be acting reasonably if (i) as a result of such implementation, it or its Approved Service Provider would be in breach of any Statutory Requirement or a duty of care to a third party or its obligations under the DBFO Contracts or (ii) such implementation would fundamentally alter the nature of the Equipment Services).

21 Assistance in Enforcement of Rights

- 21.1 In respect of any Transferred Equipment which has the benefit of third party or manufacturers' warranties or guarantees which are transferable, the Trust shall transfer the benefit of such warranties or guarantees to Summit or as it may direct.
- 21.2 Without prejudice to Clause 21.1, the Trust shall provide all reasonable assistance required by Summit, its Approved Service Provider(s) or Permitted Sub-contractor(s) in the enforcement of any rights that the Trust or Summit or its sub-contractors may have against:
- (a) any supplier of Transferred Equipment; or
 - (b) any supplier of third party maintenance or support services in respect of any of the Transferred Equipment; or
 - (c) any other person providing any guarantee or warranty in respect of the Transferred Equipment;

provided this does not give rise to significant costs or significant disruption to the Trust.

22 Limitations on Agency

Save as expressly set out in this Agreement, nothing in this Agreement shall entitle Summit to act as the agent of the Trust and Summit shall not hold itself out as the agent of the Trust.

23 Remedy by the Trust

- 23.1 If Summit fails to demonstrate to the reasonable satisfaction of the Trust that, as provided in Clause 6.10 (subject to Clause 6.12), PACS will be Operational at the Site prior to the first anniversary of the Operational Date then the Trust may, upon the expiry of the 3 month time period referred to in Clause 6.10, require the deletion of PACS from the Investment Plan by instituting a Change under the Change Provisions and adjustments to the payment provisions shall be made in accordance with paragraph 9.4.5 (a) of Section 2 of the Change Provisions and PACS shall be deleted from the Investment Plan on the basis of the price set out in Part 2 of the Schedule. Summit shall indemnify the Trust on demand from and against the additional costs (if any)(including, for the avoidance of doubt, any increase in the cost of the provision of PACS), properly and reasonably incurred by the Trust in procuring the provision of PACS from a replacement service provider for a period of 3 years from the earlier of the date of the Trust so procuring the provision of PACS or 6 months after the date of the Change taking effect provided that Summit's liability to the Trust in accordance with this Clause 23 will not, irrespective of the terms upon (or duration for) which the Trust procures PACS, exceed the additional sum which would have been payable by the Trust had it procured PACS on substantially the same terms (except as to price) as originally set out in this Agreement and for the remainder of the Term.
- 23.2 If Summit fails to make the Ultrasound Operational by the Services Commencement Date, save in the circumstances referred to in Clause 6.12, the Trust may decommission the Ultrasound at the Existing Site and make the Ultrasound Operational at the Site and invoice Summit for the reasonable costs properly incurred by the Trust in effecting such remedy, such costs not to exceed £5,000. Summit shall pay such invoice within five Business Days after (a) the date of receipt of that invoice or (b) if Summit disputes that invoice within that period by reference to the Dispute Resolution Procedure, the date of determination under the Dispute Resolution Procedure where such determination is in favour of the Trust but without prejudice to any further rights of Summit under the Dispute Resolution Procedure.
- 23.3 In effecting or procuring any remedy or replacement under Clauses 23.1 and 23.2 the Trust shall, and shall procure that any relevant third party shall, use all reasonable endeavours to mitigate any costs incurred by it.
- 23.4 If Summit has failed to replace an item of Equipment:
- (a) in accordance with Clause 14.1 by the date occurring three months after the end of the relevant Planned Replacement Year; or

- (b) within three months of any date specified in accordance with Clause 14.2 where it is agreed or determined an item of New Equipment should be replaced;

then the Trust (acting reasonably) may, but shall not be obliged to, at any time, thereafter until such item of Equipment has been replaced, notify Summit in writing requiring Summit to terminate the contract between Summit and the Approved Service Provider providing that item of Equipment on three months' notice and Summit shall implement that notice and the provisions of Clause 24.2 shall apply provided that Summit shall be entitled to revoke that notice of termination if the item of Equipment is replaced prior to expiry of that three months notice of termination.

24 Termination of contract with Approved Service Provider and consequences

24.1 Summit shall only be entitled to terminate the contract between Summit and the Approved Service Provider in relation to the provision of the Equipment Services (the "Equipment Sub-Contract") with the prior written consent of the Trust, which consent shall not be unreasonably withheld or delayed. Such consent will be given where Summit validly terminates the Equipment Sub-Contract in the following events:

- (a) in accordance with Clause 30.1.1 (insolvency), 30.1.2 (uptime score), 30.1.3 (non-payment), 30.1.4 (claims in excess of cap) or 30.1.5 (constructive abandonment) of the Equipment Sub-Contract; or
- (b) as provided in Clause 23.4.

Summit will procure that the Equipment Sub-Contract contains a provision specifying that the Equipment Sub-Contract may not be terminated by Summit other than with the consent of the Trust (as specified above).

24.2 On each occasion Summit terminates any Equipment Sub-Contract as provided in Clause 24.1, then:-

- (a) Summit shall conduct (in accordance with the DBFO Contracts), and diligently pursue, an appropriate tendering process (approved by the Trust, acting reasonably) for a replacement Approved Service Provider;
- (b) Summit shall as soon as practicable and, in any event, within 3 months of the date of termination of the Equipment Sub-Contract enter into a new contract (the "New Equipment Sub-Contract") with a replacement Approved Service Provider approved by the Trust, whose consent will not be unreasonably withheld or delayed;
- (c) the New Equipment Sub-Contract will be in terms of the Equipment Sub-Contract save in respect of the date of commencement of the New Equipment Sub-Contract ("the New Equipment Sub-Contract Date") (including provision for a fixed price, subject to indexation, for the remainder of the Term) with such amendments as the Trust or Summit may agree (and each party shall give reasonable consideration in good faith to any amendments proposed by the other

which is beneficial or not detrimental to the performance of the Equipment Services and which, in the case of an amendment proposed by Summit will not increase the Unitary Payment, (unless otherwise agreed by the Trust) and which, in the case of an amendment proposed by the Trust, will not (unless otherwise agreed by Summit) prejudice the costs or risk profile of Summit in procuring the performance of the Equipment Services);

- (d) Summit shall be responsible for all the costs incurred in the tendering for and entering into of the New Equipment Sub-Contract;
- (e) Summit shall bear any increase or benefit from any decrease in the cost of the provision of the Equipment Services under the New Equipment Sub-Contract until the third anniversary of the New Equipment Sub-Contract Date and, thereafter, any increase or decrease in the cost of the provision of the Equipment Services under the New Equipment Sub-Contract (from the cost in terms of the Equipment Sub-Contract) shall be borne by and be for the benefit of the Trust and the appropriate adjustments shall be made to the payment provisions in accordance with paragraph 9.4.5 of Section 2 of the Change Provisions; and
- (f) the Trust shall, subject to Clauses 15 and 25.1, and notwithstanding the service of a notice to terminate the Equipment Sub-Contract continue to pay Summit the Equipment Capacity Element provided that:-
 - (i) the Trust shall be under no obligation to continue to pay the Capacity Element in respect of the Equipment Services in respect of any items of Equipment which are removed from the Hospital prior to installation by the new Approved Service Provider during the period from such removal until such installation;
 - (ii) the Equipment PMS will continue to apply notwithstanding (1) the service of the notice to terminate given by the Trust under Clause 23.4 or (2) the service of a notice to terminate the Equipment Sub-Contract or that the Equipment Sub-Contract may then have terminated; and
 - (iii) the Equipment Sub-Contract (and New Equipment Sub-Contract) will contain provision that (subject to continued payment by the Trust as noted above) the Equipment Services will continue and the Equipment may not be removed from the Site by the relevant Approved Service Provider until the new Approved Service Provider is appointed and is to install replacement equipment.

25 **Termination of Equipment Agreement and consequences**

- 25.1 The Trust may, at its option, and without prejudice to any other rights available to it, whether pursuant to the Project Agreement or otherwise, terminate this Agreement by notice in writing at any time within a period of four months following :

- (a) failure by Summit (or where, failure would be mathematically inevitable) to achieve an Average Uptime Score of 85% (in respect of all Modalities but excluding Transferred Equipment) in any period of 24 consecutive months (such consecutive periods commencing on the Operational Date) where the Average Uptime Score is calculated in accordance with the following formula:

$$\frac{x}{y} \times 100\%$$

where:

x means the Uptime for all Modalities but excluding Transferred Equipment in the relevant period of 24 consecutive months; and

y means the aggregate Maximum Uptime for all Modalities but excluding Transferred Equipment in the relevant period of 24 consecutive months; or

- (b) termination of the Equipment Sub-Contract by Summit without the prior written consent of the Trust as specified in Clause 24.1; or
- (c) failure by Summit to diligently pursue the tendering process specified in Clause 24.2(a) or failure to enter into a New Equipment Sub-Contract within the 3 month period specified in Clause 24.2(b).
- 25.2 On termination of this Agreement pursuant to Clause 25.1 Summit shall indemnify the Trust, on demand, from and against the additional costs, if any (including, for the avoidance of doubt, any increase in the cost to the Trust of the Equipment Services) properly and reasonably incurred by the Trust in procuring the provision of Equipment Services from a replacement service provider for a period of 3 years from the date of termination of this Agreement provided that the Trust shall use all reasonable endeavours to mitigate such costs and provided that Summit's liability to the Trust in accordance with this Clause 25.2 will not, irrespective of the terms upon (or duration for) which the Trust procures the Equipment Services, exceed the additional sum which would have been payable by the Trust had it procured the Equipment Services on substantially the same terms (except as to price) as originally set out in this Agreement and for the remainder of the Term.
- 25.3 On termination or expiry of this Agreement, however arising, Clause 23.1.5 of the Project Agreement shall apply.
- 25.4 On termination or expiry of this Agreement or any Equipment Sub-Contract (but subject to Clause 24.2(i)(iii)), however arising or pursuant to its rights and obligations under this Agreement (which for the avoidance of doubt shall include the right to remove Equipment which has been replaced or pursuant to a PACS Default or a Surplus Removal as defined in the Change Provisions), unless the Trust properly exercises any rights it may have under Clause 23.1.5 of the Project Agreement or the Equipment Services Sub-Contract Direct Agreement to acquire all of the Equipment, Summit or its

agents or its Approved Service Providers shall be permitted, having given prior written notice to the Trust, to enter into any premises of the Trust in which the Equipment is situated within Normal Working Hours and remove the Equipment and the Trust grants Summit or its agents or Approved Service Providers a licence to enter the Trust's premises for this purpose. This Clause will survive termination or expiry of this Agreement.

25.5 On termination of this Agreement the Trust may exercise its rights under the Equipment Direct Agreement.

25.6 The terms of Clause 15 of this Agreement shall survive termination of this Agreement to enable the Uptime Score to be calculated for the period prior to termination.

26 General

26.1 The provisions of Clauses 28 to 31 (inclusive) and Clause 33 of the Project Agreement shall apply to this Agreement as therein provided.

26.2 Clause 12.3 of the Project Agreement (subject to the terms thereof) shall be deemed to include the provision of information by any Approved Service Provider providing Equipment Services in pursuance of its proper and necessary corporate requirements.

26.3 Where there are references in this Agreement to matters which will not cause inconvenience, cost or disruption to Summit that shall include inconvenience, cost or disruption to the Approved Service Provider, its sub-contractors and Permitted Sub-Contractors.

26.4 It is acknowledged by the parties that the Trust is responsible for HISS (or any substitute or replacement thereof and additions thereto and software comprised therein) ("the IT Facilities") and the subcontractor supplying the IT Facilities from time to time ("the IT Subcontractor") and Summit is responsible for PACS and it is further acknowledged that the Trust may permit third parties to access and use PACS from time to time ("PACS Users"), therefore:

- (a) the Trust shall indemnify Summit and/or, at the direction of Summit, its Approved Service Provider, as the case may be, against all losses, liabilities, claims and expenses suffered or incurred by Summit and/or its Approved Service Providers arising from any damage or disruption to, or corruption of, or interference with, PACS caused by the IT Facilities or the IT Subcontractor or the PACS Users or the interface of the IT Facilities and/or the PACS Users with PACS; and
- (b) Summit shall indemnify the Trust on demand against all damages, losses, liabilities, claims and expenses suffered or incurred by the Trust arising from any damage or disruption caused to, or corruption of, or interference with the IT Facilities caused by Summit, its Approved Service Provider (or its sub-contractors) or Permitted Sub-Contractor or PACS;

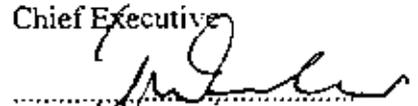
provided that each party shall use all reasonable endeavours to mitigate any loss suffered the subject of these indemnities, consequential loss shall be excluded and the Trust shall not be obliged to pay more than once for the same loss or damage.

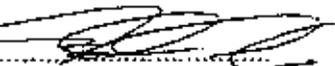
IN WITNESS WHEREOF these presents consisting of this and the preceding 36 pages are, together with the Schedule annexed hereto, executed as follows:

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:



Chief Executive


Chairman

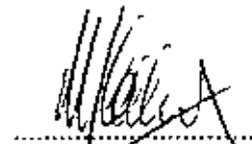
Witness 

Name *James Gemmell Dunbar*

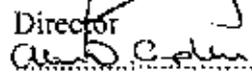
Address *6373 CANON STREET*

EDINBURGH

Subscribed for and on behalf of
SUMMIT HEALTHCARE (LAW) LIMITED
at London
on the *16th* day of June 1998
by *MICHAEL JOHN COLLARD*
Director, and *Duncan* Secretary
Director/Secretary



Director


Director/Secretary

James Gemmell Dunbar witness

RORY CHRISTIE

56 SOUTH TRINITY ROAD

EDINBURGH

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

THE SCHEDULE

Part 1

The Transferred Equipment

	Description	Serial No
1	Sireskop 5, Fluorspot H (Barium Room)	GRF1883
2	Philips Multi-Diagnost 3 including Angiomat 6000 (Special Procedures Room)	113005.04
3	AMX4 Mobile Unit	2578828WKW
4	Explorer Mobile Unit	6237
5	C Arm Image Intensifier Philips BV300	113005.05
	C Arm Image Intensifier Philips BV300	113005.06
6	ATL HDI 3000 Ultrasound Machine	00L21J
7	Aura Scientific DPXIQ Bone Densitometer	B5374
8	Siemens Sonoline Versa Ultrasound Unit	HEG0771

THE SCHEDULE

Part 2

Annual Service Cost per item of Equipment

TOTAL

Ultrasound #1 (*tfr)
 Ultrasound #2 (*tfr)
 Flouro Rm1 (Special)(*tfr)
 Flouro Rm2 (Barium)(*tfr)
 CT Scanner
 Mammography and Stereo
 A&E General
 OPG/Dental
 General Radiology (with Tomography)
 General Radiology #1
 General Radiology #2
 General Radiology #3
 General Radiology #4 (Skull)
 Mobile X-Ray #1
 Mobile X-Ray #2 (*tfr)
 Mobile X-Ray #3 (*tfr)
 Mobile II #1 (*tfr)
 Mobile II #2 (*tfr)
 Bone Densitometer (*tfr)
 PACS

 TOTAL

- Note: (1) *tfr indicates Transferred Equipment
 (2) prices are as at 1st April 1996 and will be indexed using the Equipment Index.

THE SCHEDULE

Part 3

Annual Service Cost per Modality

Ultrasound

Ultrasound #1 (*tfr)

Ultrasound #2 (*tfr)

Screening/Interventional

Flouro Rm1 (special)(*tfr)

Flouro Rm2 (Barium)(*tfr)

CT

CT Scanner

Mammography

Mammography and Stereo

General

A&E General

OPG/Dental

General Radiology (with Tomography)

General Radiology #1

General Radiology #2

General Radiology #3

General Radiology #4 (Skull)

Mobile X-Ray #1

Mobile X-Ray #2 (*tfr)

Mobile X-Ray #3 (*tfr)

Mobile II #1 (*tfr)

Mobile II #2 (*tfr)

Bone Densitometer (*tfr)

PACS

PACS

TOTAL

- NOTE: (1) The above table shows each item of Equipment comprised in each Modality, other than Transferred Equipment as a separate Modality. Each item of Transferred Equipment is indicated (* tfr). Therefore, the cost of Transferred Equipment, as a Modality (from time to time), is the aggregate cost of each item marked (* tfr) until such item is replaced with New Equipment and appropriate adjustments will be made to the calculation of the cost of each other Modality (ie by deducting the cost of each item which is calculated in the cost of Transferred Equipment). For example, in the first year from the Operational Date (and assuming all items have been provided and no replacements of Equipment during that year) the annual cost per Modality would be:

Ultrasound
 Screening/Interventional
 CT
 Mammography
 General
 PACS
 Transferred Equipment

TOTAL

- (2) Once all Transferred Equipment has been replaced with New Equipment, Transferred Equipment will cease to be a Modality and (assuming no Changes) the Modalities (and payments) will be as listed in the above table.
- (3) Prices are as at 1st April 1996 and will be indexed using the Equipment Index.

THE SCHEDULE

Part 4

Calculation of marginal cost on activity (Additional Costs)

A	B	C	D	E	F	G	H	I	J
Modality	Media Type	No of images per exam (avg)*	Costs of media	optical disc capacity	Total Image cost per exam** D/E	Maint. tubes/ probes	Sub-Total F + G	Overhead recovery	Total H + I
CT					H x 85%	H x 15%	J x 80%	J x 20%	
Fluoro									
General									
Nuclear									
Ultrasound									
Mammography									
MRI									
Interventional									

* dependent upon critical practice

** cost of optical disc/capacity of disc (average number of examinations which can be stored per disc)

THE SCHEDULE**Part 5****The Critical Equipment**

PACS (including DLR System)

Barium Screening Room

2 General Rooms: (1) General Radiology (with Tomography)
(2) General Radiology #1

OPG/Dental

Mammography and Stereo

A & E General

CT Scanner

DATED 16 JUNE 1998

MASTER DEFINITIONS SCHEDULE

applying to the Project Agreement, in relation to the
New Law District General Hospital at Netherton dated June 1998
and the other DBFO Contracts referred to in that Agreement

between

LAW HOSPITAL NATIONAL HEALTH SERVICE TRUST (1)

and

SUMMIT HEALTHCARE (LAW)LIMITED (2)



MCGRIGOR DONALD

SYDNEY

Pacific House
70 Wellington Street
GLASGOW G2 6SB
Tel: 0141 248 6677
Fax: 0141 221 1390

(PROPERTY DONNAN LAW LAW MDS 21 AGR)

15 June 1998

FAS 4833

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MASTER DEFINITIONS SCHEDULE

- (A) This Schedule is executed by (1) **Law Hospital National Health Service Trust**, a body corporate established by an order (S.I. 1993 No 2929 (3.263)) as amended by an amendment orders (SI 1995 No. 741 (S.67) and SI 1998 No 926 (S50)) made by the Secretary of State under Section 12A of the National Health Service (Scotland) Act 1978 and (2) **Summit Healthcare (Law) Limited** incorporated under the Companies Acts with Registered Number 182649 and having its Registered Office at Saltire Court, 20 Castle Terrace, Edinburgh (together the "parties") as relative to, and constitutes the Master Definitions Schedule referred to in, the Project Agreement between the parties dated 16th June 1998 and the other DBFO Contracts defined in this Schedule and shall apply to the Project Agreement and the other DBFO Contracts (and any other document between the parties expressly incorporating this Schedule's terms).
- (B) This Schedule may be amended only in writing by a document signed by the parties and expressed to be supplemental to this Schedule and, on any such amendment being made, this Schedule shall take effect as so amended.

1 Definitions

Accounts Agreement	means the accounts agreement in the Agreed Form entered into after the Execution Date between Summit, the Subsidiary, Royal Exchange Trustee Nominees Limited (as Security Trustee), Royal Exchange Trust Company Limited (as Bond Trustee), AMBAC Insurance UK Limited, Lloyds Bank PLC (as Account Bank) and Hill Samuel Asset Management Limited (as Investment Manager) in connection with the accounts to be operated by Summit in relation to the Initial Finance Facilities Agreements
Act	means the National Health Service (Scotland) Act 1978
act of insolvency	has the meaning given to it in Clause 22.1.1 of the Project Agreement
Action Plan	means an action plan in relation to the Services agreed between the parties pursuant to Provision 16.4
Actual Mark	has the meaning given to it in paragraph 2.2 of Part C
Additional Bond Service Amount	has the meaning given to it in paragraph

	10.2 of Part A
Additional Capital	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Additional Capital Service	has the meaning given to it in paragraph 7.2 of Section 2 of Part D
Additional Costs	has the meaning given to it in Clause 16.2(a) of the Equipment Agreement
Additional Employees	has the meaning given to it in Clause 17.2.1 of the Project Agreement
Additional Equipment	has the meaning given to it in Clause 18.1 of the Equipment Agreement
Additional Unavoidable Equipment Operating Costs	has the meaning given to in paragraph 10.4 of Part A
Additional Unavoidable Services Operating Costs	has the meaning given to in paragraph 10.3 of Part A
Additional Works Change	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Additional Works Contract	has the meaning given to it in paragraph 3.1.4 of Part E
Additional Works Contractor	has the meaning given to it in paragraph 3.1.4 of Part E
Additional Works Notice	has the meaning given to it in paragraph 1.1 of Part E
Additional Works Change Procedure	means the procedure set out in Part E
Affected Area	has the meaning given to it in paragraph 1 of Part A
Affected Area Deduction	has the meaning given to it in paragraph 1 of Part A
Affected Contract Year	has the meaning given to it in paragraph 2.1 of Section 1 of Part D

Affected Employee	has the meaning given to it in Clause 16.8.1 of the Project Agreement
Affected Party	has the meaning given to it in Clause 26.2.6 (a) of the Project Agreement
Agreement	when used in the General Provisions, means any agreement which states that the General Provisions are incorporated by reference into that agreement
Alternative Use Value	has the meaning given to it in Clause 24.8 of the Project Agreement
Anticipated SCD	has the meaning given to in paragraph 11.1.1 of Part A
Applicable Laws	means, as the context requires, all or any laws, statutes, legislation, proclamations, by-laws, directives, regulations, rules, orders, rules of court or delegated or subordinate legislation, including but not limited to those made by the Scottish Parliament or the Scottish Executive as the case may be following enactment of the Scotland Bill 1998, in each case having the force of law at any time or from time to time in force and which in any way affect or impact on any or all of the parties and/or on any of the matters referred to in or to be done under any one or more of the DBFO Contracts
Appointment	means, in relation to each Consultant, a document appointing such Consultant in the Agreed Form to be entered into between such Consultant and Summit or the Contractor as appropriate and Executed
appropriate treatment or removal	has the meaning given to it in Clause 26.10.3 of the Project Agreement
Approved Equity Amount	means the Initial Equity Amount as the same may be reduced from time to time pursuant to the Initial Equity Agreements and including any further equity subscribed with the prior written approval of the Trust as the same may be reduced from time to time

Approved Financiers Amount

means the aggregate from time to time, of:

- (a) the Bond Amount;
- (b) any sums required to be provided by any Finance Providers to any of Summit Group to enable Summit to fund Eligible Changes;
- (c) any additional financing other than as referred to in (b) above (notified in writing to the Trust but not approved by the Trust) made available by Finance Provider(s) to any of the Summit Group pursuant to or as envisaged by the Initial Finance Facilities Agreements up to a maximum principal amount of 10% of the Bond Amount; and
- (d) any other sum approved by the Trust

as the same may be reduced, from time to time, pursuant to the Finance Facilities Agreements and notwithstanding that additional sums may be made available by the Finance Provider(s) to any of the Summit Group pursuant to the Finance Facilities Agreements

Approved Rate

means, in respect of the Bonds, the Bond Rate, and in respect of the Standby Facility, or any other financing referred to in item (c) of the definition of the Approved Financiers Amount, the rate thereunder (such rate not to exceed a reasonable market rate)

Approved Service Provider

means, in relation to the Services, any person who is appointed by Summit to be a provider of all or any part of any of the Services to the Trust in accordance with the Services Agreement and the General Provisions and, in relation to the Equipment Services, any person who is appointed by Summit to be a provider of all or any part of the Equipment Services to the Trust in accordance with the

	Equipment Agreement and the General Provisions
Architect	means Percy Thomas Partnership Architects Limited of 10 Cathedral Road, Cardiff CF1 9YF and/or such other architect as the Contractor or Summit may from time to time appoint in addition or in substitution in relation to the Works in each case with the prior approval of the Trust in accordance with the Development Agreement
Aspect of Service Operating Score	means the weighted average of all the Elemental Scores
Asset Register	means the register to be designated as such and which Summit is obliged to maintain pursuant to the Services Agreement
Associated Company	means, in respect of any company, a company which is a subsidiary or a holding company of such company or which is a subsidiary of any holding company of such company and, in the case of Summit, shall include (without limitation) each of the Promoters for so long as any Promoter holds shares in Summit
Available	has the meaning given to it in paragraph 1 of Part A
Available Assets	has the meaning given to it in paragraph 9 of Section 3 of Part 10 of the Schedule to the Project Agreement
Availability Element	has the meaning given to it in paragraph 3 of Part A
Availability Payment Period	has the meaning given to it in paragraph 1 of Part A
Bond Amount	means the nominal amount of the Bonds to be issued by the Subsidiary pursuant to the Initial Finance Facilities Agreement as approved by the Trust and recorded in accordance with Clause 3.1.6 of the Project Agreement

Bonds	means the guaranteed secured bonds issued by the Subsidiary in relation to the Project pursuant to the Initial Finance Facilities Agreements for the Bond Amount and at the Bond Rate
Bond Rate	means the interest rate on the Bonds as agreed between the parties and recorded in accordance with Clause 3.1.6 of the Project Agreement
Bondholders	means the holders, from time to time, of any of the Bonds
Bond Service Amount	has the meaning given to it in paragraph 2.1 of Section 1 of Part D when referred to therein and has the meaning given to it in paragraph 11.1.2 of Part A when referred to therein
Breakage Costs	means all costs and liabilities reasonably, properly and necessarily incurred by Summit in connection with the Project as a consequence of the termination of the DBFO Contracts (a) in respect of any Personnel reasonably, properly and necessarily (and excluding for the avoidance of doubt any director of Summit or Subsidiary) employed by Summit or Subsidiary for the purposes of the Project (such amounts not to exceed amounts due on termination under any Applicable Law or contractually due) and (b) in respect of damages reasonably, properly and necessarily due to the Contractor or Approved Service Providers in terms of the Building Contract or Sub-Contract(s) which have been approved by the Trust in terms of the DBFO Contracts (and including for this purpose costs and liabilities properly arising from the termination of the contracts of employment of Personnel) and (c) otherwise arising in connection with the termination of the DBFO Contracts, provided that Summit will (and will use all reasonable endeavours to procure that the Building Contractor or its Approved Service Providers will) take all reasonable steps to

	minimise the amount of such costs or damages, but excluding, for the avoidance of doubt any sums due under the Finance Facilities Agreements and the Equity Agreements
breakdowns	has the meaning given to it in Part 8 of the Output Specification
Breakfast	has the meaning given to it in paragraph 1 of Part A
Building Contract	means the contract for the carrying out of the Works in the Agreed Form to be made between Summit and the Contractor
Building Contract Direct Agreement	means the agreement to be entered into by, inter alios, the Lead Financier and the Contractor
Buildings	means at any time the building or buildings comprised within the Hospital at that time including Group 1 items but excluding the Trust Group 2 and 3 Equipment, the Trust Related Materials, and any other equipment or assets of the Trust and persons for whom the Trust is responsible in terms of Clause 8.2 of the Project Agreement
Business Day	means a week day (other than a Saturday) on which banks are open for domestic business in Edinburgh and London
Calculation Table	has the meaning given to it in paragraph 1 of Part A
Capacity Element	has the meaning given to it in paragraph 4 of Part A
Capital Expenditure	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Capital Legislative Change	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Catering Services	means those services described as catering services in the Output Specification

CDM Regulations	has the meaning given in Clause 4.12.1 of the Development Agreement
Certificate of Contractual Practical Completion	means a certificate issued in accordance with the Contractual Practical Completion Procedure indicating that the Contractual Practical Completion Date has occurred
Certified Copy	means, in relation to any document, a true, complete and up-to-date copy thereof and certified as such by a director or the company secretary of Summit or, as the case may be, the Chief Executive or other Executive Director of the Trust
Cessation Employees	has the meaning given to it in Clause 16.11.1 of the Project Agreement
Change	has the meaning given to it paragraph 2.1 of Section 1 of Part D
Change in Costs	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Change in Revenues	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Change Provisions	means the change provisions set out in Part D
Collateral Deed	means the collateral deed in the Agreed Form entered into after the Execution Date between Summit, the Subsidiary, the Holding Company, Royal Exchange Trustee Nominees Limited (as Security Trustee), Royal Exchange Trust Company Limited (as Bond Trustee) and AMBAC Insurance UK Limited (as Credit Provider)
Collateral Warranties	means the collateral warranties in the Agreed Form in favour of (1) the Trust and (2) the Lead Financier amongst others and Executed by the Contractor and each of the Consultants and the Design Sub-Contractors and delivered to the Trust and the Financiers respectively in accordance with the DBFO Contracts

Commissioning Extension Period	means the period commencing on Services Commencement Date and ending on the Operational Date
Commissioning Period	means the period commencing on the Contractual Practical Completion Date and ending on the Operational Date
Commissioning Procedure	means the procedure for the commissioning of the Hospital referred to in Clause 3.3 of, and as set out in Part 7 of the Schedule to, the Project Agreement
Compensation Amount	as the context requires has the meaning given to it and is calculated in accordance with and as specified in Clause 24 of the Project Agreement and Part 10 of the Schedule thereto
Competent Authority	means any statutory agency, trust, department, local authority, highways authority, court, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) having jurisdiction in terms of an Applicable Law over any or all of the parties and/or the relevant subject matter of the DBFO Contracts
Competitive Rate	has the meaning given to it in paragraph 2.1 of Section I of Part D
Confidential Information	means all information whether technical, commercial or financial disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by or on behalf of one party to the other whether before or after the Execution Date
Confirmation Notice	means a notice to be given by the Trust to Summit indicating that it should implement an Eligible Change to which the notice relates
Construction Period	means the period commencing on Financial Close and ending on the Contractual Practical Completion Date

Construction Timetable	means the construction timetable in the Agreed Form
Constructively Abandoned	has the meaning given to it in Clause 26.6.3(a) of the Project Agreement
Consultants	means the Architect, the Structural Engineer, the M & E Engineer, and the Planning Supervisor
Contamination	has the meaning given to it in Clause 26.10.3 of the Project Agreement
Contract NPV	has the meaning given to it in paragraph 5 of Section 2 of Part 10 of the Schedule to the Project Agreement when referred to in that Section, and the meaning given to it in paragraph 7 of Section 4 of Part 10 of the Schedule to the Project Agreement when referred to therein
Contract Officer	means the person named or to be named as such in or accordance with Provisions 7.1 and 7.2
Contract Specification	has the meaning given to it in Provision 12.4(e)(ii)
Contract Year	means any Year (or part thereof) during the Term
Contractor	means Sir Robert McAlpine Limited (Registered Number 566823) of Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR or such other building contractor or contractors as Summit may from time to time appoint in addition or in substitution to carry out the Works in each case with the prior approval of the Trust in accordance with the Development Agreement
Contractual Practical Completion Date	means the date, determined under the Contractual Practical Completion Procedure, on which practical completion of the Works occurs in accordance with the Development Agreement

Contractual Practical Completion Procedure	means the procedure to be followed in relation to the certification of the Contractual Practical Completion Date in accordance with Part 5 of the Schedule to the Development Agreement
Cost Assumptions	has the meaning given to it in paragraph 10 of Section 2 of Part 10 of the Schedule to the Project Agreement
Council	means North Lanarkshire Council or its successor as local planning authority in respect of the area including the Site
Coupon Bearing Investment	has the meaning given to it in paragraph 11 of Section 4 of Part 10 of the Schedule to the Project Agreement
CPC Employees	has the meaning given to it in Clause 16.12.1 of the Project Agreement
Critical Equipment	means the items of Equipment listed in Part 5 of the Schedule to the Equipment Agreement
CT Scanner	means the CT Scanner as described in the Equipment Specifications
Current Index	has the meaning given to it in paragraph 1 of Part A
Daily Portion	means, for a Contract Year, the amount calculated in accordance with Appendix A of Part A
Date of Transfer	has the meaning given to it in Clause 16.14.1 of the Project Agreement
Day case discharge	has the meaning given to it in paragraph 1 of Part A
Day case episode	has the meaning given to it in paragraph 1 of Part A
DBFO Contracts	means the agreements and leases referred to in Part 1 of the Schedule to the Project Agreement

Debt Service Reserve Account	the Debt Service Reserve as defined in the Collateral Deed or any other account over which a charge has been granted pursuant to the Finance Facilities Agreement for an analogous purpose.
Deduction Period	has the meaning given to it in paragraph 1 of Part A
Deduction Provisions	means paragraphs 6,7, 8 and 9 of Part A
Default Deletion Change	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Default Market Testing	means any market testing required pursuant to Provisions 15.4 to 15.7
Defaulted Services	has the meaning given to it in Provision 15.11
Delay Costs	has the meaning given to it in Clause 27.5.1(c) of the Project Agreement
Delay Cost Heads	means the following heads of cost: <ul style="list-style-type: none"> (a) abortive training costs; (b) storage of equipment, or materials or any items which are intended to be used at the Site; (c) abortive transfer of the equipment materials or items referred to in (b) above; and (d) the costs of carrying out such works of repair or replacement to buildings and plant at the Existing Sites
Deleted Services	has the meaning given to it in Provision 12.7.2
Design Development Procedure	means the procedure set out in Part 10 of the Schedule to the Development Agreement
Design Sub-Contractor	shall mean if the configuration of design work carried out by sub-contractors to the

		Contractor is materially different from that disclosed to the Trust at Financial Close, those sub-contractors to the Contractor who shall have any material design role or duties in connection with the Works
Designated Areas		has the meaning given to it in Clause 1.1 of the Sub-Lease
Detailed Decision Notice		means the written decision issued by the Council on 3 September 1997 in respect of the application by Summit for planning permission in relation to the Site together with any plans or documents docketed by the Council in relation thereto
Development Agreement		means the agreement in the Agreed Form to be entered into between the Trust and Summit relating to the undertaking of the design, construction, fitting out and commissioning of the Works
Developed Specification		has the meaning given to it in Clause 4.2.2 of the Development Agreement
Direct Agreements		means the Equipment Direct Agreement, the Services Direct Agreement and the Financier Direct Agreement
Directive		means the Acquired Rights Directive (EC 77/187) as amended from time to time
Disapproved Transferees		has the meaning given to it in Clause 10.1 (b) of the Project Agreement
Discriminatory Change	Legislative	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Dispute		means a difference or dispute of whatever nature between the Trust of the one part and Summit of the other part arising under, out of or in connection with any of the DBFO Contracts (including, without limitation, any question of interpretation of any of the DBFO Contracts)
Dispute Resolution Procedure		means the procedure referred to in Clause

	28 of, and set out in Part 2 of the Schedule to, the Project Agreement
Distributable Reserves	has the meaning given to it in Provision 16.2.5
Domestic Services	means those services described as domestic services in the Output Specification
Downtime	has the meaning given to it in Clause 15.1.1 of the Equipment Agreement
Due Date	has the meaning given to it in paragraph 7.4 of Section 2 of Part D
Elemental Score	has the meaning given to it in paragraph 2.2 of Part C
Eligible Change	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Eligible Change Extension Period	has the meaning given to it in Clause 4.3.6(b) of the Development Agreement
Employees	means those employees of the Trust and Hospital Hygiene Limited who, at the Transition Commencement Date, are engaged in those services to be provided as Transition Services under Clause 17 of the Project Agreement on or immediately prior to the Transition Commencement Date
Employee Assumptions	has the meaning given to it in Clause 16.3.1 of the Project Agreement
Employee Commissioning Costs	has the meaning given to it in Clause 17.2.2 of the Project Agreement
Employment Regulations	means the Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended from time to time or other laws or regulations having the force of law which comply or are intended to comply with the Directive, whether enacted before or after the Directive
Energy Contracts	has the meaning given to it in paragraph

	1.1 of Part 2 of the Schedule to the Services Agreement
Environment	has the meaning given to it in Clause 26.10.3 of the Project Agreement
Equal Pay Claims	has the meaning given to it in Clause 16.17 of the Project Agreement
Equipment	means, at the relevant times, all items of equipment listed in the Investment Plan at that time and all replacements of that equipment
Equipment Agreement	means the agreement in the Agreed Form between the Trust and Summit relating to the procurement, transfer, maintenance and replacement of Equipment in relation to the Hospital
Equipment Annual Review	has the meaning given to it in Clause 19.2 of the Equipment Agreement
Equipment Asset Register	means the register to be designated as such and which Summit is obliged to maintain pursuant to Clause 7.2 of the Equipment Agreement
Equipment Change	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Equipment Cost Variation	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Equipment Deduction Amounts	has the meaning given to it in paragraph 5.4 of Part 7 of the Schedule to the Project Agreement
Equipment Direct Agreement	means the agreement in the Agreed Form to be entered into by, inter alios, the Lead Financier, the Trust, Summit and the Approved Service Provider(s) providing Equipment Services or other relevant third parties in relation to the Equipment
Equipment Downtime	has the meaning given to it in Clause 15.1.2 of the Equipment Agreement

Equipment Element	has the meaning given to in paragraph 10.4 of Part A
Equipment Index	has the meaning given to it in paragraph 1 of Part A
Equipment Maintenance	means the maintenance of the Equipment to be carried out in accordance with the Equipment Agreement
Equipment Performance Measurement System or Equipment PMS	means the performance measurement system for the Equipment Services as set out in Clause 15 of the Equipment Agreement
Equipment PMS Deduction	has the meaning given to it in paragraph 8.1 of Part A
Equipment PMS Period	has the meaning given to it in Clause 15.1.4 of the Equipment Agreement
Equipment Provision	means the provision of Equipment pursuant to the Equipment Agreement including Transferred Equipment and the replacement of any Equipment
Equipment Requirement Date	in respect of any items of Transferred Equipment means the date on which the item of Transferred Equipment is required to be made available to Summit, as described in Clause 4.1 of the Equipment Agreement
Equipment Services	means the Equipment Provision and the Equipment Maintenance
Equipment Specifications	means the specifications relating to the Equipment in the Agreed Form as amended from time to time in accordance with the DBFO Contracts showing the specification for each item of New Equipment listed in the Investment Plan including for this purpose New Equipment which will replace Transferred Equipment
Equipment Sub-Contract	has the meaning given to it in Clause 24.1 of the Equipment Agreement
Equipment Working Hours	has the meaning given to it in Clause

	15.1.3 of the Equipment Agreement
Equity	means the Initial Equity Amount as reduced from time to time pursuant to the Initial Equity Agreement
Equity Agreements	means (a) the Initial Equity Agreements, and (b) any agreements supplementary to or in substitution for the Initial Equity Agreements as permitted by or approved in terms of the DBFO Contracts
Equity Providers	means the providers, from time to time, of Equity
Equity Reserve Account	the Distributions Account as defined in the Collateral Deed or if the Initial Finance Facilities Agreements so far as relating to such account are amended or superceded then reference to the balance at credit of the Equity Reserve Account will be deemed to be a reference to any sums held by Summit which are available for distribution to Equity Providers.
Escrow Account	means the Escrow Account as defined in the Collateral Deed or any other account over which a charge has been granted pursuant to the Finance Facilities Agreements for an analogous purpose.
Estates Maintenance Services	means those services described as estates maintenance services in the Output Specification
Estates Trust Account	means an account in the name of the Trust the account details of which will be notified by the Trust to Summit no later than the date upon which a notice first given under Provision 16.2.6 into which the Relevant Amount in terms of Provision 16.2.6 is transferred in relation in order to effect any Permanent Repairs
Excess	has the meaning given to it in Clause 26.9.4 of the Project Agreement
Excess Employees	has the meaning given to it in Clause 16.3.4(e) of the Project Agreement

Excusable Delay	has the meaning given to it in Clause 4.3 of the Development Agreement
Excusable Event	has the meaning given to it in Clause 4.3 of the Development Agreement
Executed	means, in relation to any document, that the document is presumed under Section 3 of the Requirements of Writing (Scotland) Act 1995 to have been granted by all the grantors subscribing to it and cognate expressions shall be construed accordingly
Execution Date	means the date on which the Project Agreement is Executed
Existing Approved Service Provider	has the meaning given to it in Provision 12.4(d)
Existing Sites	means the sites at Law and Bellshill from which the Trust provides clinical services at the Execution Date
Expert	means any person appointed as such from time to time under and subject to the provisions of Part 2 of the Schedule to the Project Agreement
Expiry of the Term	means the date on which the Term expires or would expire but for early termination in accordance with the DBFO Contracts
Extended Remedy Period	has the meaning given to it in paragraph 6.5 of Part A
Extension Periods	has the meaning given to it in paragraph 4.3.6 of the Development Agreement
Facility Area	has the meaning given to it in paragraph 1 of Part A
Final Room Data Sheets	means the Room Data Sheets as updated in accordance with Part 9 of the Schedule to the Development Agreement or pursuant to the Change Provisions
Final Services Year	has the meaning given to it in Clause 1 of

Part A

Finance Facilities Agreements

means (1) the Initial Finance Facilities Agreements in the Agreed Form, (2) any agreements supplementary to or substituted for those Initial Finance Facilities Agreements and (3) the agreements entered into from time to time between any of Summit Group and the Finance Providers to be used by any of Summit Group exclusively in connection with the Project (including any agreements relating to the prospective or actual Financial Indebtedness of Summit Group exclusively in relation to the Project and agreements providing for grant of security) and "Finance Facilities Agreement" shall be construed accordingly

Finance Providers

means the Bondholders and Financiers

Financial Close

the date on which the conditions precedent in Clause 3.1 of the Project Agreement are waived or purified in terms thereof

Financial Indebtedness

means any indebtedness in respect of:

- (a) monies borrowed or raised;
- (b) any liability under any debenture, bond, note, loan stock, documentary credit or acceptance or other security;
- (c) the amount payable in respect of any asset acquired by a person where such payment is deferred for more than 90 days after the date on which the person obtained possession of the asset concerned;
- (d) a liability arising under any interest or currency exchange agreement, forward interest rate or forward currency exchange rate agreement or other hedging instrument;
- (e) any guarantee, indemnity or similar deed or agreement relating to

financial loss of any person arising in respect of any of the matters described above and within this definition; and

- (f) liabilities under leases categorised as finance leases under applicable UK accounting standards

Financial Model

means the Original Financial Model as the same may be amended from time to time in accordance with the Change Provisions

Financial Obligation

has the meaning given to it in Paragraph 2 of Clause 16.14.1 of the Project Agreement

Financier

means the Lead Financier and any person satisfying one or more of the following descriptions (but does not mean, for the avoidance of doubt, any Bondholder in its capacity as a Bondholder or any of the Summit Group):-

- (a) any bank or financial institution which has at the relevant time entered into a Finance Facilities Agreement (other than the Bonds or Equity) with any of Summit Group;
- (b) any company, bank or financial institution which has agreed to guarantee or indemnify, in whole or in part, the obligations of any of Summit Group in respect of the Bonds;
- (c) any bank or financial institution which from time to time serves as a trustee or security agent and/or trustee for one or more of the Bondholders and/or the persons falling within (a) or (b) above

Financier Direct Agreement

means the direct agreement in the Agreed Form between, inter alios, the Trust, the Lead Financier and Summit or any subsequent direct agreement in equivalent

	form to be entered into pursuant to Clause 5.3 of the Project Agreement
Financier Sub-contract Direct Agreements	means the Services Direct Agreement, the Equipment Direct Agreement and/or the Building Contract Direct Agreement
First Line Maintenance	has the meaning given to it in paragraph 4.4 of Part 8 of the Output Specification
First Market Testing Date	means the first Market Testing Date being the date seven years from the Operational Date
First Required	has the meaning given to it in paragraph 1 of Part A
First Required Notice	has the meaning given to it in paragraph 1 of Part A
First Services Year	has the meaning given to it in paragraph 1 of Part A
FM Availability Deduction	has the meaning given to it in paragraph 10.2 of Part A
FM Equipment Deduction	has the meaning given to in paragraph 10.4 of Part A
FM Services Deduction	has the meaning given to it in paragraph 10.3 of Part A
Force Majeure	has the meaning given to it in Clause 26.1 of the Project Agreement
Force Majeure Extension Period	has the meaning given to it in Clause 4.3.6 (a) of the Development Agreement
Frozen Annual Holiday Pay Entitlement	means any sum of money which becomes payable to any Employee on the termination of that Employee's employment and which relates to holiday entitlement accrued by that Employee in relation to the period of such employment prior to the holiday year which was in effect at the date of termination and as provided for in the Whitley Agreements or

	such other agreement as in force from time to time
Fuel	has the meaning given to it in paragraph 1.1 of Part 2 of the Schedule to the Services Agreement
Funding Costs	has the meaning given to it in Clause 7.2.3 of Section 2 of Part D
Future Costs	has the meaning given to it in paragraph 8 of Section 2 of Part 10 of the Schedule to the Project Agreement, when referred to in that Section, and the meaning given to it in paragraph 10 of Section 4 when referred to therein
Future Revenues	has the meaning given to it in Clause 7 of Section 2 of Part 10 of the Schedule to the Project Agreement, when referred to in that Section, and the meaning given to it in Clause 9 of Section 4 when referred to therein
General Provisions	means the document between the Trust and Summit entitled "General Provisions"
Good Industry Practice	means the exercise of such degree of skill, diligence, prudence and foresight as would reasonably generally in the industry and ordinarily be expected from an appropriately skilled and experienced person seeking to comply with its contractual obligations and seeking to avoid liability arising under any duty of care that might reasonably apply to or be expected from that person, complying with all Applicable Laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions as that in which the relevant matter arises, provided that, in the case of Summit, Good Industry Practice excludes the exercise of any degree of skill, diligence, prudence and foresight required in relation to the carrying out of clinical activities

Government Authority

means any body falling within one or more of the descriptions set out below:

- (a) any government body of the United Kingdom or any political division of the United Kingdom or having any form of local jurisdiction in the United Kingdom;
- (b) any governmental authority established by virtue of the treaties of the European Union which operates or has jurisdiction directly or indirectly within the United Kingdom having statutory, legal, fiscal, monetary or administrative effect upon the affairs of the United Kingdom;
- (c) any body having governmental functions of any of the above however constituted; and/or
- (d) any federation or other co-operative organisation of which any of the above is a member or to whose jurisdiction any of the above is subject or in whose activities any of the above is a participant

Group

means Group 1, Group 2, Group 3 and/or Group 4 as the context requires

Group 1

means those items included in the Final Room Data Sheets as Group 1 items, and supplied and installed under the Building Contract prior to the Contractual Practical Completion Date and as subsequently replaced or renewed by Summit after the Services Commencement Date

Group 2

means those items included in the Final Room Data Sheets as Group 2 items, as supplied by the Trust and installed under the Building Contract prior to the Contractual Practical Completion Date and as subsequently replaced or renewed after the Services Commencement Date in

	accordance with Part 1 of the Schedule to the Services Agreement
Group 3	means those items included in the Final Room Data Sheets as Group 3 items, as supplied prior to the Services Commencement Date and subsequently replaced or renewed in accordance with Part 1 of the Schedule to the Services Agreement
Group 4	means portable equipment having no overall critical space implication except storage and supplied in accordance with Part 1 of the Schedule to the Services Agreement
Handover Date	has the meaning given to it in Provision 15.12 of the General Provisions
Handback Vacation Notice	means a notice given to Summit by the Trust pursuant to Clause 25.1.2 of the Project Agreement
HBO	means HBO & Company (UK) Limited
Head Lease	means the lease of the Site in the Agreed Form to be granted to Summit by the Trust under Clause 4.1 (e) of the Development Agreement
Helipad Agreement	means an access agreement to permit the Trust and Summit and the Contractor to, inter alia, obtain access to the Playing Field for the provision and use of a helicopter landing facility in terms of Clause 13.2 of the Development Agreement
Help Desk	means the help desk to be made available by Summit pursuant to the DBFO Contracts or such appropriate replacement as may be agreed by the parties
Holding Costs	has the meaning given to it in paragraph 7.2.2 of Section 2 of Part D
Holding Company	means Summit Holdings (Law) Limited, company number 173083

Hospital	means the New Law District General Hospital to be constructed pursuant to the Development Agreement including the Buildings, car parks, landscaping and all erections on the Site and thereafter operated by or on behalf of the Trust as a National Health Service hospital at the Site and forming the subject matter of the Project
Hospital Cleaning Area	means the areas of the Hospital which Summit are responsible for cleaning, namely the High Risk Clinical Areas, the Clinical Areas and Non-Clinical Areas as specified in the Output Specification for Domestic Services
Hospital Information System or HISS	means the Hospital Information and Support System
Incoming Service Provider	has the meaning given to it in Clause 16.11 of the Project Agreement
Indemnified	has the meaning given to it in Clause 27.3.1 of the Project Agreement
Indemnifier	has the meaning given to it in Clause 27.3.1 of the Project Agreement
Index	has the meaning given to it in paragraph 1 of Part A
Index Year	has the meaning given to it in paragraph 1 of Part A
Indexed	means, in respect of any period, increased in accordance with the following formula: <div style="text-align: center; margin: 10px 0;"> $\frac{b}{a} \times c$ </div> <p>where <i>a</i> equals the Index at the start of the relevant period;</p> <p><i>b</i> equals the Index at the end of the relevant period; and</p> <p><i>c</i> means the relevant amount to be Indexed</p>

Indexed Equipment Amount	has the meaning given to it in paragraph 4.2 of Part A
Indexed Services Total	has the meaning given to it in paragraph 4.1 of Part A
Industry Standards	means (a) NHS Guidance, and (b) those rules, regulations, guidance and codes of practice and conduct and standards recognised at national level (which are neither Statutory Requirements nor specific to the NHS or to hospitals (including the Hospital) nor Original NHS Guidance) which would reasonably and ordinarily be expected to be followed and complied with and would reasonably be regarded as best practice, from time to time by persons engaged in the same activity as that in which the relevant matter arises
Initial Equity Agreements	means the agreements for the provision of share capital and the Coupon Bearing Investment entered or to be entered into between Summit and the Equity Provider which are in the Agreed Form
Initial Equity Amount	means the principal sums to be provided in respect of share capital and the Coupon Bearing Investment pursuant to the Initial Equity Agreements as agreed between the parties and recorded in accordance with Clause 3.1.6 of the Project Agreement
Initial Finance Facilities Agreements	means the Finance Documents (as defined in the Collateral Deed)
Initial Index	has the meaning given to it in paragraph 1 of Part A
Initial Works Cost	means the amount to be inserted in paragraph a of Section 2 of Part 10 of the Schedule to the Project Agreement as agreed between the parties and recorded in accordance with Clause 3.1.6 of the Project Agreement
Inpatient episode	has the meaning given to it in paragraph 1 of Part A

Inpatient Nights	has the meaning given to it in paragraph 1 of Part A
Insolvency	means those circumstances described in Clause 22.1.1 of the Project Agreement
Insurance Proceeds Account	means the Insurance Proceeds Account as defined in the Collateral Deed or any other account over which a charge has been granted pursuant to the Finance Facilities Agreements for an analogous purpose.
Insurances	means all those policies and contracts of insurance (including reassurances) effected or to be effected in terms of Part A of Part 5 of the Schedule to the Project Agreement
Insurance Schedule	means the Schedule of Insurances in the Agreed Form
Insurance Threshold	has the meaning given to it in Clause 26.9.1 of the Project Agreement
Insured Risks	means the risks specified in the Insurance Schedule and in Part 5A of the Schedule to the Project Agreement
Insurance A Risk	has the meaning given to it in Clause 26.9.3 of the Project Agreement
Insurance B Risk	has the meaning given to it in Clause 26.9.3 of the Project Agreement
Intellectual Property	means, as the context requires, current and/or future interests in copyright and rights in the nature of copyright, design rights, patents, trade and service marks (whether registered or unregistered) and all know-how
Interdependent Facilities	has the meaning given to it in Clause 1 of Part A
Interest Rate	4% per annum above the base rate for the time being of the Governor and Company of the Bank of Scotland
Investment Plan	means the investment plan relating to the Equipment in the Agreed Form as amended

	from time to time in accordance with the Equipment Agreement and/or in accordance with the Change Provisions listing the Equipment which is required by the Trust to be procured by Summit and showing the Planned Replacement Year for each item of Equipment
ISDS1 Definitions	means the definitions in Appendix D to Part A
IT	has the meaning given to it in Parts 7 and 8 of the Schedule to the Development Agreement
IT Network	means the IT network installed as part of the Works
IT Repairs	means any work of repair, reinstatement, renewal or other works relating to the IT Network
IT Software	the software associated with the active components, which is required to commission, configure and operate the IT Network as detailed in the Trust Requirements, Volume 4, Part I, paragraph 7.6.5, but for the avoidance of doubt not including any network operating system (eg Novel, NT, Unix) that resides on a processor.
IT Software Supplier	means at any time the party who provides the IT Software at that time
Joint Operating Group	means the group described as such established and maintained by the parties pursuant to Clause 11 of the Project Agreement
Judicial Review	means an application for judicial review of the Detailed Decision Notice other than by Summit
Laser Imager(s)	has the meaning given to it in Clause 8.1(a) of the Equipment Agreement
Lead Financier	means the Credit Provider (as defined in

	the Collateral Deed)
Legislative Change	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Liaison Procedures	means the procedures set out in Part 11 of the Schedule to the Project Agreement
Life Cycle Costs	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Life Cycle Cost Variation	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Limit	has the meaning given to it in paragraph 5 of Part 7 of the Schedule to the Project Agreement
Linen Services	means those services described as linen services in the Output Specification
Linen Sub-contracted Element	means those linen services to be procured directly by the Trust as indicated or described in the Appendix to the Output Specification for Linen Services
Linen Sub-contractor	means at any time such party with whom the Trust at that time has contracted for the provision of the Linen Sub-contracted Element
List of Headline Items	means the lists of headline items in the Agreed Form forming part of the Specification.
Local Collective Agreements	has the meaning given to it in Clause 16.6.7 of the Project Agreement
Loss and Expense	has the meaning given to it in Clause 11.1.4 of Part A
Lunch	has the meaning given to it in paragraph 1 of Part A
M & E Engineer	Hulley & Kirkwood of 15 - 16 Woodside Place, Glasgow G3 7QS or such other M & E Engineer as the Contractor or Summit may from time to time appoint in

	addition or in substitution in relation to the Works in each case with the prior approval of the Trust in accordance with the Development Agreement
Maintenance Procedures	means the procedures to be developed by Summit prior to the Services Commencement Date and updated annually (and, in each case, approved by the Trust) providing procedures to enable Summit to comply with its obligations under the Estates Maintenance Output Specification
Maintenance Reserve Account	has the meaning given to it in the Collateral Deed
Management Costs	has the meaning given to it in Clause 17.3.1 of the Project Agreement
Management Portion	has the meaning given to it in Clause 2.1 of Section 1 of Part D
Mandatory Date	means the date for completion of the Works as referred to in Part 2 of the Schedule to the Development Agreement as revised from time to time in accordance with Clause 4.3 of the Development Agreement
Market Testing	means the market testing procedure as set out in Provision 12
Market Testing Change	has the meaning given to it in Provision 12.2
Market Testing Date	has the meaning given to it in Provision 12.1.1
Master Definitions Schedule	means this document
Master Penalty Points	means master penalty points to be awarded in accordance with Provision 15 and Part B of the Schedule to the General Provisions
Maximum Uptime	has the meaning given to it in Clause 15.1.5 of the Equipment Agreement
Method Statements	means the documents so entitled in the

	Agreed Form setting out the methods to be employed in providing the Services in accordance with the Output Specification, as amended in writing from time to time in accordance with the DBFO Contracts
Minute of Variation	means in respect of each of the Head Lease and the Sub-Lease a minute of extension to extend the Premises (as therein defined) in each such document to include the Sub Station Area
Modality	has the meaning given to it in Clause 15.1.6 of the Equipment Agreement
Modality Payment	has the meaning given to it in paragraph 1 of Part A
Monitoring Period	has the meaning given to it in Clause 1.4 of Part C of the Schedule to the General Provisions
Monitoring Procedure	means the procedure to be followed in relation to the monitoring of the Works in accordance with Part 1 of the Schedule to the Development Agreement
Monitoring Report	means a report in terms of Provision 2.1 of the General Provisions setting out the matters listed therein
Month	has the meaning given to it in paragraph 1 of Part A
Necessary Consents	means all permissions, consents, licences, certificates, authorisations and other approvals (including the Detailed Decision Notice) and relaxations issued under or as required by the Statutory Requirements or any other applicable legally binding requirement relating to the Works
Net Contract Amount	has the meaning given to it in paragraph 6 of Section 2 of Part 10 of the Schedule to the Project Agreement
Net Internal Area	has the meaning given to it in paragraph 6.1 of Section 7 of Part D

New Equipment	means all items of Equipment other than Transferred Equipment
New Equipment Sub-Contract	has the meaning given to it in Clause 24.2 (b) of the Equipment Agreement
New Equipment Sub-Contract Date	has the meaning given to it in Clause 24.2(c) of the Equipment Agreement
New Guidance	has the meaning given to it in Provision 14.1
NHS	means the National Health Service and any successor bodies taking over its responsibilities
NHSME	means the National Health Service Management Executive in Scotland and any successor body(ies) or persons fulfilling the same or substantially the same functions or part thereof
NHS Guidance	Original NHS Guidance as the same may be amended, varied, supplemented or substituted from time to time pursuant to Provision 14 of the General Provisions
NHS Specific Legislative Change	has the meaning given to it in Clause 2.1 of Section 1 of Part D
NHS Superannuation Scheme	means the National Health Service Superannuation Scheme
Non Critical General Rooms	has the meaning given to it in Clause 6.7(b) of the Equipment Agreement
No Substantive Service	has the meaning given to it in Clause 1 of Part A
Normal Working Hours	means in respect of the several parts of the Trust's Facilities, the opening hours set out opposite such parts in Part 3 of the Schedule to the Services Agreement and as may be varied by written notice by the Trust to Summit, given from time to time
Operational	means installed, tested, certified and in working order at the Site in accordance with Statutory Requirements and the

	manufacturer's recommendations and available for the use by the Trust for the provision of clinical activities, or as the case may be, training for clinical activities but excluding the Trust's obligations under Clause 13.13 of the Equipment Agreement
Operational Date	means such date as is later than the Services Commencement Date by the aggregate of all (if any) Commissioning Extension Periods
Operational Days	has the meaning given to it in paragraph 1 of Part A
Operational Hours	has the meaning given to it in paragraph 1 of Part A
Operational Procedures and Schedules	has the meaning given to it in the operational policies of Summit and its Approved Service Providers in relation to the Services all as approved by the Trust pursuant to the Liaison Procedures
Option Period	has the meaning given to it in Clause 26.9.4 of the Project Agreement
Original Area	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Original Financial Model	means the financial model relating to the Project entitled "New Law District General Hospital Financial Model" which financial model establishes the financial projections of Summit at Financial Close as recorded pursuant to Clause 3.1.6 of the Project Agreement and a copy of which in computer readable form has been delivered to the Trust at Financial Close
Original NHS Guidance	means the rules, regulations, guidance, codes of practice and other provisions (not in any case constituting Statutory Requirements) contained in the documentation specified in Part H of the Schedule to the General Provisions
Original Sub-Contracts	means the Sub-Contracts relating to the Equipment Services and the Services

	entered into on or about the Execution Date and approved by the Trust and as delivered to the Trust under Clause 3.1.1 of the Project Agreement
Other Party	has the meaning given to it in Clause 1 of Section 2 of Part D
Outgoing Service Provider	has the meaning given to it in Clause 16.11.1 of the Project Agreement
Outpatient Attendance	has the meaning given to it in Clause 1 of Part A
Output Specification	means the document so entitled in the Agreed Form describing the Services and showing the levels and standards to which the Services will be provided by or on behalf of Summit as amended from time to time in accordance with the Services Agreement and the General Provisions
Outputs	has the meaning given to it in Part 8 of the Output Specification
PACS	means the picture archiving and communication system to be provided pursuant to the Equipment Agreement, listed in the Investment Plan and described in the Equipment Specifications
PACS Back-up	has the meaning given to it in Clause 8.2 of the Equipment Agreement
PACS Default	has the meaning given to it in Clause (a) of the definition of Equipment Change in paragraph 2.1 of Section 1 of Part D
PACS Downtime	has the meaning given to it in Clause 15.1.7 of the Equipment Agreement
Parent Company Guarantee	means a guarantee, in the Agreed Form, by Newarthill Plc a company incorporated in England and Wales under registered number 1050970 in respect of the obligations and liabilities of Sir Robert McAlpine Limited as Contractor under the Building Contract

Part A	means Part A of the Schedule to the General Provisions
Part C	means Part C of the Schedule to the General Provisions
Part D	means Part D of the Schedule to the General Provisions
Part E	means Part E of the Schedule to the General Provisions
Part G Works	means works of repair or reinstatement to which Part G of the Schedule to the General Provisions applies
Partial Handback Area	has the meaning given to it in Section 7 of Part D
Partial Handback Change	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
parties	means the Trust and Summit
Pass Through Costs	has the meaning given to it in paragraph 1 of Part A
Pass Through Services	has the meaning given to it in paragraph 5.3 of Part A
Payment Assumptions	has the meaning given to it in paragraph 9 of Section 2 of Part 10 of the Schedule to the Project Agreement
Payment Period	has the meaning given to it in paragraph 1 of Part A
Payment Provisions	means the provisions set out in Part A
Penalty Points	means Master Penalty Points and/or Services Penalty Points
Performance Guarantee	means a guarantee in the Agreed Form
Performance Measurement Model	means the performance measurement model relating to the Services forming Part C of the Schedule to the General Provisions

Performance Measurement System or PMS	means the Performance Measurement Model and the Services Monitoring Procedures
Period	means a period of not less than 15 consecutive days in terms of paragraph 9.1 of Part A
Permanent Repairs	has the meaning given to it in Clause 16.2.4(b) of the General Provisions
Permitted Downtime	has the meaning given to it in Clause 15.1.8 of the Equipment Agreement
Permitted Sub-Contractor	means (a) any third party appointed by an Approved Service Provider in accordance with the DBFO Contracts to provide any of or any part of the Services or the Equipment Services but excluding, for the avoidance of doubt, suppliers of goods only to any Approved Service Provider or (b) any party to whom Summit subcontract part of the Estates Maintenance Services in accordance with Provision 13
Permitted Transfer	has the meaning given to it in Clause 22.10 (c) (i) of the Project Agreement
Personnel	means the employees, including the Employees (if any) in each case of Summit, any Approved Service Provider or Permitted Sub-Contractor utilised in the provision of the Services and Equipment Services
Plan	means the plan of the Site annexed to Part 6 of the Schedule to the Development Agreement
Planned Preventative Maintenance	means a full periodic maintenance service (including regular and irregular periodic maintenance), including inspection, servicing and testing but not reactive repair, as referred to in the Output Specification and the Method Statements in relation to Estates Maintenance Services
Planned Replacement Years	means the years stated in the Investment Plan in which, in relation to each item of

Equipment listed in the Investment Plan, that item will be replaced by New Equipment

Planning Obligation

all or any of the following as the case may be:

- (a) an agreement or an application in respect of and affecting the Site (whether or not also affecting other property) pursuant to s.16 of the Roads (Scotland) Act 1984, s.8 or s.37 of the Sewerage (Scotland) Act 1968 or any other similar agreement or application affecting water supply or drainage of surface and/or foul water from the Site or a similar agreement with any competent authority or body relating to other services; and/or
- (b) an agreement or other obligation in respect of and affecting the Site (whether or not also affecting other property) pursuant to s75 of the Town and Country Planning Act (Scotland) 1997

Planning Supervisor

Cyril Sweett Project Consultants Limited of 60 Gray's Inn Road, London, WC18 PAQ or such other planning supervisor as Summit may from time to time appoint in addition or in substitution in relation to the Works in each case with the prior approval of the Trust in accordance with the Development Agreement

Playing Field

means the playing field adjacent to the Site known as King George's Field

PMR Procedures

means the procedures to be developed by Summit prior to the Services Commencement Date in consultation with the Trust as set out in Clause 10.4 of the Equipment Agreement

PMS Checklists

means the checklists and procedure specified or referred to in the Services Monitoring Procedures

PMS Deductions	has the meaning given to it in paragraph 7.1 of Part A
Portering Transport and Waste Services	means those services described as portering, transport and waste services in the Output Specification
Post Operational Period	has the meaning given to it in the Head Lease
Pre-CPC Termination Date	means a date on which the DBFO contracts terminate if they do so after the Transition Commencement Date but prior to the Contractual Practical Completion Date
Pre-Termination Adjustments	has the meaning given to it in paragraph 11 of Section 2 of Part 10 of the Schedule to the Project Agreement
Previous Year's Premium	has the meaning given to it in Clause 26.9.3 of the Project Agreement
Primary Fuel	means gas, or such alternative fuel as is agreed between the parties to replace gas as the primary fuel for use within the Hospital in accordance with the Utilities Contingency Provisions
Priority	has the meaning given to it in paragraph 1 of Part A
Priority One	has the meaning given to it in Clause 15.1.9 of the Equipment Agreement
Priority Two	has the meaning given to it in Clause 15.1.10 of the Equipment Agreement
Priority Three	has the meaning given to it in Clause 15.1.11 of the Equipment Agreement
Processor	has the meaning given to it in Clause 8.1(b) of the Equipment Agreement
Project	means the undertaking of the Works and the Commissioning Procedure and the provision of the Services and Equipment

	Services for the Hospital at the Site all in accordance with the DBFO Contracts
Project Agreement	means the agreement so entitled between the Trust and Summit relating to the Project
Project Documents	means the DBFO Contracts, the Sub-Contracts, the Finance Facilities Agreements, the Collateral Warranties, the Services Direct Agreement, the Equipment Direct Agreement, the Building Contract Direct Agreement, the Financier Direct Agreement, the Appointments, the Performance Guarantee and the Equity Agreement
Projected Demand Measurement Procedure	means the procedure set out in Appendix H of Part A as the same may be amended in accordance with the DBFO Contracts
Project Rate of Return	means the rate of return agreed between the parties and recorded in accordance with Clause 3.1.6 of the Project Agreement
Promoters	means the companies identified in Section 1 of Part 4 of the Schedule to the Project Agreement and any company which is an Associated Company of any such company and provided that for the purposes of Clause 10.1 of the Project Agreement there will be a deemed change in a Promoter if Sir Robert McAlpine Limited ceases to be an Associated Company of an entity which beneficially own shares in the Holding Company
Proponent	has the meaning given to it in paragraph 1 of Section 2 of Part D
Proposal	has the meaning given to it in Clause 22.9.4 of the Project Agreement
Proposed New Equipment	has the meaning given to it in Clause 3.3.3 of the Equipment Agreement
Proposed Trust Change	has the meaning given to it in paragraph 2.1 of Section 1 of Part D

Proprietary Information	means any commercially sensitive information not required to run the Hospital and policies and procedures, work method statements, handbooks or data processing systems developed specifically by an Approved Service Provider which are commercially sensitive and are not required by an incoming service provider for the ongoing provision of the Services
Prosecution	means any criminal prosecution (including private prosecutions) brought against the Trust, Summit or any of the Contractor, Approved Service Providers or Permitted Sub-Contractors or their sub-contractors, which relates to or has an effect on their performance under any of the Project Documents resulting in a conviction which, if appealed, is upheld on appeal
Qualifying Capital Legislative Change	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Qualifying Legislative Change	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Quality Plan for Construction	has the meaning given to it in paragraph 1.1 in Part 1 of the Schedule to the Development Agreement
Quantity Surveyor	means Tozer Capita of 18 Carlton Court, Glasgow, G5 9SP
Quarter	has the meaning given to it in paragraph 1 of Part A
Quarter Day	has the meaning given to it in paragraph 1 of Part A
Recognised Trade Unions	has the meaning given to it in Clause 16.6.5 of the Project Agreement
Recorded Score	has the meaning given to it in paragraph 2.2 of Part C
Redundancy Policy	means the policy set out in Part 9 of the Schedule to the Project Agreement

Related Contracts	means any of the Sub-Contracts and/or any other contract between Summit and a third party in terms of Part 2 of the Schedule to the Project Agreement
Related Dispute	has the meaning given to it in Part 2 of the Schedule to the Project Agreement
Related Materials	means all equipment, materials, consumables and other things whatsoever (and irrespective of the Group into which they fall but excluding Group 1) in the opinion of Summit) required for and as are suitable and appropriate for the provision of the Services in accordance with the Output Specification, the Method Statements and the DBFO Contracts and excludes for the avoidance of doubt the Equipment which is to be provided by Summit in accordance with the Equipment Agreement and any relevant provisions of the other DBFO Contracts
Relevant Adjustment	has the meaning given to it in Clause 16.8.1 of the Project Agreement
Relevant Amount	has the meaning given to it in Provision 16.2.6 of the General Provisions
Relevant Area	has the meaning given to it in paragraph 1(a) Section 7 of Part D
Relevant Costs	has the meaning given to it in Clause 2.7 of Part 1 of the Schedule to the Services Agreement
Relevant Deduction	has the meaning given to it in paragraph 1 of Part A
Relevant Delays	has the meaning given to it in Clause 26.6.3 (b) of the Project Agreement
Relevant Discoveries	has the meaning given to it in Clause 4.3(e) of the Development Agreement
Relevant Discoveries Extension Period	has the meaning given to it in Clause 4.3.6(d) of the Development Agreement
Relevant Event	has the meaning given to it in Clause

	26.6.3 (c) of the Project Agreement
Relevant Intellectual Property	has the meaning given to it in Clause 20.2 of the Project Agreement
Relevant Items	has the meaning given to it in paragraph 2 of Part 1 of the Schedule to the Services Agreement
Relevant Method Statement	means the Method Statement associated with any one of the Services or any part of any one of the Services and identified as such therein and constituting at the relevant time the then current Method Statement for that Service or that part of that Service
Relevant NoSS Period	has the meaning given to it in paragraph 1.3 of Part B
Relevant Part	has the meaning given to it in paragraph 6.5 of Part A
Relevant Period	has the meaning given to it in paragraph 9.9 of Part A
Relevant Service	has the meaning given to it in Clause 16.8.1 of the Project Agreement
Relevant Sub-Contract	has the meaning given to it in paragraph 1 of Clause 10.3 of the Project Agreement
Relevant Works	has the meaning given to it in Clause 26.6.3 of the Project Agreement
Remedy Period	has the meaning given to it in paragraph 1 of Part A
Requisite Score	has the meaning given to it in paragraph 2 of Clause 2.2 of Part C
Reserve Accounts	means the Debt Service Reserve Account and the Maintenance Reserve Account
Reserve Fuel	means oil, or such alternative fuel as is agreed between the parties to replace oil as a reserve fuel for use within the Hospital in accordance with the Utilities Contingency Provisions

Residential Accommodation Services	means those services described as residential accommodation services in the Output Specification
Residual Value Sum	has the meaning given to it in paragraph 1 of Clause 25.6 of the Project Agreement
Revision Date	has the meaning given to it in paragraph 6.4 of Section 2 of Part D
Room Data Sheets	means the room data sheets forming part of the Specification
Scheduled Period	has the meaning given to it in Clause 3 of Part 7 of the Schedule to the Project Agreement
SE Period	has the meaning given to it in Clause 26.5 of the Project Agreement
Secretary of State	The Secretary of State for Scotland or following enactment and coming into force of the Scotland Bill 1998 the relevant Scottish Minister
Secretary of State's Policies	means the intentions and policy objectives set out in the Secretary of State's clarification letter reproduced in Part 12 of the Schedule to the Project Agreement
Security Agreements	means the Security Documents (as defined in the Collateral Deed)
Security Services	those services described as security services in the Output Specification
Security Trustee	means the Security Trustee from time to time, appointed under and as defined in the Finance Facilities Agreements
Senior Lender Liabilities	has the meaning given to it in paragraph 7 of Section 3 of Part 10 of the Schedule to the Project Agreement
Service Amount	has the meaning given to it in paragraph 1 of Part A
Service Cost Variation	has the meaning given to it in paragraph

2.1 of Section 1 of Part D

Service Delivery Percentage	has the meaning given to it in paragraph 9.3 of Part A of the Schedule to the General Provisions
Service Delivery and Service Demand Measurement Procedure	has the meaning given to it in paragraph 1 of Part A
Service Measurement Procedure	has the meaning given to it in Appendix G of Part A
Service Score	in respect of each Service for any Monitoring Period means the score for that Service in that Monitoring Period determined under and in accordance with the Services Monitoring Procedures applicable to that Service and the Performance Measurement Model
Service Provision	means the provision of Services to the Trust by Summit, its Approved Services Providers and Permitted Subcontractors
Service Specification	has the meaning given to it in Provision 12.4(e)(i)
Services	means the Estates Maintenance Services, the Catering Services, the Domestic Services, the Linen Services, the Portering, Transport and Waste Services, the Switchboard Services, the Security Services and the Residential Accommodation Services
Services Agreement	means the agreement between the Trust and Summit relating to the provision of the Services
Services Commencement Date	means the date to be determined in accordance with Clause 3.3 of the Project Agreement
Services Direct Agreement	means the agreement in the Agreed Form to be entered into by, inter alios, the Lead Financier, the Trust, Summit and the

	Approved Service Provider(s) providing the Services and Serco Group plc
Services Element	has the meaning given to it in Clause 10.3 of Part A
Services Monitoring Procedures	means the procedure so entitled in the Agreed Form
Services Payment Period	has the meaning given to it in paragraph 1 of Part A
Services Penalty Points	means service penalty points to be awarded in accordance with Provision 15 and Part B of the Schedule to the General Provisions
Services Term	means the period commencing on the Services Commencement Date and ending on the last day of the Term
Single Facility	has the meaning given to it in Clause 1 of Part A
Site	means the site at Netherton, Lanarkshire owned by the Trust on which the Hospital will be situated and particularly described in Part 6 of the Schedule to the Development Agreement
Special Procedures Room	means the Philips Multi-Diagnost 3 including Angiomat 6000 - Serial No 113005.04 as listed in Part 1 of the Schedule to the Equipment Agreement
Specification	means the Specification of the Hospital and the Site as set out in Part 7 of the Schedule to the Development Agreement as amended, from time to time, in accordance with the Development Agreement and the Change Provisions
Specification Variation	has the meaning given to it in Clause (e) of the definition of Equipment Change
Specified Services	has the meaning given to it in Provision 12.1
Specified Usage Levels	has the meaning given to it in Clause 16.1 of the Equipment Agreement

Standards	means in relation to a Service the Standards set out in the relevant paragraph entitled (Indicators and Standards) of the relevant part of the Output Specification relative to that Service
Standby Loan Agreement	has the meaning given to it in the Collateral Deed
Standby Policy	has the meaning given to it in the Collateral Deed
Statutory and Mandatory Inspection and Testing	means work, including inspection, testing and maintenance, required by Applicable Laws, Statutory Requirements, British Standards Regulations or Industry Standards to the extent required by and subject as provided in the DBFO Contracts and the Output Specification
Statutory Requirements	means the requirements of or arising or imposed under any Applicable Law
Structural Engineer	Thorburn Colquhoun of 243 West George Street, Glasgow G2 4QR or such other structural and service engineer as the Contractor or Summit may from time to time appoint in addition or in substitution in relation to the Works in each case with the prior approval of the Trust in accordance with the Development Agreement
Sub contractor Warranties	means collateral warranties in the Agreed Form to be given in favour of the Trust pursuant to Clause 4.8.4 of the Development Agreement
Sub-Contracts	means all agreements between (a) Summit and any Contractor or (b) Summit and any Approved Service Provider or (c) any Approved Service Provider and a Permitted Sub-Contractor, and "Sub-Contract" means any one of them according to context
Sub-Lease	means the sub-lease to be granted by Summit to the Trust in the Agreed Form

Sub Station Area	means that area of ground adjacent to the Site shown hatched green on the Plan
Submission	means in relation to the Trust Objection Procedure a submission made to the Trust by Summit in terms of Clause 1(a) in Part 3 of the Schedule to the Project Agreement
Subsidiary	means Summit Finance (Law) PLC (incorporated with limited liability in Scotland under company number 185067) so long as it is a subsidiary of Summit
Substitute Provider	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Summit	means Summit Healthcare (Law) Limited (Registered Number 182649)
Summit Change	has the meaning given to it in paragraph 1.1 of Section 8 of Part D
Summit Items	has the meaning given to it in Clause 1.4 of Part 1 of the Schedule to the Services Agreement and as set out in Part 1A of the Schedule to the Services Agreement
Summit's Contract Officer	means, in respect of the Services and the Equipment Services, the executive officer or other person of suitable seniority (as nominated from time to time by Summit) who shall manage those Services and the Equipment Services and their provision on behalf of Summit to be appointed with the consent of the Trust in terms of Provision 7.2 of the General Provisions
Summit Group	means Summit, the Subsidiary and/or the Holding Company or any of them as the context may require
Summit Notice	means notice in writing to the Trust of details relating to Employees deemed by Summit to be excess to or unsuitable for its requirements as defined in Clause 16.3.4(a) of the Project Agreement
Summit's Representations	means the representations and warranties

	set out in Clause 3.4 of the Project Agreement
Summit's Solicitors	means Dundas & Wilson, Saltire Court, 20 Castle Terrace, Edinburgh EH1 2EN
Summit Threshold Points	has the meaning given to it in Clause 15.8 of the General Provisions
Supper	has the meaning given to it in paragraph 1 of Part A
Surplus Removal	has the meaning given to it in Clause (b) of the definition of Equipment Change in paragraph 2.1 of Section 1 of Part D
Suspension Event	has the meaning given to it in Clause 26.2 of the Project Agreement
Switchboard Services	means those services described as switchboard services in the Output Specification
Taxes	means all present and future taxes, charges, imposts, duties or levies of any kind whatever payable at the instance of or imposed by any Government Authority together with any penalties, additions, fines, surcharges or interest and "Tax" and "Taxation" shall be construed accordingly
Tax Gross Up	has the meaning given to it in Clause 24.9 of the Project Agreement
Technical Records	means all data and records and other documents relating to the Works and/or the Hospital which, either pursuant to an express obligation in the Project Agreement or otherwise as a matter of Good Industry Practice, are for the time being required to be maintained by or have been maintained by Summit in relation to the Works and/or the Hospital
Technology Committee	means the committee established under Clause 19 of the Equipment Agreement
Telephone Contracts	has the meaning given to it in paragraph

	1.1 of Part 2 of the Schedule to the Services Agreement
Temporary Alternative	has the meaning given to it in Clause 6.4 of the Equipment Agreement
Term	means a period of 30 years and 6 months commencing on the date of giving of vacant possession of the Site under Clause 8.3 of the Project Agreement as extended in accordance with Clause 4.2 and/or Clause 26.5 of the Project Agreement or if the DBFO Contracts are terminated in accordance with the terms of the DBFO Contracts such shorter period as ends on the Termination Date
Termination Date	means the date of termination of the DBFO Contracts in accordance with Clause 22 or 26.7 or 26.8 or 32.5 of the Project Agreement
Termination Events	the events and circumstances specified in Clauses 22.1 and 22.9 of the Project Agreement and Termination Event means any one of them
Termination Vacation Notice	means a notice which may be given by the Trust in accordance with Clause 23.1.8 of the Project Agreement electing to vacate the Site following the termination of the DBFO Contracts under Clause 22 or 26.7 or 26.8 or 32.5 of the Project Agreement
Tests	has the meaning given to it in Clause 1.2 of Part 5 of (and the attachment thereto as detailed in) the Schedule to the Development Agreement
Threshold Date	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Threshold Master Penalty Points	has the meaning given to it in Clause 15.11 of the General Provisions
Total Outstanding Amount	has the meaning given to it in paragraph 8 of Section 3 of Part 10 of the Schedule to the Project Agreement

Transfer Financial Obligations	has the meaning given to it in Clause 16.14.1 of the Project Agreement
Transferred Equipment	means, those items of Equipment identified as such in the Investment Plan and listed in Part 1 of the Schedule to the Equipment Agreement
Transferring Employees	has the meaning set out in Clause 16.3.4(e) of the Project Agreement
Transferring Related Materials	has the meaning given in Clause 4.4 of the Services Agreement
Transitional Arrangements	means the arrangements set out in Clause 17 of the Project Agreement
Transition Commencement Date	means the date which is six months prior to the anticipated Services Commencement Date or such other date as may be agreed between the parties
Transition Costs	has the meaning given to it in Clause 17.3.1(a) of the Project Agreement
Transition Payment	has the meaning given to it in Clause 17.3.1 of the Project Agreement
Transition Period	means the period commencing on the Transition Commencement Date and ending on conclusion of the Transition Services in accordance with Clause 17 of the Project Agreement or 6 months after the Operational Date, whichever is the earlier
Transition Services	means the services which are, during the Transition Period to be provided by or on behalf of Summit to the Trust at the Existing Sites as determined under, and in accordance with, Clause 17.1 of the Project Agreement
Trust	means Law Hospital National Health Service Trust and includes (without prejudice to Clauses 22.9 and 33.2 of the Project Agreement) any successor body assuming its functions, rights and obligations

Trust Breach	has the meaning given to it in Clause 4.3(c) of the Development Agreement
Trust Breach Extension Period	has the meaning given to it in Clause 4.3.6(c) of the Development Agreement
Trust Business Interruption Insurance	means the insurance policy to be taken out in the name of the Trust pursuant to Clause 10.2 (b) of the Project Agreement to cover the payments of the Unitary Payment which the Trust would not have been obliged to make had loss or damage to the Hospital, as a result of an Insured Risk not arisen during the Commissioning Period or as a result of a Trust act, omission or default whether occurring before on or after Services Commencement Date
Trust Cessation Employees	has the meaning given to it in Clause 16.11.2 of the Project Agreement
Trust Change	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Trust Confirmation Date	has the meaning given to it in paragraph 7.3 of Section 2 of Part D
Trust Information Letter	means a letter addressed to Summit setting out certain information given by the Trust in relation to Clauses 3.5 and 16 of the Project Agreement
Trust Group 2 Equipment	means those items of equipment and others which fall within Group 2 and which are to be provided by the Trust and which is to be installed by Summit as part of the Works prior to the Contractual Practical Completion Date as ascertained in accordance with Clause 5 of the Development Agreement
Trust Group 2 and 3 Equipment	means those items of equipment, furniture, fittings and other items as fall within Group 2 or Group 3 and as are provided by the Trust from time to time at the Hospital (including the Trust Group 2 Equipment) for use by the Trust, its staff, contractors or sub-tenants and as do not comprise Trust Related Materials

Trust Monitoring Response	has the meaning given to it in provision 2.2 of the General Provisions
Trust Objection Procedure	means the procedure set out in Part 3 of the Schedule to the Project Agreement
Trust Related Materials	has the meaning set out in paragraph 1.2 of Part 1 of the Schedule to the Services Agreement
Trust Removal	has the meaning given to it in Clause (c) of the definition of Equipment Change in Clause 2.1 of Section 1 of Part D
Trust Requirements	means the requirements of the Trust in the Agreed Form, the table of contents for which are as set out in Part 8 of the Schedule to the Development Agreement, as amended from time to time pursuant to Eligible Changes
Trust Service Provider	has the meaning given to it in Clause 16.12.1 of the Project Agreement
Trust Services Change	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Trust Threshold Points	has the meaning given to it in Clause 15.8 of the General Provisions
Trust Works Change	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Trust Works Change Certificate	has the meaning given to it in paragraph 2.1 of Section 1 of Part D
Trust's Auditor	means Deloitte & Touche
Trust's Board	means the board of directors of the Trust as constituted from time to time
Trust's Codes of Practice	has the meaning given to it in provision 19.3 of the General Provisions
Trust's Contract Officer	means, the executive officer or other person of suitable seniority (as nominated from time to time by the Trust) who will supervise on behalf of the Trust the performance of the Services and the

	Equipment Services by or on behalf of Summit
Trust's Facilities	means the Site and the Hospital and the buildings and other erections thereon from time to time and plant equipment and fittings and fixtures thereon
Trust's New Equipment Notice	has the meaning given to it in Clause 3.3.4 of the Equipment Agreement
Trust's Representative	MPM Adams Limited, of St. Andrew House, 141 West Nile Street, Glasgow G1 2RN or such other consultant as the Trust shall from time to time appoint for the purposes of the Development Agreement
Trust's Solicitors	means McGrigor Donald, Pacific House, 70 Wellington Street, Glasgow G2 6SB
Ultrasound	means the ATL HDI3000 Ultrasound machine, Serial Number 00L2IJ and the Siemens Sonoline Versa Ultrasound Unit Serial Number HEG0771
Unavailable	has the meaning given to it in paragraph 6.4 of Part A
Unavailability Deduction	has the meaning given to it in paragraph 6.9 of Part A
Unavailability Event	has the meaning given to it in paragraph 1 of Part A
Unavailability Notice	has the meaning given to it in paragraph 1 of Part A
Unavailability Table	has the meaning given to it in paragraph 1 of Part A
Unavoidable Operating Costs	has the meaning given to in paragraph 10.5 of Part A
Uninsurable Risk	has the meaning given to it in Clause 26.9.3 of the Project Agreement
Unitary Payment	has the meaning given to it in paragraph 1 of Clause 2 of Part A

Unplanned Liability	means at any time any cost, charge or liability (including professional fees) in excess of £1,000,000 in respect of a single item and £10,000,000 aggregate which Summit has incurred prior to that time or which, on the basis of information available to Summit at that time, it is likely to incur at a future date, whether in connection with the Project or otherwise and which will not be capable of being paid in the ordinary course by Summit
Uptime	has the meaning given to it in Clause 15.1.12 of the Equipment Agreement
Uptime Score	has the meaning given to it in Clause 15.1.13 of the Equipment Agreement
Usage Element	has the meaning given to it in paragraph 1 of Clause 5 of Part A
Utilised	has the meaning given to it in paragraph 1 of Part A
Utilities Contingency Provisions	has the meaning given to it in the Output Specifications for the Estate Maintenance Services
Utilities Payment	has the meaning given to it in paragraph 5.4 of Part A
Utility Contracts	has the meaning given to it in paragraph 1.1. of Part 2 of the Schedule to the Services Agreement
Utilities Costs	has the meaning given to it in paragraph 5.4.2 of Part A
VAT	means Value Added Tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental to it or in any primary or secondary legislation promulgated by the European Union or any official body or agency of the European Union and any similar sales or consumption tax replacing or introduced in addition to the above

Wages Assumptions	has the meaning given to it in Clause 16.3.1 of the Project Agreement
Warning Notice	means a notice which may be given by the Trust in accordance with Provision 15.2
Whitley Agreements	means (1) National Health Service Maintenance Staff Pay and Conditions of Service; (2) Whitley Councils for the Health Service (Great Britain) Ancillary Staffs Council - Rates of Pay, Conditions of Service and General Information; (3) Whitley Councils for the Health Services (Great Britain) Administrative and Clerical Staffs Council - Pay and Conditions of Services; (4) Whitley Councils for the Health Services (Great Britain) Conditions of Service of Employees within the Whitley Councils for the Health Services (Great Britain); (5) Whitley Councils for the Health Services (Great Britain) Professional and Technical Staffs B Council.
Withdrawal Notice	means notice given by the Trust to Summit that it no longer wishes to pay the Excess in terms of Clause 26.9.9 of the Project Agreement
Works	means the works to be carried out by or at the direction of Summit under and in accordance with the Development Agreement to design, construct, fit out and commission the Hospital
Year	has the meaning given to it in paragraph 1 of Part A

2 Interpretation

In interpreting the DBFO Contracts:

- 2.1 the Schedule to any DBFO Contract is an integral part of that DBFO Contract and any reference to that DBFO Contract includes a reference to such Schedule;
- 2.2 references to clauses, paragraphs, schedules, recitals and annexures in any DBFO Contract are to clauses of and schedules, recitals and annexures to that DBFO Contract unless stated otherwise and references in any DBFO Contract to a numbered Provision shall be references to paragraphs of the General Provisions bearing that number;

- 2.3 any reference in this Master Definitions Schedule or in any DBFO Contract to a document "in the Agreed Form" is a reference to a document which has been or shall have been approved by the parties a copy of which has been or shall have been signed for the purpose of identification by or on behalf of each of the parties;
- 2.4 any reference to a statutory provision includes a reference to all amendments and modifications to that provision and any subsequent legislation made from time to time under it (and in each case whether before or after the entering into of the DBFO Contracts) subject to potential adjustments in payment under the Change Provisions;
- 2.5 references to the singular include the plural and vice versa and references to any gender include the other genders;
- 2.6 references to a "person" includes any individual firm unincorporated association public organisation or body corporate including any Government Authority;
- 2.7 any reference to a public organisation shall be deemed to include a reference to any successor to that public organisation or any organisation or entity on which the functions or responsibilities of that public organisation have been conferred or imposed, including without limitation under or pursuant to the Scotland Bill 1998 following its enactment;
- 2.8 headings and indices shall be ignored for the purpose of construing the DBFO Contracts;
- 2.9 any references to an agreement or other document includes (subject to all relevant approvals) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned;
- 2.10 unless the context otherwise requires the words "herein", "hereto" and "hereunder" refer to the DBFO Contract in which they appear as a whole and not to the particular clause, schedule, part, section, paragraph or annex in which that word may be used;
- 2.11 Section 123(1) of the Insolvency Act 1986 shall be construed as if the reference to £750 were a reference to £200,000 indexed from Financial Close or such other amount as the parties may agree in writing;
- 2.12 reference to a "subsidiary" or "holding company" shall be construed according to Section 736 of the Companies Act 1985 (as amended) and to a "subsidiary undertaking" shall be construed according to Section 258 of that Act (as amended);
- 2.13 reference in any of the DBFO Contracts to an obligation on any party to use all reasonable endeavours to effect or procure a matter or thing shall be construed so as to require such expenditure of money or effort to effect or procure that matter or thing as is reasonable in the circumstances but shall not be construed so as to require the expenditure of an unreasonable amount of money or effort in the context of the matter or thing concerned and in any case where Summit or the Trust is to use reasonable endeavours to procure or ensure compliance by any other party, it shall ensure (insofar

as it is reasonably able) that that person contracts so to comply and shall take all reasonable steps available to it to enforce such contractual provisions;

- 2.14 references to persons for whom the Trust is responsible in terms of the DBFO Contracts shall be construed in accordance with Clause 8.2 of the Project Agreement and references to persons for whom Summit is responsible in terms of the DBFO Contracts shall be construed in accordance with Clause 9.2 of the Project Agreement;
- 2.15 reference in the DBFO Contracts to the Secretary of State shall in the event of the enactment of the Scotland Bill 1998 be construed as a reference to the relevant Scottish Minister and reference to any other post or organisation which ceases to exist in the event of the enactment of the Scotland Bill 1998 shall be construed as a reference to the relevant successor where applicable to that post or organisation; and
- 2.16 Summit may direct the Trust by notice in writing to, in which case the Trust shall, serve any notice, request or other communication under any DBFO Contract, whether generally or by reference to any specified category or categories of notice, request or other communication directly to an Approved Service Provider or Permitted Sub-Contractor (and with a copy to Summit but the Trust shall not be in breach for failure to give such a copy) and may at any time revoke that notice by further notice in writing served on the Trust but without prejudice to the validity of any notice, request or communication served prior to that revocation.

3 Language

The language of the DBFO Contracts is English. All correspondence, drawings, design data, test reports, certificates, specifications and information shall be supplied by the supplying party entirely in English.

4 Conflict

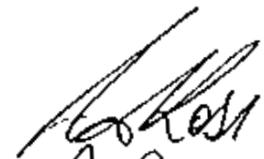
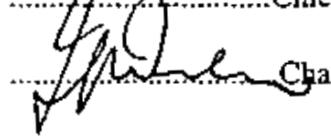
In the event of any conflict or inconsistency between or ambiguity relating to, the DBFO Contracts or any of them the documents shall take effect in the following order of precedence:-

- 4.1 the Project Agreement;
- 4.2 the General Provisions;
- 4.3 the Development Agreement, the Equipment Agreement and the Services Agreement;
- 4.4 the Head Lease and the Sub-Lease; and

if there is any inconsistency between the Output Specification and the Services Agreement, the Services Agreement will prevail

IN WITNESS WHEREOF these presents consisting of this and the preceding 57 pages are executed as follows:

Subscribed for and on behalf
of the 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:-


..... Chief Executive

..... Chairman

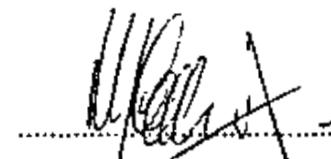
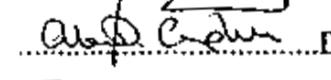
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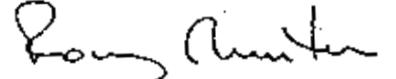
Name Andrew Ross

Address 68-73 Queen Street

Edinburgh

Subscribed for and on behalf of SUMMIT
HEALTHCARE (LAW) LIMITED at
London
on the 16th day of June 1998
by MICHAEL JOHN COLLIERO
Director, and David Company Services Ltd
Director/Secretary


..... Director

..... Director/Secretary

 Witness
RORY CHRISTIE
56 SOUTH TRINITY ROAD
EDINBURGH

VOLUME 2 - BUILDING CONTRACT AND RELATED DOCUMENTATION

	Document	Parties	Dated
1.	Building Contract together with consent letter to amendment	Summit/ SRMcA	15 June 1998
2.	Services Sub-contract	Summit/ Serco	16 June 1998
3.	Parent Company Guarantee	Summit/ Serco Group	17 June 1998
4.	Summit Assignment	Summit/ Bond Trustee	18/ 24 June 1998
5.	Extract Board Minutes	Trust	27 May 1998
6.	Certificate issued pursuant to the National Health Service (Private Finance) Act 1997	Scottish Office	5 June 1998
7.	Letters confirming approval of the project	HM Treasury	24 September 1997 and 3 June 1998
8.	Letters confirming approval of the project	Scottish Office	29 September 1997 and 4 June 1998
9.	Secretary of State's Policies letter	Secretary of State for Scotland	21 May 1998
10.	Letter confirming compliance with procurement requirements	Trust	1 June 1998
11.	Letter confirming Health Board purchasing strategy	Lanarkshire Health Board	2 June 1998
12.	Letter re vacant possession	Trust	25 June 1998
13.	Letter confirming approval of Service Providers	Trust	25 June 1998
14.	Letter confirming accuracy of warranties	Trust	25 June 1998
15.	Trust Information Letter	Trust/ Summit	18 June 1998
16.	Confirmation satisfaction funding conditions precedent	Summit	25 June 1998

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|-----|--|---|--------------|
| 17. | Certificate confirming accuracy of warranties | Summit | 25 June 1998 |
| 18. | Certificate updating Shareholders/Director Information | Summit | 25 June 1998 |
| 19. | Letters of Obligation | McGrigor
Donald/ Dundas
& Wilson/
Scottish Health
Service | 25 June 1998 |
| 20. | Barnett Alexander Chart Legal Opinion on Serco Limited | | 23 June 1998 |
| 21. | Barnett Alexander Chart Legal Opinion on Serco Group plc | | 23 June 1998 |
| 22. | Board Minutes of:-

(a) Serco;
(b) Serco Group | | |

Interpretation

Account Bank	Lloyds Bank plc
Ambac	Ambac Insurance UK Limited
Auditors	KPMG
BLB	The British Linen Bank Limited
BLIL	British Linen Investments Limited
Bond Trustee	Royal Exchange Trustee Nominees Limited
Chesteron	Chesteron plc trading as Cyril Sweett Project Consultants
Edison	Edison Capital (Netherlands) Investments B.V.
Edison Europe	Edison Capital Europe Limited
Health Adviser	Rawlinson Kelly Whittlestone
HK	Hulley & Kirkwood Consulting Engineers Limited
Independent Engineer	Alexander Gibb
Insurance Broker	Sedgwicks
Insurance Consultant	Willis Corroon
Investment Manager	Hill Samuel Asset Management Limited
Lead Manager	Morgan Stanley & Co International Limited
Listing Agent	Morgan Stanley & Co International Limited
Listing Agent's Agent	Ashurst Morris Crisp
Managers	Barclays Bank plc, CIBC Wood Gundy plc and Swiss Bank Corporation
MHL	McAlpine Healthcare Limited
Newarthill	Newarthill plc
Paying Agent	Bankers Trust Luxembourg S.A.
PFIL	PFI Investors Limited
Principal Paying Agent	Bankers Trust Company
PTP	Percy Thomas Partnership (Architects) Limited
Rating Agencies	Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies Inc and Moody's Investors Service Inc
Security Trustee	Royal Exchange Trust Company Limited
Serco	Serco Limited
Serco Group	Serco Group plc
Siemens	Siemens Healthcare Services Limited
Siemens plc	Siemens plc
SRMcA	Sir Robert McAlpine Limited
Summit	Summit Healthcare (Law) Limited
Summit Finance or Issuer	Summit Finance (Law) PLC
Summit Holdings	Summit Holdings (Law) Limited
Summit Holdings Shareholders	PFIL, BLIL, Edison
TC	Thorburn Colquhoun Limited
Technical Adviser	Alexander Gibb
Trust	Law Hospital NHS Trust