

SUMMIT HEALTHCARE (LAW) LIMITED
and
SIR ROBERT McALPINE LIMITED

NEW LAW HOSPITAL

BUILDING CONTRACT
15 JUNE 1998

Dundas & Wilson
180 Strand
LONDON WC2R 2NN DX 127 LDE

**NEW LAW HOSPITAL
BUILDING CONTRACT**

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**AGREEMENT
BETWEEN**

Summit Healthcare (Law) Limited an incorporated company registered in Scotland under No SC182649 having its registered office at Saltire Court, 20 Castle Terrace, Edinburgh, EH1 2EN (hereinafter called "**Summit**") of the one part

AND

Sir Robert McAlpine Limited, an incorporated company registered in England under No 566823 having its registered office at Eaton Court, Maylands Avenue, Hemel Hempstead, Herts HP2 7TR (hereinafter called the "**Contractor**") of the other part.

WHEREAS

- (1) Summit is desirous of obtaining the Works as defined in the Conditions annexed to this Agreement (hereinafter referred to as the Conditions)
- (2) The Contractor intends to carry out the Works and has submitted a statement of the sum which he will require for carrying out that which is necessary for completing all such works in accordance with the Conditions (which is the Contract Sum stated in Article 2), and has also submitted an analysis of that sum (hereinafter referred to as the Contract Sum Analysis) which forms Part 3 of the Schedule hereto;
- (3) The Works shall be carried out in accordance with the Trust Requirements, the Specification and the Production Information (as hereinafter or in the DBFO Contracts defined)
- (4) The CDM Regulations shall apply in their totality to the works referred to in the First Recital ;

NOW IT IS HEREBY AGREED AS FOLLOWS

Article 1 - Contractor's obligations

Upon and subject to the Conditions, the Contractor shall, for the consideration mentioned in Article 2, carry out the Works.

Article 2 - Contract Sum

Summit will pay to the Contractor the sum of One hundred and three million three hundred and twenty fivethousand two hundred and twenty eight pounds (£103,325,228) (hereinafter referred to as the Contract Sum) or such other sum as shall become payable hereunder at the times and in the manner specified in the Conditions.

Article 3 - Summit's Representative

Alan Bradbury or any replacement thereto as Summit's project director or such other person as Summit shall nominate in his place for the purpose shall be Summit's Representative referred to in the Conditions and, save to the extent which Summit may otherwise specify by written notice to the Contractor, for the receiving or issuing of such applications, consents, instructions, notices, requests or statements or for otherwise acting for Summit under any other of the Conditions.

Article 4 - Design Documentation

The content of the Trust Requirements is listed in Part 1 of the Schedule and the Specification is listed in Part 2 of the Schedule. The Production Information shall be developed in accordance with Clause 5 of the Conditions.

Article 5 - Settlement of Disputes

This Building Contract shall be governed by and construed in accordance with the laws of Scotland and subject to Clause 39 of the Conditions the parties hereto irrevocably submit to the non-exclusive jurisdiction of the Court of Session in Scotland and waive any plea of forum non conveniens. The submission in this Article 5 shall not preclude proceedings in any other court of competent jurisdiction, subject always as provided in Part 11 of the Schedule.

Article 6 - Not used.

Article 7 - CDM Regulations

The term the **Planning Supervisor** in the Conditions shall mean Cyril Sweett Project Consultants of 60 Grays Inn Road, London, WC1X 8AQ or such person as Summit shall appoint as the Planning Supervisor pursuant to regulation 6(5) of the CDM Regulations.

The term the **Principal Contractor** in the Conditions shall mean the Contractor or, in the event of his ceasing to be the Principal Contractor, such other contractor as Summit shall appoint as the Principal Contractor pursuant to regulation 6(5) of the CDM Regulations.

If in the opinion of Summit the Contractor fails adequately to perform the functions and duties of a Principal Contractor as required by this Building Contract, Summit may instruct the Contractor to cease acting as the Principal Contractor for the purposes of the CDM Regulations and employ a third party to undertake such functions and duties and may deduct the additional cost of employing such third party together with any other damages,

losses and expenses incurred by reason thereof from any amounts due to the Contractor under this Building Contract.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding 3 pages; the Conditions the Schedule in 14 parts annexed hereto are executed as follows:-

Subscribed for and on
behalf of **SUMMIT
HEALTHCARE (LAW) LIMITED**
at *LONDON*
on the *16th* day of June 1998

by
MICHAEL JOHN COLLARD
Director

[Signature]
..... Director
[Signature]
..... Director/Secretary
Siohan A. McCloskey, Witness
SIOBHAN ANNE MCCLOSKEY
79 COLOMB STREET
LONDON SE10 9EZ

Subscribed for and on
behalf of **SIR ROBERT
McALPINE LIMITED**
at *LONDON*
on the *16th* day of June 1998
by

*JONATHAN WILLIAM
CHARLES HINTON*

..... ~~Authorized Signatory~~
[Signature] ~~Authorized Signatory~~
HINTON ATTORNEY
Siohan A. McCloskey, Witness
SIOBHAN ANNE MCCLOSKEY
79 COLOMB STREET
LONDON SE10 9EZ

These are the Conditions referred to in the foregoing Agreement between Summit Healthcare (Law) Limited and Sir Robert McAlpine Limited

THE CONDITIONS

1. Interpretation, definitions, etc.
 - 1.1 Unless otherwise specifically stated a reference in the Agreement, the Conditions or the Schedule to any Clause means that Clause of the Conditions.
 - 1.2 The Agreement and the Conditions are to be read as a whole and the effect or operation of any article or Clause in the Conditions must therefore, unless otherwise specifically stated, be read subject to any relevant qualification or modification in any other article or any of the Clauses in the Conditions.
 - 1.3 In this Building Contract (as hereinafter defined), words and expressions defined or construed in the DBFO Contracts and used but not otherwise defined or construed herein shall have the same meanings as are respectively assigned to them in the DBFO Contracts, except where the context otherwise requires.
 - 1.4 Where a word or phrase is used in like circumstances in this Building Contract and in the DBFO Contracts and requires to be interpreted in circumstances which do, or are likely to, touch or concern both this Building Contract and the DBFO Contracts, then such word or phrase shall be given the same interpretation in this Building Contract as it is given in the DBFO Contracts.
 - 1.5 Unless the context otherwise requires or the Agreement or the Conditions specifically otherwise provide but subject to Clause 1.3 and 1.4, the following words and phrases in the Agreement, the Conditions and the Schedule shall have the meanings given below or as ascribed in the article or Clause to which reference is made:

Word or phrase

Meaning

Agreement:

the Agreement to which the Conditions are

annexed, and references to any recital are to the recitals set out in the Agreement

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 any of the matters referred to in or to be done under this Building Contract and/or 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 the Contractor and Executed

Bar

means any bar showing activities to be performed by the Contractor as indicated on the Earned Value Schedule

Building Contract

means the Agreement, the Conditions and the Schedule

Building Contract Completion Date

the date when the conditions in Clause

16.1 have been satisfied as specified in the Completion Certificate

Building Contract Design Development Procedure

means the design development procedure set out in Part 14 of the Schedule

Building Contractor Change

has the meaning set out in Clause 12.1

CDM Regulations:

the Construction (Design and Management) Regulations 1994 or any remaking thereof or any amendment to a regulation therein

Certificate of Making Good Defects

has the meaning given in Clause 16.6.

Change:

means a variation in the design quality or quantity of the works and may include (without limitation) the addition, omission or substitution of any work; the alteration of the kind or standard of any of the materials or goods to be used in the works; the material alteration of the position, dimensions level or alignment of any work; alteration in the sequence or timing of execution of any work; an alteration, amendment, addition to, substitution for or omission from the Trust Requirements or the Specification, but excluding always the development of the Production Information in accordance with Clause 5.3

Collateral Warranties

means the collateral warranty in the Agreed Form in favour of the Trust and the Building Contract Direct Agreement

Executed by the Contractor; the collateral warranties in favour of the Trust, each Financier (or its agent) and Summit Executed by each of the Consultants; and the collateral warranties in favour of the Trust, each Financier (or its agent) and Summit Executed by the Contractor and by each of the Design Sub-Contractors all delivered to Summit as required by this Building Contract

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 and all of the parties or the Trust and the relevant subject matter of the DBFO Contracts or this Building Contract

Completion Certificate

the Certificate to be issued in respect of the Works in accordance with Clause 16.1 confirming the Building Contract Completion Date

Completion Date:

the Date for Completion or any date fixed under Clause 25

Conditions:

the Clauses 1 to 39 and the Code of Practice referred to in Clause 8.4.3 annexed thereto

Construction Timetable	means the construction timetable set out in Part 2 of the Schedule to the Development Agreement
Contract Change	has the meaning given in Clause 12.2
Contract Sum:	the sum stated in article 2 but subject to Clause 14.2
Contract Sum Analysis:	the analysis of the Contract Sum prepared by the Contractor for the purposes of this Building Contract as referred to in Part 3 of the Schedule
Contractor:	the person named as the Contractor in the Agreement
Contractor's Personnel	means the employees, servants agents or sub-contractors of the Contractor utilised in the execution of the Works
Cost Decrease:	means any proper and reasonable decrease in the costs and expenses (including without limitation funding costs) incurred or to be incurred by the Contractor in, or in connection with, the carrying out of the Works
Cost Increase:	means any increase in the costs and expenses (including without limitation funding costs and costs and expenses resulting from or associated with any

delays in or suspension of the carrying out of the Works in whole or in part) reasonably and properly incurred or to be incurred by the Contractor in, or in connection with, the carrying out of the Works

Date for Completion: means the date being 32 calendar months from the Date of Possession

Date of Possession: means the Date of Financial Close

Defects Liability Period: the period of fifteen months from the Building Contract Completion Date

Design Documentation means the Trust Requirements, the Specification and the Production Information approved by Summit and by the Trust in accordance with the Design Development Procedure

Dispute means a difference or dispute of whatever nature between Summit of the one part and the Contractor of the other part arising under, out of or in connection with this Building Contract, including without limitation, any question of interpretation of this Building Contract

Dispute Resolution Procedure: means the procedure referred to in Clause 39 and set out in Part 11 of the Schedule

Earned Value Schedule means the Contractor's payment schedule contained in Part 10 of the Schedule as

amended from time to time in accordance with Clause 30

Expert

means any person appointed as such from time to time under and subject to the provisions of Part 11 of the Schedule hereto

Final Certificate:

has the meaning given to it in Clause 30.9

Financiers Technical Adviser

means GIBB Ltd of Gibb House, London Road, Reading, Berkshire, RG6 1BL or such other technical adviser as the Financiers may from time to time appoint in addition to or in substitution in relation to the Project

Guarantee Bond

the guarantee bond between, the Contractor, Summit and New Hampshire Insurance Company, the Agreed Form of which appears in Part 5(a) of the Schedule

Health and Safety Plan:

the plan provided to the Principal Contractor and developed by him to comply with regulation 15(4) of the CDM Regulations and, for the purpose of regulation 10 of the CDM Regulations, received by Summit before any construction work under this Building Contract has started; and any further development of that plan by the Principal Contractor during the progress of the Works

Interim Payment Certificate:	any one of the interim payment certificates to which Clause 30.1 refers
Necessary Consents	means all permissions, consents, licences, certificates, authorisations, and other approvals (including the Detailed Decision Notice) and Road Construction Consent and relaxations issued under or as required by the Statutory Requirements or any other applicable legally binding requirement relating to the Works either on or off Site
Other Parties	means the Trust (its agents and employees), the Trust's Representative, Siemens, Serco and other third parties who are appointed by Summit in relation to the Works
Parties	means Summit and the Contractor
Principal Contractor:	the Contractor or any other contractor duly appointed by Summit as the Principal Contractor pursuant to regulation 6(5) of the CDM Regulations
Production Information	means all drawings, specifications, details, levels and setting out dimensions which the Contractor prepares or uses for the purposes of the Works to the extent that the same are not included in the Specification

Project	means the undertaking of the detailed design, financing, construction, fitting out and commissioning comprised in 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 Meetings	means the monthly project progress meetings to be convened by the Contractor, with effect from Financial Close
Retention	means the percentage of the Contract Sum to be withheld as a retention pursuant to Clause 30.3.2
Schedule:	the 14 part Schedule annexed to the Conditions
Serco	means Serco Healthcare Services Ltd (Registered Number 242246) of Alderney House, 4 Sandy Lane, Hampton Wick, Middlesex, TW11 0DU
Siemens	means Siemens plc (Registered Number 727817) and/or Siemens Healthcare Services Ltd (Registered Number 3406488) both of Siemens House, Oldbury, Bracknell, Berkshire, RG12 8FZ
Site Materials:	all unfixed materials and goods delivered to, placed on or adjacent to the Works and intended for incorporation therein

Specified Peril	means fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquakes, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion; except in each case, so far as such events do not constitute Insured Risks
Summit	the person named as Summit in the Agreement
Summit's Representative:	means the person named or appointed in accordance with Article 3 of the Agreement
Summit Termination Event	means any of the events referred to in Clause 27.2
Tests	means the tests, inspections, validations and certifications referred to in Part 5 of the Schedule to the Development Agreement
Works	means the works to procure, design, construct, fit out and commission the Hospital to be carried out by the Contractor in accordance with this Building Contract
VAT Agreement:	means the agreement referred to in Clause 14.1

1.6 For the purposes of this Building Contract the following terms shall have the following meanings :-

1.6.1 "persons for whom the Trust is responsible" shall mean those persons referred to in Clause 8.2 of the Project Agreement;

- 1.6.2 "persons for whom Summit is responsible" shall mean Summit's employees and agents, Summit's Representative, Siemens, Serco and any other Approved Service Provider, sub-contractor or supplier to Summit (other than the Contractor and persons for whom the Contractor is responsible);
- 1.6.3 "persons for whom the Contractor is responsible" shall mean the Contractor's Personnel and any other person on the Site prior to the Building Contract Completion Date (other than persons for whom Summit or the Trust is responsible)
- 1.7 If Summit pursuant to Article 7.1 or to Article 7.2 by a further appointment replaces the Planning Supervisor referred to in, or appointed pursuant to, Article 7.1 or replaces the Contractor or any other contractor appointed as the Principal Contractor, Summit shall as soon as reasonably practicable upon such further appointment notify the Contractor in writing of the name and address of the new appointee.
- 1A Condition Precedent**
- 1A.1 Save for this Clause 1A and save for the obligations of Summit and of the Contractor under Clauses 2.6.3.1, 2.6.3.2 and 2.6.3.3 and such other parts of this Building Contract as are required to be referred to in order to give meaning and effect to those Clauses, the coming into force of this Building Contract is subject to and in all respects conditional upon the satisfaction of the events and conditions set out in Clause 1A.4.
- 1A.2 Summit shall notify the Contractor forthwith if any condition or event set out in Clause 1A.4 has not been fulfilled or in the case of Clauses 1A.4.2 to 1A.4.5 waived by Summit. In the event of such notification this Building Contract shall terminate and shall be of no further force and effect but without prejudice to any rights or obligations which may have already accrued prior to such time and date.
- 1A.3 The Contractor shall not be entitled to any payment or compensation from Summit and shall have no entitlement to claim, whether in damages or otherwise in respect

of the Works in the event that the conditions precedent contained in Clause 1A.4 are not so fulfilled or waived.

1A.4 The events and conditions referred to in Clause 1A.1 are as follows:

1A.4.1 Financial Close;

1A.4.2 delivery by the Contractor to Summit of the Executed Parent Company Guarantee;

1A.4.3 delivery by the Contractor to Summit of the Executed Guarantee Bond;

1A.4.4 delivery by the Contractor to Summit of evidence satisfactory to Summit of the Contractor's compliance with its obligations in relation to the insurance referred to in Clause 22 and Part 4 of the Schedule; and

1A.4.5 delivery by the Contractor to Summit of the Executed Building Contract Direct Agreement.

2 Contractor's obligations

2.1.1 The Contractor undertakes at its own cost to design, construct, procure, fit out and commission the Works in accordance with:

2.1.1.1 the Agreement and the Conditions;

2.1.1.2 the Design Documentation;

2.1.1.3 the Necessary Consents;

2.1.1.4 the Statutory Requirements;

2.1.1.5 Industry Standards;

2.1.1.6 the DBFO Contracts;

in a good and workmanlike manner, in accordance with Good Industry Practice, using only materials and goods which are of sound and satisfactory quality and to complete the Works in accordance with Clause 23 all to the satisfaction of Summit and Summit's Representative.

2.1.2 In the event of any conflict or inconsistency between the aforesaid the following order of precedence shall prevail:

- 2.1.2.1 the Statutory Requirements;
- 2.1.2.2 the Necessary Consents;
- 2.1.2.3 the DBFO Contracts;
- 2.1.2.4 the Agreement and the Conditions;
- 2.1.2.5 subject to Clause 2.1.3.3, the Design Documentation;
- 2.1.2.6 Industry Standards.

2.1.3.1 Summit confirms to the Contractor that the Trust has acknowledged to Summit that the Trust Requirements meet the Trust's anticipated clinical requirements (subject to the Change Provisions).

2.1.3.2 Without prejudice to Clause 2.5.6, Summit confirms to the Contractor that 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 and has further acknowledged that the Developed Specification will, subject to the Change Provisions, meet the Trust Requirements.

2.1.3.3.1 Where there is a discrepancy within the Trust's Requirements (including any Change) the same shall be explained and resolved by Summit and the Contractor shall forthwith comply with any such decision without any adjustment to the Contract Sum or the Completion Date, except to the extent that the same is a Trust Change.

2.1.3.3.2 Where there is a discrepancy, ambiguity or conflict between the Trust's Requirements and the Specification the Contractor shall notify Summit of the same together with the Contractor's proposals for resolving the same. Subject to receiving

Summit's approval to the proposals, (which will be deemed to be given if Summit has not responded within 15 Business Days) the Contractor shall comply with the same at no cost to Summit and the Contractor shall not be entitled to any extension of time for completion of the Works as a result of the matters referred to in this Clause.

2.1.3.4 Where there is a discrepancy, ambiguity or conflict within any part of the Specification or the Production Information developed by the Contractor and whether approved by Summit and/or the Trust in accordance with the Building Contract Design Development Procedure or the Design Development Procedure or not, the Contractor shall inform Summit in writing of his proposed amendment to remove the discrepancy, ambiguity or conflict; and (subject always to compliance with the Statutory Requirements and the Necessary Consents) Summit shall decide the matter at issue or otherwise may accept the Contractor's proposed amendment and the Contractor shall be obliged to comply with the decision or acceptance by Summit without any adjustment to the Contract Sum or extension of time.

2.1.3.5 If the Contractor or Summit find any such discrepancy, ambiguity or conflict as is referred to in Clause 2.1.3.3 or 2.1.3.4 it shall immediately give the other written notice specifying the discrepancy. A failure by Summit to notify the Contractor of any discrepancy, ambiguity or conflict whether or not Summit is aware of the same shall not entitle the Contractor to any adjustment to the Contract Sum or extension of time.

2.1.4 The Contractor acknowledges that he has full notice of the terms of

- .1 the DBFO Contracts;
- .2 Siemens' contract with Summit for the provision of the Equipment for the Hospital;
- .3 Serco's contract with Summit for the provision of the Services for the Hospital;
- .4 the Finance Facilities Agreements; and
- .5 the Detailed Decision Notice

in so far as the same relate to the Works and agrees to carry out and complete the Works and perform its other obligations pursuant to this Building Contract so as not

to cause Summit to be in breach of any of its obligations, representations or warranties under those documents.

2.1.5 The Contractor will ensure that no amendments or variations are made to the Trust Requirements and/or the Specification (otherwise than in accordance with a Change which will be implemented in accordance with the provisions of Clause 12) without the prior written consent of Summit (who may withhold its approval at its discretion) to the proposed amendment or variation as shown on plans, specification and other details which the Contractor shall be obliged to submit to it with a notice seeking to amend or vary the Specification such procedure to be outwith the Building Contract Design Development Procedure and the Design Development Procedure and on the basis that no deemed approval will apply. 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 this Clause) the Contractor shall comply with the Design Development Procedure.

2.1.6 The Contractor shall procure that no substance generally known to be deleterious or which the Contractor is aware is deleterious or not in accordance with Good Industry Practice or British or (to the extent that such standards are not inconsistent with British Standards) EU Standards at the time of use will be utilised in the Works.

2.1.7.1 The Contractor shall be solely responsible for securing the grant and all subsequent renewals, extensions and modifications of the Necessary Consents at its cost as soon as practicable and in any event within the timescale necessary to ensure compliance with the provisions of Clause 23. The Contractor shall ensure that, as far as is legally possible, the Necessary Consents are obtained in Summit's name. If any of the Necessary Consents cannot legally be obtained in Summit's name and must identify either the Trust or the Contractor, Summit shall or, to the extent it is permitted under the DBFO Contracts, procure that the Trust shall in the event of any query, breach, prosecution or other dealing in respect of such Necessary Consents, give the Contractor all reasonably necessary assistance and information to enable the Contractor to respond to the matter. If any of the Necessary Consents identifies the Trust, the Contractor shall in consultation with

Summit in the event of any query, breach, Prosecution or other dealing in respect of such permit give the Trust all necessary assistance and information to enable the Trust to respond to the matter.

2.1.7.2 To the extent not purified before Financial Close, the Contractor shall provide Summit with such information regarding the progress of the purification of any conditions attached to the Detailed Decision Notice as Summit shall reasonably require and the Contractor shall ensure that all such conditions are purified within such timescales as are required to enable the Works to be carried out in compliance with all Applicable Laws and, except insofar as such conditions relate to conditions which can only be purified after the Completion Date, prior to the Completion Date provided that if the purification of such conditions has an adverse impact on Summit's operation and or maintenance costs for the remainder of the Term the Contractor shall indemnify Summit against all damages, losses, claims, demands, costs, expenses, liabilities or penalties which are sustained or incurred by Summit resulting from the purification of such conditions.

2.1.7.3 The Contractor shall perform its obligations under this Building Contract in a manner that complies with all current and relevant permits for which it is responsible.

2.1.8 Notwithstanding any reports, data or opinions made available to it, or used by it for any purpose, the Contractor shall be deemed to have:

2.1.8.1 satisfied itself as to the suitability of the physical condition at the Site for the Works and suitability and adequacy of the Site and any off Site land and/or access required to undertake the construction of the Works and the nature and extent of the risk assumed by it in relation to this Building Contract; and

2.1.8.2 gathered all information necessary to discharge its obligations under this Building Contract 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. The Contractor shall provide to Summit with a copy to the Financier's Technical Adviser within 3 Business Days after its receipt of the same, all site investigation and ground conditions reports or information obtained by or made known to it at any time prior to or after the Building Contract Completion Date.

For the avoidance of doubt the Contractor shall have no claim against Summit for extensions of time, adjustments to the Contract Sum or otherwise in respect of unforeseen ground or other conditions affecting the Site or the Works.

- 2.1.9.1 Save as provided in Clause 2.1.9.2, the Contractor shall not be relieved from any obligation under this Building Contract and its liability shall not be diminished should any information or documentation whether obtained from Summit or otherwise (including information or documentation made available by Summit) before, on or after Financial Close, be incorrect, inadequate or insufficient and shall make its own enquiries as to the accuracy, sufficiency and adequacy of such information. Without prejudice to the generality of the foregoing, the Contractor 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 Summit's Representative, Summit or its advisers or representatives pursuant to this Building Contract.
- 2.1.9.2 The Contractor shall be entitled to rely on information relating to the design and construction of the Works provided to the Contractor by Summit which originates from Siemens and is contained in the Specification item number 19, entitled "Siemens Requirements" , provided always that the Contractor shall remain responsible for integrating such information into the design and construction of the whole of the Works.
- 2.1.10 The Contractor shall perform its obligations under this Building Contract at its own risk and without recourse to Summit, now and in the future, except as expressly provided in this Building Contract.

2.1.11 The Contractor will prior to the Contractual Practical Completion Date:

- 2.1.11.1 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 and the Necessary Consents and where these are of a nature capable of being publicly adopted, to the adoptable standard;
- 2.1.11.2 pay and satisfy in full, with the intent that Summit shall accordingly be freed and relieved from, all proper claims for fees, charges, fines, 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 the Works and that no matter when such fees and the like are rendered or whether the invoice is submitted or addressed to the Contractor or otherwise;
- 2.1.11.3 within three Business Days from receipt thereof by the Contractor, transmit to Summit's Representative a copy of any notice consent, approval, certificate, decision, or other document received by the Contractor from any Competent Authority or public service company which has jurisdiction with regard to the Works or the Site 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 forthwith comply fully with the same and to continue so to comply;
- 2.1.11.4 comply with and so free and relieve Summit of the costs of complying with all notices required by any Statutory Requirements or public service company or Competent Authority which has jurisdiction with regard to the Works and/or the Site or with whose system the Works and/or the Site are or will be connected;

- 2.1.11.5 save in respect of any temporary works, access roads, footpaths or services, which are wholly within the Site and removed by the Contractor 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 Summit's Representative and where appropriate the owners, the Competent Authority and any public service company which has jurisdiction with regard to the Works; and
- 2.1.11.6 comply with any title conditions affecting the Site
- 2.1.12.1 For the avoidance of doubt the Works include the procurement and installation of the Trust Group 1 Equipment and the installation of the Trust Group 2 Equipment to be provided to Summit by the Trust
- 2.1.12.2 Summit acknowledges to the Contractor that the Trust has confirmed to Summit that the Trust shall provide the Trust Group 2 Equipment referred to in the 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 Building Contract, save that the Contractor shall not bring forward any date for the provision of such Trust Group 2 Equipment without the prior written approval of Summit.
- 2.1.12.3 In the event that Summit is unable to provide any item(s) of Trust Group 2 Equipment in accordance with the Construction Timetable Summit's Representative shall be entitled to issue an instruction to the Contractor to install such item(s) of equipment at a later date to be specified in such instruction.

- 2.1.12.4 The issue of any instruction as referred to in Clause 2.1.12.3 shall, to the extent the same was necessitated by any cause other than any act, omission or default of Summit or persons for whom Summit is responsible or the Contractor or persons for whom the Contractor is responsible, be a Trust Works Change and so far as it relates to the Contractor, the provisions of Clause 12 shall apply.
- 2.1.12.5 The issue of any instruction shall as referred to in Clause 2.1.12.3 shall to the extent the same was necessitated by any act, omission or default of Summit or persons for whom Summit is responsible under this Building Contract, be a breach by Summit of its obligations under this Building Contract and the provisions of Clause 25.8.6 and Clause 26.2.1 shall apply.
- 2.1.13 The Contractor shall comply with any instruction and be bound by any decision of Summit issued or made under or pursuant to the Conditions and any such instruction or decision shall have effect except to the extent that any such instruction or decision is varied in accordance with the provisions of Clause 39 of this Building Contract.
- 2.1.14 The Contractor shall timeously comply with the obligations undertaken by it pursuant to this Building Contract and any Appointments in respect of which it is the employer.
- 2.1.15 The Contractor will not without the prior written consent of Summit (which consent will not be unreasonably withheld or delayed):
- 2.1.15.1 vary, alter or terminate any Appointment in respect of which it is the employer, 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 this Building Contract.
- 2.1.15.2 save insofar as required to do so in terms of such Appointments permit the Consultants, to terminate, vary or alter their respective Appointments.

- 2.1.16 The Contractor shall ensure that each Consultant appointed by the Contractor shall be obliged to consent to any assignation or novation of its Appointment and/or to enter into a new appointment on the same terms with any party exercising any right of step-in under this Building Contract pursuant to the Guarantee Bond referred to in Part 5A of the Schedule or to the Building Contract Direct Agreement, provided that in the case of the Building Contract Direct Agreement this obligation shall only arise to the extent that the Contractor or the party providing the Guarantee Bond is in default of its obligations under this Building Contract.
- 2.1.17 The Contractor shall be responsible for obtaining at its own cost all necessary rights from third parties or Competent Authorities in order to carry out any of the Works to be conducted off-Site including without limitation additional land, securities, consents to discharge or wayleaves and that so as to complete the Works by the Completion Date.
- 2.2 The Contractor shall carry out its activities during the Commissioning Period in accordance with the restrictions contained in the Commissioning Procedures and shall provide all assistance and information to Summit to enable Summit to comply with the Commissioning Procedures. The Contractor shall not carry out any obligations to be performed during the Commissioning Period in such a way as to cause Summit to be in breach of the terms of the Commissioning Procedure and shall comply with all instructions of Summit in this regard.
- 2.3.1 The Contractor shall undertake all necessary preparation for, comply with, provide all assistance and information, notifications and rights of access to Summit or others and appoint a quality manager as required by the Monitoring Procedure, so as to enable Summit to comply with the Monitoring Procedure.
- 2.3.2 As soon as practical after Financial Close, Summit and the Contractor shall set up a joint monitoring group which shall meet monthly to:-
- .1 monitor progress of the Works on a monthly basis in accordance with the procedure set out in Clause 30; and

- 2 determine the value of the actual progress of the Works in accordance with the procedure set out in Clause 30.

The group shall be made up of representatives of the Contractor and of Summit and the Financiers Technical Adviser shall be invited by Summit to attend all meetings of the group.

- 2.4 The Contractor warrants to Summit that the design of the Works satisfies the "Design Assumptions" prepared by Serco and which are listed in Part 12 of the Schedule.
- 2.5 Without limiting any warranties implied by law, the Contractor warrants and undertakes to Summit that:
 - 2.5.1 the design of the Works will in all respects comply with the Trust's Requirements, the Specification and all other requirements of this Building Contract and the DBFO Contracts;
 - 2.5.2 the Works will comprise only materials goods and substances which will be of sound and satisfactory quality and in accordance with Good Industry Practice or British or (to the extent that such standards are not inconsistent with British Standards) EU Standards at the time of use and all workmanship shall be in accordance with Good Industry Practice;
 - 2.5.3 the Works, when constructed, will comply with the Specification, the Trust Requirements and all other requirements of this Building Contract and the DBFO Contracts;
 - 2.5.4 the persons carrying out any design and/or supervision and/or monitoring and/or checking of the Works are suitably qualified and experienced to do so and in particular have adequate previous experience of the part of the design or Works they are carrying out or supervising, monitoring or checking; and

2.5.5 The Contractor shall exercise the degree of professional skill care and diligence in the design of the Works as would be expected of a qualified and competent professional designer experienced in providing design services of the type to be provided pursuant to this Building Contract in relation to developments of a similar size, scope, nature and complexity as the Works.

2.5.6 the Contractor shall be solely responsible for the Specification and the detailed design, drawings and plans of the Works (including any design work necessary to give effect to a Change under the Building Contract) so that the design of the Works and the completed Works shall be such that the requirements of the Trust Requirements are fulfilled.

Each of the warranties above is a separate warranty and the terms of each warranty shall not limit the terms of, nor Summit's rights to recover damages in respect of a breach of each of the warranties.

2.6.1 The Contractor shall at his own cost deliver to Summit-

2.6.1.1 upon execution of this Building Contract, a collateral warranty (direct agreement) in favour of the Trust in the form of the draft appearing in Part 7(a) of the Schedule duly executed by the Contractor; and

2.6.1.2 upon execution of this Building Contract, collateral warranties from the Consultants appointed by the Contractor, in the form of the drafts appearing within Parts 7(b), 7(c) and 7(d) of the Schedule duly executed by the Contractor, where appropriate, and by the Consultants appointed by the Contractor in favour of Summit, the Financiers and the Trust.

2.6.1.3 contemporaneously with the appointment of the relevant Design Sub-Contractor, collateral warranties from the Design Sub-Contractors in the forms of the drafts appearing with Part 7(e), 7(f), and 7(g) of the Schedule duly executed by the Contractor where appropriate and by the relevant Design Sub-Contractor in favour of Summit, the Financiers and the Trust. The Contractor shall be deemed to have discharged this obligation in

respect of each collateral warranty referred to in this Clause 2.6.1.3 if, despite the use by the Contractor of its best endeavours, it shall not have been able to deliver such warranty to Summit.

2.6.2 If any sub-contract of any sub-contractor or Appointment of any Consultant is terminated then without prejudice to Summits' right of termination of this Building Contract the Contractor will ensure that as soon as practicable and in any event within 15 Business Days a new sub-contract or appointment shall be entered into in a form previously approved in writing by Summit and with a party previously approved in writing by Summit and in each case relating to any Consultant or Design Sub-Contractor appointed by the Contractor a further collateral warranty (in a form previously approved in writing by Summit) in favour of Summit, the Trust and the Financiers shall be executed by the new party who has been appointed and shall be delivered to Summit within 10 business days after the appointment agreement or sub-contract shall have been entered into.

2.6.3 The Contractor warrants to Summit that:-

- .1 it has the corporate power to own assets and carry on business as now conducted;
- .2 it has full power to enter into and perform its obligations under this Building Contract;
- .3 this Building Contract constitutes a binding obligation on the Contractor and it is enforceable in accordance with its terms;
- .4 to the best of the Contractor's knowledge and belief all information or data communicated in writing to Summit, its advisers or third parties in connection with the Contractor's response to the invitation to tender, and subsequent negotiations leading up to the execution of this Building Contract were when communicated true, complete and accurate in all material respects.

2.6.4 The Contractor shall provide all assistance to Summit to ensure that all persons for whom the Contractor is responsible co-operate so far as may be reasonably necessary with the Trust and with the Trust's employees, patients, visitors and other licensees and to ensure that the Contractor's 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 provided this does not cause an unreasonable level of disruption to the Contractor in the performance by the Contractor of his obligations prior to the Contractual Practical Completion Date.

2.6.5 The Contractor acknowledges the provisions of Clause 13 of the Development Agreement and in particular undertakes, if the Trust does not acquire title to the Sub-Station Area within the period of six months from Financial Close, that the Works will be reconfigured to exclude the Sub-Station Area at no cost to Summit.

3. **Contract Sum - additions or deductions - adjustment - Interim Payments**

Where in the Conditions it is provided that an amount is to be added to or deducted from the Contract Sum or dealt with by adjustment of the Contract Sum then as soon as such amount is ascertained in whole or in part either by agreement between Summit and the Contractor or determined through the Dispute Resolution Procedure such amount shall be taken into account in the computation of the amount stated to be due in the next Interim Payment Certificate following such whole or partial ascertainment.

4. **Summit's instructions**

4.1.1 The Contractor shall (subject to Clauses 4.2, 4.3 and 12) forthwith comply with all instructions issued to him by Summit in regard to any matter in respect of which Summit is expressly empowered by the Conditions to issue instructions;

4.1.2 If within 7 days after receipt of a written notice from Summit requiring compliance with an instruction the Contractor does not comply therewith, then Summit may employ and pay other persons to execute any work whatsoever which may be

necessary to give effect to such instruction; and all costs incurred in connection with such employment may be deducted by Summit from any monies due or to become due to the Contractor under this Building Contract or may be recoverable from the Contractor by Summit as a debt.

- 4.2 Upon receipt of what purports to be an instruction issued to him by Summit the Contractor may request Summit to specify in writing the provision of the Conditions which empowers the issue of the said instruction. Summit shall forthwith comply with any such request, and the Contractor shall notwithstanding such request and without prejudice to his right to refer to the Dispute Resolution Procedure the question of whether Summit was empowered to issue the said instruction, comply with the said instruction.
- 4.3.1 All instructions issued by Summit shall be issued in writing, save that in an emergency Summit may issue oral instructions.
- 4.3.2 If Summit purports to issue an instruction otherwise than in writing it shall be of no immediate effect, unless confirmed in writing by Summit to the Contractor within 7 days, provided always that in the case of an emergency Summit shall confirm any oral instructions in writing as soon as reasonably practicable and in any event within 12 hours of issuing the oral instruction failing which the Contractor may confirm the position in writing. If such written confirmation from the Contractor is not dissented from by Summit within 24 hours of being given, it shall be deemed to be a valid instruction pursuant to this Building Contract.
- 4.3.3 If Summit does not confirm such an instruction in the manner and at the time aforesaid and the Contractor nevertheless complies with the same, then unless Summit confirms the same in writing the Contractor shall not be entitled to any additional payment hereunder.

5. Custody and supply of documents, Confidentiality and Copyright

- 5.1 The Design Documentation and the Contract Sum Analysis shall remain in the custody of Summit so as to be available at all reasonable times for the inspection of the Contractor.
- 5.2 Immediately after the execution of this Building Contract Summit without charge to the Contractor shall provide him (unless he shall have been previously so provided) with one copy each of the Agreement, the Conditions, the Design Documentation (and the Contract Sum Analysis).
- 5.3.1 All Production Information shall be prepared by the Contractor in accordance with, and the Contractor shall comply with, the Design Development Procedure contained in the Development Agreement. The Contractor shall at Summit's request make submissions, resubmissions, supply all information and generally undertake all activities required by the Design Development Procedure so as to enable Summit to comply with the same. The Contractor warrants that it has examined and understood the Design Development Procedure and allowed within the Construction Timetable for the submission of Design Documentation to the Design Development Procedure and the timescales and periods detailed therein.
- 5.3.2 In addition to the requirement set out in Clause 5.3.1, the Contractor shall pass to Summit, and at Summit's request to Siemens and to Serco one copy each of the Reviewable Design Information in accordance with, and shall comply with, the Building Contract Design Development Procedure set out in Part 14 of the Schedule, provided always that the Contractor shall receive and review any comments made by Siemens and Serco but shall not be bound to act upon the same provided always that the Contractor shall not delay progress of the Works by reason of receipt or non receipt of comments made or pending receipt of comments to be made by Siemens and Serco. The Contractor shall further submit to Summit in accordance with the Building Contract Design Development Procedure one copy of all Production Information relating to the staff residences located adjacent to the entrance of the Site and other Production Information specifically requested by Summit and the Building

Contract Design Development Procedure shall apply thereto as if the same were all Reviewable Design Information.

- 5.4 The Contractor shall keep one copy of the Design Documentation and one copy of the Contract Sum Analysis, upon the Site so as to be available to Summit's Representative at all reasonable times.
- 5.5.1 It is a precondition of the Contractual Practical Completion Date being achieved by Summit under the DBFO contracts that Summit shall supply for the retention and use of the Trust such drawings and information showing or describing the Works as built, and concerning the maintenance and operation of the Works, including any installations comprised in the Works, as is specified in the Part 5 of the Schedule to the Development Agreement. The Contractor shall provide such drawings and information to Summit as relate to the Works in sufficient time so as not to cause any delay to the achievement of the Contractual Practical Completion Date.
- 5.5.2 Upon the earlier of the Contractual Practical Completion Date or the Building Contract Completion Date the Contractor shall provide all manufacturers' and suppliers' product warranties and/or guarantees to Summit and the Contractor shall procure that all such warranties and/or guarantees are either addressed directly to Summit and/or are capable of assignation to Summit without restriction.
- 5.6.1 Subject to Clause 5.6.2 each party shall treat all Confidential Information of the other party as confidential, except as may be necessary for the performance of either party's obligations under this Building Contract or Summit's obligations under the DBFO Contracts or Finance Facilities Agreements and use all reasonable endeavours to prevent its disclosure by their respective officers employees, agents or sub-contractors. This Clause 5.6 shall survive any termination or expiry of this Building Contract. For the avoidance of doubt this Building Contract and all information provided by or to either Party hereunder shall be included in Confidential Information.
- 5.6.2 Clause 5.6.1 shall not apply to Confidential Information which:-

- 5.6.2.1 prior to its receipt by the recipient was in the possession of the recipient and at its free disposal;
- 5.6.2.2 is subsequently disclosed to the recipient without any obligation of confidentiality by a third party who has not derived it directly or indirectly from the other party;
- 5.6.2.3 is or becomes generally available to the public otherwise than through the act or default of the recipient or its agents or employees; or
- 5.6.2.4 is required by Applicable Law, Competent Authority, any recognised stock exchange on which the Bonds are traded at any time or the order of any competent court to be disclosed; or
- 5.6.2.5 is required to be disclosed to any bodies referred to in Clause 18.1 of the Project Agreement or is requested to be disclosed to the Trust's professional advisers, auditors, agents or representatives, contractors or sub-contractors (provided that (unless the Trust is entitled to disclose the Confidential Information by virtue of the provisions of Clause 12 of the Project Agreement) such recipient shall have a similar obligation of Confidentiality to the disclosing party).
- 5.6.3 Nothing in this Clause 5.6 shall prohibit the Contractor from disclosing information where reasonably necessary to enable this Building Contract to be duly performed, to any Consultant appointed by the Contractor or any sub-contractor or supplier provided that any recipient of Confidential Information contemplated by this Clause 5.6.3 shall first agree in writing to be bound to Summit and the Contractor by a confidentiality undertaking substantially in the terms of this Clause 5.6
- 5.6.4 Nothing in this Clause 5.6 shall prohibit Summit from disclosing information to its current or prospective financiers, shareholders, the Promoters, any Associated Company of Summit, any rating agency or any recognised stock exchange on which the Bonds are traded at any time, or where reasonably necessary to enable any of the Project Documents to be duly performed, to a current or prospective Contractor,

Approved Service Provider or Permitted Sub-Contractor, nor shall anything in this Clause 5.6 prohibit Summit or the Contractor from disclosing information to its or their respective professional advisers, auditors, agents or representatives, provided that any recipient of Confidential Information contemplated by this Clause 5.6.4 shall first agree in writing to be bound to Summit and to the Contractor by a confidentiality undertaking substantially in the terms of this Clause 5.6.

5.6.5 Nothing in this Clause 5.6 shall prohibit Summit from disclosing relevant information which is required to be made available by Summit or by a receiver or administrative receiver or administrator to any person *bona fide* proposing to provide funding (whether by way of equity investment, loan or otherwise) to Summit, the Subsidiary or the Holding Company for the purpose of performing its obligations under the Project Documents, provided that any recipient of Confidential Information contemplated by this Clause 5.6.5 has agreed in writing to be bound to Summit by a confidentiality undertaking substantially in the terms of this Clause 5.6.

5.7.1 The Contractor hereby grants to Summit a perpetual, irrevocable, royalty-free, non-exclusive, transferable licence (which shall include the right to grant sub-licences therefrom) to copy, reproduce and use the Relevant Intellectual Property for any purpose in connection with the Works or the Hospital including the design, construction, completion, commissioning, operation, testing, use, maintenance, repair, replacement, reinstatement, modification or development of the Works or the Hospital.

5.7.2 For the purposes of Clause 5.7.1, the Relevant Intellectual Property shall be all Intellectual Property owned by the Contractor whether now in existence or coming into existence during the continuance of this Building Contract, developed for and relating to the design, construction, fitting out, completion, commissioning or testing of the Hospital. Summit acknowledges that the Contractor is and will remain the sole owner of such Relevant Intellectual Property and Summit will acquire no right claim or interest in any Relevant Intellectual Property during the continuance of this Building Contract or thereafter save in terms of any licence granted under or in terms of this Clause 5.7.

- 5.7.3 In the case of Intellectual Property licensed by a third party to the Contractor, the Contractor shall use reasonable endeavours to procure the grant by such third party of a sub-licence to Summit and to the Trust (provided that no significant extra cost is occasioned thereby unless Summit agrees to pay such extra cost). Notwithstanding the foregoing, the Contractor will ensure that there is granted to Summit (with a right to grant in equivalent terms to the Trust) an irrevocable, non-exclusive, royalty free licence from the IT Software Supplier in order to entitle the Trust to utilise and manage the IT Software in accordance with the Output Specification for the Estates Maintenance Services, which will not terminate at the end of the Term in respect of the IT Software.
- 5.7.4 Summit hereby grants to the Contractor an irrevocable, non-exclusive, royalty free licence during the continuance of this Building Contract (carrying the right to grant sub-licences to any sub-contractor, supplier or Consultant to the extent required for the purposes of design, construction, fitting-out, completion, commissioning or testing of the Works) to use all of any Intellectual Property owned by Summit or licensed to Summit by the Trust in the terms of Clause 20.5 of the Project Agreement, whether now in existence or coming into existence during the continuance of this Building Contract, for any purpose relating to the design, construction, completion, commissioning or testing of the Works.
- 5.7.5 The Contractor shall indemnify Summit on demand and hold it harmless from and against all claims made or brought by any persons for or an account of actual or alleged infringement of any Relevant Intellectual Property licensed by the Contractor to Summit under Clause 5.7.1 and Clause 5.7.3 save to the extent that such infringement is due to failure by Summit to comply with the reasonable instructions of the Contractor (including the reasonable instructions of any third party which has licensed Relevant Intellectual Property to Summit in accordance with Clause 5.7.3) in the use of such Relevant Intellectual Property as aforesaid or use by Summit of such Relevant Intellectual Property for a purpose for which it was not licensed under Clause 5.7.1 or Clause 5.7.3 as appropriate. A similar provision shall be incorporated in the licences to be granted by any third party to the Contractor as referred to in Clause 5.7.3.

- 5.7.6 All licences of Relevant Intellectual Property created by or pursuant to Clause 5.7.1 or Clause 5.7.3 shall (without cost to Summit) survive termination or expiry of this Building Contract.
- 5.7.7 To the extent that any of the information referred to in Clause 5.7.2 is generated by or maintained on a computer or in any other machine readable format, the Contractor shall procure at no cost to Summit for the duration of the Term the grant of a non-exclusive licence or sub-licence for and supply of any relevant software or (subject always to the provisions of the Data Protection Act 1984) database to enable Summit and the Trust or its nominee to access and otherwise use that data for the purposes set out in the DBFO Contracts.
- 5.7.8 Within 50 days of Financial Close the Contractor shall submit to Summit the procedures and practices which the Contractor proposes to adopt for maintaining security of all data, materials and documents including arrangements for the backing up and subsequent recovery of information stored in electronically retrievable form and to enable Summit to comply with its obligations in this regard pursuant to Clause 21 of the Project Agreement. Such submissions when transmitted by Summit to the Trust shall be subject to the Trust Objection Procedure. The Contractor shall comply with the above procedures and practices. The Contractor may change the above procedures and practices subject to submitting its proposals for change to Summit and there being no objection to the change, such objection being at Summit's absolute discretion.
- 5.7.9 Summit and the Contractor shall, at the request of the other (except to the extent that the requirement for such execution arises as a result of a breach by Summit of its obligations under this Clause 5.7, at the Contractor's expense) execute all documents and acts and all such further acts as may be necessary to bring into effect or to confirm the terms of any licence created by or pursuant to this Clause 5.

6. Statutory obligations, notices, fees and charges

6.1.1.1 The Contractor shall comply with, and give all notices required by the Statutory Requirements and the Contractor shall pass to Summit a copy of all such notices and all approvals received by the Contractor in connection therewith in such time and in such manner as to allow Summit to comply with the terms of the DBFO Contracts.

6.1.2 If the Contractor or Summit finds any divergence ambiguity or conflict between the Statutory Requirements and any item of Design Documentation (including any Change) he shall immediately give to the other written notice specifying the divergence; the Contractor shall inform Summit in writing of his proposed amendment for removing the divergence ambiguity or conflict, and with Summit's consent the Contractor shall entirely at his own cost save as provided in Clause 6.3 complete the design and construction of the Works in accordance with the amendment and Summit shall note the amendment on the documents referred to in Clause 5.1. If Summit does not agree to the Contractor's proposed amendment, the Contractor shall submit a further proposal (and this procedure shall be repeated as necessary) until Summit has consented to the proposed amendment. A failure by Summit to notify the Contractor of any discrepancy, ambiguity or conflict, or to accept any Contractor's amendment, whether or not Summit is aware of the same, shall not entitle the Contractor to any adjustment to the Contract Sum or any extension of time to complete the Works.

6.1.3.1 If in any emergency compliance with Clause 6.1.1 requires the Contractor to supply materials or execute work before receiving Summit's consent under Clause 6.1.2 the Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance with the Statutory Requirements.

6.1.3.2 The Contractor shall forthwith inform Summit of the emergency and of the steps that he has taken or is taking under Clause 6.1.3.1.

6.2 The Contractor shall pay and indemnify Summit against liability in respect of any fees, costs, penalties, fines or charges (including any rates or landfill or other taxes)

legally demandable under any Statutory Requirement. No adjustment shall be made to the Contract Sum in respect of the amount of any such fees or charges (including any rates or landfill or other taxes).

- 6.3.1 If after Financial Close there occurs a Legislative Change affecting the Works the Contractor shall comply with the same at no additional cost to Summit and no extension of time to complete the Works shall be given to the Contractor, save to the extent that the same is an Eligible Change.
- 6.3.2 The Contractor shall not be entitled to claim any adjustment to the Contract Sum or an extension of time arising from any amendment to the Design Documentation necessary for conformity with the terms of any permission or approval made by a decision of a Competent Authority whether occurring before or after Financial Close for the purposes of the Necessary Consents but shall notify Summit in writing prior to executing any work pursuant to such amendment. Should such amendment give rise to a discrepancy of the kind referred to in Clause 2.1.3.3 or Clause 2.1.3.4, Summit shall resolve the same in accordance with the provisions therein contained.

7. CDM Regulations

- 7.1 Summit shall take reasonable steps to procure that the Planning Supervisor carries out all the duties of a designer and of a planning supervisor under the CDM Regulations;
- 7.2 The Contractor warrants to Summit that it has allocated and will allocate adequate resources to comply with its obligations as designer and principal contractor pursuant to the CDM Regulations.
- 7.3 The Contractor shall comply with all the duties of a principal contractor set out in the CDM Regulations; and in particular shall ensure that the Health and Safety Plan has the features required by regulation 15(4) of the CDM Regulations. Any amendment by the Contractor to the Health and Safety Plan shall be notified to Summit.

7.4 Where Summit pursuant to Article 7 appoints a successor to the Contractor as the Principal Contractor, the Contractor shall comply at no cost to Summit with all the reasonable requirements of the Principal Contractor to the extent that such requirements are necessary for compliance with the CDM Regulations; and, notwithstanding Clause 25, no extension of time shall be given in respect of such compliance.

7.5 Within the time reasonably required in writing by the Planning Supervisor to the Contractor, the Contractor shall at no cost to Summit provide, and shall ensure that any sub-contractor, through the Contractor, provides, such information to the Planning Supervisor as the Planning Supervisor reasonably requires for the preparation, pursuant to regulations 14(d), 14(e) and 14(f) of the CDM Regulations, of the health and safety file required by the CDM Regulations.

8. Work, materials and goods

8.1.1 Without prejudice to Clause 2.4 and 2.5 all materials and goods shall be of the respective kinds and standards described in the Design Documentation; provided that the Contractor shall not substitute anything so described without Summit's consent in writing, which consent may be delayed or withheld at Summit's absolute discretion. No such consent shall relieve the Contractor of his obligations hereunder.

8.1.2 Without prejudice to Clauses 2.4 and 2.5 all workmanship shall be of the standards described in the Design Documentation.

8.1.3 All work shall be carried out in a proper and workmanlike manner and in accordance with the Health and Safety Plan.

8.2 The Contractor shall upon the request of Summit provide him with vouchers to prove that the materials and goods comply with Clause 8.1.1.

8.3.1 Save in relation to that part of the Works comprised in the piling sub-contract Package ref: 1015 where no opening up or testing shall be permitted after practical

completion of that part of the Works, Summit may issue instructions requiring the Contractor to open up for inspection any work covered up or to arrange for or to carry out any test of any materials or goods (whether or not already incorporated in the Works) or of any executed work, and the cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be added to the Contract Sum and an extension of time for completion of the Works shall be granted to the Contractor unless stated otherwise in the Design Documentation or unless the inspection or test shows, or Summit had reasonable grounds for believing that, the work, materials or goods were not in accordance with this Building Contract.

- 8.3.2 The Contractor shall not cover up any parts of the Works without having given to Summit's Representative and the Financier's Technical Adviser 3 Business Days prior written notice inviting them to attend the Site to witness such covering up.
- 8.4 If any work, materials or goods are not in accordance with this Building Contract Summit, without prejudice to the generality of its powers, may:
- 8.4.1 issue instructions requiring the removal from the Site or rectification of all or any of such work, materials or goods; and/or
- 8.4.2 issue such instructions requiring a Change as are reasonably necessary as a consequence of such an instruction under Clause 8.4.1 and to the extent that such instructions are so necessary to allow the Contractor to meet his obligations hereunder and/or to allow Summit to discharge his obligations under the DBFO Contracts and notwithstanding Clauses 12, 25 and 26 no addition to the Contract Sum shall be made and no extension of time shall be given; and/or
- 8.4.3 having had due regard to the Code of Practice appended to these Conditions (following Clause 39) issue such instructions under Clause 8.3 to open up for inspection or to test as are reasonable in all the circumstances to establish to the reasonable satisfaction of Summit the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance (subject always to the provisions of Clause 8.3 which prevent opening-up of the piling works). To the extent that such instructions are so reasonable, whatever the results of the opening

up for inspection or test, and notwithstanding Clauses 8.3 and 26 no addition to the Contract Sum shall be made and no extension of time to complete the Works shall be given to the Contractor. Where it is demonstrated that Summit had no reasonable grounds for opening up or testing and it is discovered that work, materials or goods are in accordance with this Building Contract, the cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be added to the Contract Sum and an extension of time for completion of the Works shall be granted to the Contractor.

8.5 Where there is any failure to comply with Clause 8.1.3 in regard to the carrying out of the work in a proper and workmanlike manner Summit, without prejudice to the generality of its powers, may issue such instructions whether requiring a Change or otherwise as are reasonably necessary as a consequence thereof. To the extent that such instructions are so necessary to allow the Contractor to meet his obligations hereunder and/or to allow Summit to discharge his obligations under the DBFO Contracts and notwithstanding Clauses 12 and 25 and 26 no addition to the Contract Sum shall be made or extension of time to complete the Works shall be given.

8.6 The Contractor shall before carrying out the relevant work and/or ordering the relevant goods or materials provide Summit with such samples of the standard of workmanship or the quality of the goods or materials which the Contractor intends to provide as are specifically referred to in the Design Documentation.

9. Contamination

9.1 As between the parties, each party shall be responsible for Contamination as follows:-

- .1 Subject to Clause 9.2, Summit shall be responsible for appropriate treatment or removal of and costs relating to Contamination arising due to an act, omission or default of Summit or the Trust or persons for whom either Summit or the Trust are responsible; and

.2 the Contractor shall (save to the extent the same is a Qualifying Legislative Change) be responsible for all appropriate treatment or removal of and costs relating to:-

- .1 Contamination arising due to an act, default or omission of the Contractor, or any person for whom the Contractor is responsible;
- .2 Contamination already existing at Financial Close on the Site and known to the Contractor at that date or discovered by carrying out the Works and which requires appropriate treatment or removal to enable the Works to reach the Building Contract Completion Date; and
- .3 Contamination already existing at Financial Close on the Site and known to the Contractor at that time or discovered by carrying out the Works and which requires appropriate treatment or removal after the Building Contract Completion Date as a result of a Legislative Change;

9.2 In respect of any Contamination (whatsoever and howsoever arising) other than such as is described in Clause 9.1.1 or Clause 9.1.2:-

- .1 to the extent that such Contamination, and the consequences (including appropriate treatment or removal thereof and any business interruption caused thereby) are fully covered by Insurances thereof, the Contractor shall be responsible for appropriate treatment or removal and the costs thereof; and
- .2 to the extent that such Contamination, and the cause/consequences thereof (including appropriate treatment or removal thereof and any business interruption caused thereby) are not fully covered by the Insurances, it shall be deemed to be and treated as an event of Force Majeure unless the Trust, at its option instructs a Trust Change requiring appropriate treatment and removal of Contamination and to compensate Summit for any loss of income arising through a

deduction in the Unitary Payment caused by such Contamination pursuant to the Change Provisions (and in which event the Trust shall be entitled to take any action it requires against the third party responsible for the Contamination (if any) and the Contractor shall give Summit all assistance reasonably requested by Summit to enable Summit to give assistance to the Trust as required by Clause 26.10.3(b) of the Project Agreement);

9.3 For the purposes of this Clause 9:-

"Contamination" means (contamination of the Site and/or the Hospital or part thereof with a hazardous, dangerous, toxic, poisonous, radio-active, explosive, infectious or polluting substance (whether a solid, liquid, gas or micro-organism) which is likely to cause death, serious injury or clinical toxicity or physical damage or harm to the Environment or to give rise to any common law or statutory nuisance.

"Environment" means any and all living organisms (including man), ecosystems, property and the media of air (including air in buildings, natural or man-made structures, below or above ground), water (as defined in Section 30A of the Control of Pollution Act and within drains and sewers) and land (including under any water as described above or whether above or below surface);

"appropriate treatment or removal" means such treatment or removal which is reasonably necessary to ensure that:-

- (i) either the Works will render the Site or the Site will be suitable for use as a hospital; and
- (ii) the Contamination will not be likely to give rise to liability under Applicable Laws in force for the time being;

10. Person-in-charge

The Contractor shall constantly keep upon the Site a competent person-in-charge and any instructions given to him by Summit shall be deemed to have been issued to the Contractor. The Contractor shall as soon as practicable after Financial Close notify Summit of the identity of the person-in-charge.

11. Access for Summit's Representative etc. to the Works

11.1 Summit's Representative and any person authorised by Summit or Summit's Representative including the Financier's Technical Adviser shall at all reasonable times have access to the Works and to the workshops or other places of the Contractor where work is being prepared for this Building Contract, and when work is to be so prepared in workshops or other places of a sub-contractor the Contractor shall by a term of the Sub-Contract secure a similar right of access to those workshops or places for Summit and his representatives and the Financier's Technical Adviser and shall do all things reasonably necessary to make such right effective.

11.2 In addition to any other obligation relating to the provision of information the Contractor shall provide the Financier's Technical Adviser with access to copies of all information provided to Summit and all information referred to in Clauses 5.2 and 5.3 of this Building Contract

11.3 The Contractor shall invite Summit's Representative, the Financier's Technical Adviser and any other relevant parties to all Project Meetings convened by the Contractor in relation to the Works;

11.4 Without prejudice to the generality of Clause 5.5 the Contractor shall timeously provide to Summit copies of the following documents as and when the same have been finalised and in any event prior to Contractual Practical Completion:-

- .1 the Construction Timetable as referred to in Schedule, Part 2 of the Development Agreement
- .2 all Necessary Consents

- .3 minutes of all Project Meetings held at the Site or elsewhere
- .4 all test certificates and commissioning reports associated with the Tests
- .5 all notices to or from third parties in connection with this Building Contract and/or the Works
- .6 all reports resulting from the opening up of Works
- .7 all operation and maintenance manuals and all information required to complete the Health and Safety File including the CDM safety manual
- .8 all as built drawings and as-built specifications
- .9 such further information as Summit may require regarding the execution of the Works or other obligations of the Contractor pursuant to this Building Contract or which Summit is obliged to provide in relation to the Works to the Trust pursuant to the DBFO Contracts.

12. Changes in Summit's Requirements

12.1 *Building Contractor Changes*

The Contractor may propose a Change for the consideration of Summit (a "Building Contractor Change") and Summit shall, at its absolute discretion, decide whether to accept the same. If the Contractor has proposed a Building Contractor Change the Contractor shall not be entitled to any addition to the Contract Sum or extension of time (unless Summit in its absolute discretion agrees otherwise in which case it shall be treated as a Summit Change). The Contractor shall not propose a Building Contractor Change which may or would be likely to:-

- 12.1.1 reduce the standard of quality of the Works or impair the performance of the Works;
- 12.1.2 have an adverse effect on the Contractor's ability to complete the construction of the Works to such standard as would require the issue of the Certificate of Contractual Practical Completion by the Mandatory Date or the Completion Certificate by the Completion Date;
- 12.1.3 be materially prejudicial to the interests of Summit;

12.1.4 increase the operating or maintenance costs of the Hospital or risks associated with operating and maintaining the Hospital.

12.2 *Eligible Changes and Summit Changes*

Summit may require the Contractor to implement an Eligible Change or to undertake any other Change (a "Summit Change") (together "Contract Changes"). All proposals to the Contractor to undertake a Contract Change must be specified by notice in writing to the Contractor (a "Contract Change Notice").

12.3 *Refusal to implement a Contract Change*

12.3.1 As soon as reasonably practicable and not later than 20 Business Days after the giving of notice to the Contractor requesting a Contract Change, the Contractor may refuse to implement a Contract Change if in the Contractor's reasonable opinion the implementation of such a Contract Change would:-

- (a) be in breach of Applicable Laws; or
- (b) after completion of any works to implement the same, be a threat to the health and/or safety of persons for whom either Summit, the Contractor or the Trust is responsible in the terms of the DBFO Contracts and/or the Building Contract; or
- (c) have an adverse effect on Summit and/or the Contractor and/or the Trust's ability to comply with their respective obligations under the DBFO Contracts or the Building Contract save where such a Contract Change can be evaluated and the associated risks costed in accordance with sub-clause 12.4 of this Clause.

12.3.2 Where the Contractor has served notice refusing to implement a Contract Change then, notwithstanding the service of such notice, the Contractor shall be obliged to comply with the remaining provisions of this Clause 12 pending agreement or determination under the Dispute Resolution Procedure as to whether or not the Contractor is obliged to implement the Contract Change provided that, in the case of a Summit Change, there shall be no obligation to comply with the provisions of Clause 12.4 unless the

Contractor has failed to serve a notice refusing to implement the Contract Change within 20 Business Days after the giving of the notice to the Contractor requesting the Contract Change or it is agreed or determined pursuant to the Dispute Resolution Procedure that the Contractor had no right to refuse to implement a Contract Change.

12.4 Notification of Cost Increases/Cost Decreases/Extensions of Time

12.4.1 If, in relation to a Contract Change, the Contractor is of the opinion that implementation of such Contract Change would involve a Cost Increase or a Cost Decrease and/or an extension to the time to complete the Works the Contractor shall immediately notify Summit thereof and the Contractor shall as soon as reasonably practical and in any event within no later than 10 Business Days of the issue of the Contract Change Notice provide to Summit-

- (a) an estimate of the amount of such Cost Increase or Cost Decrease and the value of the addition (or deduction), if any, that would have to be made to or from the Contract Sum in consequence of such Contract Change having regard to the obligation to mitigate in Clause 12.11 and in particular the estimate of the Cost Increase or Cost Decrease shall be based on the following principles:-
 - (i) increases in the costs (other than funding costs) of carrying out the Works shall be the proper and reasonable costs (to be assessed in comparison to prevailing market rates) estimated to be incurred by the Contractor including professional fees, as a result of implementing the Contract Change (but excluding the element of profit or Contractor's head office overheads) to the amount of which there should be added 7.5% of such amount in respect of overheads and profits; and
 - (ii) decreases in the costs (other than funding costs) of carrying out the Works shall be the proper and reasonable decrease estimated to be incurred by the Contractor as a result of implementing the Contract Change plus 7.5% of such amount

in respect of overheads and profit included in the original Contract Sum.

- (b) an estimate of how long the Contract Change will take to implement and the extent (if any) to which the Completion Date may require to be extended.

together with details of relevant contemporary records to substantiate the claim, details of any measures which the Contractor has adopted or proposes to adopt to remedy or mitigate the consequences of such Contract Change all necessary supporting information to include, in the case of an Eligible Change, all information, documents, assistance and co-operation at such time or times and in such manner as Summit may request to ensure compliance by Summit with paragraphs 2 and 9 of Section 2 of Part D of the Schedule of the General Provisions;

12.4.2 Upon receipt of the information provided under paragraph 12.4.1 above Summit may following receipt of such information require the Contractor to provide certain additional evidence as to the estimates of the amount of the Cost Increase or Cost Decrease and/or estimate of any extension to the Completion Date as Summit may require including without limitation:-

- (a) the preparation of a preliminary design of any changes to the Works which may be required by the Contract Change;
- (b) more detailed costings and estimates in relation to the Cost Increase or Cost Decrease stipulated in Clause 12.4.1(a) above; and
- (c) further information and evidence to support any proposed extension of time to complete the Works

together with all necessary supporting information to include, in the case of an Eligible Change, all information, documents, assistance and co-operation at such time or times and in such manner as Summit may request to ensure compliance by Summit with paragraphs 3.1 and 9 of Section 2 of Part D of the Schedule to the General Provisions.

12.5 *Agreement to Contract Change*

The Parties shall then use all reasonable endeavours to agree in respect of a Summit Change the matters referred to in Clause 12.4; or (in the case of an Eligible Change), the Contractor, on behalf of Summit shall then negotiate in good faith and seek to agree the matters referred to in 12.4 with the Trust's Representative in compliance with paragraph 3.2 of Section 2 of Part D of the Schedule to the General Provisions.

12.6 *Disputes*

If the Parties or (in the case of an Eligible Change), the Parties and the Trust do not reach agreement on any of the matter referred to in Clause 12.5 within 20 Business Days of service of the Contract Change Notice or (in the case of an Eligible Change), within the timescale set out in paragraph 3.4 of Section 2 of Part D of the General Provisions then either Party may refer the Dispute to the Dispute Resolution Procedure.

12.7 *Implementation of Contract Change*

Any agreement reached in accordance with Clause 12.5 or determined under Clause 12.6 when confirmed in writing by Summit or, in the case of an Eligible Change, after agreement has been reached with the Trust and a Trust Works Change Certificate issued pursuant to paragraph 3.2 of Section 3 of Part D of the Schedule to the General Provisions, shall (in either case) be binding on the Contractor and Summit as to the amount to be paid by Summit or deducted from the Contract Sum, the dates when such payment or deduction shall be made and any extension of time to complete the Works to be granted. The Contractor shall immediately commence execution of such Contract Change and Summit shall grant an extension of time to complete the Works under Clause 25 of the agreed length (if any) and the agreed adjustments (if any) shall be made to the Contract Sum.

12.8 *Right to Instruct Contract Changes*

Summit shall for the avoidance of doubt, instead of negotiating with the Contractor in accordance with Clause 12.4 and 12.5 above, have the right to instruct the Contractor in writing at the time of issuing the Contract Change Notice (or at any time thereafter), to implement the Contract Change applying the method of

valuation set out in Clause 12.4.1(a) in relation to the Cost Increase or Cost Decrease and the provisions of Clause 25 in relation to any extension of time to complete the Works, but without prejudice to Summit's rights to dispute the amount of Cost Increases and Cost Decreases and/or the duration of any extension of time.

12.9 *Withdrawal of a Contract Change Notice*

If Summit withdraws a Contract Change Notice (to the extent that it is permitted by this Building Contract to do so) the Contractor shall not be entitled to any extension of time to complete the Works or to any adjustment to the Contract Sum save (a) in the case of an Eligible Change where the Contractor shall be entitled (subject to Clause 12.10.1) to be reimbursed for its reasonable costs and expenses in responding to the Eligible Change, or (b) in the case of a Summit Change which has been instructed as a result of any act or omission of Siemens or Serco where the Contractor shall be entitled (subject to Clause 12.10.2) to be reimbursed for its reasonable costs and expenses in responding to the Summit Change.

12.10 *Entitlement to Reimbursement*

The entitlement of the Contractor to receive reimbursement of its costs and expenses pursuant to Clause 12.9 shall be restricted as follows:-

12.10.1 in the case of an Eligible Change, to the amount, if any, that Summit is entitled to recover from the Trust in respect of the Contractor's costs and expenses as agreed or determined in accordance with paragraph 6 of Section 3 of Part D of the Schedule to the General Provisions; and

12.10.2 in the case of a Summit Change instructed as a result of any act or omission of Siemens or Serco, to the amount, if any, that Summit is entitled to recover from Siemens and Serco in respect of the Contractor's costs and expenses agreed or determined pursuant to the provisions of Summit's contracts with Siemens and Serco referred to in Clause 2.1.4.2 and Clause 2.1.4.3 respectively.

12.11 *Mitigation*

The Contractor shall take all reasonable steps available to it and use all reasonable endeavours to mitigate the effects of any Contract Change so as to minimise any

effect on progress of the Works and any Cost Increase or maximise any Cost Decrease (as the case may be) resulting from such Contract Change, but without, in so doing, being obliged to prejudice its ability to perform its obligations under this Building Contract, or to accelerate the performance of its obligations under the Building Contract.

12.12 Consequential Amendments including amendments to the Specification

This Building Contract will be amended consequently including (without limitation) amendments to the Design Documentation so far as necessary to give full effect to any Contract Change. If the Parties are unable to reach agreement as to the manner in which the Building Contract shall be amended within 28 days of the Parties reaching agreement under clause 12.5 above or a dispute being determined under Clause 12.6 above, either may refer the matter for resolution under the Dispute Resolution Procedure.

12.13 Breach by Contractor

Notwithstanding any other provision of this Building Contract the Contractor shall not be entitled to any addition to the Contract Sum and/or any payment or claim whatsoever, whether in damages or otherwise or any extension of time to complete the Works to the extent that any Change is required as a result of any breach by the Contractor or persons for whom it is responsible of its obligations under this Building Contract.

12.14 Non Vitiating

No Change shall vitiate or invalidate this Building Contract.

12.15 Adjustment to the Contract Sum

The value (if any) of any Cost Increase or Cost Decrease (as the case may be) resulting from any Change shall be taken into account in ascertaining any adjustment to the Contract Sum, subject to the provisions of this Clause 12 or Clauses 12A and 12B.

12.16 *Compliance with DBFO Contracts*

Without prejudice to the other provisions of this Clause 12, the Contractor shall at all times provide all information, documents, assistance and co-operation at such time or times and in such manner as Summit may request to ensure compliance by Summit with the provisions of Part D of the Schedule to the General Provisions.

12A. *Claims by the Contractor*

12A.1 If the Contractor intends to claim any additional payment pursuant to any Clause of this Building Contract he shall (except as otherwise expressly provided herein) give notice in writing of his intention to Summit as soon as reasonably possible after the happening of events giving rise to the claim.

12A.2 If any event shall happen or circumstances arise in respect of which the Contractor shall have given notice pursuant to this Clause and in respect of which the Contractor may subsequently wish to make any financial claim pursuant to any provision of this Building Contract, the Contractor shall keep such contemporary records as may be reasonably necessary to substantiate any such claim. Without prejudice to the generality of the foregoing, the Contractor shall at all times maintain (and exhibit to Summit's Representative when requested) an account showing separately the individual and aggregate amounts of all Cost Increases and Cost Decreases, and the consequent additions requested to, or deductions requested from, the Contract Sum. Without admitting Summit's liability, Summit may at any time inspect such contemporary records and may request the Contractor to keep such further contemporary records as it considers to be desirable, and which may be material to the claim for which notice has been given. The Contractor shall permit Summit to inspect all records kept pursuant to this sub-Clause and shall supply it with copies thereof as and when Summit so requests.

12A.3 After the giving of a notice to Summit under this Clause the Contractor shall as soon as is practicable in all the circumstances send to Summit a first interim account giving full and detailed particulars of the amount claimed up to that date and of the grounds upon which the claim is based. Thereafter at such intervals as Summit may reasonably require the Contractor shall send to Summit further up to date accounts

giving the accumulated total of the claim and any further grounds upon which it is based.

12A.4 If the Contractor fails to comply with any of the foregoing provisions of this Clause 12A in respect of any claim which he shall seek to make then (without prejudice to Clause 12A.5 below) the Contractor shall be entitled to payment in respect thereof only to the extent that Summit has not been prevented from or prejudiced in investigating the said claim by such failure.

12A.5.1 The entitlement of the Contractor to receive payment in respect of any such claims it may make to any additional payment or rate pursuant to any Clause of these Conditions shall, except in the circumstances referred to in Clause 12A.5.3 below, be restricted to:-

12A.5.1.1 the amount (if any) which Summit is entitled to be paid by the Trust as agreed or determined under the DBFO Contracts or otherwise in respect of the Contractor's claim; or

12A.5.1.2 the amount as equals the then present value of that part of the adjustment or amendment (if any) made under the DBFO Contracts in accordance with the terms thereof, as shall relate to the Contractor's entitlement, such amount to be ascertained at the date of such adjustment.

In the event that Summit receives a payment under Clause 12A.5.1.1 above or the benefit of an adjustment or amendment to the DBFO Contracts under Clause 12A.5.1.2 above and Summit and the Contractor are unable to agree the Contractor's interest in such payment or in the value of such adjustment within 28 days of Summit becoming entitled to the relevant payment (in each case without dissent on the part of Summit) then Summit shall make an assessment of the amount attributable to the Contractor's claim (but without prejudice to either Party's right to refer such assessment to the Dispute Resolution Procedure).

12A.5.2 In relation to any claim by the Contractor which is subject to the provision set out in Clause 12A.5.1 above the Contractor shall be entitled to have so much of the amount (if any) ascertained in accordance with Clause 12A.5.1 above included in the interim

payment next certified by Summit pursuant to Clause 30 following the date being the later of the date when:-

12A.5.2.1 the adjustment or amendment is agreed or determined pursuant to the DBFO Contracts in accordance with their terms; or

12A.5.2.2 Summit makes an assessment pursuant to Clause 12A.5.1.1 above or the relevant payment or adjustment or amendment is determined by the Dispute Resolution Procedure.

12A.5.3 The exceptions referred to in Clause 12A.5.1 above are where the entitlement of the Contractor is based upon or due to:-

12A.5.3.1 a Contractor Change in relation to which for the avoidance of doubt the Contractor is not entitled to any additional payment or extension of time (unless Summit in its absolute discretion agrees otherwise);

12A.5.3.2 a Summit Change;

12A.5.3.3 any breach of this Building Contract on the part of Summit or persons for whom Summit is responsible (subject as provided in Clause 12A.5.4); or

12A.5.4 If an event occurs which, but for this Clause 12A.5.4 might be a breach by Summit, to the extent that such event arises from any act or omission of the Trust or persons for whom the Trust is responsible, the event shall be considered to be a breach by the Trust and not a breach by Summit

12B. Claims relating to matters which arise under the DBFO Contracts

12B.1 The provisions of this Clause 12B shall have effect in the event that:-

- .1 the Contractor claims any rights or benefits arising out of or in any way connected with this Building Contract which in the opinion of Summit touches or concerns any matter between Summit and the Trust's Representative or the Trust under the DBFO Contracts.

.2 the Trust's Representative or the Trust claims any rights, remedies or other relief against Summit arising out of or in any way connected with the DBFO Contracts which touches or concerns any matter between the Contractor and Summit.

12B.2 Except to the extent described in Clause 12B.4 below, the Contractor shall, if and to the extent Summit so directs, conduct on behalf of Summit all negotiations with the Trust's Representative or the Trust for the settlement of the matters described in Clause 12B.1 above and the determination of any disputes which may arise therefrom. PROVIDED ALWAYS that the Contractor shall not settle any such matter without the prior written consent of Summit.

12B.3 In respect of any such claims for rights or benefits as are described in Clause 12B.1 the Contractor shall, except to the extent otherwise directed by Summit, give to the Trust's Representative or the Trust (as the case may be) notice thereof on behalf of Summit in the manner and within the time (if any) prescribed therefor in the DBFO Contracts and in such manner as not to prejudice or affect the rights and remedies of Summit against the Trust thereunder, and the Contractor shall indemnify Summit against any loss or expense suffered or incurred by Summit resulting from the conduct of any claims by the Contractor including without limitation a failure to comply with this Clause 12B.3 and Clauses 12B.2, 12B.4 and 12B.5. The Contractor shall deliver to Summit at least two Business Days in advance a copy of each notice proposed to be given by the Contractor on Summit's behalf under this Clause 12B.3.

12B.4 Summit may itself require to conduct any negotiations or disputes described in sub-Clause 12B.2 or revoke the Contractor's authority under Clause 12B.2 at any time if in the opinion of Summit the matters described in Clause 12B.1 will or may have a material effect upon Summit or involve consequences which will not or are unlikely to be substantially borne ultimately by the Contractor pursuant to the provisions of this Building Contract.

12B.5 Insofar as one party (in this sub-Clause called "the First Participant") has conduct of any negotiations or disputes in accordance with this Clause 12.B:-

- .1 it will afford to the other party (in this Clause 12B.5 called "the Second Participant) the opportunity to participate in such negotiations or to participate and assist in the conduct of such disputes insofar as relevant to the Second Participant and, in each such case, the First Participant and the Second Participant shall agree the manner in which the Second Participant shall be afforded such opportunity (neither party being entitled unreasonably to withhold or delay its agreement). When the First Participant is the Contractor the parties shall, in addition, agree the manner in which the negotiations or disputes the subject of this Clause 12.B shall be co-ordinated with any other negotiations or disputes being conducted by Summit.
- .2 the Second Participant shall at its own cost afford all such assistance, and provide to the First Participant all such documents, data and information as the First Participant may reasonably request in connection with the conduct thereof (but provided that the Second Participant shall not be obliged to disclose any document which would be privileged from production in civil proceedings between the Parties);
- .3 throughout the conduct of any such negotiations or disputes the First Participant shall keep the Second Participant fully informed of all steps taken, and of all documents and other information given or received in connection with such negotiations or disputes so far as relevant to the Second Participant (but provided that the First Participant shall not be obliged to disclose any document which would be privileged from production in civil proceedings between the Parties);
- .4 no such matter shall be settled by the First Participant insofar as relevant to the Second Participant without the prior written consent of the Second Participant not to be unreasonably withheld or delayed and any settlement so reached shall be binding upon the parties insofar as it relates to any costs damages or other relief claimed by or from the Trust but no further or otherwise; and

.5 the First Participant shall not in the conduct of any such negotiations or disputes, waive or release any rights under the DBFO Contracts in such manner as to prejudice or affect the position of the Second Participant without the prior written consent of the Second Participant (such consent not to be unreasonably withheld or delayed).

12B.6 Summit shall have no liability to the Contractor in respect of any act or omission by the Trust or persons for whom the Trust is responsible including but not limited to any approval or non-approval of or interference with any aspect of the Works save in relation to any Eligible Changes affecting the Works as referred to, and to the extent provided for, in Clause 12 and save in relation to any breach by the Trust of its obligations, as set out in Clauses 25.8.3 and 26.2.1 .

13. Contract Sum

The Contract Sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of the Conditions.

14. Value added tax - supplemental provisions

14.1 In Clause 14 and in the supplemental provisions pursuant hereto and forming Part 8 of the Schedule (hereinafter called the VAT Agreement) "tax" means the value added tax charged in accordance with the Value Added Tax Act 1994 and all regulations and orders made thereunder (the "VAT legislation") and any amendment or re-enactment thereof which is under the care and management of the Commissioners of Customs and Excise (hereinafter and in the VAT Agreement called "the Commissioners").

14.2 Any reference in these Conditions to "Contract Sum" shall be regarded as such Sum exclusive of any tax and recovery by the Contractor from Summit of tax properly chargeable by the Commissioners on the Contractor under or by virtue of the VAT legislation or any amendment thereof on the supply of goods and services under this

Building Contract shall be under the provisions of Clause 14 and under the VAT Agreement. Clause 1A of the VAT Agreement shall apply.

14.3 To the extent that after Financial Close the supply of goods and services to Summit becomes exempt from tax there shall be paid to the Contractor an amount equal to the loss of credit (input tax) on the supply to the Contractor of goods and services which contribute exclusively to the Works by way of additional consideration for the Works.

15. Unfixed materials and goods

Unfixed materials and goods delivered to, placed on or adjacent to the Works and intended therefor shall not be removed except for use upon the Works unless Summit has consented in writing to such removal which consent shall not be unreasonably withheld. Where the value of any such materials or goods has been included in any Interim Payment Certificate, such materials and goods shall become the property of Summit, but the Contractor shall remain responsible for loss or damage to the same and for any materials and/or goods purchased prior to their delivery to the Site.

16 Completion and Defects Liability Period

16.1 Summit shall not be obliged to issue the Completion Certificate until

- .1 the Works (other than, for the avoidance of doubt, the making good of any and all defects to be rectified during the Defects Liability Period as referred to in Clauses 16.4, 16.5 and 16.11) have been completed in accordance with the requirements of this Building Contract; and
- .2 the Certificate of Contractual Practical Completion has been issued in accordance with Part 5 of the Schedule to the Development Agreement.

Notwithstanding that the Works have been substantially completed for the purposes of the Development Agreement, the Contractor acknowledges and accepts that Summit may delay the issue of the Certificate of Contractual Practical Completion until such time as the Contractor has satisfied the requirements of clause 16.1.1 of this Building Contract.

- 16.2 The Contractor shall provide all assistance and information to Summit to enable Summit to comply with its obligations under the Contractual Practical Completion Procedure and to procure the issue of a Certificate of Contractual Practical Completion in accordance with Part 5 of the Schedule to the Development Agreement, and shall be responsible for the provision of the matters referred to therein including, without limitation, undertaking on Summit's behalf the carrying out and (to the extent necessary) repetition of any Tests, snagging items, supply of Construction Related Records (other than the Fire Certificate) and shall indemnify Summit in respect of (a) any costs and expenses incurred by Summit to the Trust and (b) those internal costs and expenses of Summit in circumstances where Summit has to reimburse the Trust in accordance with the Contractual Practical Completion Procedure, in satisfying its obligations under the Contractual Practical Completion Procedure. The Contractor shall provide all information to the Planning Supervisor to enable the Planning Supervisor to collate the Health & Safety File and any drafts thereof, as required pursuant to this Building Contract.
- 16.3 If at any time prior to the issue of the Completion Certificate the Contractor is of the view that the Works have achieved Contractual Practical Completion such that the Certificate of Contractual Practical Completion should have been issued pursuant to the Development Agreement and/or that the Works have been completed in accordance with the requirements of this Building Contract, the Contractor shall be entitled to refer either or both such matters to the Dispute Resolution Procedure.
- 16.4 Any defects, shrinkages or other faults in the Works which shall appear within the Defects Liability Period and which:-
- (a) have not resulted from the acts of persons for whom the Contractor is not responsible pursuant to this Building Contract; and/or

(b) are due to frost occurring before the Building Contract Completion Date.

shall be specified by Summit in a schedule of defects which Summit shall deliver to the Contractor as an instruction of Summit not later than 14 days after the expiry of the Defects Liability Period, and upon receipt of such schedule the defects, shrinkages and other faults therein specified shall be made good by the Contractor unless Summit shall otherwise instruct and at no cost to Summit; and if Summit does so otherwise instruct then an appropriate deduction in respect of any such defects, shrinkages or other faults not made good shall be made from the Contract Sum, or the appropriate amount may be recovered as a debt due from the Contractor to Summit.

16.5 Notwithstanding Clause 16.4 Summit may whenever it considers it necessary so to do, issue instructions requiring any defect, shrinkage or other fault which shall appear within the Defects Liability Period and which:-

(a) have not resulted from the acts of persons for whom the Contractor is not responsible pursuant to this Building Contract; and/or

(b) are due to frost occurring before the Building Contract Completion Date,

to be made good, and the Contractor shall upon receipt of such instructions comply with the same unless Summit shall otherwise instruct and at no cost to Summit; and if Summit does so otherwise instruct then an appropriate deduction in respect of any such defects, shrinkages or other faults not made good shall be made from the Contract Sum or the appropriate amount may be recovered as a debt due from the Contractor to Summit. Provided that no such instructions shall be issued after 14 days from the expiration of the Defects Liability Period.

16.6 When all defects, shrinkages or other faults which Summit may have required to be made good under Clauses 16.4 and 16.5 shall have been made good, Summit and the Financier's Technical Adviser shall be invited to inspect the same by the Contractor

and following such inspection when Summit is satisfied that such defects, shrinkages or faults have been made good, Summit or Summit's Representative shall issue a Certificate of Making Good Defects ("the Certificate of Making Good Defects"), which certificate shall not be unreasonably withheld or delayed and completion of making good defects shall be deemed for the purposes of making good the defects only, to have taken place on the day named in such certificate, but otherwise shall not be conclusive evidence that the Contractor has complied with its obligations under this Building Contract.

- 16.7 The issue of the Completion Certificate, the Certificate of Contractual Practical Completion or the Certificate of Making Good Defects and the rights (whether or not exercised) of Summit under this Building Contract or any other approval or comment or absence of approval or comment made by Summit or by Summit's Representative (including, without limitation, pursuant to the Building Contract Design Development Procedure or the Design Development Procedure) shall in no way import any liability or obligation in relation to the Works upon Summit or affect or diminish the obligations of the Contractor pursuant to this Building Contract.
- 16.8 The Contractor shall make good any defects, shrinkages or other faults referred to in Clause 16 in such a way as not to jeopardise the Transition Commencement Date, the Services Commencement Date or any Availability Element which may become due to Summit.
- 16.9 The Financiers Technical Adviser, Siemens, Serco and the Trust's Representative shall be entitled to attend any Tests required as part of the Contractual Practical Completion Procedure and to make representations to the Contractor and to Summit in relation to such tests, inspections or certifications. The Contractor shall not act upon such representations without prior written instructions from Summit. Preliminary draft manufacturers technical data will be provided by the Contractor to Summit (for onward transmission to Serco) four months prior to the then estimated Contractual Practical Completion Date.
- 16.10 Summit may require the Contractor to make good any damage caused by persons for whom the Contractor is not responsible which shall appear during the Defects

Liability Period. Upon receipt of an instruction from Summit to do so the Contractor shall make good such defect and an appropriate amount agreed between the parties (or in the absence of agreement as determined by the Dispute Resolution Procedure) shall be added to the Contract Sum.

16.11 The Contractor's obligations in relation to the Works shall, for the avoidance of doubt, apply to the making good of any and all defects to be rectified during the Defects Liability Period in accordance with this Clause 16.

17. Liaison Procedures etc.

17.1 The Contractor shall provide all reasonable assistance and information to Summit in relation to the Works and this Building Contract to enable Summit to comply with:-

.1 the provisions of Clause 11 of the Project Agreement relating to the Joint Operating Group; and

.2 the Liaison Procedures in Part 11 of the Schedule to the Project Agreement and the Contractor shall itself comply with those procedures to the extent they impact on the Works or the Works could impact on the activities of persons for whom the Contractor is not responsible and in particular, paragraph 5 thereof.

17.2 The Contractor shall provide all assistance and information to enable Summit to comply with its obligation to provide a report to the Trust pursuant to Clause 5.5 of the Project Agreement.

17.3 The Contractor shall provide all assistance and information to Summit to enable Summit to keep the Trust fully advised of the circumstances that lead to any Unplanned Liability, insofar as the same relates to the Works, and shall discuss and agree with Summit the steps to be taken by the Contractor to assist Summit to resolve the Unplanned Liability. The Contractor shall at Summit's request provide all information relating to the Works which Summit may require to give to the Trust in the notice referred to in Clause 6.2 of the Project Agreement.

- 17.4 Subject to Clauses 5.6 and 5.7 of this Building Contract, the Contractor shall, in relation to the Works provide all assistance and information to Summit to enable Summit to comply with Clause 18.1 of the Project Agreement.
- 17.5 The Contractor shall in relation to the Works provide all assistance and information to Summit to enable Summit to provide to the Trust the assistance required by the Trust pursuant to Clause 18.2 of the Project Agreement provided always that the Contractor shall not be required to disclose details of the financial arrangements it has made or contemplates making with his sub-contractors.
- 17.6 Nothing contained in Clause 17.4 or 17.5 shall oblige the Contractor to take any action or provide any assistance to the extent that such action or assistance would result in a material departure from or addition to its other obligations under this Building Contract or give rise to significant costs or significant disruption to the Contractor.

18. Assignment and Sub-Contracts

- 18.1.1 The Contractor shall not without the written consent of Summit, assign this Building Contract.
- 18.1.2 Summit shall be entitled to assign (absolutely or in security) or charge the whole or any part of this Building Contract or any benefit or interest it may have thereunder:-
- 18.1.2.1 to the Financiers (or any of them) or their agent(s) or trustee(s) without the need to obtain the Contractor's consent; or
 - 18.1.2.1 to the Trust without the need to obtain the Contractor's consent; or
 - 18.1.2.2 to any other person, subject to the Contractor's consent (not to be unreasonably withheld or delayed).
- 18.2.1 The Contractor shall not without the written consent of Summit (which consent shall not be unreasonably delayed or withheld) sub-let all or any portion of the Works.

18.2.2 The Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with Clause 2 notwithstanding the sub-letting of all or any portion of the Works or the design thereof and that notwithstanding that Summit may have consented to a specific sub-contractor. No sub-letting by the Contractor under this Clause 18.2 shall relieve the Contractor of any liability to Summit or diminish such liability and the Contractor shall remain fully liable for any work carried out by and any acts or omissions of any sub-contractor as if such work had been carried out by or if such acts or omissions were those of the Contractor itself.

18.2.3 The Contractor shall not without the written consent of Summit (which consent shall not be unreasonably delayed or withheld) sub-let all or any portion of the Works.

18.3 It shall be a condition in any sub-letting to which Clause 18.2 refers that:

18.3.1 subject to Clause 18.3.2.5 the employment of the sub-contractor under the sub-contract shall determine immediately upon the termination (for any reason) of this Building Contract save as provided in any Collateral Warranty which provides for step-in rights in favour of Summit; and

18.3.2 the sub-contract (including any new sub-contract pursuant to Clause 2.6.2) shall provide that

.21 Subject to Clause 15 of these Conditions (in Clauses 18.3.2.2.2 to .4 called "the Main Contract Conditions"), unfixed materials and goods delivered to, placed on or adjacent to the Works by the sub-contractor and intended therefor shall not be removed except for use on the Works unless the Contractor has consented in writing to such removal, which consent shall not be unreasonably withheld.

.22 Where, in accordance with Clause 30 of the Main Contract Conditions, the value of any such materials or goods has been included in the amount due as an Interim Payment and that Interim

Payment has been discharged by Summit in favour of the Contractor, such materials or goods shall be and become the property of Summit and the sub-contractor shall not deny that such materials or goods are and have become the property of Summit.

.23 Provided that if the Contractor shall pay the sub-contractor for any such materials or goods before the value therefor has, in accordance with Clause 30 of the Main Contract Conditions, been included in the amount due as an Interim Payment and before that Interim Payment has been discharged by Summit in favour of the Contractor, such materials or goods shall upon such payment by the Contractor be and become the property of the Contractor.

.24 The sub-contractor shall be obliged to consent to any assignation or novation of its sub-contract or to enter into a new sub-contract on the same terms with any party exercising any right of step-in under this Building Contract pursuant to the Guarantee Bond or to Building Contract Direct Agreement, provided always that, in the case of the Building Contract Direct Agreement, this obligation shall only arise to the extent that the Contractor or the party providing the said Guarantee Bond is in default of its obligations under this Building Contract.

18.3 The Contractor shall promptly inform Summit in writing of any breach or default or dispute or notices of non-payment or notices of intention to suspend the progress of any works under any sub-contracts of which it is aware and that would or could be likely to be materially adverse to Summit's and/or the Trust's interests and give reasonable details of the circumstances and the steps being taken to remedy or mitigate their effect.

18.4 The Contractor acknowledges that, as between Summit and the Contractor, it will be responsible for the acts or omissions of its employees, agents, consultants, Consultants and sub-contractors to the same extent to which the Contractor would

be responsible under the terms of this Building Contract if they were its own acts or omissions.

19. **Summit Preliminaries**

The Contractor shall comply with the provisions of Part 13 of the Schedule.

20. **Indemnity to Summit**

20.1 Subject to the limitations contained elsewhere in this Building Contract and without prejudice to Clause 20.2 and to any other rights or remedies of Summit, the Contractor shall be liable for, and shall indemnify and keep indemnified Summit for itself and as trustee for and on behalf of the Subsidiary and the Holding Company, against, damages, losses, claims, demands, expenses (including reasonable legal and other professional expenses) costs, liabilities, fines, penalties, compensation orders ("Losses") and any proceedings whatsoever including without limiting the nature of the Losses that fall within the scope of this Clause 20.1:-

- .1 any reduction of sums paid or payable to Summit by the Trust pursuant to the DBFO Contracts including without limitation on termination of the DBFO Contracts, the difference between the value of:-
 - (a) "CA" and
 - (b) "a" minus "c" under (and, in each case, as defined in) Section 1 of Part 10 of the Schedule to the Project Agreement;
- .2 any costs, losses or expenses (including without limitation interest payments) under the Finance Facilities Agreements; and
- .3 any costs, losses or expenses arising as a result of the acceleration of any repayment obligation under the Finance Facilities Agreements or the enforcement of security

incurred, in the case of Clause 20.1.1, by Summit or, in the case of Clauses 20.1.2 and 20.1.3, any member of the Summit Group; as a direct or indirect result of any negligence, delictual act or omission, breach of contract or statutory duty or other act or failure of or by the Contractor in the course of or caused by or in connection with the carrying out of the Works or the performance or failure to perform any obligation under this Building Contract.

20.2 The Contractor shall indemnify Summit on demand and hold it harmless against all damages, losses, liabilities, claims and expenses (including reasonable legal and other professional expenses), incurred by Summit:

- .1 as a direct result of any claim for or in respect of the death or personal injury of any person employed or engaged by Summit or the Trust, any Approved Service Provider, any patients of or visitors to the Hospital or any other person or in respect of any claim against the Trust by any third party in each case if and to the extent that such claim is caused by the Contractor or any person for whom the Contractor is responsible in terms of Clause 18.;
- .2 in repairing or reinstating or replacing any assets owned by or in the possession of the Trust or any person for whom the Trust, Summit, any Approved Service Provider or any third party is responsible which have been lost or damaged if and to the extent that such loss or damage has been caused by the Contractor or any person for whom it is responsible in terms of Clause 18.5;
- .3 as a direct result of any Prosecution against the Trust or Summit or any Approved Service Provider arising from a breach of Applicable Law for which the Contractor is responsible in terms of this Building Contract brought against the Trust or Summit or any Approved Service Provider as a result of the breach or non-performance of, any obligations of the Contractor under this Building Contract or any of the Contractor's other activities on or off the Site;

- .4 in respect of any increase in insurance premiums or policy excesses payable by Summit and/or the Trust and/or any Approved Service Provider as a result of any claims made on account of any matter for which the Contractor is responsible in terms of this Clause 20.2; and
- .5 as a direct result of a claim against the Trust or Summit by any third party if and to the extent that such claim is caused by contamination of the Environment in relation to third party land, air or waterway due to the act, omission or default of the Contractor or any person for whom the Contractor is responsible.
- .6 as set out in Clause 2.1.7.2, Clause 5.7, Clause 6.2, Clause 12B.3, Clause 28A.1.5.1.2 and Clause 31.6.2.
- .7 subject to Clause 21.1.2 and without prejudice to Clause 24.1, in the event that the Works are delayed beyond the Completion Date (other than the Liquidated Damages referred to in Clause 24.1.1) including without limitation Summit's management costs and Summit's liabilities to Siemens, Serco and the Trust ("Other Delay Losses") provided always that Summit's entitlement to recovery of Other Delay Losses shall not exceed a sum equal to the number of days of delay multiplied by £3,556.43 (three thousand five hundred and fifty-six pounds and forty three pence);

provided always that (a) Summit shall enforce its rights to procure that the Trust shall, to the extent that any such matter arises where the Contractor is liable to indemnify Summit in terms of Clauses 20.2.1, 20.2.2 or 20.2.3, claim under the relevant insurance policy (or policies) (if any) effected and maintained by Summit or the Trust and use all reasonable endeavours to pursue such claims and to the extent such recovery is made the Contractor's liability under this Clause 20.2 shall be reduced accordingly or to the extent the Contractor has already indemnified Summit, Summit shall reimburse such amounts to the Contractor not to exceed the amount paid by the Contractor provided that the Contractor shall be obliged to indemnify Summit for all reasonable costs incurred in connection with making such claim but without prejudice to Summit's rights under this Clause 20.2 to the

extent that no recovery is made under any such insurance (including to the extent of any policy excesses), and (b) the Contractor will not be obliged to pay more than once for the same loss or damage.

20.3 If Summit incurs any liability for taxation in respect of a payment by the Contractor under these Conditions, the amount payable by the Contractor shall be increased so that the net amount received by Summit (after account is taken of the taxation consequences of the increased payment) is equal to the full amount which would have been received by Summit had no such liability to taxation been incurred.

21. Limitations on Contractor's Liability

21.1.1 The Contractor shall not be required to pay liquidated and ascertained damages for any reason whatsoever under Clause 24.1 in excess of the sum of £ £15,960,000 (fifteen million nine hundred and sixty thousand pounds) ("the Liquidated Damages Total") being the amount of liquidated damages which would be payable by the Contractor in the event of the period between the Completion Date and the Building Contract Completion Date being 18 months.

21.1.2 The Contractor's liability for Other Delay Losses shall not exceed £1,948,923 (one million nine hundred and forty eight thousand, nine hundred and twenty three pounds).

21.1.3 The provisions of this Clause 21.1 and 24.13 are without prejudice to and shall not limit the Contractor's liability under the other provisions of this Building Contract:

(a) in the event that the period between the Completion Date and the Building Contract Completion Date exceeds 18 months; or

(b) following the termination of this Building Contract.

21.2 The Contractor's liability for consequential losses including without limitation loss of revenue and any financing and/or other costs incurred or suffered by Summit other than:-

- .1 costs incurred by Summit in constructing, completing, repairing, replacing, remedying or reinstating the whole or any part of the Works (whether as a result of a latent or inherent defect or otherwise) or in procuring the completion of the Works (including all additional costs in excess of the Contract Sum which are payable or incurred in relation to the selection of, negotiation with and payment of any replacement contractor following termination of this Building Contract;
 - .2 on the termination of the DBFO Contracts due to any act, omission or default of the Contractor an amount equal to the value of "b" under Section 1, Part 10 of the Schedule to the Project Agreement);
 - .3 any liquidated damages to which Summit is entitled or has been paid under Clause 24;and
- and
- .4 any sums to which Summit is entitled pursuant to Clause 20.2.7.

shall be limited to an amount equal to 30% of the Contract Sum (as adjusted in accordance with Clauses 12 and 12A provided that it shall never for the purposes of this Clause 21.2 be less than the Contract Sum stated in Article 2).

21.3 The limit referred to in Clause 21.2 shall not apply:-

- .1 to the extent that any such consequential losses are attributable either directly or indirectly to any wilful default on the part of the Contractor (including without limitation, abandonment of the Works); or
- .2 in respect of any liability of the Contractor under Clause 20.2 above save for the liability of the Contractor set out in Clause 20.2.7..

22. Insurance

The provisions of Part 4 of the Schedule shall apply in relation to insurance and Summit and the Contractor shall comply with such provisions.

23. Date of Possession, completion and postponement

23.1.1 On the Date of Possession possession of the Site shall be given to the Contractor but only for the purpose of enabling the Contractor to perform its obligations under this Building Contract who shall thereupon begin the construction of the Works and regularly and diligently proceed with the same and shall complete the same so as to procure the issue of the Completion Certificate on or before the Building Contract Completion Date.

23.1.2 The Contractor's rights of access from the Date of Possession are subject to

23.1.2.1 any rights of public passage or existing access;

23.1.2.2 Competent Authorities or third parties;

23.1.2.3 the Trust's right to obtain full vacant possession of the Site forthwith upon the DBFO Contracts being terminated in accordance with Clauses 22 and 23 of the Project Agreement;

23.1.2.4 the Trust's rights under the DBFO Contracts, including without limitation, the Monitoring Procedure and the Contractual Practical Completion Procedure.

23.1.2.5 the rights of Summit and Other Parties as referred to in Clause 29 of this Building Contract.

23.2.1 For the purposes of the insurances referred to in paragraph 2.1 of Part 4 of the Schedule the Contractor shall retain possession of the Site and the Works up to and including the Building Contract Completion Date, and Summit shall not be entitled to take possession of any part or parts of the Works until that date.

23.2.2 Notwithstanding the provisions of Clause 23.2.1 Summit or others authorised by Summit may with the consent of the Contractor use or occupy the Site or the Works or part thereof whether for the purposes of storage of its or their goods or otherwise before the date of issue of the Completion Certificate . Summit shall notify the insurers and obtain confirmation that such use or occupation will not prejudice the insurance to be maintained by Summit referred to in paragraph 2.1 of Part 4 of the Schedule.

24. Liquidated Damages

24.1.1 Without prejudice to Clause 20.2.7, the Contractor shall pay to Summit by way of liquidated damages (and not as a penalty) in respect of the Bond Service Amount the sum of £30,000 (thirty thousand pounds) for every complete day which shall elapse between the Completion Date and the Building Contract Completion Date("Liquidated Damages"). Summit and the Contractor agree that the Liquidated Damages represent a genuine pre-estimate of the Bond Service Amount which Summit will be liable to pay to the Financiers during the period in respect of which the Liquidated Damages are payable in the event that the Works are delayed beyond the Completion Date and the parties to this Building Contract have in respect of that period liquidated that head of damage and have agreed a mechanism for deduction of this loss under Clause 24 of this Building Contract.

24.1.2 All losses or damages (other than the Liquidated Damages referred to in Clause 24.1.1) which Summit may incur in the event that the Works are delayed beyond the Completion Date shall be treated in accordance with Clause 20.2.7

24.2 Summit may deduct any sum due by way of Liquidated Damages from any monies due or to become due to be paid to the Contractor under this Building Contract (including any balances stated as due to the Contractor in the Final Certificate) or Summit may recover the same from the Contractor as a debt . If Summit intends to deduct Liquidated Damages Summit shall inform the Contractor

on the face of such Certificate that it may withhold or deduct Liquidated Damages from any sums due pursuant to an Interim Payment Certificate or Final Certificate.

- 24.3 The payment or deduction of Liquidated Damages shall not relieve the Contractor from its obligation to complete the Works, or from any other of its duties, obligations or responsibilities under this Building Contract.
- 24.4 The Contractor shall by written notice to Summit, to be served not earlier than ten (10) Business Days prior to the Completion Date, provide full details, insofar as the same are known to the Contractor at that date, of all outstanding claims for extensions of time which have arisen from circumstances occurring prior to the Completion Date including claims which have previously been notified to Summit pursuant to Clause 25 but which have not previously been withdrawn, agreed between the parties or determined under the Dispute Resolution Procedure ("the Pre Completion Date Claim Notice").
- 24.5 Within five (5) Business Days of receipt of the Pre Completion Date Claim Notice, Summit shall advise the Contractor by written notice of the extent to which it accepts the outstanding claims for extensions of time specified in the Pre Completion Date Claim Notice ("the Pre Completion Date Claim Response"). Where Summit states in the Pre Completion Date Claim Response that it rejects, in whole or in part, any outstanding claims for extensions of time included in the Pre Completion Date Claim Notice, either party may immediately refer the Dispute in respect of such claims ("the Pre Completion Date Claims") to the Expert for determination in accordance with the Dispute Resolution Procedure.
- 24.6 If, on the Completion Date, no outstanding claims for extensions of time have been notified under the Pre Completion Date Claim Notice, the Contractors' obligation to pay Liquidated Damages shall be immediate and unconditional with effect from that Date.
- 24.7 [Not used].

24.8 Where Pre Completion Date Claims have been submitted to the Dispute Resolution Procedure in accordance with Clause 24.5 the Contractor's obligation to pay Liquidated Damages in accordance with Clause 24.1 shall become immediate and unconditional with effect from the expiry of any extension of time to the Completion Date to which the Expert determines that the Contractor is entitled in respect of the Pre Completion Date Claims provided that:-

- (a) if the determination of the Expert in respect of the Pre Completion Date Claims has not been made within the period of three months after the then current Completion Date, the Contractor's obligation to pay Liquidated Damages with effect from the then current Completion Date shall become immediate and unconditional upon the expiry of such three month period;
or
- (b) if:
 - (i) paragraph (a) above does not apply; and
 - (ii) the Expert has determined pursuant to the Dispute Resolution Procedure that the Contractor is entitled to a further extension of time to the Completion Date in respect of claims for extension of time which have arisen in respect of the period ("Post Completion Date Claims"); and
 - (iii) the determination in paragraph (ii) has been made prior to the expiry of any extensions of time to the Completion Date which has been granted by the Expert to the Contractor in respect of the Pre Completion Date Claims or any previously submitted Post Completion Date Claims;

the Contractor's obligation to pay such Liquidated Damages shall become immediate and unconditional upon and with effect from the expiry of the extension of time referred to in sub-paragraph (ii) above.

- 24.9 Where the Contractor has paid Liquidated Damages in accordance with this Clause 24 and the Expert subsequently determines pursuant to the Dispute Resolution Procedure that the Contractor is entitled to an extension of time to the Completion Date in respect of Pre or Post Completion Date Claims, Summit shall repay to the Contractor the amount of any Liquidated Damages which have been overpaid by the Contractor prior to the date of such determination. Where the effect of any such subsequent determination of the Expert is to extend the Completion Date to a date which falls after the date of such determination, the Contractor shall be relieved from its liability to pay Liquidated Damages under this Clause 24 until the expiry of such extension of time.
- 24.10 Summit shall not be entitled to make a claim for payment of Liquidated Damages under this Clause 24 more frequently than once every 28 days. All payments to be made by the Contractor to Summit under this Clause 24 shall be paid in full without set-off or counterclaim save in respect of sums which remain unpaid but in respect of which an Interim Payment Certificate has been issued pursuant to Clause 30.3.1 and not subject to any condition and the Contractor hereby expressly waives all rights of set-off (legal or equitable) and counterclaims in respect thereof.
- 24.11 The parties hereto have agreed the provisions of this Clause 24 having regard to and in the knowledge of the commercial circumstances (and in particular the liquidity constraints) surrounding the Project and the Parties accept that the mechanism for determining the Contractor's liability for making payments of Liquidated Damages hereunder is fair and reasonable. In particular, the Contractor acknowledges and accepts that it may become obliged to pay Liquidated Damages to Summit while there are outstanding claims for extension of time to the Completion Date under determination to be determined pursuant to the Dispute Resolution Procedure and which may subsequently require Summit to repay some or all of such payments.
- 24.12 Any failure by, or inability of, the Contractor to justify claims for extension of time in accordance with the requirement of this Clause 24 and Clause 25, or to present its case to the Adjudicator in accordance with the Dispute Resolution Procedure for any reason (including, without limitation, as a result of the insolvency, liquidation or

receivership or any analogous event of the Contractor) shall not prejudice the operation of nor the rights and obligations of the parties under this Clause 24.

24.13 For the avoidance of doubt, Liquidated Damages are not payable by the Contractor in respect of any period after the termination of this Building Contract.

25. Extension of Time

25A Notwithstanding any other provision of this Clause 25, where an extension of time relating to any Contract Change requires to be evaluated in accordance with the provisions of Clause 12, the Contractor will comply with the timescales stated in or referred to in Clause 12 relating to

- .1 the provision of any notification or information for; and
- .2 any step in the process of;

the determination of the length of any extension of time to be granted.

25.1 As a condition precedent of claiming or being entitled to any extension of time the Contractor shall give, or procure the giving of, notice in writing to Summit's Representative as soon as practical after it can reasonably foresee the occurrence of a Relevant Event or, if the same is not reasonably foreseeable, as soon as the Contractor shall become aware of such Relevant Event and such notice will specify and give reasonable particulars of the event which the Contractor believes has or may give rise to a delay in completing the Works. As soon as practicable thereafter, but in any event not later than 15 Business Days after such notification the Contractor shall give further written details to Summit's Representative which shall include:

1. a statement of which Relevant Event the claim is based upon;
2. details of the circumstances from which the Relevant Event arises;

3. details of the contemporary records which the Contractor will maintain to substantiate its claim for extra time;
 4. details of the consequences which such Relevant Event may have upon completion of the Works insofar as those are known to the Contractor, including its best estimate(s) as to the length of any extension of time required to compensate for the effect and consequences of the Relevant Event;
 5. details of any measures which the Contractor has adopted or proposes to adopt to remedy or mitigate the consequences of such Relevant Event.
- 25.2 As soon as possible but in any event within 8 Business Days of the Contractor receiving, or becoming aware of, any supplemental information which may further substantiate or support the Contractor's claim then the Contractor shall submit further particulars based on such information to Summit's Representative.
- 25.3 Summit's Representative shall, after receipt of written or further details be entitled by notice in writing to require the Contractor to provide such further supporting particulars as it may reasonably consider necessary. The Contractor shall afford to Summit's Representative reasonable facilities for investigating the validity of the Contractor's claim including, without limitation, a site inspection of the relevant parts of the Site.
- 25.4 The Date for Completion shall be extended by such period as Summit's Representative shall in accordance with this Clause 25 certifies is fair and reasonable in relation to the Relevant Event and in the case of a Trust's 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 the Contractor fails timeously to comply with the provisions of this Clause 25 to the effect that Summit and/or the Trust is prevented from taking action to mitigate the effects of such Relevant Event then to the extent that either Summit and/or the Trust is so prevented from taking action to mitigate the effects of such Relevant Event then the extension of time will be reduced by such period as is necessary to remove such

prejudice and to put Summit in the same position as if the Contractor had timeously complied with this Clause 25.

- 25.5 If Summit's Representative declines to adjust the Date of Completion within 15 Business Days of having received the details and information and having been afforded the facilities referred to in this Clause 25 or if the Contractor considers that a different Date of Completion should be fixed then the Contractor shall be entitled to refer the matter for determination in accordance with the Dispute Resolution Procedure.
- 25.6 The Contractor will use all reasonable endeavours to remedy or mitigate the effects of Relevant Events.
- 25.7 Provided always that the Contractor's entitlement to an extension of time shall be reduced proportionately to the extent that the act or neglect of the Contractor, its servants or agents or other persons for whom the Contractor is responsible may have contributed to the delay save if the delay has been caused by the occurrence of an Insured Risk as referred to in Clause 25.8.4.
- 25.8 The following are the Relevant Events referred to in Clause 25:
- 25.8.1 any event of Force Majeure;
 - 25.8.2 the implementation of any Contract Change
 - 25.8.3 any breach by the Trust of its obligations under the DBFO Contracts, or any acts or omissions by the Trust or persons for whom the Trust is responsible (including protest activity by the Trust staff) which have an adverse effect on the progress of the Works or failure to issue a Certificate of Practical Completion in accordance with the provisions of the DBFO Contracts; or the revocation of the Detailed Decision Notice or Judicial Review.
 - 25.8.4 loss or damage to the Works caused by a Specified Peril; or

- 25.8.5 in regard to the opening up for inspection of any work covered up or the testing of any of the work, materials or goods in accordance with Clause 8.3 (including making good in consequence of such opening up or testing) where the Contractor is entitled to an adjustment to the Contract Sum as a result of such inspection or test in accordance with Clause 8.3 or Clause 8.4.3;
- 25.8.6 any breach by Summit (or Summit's Representative) of its obligations under this Building Contract subject as provided in Clause 12A.5.4.
- 25.8.7 any Relevant Discoveries in relation to the period in respect of which Summit is entitled to receive the Bond Service Amount and Unavoidable Operating Costs from the Trust in accordance with paragraph 11.5 of Part A of the Schedule to the General Provisions.

in each case only to the extent that the Contractor is unable to perform or is delayed in performing its obligations in whole or in part by reason of that Relevant Event.

- 25.9 [Not Used]
- 25.10 PROVIDED ALWAYS that the Contractor shall not be entitled to any greater extension of time as a result of any Relevant Event than (or prior to) any extension to the Mandatory Date granted to Summit under the DBFO Contracts as a result of the same event, but the Contractor shall in such circumstances be entitled to the same extension of time as shall have been granted to Summit under the DBFO Contracts as a result of any such event, subject always (and without prejudice) to any limitations on the Contractor's right to claim on extension of time under the provisions of this Clause 25 and Clause 12A. For the avoidance of doubt the provisions of Clause 12B apply to such claims for extensions of time by the Contractor.
- 25.11 The proviso contained in Clause 25.10 shall not apply where the Contractor's claim to an extension of time is based upon or due to:-

25.11.1 a Building Contractor Change (other than one made in order to give effect to an Eligible Change) in relation to which for the avoidance of doubt the Contractor is not entitled to any additional payment or extension of time, (unless Summit in its absolute discretion agrees otherwise).

25.11.2 a Summit Change

25.11.3 any breach of contract on the part of Summit or persons for whom Summit is responsible (subject as provided in Clause 12A.5.4)

unless (in each case) the Relevant Event referred to above has arisen as a result of, or is otherwise attributable to, any act, omission or default of, or risk assumed by the Contractor, the Trust or the Trust's Representatives under or in connection with the DBFO Contracts.

25.12 The Contractor shall have no other claim against Summit in respect of extensions of time for delay, disorganisation or disruption of work other than as expressly permitted pursuant to the foregoing provisions of this Clause.

26. Loss and expense caused by matters affecting regular progress of the Works

26.1 If the Contractor makes written application to Summit stating that he has incurred or is likely to incur direct loss and/or expense in the execution of this Building Contract for which he would not be reimbursed by a payment under any other provision in this Building Contract because the regular progress of the Works or of any part thereof has been or is likely to be materially affected by any one or more of the matters referred to in Clause 26.2, the amount of such loss and/or expense which has been or is being incurred by the Contractor shall be added to the Contract Sum; provided always that:

26.1.1 it shall be a precondition of any claim or entitlement to payment under this Clause 26 that the Contractor's application shall be made within 14 days of

the date that it became apparent or ought reasonably to have become apparent to him that the regular progress of the Works or of any part thereof has been or was likely to be affected as aforesaid, and

26.1.2 the Contractor shall in support of his application and in respect of the amount of the loss and/or expense provide upon request by Summit such information and details as Summit may reasonably require.

26.2 The following are the matters referred to in Clause 26.1:

26.2.1 any Relevant Event specified in Clauses 25.8.3, 25.8.5 and 25.8.6

26.2.2 subject to Clause 26.2A, any act or omission of Siemens or Serco (other than as permitted and envisaged by Clause 29 of this Building Contract). In the event that Summit is entitled to receive payment from Siemens or Serco in respect of the matters referred to in this Clause and Summit and the Contractor are unable to agree the Contractor's interest in such payment within 28 days of Summit becoming entitled to the relevant payment (without dissent on the part of Summit) then Summit shall make an assessment of the amount attributable to the Contractor's claim but without prejudice to either party's right to refer such assessment to the Dispute Resolution Procedure.

26.2A The entitlement of the Contractor to receive any additional payment or rate pursuant to Clause 26.2.2 as a result of any act or omission of Siemens or Serco shall be restricted to the amount, if any, to which Summit is entitled to be paid by Siemens or Serco as the case may be by way of agreement or determination under the Siemens Sub-Contract or Serco Sub-Contract as the case may be or otherwise in respect of the Contractor's claim.

26.3 The provisions of Clause 12.4 shall apply in respect of claims by the Contractor under this Clause as if references to Cost Increases and Cost Decreases were to the amount claimed by the Contractor under this Clause and otherwise mutatis mutandis provided that the limitation in Clause 12.10 shall not apply in respect of

any breach of this Building Contract by Summit or an act or omission of Siemens or Serco as referred to in Clause 26.2.2. (subject as provided in Clause 12A.5.4)

26.4 Any amount from time to time ascertained under Clause 26 shall be added to the Contract Sum.

27. Determination by Summit

27.1 [Not used].

27.2 The following shall be Summit Termination Events for the purposes of this Building Contract:-

.1 any act of insolvency in respect of the Contractor and/or the Guarantor which for the purposes of this Clause 27 means:-

.1 a receiver, administrator, administrative receiver or liquidator being appointed over all or any of the assets of the Contractor and/or the Guarantor other than a solvent liquidation in terms which have been expressly and previously approved by Summit in writing or;

.2 any application or petition is made or any meeting convened with a view to making an administration or winding up order in respect of the Contractor and/or the Guarantor (unless such meeting resolves not to proceed with the proposed course of action); or

.3 dissolution of the Contractor and/or the Guarantor ; or

.4 the Contractor and/or the Guarantor ceasing to be incorporated in Scotland or England or its insolvency ceasing to be subject to the jurisdiction of the Scottish or English Courts.

.2 any of the following occurs:

.1 any arrangement or composition with or for the benefit of its creditors

(including any voluntary arrangements as defined in the Insolvency Act 1986) being entered into by or in relation to the Contractor and/or the Guarantor; or

- .2 any encumbrancer taking possession of or being appointed over, or any diligence, distress, arrestment, execution or other similar process being levied or enforced (and not being discharged within 14 days) on, all or any of the assets of the Contractor and/or the Guarantor of an amount exceeding £75,000; or
- .3 the Contractor and/or the Guarantor ceasing to carry on business, or being or becoming unable to pay its debts as they fall due within the meaning of Section 123(e) of the Insolvency Act 1986 except and for so long as the Contractor provides to Summit evidence to Summit's reasonable satisfaction that the Contractor and/or the Guarantor is in the course of negotiation with its financiers with a view to rescheduling or refinancing its debts or resolving the issue in question and Summit is satisfied (acting reasonably) that such restructuring refinancing or other resolution is likely to succeed within a reasonable time thereafter;

.3 this Building Contract is repudiated by the Contractor;

- .4 the Contractor has not commenced carrying out the Works within three months after Financial Close, or has demonstrably ceased carrying out the Works for a period of three consecutive months ("Works" in this Clause 27.2.4 including both progress of the physical works at the Site and design development relative to the progress of the Works at that time) other than by reason of Relevant Events (or the consequences thereof) and;

- .5 the Contractor fails to complete the Works to such a standard such that as would require a Completion Certificate to be issued within a period of eighteen months after the Completion Date).
- .6 if it is agreed between the parties or it is determined by the Expert under the Dispute Resolution Procedure that (and it is hereby agreed that the decision of the Expert under the Dispute Resolution Procedure is final and binding in this regard and notwithstanding Rules 14 and 33 of the Adjudication Rules referred to in Part 11 of the Schedule, neither party shall make any application whatsoever to a competent court in relation to the conduct of the Adjudication or the decision of the Adjudicator) the Contractor has failed to complete, save for "de minimis" items, the construction of the Works to the following stages by the date falling at the expiry of the periods noted below in relation to each stage. The commencement date of each period shall be the date indicated on the Construction Timetable contained in Part 2 of the Schedule to the Development Agreement for completion of each such stage. Such periods shall be extended to the extent of each and every extension on a day for day basis to the Completion Date under this Building Contract.

	<u>Event</u>	<u>Period</u>
.1	completion of the structural frame for the main hospital building and the west building;	12 months
.2	both the main hospital building and the west building are weatherproof and windtight;	15 months
.3	commencement of commissioning of the mechanical and electrical installations in the main hospital building.	18 months

- .7 the Contractor breaches the provisions of Clause 32 such that Summit is entitled to terminate this Building Contract pursuant to Clause 32.

- .8 the Parent Company Guarantee or the Guarantee Bond ceases to have full force and effect.
- .9 the Contractor fails to pay any Liquidated Damages in excess of £10,000 to Summit within 14 days after such sums become due or, if disputed by the Contractor as being due, within 14 days of the determination by the Expert under the Dispute Resolution Procedure that Liquidated Damages are payable by the Contractor.
- .10 the Contractor commits a material breach (not otherwise listed in this Clause 27.2) of any of its obligations under this Building Contract, a material breach for this purpose being a material and substantial breach of the terms of this Building Contract which has a material adverse effect on the satisfactory performance by the Contractor of its obligations to Summit under this Building Contract in respect of which:-
 - .1 notice is given by Summit to the Contractor within 120 days of Summit becoming aware of the breach giving reasonable details of the matter complained; and
 - .2 if capable of remedy the Contractor has not commenced and thereafter completed remedial action within a reasonable period from the date of receipt of the notice from Summit as specified in the notice; or
 3. if irremediable the Contractor has not made proposals to compensate Summit (in terms which are reasonably satisfactory to Summit) for the loss or damage it shall have incurred as a consequence of such breach within a reasonable period from the date of receipt of the notice from Summit (determined in accordance with this Clause 27.2.9); and
 - .4 the issue of whether a material breach has occurred has (in the case of any dispute) first been resolved by the Dispute Resolution Procedure.

27.3 Whilst any such Summit Termination Event (specified in Clauses 27.2.1 to 27.2.10) is subsisting in any such case, without prejudice to any of its other rights or remedies, Summit may at any time thereafter at its discretion:

- .1 terminate this Building Contract, subject to Clause 27.7, by notice in writing having immediate effect, in which case the terms of Clause 28A shall apply;
- .2 suspend performance in whole or in part by the Parties of the terms of this Building Contract, including (without limitation) Summit's obligations of payment in relation to the matters in respect of which performance is suspended or affected by any such suspension, until the Contractor has demonstrated to Summit's reasonable satisfaction that it will perform and is capable of performing its obligations under this Building Contract; or
- .3 serve notice of default on the Contractor requiring the Contractor at Summit's option either:
 - .1 to rectify or remedy the breach(es) referred to in that notice of default continuing at the date of service of the notice within 30 days of that notice (or such longer period agreed in writing by Summit in its absolute discretion); or
 - .2 within 14 days of that notice to put forward a reasonable programme to rectify or remedy the breach(es) continuing at the date of service of the notice, that programme to be in writing and specify the proposed rectification or remedy in reasonable detail and the latest date by which it is proposed that the rectification or remedy shall be completed, in which case the terms of Clause 27.4 shall apply.

27.4 Where the Contractor puts forward a programme following notice under Clause 27.3.3.2 Summit shall have 28 days in which to notify the Contractor in writing that

it does not accept that programme as reasonable, failing which Summit shall be deemed to have accepted that programme. Where Summit notifies the Contractor that it does not accept that programme, the parties shall endeavour in the following seven days to agree any necessary amendments to the programme put forward. In the absence of agreement in that seven day period, the question whether the programme is reasonable may be referred by either party to the Dispute Resolution Procedure, and the Expert shall either accept Summit's programme as reasonable or substitute such programme as he believes to be reasonable having regard to the representations of both parties.

27.5.1 If:

the breach(es) specified in a notice of default served under Clause 27.3.3 is or are not rectified or remedied:-

- .1 before the expiry of the period referred to in Clause 27.3.3.1 (if applicable) or;
- .2 where the Contractor puts forward a programme pursuant to Clause 27.3.3.2 which has been either accepted by Summit or determined by the Dispute Resolution Procedure to be reasonable, in accordance with that programme or such other programme as is agreed or determined pursuant to Clause 27.4 (unless due to Force Majeure in which case the programme shall be extended by a period which is reasonable having regard to the period during which the Force Majeure subsisted);

27.5.2 then Summit may terminate this Building Contract subject to Clause 27.7 by notice in writing having immediate effect, and the terms of Clause 28A shall apply.

27.6 Summit's and the Contractor's rights under this Clause 27 and under Clause 28A are in addition and without prejudice to any other rights or remedies either party may have, including (without limitation) any claim for the amount of any loss or damage suffered by either party on account of the acts or omissions of the other as the case may be, whether pursuant to the Guarantee Bond or Parent Company Guarantee or otherwise.

27.7 Summit acknowledges that its rights upon termination are subject to the terms of any direct agreement between the Contractor and the Financiers (as referred to in Clause 2.6.2).

27.8 The Contractor shall promptly inform Summit in writing of:-

- .1 any breach or default under this Building Contract of which it is aware which would be materially adverse to the Trust's or Summit's interests; and
- .2 any event described in Clause 27.2 of which it is aware;

giving reasonable details of the circumstances and the steps being taken to remedy or mitigate their effect.

28. Determination by the Contractor

28.1 [Not used].

28.2

If Summit shall make default in either of the following respects:

28.2.1. default of its payment obligations to the Contractor to the extent that the amount stated as due on one Interim Payment Certificate is outstanding for two months or more from the due date of payment save to the extent of any case of genuine error or where such sums are disputed in good faith and subject to any deduction that Summit is entitled to make under this Building Contract; or

28.2.2 Summit failing without proper cause to issue any Interim Payment Certificate in the period required under Clause 30,

then the Contractor shall be entitled to give written notice to Summit requiring it to rectify the default within 28 days. If the relevant matter or circumstance has not been rectified or remedied by Summit or otherwise

within 28 days of such notice the Contractor may serve a further notice on Summit terminating this Building Contract with immediate effect; or

28.2.3 if the DBFO Contracts terminate pursuant to Clause 22 of the Project Agreement (to the extent that the termination does not arise by reason of any default of the Contractor and provided the Financiers have elected not to exercise any rights they may have to step in/take a novation of this Building Contract this Building Contract shall terminate with immediate effect.

28.3 In the event of termination by the Contractor under Clause 28.2 the Contractor shall be entitled to compensation as stated in Clause 28D and in addition, Summit shall pay to the Contractor the amount of any direct loss or damage to the Contractor arising out of or in connection with such termination. For the avoidance of doubt the Contractor shall not be entitled to payment for loss of profit, loss of income, indirect or consequential losses.

28A. Consequences of Early Termination

28A.1 On termination of this Building Contract, however arising, the following provisions shall apply:

28A1.1 The Contractor shall, on demand, by Summit, but subject to Clause 5.7 deliver to Summit all as-built drawings documenting work carried out prior to or after Execution of this Building Contract, materials, contracts, certificates, documents, records (including the Technical Records), computer programmes and related data contained on machine readable media (and for this purpose only title in the media on which such data is stored shall be deemed to pass to Summit) and all other documents files and correspondence prepared in relation to the Works the ownership of which is vested in the Contractor or which are utilised in connection with the Works as may be reasonably requested by Summit but excluding any such documents containing Proprietary Information. In the case of any termination of the DBFO Contracts the Contractor will provide all information referred to in Clause 23 of the Project Agreement, insofar as the same relates to the Works,

to enable Summit to comply with the provisions of Clause 23 of the Project Agreement.

28A1.2 All licences of Intellectual Property from Summit in favour of the Contractor shall terminate

28A1.3 The Contractor shall procure that the benefit of all manufacturers and suppliers produce warranties and/or guarantees in respect of the Works or any part thereof are delivered and/or assigned to Summit or its nominee

28A1.4 The Contractor shall forthwith vacate the Site and leave the Site in a clean and orderly condition and remove all temporary buildings, plants, tools, equipment, goods and materials and shall ensure that the sub-contractors do the same, but subject always to Summit's rights pursuant to Clause 28A1.5.

28A1.5 Summit may at its option but without relieving the Contractor of its obligations and liabilities accrued under this Building Contract:

- .1 enter the Site and expel the Contractor (and/or any other sub-contractors of the Contractor or any other person acting on their instruction) as Summit thinks fit provided always that the Contractor's plant and equipment shall remain available to Summit or its nominees for the purposes of completing the Works;
- .2 itself or through any other contractor employed (directly or indirectly) by Summit, complete the Works either in accordance with the terms of this Building Contract or in such other manner as Summit shall consider appropriate;
- .3 in exercise of its rights under the collateral warranties from the sub-contractors or otherwise, acquire the Contractor's rights and obligations under any one or more of the sub-contracts relating to the Works either in its name or in that of or any person nominated by

Summit but so that where Summit exercises such rights in respect of a Sub-Contract;

- .1 no such transfer shall affect the Contractors' liability to Summit for the Summit Termination Event entitling Summit to request that transfer; and
- .2 the Contractor shall remain liable to the relevant other party(ies) to the sub-contract(s) concerned for all accrued but - undischarged liabilities under that (those) sub-contract(s) in the period prior to such transfer and shall indemnify Summit and hold it harmless against those liabilities and the consequences of any antecedent breach of the relevant sub-contracts(s).

28A.2 Where Summit exercises its rights under Clause 28.A.1.5.2 or in the case of termination of the DBFO Contracts as a result of any act omission or default of the Contractor:

28A.2.1 Summit shall not be liable to make any further payments to the Contractor under this Building Contract until all works which it would have been necessary for the Contractor to carry out in order to permit the Completion Certificate to be issued have been completed and thereafter until the costs of Summit and/or any other contractor employed by Summit to complete the Works have been ascertained and certified by Summit or in the case of termination of the DBFO Contracts as a result of any act omission or default of the Contractor until the value of "b" has been ascertained in accordance with Section 1 of Part 10 of the Schedule to the Project Agreement (all such costs and the value of "b" being hereinafter referred to as the "Completion Costs"). The Contractor shall be entitled to receive only such sum (if any) as Summit certifies would have been due to it upon due completion of the Works by the Contractor after deducting such Completion Costs. If the Completion Costs exceed the sum

which would have been payable to the Contractor on completion of the Works by the Contractor then the Contractor shall pay to Summit the amount of such excess, which shall be deemed a debt due by the Contractor to Summit and shall be recoverable accordingly; and

28A.2.2 if in accordance with Clause 28A.1.5.2 Summit employs another contractor to complete the Works, the Contractor acknowledges and accepts that the terms of Clause 11.6 of the Building Contract Direct Agreement shall apply and that any duty on Summit to mitigate under this Building Contract with respect to that appointment will be deemed to be satisfied if the terms of Clause 11.6 of the Building Contract Direct Agreement have been satisfied.

28A.3 Termination of this Building Contract

- .1 shall not affect any accrued rights and obligations under this Building Contract as at the date of termination, including (without limitation) any rights of Summit or the Contractor to damages, indemnification or other relief subject always as provided in this Building Contract; and
- .2 shall not prejudice the operation of Clauses 5, 20, 21, 24, 28A and 28D and 39 which shall remain in full force and effect.

28A.4 The rights of Summit under this Clause 28A are in addition to and without prejudice to any other right Summit may have to claim the amount of any loss or damage suffered by Summit on account of the acts or omissions of the Contractor, in connection with the performance of the Works or of any part of the Works or otherwise under this Building Contract including, without limitation, any rights to recover any losses suffered by Summit under the DBFO Contracts which are due to any act omission or default of the Contractor in connection with the performance of the Works or of any part of the Works or otherwise under this Building Contract.

28B. Force Majeure

28B.1 If either party is unable to perform all or any material part of its obligations under this Building Contract as a consequence of Force Majeure for a continuous period in excess 6 months either party may following a period of consultation with a view to resolving the matter for a period of not less than 60 days, terminate this Building Contract by giving one month's prior notice in writing, provided always that the Contractor shall not be permitted to terminate this Building Contract in respect of any event of Force Majeure unless the DBFO Contracts have been terminated as a result of such event.

28B.2 The provisions of Clause 28D shall apply in the event of such termination.

28C. Termination of the DBFO Contracts

28C.1 In the event that the DBFO Contracts are terminated subject to the rights of the Financiers to step in/take a novation of this Building Contract, this Building Contract shall automatically determine.

28C.2 The Contractor shall be entitled to compensation in accordance with Clause 28D, provided always and to the extent that that the DBFO Contracts have not been terminated due to any default, act or omission of Summit which has arisen from a default act or omission of the Contractor or persons for whom the Contractor is responsible.

28D. Compensation

28D.1 If:-

- .1 this Building Contract terminates pursuant to Clause 28;

.2 this Building Contract is terminated by either party pursuant to Clauses 28B;
or

.3 this Building Contract is terminated pursuant to Clause 28C;

Summit shall, subject to Clause 12B pay to the Contractor (insofar as such amounts or items shall not have already been covered by payment on account made to the Contractor) for all work executed prior to the date of termination in accordance with and in addition:

.4 to the extent not previously recovered the cost of materials reasonably ordered for the Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials becoming the property of Summit upon such payment being made);

.5 the reasonable costs incurred by the Contractor as a result of such termination including but not limited to the costs of protecting the Works and demobilising.

For the avoidance of doubt, the Contractor shall not be entitled to compensation pursuant to this Clause 28D.1 for any loss of profit in respect of work not executed, loss of income, indirect or consequential losses.

28D.2 The Contractor shall do everything necessary to enable Summit to receive compensation pursuant to Clause 24 of the Project Agreement insofar as the same relates to the Works.

29. Work of Others

29.1 The Contractor accepts that activities such as monitoring and training are being and will be undertaken at the Site by Other Parties under a direct contract with Summit or by the Trust. The Other Parties shall have such access to the Site as is necessary for them to perform or prepare to perform these activities. Consequently the Contractor shall not have exclusive use of the Site prior to the Building Contract Completion Date and shall be deemed to be aware that these other activities will be executed contemporaneously with the Works.

29.2 The Contractor shall at all times before the Building Contract Completion Date:-

29.2.1 not interfere with the carrying out of activities referred to in Clause 29.1 by Other Parties;

29.2.2 closely co-operate and liaise with Other Parties;

29.2.3 co-ordinate his work with that of Other Parties; and

29.2.4 permit Other Parties access to parts of the Works thereof prior to the Building Contract Completion Date in accordance with the directions of Summit's Representative, to enable Summit to achieve the Operational Date on the Services Commencement Date.

29.3 In carrying out any Works after the Building Contract Completion Date the Contractor shall:-

29.3.1 not interfere with the activities of Other Parties at any and all times;

29.3.2 conduct its own operations in such a manner and sequence and at such times that such activities shall not be endangered, delayed, disrupted, impeded or unduly interfered with;

29.3.3 closely co-operate and liaise with Other Parties;

29.3.4 co-ordinate its work with that of Other Parties; and

29.3.5 comply with the Liaison Procedures.

29.4 Any difference of opinion regarding such co-operation or, following the Building Contract Completion Date, regarding spaces on the Site to be allocated to the Contractor or to Other Parties for their temporary accommodation, constructional

plant, tools, equipment, materials or goods shall be referred to the Dispute Resolution Procedure.

- 29.5 The Contractor shall not be entitled to any extra cost or to any extension of time in respect of the requirements of this Clause with regard to the Contractor's obligations in respect of Other Parties.
- 29.6 The Contractor, his employees and agents, his sub-contractors, suppliers and their employees or agents shall not wrongfully use or interfere with any equipment, materials, plant, ways, appliances or other property belonging to or provided by Summit's Representative or by Other Parties or commit any breach or infringement of any Applicable Laws. Provided that nothing in this Clause 29.4 shall prejudice or limit the rights of the Contractor in the carrying out of his statutory duties or contractual duties under this Building Contract.
- 29.7.1 Prior to the Contractual Practical Completion Date the Contractor shall provide training in the operation of the mechanical and electrical elements of plant and Group 1 Equipment, which form part of the Works, to Serco staff, in accordance with a programme agreed between the Parties, such training to commence no earlier than three months prior to the Contractual Practical Completion Date.
- 29.7.2 The Contractor shall issue draft proposals for training Serco staff as referred to in Clause 29.7.1 six months prior to the Contractual Practical Completion Date. The Parties, acting reasonably, shall endeavour to reach agreement on such proposals and produce a mutually acceptable programme for such training within one month of the issue of such draft proposals.
- 29.7.3 If the Parties cannot reach agreement on any of the matters referred to in Clause 29.7.2 within the period of one month referred to in Clause 29.7.2, either Party may refer any such matter to the Dispute Resolution Procedure.

30. Payments

- 30.1 The Earned Value Schedule contained in Schedule Part 10(a) shows the amount estimated as due at the end of each month during the period of each Bar. The Contractor shall as soon as practicable after Financial Close develop the final Earned Value Schedule which shall, at Summit's discretion, replace the Earned Value Schedule appended hereto in Part 10(a) of the Schedule for the purposes of this Building Contract. The lump sums contained in the Earned Value Schedule may only be adjusted in accordance with the express provisions of this Building Contract.
- 30.2 At Financial Close and subsequently at the end of every period of one month after Financial Close, the Contractor may apply to Summit for an Interim Payment Certificate for work performed during the month to which the application relates. Each such application shall state the lump sum due for that month according to the Earned Value Schedule assuming progress by the Contractor matches that indicated on the Earned Value Schedule. If actual progress is behind that indicated on the Earned Value Schedule the Contractor's application shall only include an amount consistent with actual progress. If the Contractor's progress is in advance of that indicated on the Earned Value Schedule the Contractor shall be entitled to apply for payment for all work done (excluding from this purpose only work done pursuant to a Change) subject to the cumulative cap up to and including the month to which the application relates shown on the Payment Curve in the Financial Model attached hereto as Part 10b of the Schedule. The Contractor's application shall also include the amounts (supported by all relevant vouchers) payable in respect of any Change and any other sums that the Contractor shall be entitled to include in the Interim Payment Certificate including those pursuant to Clause 26.
- 30.3.1 Summit shall, only with the consent of the Financiers Technical Adviser, issue an Interim Payment Certificate to the Contractor for the period to which the Contractor's application relates within 14 days following the date upon which Summit has received the particulars required to be submitted by the Contractor under Clause 30.2 hereof. Such Interim Payment Certificate shall show:
- 30.3.1.1 the amount (if any) payable by Summit to the Contractor by way of interim payment for the period to which the Contractor's application

relates ascertained in accordance with Clauses 30.2 and 30.5 less any Retention to be withheld in accordance with Clause 30.3.2;

30.3.1.2 details of any amounts withheld including a reasonably detailed breakdown of any such amounts withheld and reasons for such amounts being withheld; and

30.3.1.3 any other amounts as may be due and payable under this Building Contract.

30.3.2 The Retention to be withheld pursuant to Clause 30.3.1.1 shall be a sum equal to five per cent of the value certified until a reserve equal to three per cent of the Contract Sum shall have accumulated in the hands of Summit.

30.4 Amounts from time to time certified by Summit or which become due upon issue of an Interim Payment Certificate pursuant to Clause 30.3 hereof shall be paid by Summit to the Contractor within 14 days after the date of certification or date of issue of the relevant Interim Payment Certificate in accordance with this Building Contract. The date falling at the end of such 14 day period shall be the final date for payment of the amounts referred to in this Clause 30.4.

30.5 Summit shall have power to reject any part of an application for an Interim Payment Certificate which relates to the value of any work done, goods, materials or plant supplied or services rendered not in accordance with this Building Contract and for that purpose may delete, correct or modify any sum previously certified by it provided always that prior to such rejection or omission, deletion, correction or modification, Summit shall in accordance with Clause 30.3.1.2 give to the Contractor a detailed breakdown of any such amounts omitted, with reasons for the omission.

30.6.1 The Contractor shall be entitled to include one half of the Retention due to the Contractor under this Building Contract in respect of the Works in the first application for an Interim Payment Certificate following the issue of the Completion Certificate.

30.6.2 The Contractor shall be entitled to include the balance of the Retention due to the Contractor under this Building Contract in respect of the Works in the Final Certificate issued pursuant to Clause 30.8.

30.7 Not later than three months after the Building Contract Completion Date the Contractor shall submit to Summit a statement of final account and supporting documentation showing in detail the value in accordance with this Building Contract of the work done in accordance with this Building Contract together with all further sums which the Contractor considers to be due to it under this Building Contract up to the Building Contract Completion Date.

30.8 Within one calendar month of the latest of:-

30.8.1 the end of the Defects Liability Period;

30.8.2 the date stated in the Certificate of Making Good Defects; and

30.8.3 the date of submission by the Contractor of his final account and all information reasonably required for its verification;

Summit shall, only with the consent of the Financiers Technical Adviser, issue a Final Certificate stating the Contract Sum less all amounts previously paid by Summit and less all sums to which Summit is entitled to retain under this Building Contract including any amounts withheld including a reasonably detailed breakdown of any such amounts withheld and the reasons for such amounts being withheld and stating the balance, if any, due from Summit to the Contractor or from the Contractor to Summit as the case may be.

30.9 The balance of any payment referred to in Clause 30.8 above shall be paid to the Contractor and the balance of any over payment shall be paid by the Contractor in either case within 14 days of the date of the Final Certificate. The date falling at the end of such 14 day period shall be the final date for payment of the amounts referred to in this Clause 30.9.

30.10 Subject to Clauses 30.11 and 30.12, the Final Certificate shall have effect in any proceedings arising out of or in connection with this Building Contract as:

- 30.10.1 conclusive evidence that any necessary effect has been given to all the terms of this Building Contract which require that an amount is to be added to or deducted from the Contract Sum or an adjustment is to be made to the Contract Sum save where there has been any accidental inclusion or exclusion of any work, materials, goods or figure in any computation or any arithmetical error in any computation, in which event the Final Certificate shall have effect as conclusive evidence as to all other computations, and
- 30.10.2 conclusive evidence that all and any such extensions of time, as are due under this Building Contract have been given, and
- 30.10.3 conclusive evidence that the reimbursement of direct loss and/or expense, if any, to the Contractor pursuant to Clause 26 is in final settlement of all and any claims which the Contractor has or may have for breach of contract, duty of care, statutory duty or otherwise.
- 30.11 If any proceedings under Clause 39 have been commenced by either party before the Final Certificate has been issued the Final Certificate shall have effect as conclusive evidence as provided in Clause 30.10 after either:
- 30.11.1 such proceedings have been finally concluded including all rights of appeal, whereupon the Final Certificate shall be subject to the terms of any award or judgment in or settlement of such proceedings, or
- 30.11.2 a period of 12 months during which neither party has taken any further step in such proceedings, whereupon the Final Certificate shall be subject to any terms agreed in any partial settlement, if any.
- whichever shall be the earlier.
- 30.12 If the Disputes Resolution Procedure has been commenced by either party within 14 days after the Final Certificate has been issued, the Final Certificate shall have effect as conclusive evidence as provided in Clause 30.11 save only in respect of all matters to which those proceedings relate.

30.13 Save as provided in this Clause 30 the Final Certificate shall not be conclusive evidence that the Contractor has complied with its obligations under this Building Contract.

30.14 Without prejudice to any other rights and remedies which the Contractor may possess if Summit shall, subject to any notification given pursuant to Clause 30.3.1.2 fail to pay the Contractor in full by the final date for payment as required by Clause 30.4 and such failure shall continue for 7 days after the Contractor has given to Summit written notice of his intention to suspend performance of his obligations under this Building Contract to Summit and the ground or grounds on which it is intended to suspend performance then the Contractor may suspend such performance of his obligations under this Building Contract to Summit until payment in full occurs. Such suspension shall not be taken into account for the purposes of assessing whether a Summit Termination Event has occurred pursuant to Clause 27.

31. Income and Corporation Taxes Act, 1988 - statutory tax deduction scheme

31.1 In this Condition "the Act" means the Income and Corporation Taxes Act, 1988; "the Regulations" means the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1993 S I No. 1993/743; "contractor" means a person who is a contractor for the purposes of the Act and the Regulations; "evidence" means such evidence as is required by the Regulations to be produced to a "contractor" for the verification of a "Sub-Contractor's" tax certificate; "statutory deduction" means the deduction referred to in S.559(4) of the Act or such other deduction as may be in force at the relevant time; "Sub-Contractor" means a person who is a Sub-Contractor for the purposes of the Act and the Regulations; "tax certificate" is a certificate issuable under the Act.

31.2.1 Clauses 31.3 to .9 shall not apply if Summit is stated not to be a "contractor".

31.2.2 If, at any time up to the issue and payment of the Final Account, Summit becomes such a "contractor", Summit shall so inform the Contractor and the provisions of Clause 31 shall immediately thereupon become operative.

31.3.1 Not later than 21 days before the first payment under this Building Contract is due to the Contractor or after Clause 31.2.2 has become operative the Contractor shall:

either

.1.1 provide Summit with the evidence that the Contractor is entitled to be paid without the statutory deduction;

or

.1.2 inform Summit in writing that he is not entitled to be paid without the statutory deduction.

31.3.2 If Summit is not satisfied with the validity of the evidence submitted in accordance with Clause 31.3.1.1, he shall within 14 days of the Contractor submitting the evidence notify the Contractor in writing that he intends to make the statutory deduction from payments due under this Building Contract to the Contractor who is a "Sub-Contractor" and give his reasons for that decision. Summit shall at the same time comply with Clause 31.6.1.

31.4.1 Where Clause 31.3.1.2 applies, the Contractor shall immediately inform Summit if he obtains a tax certificate and thereupon Clause 31.3.1.1 shall apply.

31.4.2 If the period for which the tax certificate has been issued to the Contractor expires before the final payment is made to the Contractor under this Building Contract the Contractor shall not later than 28 days before the date of expiry:

either

.2.1 provide Summit with evidence that the Contractor from the said date of expiry is entitled to be paid for a further period without the statutory deduction in which case the provisions of Clause 31.3.2 shall apply if Summit is not satisfied with the evidence;

or

- .2.2 inform Summit in writing that he will not be entitled to be paid without the statutory deduction after the said date of expiry.
- 31.4.3 The Contractor shall immediately inform Summit in writing if his current tax certificate is cancelled and give the date of such cancellation.
- 31.5 Summit shall, as a "contractor" in accordance with the Regulations, send promptly to the Inland Revenue any voucher which, in compliance with the Contractor's obligations as a "Sub-Contractor" under the Regulations, the Contractor gives to Summit.
- 31.6.1 If at any time Summit is of the opinion (whether because of the information given under Clause 31.3.1.2 or of the expiry or cancellation of the Contractor's tax certificate or otherwise) that he will be required by the Act to make a statutory deduction from any payment due to be made Summit shall immediately so notify the Contractor in writing and require the Contractor to state not later than 7 days before each future payment becomes due (or within 10 days of such notification if that is later) the amount to be included in such payment which represents the direct cost to the Contractor and any other person of materials used or to be used in carrying out the Works.
- 31.6.2 Where the Contractor complies with Clause 31.6.1 it shall indemnify Summit against loss or expense caused to Summit by any incorrect statement of the amount of direct cost referred to in Clause 31.6.1.
- 31.6.3 Where the Contractor does not comply with Clause 31.6.1 Summit shall be entitled to make a fair estimate of the amount of direct cost referred to in Clause 31.6.1.
- 31.7 Where any error or omission has occurred in calculating or making the statutory deduction Summit shall correct that error or omission by repayment to, or by deduction from payments to, the Contractor as the case may be subject only to any statutory obligation on Summit not to make such correction.

31.8 If compliance with Clause 31 involves Summit or the Contractor in not complying with any other of the Conditions, then the provisions of Clause 31 shall prevail.

31.9 The provisions of Clause 39 shall apply to any dispute or difference between Summit and the Contractor as to the operation of Clause 31 except where the Act or the Regulations or any other Act of Parliament or statutory instrument, rule or order made under an Act of Parliament provide for some other method of resolving such dispute or difference.

31.10 The Contractor shall at the request of Summit produce to Summit the original of any current tax certificate which it holds and shall permit Summit to make a copy of such tax certificate and/or to record such details in respect of such tax certificate as Summit may consider appropriate.

32 Corrupt Gifts and Payments of Commission

32.1 The Contractor shall not offer or give or agree to give to any person in the employ of Summit or the Trust any gift or consideration of any kind as inducement or reward for doing or for having done or forborne to do any act or showing favour or forbearing to show disfavour to any person in relation to this Building Contract.

32.2 The Contractor represents to Summit that:

- (a) The Contractor has not offered or given or agreed to give any gift or consideration of any kind as an inducement or reward for doing or having done or forborne to do any act in relation to the obtaining or execution of this Building Contract; and
- (b) in connection with the obtaining or execution of this Building Contract no commission has been paid or agreed to be paid by the Contractor or to its knowledge on its behalf.

32.3 Nothing contained in Clauses 32.1 to 32.2 shall prevent an employer from paying any proper commission or bonus to its employees within their agreed terms of employment.

32.4 Subject as provided in Clause 32.5 any material breach of Clause 32.1 or 32.2 by the Contractor or the commission of any offence by the Contractor or any of its directors or employees under the Prevention of Corruption Acts 1889 to 1916 in relation to this Building Contract shall entitle Summit to act as follows:

(a) if:

- (i) a conviction on indictment against the Contractor under the Prevention of Corruption Acts 1889 to 1916 arising from the act of any director or the chief executive (at the direction of or with the knowledge of another director or in the case of an act by the chief executive, a director) of the Contractor or from the acts of an agent of the Contractor instructed by any such two persons to commit such acts, has been obtained and such conviction is not the subject of appeal; and
- (ii) the Secretary of State has after due and proper consideration of the circumstances formally asked the Trust in writing to exercise its rights under Clause 32.5(a) of the Project Agreement;

If the act, omission or default which occasioned or initiated such breach or offence occurred after the Execution Date (or only if) then Summit shall be entitled to terminate this Building Contract;

- (b) without prejudice to its other rights under this Clause 32 if a conviction on indictment against any director or the chief executive of the Contractor under the prevention of Corruption Acts 1889 to 1916 has been obtained and such conviction is not the subject of appeal, then Summit shall be entitled to require the Contractor to dismiss such employee or director;

- (c) without prejudice to its other rights under this Clause 32 if a conviction on indictment against any employee of the Contractor under the Prevention of Corruption Acts 1889 to 1916 has been obtained and such conviction is not the subject of appeal then Summit shall be entitled to require the Contractor to dismiss such employee;
- (d) without prejudice to the other rights under this Clause 32 Summit shall be entitled to require the Contractor to dismiss any director or the chief executive or any employee who reports directly to the chief executive or a director of the Contractor who was aware of any act of corruption which gave rise to any conviction not the subject of an appeal referred to in this Clause 32.4 and who did not use his best endeavours to stop such act of corruption; and
- (e) without prejudice to its other rights under this Clause 32 Summit shall be entitled to require the Contractor to take such actions (including, if applicable, dismissal) as accords with its then current applicable disciplinary procedure against any employee of the Contractor who has been responsible for any act on the part of the Contractor which constitutes a breach of Clause 32.1. or 32.2.

32.5 In exercising its rights or remedies under this Clause 32 Summit shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the acts prohibited under this Clause 32 and any actions of the Contractor pursuant to Sub-Clause 32.7; and
- (b) give all due consideration, where appropriate, to action other than termination of this Building Contract under Clause 32.4 (a) including (but not limited to) requiring the Contractor to take the action set out in Clause 32.4 (b).

32.6 Any Dispute relating to this Clause 32 may be referred by either party to the Dispute Resolution Procedure.

32.7.1 The Contractor shall put in place procedures requiring each of its directors and employees to certify on an annual basis that he or she has not offered to give or agreed to give to any person in the employ of Summit or the Trust any gift or consideration of any kind or an inducement or reward for doing or for having done or forborne to do any act or showing favour or forbearing to show disfavour to any person in relation to this Building Contract.

32.7.2 The Contractor shall permit Summit to have access to procedures put in place by the Contractor pursuant to Clause 32.7.1 above following any conviction of a director or employee of an offence under the Prevention of Corruption Acts 1889 to 1916 in order that Summit may review the same and the Contractor will increase the monitoring of the acts of the directors and employees.

33. General

33.1 No amendment to the terms and conditions of this Building Contract shall have effect unless agreed in writing signed by two directors or one director and the company secretary of Summit and two directors or one director and the company secretary of the Contractor and in self proving terms.

33.2 Save as expressly provided in this Building Contract no delay by or omission of either party in exercising any right, power, privilege or remedy under this Building Contract shall operate to impair that right, power, privilege or remedy or be construed as a waiver. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise or the exercise of any other right, power, privilege or remedy.

33.3 If any provision in this Building Contract shall be or become illegal, invalid or unenforceable, the effectiveness of the remaining provisions of this Building Contract shall not be prejudiced or impaired.

- 33.4 Each party shall at the request of the other execute any additional documents and do any other acts or things which may reasonably be required to give effect to this Building Contract.
- 33.5 Each party shall be responsible for paying of its own costs and expenses in relation to the preparation, execution and implementation of this Building Contract except where expressly provided to the contrary and except for any award of costs or expenses by a competent court or under the Dispute Resolution Procedure.
- 33.6 No announcement shall be made by either party in connection with the Works or this Building Contract without the prior written consent of the other.
- 33.7.1 This Building Contract constitutes the entire agreement between the parties in respect of the Works and supersedes all prior proposals, representations, agreements and negotiations (whether written, oral or implied) relating thereto between the parties or their respective professional advisers.
- 33.7.2 Without prejudice to Clause 2.6.3.4 both Summit and the Contractor acknowledge that they do not enter into this Building Contract in reliance on any representation, warranty or other undertaking by the other not expressly set out or referred to in this Building Contract.
- Provided always that the provisions of this Clause 33.7 shall not exclude any liability which either of the Parties would otherwise have to the other or any right which either of them may have in respect of any statements made fraudulently by either of them or on their behalf prior to the execution of this Building Contract or any rights which either of them may have in respect of fraudulent concealment by either Party.
- 33.8 Any sum payable under this Building Contract not paid by the due date (or, where payable on demand, on that demand being made) shall (unless otherwise stated) bear interest at the Interest Rate calculated on a daily basis with quarterly rests from the due date until the date of actual payment, after as well as before judgement or decree.

33.9 Both Summit and the Contractor shall, in carrying out their respective obligations under this Building Contract, act at all times in good faith.

33.10 Where Summit is, in terms of this Building Contract to act reasonably in giving consent or approval (to any document(s) or proposed course of action) then, without prejudice to any matters or directions specified in the relevant Clause or provision, Summit will be deemed to be reasonably withholding its consent or approval if:

- .1 the document(s) or proposed action is inconsistent with Summit's or the Trust's statutory duties or the terms of any DBFO Contract or is in breach of any Applicable Law; or
- .2 Summit's ability to perform its obligations under the DBFO Contract would be adversely effected (to an unreasonable extent) by the implementation of the document(s) or proposed course of action; or
- .3 implementation of the document(s) or proposed course of action would adversely effect (to an unreasonable extent) any rights of Summit under any DBFO Contract or its ability to enforce my such right; or
- .4 implementation of the document(s) or proposed or proposed course of action would adversely affect (to an unreasonable extent) Summit's ability to perform its obligation under any DBFO Contract or to carry out its statutory duties; or
- .5 the Trust has refused any equivalent consent or approval pursuant to the DBFO Contracts

33.11.1 Where any agreement, certificate, consent, permission, expression of satisfaction or other approval is to be expressly given by the Trust or Summit or any person on behalf of either of them under the terms of this Building Contract (an "Approval"), neither the giving of any Approval, failure to give an Approval or the withdrawal of any Approval, knowledge of the terms of any contract or document, nor the review of any document or course of action pursuant to the Building Contract

Design Development Procedure or the Design Development Procedure by or on behalf of the Trust, Summit or Summit's Representative shall relieve the Contractor of any of its obligations under this Contract or of its duty to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the Approval or knowledge, or of the review under the Building Contract Design Development Procedure or the Design Development Procedure referred to in Clauses 5.3.1 or 5.3.2.

- 33.11.2 Without limitation to Clause 33.11.1, no examination or lack of examination by the Trust, Summit or Summit's Representative of the Contractor's drawings, documents, calculations, or details relating to the design, construction, and completion of the Works or otherwise nor any comment, rejection or Approval expressed by such person in regard thereto, either with or without modifications, shall in any respect relieve or absolve the Contractor from any obligations or liability under or in connection with this Building Contract whether in relation to accuracy, safety, suitability, adequacy of performance or practicability of its design or howsoever otherwise arising.
- 33.11.3 Without limitation to Clause 13.11.1, notwithstanding any inspection or test by the Trust under the DBFO Contracts or Summit under this Building Contract or the failure of the Trust or Summit to make any inspection or test under the DBFO Contracts or this Building Contract, the Contractor's responsibility under this Building Contract shall not be relieved or absolved or otherwise modified.
- 33.12 Nothing in this Building Contract shall be construed as establishing or implying a partnership or joint venture.
- 33.13 Subject to paragraph 2.4 of Part 4 of the Schedule, notwithstanding any damage to or destruction of the Works by whatever cause this Building Contract will remain in full force and effect and the Contractor will remain responsible for carrying out and comprising the Works timeously in accordance with this Building Contract.
- 33.14 Summit undertakes to the Contractor that it will not and it will procure that Siemens and Serco do not act in a manner that prevents the Contractor from the

timely performance of its obligations under this Building Contract provided always that:

- .1 the undertaking in this Clause 33.14 shall not apply in respect of
 - (a) the proper exercise by Summit of its rights under this Building Contract or the proper performance by Siemens and/or Serco of their obligations and those activities as referred to in Clause 29 (for which due allowance has been made by the Contractor in the Construction Timetable and will be made in any modification or revision to the Construction Timetable); or
 - (b) to the extent that any such act by Summit is necessitated by or results from any default, negligence, delictual act, omission or breach by the Contractor; and
- .2 the Contractor acknowledges and accepts that Summit has no further obligations to the Contractor (whether to provide assistance, information or otherwise) other than as expressly set out in this Building Contract.

The Contractor agrees to assume the risk of all other acts of or omission of Other Parties (excluding the Trust and excluding any acts or omissions of Siemens and Serco (other than the proper performance of their obligations and those activities as referred to in Clause 29)) and further agrees that, except as expressly provided in this Building Contract, the Contractor shall have no claim, whether for extension of time, payment of additional amounts or otherwise, as a result of or in connection with any such act or omission.

33.15.1 If, any of clauses 12A.5.1.1, 12.10 or 26.2A is or are held to be rendered void or ineffective will be otherwise unenforceable on the part of Summit by any Applicable Law then the Parties hereby agree that any such clause or clauses of this Building Contract so rendered shall be of no further force and effect and this Building Contract shall be construed and interpreted as if such clauses no longer formed part of this Building Contract.

33.15.2 If, in respect of any amount to which Clauses 12A.5.1.1, 12.10 or 26.2A of this Building Contract applies, the restrictions to entitlement referred to in Clauses 12A.5.1.1, 12.10 and/or 26.2A of this Building Contract are held to be or rendered void or ineffective or will otherwise be unenforceable on the part of Summit (an "Act Event") then the Contractor and Summit agree that notwithstanding the other provisions of this Building Contract, the due date for payment of any Additional Amount under this Building Contract shall be the date occurring six months after the Services Commencement Date.

33.15.3 For the purposes of this Clause 33.15, an Additional Amount is an amount equal to the difference between the amount that the Contractor is entitled to recover under this Building Contract and the amount that the Contractor would have been entitled to recover under this Building Contract if the restrictions to entitlement referred to in Clauses 12A.5.1.1, 12.10 and/or 26.2A of this Building Contract had not been held to be or been rendered void, ineffective or otherwise unenforceable as determined by Summit's Representative acting reasonably and with reference to any relevant rates or prices set out in this Building Contract.

33.16 Summit shall be entitled to retain or set-off any amount due to it by the Contractor against any amounts due by Summit to the Contractor under this Building Contract or otherwise.

33.17 For the avoidance of doubt the expiry of the Defects Liability Period shall not exclude the Contractor's liability at law.

34. Antiquities

34.1 All fossils, antiquities and other objects of interest or value which may be found on the Site or in excavating the same during the progress of the Works shall become the property of Summit and upon discovery of such an object the Contractor shall forthwith:

34.1.1 use his best endeavours not to disturb the object and shall cease work if and insofar as the continuance of work would endanger the object or prevent or impede its excavation or its removal;

34.1.2 take all steps which may be necessary to preserve the object in the exact position and condition in which it was found; and

34.1.3 inform Summit of the discovery and precise location of the object.

34.2 Summit shall issue instructions in regard to what is to be done concerning an object reported by the Contractor under Clause 34.1, and (without prejudice to the generality of his power) such instructions may require the Contractor to permit the examination, excavation or removal of the object by a third party.

35. Notices

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

a) if to the Contractor, to:-

Sir Robert McAlpine Limited
11, Elmbank Street
Glasgow G2 4PB

cc: Sir Robert McAlpine Limited
Eaton Court
Maylands Avenue
Hemel Hempstead HP2 7TR

Fax No: 0141 221 2192
Attention: Mr D M Boyle

01442 230 024
Mr B R Cowen

(b) if to Summit, to:-

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

cc: Summit Healthcare (Law) Limited
Eaton Court
Maylands Avenue
Hemel Hempstead HP2 7TR

Fax No: 0131 243 8391
Attention: Dr W Moyes

01442 230 024
Mr M J Collard

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 be specified by the relevant party to the other, by notice given in accordance with this Clause 35, for the purpose of this Clause 35.

- 35.2 Any notice or other communication to be given by one party to another under, or in connection with the matters contemplated by, this Building 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.

36. Year 2000 Compliance Warranty

The Contractor shall use all reasonable endeavours to ensure that neither the functionality nor the performance of any of the systems which relate to or are necessary for the performance of its obligations in connection with the Project are adversely affected by the use of any dates falling after 31st December 1999.

37. Information Requirements re: Third Parties

37.1 Subject to Clause 5.6 and 5.7, the Contractor shall use all reasonable endeavours (which shall include, without limitation an obligation to include in any relevant contract to which it is a party, an obligation to the aftermentioned effect, and to use all steps reasonably available to the Contractor to enforce such obligations) to procure all reasonable assistance (including the provision to Summit of all information that Summit reasonably requires and, if appropriate, the attendance at meetings) from each sub-contractor and/or Consultant to enable Summit to satisfy any requirements or request for information to be provided to the Trust under the DBFO Contracts, provided that such assistance and information will not extend to any Proprietary Information (not licensed to Summit) of the Contractor or any sub-contractor or Consultant.

37.2 Without limiting Clause 37.1 and subject to Clause 5.6, the Contractor and any sub-contractor or Consultant (pursuant to Clause 37.1 above) shall provide to Summit as soon as reasonably practicable such assistance as Summit shall reasonably require in connection with any requests properly made of the Trust by the Trust' auditor for the time being (or its duly appointed representatives) for information associated with the giving of any audit certificate by that person or the undertaking of any value for money survey associated with the Trust and/or the Project, but excluding any financial information provided by the Contractor or any sub-contractor to Summit which is not in the public domain.

38. Restrictive Trade Practice Act

Any provision of this Building Contract 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 27 of that Act.

39. Settlement of disputes

39.1 The Parties shall use their reasonable efforts to negotiate in good faith and settle amicably any Dispute which arises during the continuance of this Building Contract.

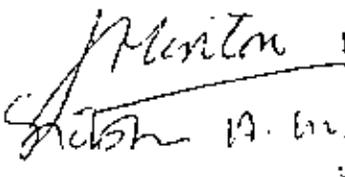
39.2 Any Dispute not capable of resolution under Clause 39.1 shall unless the contrary is express in any Clause become subject to the Dispute Resolution Procedure in Part 11 of the Schedule.

Code of Practice : referred to in Clause 8.4.3

1. This is the Code of Practice referred to in Clause 8.4.3. The purpose of the Code is to help in the fair and reasonable operation of the requirements of Clause 8.4.3.
2. Summit and the Contractor should endeavour to agree the amount and method of opening up or testing but in any case in issuing his instructions pursuant to Clause 8.4.3 Summit is required to consider the following criteria:
 - .1 the need in the event of non-compliance to demonstrate at no cost to Summit either that it is unique and not likely to occur in similar elements of the Works or alternatively the extent of any similar non-compliance in the Works already constructed or still to be constructed;
 - .2 the need to discover whether any non-compliance in a primary structural element is a failure of workmanship and/or materials such that rigorous testing of similar elements must take place; or where the non-compliance is in a less significant element whether it is such as is to be statistically expected and can be simply repaired; or whether the non-compliance indicates an inherent weakness such as can only be found by selective testing the extent of which must depend upon the importance of any detail concerned;
 - .3 the significance of the non-compliance having regard to the nature of the work in which it has occurred;
 - .4 the consequence of any similar non-compliance on the safety of the building, its effect on users, adjoining property, the public, and compliance with any Statutory Requirements;
 - .5 the level and standard of supervision and control of the Works by the Contractor;

- .6 the relevant records of the Contractor and where relevant of any sub-contractor resulting from the supervision and control referred to in paragraph 2.5 above or otherwise;
- .7 any Codes of Practice or similar advice issued by a responsible body which are applicable to the non-complying work, materials or goods;
- .8 any failure by the Contractor to carry out, or to secure the carrying out of, any tests specified in the Design Documentation or in an instruction of Summit;
- .9 the reason for the non-compliance when this has been established;
- .10 any technical advice that the Contractor has obtained in respect of the non-complying work, materials or goods;
- .11 current recognised testing procedures;
- .12 the practicability of progressive testing in establishing whether any similar non-compliance is reasonably likely;
- .13 if alternative testing methods are available, the time required for and the consequential costs of such alternative testing methods;
- .14 any proposals of the Contractor;
- .15 any other relevant matters.


Stuart A. McCloskey
Witness


Stuart A. McCloskey
Witness

This is the Schedule in 14 parts referred to in the foregoing agreement between Summit Healthcare (Law) Limited and Sir Robert McAlpine Limited

Schedule

Part 1 - Trust Requirements

The Trust's Requirements

The Trust's Requirements consists 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	<u>219</u> 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/02/2 (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)	✓

	<u>DEPARTMENT</u>	<u>DRAWING</u>	<u>NOTES/ CORRESPONDENCE</u>
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	LT.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/02/18	(Rev 1) (Rev 1)

	<u>DEPARTMENT</u>	<u>DRAWING</u>	<u>NOTES/ CORRESPONDENCE</u>
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 2 - Specification

1 [Not Used]

2(a) Net Departmental Areas of Trust-occupied Space

This is the net areas of the Schedule 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(b) Net Departmental Areas (Summit/FM Contractor -occupied Space)

This is the FM Contractor and Summit areas of the Schedule 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(c) Circulation Areas (Trust- and Summit/FM Contractor- occupied space)

This is the departmental circulation areas of the Schedule 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(d) Communications areas (Trust- and Summit/FM Contractor- occupied space)

This is the communication area of the Schedule 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(e) Plant Rooms

This is the Plant area including the Energy Centre of the Schedule 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(a) 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(b) 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(c) 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 Healthcare dated 10th June 1998, page numbers 1 to 8.

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

This is the Outline Architectural & Structural Specification Revision I 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 plant room 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
M10003/530/ 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

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 plant room 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/01/PP/02/02	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
Mamography 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

This is the List of Headline Items dated 28.5.98 consisting of 5 pages 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 3 - Contract Sum Analysis

The Contract Sum Analysis follows this page:

CONTRACT SUM ANALYSIS

NEW LAW HOSPITAL, WISHAW

Building Element	Sum (£)	Totals (£)
HOSPITAL		
Demolition	10,000	
Bulk earthworks	1,288,000	
Substructure	3,671,000	
Frame/upper floors	7,069,000	
Roof	2,519,000	
Stairs	161,000	
External walls	5,440,000	
Internal walls & partitions	3,894,000	
Internal doors	2,705,000	
Wall finishes	726,000	
Floor finishes	1,946,000	
Ceiling finishes	1,278,000	
Group 1 and 2 Equipment	3,333,489	
Fittings	799,000	
Foul & waste installations	464,000	
Mechanical & Electrical Installation	24,082,000	
Telephone installation	444,000	
Lift installation	633,000	
Kitchen Equipment	500,000	
BWICS	857,000	
Site works	4,672,000	
External Drainage	1,300,00	
External engineering works	1,261,000	
Headline Items/Trust Changes	232,744	
Further Design Development	564,936	
Value Engineering Savings	(318,203)	
HOSPITAL TOTAL COST	69,531,966	69,531,966

Building Element	Sum (£)	Totals (£)
ENERGY CENTRE TOTAL COST	1,740,000	1,740,000
CRECHE TOTAL COST	262,000	262,000
STAFFACCOMMODATION TOTAL COST		
<u>Original Cost</u>	2,018,000	2,018,000
<u>Value Engineering Saving</u>	(475,109)	
STAFF ACCOMMODATION TOTAL COST	1,542,891	1,542,891
PRELIMINARIES, MANAGEMENT, ETC	6,968,458	
FIXED PRICE ALLOWANCE	8,605,648	8,605,648
OVERHEADS & PROFITS	6,648,822	6,648,822E
DESIGN FEES	6,127,500	6,127,500
BUILDING CONTROL FEES etc	217,804	217,804
SURREY PERFORMANCE GUARANTEE	707,571	707,571
PROGRAMME RELATED PREMIUM ALLOWANCE & RESIDUAL CONTINGENCY	972,568	972,568
GRAND TOTAL	103,325,228	103,325,228

Schedule

Part 4 - Insurances

1. Cover to be Maintained by the Contractor

- 1.1 The Contractor shall, for such time as it has obligations (whether contingent or otherwise) pursuant to this Building Contract take out and maintain in full force and effect such insurance policies as are required by law or as requested by Summit by written notice to the Contractor including (but without prejudice to the generality of the foregoing):-
- .1 employer's liability insurance complying with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendment or re-enactment thereof;
 - .2 motor vehicle insurance;
 - .3 professional indemnity insurance with an insurer carrying on business in the United Kingdom with a limit of indemnity for any one claim in an amount of not less than ten million pounds (£10 million) provided that such insurance is generally available in the UK market at commercially reasonable rates. The Contractor shall maintain such insurance for such time as he has obligations (whether contingent or otherwise) pursuant to this Building Contract.
 - .4 plant and equipment owned by or belonging to the Contractor.
- 1.2 The Contractor shall not at any time take out or allow to be taken out any insurance which duplicates the cover to be maintained by Summit referred to in paragraph 2 of this Part 4 without the prior written consent of Summit.

2. Cover to be Maintained by Summit

2.1 Summit shall, throughout the term of this Building Contract, take out and maintain in full force and effect the following insurance (which shall be in the joint names of the parties as specified in the attached draft policy:

- .1 contractor's all risks insurance as detailed in draft policy terms and conditions attached;
- .2 third party legal liability insurance covering bodily injury and/or death and/or property damage in an amount of at least £100 million for each claim or series of claims arising out of any one incident; and

Such insurances shall as at the date of this Building Contract be in accordance with and subject to the terms, conditions, limitations and excesses set out in Summit's policy no [to be advised]. After the date of this Building Contract, the said insurances shall comply with market practice from time to time.

2.2 The Contractor shall and shall cause his sub-contractors to authorise the insurers to pay all monies from the Project Insurances in respect of the loss or damage to the Works to Summit and to authorise Summit to give a receipt on their behalf to the insurers in respect of such monies.

2.3 The Contractor shall not be entitled to any payment in respect of any Works undertaken in restoring works damaged, replacing or repairing any unfixated materials or goods which have been lost or damaged or removing or disposing of any debris following the occurrence of a Works Insured Risk other than the monies received which are referred to in paragraph 2.2 above. The Contractor shall bear the excesses and/or deductibles on the insurances maintained by Summit and the occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under this Building Contract PROVIDED ALWAYS THAT the Contractor shall not be responsible for any excess relating to the "Advance Loss of Profits Insurance" maintained by Summit

2.4 Unless the Financiers elect not to make the insurance proceeds under the insurance under paragraph 2.1.1 available for reinstatement pursuant to the Finance Facilities Agreements (in which circumstance the Contractor shall be released from any further obligation to carry out and complete the Works), all monies received in excess of £5,000,000 per claim under any such policy shall be paid into the Insurance Proceeds Account (as defined in the Collateral Deed), applied in accordance with the provisions of the Finance Facilities Agreements and paid over to the Contractor as appropriate and applied in or towards the replacement and repair of the Works lost, damaged or destroyed but this provision shall not affect the Contractor's accrued liabilities under this Building Contract.

3. **Parties to take appropriate action**

Neither party shall take or fail to take any reasonable action or (insofar as it is reasonably within its power) permit to be done or omit to be done anything to occur which may entitle any insurer to avoid payment of any claim under any insurance policy under which such party is a co-insured or additional insured person, or render any insurance suspended, impaired, invalidated or defeated in whole or in part or which brings any particular liability within the scope of an exclusion or exemption to any insurance.

4. **Parties' Right to Insure**

4.1 If the Contractor fails or refuses to:

- .1 obtain or maintain any insurance policy it is required to obtain or maintain pursuant to Paragraph 1 of this Part of the Schedule; or
- .2 to provide Summit with copies of the renewal certificates in relation thereto (certified in a manner acceptable to Summit) as and when required,

then Summit may, without prejudice to any of its rights under this Building Contract or otherwise, require the Contractor's consent to procure such insurances itself and

shall be entitled to deduct the cost of such insurances from any sums due now or in the future to the Contractor.

4.2 If Summit fails and refuses to:-

- .1 obtain or maintain any insurance policy it is required to obtain or maintain pursuant to paragraph 2 of this Part of the Schedule; or
- .2 to provide the Contractor with evidence that such insurance is being maintained, upon reasonable request from the Contractor so to do,

then the Contractor may, without prejudice to any of its rights under this Building Contract or otherwise, procure such insurances itself and deduct the cost of such insurances from any sums due now and in the future to Summit.

5. Notification of Claims

Each party shall give the other notification as soon as possible of any circumstances which may lead to a claim under any of the insurance policies referred to in this Schedule and within 15 Business Days supply full details of the incident giving rise to such claim and shall afford to each other all such assistance as may reasonably be required for the preparation and negotiation of such claims.

6. Saving

6.1 Neither failure to comply nor full compliance with the insurance provisions of this Building Contract shall limit or relieve the Contractor:

- .1 from its liabilities, obligations or responsibilities under this Building Contract and in particular
- .2 from the Contractor's obligation to hold Summit harmless in compliance with any indemnity provisions contained in this Building Contract

7. Construction Period

During the design and construction of the Works the Contractor shall comply with all the conditions of the "Contractors all risks" insurance and other insurances maintained by Summit and all requirements of insurers in connection with the settlement of claims, the recovery of losses and prevention of accidents, and shall bear at its own cost the consequences of any failure on its part so to do.

The Contractor shall ensure that all its representatives, sub-contractors and others for whom it is responsible pursuant to the Building Contract respective employees shall do or omit to do nothing which might render unenforceable the said insurance or entitle insurers to avoid liability thereunder.

8. Insurance generally

8.1 The Contractor shall procure that he shall perform his obligations pursuant to this Building Contract in such a manner as to ensure that Summit complies with the insurance requirements of the DBFO Contracts.

8.2 All insurances which the Contractor effects under this Building Contract

8.2.1 must be effected with insurers approved by Summit;

8.2.2 must be on terms approved by Summit;

8.2.3 must not contain any exclusion, endorsement or alteration unless it is first approved in writing by Summit;

8.2.4 must contain a term which requires the insurer to give Summit and the Trust not less than 15 Business Days notice in writing of:

(a) cancellation, termination or expiry of, or any material alteration to any policies of insurance, or

- (b) any non-payment of premium, or
- (c) any act or omission or event which might invalidate or render unenforceable any policies of insurance, or
- (d) any reductions in limits of coverage or increases in deductibles, exclusions or exceptions, or
- (e) any other notice given to the Contractor in respect of a policy.

whenever the insurer gives the Contractor a notice of cancellation or any other notice in respect of a policy.

8.2.5 must contain a term which requires the Insurer to agree that Summit or the Trust shall not be liable for the payment of any premium and there shall be no set off for unpaid premiums in relation to Summit or the Trust seeking protection under any policy.

8.2.6 must contain a term which requires the Insurer to agree to waive all rights of subrogation it may have or acquire against Summit or the Trust.

8.3 The Contractor must

8.3.1 give Summit and the Trust's Representative and the Financier's Technical Advisor reasonable notice in the event of any difficulty in extending, renewing or reinstating any such insurance;

8.3.2 give Summit and the Trust's Representative certified copies of all:

- .1 policies to the extent that such policies are not confidential and/or would not be invalidated by the provision of any copy;
- .2 renewal certificates; and

.3 endorsement slips.

8.3.3 as soon as it receives them; and

8.3.4 use reasonable endeavours (including paying any reasonable premium) to have each policy endorsed to the effect that the insurer waives its right to avoid the policy or any liability under the policy by reason of non-disclosure or inaccurate disclosure in the proposal relating to that policy.

8.3.5 commence procedures for the renewal of any insurance policy not less than 45 days prior to its expiry and shall consult and obtain the approval of Summit to the terms of the renewal;

8.3.6 ensure that its subcontractors effect and maintain professional indemnity insurance in such amount and on such terms to be agreed with Summit.

9. Premiums

The Contractor must punctually pay all premiums in respect of all insurance policies referred to in Paragraph 1 of this Part of the Schedule.