

Schedule

Part 5A - Guarantee Bond

The form of Guarantee Bond follows this page

GUARANTEE BOND No.

BETWEEN the following parties whose names and registered office addresses are set out in the Schedule to this Guarantee Bond ("**the Schedule**")

- (1) The "Contractor" as principal;
- (2) The "Guarantor" as guarantor; and
- (3) The "Employer".

WHEREAS:

- (1) By a contract (the "**Building Contract**") entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the "**Works**") upon and subject to the terms and conditions therein set out.
- (2) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Building Contract upon the terms and conditions of this Guarantee Bond subject to the limitations set out in Clause 7.1 and 7.2.

NOW THE PARTIES AGREE as follows:

1. Except as otherwise specified in this Guarantee Bond, capitalised words and phrases used herein shall have the same meanings as given to them in the Master Definitions Schedule and the General Provisions of even date herewith and made between Law Hospital National Health Service Trust ("**the Trust**") and the Employer or where so specified in this Guarantee Bond the same meanings as given to them in the Building Contract.
2. The Guarantor guarantees to the Employer as a continuing guarantee the due, proper and punctual performance by the Contractor of all the terms, conditions, obligations and agreements on the part of the Contractor contained in the Building Contract (including, without limitation, the payment of moneys due and payable by the Contractor thereunder) and agrees that if the Contractor shall in any respect fail to perform any of its obligations (including, without limitation, the payment of moneys so due and payable) arising under the Building Contract or shall commit any breach of or fail to fulfil any warranty as set out in the Building Contract, then the Guarantor will subject to the terms of this Guarantee Bond:
 - (a) where such failure relates to the payment of any amount due and payable from the Contractor to the Employer in accordance with the terms of the Building Contract (including, without limitation, by way of Liquidated Damages (as defined in Clause 24 of the Building Contract) or indemnity), pay, such amount to the Employer within 2 Business Days of the Employer notifying the Guarantor of such failure (such notification to be in the form provided in Clause 3 of this Guarantee Bond in the case of a failure by the Contractor to pay Liquidated Damages); and

- (b) where such failure or breach relates to any other obligation or warranty of the Contractor under the Building Contract, be liable to the Employer for any and all damages which the Employer suffers or incurs by reason of the said failure or breach in respect of such obligations.

For the avoidance of doubt and without limiting the foregoing, if any Summit Termination Event occurs (including those such events listed in Clause 27.2.1 and Clause 27.2.2 of the Building Contract) and the Employer exercises all or any of its rights pursuant to clause 27.3 of the Building Contract, then the Guarantor shall, subject to the provisions of this Guarantee Bond, satisfy and discharge the damages suffered by the Employer, and the obligations of the Contractor arising, as a consequence of the Employer exercising its rights pursuant to Clause 27.3 of the Building Contract.

- 3. For the purposes of any claim for payment by the Employer pursuant to Clause 2 of this Guarantee Bond in respect of Liquidated Damages, the Guarantor acknowledges the provisions of Clause 24 of the Building Contract relating to Liquidated Damages and irrevocably and unconditionally undertakes to pay to the Employer (without any set-off or counterclaim save as in respect of any amounts which have been certified to be due and payable by the Employer to the Contractor in accordance with the terms of the Building Contract) all amounts which from time to time become due and payable by the Contractor to the Employer pursuant to the said Clause 24 upon presentation to the Guarantor at its registered office (as set out in the Schedule to this Guarantee Bond) of a certificate or certificates signed by a director or other duly authorised officer of the Employer stating that:-
 - (a) an amount (as specified in the certificate) has become immediately due and payable by the Contractor to the Employer in accordance with the provisions of Clause 24 of the Building Contract;
 - (b) the Employer has made written demand on the Contractor for payment of such amount (and attaches to the certificate a copy of such demand);
 - (c) the Contractor has failed to pay such amount in full to the Employer within 2 Business Days of service on the Contractor of such demand;
 - (d) the Employer has made written demand on Newarthill plc under the Parent Company Guarantee (as defined in the Master Definitions Schedule) for payment of such amount (to the extent that the same has not been met by the Contractor); and
 - (e) Newarthill plc has failed to pay such amount (or the portion unpaid by the Contractor) within 2 Business Days of service on Newarthill plc of such demand

and any such certificate shall have attached to it all awards or determinations of the Expert that have been made pursuant to the Dispute Resolution Procedure (as defined in the Building Contract) prior to the date of such certificate in respect of claims by the Contractor for extensions of time under Clause 25 of the Building Contract.

4. The Guarantor shall be kept fully informed by the Contractor of all steps taken by the Contractor and by the Employer (insofar as the Contractor is aware of the same) in accordance with the Dispute Resolution Procedure in respect of any claim under the Building Contract which could give rise to a claim under this Guarantee Bond.

5.1 The Guarantor shall receive from the Contractor copies of:

- (a) monthly progress reports provided by the Employer to the Trust under Clause 3.1 of Schedule, Part 1 of the Development Agreement between the Trust and the Employer; and
- (b) the Construction Timetable (as for time to time amended or revised).

To the extent that those documents indicate an actual or potential claim against the Contractor which could give rise to liability under this Guarantee Bond, then the Contractor shall procure that the Guarantor has the right to attend and observe (but without the right to participate in) all future meetings between the Contractor and the relevant parties and to receive copies of all relevant correspondence until such time as the relevant circumstances are resolved.

5.2 A failure by the Contractor to perform and discharge its obligations under Clauses 4, 5 or 14 of this Guarantee Bond may give rise to a claim for damages by the Guarantor against the Contractor but shall not in any way prejudice, diminish or otherwise affect the obligations and liabilities of the Guarantor to the Employer under this Guarantee Bond.

6.1 Where a Summit Termination Event within Clause 27.2.1 or 27.2.2 of the Building Contract has occurred and is subsisting, prior to any exercise of the right of the Employer to terminate the Building Contract (a "Termination Right"), the Employer agrees first to notify the Guarantor (with a copy to the Contractor) (a "Termination Event Notice") of the Employer's intention to exercise the Termination Right whereupon the Guarantor may within 14 days of service of such Termination Event Notice notify the Employer (with a copy to the Contractor) (a "Step-In Notice") that the Guarantor will complete the Works in accordance with the relevant terms and conditions of the Building Contract (including as to payment of the Contract Sum) as if the Guarantor was the original party thereto in place of the Contractor whereupon:

- (a) the Employer, the Contractor and the Guarantor shall enter into a contract to that effect substantially in the form set out in Part III of the Appendix to this Guarantee Bond (the "Novation Agreement");
- (b) the Guarantor shall deliver to the Security Trustee a copy of an agreement duly executed by the Guarantor, such agreement to be substantially in the form of the Building Contract Direct Agreement entered into on or about the date hereof by, inter alia, the Contractor, the Employer and the Security Trustee but excluding:-
 - (i) the guarantee by Newarthill plc contained in Clause 19 and 20 of the Building Contract Direct Agreement; and

- (ii) all other acknowledgements, warranties and undertakings by Newarthill plc, and with references to the Contractor being replaced by references to the Guarantor and the agreement otherwise being amended mutatis mutandis; and
- (c) the Guarantor shall deliver to the Trust a collateral warranty, in the form of the Collateral Warranty contained in Part 7(a) of the Schedule to the Building Contract, duly executed by the Guarantor,

(together the "Conditions"). Where the Guarantor has served a Step-In Notice under this Guarantee Bond, the Contractor hereby undertakes to the Guarantor forthwith to enter into the Novation Agreement and the Contractor hereby irrevocably appoints the Guarantor as its attorney to execute such Novation Agreement on its behalf. The Guarantor undertakes and agrees that a failure by the Contractor to execute the Novation Agreement will not release the Guarantor from its obligations to the Employer under this Guarantee Bond. If the Conditions shall not be satisfied within 7 days of the service on the Employer of the Step-In Notice, the Step-In Notice shall lapse and the Employer shall be entitled to terminate the Building Contract in accordance with Clause 27.3.1 thereof. For the avoidance of doubt, where the Guarantor has served a Step-In Notice and the Conditions have been satisfied in accordance with the requirements of this Clause 6.1, the limitations on the Guarantor's liability under Clause 7 of this Guarantee Bond shall no longer apply whether in respect of antecedent or subsequent breaches of the Building Contract.

- 6.2 If the Employer shall exercise the Termination Right without first issuing a Termination Event Notice to the Guarantor or within 14 days of service of such Notice then the Guarantor shall have no liability and no demand may be issued hereunder in respect of the circumstances leading to or underlying the Summit Termination Event or as a result of or arising out of the subsequent termination of the Building Contract.
- 6.3 If the Guarantor does not issue a Step-In Notice within 14 days of service of a Termination Event Notice then the Employer shall be entitled to exercise the Termination Right in respect of the Termination Event in respect of which such Termination Event notice has been served at any time thereafter in accordance with its rights under the Building Contract and the liability of the Guarantor shall be determined in accordance with the other provisions of this Guarantee Bond.
- 7.1 The maximum aggregate liability of the Guarantor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the "Bond Amount") and (save in the case of an exercise of its rights under Clause 6.1 of this Guarantee Bond) the Guarantor shall have no obligation under this Guarantee Bond other than to pay sums payable in accordance with the terms hereof up to the said maximum aggregate amount.
- 7.2 The Guarantor's liability under this Guarantee Bond in respect of any breach or failure by the Contractor under the Building Contract shall not exceed the liability of the Contractor in respect of such breach or failure on the basis that the Building Contract is valid, binding and enforceable and has full force and effect.

- 8.1 The Guarantor undertakes and agrees with the Employer that any of the following acts, events, circumstances or omissions which but for the provisions of this Clause 8.1 may affect, change or release the Guarantor from its obligations under this Guarantee Bond, namely:-
- (a) waiver by the Employer of any terms, provisions, conditions, obligations and agreements of or under the Building Contract or, subject as provided in Clause 3, any failure to make demand upon or take action against the Contractor;
 - (b) any modification or changes to the terms of the Building Contract or to the Works referred to in the Building Contract provided that any such modifications or changes to the Works are limited to those which are necessary to give effect to or result from an Eligible Change, a Trust Works Change or (to the extent that the same falls within the scope of a Trust Works Change) a Summit Change or are otherwise permitted under the terms of the Building Contract;
 - (c) any assignation by the Employer of the benefit of the Building Contract which is permitted under either the Building Contract or the Building Contract Direct Agreement;
 - (d) the granting of extensions of time or other indulgence to the Contractor;
 - (e) any dealings between the Employer and the Contractor (other than any modification or change to the terms of the Building Contract or to the Works outside the scope of paragraph (b) above);
 - (f) (except to the extent that such breach affects, changes or releases the Contractor from its obligations under the Building Contract) any breach by the Employer of any terms of the Building Contract;
 - (g) the exercise by the Security Trustee of any of its rights under the Building Contract Direct Agreement or by a Financiers Nominee (as defined in the Building Contract Direct Agreement) of any of the rights to which it is or becomes entitled pursuant to the Building Contract Direct Agreement;
 - (h) the termination of the Building Contract in accordance with its terms or as a result of the repudiation of the Building Contract by the Contractor;
 - (i) any novation of the Building Contract to a Substitute (as defined in the Building Contract Direct Agreement);
 - (j) the invalidity or unenforceability of the Parent Company Guarantee; and
 - (k) the taking, varying or releasing of any security from any party to this Guarantee Bond or from any other person (other than an assignation or charge of this Guarantee Bond otherwise than in accordance with Clause 15);

may be made and done without notice to or the consent of the Guarantor and no such act, event, circumstance or omission shall in any way affect, change or release the Guarantor from its obligations under this Guarantee Bond and the liability of the Guarantor hereunder shall not be in any way affected thereby.

- 8.2 Subject to Clause 9 hereof, this Guarantee Bond shall remain in full force and effect until performance in full of the terms, conditions, obligations and agreements on the part of the Contractor contained in the Building Contract notwithstanding any of the following acts, events, circumstances or omissions which but for the provisions of this Clause 8.2 may affect, change or release the Guarantor from its obligations under this Guarantee Bond namely:-
- (a) the insolvency, liquidation, receivership, reorganisation, amalgamation, reconstruction or any analogous event of the Contractor, the Guarantor, the Employer or any other person;
 - (b) any disclaimer of the Building Contract by a liquidator of the Contractor, the Guarantor or any other person; and
 - (c) any change in the status, function, control or ownership of the Contractor, the Guarantor or any other person.
9. Whether or not this Guarantee Bond shall be returned to the Guarantor, the Guarantor shall have no obligations under this Guarantee Bond in respect of any breach of the Building Contract which occurs after the Expiry Date or any breach of the Building Contract in respect of which a claim under this Guarantee Bond has not been notified in writing to the Guarantor (including such particulars of such breach as are known to the Employer) prior to the expiry of the period of three months after the Expiry Date.
10. No delay or omission of the Employer in exercising any right, power or privilege hereunder shall impair such right, power or privilege or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the Employer herein provided are cumulative and not exclusive of any rights or remedies provided by law.
11. A waiver given or consent granted by the Employer under this Guarantee Bond will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
12. If at any time any one or more of the provisions of this Guarantee Bond is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof shall not be in any way affected or impaired thereby.
- 13.1 Save as specifically otherwise provided in this Guarantee Bond any notice, demand or other communication to be served under this Guarantee may be served upon a party hereto only by posting by first class post or delivering the same by hand to the party to be served at its

address shown in the Schedule to this Guarantee Bond or at such other address as it may from time to time notify in writing to the other party.

- 13.2 A notice or demand served by first class post shall be deemed duly served on the second Business Day after the date of posting and a notice or demand sent by hand shall be deemed to have been served at the time of delivery unless served after 5.00 pm in the place of intended receipt in which case it will be deemed served at 9.00 a.m. on the following Business Day.
- 13.3 In proving service of any notice it will be sufficient to prove, in the case of a letter, that such letter was properly stamped or franked first class, addressed and placed in the post.
14. The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes with the Guarantor (without limitation of, or prejudice to, any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Building Contract.
15. The Employer may assign or charge this Guarantee Bond or any benefit arising from it in favour of any one or all of the Beneficiaries (as defined in the Collateral Deed) and/or the Substitute (as defined in the Building Contract Direct Agreement) and their permitted successors, transferees and assignees on such terms as it sees fit without the consent of the Guarantor and without affecting, changing or releasing the Guarantor from its obligations under this Guarantee Bond, provided however that the Guarantor shall be entitled to deal only with the Employer in respect of this Guarantee Bond and shall not be deemed to have knowledge of, or obligations in respect of, such assignation unless and until the Employer shall give notice of any such assignation or charge to the Guarantor substantially in the form of the Notice of Assignment set out in Part 1 of the Appendix to this Guarantee Bond.
16. All references to the Employer in this Guarantee Bond shall include the Security Trustee as identified in any Notice of Assignment given to the Guarantor pursuant to Clause 15 provided an Enforcement Notice (as defined in the Notice of Assignment) has also been given following which event, the Security Trustee shall be entitled to exercise all rights of the Employer under this Guarantee Bond in place of the Employer.
- 17.1 This Guarantee Bond shall be governed by and construed in accordance with the laws of Scotland.
- 17.2 Each of the persons constituting the Contractor, the Guarantor and the Employer separately prorogate the non-exclusive jurisdiction of the Court of Session in Scotland in relation to any disputes arising hereunder.
- 17.3 Without prejudice to any other permitted mode of service, the parties agree that service of any writ, notice or other document for the purpose of any proceedings begun in Scotland shall be duly served upon if delivered personally or sent by registered post, in the case of:
- (a) the Contractor to (marked for the attention of);

- (b) the Guarantor to 120 Fenchurch Street, London EC3M 5BP (marked for the attention of The Manager, Surety Department);
- (c) the Employer to the appropriate address set out in the Schedule and marked for the attention of

or such other person and address in Scotland as the relevant party shall notify to the others in writing from time to time.

18. The parties hereto consent to the registration of these presents for preservation and execution.

IN WITNESS WHEREOF the parties hereto have caused this Guarantee Bond consisting of this and the foregoing seven pages, the following Schedule and Appendix in three parts to be executed as follows:-

Subscribed for and on behalf of

Sir Robert McAlpine Limited

at

on day of 1998

acting by

in the presence of

Witness

Full Name

Address

Subscribed for and on behalf of

New Hampshire Insurance Company

at

on day of 1998

acting by

in the presence of

Witness

Full Name

Address

Subscribed for and on behalf of
Summit Healthcare (Law) Limited

at
on day of 1998

by

Director, and

..... Director

Director/Secretary

.....Director/Secretary

This is the Schedule referred to in the foregoing Guarantee Bond No. dated 1998
made between the Contractor, the Guarantor and the Employer as defined in this Schedule.

THE SCHEDULE

The Contractor: **Sir Robert McAlpine Limited** whose registered office is at:
Eaton Court, Maylands Avenue, Hemel Hempstead, Herts
HP2 7TR

The Guarantor: **New Hampshire Insurance Company** whose principal
office address is at: 120 Fenchurch Street, London, EC3M
5BP

The Employer: **Summit Healthcare (Law) Limited** whose registered office
is at: Saltire Court, 20 Castle Terrace, Edinburgh, EH1

The Building Contract: A contract for the design and construction of a New Law
District General Hospital at Netherton, Scotland entered or to
be entered into on or about the date hereof between the
Employer and the Contractor.

The Bond Amount: £51,662,614.00 (fifty one million, six hundred and sixty two
thousand, six hundred and fourteen pounds sterling)

The Expiry Date: The Contractual Practical Completion Date

This notice shall be governed by and construed in accordance with the laws of Scotland and only the courts of Scotland shall have jurisdiction hereunder.

Please acknowledge receipt of this notice by signing two copies of this notice on the Consent and Acknowledgement in the form attached hereto and by returning one copy as so executed to the Employer and one copy to the Security Trustee c/o Shepherd & Wedderburn WS, Level 2, Saltire Court, 20 Castle Terrace, Edinburgh, EH1 2ET marked for the attention of Paul W Hally.

Yours faithfully

For and on behalf of
SUMMIT HEALTHCARE (LAW) LIMITED

PART II

Acknowledgement

To: Summit Healthcare (Law) Limited
Saltire Court
20 Castle Terrace
Edinburgh
EH1

Security Trustee
Address

Consent and acknowledgement

We hereby acknowledge receipt of a notice of assignation (the "Notice"), a copy of which is attached hereto and:

- (i) confirm our agreement to the terms of the Notice;
- (ii) confirm that we have not received notice of the interest of any third party in all or any of the property stated in the Notice to have been assigned;
- (iii) agree to pay all amounts due for payment by us to the Employer under the Bond up to the Bond Amount of £ Sterling directly to a bank account named the Summit Healthcare (Law) Limited. Account; a/c no. held by Bank Branch or to such other account in the UK as the Security Trustee may notify us from time to time; and
- (iv) agree that we shall, until we receive notice to the contrary from the Security Trustee, deal only with the Security Trustee in respect of the Bond.
- (v) Final and unconditional payment of an amount due from us under the terms of the Bond in full to an account as specified in paragraph (iii) above will discharge our liability to pay that amount under the Bond without any requirement on our part to see to the application of the moneys.

For and on behalf of
New Hampshire Insurance Company
Date:

PART III

Form of Novation Agreement

AGREEMENT dated

BETWEEN:-

- (1) **SUMMIT HEALTHCARE (LAW) LIMITED** (the "Employer"); and
- (2) **NEW HAMPSHIRE INSURANCE COMPANY** (the "Guarantor"); and
- (3) **SIR ROBERT M^CALPINE LIMITED** (the "Contractor")

RECITALS

- (A) The Employer and the Contractor have entered into (the "Building Contract") a contract dated 1998 for the design, construction, fitting out and commissioning of New Law District General Hospital (the "Building Contract").
- (B) The Guarantor has issued to the Employer a Guarantee Bond dated 1998 (the "Guarantee Bond") in respect of the performance of the contract, obligations under the Building Contract;
- (C) Pursuant to the terms of the Guarantee Bond, the Employer has agreed to the Building Contract being novated to the Guarantor.

THE PARTIES AGREE AS FOLLOWS:-

1. INTERPRETATION

Capitalised terms defined in the Guarantee Bond shall have the same meaning in this Agreement.

2. NOVATION

2.1 On the date hereof:

- (a) the Contractor shall cease to have the benefit of any of its rights, and shall be released by the Employer from all of its obligations, under and in respect of the Building Contract; and
- (b) the Guarantor shall have the benefit of such rights and shall assume obligations that are identical to all of the rights and obligations of the Contractor under the Building Contract (whether they shall have arisen or arise before, on or after the date hereof)

except that all such rights shall be rights owed to, and all such obligations shall be obligations owed by, the Guarantor instead of the Contractor.

- (c) the Contractor hereby assigns to the Guarantor or to such other person as the Guarantor may have nominated in writing prior to the date hereof the Contractor's rights and obligations under the Sub-Contracts (as defined in the Building Contract).

2.2 Pursuant to Clause 2.1 above, the Guarantor shall accordingly become a party to the Building Contract in place of the Contractor and thereafter shall be treated as if it was named as a party thereto in place of the Contractor and the Guarantor shall owe all of such obligations as are referred to in Clause 2.1 to the Employer.

3. GOVERNING LAW

3.1 This agreement is governed by and shall be construed in accordance with the law of Scotland.

3.2 Each of the persons constituting the Employer, the Guarantor and the Contractor separately prorate the non-exclusive jurisdiction of the Court of Session in Scotland in relation to any disputes arising hereunder.

IN WITNESS whereof the parties hereto have caused this agreement to be executed as follows:

Schedule

Part 5B - Newarthill Plc Parent Company Guarantee

The form of Parent Company Guarantee follows this page

DATED _____ 1998

(1) NEWARTHILL plc

- and -

(2) SUMMIT HEALTHCARE (LAW) LIMITED

**PARENT COMPANY GUARANTEE
NEW LAW DISTRICT GENERAL HOSPITAL - CONSTRUCTION CONTRACT**

ASHURST MORRIS CRISP
Broadwalk House
5 Appold Street
London EC2A 2HA

Tel: 0171 638 1111
Fax: 0171 972 7990
Ref: LMM/525124

THIS GUARANTEE

BY

- (1) **NEWARTHILL plc** (Company Registration No. 1050970) having its registered office at 40 Bernard Street, London WC1N 1LG (the "Guarantor"); and

TO

- (2) **SUMMIT HEALTHCARE (LAW) LIMITED** (Company Registration No. 182649) having its registered office at Saltire Court, 20 Castle Terrace, Edinburgh (the "Employer")

WHEREAS

- (A) Sir Robert McAlpine Limited (the "Subsidiary"), has entered into a contract with the Employer in relation to the design, construction, fitting out and commissioning of the New Law District General Hospital as described in the contract (the "Construction Contract").
- (B) The Guarantor is the beneficial owner of one hundred per cent. (100%) of the issued share capital of the Subsidiary.
- (C) The Guarantor has agreed to guarantee all the obligations of the Subsidiary under the Construction Contract on the terms set out below.

NOW IT IS HEREBY AGREED as follows:-

1. The Guarantor in consideration of the Employer entering the Construction Contract with the Subsidiary, for itself, its successors and assigns, hereby absolutely, irrevocably and (except as expressly provided herein) unconditionally guarantees to the Employer as a continuing guarantee the due, proper and punctual performance by the Subsidiary of all the terms, conditions, obligations and agreements on the part of the Subsidiary contained in the Construction Contract (including, without limitation, the payment of monies) and agrees that if the Subsidiary shall in any respect fail to perform any of its obligations (including, without limitation, the payment of monies) arising under the Construction Contract or shall commit any breach of or fail to fulfil any warranty as set out in the Construction Contract, then the Guarantor will forthwith perform and fulfil in place of the Subsidiary each and every obligation or warranty in respect of which the Subsidiary has defaulted or as may be unfulfilled by the Subsidiary. The Guarantor shall be liable to the Employer for any and all losses, damages, expenses, liabilities, claims, costs or proceedings which the Employer may suffer or incur by reason of the said failure or breach: provided always that the Guarantor's liability under this Guarantee shall not exceed that of the Subsidiary under the Construction Contract determined on the basis that the Construction Contract is valid, enforceable and has full force and effect.
2. For the purposes of any claim for payment by the Employer pursuant to Clause 1 of this Guarantee in respect of Liquidated Damages (as defined in the Construction Contract), the Guarantor acknowledges the provisions of Clause 24 of the Construction Contract relating to Liquidated Damages and irrevocably and unconditionally undertakes to pay to the

Employer (without any set-off or counterclaim save as in respect of any amounts which have been certified to be due and payable by the Employer to the Contractor in accordance with the terms of the Construction Contract) all amounts which from time to time become due and payable by the Contractor to the Employer pursuant to the said Clause 24 in each case within 2 Business Days of the presentation to the Guarantor at its registered office (as set out above) of a certificate or certificates signed by a director or other duly authorised officer of the Employer stating that:-

- (a) an amount (as specified in the certificate) has become immediately due and payable by the Contractor to the Employer in accordance with the provisions of Clause 24 of the Construction Contract;
- (b) the Employer has made written demand on the Contractor for payment of such amount (and attaches to the certificate a copy of such demand); and
- (c) the Contractor has failed to pay such amount in full to the Employer within 2 Business Days of service on the Contractor of such demand;

and any such certificate shall have attached to it all awards or determinations of the Expert (as defined in the Construction Contract) that have been made pursuant to the Dispute Resolution Procedure (as defined in the Construction Contract) prior to the date of such certification in respect of claims by the Contractor for extensions of time under Clause 25 of the Construction Contract.

3. The Guarantor covenants and agrees with the Employer that any act, event, circumstance or omission which but for the provisions of this Clause 3 may affect, change or release the Guarantor from its obligations under this Guarantee, including, without limitation:-
- (i) waiver by the Employer of any terms, provisions, conditions, obligations and agreements of or under the Construction Contract or any failure to make demand upon or take action against the Subsidiary;
 - (ii) any modification or changes, however fundamental, to the Construction Contract or referred to in the Construction Contract;
 - (iii) the giving by the Employer of any consent to an assignation or the making of any assignation of the Construction Contract;
 - (iv) the granting of extensions of time or adjustments to the amount payable to the Subsidiary or other indulgence to the Subsidiary;
 - (v) any dealings between the Employer and the Subsidiary;
 - (vi) the avoidance or termination of the Construction Contract or the employment of the Subsidiary for default by the Subsidiary;
 - (vii) (except to the extent that such breach is not caused by the Subsidiary and affects, changes or releases the Subsidiary from its obligations under the Construction Contract) any breach by the Employer of any terms of the Construction Contract; and

- (viii) any bond, security or other guarantee obtained by the Employer for any of the obligations of the Subsidiary under the Construction Contract;

may be made and done without notice to or the consent of the Guarantor and no such act, event, circumstance or omission shall in any way affect, change or release the Guarantor from its obligations under this Guarantee and the liability of the Guarantor hereunder shall not be in any way affected thereby.

4. This Guarantee shall remain in full force and effect until performance in full of the terms, conditions, obligations and agreements on the part of the Subsidiary contained in the Construction Contract notwithstanding any act, event, circumstance or omission which but for the provisions of this Clause 4 may affect, change or release the Guarantor from its obligations under this Guarantee, including, without limitation:-
- (i) the insolvency, liquidation, receivership, reorganisation, amalgamation, reconstruction or any analogous event of the Subsidiary, the Guarantor or any other person;
 - (ii) any disclaimer of the Construction Contract by a liquidator of the Subsidiary, the Guarantor or any other person;
 - (iii) any change in the status, function, control or ownership of the Subsidiary; and/or
 - (iv) unenforceability or invalidity of any obligations of the Subsidiary so that this Guarantee shall be construed as if there were no such unenforceability or invalidity.
5. Until the terms, conditions, obligations and agreements on the part of the Subsidiary contained in the Construction Contract have been unconditionally and irrevocably performed in full the Guarantor shall not by virtue or as a result of any payment or performance by it under this Guarantee in respect of the Construction Contract:-
- (a) be subrogated to any rights, security or moneys held or received or receivable by the Employer; or
 - (b) receive, claim or have the benefit of any payment, distribution, security or indemnity from the Subsidiary or (if and for so long as the Employer has any unsatisfied claims outstanding or pending against the co-sureties) any such co surety; or
 - (c) unless so directed by the Employer (when the Guarantor will prove in accordance with such directions) claim as a creditor of the Subsidiary in competition with the Employer.
6. The Guarantor shall hold in trust for the Employer and forthwith pay or transfer (as appropriate) to the Employer any such payment (including an amount equal to any such set-off), distribution or benefit of such security, indemnity or claim in fact received by it in breach of Clause 5.

7. No delay or omission of the Employer in exercising any right, power or privilege hereunder shall impair such right, power or privilege or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the Employer herein provided are cumulative and not exclusive of any rights or remedies provided by law.
8. A waiver given or consent granted by the Employer under this Guarantee will be effective only if given in writing to the Guarantor and then only in the instance and for the purpose for which it is given.
- 9.1 If at any time any one or more of the provisions of this Guarantee is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof shall not be in any way affected or impaired thereby.
- 9.2 As a separate and alternative stipulation the Guarantor unconditionally and irrevocably agrees that any sum expressed to be payable by it or obligation to be performed by it under this Guarantee but which is for any reason (whether or not now existing and whether or not now known or becoming known to the Guarantor) not recoverable from or enforceable against the Guarantor on the basis of a guarantee shall nevertheless be recoverable from or enforceable against the Guarantor as if the Guarantor were the sole principal debtor or obligor (where relevant).
- 10.1 Save as specifically otherwise provided in this Guarantee any notice, demand or other communication to be served under this Guarantee may be served upon a party hereto only by posting by first class post or delivering the same by hand or sending the same by facsimile transmission to the party to be served at its address or facsimile number shown immediately after its name on the signature page of this Guarantee or at such other address or number as it may from time to time notify in writing to the other party.
- 10.2 A notice or demand served by first class post shall be deemed duly served on the second business day after the date of posting and a notice or demand sent by hand or facsimile transmission shall be deemed to have been served at the time of delivery or transmission unless served after 5.00 pm in the place of intended receipt in which case it will be deemed served at 9.00 a.m. on the following business day. For the purposes of this paragraph "business day" means a day on which commercial banks are open for business in Edinburgh or London.
- 10.3 In proving service of any notice it will be sufficient to prove, in the case of a letter, that such letter was properly stamped or franked first class, addressed and placed in the post and, in the case of facsimile transmission, that such facsimile was duly transmitted on a business day to a current facsimile number of the addressee at the address referred to below.
11. The Employer may assign or charge this Guarantee or any benefit arising from it in favour of the Financiers to the Employer under the Summit Assignment (as amended, varied or

Schedule

Part 6 - Financier's Building Contract Direct Agreement

The form of Financier's Building Contract Direct Agreement follows this page

SIR ROBERT M'ALPINE LIMITED

- and -

NEWARTHILL PLC

- and -

SUMMIT HEALTHCARE (LAW) LIMITED

- and -

AMBAC INSURANCE UK LIMITED

and -

ROYAL EXCHANGE TRUSTEE NOMINEES LIMITED
as Security Trustee

BUILDING CONTRACT DIRECT AGREEMENT

ASHURST MORRIS CRISP

Broadwalk House
5 Appold Street
London EC2A 2HA

Tel: 0171-638 1111
Fax: 0171-972 7990
Ref: LMM/552292

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
2. NOTICE OF ASSIGNATION, ACKNOWLEDGEMENTS	4
3. NO TERMINATION WITHOUT NOTICE.....	5
4. STEP-IN	6
5. SUSPENSION, TERMINATION AND OTHER RIGHTS	7
6. STATUS OF FINANCIERS NOMINEE	8
7. STEP-OUT.....	8
8. NOVATION	9
9. NOTIFICATION OF BREACH.....	10
10. WARRANTIES	10
11. UNDERTAKINGS	12
12. CONTRACTOR DEFAULT	15
13. CONTINUATION OF BUILDING CONTRACT GUARANTEE.....	15
14. NO WAIVERS, ETC.....	15
15. RIGHTS OF ACTION.....	16
16. LATE PAYMENT	16
17. TAXES.....	17
18. DURATION.....	17
19. GUARANTEE	17
20. NOTICES.....	19
21. GOVERNING LAW.....	19
22. GOVERNING JURISDICTION.....	20

DEED made

BETWEEN:-

- (1) **SIR ROBERT M'ALPINE LIMITED** a company incorporated in England and Wales under registered number 566823 having its registered office at Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire HP2 7TR (the "Contractor");
- (2) **NEWARTHILL PLC** a company incorporated in England and Wales under registered number 1050970 having its registered office at 40 Bernard Street, London WC1N 1LG (the "Guarantor");
- (3) **SUMMIT HEALTHCARE (LAW) LIMITED** a company incorporated in Scotland under registered number 182649 having its registered office at Saltire Court, 20 Castle Terrace, Edinburgh ("Summit");
- (4) **AMBAC INSURANCE UK LIMITED ("AMBAC")** a company incorporated in England and Wales under registered number 3248674 whose address is St Helen's, One Undershaft, London EC3A 8JL; and
- (5) **ROYAL EXCHANGE TRUSTEE NOMINEES LIMITED** (the "Security Trustee" which expression shall, where the context so admits, include all persons for the time being the trustee or trustees under the Security Trust Deed (as defined herein)).

RECITALS

- (A) By a building contract dated on or about the date of this agreement (the "Building Contract") made between Summit and the Contractor, the Contractor has agreed with Summit to design, construct and commission a district general hospital, all in compliance with the contracts (the "DBFO Contracts") for the design, construction, non-clinical operation and financing of a district general hospital at Law, dated on or about the date of this agreement and made between Law Hospital National Health Service Trust (the "Trust") and Summit.
- (B) By a guarantee dated on or about the date of this agreement the Guarantor provided to Summit a guarantee of the Contractor's obligations under the Building Contract (the "Building Contract Guarantee").
- (C) The parties to this Agreement have agreed various matters in relation to the Building Contract on the terms set out below.

THE PARTIES AGREE AS FOLLOWS:-

1. **INTERPRETATION**

1.1 **Definitions**

In this agreement:

"Applicable Accounting Principles" means accounting principles, standards and practices generally accepted in England and consistently applied in accordance with the Companies Act 1985 to 1989;

"Beneficiaries" has the meaning given to it in the Collateral Deed;

"Building Contract Guarantee" means the guarantee given by the Guarantor in favour of Summit in respect of the Contractor's obligations under the Building Contract;

"Collateral Deed" means the collateral deed of on or about today's date between, inter alia, Summit, the Security Trustee, the Bond Trustee and AMBAC;

"Contract Documents" means:

- (a) this Agreement;
- (b) the Building Contract Guarantee; and
- (c) the Building Contract;

"Credit Provider" has the meaning given to it in the Collateral Deed;

"Finance Documents" has the meaning given to it in the Collateral Deed;

"Financial Indebtedness" has the meaning given to it in the Collateral Deed;

"Financier Direct Agreement" has the meaning given to it in the Collateral Deed;

"Independent Engineer" means such person as may be appointed Independent Engineer under the Collateral Deed;

"Insurance Proceeds" means all proceeds of the Insurances payable to or received by or on behalf of any member of the Summit Group (including in respect of the Project Documents any sub-contractor (of any tier) of the Summit Group or any sub-contractor of any tier of Summit) or any Credit Provider, including proceeds of any insurance in respect of liabilities arising under any of the Project Documents but excluding any such proceeds paid directly to a third party claimant.

"RTPA" has the meaning given to it in the Collateral Deed;

"Security Documents" has the meaning given to it in the Collateral Deed;

"Security Trust Deed" means the security trust deed of on or about today's date between, inter alia, AMBAC, the Security Trustee, the Bond Trustee and Summit;

"Subsidiary " means a subsidiary as defined in section 736 of the Companies Act 1985 as amended by the Companies Act 1989.

"Summit Assignment" means the assignment in security dated on or about the date of this agreement granted by Summit in favour of the Security Trustee;

"Summit Group" means Summit Healthcare Law Limited, Summit Finance (Law) PLC and Summit Holdings (Law) Limited.

1.2 Interpretation

In this Agreement:-

- (a) a reference to "termination" of the Building Contract includes any suspension (otherwise than temporarily for proper safety or operational reasons) or termination of the Contractor's employment and/or activities under it (and the verb to "terminate" shall be construed accordingly);
- (b) with the exception of the definitions contained in clause 1.1, words and phrases defined in any of the Building Contract, the DBFO Contracts and the Financier Direct Agreement shall bear the same meaning herein;
- (c) references to a statute or legislative provision, or a provision of a statute or legislative provision, or any other Law shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment at any time then in force and to all instruments, orders and regulations then in force and made at any time under, or deriving validity from, the relevant statute, provision or Law;
- (d) references to clauses are, unless the context otherwise requires, references to the provisions of this Agreement;
- (e) references in the singular shall include references in the plural and vice versa and words denoting natural persons shall include any other Persons;
- (f) headings shall be ignored in construing this Agreement;
- (g) references to an agreement, deed, instrument, licence or other document (including this Agreement), or to a provision contained in any of these, shall be construed, at the particular time, as a reference to it as it may then have been amended, varied, supplemented, modified, suspended or novated;
- (h) references to a party or the parties include its or their successors and permitted assignees;
- (i) references to the "Assets" of any Person means all or any part of its business, undertaking, property, assets, revenues (including any right to receive revenues) and uncalled capital wherever situated;
- (j) references to a "Person" include any individual, company, corporation, firm, partnership, joint venture, undertaking, association, organisation, trust, state or

Government Authority (in each case, whether or not having separate legal personality); and

- (k) references to the "Winding-up" of a Person also includes the amalgamation, reconstruction, reorganisation, administration, dissolution, liquidation, merger or consolidation of that Person, and any equivalent or analogous procedure under the law of any jurisdiction in which that Person is incorporated, domiciled or resident or carries on business or has Assets.

2. NOTICE OF ASSIGNATION, ACKNOWLEDGEMENTS

2.1 The Security Trustee hereby gives notice to the Contractor and the Guarantor of the assignation in security pursuant to the Summit Assigation by Summit to the Security Trustee of all Summit's rights:

- (a) under the Contract Documents; and
- (b) to receive Insurance Proceeds under all present and future policies of insurance taken out and maintained by Summit pursuant to the DBFO Contracts, the Building Contract and/or in accordance with the third schedule to the Collateral Deed.

2.2 The Contractor and the Guarantor:-

- (a) acknowledge that they have received intimation of the Assigation and confirm that they have not received any notice of any previous assignations or charges over the Contract Documents;
- (b) acknowledge that intimation of the Assigation shall not imply any assumption by the Security Trustee as assignee of the obligations of Summit to the Contractor or the Guarantor under the Building Contract and the Building Contract Guarantee respectively;
- (c) acknowledge that the execution of this Agreement is one of the conditions which must be satisfied before any of the Beneficiaries is obliged to advance Summit moneys, or provide credit support to or on behalf of Summit, under the relevant Finance Documents;
- (d) acknowledge that, pursuant to the Assigation, Summit is not entitled to amend, vary or waive any provision of the Contract Documents without the prior written approval of the Security Trustee and confirm that no amendment, waiver or release of any such rights, interests or benefits shall be effective other than with the prior written consent of the Security Trustee, and that no termination of such rights, interest or benefits shall be effective unless they have given to the Security Trustee written notice of the proposed termination in accordance with and subject to the terms of the Contract Documents; and
- (e) acknowledge that, if they have been notified by the Security Trustee that an Enforcement Event (as defined in the Assigation) has occurred all rights of Summit

to compel performance of the Contract Documents are only exercisable by (or with the prior approval of) the Security Trustee.

- 2.3 The Security Trustee has agreed with Summit that, until such time as the Security Trustee notifies the Contractor and the Guarantor in writing that an Enforcement Event has occurred, Summit may exercise all of the rights referred to in clause 2.1(a) subject to the restrictions on Summit referred to in clauses 2.2 and 14.3.
- 2.4 The Contractor and Guarantor each acknowledges that upon notification in writing to them by the Security Trustee pursuant to clause 2.3:
- (a) all payments under or arising from the Building Contract and Building Contract Guarantee should be made to (or with the prior approval of) the Security Trustee or to its order; and
 - (b) all remedies provided for in the Building Contract and the Building Contract Guarantee or available at law or in equity to Summit are exercisable only by (or with the prior approval of) the Security Trustee.
- 2.5 Summit acknowledges to the Contractor that it is aware of the Contractor's duty to pay the Security Trustee by reason of clause 2.4(a) and Summit waives any claim to such payment whether arising in law or equity to the extent that such payment is made by the Contractor.
- 2.6 Guarantor acknowledges to the Contractor that it is aware of the Contractor's duty to pay the Security Trustee by reason of clause 2.4(a) and Summit waives any claim to such payment whether arising in law or equity to the extent that such payment is made by the Contractor.
- 2.7 Summit acknowledges, accepts and will comply and be bound by, the provisions of clauses 11.1(c) of this Deed.

3. NO TERMINATION WITHOUT NOTICE

The Contractor shall not terminate the Building Contract without giving to the Security Trustee (at the same time as the original thereof is given to Summit) a copy of the notice (a "Default Notice") given by the Contractor under clause 28.1 (Determination by the Contractor) of the Building Contract informing Summit of the occurrence of an event within clause 28.1 of the Building Contract (a "Default"). Any Default Notice shall set out (or be accompanied by) details of the Default(s) which has/have given rise to the ground(s) for service of the Default Notice and details (to the extent then available) of any amounts due and outstanding under the Building Contract at the date of the Default Notice, any obligation of Summit owed to the Contractor under the Building Contract performance of which is then outstanding and supporting information and materials illustrating in reasonable detail the matters specified in the notice given pursuant to this clause. Each of the Contractor and the Guarantor agree and undertake that it shall not, pending the expiry of the 60 day period referred to in clause 4.1 and subject to clause 5.1(c), during the Step-in Period (as hereinafter defined) take any other or further step to terminate, repudiate or revoke any of the Contract Documents.

4. STEP-IN

4.1 Without prejudice to any of the rights of any of the Beneficiaries under any of the Finance Documents as against Summit or any other person (including, without limitation, the right to enforce any security created pursuant to any of the Security Documents and/or the right to appoint a receiver, receiver and manager, administrative receiver or other similar officer), the Contractor and the Guarantor confirms that, on or after any of the following events (each a "Step-In Event"):

- (a) receipt by the Security Trustee of a Default Notice (unless the Contractor has confirmed to the Security Trustee that all defaults under the Building Contract have been remedied and accordingly there are no longer any subsisting grounds on which the Contractor would be entitled to terminate the Building Contract); or
- (b) the delivery by the Security Trustee to the Contractor of a notice stating that a Default Event (as defined in the Collateral Deed) is subsisting,

the Security Trustee may without prejudice to its rights under the Finance Facilities Agreements within a period of 60 days following receipt of a notice under either 4.1(a) or (b) above:-

- (i) appoint a receiver or receiver and manager (a "Receiver") over Summit and/or any or all of its assets (including the Building Contract and the Building Contract Guarantee) in accordance with any of the Security Documents; and/or
- (ii) itself (whether through any attorney, agent or other appointee or otherwise) enter into possession of any or all of Summit's assets in accordance with any of the Security Documents; and/or
- (iii) by notice to the Contractor in accordance with clause 6 (Status of Financiers Nominee), procure that a company or other person (a "Financiers Nominee") controlled by all or any of the Beneficiaries assumes, jointly and severally with Summit, all of Summit's rights under the Building Contract and the Building Contract Guarantee.

4.2 If the Security Trustee takes any action in the terms described in clause 4.1(i) or (ii), it will notify the Contractor that it has done so.

4.3 Any action taken by the Security Trustee in the terms described in clause 4.1(i), (ii) or (iii) is a "Step-in Action". The period from the date that any Step-in Action is taken to the earliest of:-

- (a) the date the corresponding Step-out Action (as defined in clause 7 (Step-out) below) is taken;

- (b) the date on which the Contractor terminates the Building Contract provided that such termination is permitted in accordance with clause 5.1(c) (Suspension of Termination Rights); and
- (c) the date of any transfer under clause 8 (Novation).

is a "Step-in Period".

4.4 During a Step-in Period, no amount shall be payable to the Contractor under or in respect of any:

- (a) Interim Payment Certificate issued under clause 30.2 of the Building Contract; or
- (b) Final Certificate issued under clause 30.9 of the Building Contract.

unless the relevant document is countersigned by the Independent Engineer. The Security Trustee shall instruct the Independent Engineer to countersign any such document submitted to it by the Contractor, Summit or its Receiver promptly upon Summit or its Receiver or the Contractor demonstrating to the Independent Engineer that the relevant certificate is correctly and properly issued in accordance with the terms of the Building Contract, and shall procure that the Independent Engineer does so.

4.5 The Contractor and the Guarantor acknowledge and agree that there is no obligation on the part of the Security Trustee to take any Step-in Action or to exercise any rights available to it under any of the Security Documents (or to exercise any step-in or similar rights available to it under its Direct Agreement with the Trust) in any circumstances, and that the Security Trustee not taking any such action shall not constitute a failure to mitigate loss resulting from breach or termination of the Building Contract.

4.6 The parties to this Agreement acknowledge and agree that the right of the Security Trustee to take the Step-in Action specified in clause 4.1(iii) is a separate and independent contractual right arising under this Agreement and is separate and independent of its and any of the Beneficiaries' rights arising pursuant to the Finance Documents.

5. **SUSPENSION, TERMINATION AND OTHER RIGHTS**

5.1 The Contractor may not terminate the Building Contract:-

- (a) on the grounds that any Step-in Action has been taken;
- (b) on or after the date on which any Step-in Action is taken, on any grounds which gave rise to, or could have given rise to, the issue of a Default Notice prior to that date provided that any amount that is due but unpaid under the Building Contract on that date is paid within twenty days after that date; or
- (c) at any time during the Step-in Period except under clause 28.2 of the Building Contract for failure to pay any amount falling due to the Contractor under the Building Contract during the Step-in Period and, for the avoidance of doubt, the

notice period provided in clause 28.2. of the Building Contract shall apply to any such non-payment.

- 5.2 Except for any action taken in accordance with 5.1(c), during any Step-in Period, the Contractor agrees and undertakes to the Security Trustee that it shall not at any time prevent, obstruct or frustrate the exercise and performance by any of Summit, a receiver, the Financiers Nominee, the Security Trustee or any other Person of any rights or obligations of Summit under the Contract Documents.

6. STATUS OF FINANCIERS NOMINEE

- 6.1 If the Security Trustee gives notice to the Contractor to the effect that a specified Financiers' Nominee is to assume, jointly and severally with Summit, all of Summit's rights under the Building Contract and the Building Contract Guarantee then Summit and the Contractor acknowledge and accept that the following shall happen automatically without requiring action by Summit:

- (a) the Financiers' Nominee shall have the benefit of all of Summit's rights under and in respect of the Building Contract and the Building Contract Guarantee (jointly and severally with Summit);
- (b) the Financiers' Nominee shall be entitled to exercise all of the rights, remedies and discretions of Summit under and in respect of the Building Contract and the Building Contract Guarantee; and
- (c) Summit shall only be entitled to exercise any such rights, remedies and discretions to the extent (if any) that the Security Trustee notifies the Contractor and the Guarantor that it may do so,

and the exercise of such rights, remedies and discretions by the Financiers' Nominee shall be binding on Summit notwithstanding any subsequent action taken pursuant to clause 7(c).

- 6.2 Notwithstanding the above, any monies paid or payable by the Contractor to Summit under the Building Contract during the continuance of any such exercise by the Financiers' Nominee of such rights and discretions of Summit shall (subject to the terms of any notice of assignment of Summit's rights served on the Contractor pursuant to the Debentures) continue to be paid and payable to, and receivable by, Summit in accordance with clause 11.1(b).

7. STEP-OUT

The Security Trustee may at any time:

- (a) procure that any receiver or receiver and manager appointed by it vacates office; or
- (b) withdraw from possession of any or all of Summit's assets; or

- (c) by giving at least ten days' prior written notice to the Contractor, procure that any Financiers' Nominee shall no longer derive any rights under and in respect of this agreement and the Building Contract and the Building Contract Guarantee on and as from the date the notice expires.

Any action taken by the Security Trustee under this clause 7 is a "Step-out Action".

8. NOVATION

8.1 On or after a Step-in Event, the Security Trustee may procure the transfer of all Summit's rights and obligations under the Building Contract and the Building Contract Guarantee to:

- (a) any person to whom Summit's rights and obligations under the Project Documents are novated under clause 5 (Novation) of the Financier Direct Agreement with the Trust; or
- (b) with the consent of the Contractor and the Guarantor (which may not be unreasonably withheld or delayed by either), any other person with the legal capacity, power and authority and the technical competence and technical and financial resources available to perform the obligations of Summit under the Building Contract,

(a "Substitute") by giving the Contractor at least 45 days' prior written notice.

8.2 Upon the later of the expiry of a notice given under clause 8.1 and (if clause 8.1(b) applies) receipt by the Security Trustee of the consents of the Contractor and the Guarantor as required under clause 8.1(b) (the "Effective Date"):

- (a) Summit shall cease to have the benefit of any of its rights, and shall be released from all of its obligations, under and in respect of the Building Contract and the Building Contract Guarantee; and
- (b) the Substitute shall have the benefit of rights and shall assume obligations that are identical to all of those rights and obligations referred to in clause 8.1 (whether they have arisen or arise before, on or after the Effective Date) except that all such rights shall be rights of, and all such obligations shall be obligations owed by, the Substitute instead of Summit.

8.3 The Security Trustee may require Summit, the Contractor and the Guarantor to enter into a novation agreement with the Security Trustee and the Substitute in the form of Schedule 1 (a "Novation Agreement") and, if so requested by the Security Trustee, the Contractor, the Guarantor and Summit hereby undertake forthwith to enter into such Novation Agreement. Each of Summit, the Contractor and the Guarantor hereby irrevocably appoints the Security Trustee to be its attorney to execute such Novation Agreement on its behalf.

9. NOTIFICATION OF BREACH

The Contractor shall promptly notify the Security Trustee of any material breach of the Building Contract by Summit (giving reasonable details thereof) of which it is aware and which continues unremedied or unwaived and which constitutes or would (with the passage of time, the giving of notice, the making of any determination, the fulfilment of any other applicable condition or any combination thereof) constitute a Trigger Event or Default Event (as defined in the Collateral Deed).

10. WARRANTIES

Each of the Contractor and the Guarantor warrants for the benefit of the Security Trustee, on behalf of the Beneficiaries, that:-

- 10.1 It is a limited liability company duly organised and validly existing under the laws of England and Wales with power to enter into, exercise its rights and perform its obligations under, and deliver, the Contract Documents to which it is or will be a party and the transactions contemplated by the Contract Documents and has taken all corporate, legislative, administrative and other action required to authorise its execution thereof and its performance of its obligations thereunder has been duly taken.
- 10.2 All necessary authorisations required as at the date hereof in connection with the entry into, and performance of and/or the validity and enforceability against it of, and the obligations expressed to be assumed by it in, the Contract Documents to which it is or will be a party have been obtained or effected (as appropriate) and are in full force and effect, other than any necessary registration of any of the Contract Documents pursuant to the RTPA and so far as it is aware no steps have been taken to revoke or cancel any authorisation obtained or effected.
- 10.3 Subject to any necessary registration of any of the Contract Documents pursuant to the RTPA, the obligations expressed to be assumed by it in the Contract Documents to which it is or will be a party are legal, valid and binding obligations enforceable on it in accordance with the terms thereof. This warranty is made subject to:-
- (a) the limitation of enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws affecting the rights of creditors generally;
 - (b) the principle that equitable remedies may be granted or refused at the discretion of the court;
 - (c) the time barring or prescription of claims; and
 - (d) defences of plea of compensations, set-off or counterclaim (to the extent not purportedly excluded by the terms of any relevant agreements).
- 10.4 It has not taken any corporate action or any other steps, nor have legal proceedings been served on it or (to the best of its knowledge and belief) threatened against it for its winding-

up, dissolution, administration or reorganisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any material part or all of its assets or revenues.

- 10.5 Its execution of the Contract Documents to which it is or will be a party and its exercise of its rights and performance of its obligations thereunder and the transactions contemplated thereby do not and will not:
- (a) conflict in any material respect with any agreement, mortgage, bond or other instrument or treaty to which it is a party or which is binding upon it or which affects any of its material assets;
 - (b) conflict with its Memorandum or Articles of Association; or
 - (c) conflict in any material respect with any applicable law or regulation or official or judicial order.
- 10.6 Its audited accounts for the year ended 31st October 1997 and as delivered to the Security Trustee (with copies of the related directors' and auditors' reports), pursuant to clause 11.1(m):-
- (a) include such financial statements as are required by the laws of England and Wales and are prepared in accordance with Applicable Accounting Principles;
 - (b) save as stated in the notes thereto, were prepared and audited in accordance with the laws of England and Wales and Applicable Accounting Principles as consistently applied;
 - (c) together with those notes, give a true and fair view of its financial condition and operations as at that date and for the year then ended.
- 10.7 No meeting has been convened for its Winding-up, no such step is intended by it and, so far as it is aware, no petition, application or the like is outstanding for its Winding-up.
- 10.8 So far as it is aware, no litigation, arbitration or administrative proceeding is current or pending to restrain its entry into, exercise of any rights under and/or performance or enforcement of or compliance with its obligations under this agreement.
- 10.9 So far as it is aware, there are no material facts in relation to the Contractor or the Guarantor and/or the Guarantor's Subsidiaries and/or the assets and affairs of the Contractor or the Guarantor and/or the Guarantor's Subsidiaries which have not been disclosed to AMBAC before the date of the Collateral Deed and which, if disclosed, might reasonably be expected adversely to affect the decision of a Person considering whether to provide finance to Summit.
- 10.10 The Contract Documents contain all the terms of the agreement between the Contractor and Summit with respect to the subject matter of the Contract Documents.

- 10.11 The Guarantor beneficially owns all of the issued share capital of the Contractor.
- 10.12 Without prejudice to any other liability of the Contractor in connection with the Building Contract, the Contractor has complied with and will continue to comply with the Building Contract and has exercised and will continue to exercise all necessary skills, care and diligence expected of a contractor experienced in constructing projects of a similar size, scope, nature, complexity and value as the Works.
- 10.13 The Works will, on completion:-
- (a) satisfy all performance specifications and other requirements contained or referred to or implied in the Building Contract; and
 - (b) comply with all applicable statutory requirements.

Each of the Contractor and the Guarantor acknowledges that each of the Beneficiaries has entered into the Finance Documents to which each is a party in reliance upon such representations and warranties.

- 10.14 A breach by the Contractor of either of the warranties contained in Clauses 10.12 or 10.13 shall not operate to impose any liability on the Contractor which is greater in scope or quantum than the liability imposed on the Contractor in respect of such breach under the Building Contract.

11. UNDERTAKINGS

- 11.1 The Contractor and the Guarantor each undertake for the benefit of the Security Trustee on behalf of the Beneficiaries that it shall:
- (a) not transfer any of its rights or obligations (if any) under or in respect of the Building Contract or the Building Contract Guarantee to any Person (except in accordance with clause 6.1 of the Guarantee Bond);
 - (b) (unless and until the Security Trustee otherwise directs or agrees) pay all amounts payable to Summit under, or (in the case of Guarantor) in respect of, clause 24 (Damages for Non-Completion) of the Building Contract directly to the Receipts Account and pay all other amounts payable by it under or in respect of the Building Contract or the Building Contract Guarantee directly to the Receipts Account, in each case without any plea of compensation, set-off, deduction or counterclaim of any kind except for a plea of compensation or set-off in relation to amounts due and payable under the Building Contract;
 - (c) not accept, or be entitled to act or rely upon, any notice given by or on behalf of Summit and purporting to terminate the Building Contract unless it is countersigned by the Security Trustee;

- (d)
 - (i) not take or support any action for the winding-up, administration, receivership, voluntary arrangement, dissolution or any similar insolvency procedure in relation to any member of the Summit Group;
 - (ii) not compete with any of the Beneficiaries on a liquidation of any member of the Summit Group nor claim to be subrogated to any rights of any of the Beneficiaries;
- (e)
 - (i) not and shall procure that no person acting on its behalf will seek any specific relief or order (whether in the courts or under any disputes resolution procedure applicable to any agreement or otherwise) if that relief or order could constitute or give rise to any encumbrance, security interest or restriction (including, without limitation, any charging order or garnishee order) over any of the assets of any member of the Summit Group;
 - (ii) not and shall procure that no person acting on its behalf will take any proceedings to enforce by any means (including, without limitation, charging order, garnishee order, an order for specific implement and any form of diligence) against any member of the Summit Group, any judgment or decree of a court or any certificate or other document which is treated as equivalent to such a decree or as a warrant for diligence and will not exercise any diligence available to it on the dependence of an action;
- (f) ensure that the Security Trustee and any person(s) designated by it is (upon request) given access to the Site, the Works and the Contractor's records;
- (g) if so requested by the Security Trustee or any person(s) designated by it, meet with the Security Trustee and/or such person(s) at reasonable times and on reasonable notice in order to discuss and review the progress of the Works.
- (h) without prejudice to clause 3, deliver to the Security Trustee, at such time as it shall deliver the same to Summit, a copy of any notice, information, or other communication that it reasonably considers should be forwarded to the Security Trustee;
- (i) accept as valid any notices or demands given or made by the Security Trustee or a receiver under or pursuant to the Contract Documents in place of Summit;
- (j) save with the prior written consent of the Security Trustee, not agree to or concur in any action by Summit which would contravene in any respect the terms of the Assignations notified to it;
- (k) save with the prior written consent of the Security Trustee, not agree to or make any amendment or variation of the Contract Documents or agree to any release or waiver of any term, provision or condition of the Contract Documents;
- (l) save with the prior written consent of the Security Trustee, not assign all or any benefit, title, right interest or obligations under the Contract Documents or any part

thereof or sell, or otherwise dispose of, the benefit or all or any part of its benefit, title, rights or interest in and to the Contract Documents or any part thereof;

- (m) deliver to the Security Trustee a copy of the Contractor's annual audited accounts and the Guarantor's annual audited consolidated accounts in each case as soon as the same are available and in any event within 270 days of the financial year to which they relate; and
 - (n) notify the Security Trustee (promptly upon becoming aware of the same) of the occurrence of any event or circumstance that causes, or may reasonably be expected to cause, any of the warranties set out in clause 10 to be incorrect or misleading in any material respect.
- 11.2 Without prejudice to any obligation of a Financiers' Nominee or the Security Trustee or (as the case may be) a receiver pursuant to a Step-In Event, each of the Contractor and the Guarantor hereby agrees and accepts that none of a Financiers' Nominee or the Security Trustee or (as the case may be) a receiver shall have any obligations (whether in place of Summit or otherwise) under the Contract Documents.
- 11.3 The Contractor and the Guarantor each hereby confirms to the Security Trustee that it has not, on or prior to the date hereof, received any notice of any assignment, charge, pledge, mortgage or other encumbrance of or regarding any of the Contract Documents or any right, title, benefit or interest of Summit thereunder (other than the notice served under clause 2).
- 11.4 The Contractor and the Guarantor acknowledge that the taking out and maintenance of, as well as the making of claims under, insurances by Summit is regulated in the manner set out in the third schedule to the Collateral Deed and agree that the proceeds of such insurances shall be applied and dealt with in accordance with such Schedule and the Accounts Agreement referred to therein.
- 11.5 The Contractor further acknowledges and hereby agrees that if the Building Contract is terminated, Summit or the Financiers' Nominee shall be entitled to appoint a replacement contractor and in so doing will be deemed to have fully satisfied any duty on it to mitigate with respect to the appointment of that replacement contractor in accordance with the terms of the Building Contract if:
- (a) it (or anyone on its behalf) has invited or solicited bids from a reasonable number of suitably qualified contractors to act as the replacement contractor (or undertaken any analogous procedure); and
 - (b) Summit or the Financiers' Nominee has appointed as the replacement contractor the contractor who submitted a tender to complete the Works which, in the reasonable opinion of Summit or the Financiers' Nominee (as appropriate), was the most competitive tender to complete the Works.
- 11.6 The Contractor further acknowledges and hereby agrees that if a replacement contractor is appointed it shall, if requested by Summit or the Financiers' Nominee, assign to the

replacement contractor the benefit of any agreement for supply of goods and materials entered into by the Contractor in relation to the Building Contract.

- 11.7 If any of the Contractor and the Guarantor receives any amount in contravention of the provisions of clause 11.1 (d) or (e) it shall immediately turn the same over to the Security Trustee for the account of the Beneficiaries and pending such payment hold the same on trust for the Beneficiaries provided that such trust shall not create any security over such amount.
- 11.8 The Contractor hereby grants to the Security Trustee an irrevocable, royalty-free license to copy and use the Contract Documents and to reproduce the designs and content of them for any purpose relating to the Contract Documents, the DBFO Contracts or the Finance Documents, including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Hospital.

12. **CONTRACTOR DEFAULT**

- 12.1 The Contractor shall make good and hold harmless the Security Trustee and the Beneficiaries or any receiver against all liabilities, losses, proceedings, claims, costs and expenses of whatever nature which any of them may suffer, incur or sustain arising by virtue of the issue of any Step-in Undertakings pursuant to the Financier Direct Agreement, where issued as a result of a default by the Contractor under the Building Contract (provided that none of the Security Trustee, the Beneficiaries or any receiver shall be entitled to recover twice in respect of the same loss and that this clause shall not operate to impose any liability on the Contractor which is greater in quantum than the liability imposed on the Contractor under the Building Contract).
- 12.2 Summit (and the Security Trustee if it has perfected its rights under the legal assignment of the DBFO Contracts effected pursuant to the Debenture) undertakes to the Contractor and the Guarantor to enforce its rights under the DBFO Contracts, and the Security Trustee undertakes to enforce its rights under the Direct Agreement in order to procure (so far as able) payment by the Trust of any compensation payable to Summit and/or the Financiers (or their agent) upon termination of the DBFO Contracts.

13. **CONTINUATION OF BUILDING CONTRACT GUARANTEE**

The Guarantor confirms that its obligations under and in respect of the Building Contract Guarantee shall continue in full force and effect notwithstanding any Step-in Action or Step-out Action, any novation under clause 8 (Novation) or the exercise by any Financiers Nominee of any rights or discretions of Summit and the Security Trustee or any Receiver, Financiers Nominee or Substitute (or any their respective successors or assigns) may exercise the rights of Summit under and in respect of the Building Contract Guarantee in accordance with its terms.

14. **NO WAIVERS, ETC.**

- 14.1 A waiver given or consent granted by the Security Trustee under this Agreement will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
- 14.2 If at any time any one or more of the provisions of this Agreement is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof shall not be in any way affected or impaired thereby.
- 14.3 No failure or delay by the Security Trustee in exercising any right under or in respect of this agreement shall operate as a waiver of that right or prejudice any further exercise of any such rights, and such rights may be exercised as often as necessary and are cumulative and not exclusive of any rights or remedies provided by law.
- 14.4 To the extent that this agreement and the Building Contract are inconsistent, this Agreement shall prevail and the Building Contract is deemed to be amended accordingly (but without conferring any rights on Summit and without limiting the Contractor's obligations under the Building Contract). Any purported action of the Contractor or the Guarantor that contravenes any provision of this Agreement shall, as between the parties to this Agreement (including Summit), be of no effect, save that this clause 14.4 shall not preclude the Security Trustee or any of the Beneficiaries from exercising any rights or remedies that it or they may have against the Contractor or the Guarantor as a result of it taking such action.
- 14.5 The Contractor and the Guarantor acknowledge and agree that clauses 8 (General Positive Covenants), 9 (Summit Specific Covenants), 12 (General Negative Covenants) and 13 (Summit Specific Covenants) of the Collateral Deed contain certain restrictions on Summit's actions in relation to the Building Contract and that none of them will have any right to take any action (such as, without limitation, an action for damages or seeking an injunction or specific performance or for an interdict or specific implement) against Summit or any Beneficiary in respect of any such restriction or any of their effects, provided always that the provisions of this clause shall not affect or restrict the Contractor's right to be paid sums due and payable under the Building Contract together with interest for late payment where due under the terms of such contract.

15. **RIGHTS OF ACTION**

The parties to this agreement acknowledge that any Beneficiary or Beneficiaries may bring legal proceedings in relation to this agreement as assignees of any right of action which may arise in relation to this agreement and which would otherwise be competent to the Security Trustee and the Security Trustee acknowledges and the other parties agree that the Security Trustee may formally grant assignments of any such right of action in favour of any Beneficiary or Beneficiaries for that purpose.

16. **LATE PAYMENT**

Any amount due and payable under this agreement shall, if not paid when due, bear interest (as well after as before judgment) at the Interest Rate, (as defined in the Building Contract)

which interest shall be payable on demand, from the date such amount is due and payable until the date of payment in full of such amount and interest.

17. TAXES

17.1 Any sum payable by the Contractor or the Guarantor to Summit or (as the case may be) the Security Trustee under this Agreement shall be made free and clear of any withholding or deduction for on account of any taxation except to the extent required by law. If any such withholding or deduction is so required, the sum payable by the Contractor or the Guarantor shall be increased as may be necessary so that after making all required withholdings or deductions (including any withholding or deductions applicable to additional amounts payable under this clause) Summit or the Security Trustee receives and retains an amount equal to the sum it would have received had no such deduction been made.

17.2 If any sum payable by the Contractor or the Guarantor in accordance with this agreement shall be subject to a charge to taxation in the hands of Summit or the Security Trustee, the sum payable shall be increased to such sum as will ensure that after payment of such taxation Summit or the Security Trustee shall be left with a sum equal to the sum that it would have received in the absence of such charge to taxation, provided that the Contractor or the Guarantor shall not be required to make an increased payment (a "Tax Payment") under this clause to the extent that the Tax Payment represents the taxation properly chargeable in respect of the profit element due to Summit or the Security Trustee in respect of any amounts payable by the Contractor, or the Guarantor to Summit or the Security Trustee pursuant to this Agreement.

18. DURATION

18.1 This agreement shall commence on the date hereof and shall continue in full force and effect until all the obligations of the Contractor under this agreement and the Building Contract, and all the obligations of the Guarantor under this agreement and the Building Contract Guarantee, have been fully performed, satisfied or complied with.

18.2 The Security Trustee shall notify the Contractor and the Guarantor in writing as soon as is reasonably practicable after this agreement ceases to have effect.

19. GUARANTEE

19.1 The Guarantor irrevocably and unconditionally guarantees to the Security Trustee the due performance and observance by the Contractor of each and all of the obligations, warranties, duties and undertakings of the Contractor under this Agreement.

19.2 The Guarantor agrees that if the Contractor shall in any respect fail to perform any of its obligations under this Agreement or breach any of the terms and conditions of it then the Guarantor will indemnify the Security Trustee against all losses, damages, expenses, liabilities, claims, costs or proceedings which the Security Trustee may suffer or incur by reason of the said failure or breach; provided that the Guarantor's liability under this Agreement shall not exceed that of the Contractor under this Agreement on the basis that

this Agreement is valid, binding and enforceable on the Contractor and has full force and effect.

19.3 The Guarantor covenants and agrees that any act, event, circumstance or omission which but for the provisions of this clause 19.3 may affect, change or release the Guarantor from its obligations under the guarantee contained in this clause 19, including, without limitation:-

- (i) waiver by the Security Trustee of any terms, provisions, conditions, obligations and agreements of or under this Agreement or any failure to make demand upon or take action against the Contractor;
- (ii) any modification or changes, however fundamental, to this Agreement;
- (iii) the giving by the Security Trustee of any consent to an assignment or the making of any assignment of this Agreement;
- (iv) the granting of extensions of time or other indulgence to the Contractor; and
- (v) any dealings between the Security Trustee and the Contractor; and

may be made and done without notice to or the consent of the Guarantor and no such act, event, circumstance or omission shall in any way affect, change or release the Guarantor from its obligations under this Agreement and the liability of the Guarantor hereunder shall not be in any way affected thereby.

19.4 The Guarantee contained in this clause 19 shall remain in full force and effect until performance in full of the terms, conditions, obligations and agreements on the part of the Contractor contained in this Agreement notwithstanding any act, event, circumstance or omission which but for the provisions of this clause 19.4 may affect, change or release the Guarantor from its obligations under such guarantee, including, without limitation:-

- (i) the insolvency, liquidation, receivership, reorganisation, amalgamation, reconstruction or any analogous event of the Contractor, the Guarantor or any other person;
- (ii) any disclaimer of this Agreement by a liquidator of the Contractor, the Guarantor or any other person;
- (iii) any change in the status, function, control or ownership of the Contractor; and/or
- (iv) unenforceability or invalidity of any obligations of the Contractor so that such guarantee shall be construed as if there were no such unenforceability or invalidity.

19.5 Until the terms, conditions, obligations and agreements on the part of the Contractor contained in the Building Contract have been unconditionally and irrevocably performed in full the Guarantor shall not by virtue or as a result of any payment or performance by it under this Clause 19 in respect of the Contractor:-

- (a) be subrogated to any rights, security or moneys held or received or receivable by the Security Trustee; or
 - (b) receive, claim or have the benefit of any payment, distribution, security or indemnity from the Contractor; or
 - (c) unless so directed by Summit (when the Guarantor will prove in accordance with such directions) claim as a creditor of the Contractor in competition with the Security Trustee.
- 19.6 The Guarantor shall hold in trust for the Security Trustee and forthwith pay or transfer (as appropriate) to the Security Trustee any such payment (including an amount equal to any such set-off), distribution or benefit of such security, indemnity or claim in fact received by it in breach of clause 19.5.
- 19.7 As a separate and alternative stipulation the Guarantor unconditionally and irrevocably agrees that any sum expressed to be payable by it or obligation to be performed by it under this clause 19 but which is for any reason (whether or not now existing and whether or not now known or becoming known to the Guarantor) not recoverable from or enforceable against the Guarantor on the basis of a guarantee shall nevertheless be recoverable from or enforceable against the Guarantor as if the Guarantor were the sole principal debtor or obligor (where relevant).

20. NOTICES

- 20.1 Save as specifically otherwise provided in this Agreement any notice, demand or other communication to be served under this Agreement may be served upon a party hereto only by posting by first class post or delivering the same by hand to the party to be served at its address shown above or at such other address as it may from time to time notify in writing to the other parties hereto.
- 20.2 A notice or demand served by first class post shall be deemed duly served on the second business day after the date of posting and a notice or demand sent by hand shall be deemed to have been served at the time of delivery unless served after 5.00 pm in the place of intended receipt in which case it will be deemed served at 9.00 a.m. on the following business day. For the purposes of this paragraph "business day" means a day on which commercial banks are open for business in Edinburgh and London.
- 20.3 In proving service of any notice it will be sufficient to prove, in the case of a letter, that such letter was properly stamped or franked first class, addressed and placed in the post.

21. GOVERNING LAW

This agreement is governed by and shall be construed in accordance with the law of Scotland.

22. GOVERNING JURISDICTION

Each of the persons constituting the Contractor, the Guarantor, Summit, AMBAC and the Security Trustee separately prorogate the non-exclusive jurisdiction of the Court of Session in Scotland in relation to any disputes arising hereunder.

IN WITNESS whereof this agreement has been executed as follows:

Subscribed for and on behalf of)
SIR ROBERT M'ALPINE LIMITED)
at)
on day of 1998)
acting by)
in the presence of

Witness.....
Full name
Address
.....
.....

Subscribed for and on behalf of)
NEWARTHILL PLC)
at)
on day of 1998)
acting by)
in the presence of

Witness.....
Full name
Address
.....
.....

Subscribed for and on behalf of)
SUMMIT HEALTHCARE (LAW))
LIMITED)
at)
on day of 1998)
by Director)
Director

and

Director/Secretary

.....
Director/Secretary

Subscribed for and on behalf of)
ROYAL EXCHANGE TRUSTEE)
NOMINEES LIMITED)

at
on day of 1998

by its attorney
in the presence of:

Witness:
Name:
Address:

.....
Attorney

Subscribed for and on behalf of)
AMBAC INSURANCE UK LIMITED)
at)

on day of 1998

by its attorney
in the presence of:

Witness:
Name:
Address:

.....
Attorney

APPENDIX

This is the Appendix 1 referred to in clause 8.2 of the foregoing Building Contract Direct Agreement.

FORM OF NOVATION AGREEMENT

AGREEMENT BETWEEN:-

- (1) (the "Substitute"); and
- (2) **ROYAL EXCHANGE TRUSTEE NOMINEES LIMITED** (the "Security Trustee") as agent and trustee for itself and each of the other parties to the Building Contract Direct Agreement (as defined below) other than AMBAC (as defined therein).

RECITALS

- (A) The Security Trustee, Summit Healthcare (Law) Limited ("**Summit**") and certain other parties have entered into a building contract direct agreement (the "**Building Contract Direct Agreement**") dated , 1998 in relation to a contract dated , 1998 for design, construction, fitting out and commissioning of New Law District General Hospital (the "**Building Contract**").
- (B) The Substitute has agreed to become and be bound as the Substitute as defined in the Building Contract Direct Agreement.

THE PARTIES AGREE AS FOLLOWS:-

1. INTERPRETATION

Capitalised terms defined in the Building Contract Direct Agreement shall have the same meaning in this agreement.

2. NOVATION

2.1 On the Effective Date:

- (a) Summit shall cease to have the benefit of any of its rights, and shall be released from all of its obligations, under and in respect of the Building Contract and the Building Contract Guarantee; and
- (b) the Substitute shall have the benefit of such rights and shall assume obligations that are identical to all of the rights and obligations of Summit under the Building Contract and all of its rights under the Building Contract Guarantee (whether in each case they shall have arisen or arise before, on or after the Effective Date) except that all such rights shall be rights owed to, and all such obligations shall be obligations owed by, the Substitute instead of Summit.

Schedule

Part 7 - Collateral Warranty Agreements

- (a) Contractor to Trust

- (b)
 - (i) Consultant to Summit - Hulley & Kirkwood
 - (ii) Consultant to Summit - Thornburn Colquhoun
 - (iii) Consultant to Summit - Percy Thomas Partnership

- (c)
 - (i) Consultant to Financiers - Hulley & Kirkwood
 - (ii) Consultant to Financiers - Thornburn Colquhoun
 - (iii) Consultant to Financiers - Percy Thomas Partnership

- (d)
 - (i) Consultant to Trust - Hulley & Kirkwood
 - (ii) Consultant to Trust - Thornburn Colquhoun
 - (iii) Consultant to Trust - Percy Thomas Partnership

- (e) Sub-Contractor to Summit

- (f) Sub-Contractor to Financiers

- (g) Sub-Contractor to Trust

The forms of Collateral Warranty Documents follow this page

Schedule

Part 7(a) - Collateral Warranty - Contractor to Trust

WARRANTY AGREEMENT

THIS AGREEMENT

BETWEEN:-

- (1) Sir Robert McAlpine Limited whose registered office is situated at Eaton Court, Maylands Avenue, Hemel Hempstead, Herts HP2 7TR ("the Contractor"); and
- (2) Summit Healthcare (Law) Limited whose registered office is situated at Saltire Court, 20 Castle Terrace, Edinburgh EH1 2EN ("Summit"); and
- (3) Law Hospital National Health Service Trust a body corporate established by an order (S.I. 1993 No. 2929 (S.263)) as amended by an amendment order (S.I. 1995 No. 741 (S.67)) made by the Secretary of State under Section 12A of the National Health Service (Scotland) Act 1978 ("the Trust" which term shall include all permitted assignees under this Agreement).

WHEREAS

- A. The Trust has entered into agreements ("the DBFO Contracts") with Summit for inter alia the provision of a new hospital at Netherton to be known as the New Law District General Hospital ("the Works" which term shall include any changes made to the building works in accordance with the Building Contract referred to in Recital B).
- B. By a contract ("the Building Contract" which term shall include any enforceable agreements reached between Summit and the Contractor and which arise out of and

relate to the same) dated or on about the date hereof Summit has appointed the Contractor to carry out and complete the Works.

NOW IT IS HEREBY AGREED as follows

1. The Contractor warrants that it has complied and will continue to comply with the Building Contract.
 - 1.1 The Contractor shall be entitled in any action or proceedings by the Trust to rely on any limitation in the Building Contract and to raise the equivalent rights in defence of liability other than a counter claim which the Trust can demonstrate was not in existence at the time of the said action or proceedings as it would have against Summit under the Building Contract.
2. Without prejudice to the generality of Clause 1, the Contractor further warrants that unless otherwise authorised in writing by Summit none of the following has been used in the Works:
 - 2.1 high alumina cement in structural elements;
 - 2.2 wood wool slabs in permanent formwork to concrete;
 - 2.3 calcium chloride in admixtures for use in reinforced concrete;
 - 2.4 asbestos products;
 - 2.5 naturally occurring aggregates for use in reinforced concrete which do not comply with British Standard 882: 1983 and/or naturally occurring aggregates for use in concrete which do not comply with British Standard 8110: 1985;
 - 2.6 Any other goods, material or equipment which are themselves or which incorporate substances which are stated in the Building Contract to be prohibited or which are generally known at the time of use to be deleterious to health and safety or to the durability of the completed Works in the particular circumstances in which they are

used or which otherwise are not in accordance with British Standards, Codes of Practice or good building practice or techniques.

3. The Trust has no authority to issue any direction or instruction to the Contractor in relation to the Building Contract. The Trust has no liability to the Contractor in relation to amounts due under the Building Contract.
4. The copyright in all drawings, reports, models, specifications, bills of quantities, calculations and other documents and information prepared by or on behalf of the Contractor in connection with the Works (together referred to in this Clause 4 as "the Documents") shall remain vested in the Contractor but subject to Summit having discharged his obligations to pay all monies certified as due/properly due under the Building Contract the Trust or its appointee shall have an irrevocable royalty-free, non-exclusive licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Works including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Works. Such licence shall be transferable by the Trust to third parties. The Contractor shall not be liable for any use by the Trust or its appointee of any of the Documents for any purpose other than that for which the same were prepared by or on behalf of the Contractor.
5. The Contractor shall take out and maintain professional indemnity insurance in an amount of ten million pounds £10,000,000 for any one claim in any one period of insurance for such time as he has obligations (whether contingent or otherwise) pursuant to the Building Contract, provided such insurance is generally available at commercially reasonable rates. The Contractor shall immediately inform the Trust if such insurance is not or ceases to be available at commercially reasonable rates in order that the Contractor and the Trust can discuss the means of best protecting the Contractor in the absence of such insurance. As and when it is reasonably requested to do so by the Trust or its appointee, the Contractor shall produce for inspection documentary evidence that is professional indemnity insurance is being maintained.
6. This agreement may be assigned by the Trust to another person acquiring the Trust's interest in the Works without the consent of Summit or the Contractor being required

and such assignation shall be effective upon written notice thereof being given to Summit and to the Contractor. No further or other assignation of this Agreement shall be permitted save as is expressly provided for herein.

7. Any notice to be given by the Contractor or Summit hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the Trust at its registered office and any notice given by the Trust hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to Summit or the Contractor at its registered office, and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed (subject to proof to the contrary) to have been received forty eight hours after being posted.
8. The construction validity and performance of this Agreement shall be governed by Scots law and the parties agree to prorogate the jurisdiction of the Scottish Courts.
9. The obligations and liabilities of the Contractor under this Agreement shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the Trust or by the appointment of any person, firm or other entity by the Trust to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or other entity to the Trust arises in connection therewith.

IN WITNESS

Schedule

Part 7(b)(i) - Collateral Warranty - Consultant to Summit - Hulley & Kirkwood

WARRANTY AGREEMENT

THIS AGREEMENT

BETWEEN:

- (1) **HULLEY & KIRKWOOD** whose registered office is situated at 15-16 Woodside Place, Glasgow, G3 7QS ("the Firm");
- (2) **SIR ROBERT McALPINE LIMITED** whose registered office is situated at Eaton Court, Maylands Avenue, Hemel Hempstead, Herts, HP2 7TR ("the Contractor") which term shall include all permitted assignees under this agreement).
- (3) **SUMMIT HEALTHCARE (LAW) LIMITED** whose registered office is situated at Saltire Court, Castle Terrace, Edinburgh, EH1 ("the Company"); and

WHEREAS:-

- A. The Company has entered into a building contract ("the Agreement") with the Contractor for inter alia the provision of a new hospital at Netherton to be known as the New Law District General Hospital ("the Development").
- B. By a contract ("the Appointment") dated on or about the date hereof the Contractor has appointed the Firm as consulting building services engineers in connection with the Development.

NOW IN CONSIDERATION OF THE PAYMENT OF ONE POUND (£1) BY THE COMPANY TO THE FIRM (RECEIPT OF WHICH THE FIRM ACKNOWLEDGES) IT IS HEREBY AGREED as follows:-

1. The Firm warrants to the Company and undertakes that-
 - 1.1 in respect of all professional services performed and to be performed by the Firm in connection with the Development pursuant to the Appointment, it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified professional engineer who has held itself out as competent to perform such services and who has performed such services in relation to developments of a similar size, scope, nature, complexity and value as the Development; and
 - 1.2 it has complied and shall continue to comply promptly and efficiently with the terms of and has fulfilled and shall continue to fulfil its duties and obligations set out in the Appointment.
 - 1.3 the Firm shall be entitled in any action or proceedings by the Company to raise the equivalent rights in defence of liability (other than a counter claim) as it would have against the Contractor under the Appointment.
2. Without prejudice to the generality of Clause 1, the Firm further warrants that it has exercised and will continue to exercise reasonable skill and care to see that, unless authorised by the Contractor in writing or, where such authorisation is given orally, confirmed by the Firm to the Contractor in writing, none of the following has been or will be specified by the Firm for use in the construction of those parts of the Development to which the Appointment relates:-
 - 2.1 high alumina cement in structural elements;
 - 2.2 wood wool slabs in permanent formwork to concrete or in structural elements;
 - 2.3 calcium chloride in admixtures for use in reinforced concrete;
 - 2.4 asbestos products;

- 2.5 naturally occurring aggregates for use in reinforced concrete which do not comply with British Standard 882: 1983 and/or naturally occurring aggregates for use in concrete which do not comply with British Standard 8110: 1985;
- 2.6 Any other goods, material or equipment which are themselves or which incorporate substances which are stated in the Building Contract to be prohibited or which are generally known at the time of specification to be deleterious to health and safety or to the durability of the completed Works in the particular circumstances in which they are used or which otherwise are not in accordance with British Standards, Codes of Practice or good building practice or techniques.
3. The Company has no authority to issue any direction or instruction to the Firm in relation to performance of the Firm's services under the Appointment unless and until the Company has given notice under Clauses 5 or 6.
4. The Firm acknowledges that the Contractor has paid all fees and expenses properly due and owing to the Firm under the Appointment up to the date of this Agreement. The Company has no liability to the Firm in respect of fees and expenses under the Appointment unless and until the Company has given notice under Clauses 5 or 6.
5. The Firm agrees that, in the event of the termination of the Finance Agreement by the Company, the Firm will, if so required by notice in writing given by the Company and subject to Clause 7, accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the Development upon the terms and conditions of the Appointment. The Contractor acknowledges that the Firm shall be entitled to rely on a notice given to the Firm by the Company under this Clause 5 as conclusive evidence for the purposes of this Agreement of the termination of the Finance Agreement by the Company.
6. The Firm further agrees that it will not without first giving the Company not less than twenty one days' notice in writing exercise any right it may have to terminate the Appointment or to treat the same as having been repudiated by the Contractor or to discontinue the performance of any services to be performed by the Firm pursuant thereto. Such right to terminate the Appointment with the Contractor or treat the same

as having been repudiated or discontinue performance shall cease if, so Contractor then such period of notice and subject to Clause 7, the Company shall give notice in writing to the Firm requiring the Firm to accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the Development upon the terms and conditions of the Appointment.

7. It shall be a condition of any notice given by the Company under Clauses 5 or 6 that the Company or its appointee accepts liability for payment of the fees and expenses payable to the Firm under the Appointment and for performance of the Contractor's obligations excluding payment of any fees and expenses outstanding at the date of such notice. Upon the issue of any notice by the Company under Clauses 5 or 6, the Appointment shall continue in full force and effect as if no right of termination on the part of the Firm had arisen and the Firm shall be liable to the Company and its appointee under the Appointment in lieu of its liability to the Contractor. If any notice given by the Company under Clauses 5 or 6 requires the Firm to accept the instructions of the Company's appointee, the Company shall be liable to the Firm as guarantor for the payment of all sums from time to time due to the Firm from the Company's appointee.
8. The copyright in all drawings, reports, models, specifications, plans, schedules, bills of quantities, calculations and other similar documents provided by the Firm in connection with the Development (together referred to in this Clause 8 as "the Documents") shall remain vested in the Firm but, the Company and its appointee shall have an irrevocable royalty-free licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Development including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Development. Such licence shall be transferable to third parties and shall carry the right to grant sub-licences. The Firm shall not be liable for any misuse by the Company or its appointee of any of the Documents.
9. The Firm shall maintain professional indemnity insurance in an amount of not less than the amount required by the Appointment for any one claim for the period required by the Appointment, provided always that such insurance is generally available at

commercially reasonable rates. The Firm shall immediately inform the Company if such insurance ceases to be available at commercially reasonable rates in order that the Firm and the Company can discuss means of best protecting the respective positions of the Company and the Firm in respect of the Development in the absence of such insurance. As and when it is reasonably requested to do so by the Company or its appointee under Clauses 5 or 6, the Firm shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

10. The Contractor has agreed to be a party to this Agreement for the purposes of acknowledging that the Firm shall not be in breach of the Appointment by complying with the obligations imposed on it by Clauses 5 and 6.
11. This Agreement may be assigned by the Company by way of absolute legal assignment to any other person, firm or company acquiring the Company's interest in the Development without the consent of the Contractor or the Firm being required and such assignation shall be effective upon written notice thereof being given to the Contractor and to the Firm. No further or other assignation of this Agreement shall be permitted save as is expressly provided for herein.
12. Any notice to be given by the Firm hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the Company at its registered office and any notice given by the Company hereunder shall be deemed to be duly given if it is addressed to "The Senior Partner" / "The Managing Director" and delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the Firm or to the principal business address of the Firm for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received forty eight hours after being posted.
13. The construction validity and performance of this Agreement shall be governed by Scots Law and the parties agree to prorogate the jurisdiction of the Scottish Courts.
14. The obligations and liabilities of the Firm under this Agreement shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried

out by Summit or by the appointment of any person, firm or other entity by Summit to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or other entity to Summit arises in connection therewith.

IN WITNESS

Schedule

Part 7(b)(ii) - Collateral Warranty - Consultant to Summit - Thornburn Colquhoun

WARRANTY AGREEMENT

THIS AGREEMENT

BETWEEN:

- (1) **THORBURN COLQUHOUN** whose registered office is situated at 243 West George Street, Glasgow, G2 4QR ("the Firm");
- (2) **SIR ROBERT McALPINE LIMITED** whose registered office is situated at Eaton Court, Maylands Avenue, Hemel Hempstead, Herts, HP2 7TR ("the Contractor") which term shall include all permitted assignees under this agreement).
- (3) **SUMMIT HEALTHCARE (LAW) LIMITED** whose registered office is situated at Saltire Court, Castle Terrace, Edinburgh, EH1 ("the Company"); and

WHEREAS:-

- A. The Company has entered into a building contract ("the Agreement") with the Contractor for inter alia the provision of a new hospital at Netherton to be known as the New Law District General Hospital ("the Development").
- B. By a contract ("the Appointment") dated on or about the date hereof the Contractor has appointed the Firm as consulting structural engineers in connection with the Development.

NOW IN CONSIDERATION OF THE PAYMENT OF ONE POUND (£1) BY THE COMPANY TO THE FIRM (RECEIPT OF WHICH THE FIRM ACKNOWLEDGES) IT IS HEREBY AGREED as follows:-

1. The Firm warrants to the Company and undertakes that-

- 1.1 in respect of all professional services performed and to be performed by the Firm in connection with the Development pursuant to the Appointment, it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified professional engineer who has held itself out as competent to perform such services and who has performed such services in relation to developments of a similar size, scope, nature, complexity and value as the Development; and
 - 1.2 it has complied and shall continue to comply promptly and efficiently with the terms of and has fulfilled and shall continue to fulfil its duties and obligations set out in the Appointment.
 - 1.3 the Firm shall be entitled in any action or proceedings by the Company to raise the equivalent rights in defence of liability (other than a counter claim) as it would have against the Contractor under the Appointment;
2. Without prejudice to the generality of Clause 1, the Firm further warrants that it has exercised and will continue to exercise reasonable skill and care to see that, unless authorised by the Contractor in writing or, where such authorisation is given orally, confirmed by the Firm to the Contractor in writing, none of the following has been or will be specified by the Firm for use in the construction of those parts of the Development to which the Appointment relates:-
- 2.1 high alumina cement in structural elements;
 - 2.2 wood wool slabs in permanent formwork to concrete or in structural elements;
 - 2.3 calcium chloride in admixtures for use in reinforced concrete;
 - 2.4 asbestos products;

- 2.5 naturally occurring aggregates for use in reinforced concrete which do not comply with British Standard 882: 1983 and/or naturally occurring aggregates for use in concrete which do not comply with British Standard 8110: 1985;
- 2.6 Any other goods, material or equipment which are themselves or which incorporate substances which are stated in the Building Contract to be prohibited or which are generally known at the time of use to be deleterious to health and safety or to the durability of the completed Works in the particular circumstances in which they are used or which otherwise are not in accordance with British Standards, Codes of Practice or good building practice or techniques.
3. The Company has no authority to issue any direction or instruction to the Firm in relation to performance of the Firm's services under the Appointment unless and until the Company has given notice under Clauses 5 or 6.
4. The Firm acknowledges that the Contractor has paid all fees and expenses properly due and owing to the Firm under the Appointment up to the date of this Agreement. The Company has no liability to the Firm in respect of fees and expenses under the Appointment unless and until the Company has given notice under Clauses 5 or 6.
5. The Firm agrees that, in the event of the termination of the Finance Agreement by the Company, the Firm will, if so required by notice in writing given by the Company and subject to Clause 7, accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the Development upon the terms and conditions of the Appointment. The Contractor acknowledges that the Firm shall be entitled to rely on a notice given to the Firm by the Company under this Clause 5 as conclusive evidence for the purposes of this Agreement of the termination of the Finance Agreement by the Company.
6. The Firm further agrees that it will not without first giving the Company not less than twenty one days' notice in writing exercise any right it may have to terminate the Appointment or to treat the same as having been repudiated by the Contractor or to discontinue the performance of any services to be performed by the Firm pursuant thereto. Such right to terminate the Appointment with the Contractor or treat the same

as having been repudiated or discontinued performance shall cease if, so Contractor then such period of notice and subject to Clause 7, the Company shall give notice in writing to the Firm requiring the Firm to accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the Development upon the terms and conditions of the Appointment.

7. It shall be a condition of any notice given by the Company under Clauses 5 or 6 that the Company or its appointee accepts liability for payment of the fees and expenses payable to the Firm under the Appointment and for performance of the Contractor's obligations excluding payment of any fees and expenses outstanding at the date of such notice. Upon the issue of any notice by the Company under Clauses 5 or 6, the Appointment shall continue in full force and effect as if no right of termination on the part of the Firm had arisen and the Firm shall be liable to the Company and its appointee under the Appointment in lieu of its liability to the Contractor. If any notice given by the Company under Clauses 5 or 6 requires the Firm to accept the instructions of the Company's appointee, the Company shall be liable to the Firm as guarantor for the payment of all sums from time to time due to the Firm from the Company's appointee.
8. The copyright in all drawings, reports, models, specifications, plans, schedules, bills of quantities, calculations and other similar documents provided by the Firm in connection with the Development (together referred to in this Clause 8 as "the Documents") shall remain vested in the Firm but, the Company and its appointee shall have an irrevocable royalty-free licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Development including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Development. Such licence shall be transferable to third parties and shall carry the right to grant sub-licences. The Firm shall not be liable for any misuse by the Company or its appointee of any of the Documents.
9. The Firm shall maintain professional indemnity insurance in an amount of not less than the amount required by the Appointment for any one claim for the period required by the Appointment, provided always that such insurance is generally available at

commercially reasonable rates. The Firm shall immediately inform the Company if such insurance ceases to be available at commercially reasonable rates in order that the Firm and the Company can discuss means of best protecting the respective positions of the Company and the Firm in respect of the Development in the absence of such insurance. As and when it is reasonably requested to do so by the Company or its appointee under Clauses 5 or 6, the Firm shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

10. The Contractor has agreed to be a party to this Agreement for the purposes of acknowledging that the Firm shall not be in breach of the Appointment by complying with the obligations imposed on it by Clauses 5 and 6.
11. This Agreement may be assigned by the Company by way of absolute legal assignment to any other person, firm or company acquiring the Company's interest in the Development without the consent of the Contractor or the Firm being required and such assignation shall be effective upon written notice thereof being given to the Contractor and to the Firm. No further or other assignation of this Agreement shall be permitted save as is expressly provided for herein.
12. Any notice to be given by the Firm hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the Company at its registered office and any notice given by the Company hereunder shall be deemed to be duly given if it is addressed to "The Senior Partner"/"The Managing Director" and delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the Firm or to the principal business address of the Firm for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received forty eight hours after being posted.
13. The construction validity and performance of this Agreement shall be governed by Scots Law and the parties agree to prorogate the jurisdiction of the Scottish Courts.
14. The obligations and liabilities of the Firm under this Agreement shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried

out by Summit or by the appointment of any person, firm or other entity by Summit to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or other entity to Summit arises in connection therewith.

IN WITNESS

Schedule

Part 7(b)(iii) - Collateral Warranty - Consultant to Summit - Percy Thomas Partnership

WARRANTY AGREEMENT

THIS AGREEMENT

BETWEEN:

- (1) **PERCY THOMAS PARTNERSHIP (ARCHITECTS) LTD** whose registered office is situated at 10 Cathedral Road, Cardiff CF1 9YF ("the Firm");
- (2) **SIR ROBERT McALPINE LIMITED** whose registered office is situated at Eaton Court, Maylands Avenue, Hemel Hempstead, Herts, HP2 7TR ("the Contractor") which term shall include all permitted assignees under this agreement).
- (3) **SUMMIT HEALTHCARE (LAW) LIMITED** whose registered office is situated at Saltire Court, Castle Terrace, Edinburgh, EH1 ("the Company"); and

WHEREAS:-

- A. The Company has entered into a building contract ("the Agreement") with the Contractor for inter alia the provision of a new hospital at Netherton to be known as the New Law District General Hospital ("the Development").
- B. By a contract ("the Appointment") dated on or about the date hereof the Contractor has appointed the Firm as in connection with the Development.

NOW IN CONSIDERATION OF THE PAYMENT OF ONE POUND (£1) BY THE COMPANY TO THE FIRM (RECEIPT OF WHICH THE FIRM ACKNOWLEDGES) IT IS HEREBY AGREED as follows:-

1. The Firm warrants to the Company and undertakes that-

- 1.1 in respect of all professional services performed and to be performed by the Firm in connection with the Development pursuant to the Appointment, it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified professional architect who has held itself out as competent to perform such services and who has performed such services in relation to developments of a similar size, scope, nature, complexity and value as the Development;and
- 1.2 it has complied and shall continue to comply promptly and efficiently with the terms of and has fulfilled and shall continue to fulfil its duties and obligations set out in the Appointment.
- 1.3 the Firm shall be entitled in any action or proceedings by the Company to raise the equivalent rights in defence of liability (other than a counter claim) as it would have against the Contractor under the Appointment;
- 1.4 It is hereby agreed that in respect of any claim by the Company the Firm's liability shall be limited to its Net Contribution.

PROVIDED ALWAYS THAT:-

- 1.4.1 the Net Contribution shall be such sum as shall be agreed between the Firm and the Company or adjudged by the court to be the proportion of the loss to the Company directly caused by the Firm's failure to exercise reasonable skill and care in the performance of its duties and responsibilities under the Appointment. This proportion is to be calculated on the basis that all other consultants, advisers, contractors and sub-contractors ("Relevant Parties") involved in the Development shall be deemed to have provided contractual undertakings to the Company in respect of their services in connection with the Development and shall be deemed to have paid to the Company the proportion of the loss (after apportionment between the Relevant Parties and the Firm) which it would have been just and equitable for them to pay having regard to the extent of their responsibilities;and

- 1.4.2 the Firm shall owe no greater duties or obligations in time or in nature and shall have no greater liabilities hereunder to the Company than it owes to the Contractor under the Appointment and
- 1.4.3 any agreement or arrangement between the Firm and the Contractor in respect of the Firm's duties to the Contractor shall likewise bind the Company.
2. The Company has no authority to issue any direction or instruction to the Firm in relation to performance of the Firm's services under the Appointment unless and until the Company has given notice under Clauses 4 or 5.
3. The Firm acknowledges that the Contractor has paid all fees and expenses properly due and owing to the Firm under the Appointment up to the date of this Agreement. The Company has no liability to the Firm in respect of fees and expenses under the Appointment unless and until the Company has given notice under Clauses 4 or 5.
4. The Firm agrees that, in the event of the termination of the Finance Agreement by the Company, the Firm will, if so required by notice in writing given by the Company and subject to Clause 6, accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the Development upon the terms and conditions of the Appointment. The Contractor acknowledges that the Firm shall be entitled to rely on a notice given to the Firm by the Company under this Clause 4 as conclusive evidence for the purposes of this Agreement of the termination of the Finance Agreement by the Company.
5. The Firm further agrees that it will not without first giving the Company not less than twenty one days' notice in writing exercise any right it may have to terminate the Appointment or to treat the same as having been repudiated by the Contractor or to discontinue the performance of any services to be performed by the Firm pursuant thereto. Such right to terminate the Appointment with the Contractor or treat the same as having been repudiated or discontinue performance shall cease if, so Contractor then such period of notice and subject to Clause 6, the Company shall give notice in writing to the Firm requiring the Firm to accept the instructions of the Company or its

appointee to the exclusion of the Contractor in respect of the Development upon the terms and conditions of the Appointment.

6. It shall be a condition of any notice given by the Company under Clauses 4 or 5 that such notice must be served prior to practical completion of the Development for the purposes of completing the Development and that the Company or its appointee accepts liability for payment of the fees and expenses payable to the Firm under the Appointment and for performance of the Contractor's obligations excluding payment of any fees and expenses outstanding at the date of such notice. Upon the issue of any notice by the Company under Clauses 4 or 5, the Appointment shall continue in full force and effect as if no right of termination on the part of the Firm had arisen and the Firm shall be liable to the Company and its appointee under the Appointment in lieu of its liability to the Contractor. If any notice given by the Company under Clauses 4 or 5 requires the Firm to accept the instructions of the Company's appointee, the Company shall be liable to the Firm as guarantor for the payment of all sums from time to time due to the Firm from the Company's appointee.
7. The copyright in all drawings, reports, models, specifications, plans, schedules, bills of quantities, calculations and other similar documents provided by the Firm in connection with the Development (together referred to in this Clause 7 as "the Documents") shall remain vested in the Firm but, the Company and its appointee shall have an irrevocable royalty-free licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Development including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Development. Such licence shall be transferable to third parties and shall carry the right to grant sub-licences. The Firm shall not be liable for any misuse by the Company or its appointee of any of the Documents.
8. The Firm shall maintain professional indemnity insurance in an amount of not less than the amount required by the Appointment for any one claim for the period required by the Appointment, provided always that such insurance is generally available at commercially reasonable rates. The Firm shall immediately inform the Company if such insurance ceases to be available at commercially reasonable rates in order that the

Firm and the Company can discuss means of best protecting the respective positions of the Company and the Firm in respect of the Development in the absence of such insurance. As and when it is reasonably requested to do so by the Company or its appointee under Clauses 4 or 5 the Firm shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

9. The Contractor has agreed to be a party to this Agreement for the purposes of acknowledging that the Firm shall not be in breach of the Appointment by complying with the obligations imposed on it by Clauses 4 and 5.
10. This Agreement may be assigned by the Company by way of absolute legal assignment to any other person, firm or company acquiring the Company's entire interest in the Development without the consent of the Contractor or the Firm being required and such assignation shall be effective upon written notice thereof being given to the Contractor and to the Firm. No further or other assignation of this Agreement shall be permitted save as is expressly provided for herein.
11. Any notice to be given by the Firm hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the Company at its registered office and any notice given by the Company hereunder shall be deemed to be duly given if it is addressed to "The Senior Partner" / "The Managing Director" and delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the Firm or to the principal business address of the Firm for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received forty eight hours after being posted.
12. The construction validity and performance of this Agreement shall be governed by Scots Law and the parties agree to prorogate the jurisdiction of the Scottish Courts.
13. The obligations and liabilities of the Firm under this Agreement shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by Summit or by the appointment of any person, firm or other entity by Summit to make or carry out any enquiry or inspection and whether or not any independent

liability of any such person, firm or other entity to Summit arises in connection therewith.

IN WITNESS

Schedule

Part 7(c)(i) - Collateral Warranty - Consultant to Financiers - Hulley & Kirkwood

WARRANTY AGREEMENT

THIS AGREEMENT

BETWEEN:

- (1) HULLEY & KIRKWOOD whose registered office is situated at 15-16 Woodside Place, Glasgow, G3 7QS ("the Firm");
- (2) [] whose registered office is situated at [] ("the Financiers" which term shall include all permitted assignees under this agreement).

WHEREAS:-

- A. The Financiers have entered into an agreement ("the Finance Agreement") with Summit Healthcare (Law) Limited ("Summit") for the provision of certain finance in connection with the inter alia the provision of a new hospital at Netherton to be known as the New Law District General Hospital ("the Development").
- B. By a contract ("the Appointment") dated on or about the date hereof Sir Robert McAlpine Limited ("the Contractor") has appointed the Firm as consulting building services engineers in connection with the Development.
- C. Summit has entered or may enter into a building contract ("the Building Contract") with the Contractor for the construction of the Development.

NOW IN CONSIDERATION OF THE PAYMENT OF ONE POUND (£) BY THE FINANCIERS TO THE FIRM (RECEIPT OF WHICH THE FIRM ACKNOWLEDGES) IT IS HEREBY AGREED as follows:-

1. The Firm warrants to the Financiers and undertakes that-

- 1.1 in respect of all professional services performed and to be performed by the Firm in connection with the Development pursuant to the Appointment or otherwise, it has exercised and will continue to exercise all the skill, care and diligence to be reasonably expected of a properly qualified professional engineer who has held itself out as competent to perform such services and who has experience in performing and resourcing such services in relation to developments of a similar size, scope, nature, complexity and value as the Development;
- 1.2 it has complied and shall continue to comply promptly and efficiently with the terms of and has fulfilled and shall continue to fulfil its duties and obligations set out in the Appointment;
- 1.3 it owes a duty of care to the Financiers in relation to its duties, representations and warranties within the Appointment.
- 1.4 the Firm shall be entitled in any action or proceedings by the Financiers to raise the equivalent rights in defence of liability (other than a counter-claim) as it would have against the Contractor under the Appointment;
2. Without prejudice to the generality of Clause 1, the Firm further warrants that unless authorised by the Contractor in writing or, where such authorisation is given orally, confirmed by the Firm to the Contractor in writing, none of the following has been or will be specified by the Firm for use in the construction of those parts of the Development to which the Appointment relates:-
 - 2.1 high alumina cement in structural elements;
 - 2.2 wood wool slabs in permanent formwork to concrete or in structural elements;
 - 2.3 calcium chloride in admixtures for use in reinforced concrete;
 - 2.4 asbestos products;

- 2.5 naturally occurring aggregates for use in reinforced concrete which do not comply with British Standard 882: 1983 and/or naturally occurring aggregates for use in concrete which do not comply with British Standard 8110: 1985;
- 2.6 Any other goods, material or equipment which are themselves or which incorporate substances which are stated in the Building Contract to be prohibited or which are generally known at the time of specification to be deleterious to health and safety or to the durability of the Development in the particular circumstances in which they are used or which otherwise are not in accordance with British Standards, Codes of Practice or good building practice or techniques; and the Contractor undertakes insofar as within its obligations or responsibilities under the Appointment to exercise the level of skill, care and diligence to ensure that such materials are not specified and/or used in the Development.
3. The Financiers have no authority to issue any direction or instruction to the Firm in relation to performance of the Firm's services under the Appointment.
4. The copyright in all drawings, reports, models, specifications, plans, schedules, bills of quantities, calculations and other similar documents provided by the Firm in connection with the Development (together referred to in this Clause 4 as "the Documents") shall remain vested in the Firm but, the Firm shall provide a copy of the Documents to the Financiers hereby grants to the and Financiers and their appointee an irrevocable royalty-free licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Development including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Development. Such licence shall be transferable to third parties and shall carry the right to grant sub-licences. The Firm shall not be liable for any misuse by the Financiers or its appointee of any of the Documents.
5. The Firm shall provide evidence to the Financiers of its existing level of professional indemnity insurance. The Firm shall then effect and maintain professional indemnity insurance in such amount and for such period required by the Appointment. The Firm shall immediately inform the Financiers if such insurance ceases to be available at

commercially reasonable rates in order that the Firm and the Financiers can discuss means of best protecting the respective positions of the Financiers and the Firm in respect of the Development in the absence of such insurance. As and when it is reasonably requested to do so by the Financiers or its appointee under Clauses 5 or 6, the Firm shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

6. This Agreement may be assigned by the Financiers to any other person, firm or company without the consent of the Firm being required and such assignation shall be effective upon written notice thereof being given to the Firm. No further or other assignation shall be permitted save as is expressly provided for herein.
7. The construction validity and performance of this Agreement shall be governed by Scots Law and the parties agree to prorogate the jurisdiction of the Scottish Courts.
8. The obligation and liabilities of the Firm under this Agreement shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the Financiers or by the appointment of any person, firm or other entity by the Financiers to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or other entity to the Financiers arises in connection therewith.

IN WITNESS

Schedule

Part 7(c)(ii) - Collateral Warranty - Consultant to Financiers - Thorburn Colquhoun

WARRANTY AGREEMENT

THIS AGREEMENT

BETWEEN:

- (1) THORBURN COLQUHOUN whose registered office is situated at 243 West George Street, Glasgow, G2 4QR ("the Firm");
- (2) [] whose registered office is situated at [] ("the Financiers" which term shall include all permitted assignees under this agreement).

WHEREAS:-

- A. The Financiers have entered into an agreement ("the Finance Agreement") with Summit Healthcare (Law) Limited ("Summit") for the provision of certain finance in connection with inter alia the provision of a new hospital at Netherton to be known as the New Law District General Hospital ("the Development").
- B. By a contract ("the Appointment") dated on or about the date hereof Sir Robert McAlpine Limited ("the Contractor") has appointed the Firm as consulting structural engineers in connection with the Development.
- C. Summit has entered or may enter into a building contract ("the Building Contract") with the Contractor for the construction of the Development.

NOW IN CONSIDERATION OF THE PAYMENT OF ONE POUND (£1) BY THE FINANCIERS TO THE FIRM (RECEIPT OF WHICH THE FIRM ACKNOWLEDGES) IT IS HEREBY AGREED as follows:-

1. The Firm warrants to the Financiers and undertakes that-

- 1.1 in respect of all professional services performed and to be performed by the Firm in connection with the Development pursuant to the Appointment or otherwise, it has exercised and will continue to exercise all the skill, care and diligence to be reasonably expected of a properly qualified professional engineer who has held itself out as competent to perform such services and who has experience in performing and resourcing such services in relation to developments of a similar size, scope, nature, complexity and value as the Development;
- 1.2 it has complied and shall continue to comply promptly and efficiently with the terms of and has fulfilled and shall continue to fulfil its duties and obligations set out in the Appointment;
- 1.3 it owes a duty of care to the Financiers in relation to its duties, representations and warranties within the Appointment.
- 1.4 the Firm shall be entitled in any action or proceedings by the Financiers to raise the equivalent rights in defence of liability (other than a counter-claim) as it would have against the Contractor under the Appointment;
2. Without prejudice to the generality of Clause 1, the Firm further warrants that unless authorised by the Contractor in writing or, where such authorisation is given orally, confirmed by the Firm to the Contractor in writing, none of the following has been or will be specified by the Firm for use in the construction of those parts of the Development to which the Appointment relates:-
 - 2.1 high alumina cement in structural elements;
 - 2.2 wood wool slabs in permanent formwork to concrete or in structural elements;
 - 2.3 calcium chloride in admixtures for use in reinforced concrete;
 - 2.4 asbestos products;

- 2.5 naturally occurring aggregates for use in reinforced concrete which do not comply with British Standard 882: 1983 and/or naturally occurring aggregates for use in concrete which do not comply with British Standard 8110: 1985;
- 2.6 Any other goods, material or equipment which are themselves or which incorporate substances which are stated in the Building Contract to be prohibited or which are generally known at the time of use to be deleterious to health and safety or to the durability of the Development in the particular circumstances in which they are used or which otherwise are not in accordance with British Standards, Codes of Practice or good building practice or techniques; and the Contractor undertakes insofar as within its obligations or responsibilities under the Appointment to exercise the level of skill, care and diligence to ensure that such materials are not specified and/or used in the Development.
3. The Financiers have no authority to issue any direction or instruction to the Firm in relation to performance of the Firm's services under the Appointment.
4. The copyright in all drawings, reports, models, specifications, plans, schedules, bills of quantities, calculations and other similar documents provided by the Firm in connection with the Development (together referred to in this Clause 4 as "the Documents") shall remain vested in the Firm but, the Firm shall provide a copy of the Documents to the Financiers and hereby grants to the Financiers and their appointee an irrevocable royalty-free licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Development including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Development. Such licence shall be transferable to third parties and shall carry the right to grant sub-licences. The Firm shall not be liable for any misuse by the Financiers or its appointee of any of the Documents.
5. The Firm shall provide evidence to the Financiers of its existing level of professional indemnity insurance. The Firm shall then effect and maintain professional indemnity insurance in such amount and for such period required by the Appointment. The Firm shall immediately inform the Financiers if such insurance ceases to be available at

commercially reasonable rates in order that the Firm and the Financiers can discuss means of best protecting the respective positions of the Financiers and the Firm in respect of the Development in the absence of such insurance. As and when it is reasonably requested to do so by the Financiers or its appointee under Clauses 5 or 6, the Firm shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

6. This Agreement may be assigned by the Financiers to any other person, firm or company providing finance or re-finance in connection with the carrying out of the Development without the consent of the Firm being required and such assignation shall be effective upon written notice thereof being given to the Firm. No further or other assignation shall be permitted save as is expressly provided for herein. The Firm shall not be permitted to assign this Agreement.
7. The construction validity and performance of this Agreement shall be governed by Scots Law and the parties agree to prorogate the jurisdiction of the Scottish Courts.
8. The obligation and liabilities of the Firm under this Agreement shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the Financiers or by the appointment of any person, firm or other entity by the Financiers to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or other entity to the Financiers arises in connection therewith.

IN WITNESS

Schedule

Part 7(c)(iii) - Collateral Warranty - Consultant to Financiers - Percy Thomas Partnership

WARRANTY AGREEMENT

THIS AGREEMENT

BETWEEN:

- (1) **PERCY THOMAS PARTNERSHIP (ARCHITECTS) LTD** whose registered office is situated at 10 Cathedral Road, Cardiff, CF1 9YF ("the Firm");
- (2) [] whose registered office is situated at [] ("the Financiers" which term shall include all permitted assignees under this agreement).

WHEREAS:-

- A. The Financiers have entered into an agreement ("the Finance Agreement") with Summit Healthcare (Law) Limited ("Summit") for the provision of certain finance in connection with inter alia the provision of a new hospital at Netherton to be known as the New Law District General Hospital ("the Development").
- B. By a contract ("the Appointment") dated on or about the date hereof Sir Robert McAlpine Limited ("the Contractor") has appointed the Firm as architects in connection with the Development.
- C. Summit has entered or may enter into a building contract ("the Building Contract") with the Contractor for the construction of the Development.

NOW IN CONSIDERATION OF THE PAYMENT OF ONE POUND (£1) BY THE FINANCIERS TO THE FIRM (RECEIPT OF WHICH THE FIRM ACKNOWLEDGES) IT IS HEREBY AGREED as follows:-

1. The Firm warrants to the Financiers and undertakes that-

- 1.1 in respect of all professional services performed and to be performed by the Firm in connection with the Development pursuant to the Appointment or otherwise, it has exercised and will continue to exercise all the skill, care and diligence to be reasonably expected of a properly qualified professional architect who has held itself out as competent to perform such services and who has experience in performing and resourcing such services in relation to developments of a similar size, scope, nature, complexity and value as the Development;
- 1.2 it has complied and shall continue to comply promptly and efficiently with the terms of and has fulfilled and shall continue to fulfil its duties and obligations set out in the Appointment;
- 1.3 it owes a duty of care to the Financiers in relation to its duties, representations and warranties within the Appointment.
- 1.4 the Firm shall be entitled in any action or proceedings by the Financiers to raise the equivalent rights in defence of liability (other than a counter-claim) as it would have against the Contractor under the Appointment;
- 1.5 It is hereby agreed that in respect of any claim by the Financiers the Firm's liability shall be limited to its Net Contribution.

PROVIDED ALWAYS THAT

- 1.5.1 the Net Contribution shall be such sum as shall be agreed between the Firm and the Financiers or adjudged by the court to be the proportion of the loss, expenses, claims and damages to the Financiers caused by the Firm's failure to exercise reasonable skill and care in the performance of its duties and responsibilities under the Appointment. This proportion is to be calculated on the basis that all other consultants, advisers, contractors and sub-contractors who have provided a Collateral Warranty Agreement to the Financiers shall be deemed to have paid to the Financiers the proportion of the loss (after apportionment between the Relevant Parties and the Firm) which it would have been just and equitable for them to pay having regard to the extent of their responsibilities;

2. Subject to Clause 3 below the Financiers have no authority to issue any direction or instruction to the Firm in relation to performance of the Firm's services under the Appointment.
3. The Financiers agree that the Contractor and the Firm may make minor changes to the Firm's duties without the consent of the Financiers.

PROVIDED ALWAYS THAT

- 3.1 any changes which affect in any way the Firm's warranties under the Appointment or the Contractor's warranties under the Building Contract shall be considered a material change and construed in accordance with the original obligations of the Firm and the Contractor therein and shall not in any way limit or alter such original obligations except with the prior written consent of the Financiers.
- 3.2 any material changes made without the consent of the Financiers shall be null and void.
4. The copyright in all drawings, reports, models, specifications, plans, schedules, bills of quantities, calculations and other similar documents provided by the Firm in connection with the Development (together referred to in this Clause 4 as "the Documents") shall remain vested in the Firm but, Firm shall provide a copy of the Documents to the Financiers and the Financiers and their appointee an irrevocable royalty-free licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Development including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Development. Such licence shall be transferable to third parties and shall carry the right to grant sub-licences. The Firm shall not be liable for any misuse by the Financiers or its appointee of any of the Documents.
5. The Firm shall provide evidence to the Financiers of its existing level of professional indemnity insurance. The Firm shall then effect and maintain with insurers approved

by the Financiers professional indemnity insurance in such amount and for such period required by the Appointment. The Firm shall immediately inform the Financiers if such insurance ceases to be available at commercially reasonable rates in order that the Firm and the Financiers can discuss means of best protecting the respective positions of the Financiers and the Firm in respect of the Development in the absence of such insurance. As and when it is reasonably requested to do so by the Financiers, the Firm shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

6. This entire Agreement may be assigned by the Financiers to any other person, firm or company without the consent of the Firm being required and such assignment shall be effective upon written notice thereof being given to the Firm. The Firm shall not be permitted to assign this Agreement.
7. The construction validity and performance of this Agreement shall be governed by Scots Law and the parties agree to prorogate the jurisdiction of the Scottish Courts.
8. The obligation and liabilities of the Firm under this Agreement shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the Financiers or by the appointment of any person, firm or other entity by the Financiers to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or other entity to the Financiers arises in connection therewith.

IN WITNESS

Part 7(d)(i) - Collateral Warranty - Consultant to Trust - Hulley & Kirkwood

WARRANTY AGREEMENT

THIS AGREEMENT

BETWEEN:

- (1) **HULLEY & KIRKWOOD** whose registered office is situated at 15-16 Woodside Place, Glasgow, G3 7QS("the Firm");

- (2) **LAW HOSPITAL NATIONAL HEALTH SERVICE TRUST** a body corporate established by an order (S.I. 1993 No. 2929 (S.263)) as amended by an amendment order (S.I. 1995 No. 741 (S.67)) made by the Secretary of State under Section 12A of the National Health Service (Scotland) Act 1978 ("the Trust" which term shall include all permitted assignees under this Agreement).

WHEREAS:-

- A. The Trust has entered into various agreements ("the DBFO Contracts") with Summit Healthcare (Law) Limited ("Summit") in connection with inter alia the provision of a new hospital at Netherton to be known as the New Law District General Hospital ("the Development").

- B. By a contract ("the Appointment") dated on or about the date hereof Sir Robert McAlpine Limited ("the Contractor") has appointed the Firm as consulting building services engineers in connection with the Development.

- C. Summit has or will enter into a building contract ("the Building Contract") with the Contractor for the construction of the Development.

NOW IN CONSIDERATION OF THE PAYMENT OF ONE POUND (£1) BY THE COMPANY TO THE FIRM (RECEIPT OF WHICH THE FIRM ACKNOWLEDGES) IT IS HEREBY AGREED as follows:-

1. The Firm warrants to the Trust and undertakes that-
 - 1.1 in respect of all professional services performed and to be performed by the Firm in connection with the Development pursuant to the Appointment, it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified professional engineer who has held itself out as competent to perform such services and who has performed such services in relation to developments of a similar size, scope, nature, complexity and value as the Development; and
 - 1.2 it has complied and shall continue to comply promptly and efficiently with the terms of and has fulfilled and shall continue to fulfil its duties and obligations set out in the Appointment;
 - 1.3 The Firm shall be entitled in any action or proceedings by the Trust to raise the equivalent rights in defence of liability other than a counter claim as it would have against the Contractor under the Appointment;
2. Without prejudice to the generality of Clause 1, the Firm further warrants that it has exercised and will continue to exercise reasonable skill and care to see that, unless authorised by the Contractor in writing or, where such authorisation is given orally, confirmed by the Firm to the Contractor in writing, none of the following has been or will be specified by the Firm for use in the construction of those parts of the Development to which the Appointment relates:-
 - 2.1 high alumina cement in structural elements;
 - 2.2 wood wool slabs in permanent formwork to concrete or in structural elements;
 - 2.3 calcium chloride in admixtures for use in reinforced concrete;

- 2.4 asbestos products;
- 2.5 naturally occurring aggregates for use in reinforced concrete which do not comply with British Standard 882: 1983 and/or naturally occurring aggregates for use in concrete which do not comply with British Standard 8110: 1985;
- 2.6 Any other goods, material or equipment which are themselves or which incorporate substances which are stated in the Building Contract to be prohibited or which are generally known at the time of specification to be deleterious to health and safety or to the durability of the completed Works in the particular circumstances in which they are used or which otherwise are not in accordance with British Standards, Codes of Practice or good building practice or techniques.
3. The Trust has no authority to issue any direction or instruction to the Firm in relation to performance of the Firm's services under the Appointment.
4. The copyright in all drawings, reports, models, specifications, plans, schedules, bills of quantities, calculations and other similar documents provided by the Firm in connection with the Development (together referred to in this Clause 4 as "the Documents") shall remain vested in the Firm but, the Trust and its appointee shall have an irrevocable royalty-free licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Development including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Development. Such a licence shall be transferable and shall carry the right to grant sub-licences. The Firm shall not be liable for any misuse by the Trust or its appointee of any of the Documents.
5. The Firm shall maintain professional indemnity insurance in an amount of not less than the amount required by the Appointment for any one claim for the period required by the Appointment, provided always that such insurance is generally available at commercially reasonable rates. The Firm shall immediately inform the Trust if such insurance ceases to be available at commercially reasonable rates in order that the Firm

and the Trust can discuss means of best protecting the respective positions of the Trust and the Firm in respect of the Development in the absence of such insurance. As and when it is reasonably requested to do so by the Trust or its appointee under Clauses 5 or 6, the Firm shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

6. This Agreement may be assigned by the Trust to another my other person, firm or company acquiring the Trust's interest in the Development without the consent of the Firm being required and such assignation shall be effective upon written notice thereof being given to the Firm. No further or other assignation shall be permitted save as is expressly provided for herein.
7. The construction validity and performance of this Agreement shall be governed by Scots Law and the parties agree to prorogate the jurisdiction of the Scottish Courts.
8. The obligation and liabilities of the Firm under this Agreement shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the Trust or by the appointment of any person, firm or other entity by the Trust to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or other entity to the Trust arises in connection therewith.

IN WITNESS

Schedule

Part 7(d)(ii) - Collateral Warranty - Consultant to Trust - Thornburn Colquhoun

WARRANTY AGREEMENT

THIS AGREEMENT

BETWEEN:

- (1) **THORBURN COLQUHOUN** whose registered office is situated at 243 West George Street, Glasgow, G2 4QR ("the Firm");

- (2) **LAW HOSPITAL NATIONAL HEALTH SERVICE TRUST** a body corporate established by an order (S.I. 1993 No. 2929 (S.263)) as amended by an amendment order (S.I. 1995 No. 741 (S.67)) made by the Secretary of State under Section 12A of the National Health Service (Scotland) Act 1978 ("the Trust" which term shall include all permitted assignees under this Agreement).

WHEREAS:-

- A. The Trust has entered into various agreements ("the DBFO Contracts") with Summit Healthcare (Law) Limited ("Summit") in connection with inter alia the provision of a new hospital at Netherton to be known as the New Law District General Hospital ("the Development").

- B. By a contract ("the Appointment") dated on or about the date hereof Sir Robert McAlpine Limited ("the Contractor") has appointed the Firm as consulting structural engineers in connection with the Development.

- C. Summit has or will enter into a building contract ("the Building Contract") with the Contractor for the construction of the Development.

NOW IN CONSIDERATION OF THE PAYMENT OF ONE POUND (£1) BY THE COMPANY TO THE FIRM (RECEIPT OF WHICH THE FIRM ACKNOWLEDGES) IT IS HEREBY AGREED as follows:-

1. The Firm warrants to the Trust and undertakes that-
 - 1.1 in respect of all professional services performed and to be performed by the Firm in connection with the Development pursuant to the Appointment, it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified professional engineer who has held itself out as competent to perform such services and who has performed such services in relation to developments of a similar size, scope, nature, complexity and value as the Development; and
 - 1.2 it has complied and shall continue to comply promptly and efficiently with the terms of and has fulfilled and shall continue to fulfil its duties and obligations set out in the Appointment;
 - 1.3 The Firm shall be entitled in any action or proceedings by the Trust to raise the equivalent rights in defence of liability other than a counter claim as it would have against the Contractor under the Appointment;
2. Without prejudice to the generality of Clause 1, the Firm further warrants that it has exercised and will continue to exercise reasonable skill and care to see that, unless authorised by the Contractor in writing or, where such authorisation is given orally, confirmed by the Firm to the Contractor in writing, none of the following has been or will be specified by the Firm for use in the construction of those parts of the Development to which the Appointment relates:-
 - 2.1 high alumina cement in structural elements;
 - 2.2 wood wool slabs in permanent formwork to concrete or in structural elements;
 - 2.3 calcium chloride in admixtures for use in reinforced concrete;
 - 2.4 asbestos products;

- 2.5 naturally occurring aggregates for use in reinforced concrete which do not comply with British Standard 882: 1983 and/or naturally occurring aggregates for use in concrete which do not comply with British Standard 8110: 1985;
- 2.6 Any other goods, material or equipment which are themselves or which incorporate substances which are stated in the Building Contract to be prohibited or which are generally known at the time of use to be deleterious to health and safety or to the durability of the completed Works in the particular circumstances in which they are used or which otherwise are not in accordance with British Standards, Codes of Practice or good building practice or techniques.
3. The Trust has no authority to issue any direction or instruction to the Firm in relation to performance of the Firm's services under the Appointment.
4. The copyright in all drawings, reports, models, specifications, plans, schedules, bills of quantities, calculations and other similar documents provided by the Firm in connection with the Development (together referred to in this Clause 4 as "the Documents") shall remain vested in the Firm but, the Trust and its appointee shall have an irrevocable royalty-free licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Development including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Development. Such a licence shall be transferable and shall carry the right to grant sub-licences. The Firm shall not be liable for any misuse by the Trust or its appointee of any of the Documents.
5. The Firm shall maintain professional indemnity insurance in an amount of not less than the amount required by the Appointment for any one claim for the period required by the Appointment, provided always that such insurance is generally available at commercially reasonable rates. The Firm shall immediately inform the Trust if such insurance ceases to be available at commercially reasonable rates in order that the Firm and the Trust can discuss means of best protecting the respective positions of the Trust and the Firm in respect of the Development in the absence of such insurance. As and when it is reasonably requested to do so by the Trust or its appointee under Clauses 5

or 6, the Firm shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

6. This Agreement may be assigned by the Trust to another my other person, firm or company acquiring the Trust's interest in the Development without the consent of the Firm being required and such assignation shall be effective upon written notice thereof being given to the Firm. No further or other assignation sshall be permitted save as is expressly provided for herein.
7. The construction validity and performance of this Agreement shall be governed by Scots Law and the parties agree to prorogate the jurisdiction of the Scottish Courts.
8. The obligation and liabilities of the Firm under this Agreement shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the Trust or by the appointment of any person, firm or other entity by the Trust to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or other entity to the Trust arises in connection therewith.

IN WITNESS

Schedule

Part 7(d)(iii) - Collateral Warranty - Consultant to Trust - Percy Thomas Partnership

WARRANTY AGREEMENT

THIS AGREEMENT

BETWEEN:

- (1) **PERCY THOMAS PARTNERSHIP (ARCHITECTS) LTD** whose registered office is situated at 10 Cathedral Road, Cardiff, CF1 9YF ("the Firm");
- (2) **LAW HOSPITAL NATIONAL HEALTH SERVICE TRUST** a body corporate established by an order (S.L. 1993 No. 2929 (S.263)) as amended by an amendment order (S.L. 1995 No. 741 (S.67)) made by the Secretary of State under Section 12A of the National Health Service (Scotland) Act 1978 ("the Trust" which term shall include all permitted assignees under this Agreement).

WHEREAS:-

- A. The Trust has entered into various agreements ("the DBFO Contracts") with Summit Healthcare (Law) Limited ("Summit") in connection with inter alia the provision of a new hospital at Netherton to be known as the New Law District General Hospital ("the Development").
- B. By a contract ("the Appointment") dated on or about the date hereof Sir Robert McAlpine Limited ("the Contractor") has appointed the Firm as consulting structural engineers/consulting building services engineers in connection with the Development.
- C. Summit has or will enter into a building contract ("the Building Contract") with the Contractor for the construction of the Development.

NOW IN CONSIDERATION OF THE PAYMENT OF ONE POUND (£1) BY THE COMPANY TO THE FIRM (RECEIPT OF WHICH THE FIRM ACKNOWLEDGES) IT IS HEREBY AGREED as follows:-

1. The Firm warrants to the Trust and undertakes that-
 - 1.1 in respect of all professional services performed and to be performed by the Firm in connection with the Development pursuant to the Appointment, it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified professional [architect, etc.] who has held itself out as competent to perform such services and who has performed such services in relation to developments of a similar size, scope, nature, complexity and value as the Development; and
 - 1.2 it has complied and shall continue to comply promptly and efficiently with the terms of and has fulfilled and shall continue to fulfil its duties and obligations set out in the Appointment;
 - 1.3 The Firm shall be entitled in any action or proceedings by the Trust to raise the equivalent rights in defence of liability other than a counter claim as it would have against the Contractor under the Appointment;
 - 1.4 It is hereby agreed that in respect of any claim by the Trust the Firm's liability shall be limited to its Net Contribution.

PROVIDED ALWAYS THAT

- 1.4.1 the Net Contribution shall be such sum as shall be agreed between the Firm and the Trust or adjudged by the court to be the proportion of the loss to the Trust directly caused by the Firm's failure to exercise reasonable skill and care in the performance of its duties and responsibilities under the Appointment. This proportion is to be calculated on the basis that all other consultants, advisers, contractors and sub-contractors ("Relevant Parties") involved in the Development shall be deemed to have provided contractual undertakings to the Trust in respect of their services in connection

with the Development and shall be deemed to have paid to the Trust the proportion of the loss (after apportionment between the Relevant Parties and the Firm) which it would have been just and equitable for them to pay having regard to the extent of their responsibilities; and

- 1.4.2 the Firm shall owe no greater duties or obligations in time or in nature and shall have no greater liabilities hereunder to the Trust than it owes to the Contractor under the Appointment; and
- 1.4.3 any agreement or arrangement between the Firm and the Contractor in respect of the Firm's duties to the Contractor shall likewise bind the Trust.
2. The Trust has no authority to issue any direction or instruction to the Firm in relation to performance of the Firm's services under the Appointment.
3. The copyright in all drawings, reports, models, specifications, plans, schedules, bills of quantities, calculations and other similar documents provided by the Firm in connection with the Development (together referred to in this Clause 3 as "the Documents") shall remain vested in the Firm but, the Trust and its appointee shall have an irrevocable royalty-free licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Development including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Development. Such a licence shall be transferable and shall carry the right to grant sub-licences. The Firm shall not be liable for any misuse by the Trust or its appointee of any of the Documents.
4. The Firm shall maintain professional indemnity insurance in an amount of not less than the amount required by the Appointment for any one claim for the period required by the Appointment provided always that such insurance is generally available at commercially reasonable rates. The Firm shall immediately inform the Trust if such insurance ceases to be available at commercially reasonable rates in order that the Firm and the Trust can discuss means of best protecting the respective positions of the Trust and the Firm in respect of the Development in the absence of such insurance. As and

when it is reasonably requested to do so by the Trust or its appointee under Clauses 5 or 6, the Firm shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

5. This Agreement may be assigned by the Trust to another my other person, firm or company acquiring the Trust's entire interest in the Development without the consent of the Firm being required and such assignation shall be effective upon written notice thereof being given to the Firm. No further or other assignation shall be permitted save as is expressly provided for herein.
6. The construction validity and performance of this Agreement shall be governed by Scots Law and the parties agree to prorogate the jurisdiction of the Scottish Courts.
7. The obligation and liabilities of the Firm under this Agreement shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the Trust or by the appointment of any person, firm or other entity by the Trust to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or other entity to the Trust arises in connection therewith.

IN WITNESS

NOW IT IS HEREBY AGREED

In consideration of the payment of one pound (£1) to the Sub-Contractor, receipt of which the Sub-Contractor acknowledges:

1. The Sub-Contractor warrants that it has complied and will continue to comply with the Sub Contract. In the event of any breach of this warranty the Sub-Contractor shall be entitled in any action or proceedings by Summit to raise the equivalent rights in defence of liability (other than a counter claim) as it would have against the Contractor under the Sub Contract.
2. Without prejudice to the generality of Clause 1, the Sub-Contractor further warrants that, unless required by the Sub Contract or unless otherwise authorised in writing by the Contractor (or, where such authorisation is given orally, confirmed in writing by the Sub-Contractor to the Contractor, none of the following has been used in the Works:
 - 2.1 high alumina cement in structural elements;
 - 2.2 wood wool slabs in permanent formwork to concrete;
 - 2.3 calcium chloride in admixtures for use in reinforced concrete;
 - 2.4 asbestos products;
 - 2.5 naturally occurring aggregates for use in reinforced concrete which do not comply with British Standard 882: 1983 and/or naturally occurring aggregates for use in concrete which do not comply with British Standard 8110: 1985;
 - 2.6 any other goods material or equipment which are themselves or which incorporate substances which are stated in the Building Contract to be prohibited or which are generally known at the time of use to be deleterious to health and safety or to the durability of the completed Works in the particular circumstances in which they are used or which otherwise are not in accordance with British Standards, Codes of Practice or good building practice or techniques.

3. Summit has no authority to issue any direction or instruction to the Sub-Contractor in relation to the Building Contract unless and until Summit has given notice under Clauses 4 or 5. Summit has no liability to the Sub-Contractor in relation to amounts due under the Sub Contract unless and until Summit has given notice under Clause 4 or Clause 5.

4. In the event of the termination of the Building Contract by Summit, the Sub-Contractor will, if so required by notice in writing given by Summit and subject to Clause 6, accept the instructions of Summit or its appointee to the exclusion of the Contractor in respect of the Works upon the terms and conditions of the Sub Contract. The Contractor acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor by Summit under this Clause 4 as conclusive evidence for the purposes of this Agreement of the termination of the Building Contract by Summit; and further acknowledges that such acceptance of the instructions of Summit to the exclusion of the Contractor shall not constitute any breach of the Sub-Contractor's obligations to the Contractor under the Sub Contract.

- 5.1 The Sub-Contractor shall not exercise any right of determination of his employment under the Sub Contract without having first
 - .1 copied to Summit any written notices required by the Sub Contract to be sent to the Contractor prior to the Sub-Contractor being entitled to give notice under the Sub Contract that his employment under the Sub Contract is determined, and
 - .2 given to Summit written notice that he has the right under the Sub Contract forthwith to notify the Contractor that his employment under the Sub Contract is determined.

- 5.2 The Sub-Contractor shall not treat the Sub Contract as having been repudiated by the Contractor without having first given to the Company written notice that he intends to so inform the Contractor.

5.3 The Sub-Contractor shall not

- issue any notification to the Contractor to which Clause 5.1.2 refers; or
- inform the Contractor that he is treating the Sub Contract as having been repudiated by the Contractor as referred to in Clause 5.2

before the lapse of 21 days from receipt by Summit of the written notice by the Sub-Contractor which the Sub-Contractor is required to give under Clause 5.1.2 or Clause 5.2.

5.4 Summit may, not later than the expiry of the 21 days referred to in Clause 5.3 require the Sub-Contractor by notice in writing and subject to Clause 6 to accept the instructions of Summit or its appointee to the exclusion of the Contractor in respect of the Sub Contract Works upon the terms and conditions of the Sub Contract. The Contractor acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor by Summit under Clause 5.7 and that acceptance by the Sub-Contractor of the instruction of Summit to the exclusion of the Contractor shall not constitute any breach of the Sub-Contractor's obligations to the Contractor under the Sub-Contract. Provided that, subject to Clause 6, nothing in Clause 5.4 shall relieve the Sub-Contractor of any liability he may have to the Contractor for any breach by the Sub-Contractor of the Sub Contract or where the Sub-Contractor has wrongfully served notice under the Sub Contract that he is entitled to determine his employment under the Sub Contract or has wrongfully treated the Sub Contract as having been repudiated by the Contractor..

6. It shall be a condition of any notice given by Summit under Clauses 4 or 5 that Summit or its appointee accepts liability for payment of the sums properly due to the Sub-Contractor under the Sub Contract and for performance of the Contractor's obligations thereunder including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by Summit under Clauses 4 or 5, the Sub Contract shall continue in full force and effect as if no right of determination of his employment under the Sub Contract, nor any right of the Sub-Contractor to treat the Sub Contract as having been repudiated by the Contractor had arisen and the Sub-Contractor shall be

liable to Summit and its appointee under the Sub Contract in lieu of its liability to the Contractor. If any notice given by Summit under Clauses 4 or 5 requires the Contractor to accept the instructions of Summit's appointee, Summit shall be liable to the Sub-Contractor as guarantor for the payment of all sums from time to time due to the Sub-Contractor from Summit's appointee.

7. The copyright in all drawings, reports, models, specifications, bills of quantities, calculations and other documents and information prepared by or on behalf of the Sub-Contractor in connection with the Works (together referred to in this Clause 7 as "the Documents") shall remain vested in the Sub-Contractor but, subject to the Contractor having discharged his obligation to pay all monies certified as due/properly due under the Sub Contract, Summit or its appointee shall have a licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Sub Contract including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Works. Such licence shall be transferable to third parties and shall carry the right to grant sub-licences. The Sub-Contractor shall not be liable for any misuse by Summit or its appointee of any of the documents.
8. The Sub-Contractor shall take out and maintain professional indemnity insurance in an amount of [] pounds (£) for any one claim and in all in any one period of insurance for a period of [] years from the date of Contractual Practical Completion as defined in the Building Contract, provided such insurance is available at commercially reasonable rates. The Sub-Contractor shall immediately inform Summit if such insurance is not or ceases to be available at commercially reasonable rates in order that the Sub-Contractor and Summit can discuss the means of best protecting the Sub-Contractor in the absence of such insurance. As and when it is reasonably requested to do so by Summit or its appointee, the Sub-Contractor shall produce for inspection documentary evidence that professional indemnity insurance is being maintained.
9. This agreement may be assigned by Summit to another person acquiring the interest of the Contractor in the Works without the consent of the Contractor or the Sub-Contractor being required and such assignation shall be effective upon written notice

thereof being given to the Contractor and to the Sub-Contractor. No further or other assignation of this Agreement shall be permitted save as is expressly provided for herein.

10. Any notice to be given by the Sub-Contractor or the Contractor hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to Summit at its registered office and any notice given by Summit hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the Contractor or the Sub-Contractor at its registered office, and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed (subject to proof to the contrary) to have been received forty eight hours after being posted.
11. The construction validity and performance of this Agreement shall be governed by Scots law and the parties agree to prorogate the jurisdiction of the Scottish Courts.
12. The obligations and liabilities of the Sub-Contractor under this Agreement shall not be limited or excluded by an enquiry or inspection into any matter which may be made or carried out by Summit or by the appointment of any person, firm or other entity by Summit to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or other entity to Summit arises in connection therewith.

IN WITNESS

NOW IT IS HEREBY AGREED

In consideration of the payment of one pound (£1) to the Sub-Contractor, receipt of which the Sub-Contractor acknowledges:

1. The Sub-Contractor warrants to the Financiers and undertakes that-
 - 1.1 in respect of performance of its obligations under the Sub-Contract, it has exercised and will continue to exercise all the skill, care and diligence to be reasonably expected of a Contractor who has held itself out as experienced in performing and resourcing such obligations;
 - 1.2 it has complied and shall continue to comply promptly and efficiently with the terms of and has fulfilled and shall continue to fulfil its duties and obligations set out in the Sub-Contract;
 - 1.3 the Works will, on completion, comply with all applicable statutory requirements and all performance specifications and other requirements under the Building Contract (and the Sub-Contractor acknowledges that it has received a copy of the Building Contract and has considered the same) to the extent that any part of the Works has been or will be designed by the Sub-Contractor or in respect of which the Sub-Contractor is responsible for checking, monitoring, certifying or commissioning the same;
 - 1.4 all materials and goods comprising the Works will correspond as to description, quality, condition and durability with the requirements set out in the Sub-Contract and be of sound manufacture and workmanship; and
 - 1.5 it owes a duty of care to the Financiers in relation to its duties, representations and warranties within the Sub-Contract.

- 1.6 the Sub-Contractor shall be entitled in any action or proceedings by the Financiers to raise the equivalent rights in defence of liability (other than a counter claim) as it would have against the Contractor under the Sub Contract.]
2. Without prejudice to the generality of Clause 1, the Sub-Contractor further warrants that, unless required by the Sub Contract or unless otherwise authorised in writing by the Contractor (or, where such authorisation is given orally, confirmed in writing by the Sub-Contractor to the Contractor, none of the following has been used in the Sub-Contract Works:
- 2.1 high alumina cement in structural elements;
 - 2.2 wood wool slabs in permanent formwork to concrete;
 - 2.3 calcium chloride in admixtures for use in reinforced concrete;
 - 2.4 asbestos products;
 - 2.5 naturally occurring aggregates for use in reinforced concrete which do not comply with British Standard 882: 1983 and/or naturally occurring aggregates for use in concrete which do not comply with British Standard 8110: 1985;
 - 2.6 any other goods material or equipment which are themselves or which incorporate substances which are stated in the Building Contract to be prohibited or which are generally known at the time of use to be deleterious to health and safety or to the durability of the completed Works in the particular circumstances in which they are used or which otherwise are not in accordance with British Standards, Codes of Practice or good building practice or techniques; and the Sub-Contractor undertakes insofar as within its obligations or responsibilities under the Sub-Contract to exercise the level of skill, care and diligence to ensure that such materials are not specified and/or used in the Sub-Contract Works.

3. The Financiers has no authority to issue any direction or instruction to the Sub-Contractor in relation to the Sub Contract. The Financiers has no liability to the Sub-Contractor in relation to amounts due under the Sub Contract.
4. The copyright in all drawings, reports, models, specifications, bills of quantities, calculations and other similar documents provided by the Firm in connection with the Development (together referred to in this Clause 4 as "the Documents") shall remain vested in the Firm but, the Firm shall provide a copy of the Documents to the Financiers and hereby grants to the Financiers and their appointee an irrevocable royalty-free licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Development including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Development. Such licence shall be transferable to third parties and shall carry the right to grant sub-licences. The Firm shall not be liable for any misuse by the Financiers or its appointee of any of the Documents.
5. The Firm shall provide evidence to the Financiers of its existing level of professional indemnity insurance. The Firm shall then effect and maintain with Insurers approved by the Financiers professional indemnity insurance in such amount and for such period approved by the Financiers. The Firm shall immediately inform the Financiers if such insurance ceases to be available at commercially reasonable rates in order that the Firm and the Financiers can discuss means of best protecting the respective positions of the Financiers and the Firm in respect of the Development in the absence of such insurance. As and when it is reasonably requested to do so by the Financiers or its appointee, under Clauses 5 or 6, the Firm shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.
6. This agreement may be assigned by the Financiers to another person, Firm or company without the consent of the Sub-Contractor being required and such assignment shall be effective upon written notice thereof being given to the Contractor and to the Sub-Contractor. The Sub-Contractor shall not be permitted to assign the Agreement.

7. The construction validity and performance of this Agreement shall be governed by Scots law and the parties agree to prorogate the jurisdiction of the Scottish Courts.

8. The obligations and liabilities of the Sub-Contractor under this Agreement shall not be limited or excluded by an enquiry or inspection into any matter which may be made or carried out by the Financiers or by the appointment of any person, firm or other entity by the Financiers to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or other entity to the Financiers arises in connection therewith.

IN WITNESS

out of and relate to the same) dated [] the Contractor has appointed the Sub-Contractor to carry out and complete [] ("the Sub-Contract Works").

NOW IT IS HEREBY AGREED

In consideration of the payment of one pound (£1) to the Sub-Contractor, receipt of which the Sub-Contractor acknowledges:

1. The Sub-Contractor warrants that it has complied and will continue to comply with the Sub Contract. In the event of any breach of this warranty the Sub-Contractor shall be entitled in any action or proceedings by the Trust to raise the equivalent rights in defence of liability (other than a counter claim) as it would have against the Contractor under the Sub Contract.

2. Without prejudice to the generality of Clause 1, the Sub-Contractor further warrants that, unless required by the Sub Contract or unless otherwise authorised in writing by the Contractor (or, where such authorisation is given orally, confirmed in writing by the Sub-Contractor to the Contractor, none of the following has been used in the Sub-Contract Works:
 - 2.1 high alumina cement in structural elements;
 - 2.2 wood wool slabs in permanent formwork to concrete;
 - 2.3 calcium chloride in admixtures for use in reinforced concrete;
 - 2.4 asbestos products;
 - 2.5 naturally occurring aggregates for use in reinforced concrete which do not comply with British Standard 882: 1983 and/or naturally occurring aggregates for use in concrete which do not comply with British Standard 8110: 1985;
 - 2.6 any other goods material or equipment which are themselves or which incorporate substances which are stated in the Building Contract to be prohibited or which are

generally known at the time of use to be deleterious to health and safety or to the durability of the completed Works in the particular circumstances in which they are used or which otherwise are not in accordance with British Standards, Codes of Practice or good building practice or techniques.

3. The Trust has no authority to issue any direction or instruction to the Sub-Contractor in relation to the Sub Contract. The Trust has no liability to the Sub-Contractor in relation to amounts due under the Sub Contract.
4. The copyright in all drawings, reports, models, specifications, bills of quantities, calculations and other documents and information prepared by or on behalf of the Sub-Contractor in connection with the Sub-Contract Works (together referred to in this Clause 4 as "the Documents") shall remain vested in the Sub-Contractor but, subject to the Contractor having discharged his obligation to pay all monies certified as due/properly due under the Sub Contract, the Trust or its appointee shall have a licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Sub Contract including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Sub Contract Works. Such licence shall transferable to third parties and shall carry the right to grant sub-licences. The Sub-Contractor shall not be liable for any misuse by the Trust or its appointee of any of the Documents.
5. The Sub-Contractor shall take out and maintain professional indemnity insurance in an amount of [] pounds (£) for any one claim and in all in any one period of insurance for a period of [] years from the date of Contractual Practical Completion as defined in under the Building Contract, provided such insurance is available at commercially reasonable rates. The Sub-Contractor shall immediately inform the Trust if such insurance is not or ceases to be available at commercially reasonable rates in order that the Sub-Contractor and the Trust can discuss the means of best protecting the Sub-Contractor in the absence of such insurance. As and when it is reasonably requested to do so by the Trust or its appointee, the Sub-Contractor shall produce for inspection documentary evidence that is professional indemnity insurance is being maintained.]

6. This agreement may be assigned by the Trust to another person acquiring the interest of the Trust in the Works without the consent of the Sub-Contractor being required and such assignation shall be effective upon written notice thereof being given to the Contractor and to the Sub-Contractor. No further or other assignation of this Agreement shall be permitted save as is expressly provided for herein.
7. The construction validity and performance of this Agreement shall be governed by Scots law and the parties agree to prorogate the jurisdiction of the Scottish Courts.
8. The obligations and liabilities of the Sub-Contractor under this Agreement shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the Trust or by the appointment of any person, firm or other entity by the Trust to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or other entity to the Trust arises in connection therewith.

IN WITNESS

Schedule

Part 8 - VAT Agreement

Supplemental Provisions (the VAT Agreement)

The following are the supplemental provisions (the VAT Agreement) referred to in Clause 14.1 of the Conditions:

1. Summit shall pay to the Contractor in the manner hereinafter set out any tax properly chargeable by the Commissioners on the Contractor on the supply to Summit of any goods and services by the Contractor under this Building Contract. Supplies of goods and services under this Building Contract are supplies under a contract providing for periodical payment for such supplies within the meaning of Regulation 93 of the Value Added Tax Regulations 1995 or any amendment or re-enactment thereof.
- 1A.1 Where it is stated in Clause 14.2 of the Conditions that Clause 1A of this Agreement applies Clauses 1.1 to 1.2.2 inclusive hereof shall not apply unless and until any notice issued under Clause 1A.4 hereof becomes effective or unless the Contractor fails to give the written notice required under Clause 1A.2. Where Clause 1A applies Clauses 1 and 1.3 to 8 of this Agreement remain in full force and effect.
- 1A.2 Not later than 7 days before the date of the first Application for Interim Payment the Contractor shall give written notice to Summit of the rate of tax chargeable on the supply of goods and services for which Interim Payments are to be made and the Final Certificate issued. If the rate of tax so notified is varied under statute the Contractor shall, not later than 7 days after the date when such varied rate comes into effect, send to Summit the necessary amendment to the rate given in his written notice and that notice shall then take effect as so amended.
- 1A.3 For the purpose of complying with the VAT Agreement for the recovery by the Contractor, as stated in Clause 14.2 of the Conditions, from Summit of tax properly chargeable by the Commissioners on the Contractor, an amount calculated at the rate given in the aforesaid written notice (or, where relevant, amended written notice)

shall be shown on each Application for Interim Payment made by the Contractor and, unless the procedure set out in Clause 1.3 hereof shall have been completed, on the Final Certificate. Such amount shall be paid by Summit to the Contractor or by the Contractor to Summit as the case may be within the period for payment of Applications for Interim Payment set out in Clause 30.2 or within the period set out in Clause 30.9 for the payment of the balance properly stated in the Final Certificate.

1.A.4 Either Summit or the Contractor may give written notice to the other stating that with effect from the date of the notice Clause 1A shall no longer apply. From that date the provisions of Clauses 1.1 to 1.2.2 inclusive hereof shall apply in place of Clause 1A hereof.

1.1 Unless Clause 1A applies, the Contractor shall not later than the date for the issue of each Application for Interim Payment and, unless the procedure set out in Clause 1.3 of this Agreement shall have been completed, for the issue of the Final Certificate, give to Summit a written provisional assessment of the respective values (less any Retention Percentage applicable thereto) of those supplies of goods and services for which the Application for Payment is being made or which monies are shown as being outstanding on the Final Certificate, whichever is applicable, and which will be chargeable, at the relevant time of supply under Regulation 93 of the Value Added Tax Regulations 1995 on the Contractor at

- .1 a zero rate of tax (Category (i)) and
- .2 any rate or rates of tax other than zero (Category (ii)).

the Contractor shall also specify the rate or rates of tax which are chargeable on those supplies included in Category (ii), and shall state the grounds on which he considers such supplies are so chargeable.

1.2 .1 Upon receipt of such written provisional assessment Summit, unless he has reasonable grounds for objection to that assessment, shall calculate the amount of tax due by applying the rate or rates of tax specified by the Contractor to the amount of the assessed value of those supplies included in

Category (ii) of such assessment, and remit the calculated amount of such tax, together with the amount of the Interim Payment to the Contractor within the period for payment of Applications for Interim set out in Clause 30.2 of the Conditions.

.2 If Summit has reasonable grounds for objection to the provisional assessment he shall within 3 working days of receipt of that assessment so notify the Contractor in writing setting out those grounds. The Contractor shall within 3 working days of receipt of the written notification of Summit reply in writing to Summit either that he withdraws the assessment in which case Summit is released from his obligation under Clause 1.2.1 of this Agreement or that he confirms the assessment. If the Contractor so confirms then the Contractor may treat any amount received from Summit in respect of the value which the Contractor has stated to be chargeable on him at a rate or rates of tax other than zero as being inclusive of tax and issue an authenticated receipt under Clause 1.4 of this Agreement.

1.3 .1 Where Clause 1A is operated Clause 1.3 only applies if no amount of tax pursuant to Clause 1A.3 has been shown on the Final Certificate. After the issue of the Notice of Completion of Making Good Defects under Clause 17.4 of the Conditions the Contractor shall as soon as he can finally so ascertain prepare a written final VAT statement of the respective values of all supplies of goods and services for which payments have been or will be paid which are chargeable on the Contractor at

.1 .1 a zero rate (Category (i)) and

.1 .2 any rate or rates of tax other than zero (Category (ii))

and shall issue such final VAT statement to Summit .

The Contractor shall also specify the rate or rates of tax which are chargeable on the value of those supplies included in Category (ii) and shall state the grounds on which he considers such supplies are so chargeable.

The Contractor shall also state the total amount of tax already received by the Contractor for which a receipt or receipts under Clause 1.4 of this Agreement have been issued.

- 1.3 .2 The VAT statement under Clause 1.3.1 of this Agreement may be issued either before or after the issue of the Final Certificate.
- 1.3 .3 Upon receipt of the written final VAT statement Summit shall, subject to Clause 3 of this Agreement, calculate the final amount of tax due by applying the rate or rates of tax specified by the Contractor to the value of those supplies included in Category (ii) of the VAT statement and deducting therefrom the total amount of tax already received by the Contractor specified in the VAT statement, and shall pay the balance of such tax to the Contractor within 28 days from receipt of the VAT statement.
- 1.3 .4 If Summit finds that the total amount of tax specified in the final VAT statement as already paid by him exceeds the amount of tax calculated under Clause 1.3.3 of this Agreement Summit shall so notify the Contractor who shall refund such excess to Summit within 28 days of receipt of the notification, together with a receipt under Clause 1.4 of this Agreement showing the correction of the amounts for which a receipt or receipts have previously been issued by the Contractor.
- 1.4 Upon receipt of any amount paid by Summit under this Building Contract and any tax properly paid under the provisions of Clause I or Clause 1A of this Agreement the Contractor shall issue to Summit a receipt of the kind referred to in Regulation 13(4) of the Value Added Tax Regulations 1995 containing the particulars required under Regulation 14(1) of the aforesaid Regulations or any amendment or re-enactment thereof to be contained in a tax invoice.
- 2.1 If, when Summit is obliged to make payment under Clause 1.2 or 1.3 of this Agreement he is empowered under Clause 24 of the Conditions to deduct any sum calculated at the rate stated in the Appendix as liquidated and ascertained damages

for sums due or to become due to the Contractor under this Building Contract he shall disregard any such deduction in calculating the tax due on the value of goods and services supplied to which he is obliged to add tax under Clause 1.2 or 1.3 of this Agreement.

- 2.2 the Contractor when ascertaining the respective values of any supplies of goods and services for which Applications for Payment have been or will be made under the Conditions in order to prepare the final statement referred to in Clause 1.3 of this Agreement shall disregard when stating such values any deduction by Summit of the sum calculated at the rate stated in the Appendix as liquidated and ascertained damages under Clause 24 of the Conditions.
- 2.3 Where Clause 1A is operated Summit shall pay the tax to which that Clause refers notwithstanding any deduction which Summit may be empowered to make under Clause 24 of the Conditions as liquidated or ascertained damages from any monies due or to become due to the Contractor under this Building Contract.
- 3.1 If Summit disagrees with the final VAT statement issued by the Contractor under Clause 1.3 of this Agreement he may but before any payment or refund becomes due under Clause 1.3.3 or 1.3.4 of this Agreement request the Contractor to obtain the decision of the Commissioners on the tax properly chargeable on the Contractor for all supplies of goods and services under this Building Contract and the Contractor shall forthwith request the Commissioners for such decision. If Summit disagrees with such decision then, provided Summit indemnifies and at the option of the Contractor secures the Contractor against all costs and other expenses, the Contractor shall in accordance with the instructions of Summit make all such appeals against the decision of the Commissioners as shall Summit request. The Contractor shall account for any costs awarded in his favour in any appeals to which Clause 3 of this Agreement applies.
- 3.2 Where, before any appeal from the decision of the Commissioners can proceed, the full amount of the tax alleged to be chargeable on the Contractor on the supply of goods and services under the Conditions must be paid or accounted for by the

Contractor, Summit shall pay to the Contractor the full amount of tax needed to comply with any such obligation.

- 3.3 Within 28 days of the final adjudication of an appeal (or of the date of the decision of the Commissioners if Summit does not request the Contractor to refer such decision to appeal) Summit or the Contractor, as the case may be, shall pay or refund to the other in accordance with such final adjudication any tax underpaid or overpaid, as the case may be, under the provisions of this Agreement and the provisions of Clause 1.4 of this Agreement shall apply in regard to the provision of authenticated receipts.
4. Upon receipt by the Contractor from Summit or by Summit from the Contractor, as the case may be, of any payment under Clause 1.3.3 or 1.3.4 of this Agreement or where Clause 1A of this Agreement is operated of any payment of the amount of tax shown upon the Final Certificate or upon final adjudication of any appeal made in accordance with the provisions of Clause 3 of this Agreement and any resultant payment or refund under Clause 3.3 of this Agreement, Summit shall be discharged from any further liability to pay tax to the Contractor in accordance with the VAT Agreement. Provided always that if after the date of discharge under Clause 4 of this Agreement the Commissioners decide to correct the tax due from the Contractor on the supply to Summit of any goods and services by the Contractor under this Building Contract the amount of any such correction shall be an additional payment by Summit to the Contractor or by the Contractor to Summit, as the case may be. The provisions of Clause 3 of this Agreement in regard to disagreement with any decision of the Commissioners shall apply to any decision referred to in this proviso.
5. If any dispute or difference is referred to the Dispute Resolution Procedure or to a court then insofar as any payment awarded in such arbitration or court proceedings varies the amount of payment for goods or services supplied by the Contractor to Summit under this Building Contract or is an amount which ought to have been so paid but was not so paid then the provisions of this Agreement shall so far as relevant and applicable apply to any such payments.

6. The provisions of article 5 shall not apply to any matters to be dealt with under Clause 3 of this Agreement.

7. Notwithstanding any provisions to the contrary elsewhere in the Conditions Summit shall not be obliged to make any further payment to the Contractor under the Conditions if the Contractor is in default in providing the receipt referred to in Clause 1.4 of this Agreement. Provided that Clause 7 of this Agreement shall only apply where:
 7. .1 Summit can show that he requires such receipt to validate any claim for credit for tax paid or payable under this Agreement which Summit is entitled to make to the Commissioners, and

 7. .2 Summit has

paid tax in accordance with the provisional assessment of the Contractor under Clause 1 of this Agreement unless he has sustained a reasonable objection under Clause 1.2 of this Agreement; or

paid tax in accordance with Clause 1A of this Agreement.

8. Where Clause 27.6 of the Conditions becomes operative there shall be added to the amount allowable or payable to Summit any additional tax that Summit has had to pay by reason of determination under Clause 27 of the Conditions as compared with the tax Summit would have paid if the determination had not occurred.

Schedule

Part 9 - Incorporation of Development Agreement Schedules

This Schedule shall be deemed to consist of the provisions of Parts 1, 2, 4, 5, 6, 9,10 and 11 of the Schedule of the Development Agreement as amended from time to time as if the same has been incorporated at length herein but declaring that:-

- (i) the provisions so incorporated shall be deemed applicable only to the scope of work under this Building Contract as set out in the Articles of Agreement, Conditions and the Schedule and so far as relevant to the description of the Works;
- (ii) the definitions used in the Development Agreement and Master Definitions Schedule shall apply to provisions incorporated herein as aforesaid;
- (iii) Clause references contained in the provisions incorporated herein as aforesaid shall be taken to be to references to the applicable clauses within the Development Agreement;
- (iv) information contained in the provisions incorporated herein as aforesaid which, when read in conjunction with the Development Agreement is relevant only to that Agreement, shall be treated as irrelevant to this Building Contract.

Schedule

Part 10 (a) - Earned Value Schedule

The Earned Value Schedule follows this page

Schedule

Part 10 (b) - Payment Curve in the Financial Model

The Payment Curve in the Financial Model follows this page

ST. W. HOSPITAL

Per	Nov-99	Dec-99	Jan-00	Feb-00	Mar-00	Apr-00	May-00	Jun-00	Jul-00	Aug-00	Sep-00	Oct-00	Nov-00	Dec-00	Jan-01	Feb-01
17	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4

Bar Title	1-00	2-00	3-00	4-00	5-00	6-00	7-00	8-00	9-00	10-00	11-00	12-00	1-01	2-01	3-01	4-01
11 General Wld	11000	11000	11000	11000	11000	11000	11000	11000	11000	11000	11000	11000	11000	11000	11000	11000

Bar Title	1-00	2-00	3-00	4-00	5-00	6-00	7-00	8-00	9-00	10-00	11-00	12-00	1-01	2-01	3-01	4-01
12 General Wld	12000	12000	12000	12000	12000	12000	12000	12000	12000	12000	12000	12000	12000	12000	12000	12000

Bar Title	1-00	2-00	3-00	4-00	5-00	6-00	7-00	8-00	9-00	10-00	11-00	12-00	1-01	2-01	3-01	4-01
13 General Wld	13000	13000	13000	13000	13000	13000	13000	13000	13000	13000	13000	13000	13000	13000	13000	13000

Bar Title	1-00	2-00	3-00	4-00	5-00	6-00	7-00	8-00	9-00	10-00	11-00	12-00	1-01	2-01	3-01	4-01
14 General Wld	14000	14000	14000	14000	14000	14000	14000	14000	14000	14000	14000	14000	14000	14000	14000	14000

Bar Title	1-00	2-00	3-00	4-00	5-00	6-00	7-00	8-00	9-00	10-00	11-00	12-00	1-01	2-01	3-01	4-01
15 General Wld	15000	15000	15000	15000	15000	15000	15000	15000	15000	15000	15000	15000	15000	15000	15000	15000

Bar Title	1-00	2-00	3-00	4-00	5-00	6-00	7-00	8-00	9-00	10-00	11-00	12-00	1-01	2-01	3-01	4-01
16 General Wld	16000	16000	16000	16000	16000	16000	16000	16000	16000	16000	16000	16000	16000	16000	16000	16000

Bar Title	1-00	2-00	3-00	4-00	5-00	6-00	7-00	8-00	9-00	10-00	11-00	12-00	1-01	2-01	3-01	4-01
17 General Wld	17000	17000	17000	17000	17000	17000	17000	17000	17000	17000	17000	17000	17000	17000	17000	17000

Bar Title	1-00	2-00	3-00	4-00	5-00	6-00	7-00	8-00	9-00	10-00	11-00	12-00	1-01	2-01	3-01	4-01
18 General Wld	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000

Schedule

Part 11 - Dispute Resolution Procedure

SECTION 1 : NEGOTIATION BETWEEN THE PARTIES

If a Dispute arises under, out of or in connection with this Building Contract, then, except where a Dispute is expressly stated in this Building Contract to be referable to an Expert, the parties may agree to refer the Dispute to an official of Summit (nominated from time to time for that purpose by Summit, failing which, the Chief Executive of Summit) and an official of the Contractor (nominated from time to time for that purpose by the Contractor, failing which, the Chief Executive of the Contractor), who shall meet and use their reasonable endeavours to negotiate (in good faith) to resolve the Dispute within 10 days of referral, and whose unanimous decision shall be binding on the parties.

SECTION 2 : DISPUTE RESOLUTION PROCEDURE

1. REFERRAL TO EXPERT FOR ADJUDICATION

1.1 If the procedure referred to in Section 1 above does not resolve a Dispute arising under, out of or in connection with this Building Contract within ten (10) days of the date of referral, or if a Dispute is expressly stated in this Building Contract to be referable to an Expert, then either party may refer such Dispute to the Expert appointed pursuant to this Dispute Resolution Procedure (the "Expert") for adjudication in accordance with the procedure specified in paragraph 2 below.

2 ADJUDICATION PROCEDURE

2.1 Any Dispute arising under this Building Contract which is referred to the Expert for adjudication shall be adjudicated in accordance with the ORSA Adjudication Rules - 1998 Version 1.2 (the "Adjudication Rules"), provided always that:-

- (a) all references to the Adjudicator in the Adjudication Rules shall be deemed and treated as a reference to the Expert specified in Section 2, paragraph 1.1 above;
- (b) the following words shall be deleted from the Adjudication Rules:

- (i) "Contract" means the agreement which includes the agreement to adjudicate in accordance with these Rules" in lines 2 to 4 of Rule 2;
 - (ii) "an arbitrator appointed pursuant to the Contract and/or" in lines 3 and 4 of Rule 16;
 - (iii) "or arbitration" in line 3 of Rule 31;
 - (iv) "or arbitration" in line 6 of Rule 31;
- (c) Rule 1(i) shall be deleted from the Adjudication Rules;
 - (d) Rule 1(ii) shall be deleted from the Adjudication Rules;
 - (e) the party giving written notice pursuant to Rule 3(i) shall, at the same time, also give a copy of the notice to the Adjudicator;
 - (f) subject to paragraph 1.13 in Section 3 below, for the purposes of Rule 6 the parties agree upon the appointment of the Expert as the Adjudicator unless and until the parties shall agree otherwise in writing;
 - (g) notwithstanding Rules 14 and 33, no party shall, save in the case of bad faith on the part of the Adjudicator make any application whatsoever to a competent court in relation to the conduct of the Adjudication or the decision of the Adjudicator until after the Contractual Practical Completion Date or the alleged Contractual Practical Completion Date of the Works or termination or alleged termination of this Building Contract, unless and until the prior written consent of both Summit and the Contractor has been obtained;
 - (h) notwithstanding Rules 14 and 33, no party shall make any application whatsoever to a competent court in relation to the conduct of the Adjudication or the decision of the Adjudicator after that date being the later of, ninety (90) days from the decision of the Adjudicator or ninety (90) days from the Contractual Practical Completion Date;
 - (i) notwithstanding Rules 14 and 33, no party shall make any application whatsoever to a competent court in relation to the conduct of the

Adjudication or the decision of the Adjudicator unless it shall involve the pursuit of a claim or a counterclaim of a monetary value in excess of £150,000 (or in the case of individual claims or counterclaims of a lesser monetary value arising out of the same facts and circumstances, an aggregate monetary value in aggregate of £300,000 in each case) calculated in both cases on a net present value basis using a discount rate of the Bond Rate (Indexed from Financial Close);

- (j) Rule 19(x) and Rule 19 (xiii) shall be deleted from the Adjudication Rules;
- (k) Rule 21(v) shall be deleted from the Adjudication Rules;
- (l) Rule 24 shall be deleted from the Adjudication Rules;
- (m) Rule 28 shall be deleted from the Adjudication Rules;
- (n) Rule 32 shall be deleted from the Adjudication Rules;
- (o) the following Rules shall be inserted in the Adjudication Rules;
 - (i) "1A. The following rules meet the requirements of adjudication procedure as set out in section 108 of the Housing Grants, Construction and Regeneration Act 1996; Part 1 of the Scheme for Construction Contracts (Scotland) Regulations 1998 shall thus not apply".
 - (ii) "2A. "Contract" means this Building Contract and shall include the agreement to adjudicate in accordance with these Rules."
 - (iii) "2B. "Chairman of ORSA" means the President for the time being of ORSA, or such other officer as is authorised to deputise for him;
 - (iv) "2C. "ORSA" means the Law Society of Scotland;
 - (v) "19A. The Adjudicator shall only reach his decision after holding an oral hearing and with or without having endeavoured to facilitate any agreement between the parties".

- (vi) "19B. Upon becoming aware that the dispute is the same or arises out of substantially the same facts as a dispute which has previously been referred to adjudication under the Contract, the Adjudicator shall immediately resign."
- (vii) "21A. The Adjudicator may require any Party to pay or make contribution to, the legal costs of another Party arising in the Adjudication, and/or the legal costs of any party to a dispute arising under, out of, or in connection with any other contract between any Party and that third party which relates to the Contract (the "Related Dispute") where the adjudication of the Related Dispute has been consolidated or joined with the Adjudication of the dispute between the Parties (the "Consolidated Adjudication"), to the extent that the legal costs of that third party arise in respect of the Related Dispute during the period in which the Related Dispute is consolidated or joined with the dispute between the parties."
- (viii) "24A. Save as aforesaid, the Parties shall be jointly responsible for the Adjudicator's fees and expenses including those of any specialist consultant appointed under 19(viii) (the "Costs of Adjudication"), the Adjudicator shall have the discretion to make directions to require any Party to pay or make contribution to the Costs of Adjudication and/or the fees and expenses of any adjudicator and specialist consultant appointed in relation to the Consolidated Adjudication. If no such directions are made, the Parties shall bear the Costs of Adjudication in equal shares, and if any Party has paid more than such equal share, that Party shall be entitled to contribution from other Parties accordingly."
- (ix) "28A. Every decision of the Adjudicator shall be implemented without delay. The parties shall be entitled to such reliefs and remedies as are set out in the decision, and shall be entitled to summary enforcement thereof, regardless of whether such decision is or is to be the subject of any challenge or review. No party shall be entitled to raise any right of set-off, counterclaim or abatement in

connection with any enforcement proceedings. The parties agree and bind themselves to each other to docket every decision with their consent and to registration of the Adjudicator's decision in the Books of Council and Session for execution."

- (x) "30A. All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment hereunder shall be treated as confidential by the Adjudicator and each party to the Adjudication (save to the extent disclosure of such has to be made pursuant to the Related Disputes procedures in Section 3 below) and shall be returned to the owner on completion of the Adjudication proceedings."

- (xi) "32A. These Rules shall be governed by and construed in accordance with the law of Scotland and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Session, Scotland and waive any plea of forum non conveniens."

SECTION 3 : RELATED DISPUTES

1. CONSOLIDATION OF DISPUTES

- 1.1 In the event of a Dispute arising under, out of or in connection with this Building Contract which in the opinion of Summit relates to a dispute or potential dispute ("Related Dispute") arising under, out of, or in connection with any other contract between Summit and a third party (all such contracts being referred to as the "Related Contracts"), and where the Related Dispute has been referred to an adjudicator for determination under an adjudication procedure (the "Related Procedure") which meets the requirements set out in section 108 of the Housing Grants, Construction and Regeneration Act 1996 and where the Related Procedure is substantially the same as the adjudication procedure in this Building Contract, Summit may or may procure that the other party to the Related Dispute shall as soon as practicable, and in any case within fourteen (14) days of the referral of the Dispute to the Expert, give to the Expert conducting the adjudication under this Building Contract and also to the other parties to the Dispute and the Related Dispute the particulars set out in paragraph 1.2 below.

1.2 The particulars referred to in paragraph 1.1 above are:-

- (a) a copy of the Related Contract;
- (b) a preliminary statement from Summit and/or, as the case may be, the other party to the Related Dispute setting out-
 - (i) the basis and grounds for consolidation of the Related Dispute and the Dispute;
 - (ii) the cases of the parties to the Related Dispute;
 - (iii) any relief sought by the parties to the Related Dispute; and
 - (iv) a list of any documents served in relation to the Related Dispute.

Any such particulars sent by Summit to the Expert and the other parties to the Dispute shall be sent at the same time to the other party to the Related Dispute.

1.3 On receiving the particulars set out in paragraph 1.2 above prior to the Contractual Practical Completion Date and within fourteen (14) days of the referral of the Dispute to the Expert, the Expert shall, at the request of Summit, immediately order consolidation of the Dispute and the Related Dispute and shall have the authority and the power referred to in paragraph 1.10 below.

1.4 On receiving the particulars set out in paragraph 1.2 above on or after the Contractual Practical Completion Date and within fourteen (14) days of the referral of the Dispute to the Expert, the Expert shall immediately request that the parties to the Dispute and the other party to the Related Dispute attend a meeting with the Expert with a view to determining whether or not the Dispute and the Related Dispute should be consolidated.

1.5 Summit shall use its reasonable endeavours to procure that an authorised representative of the other party to the Related Dispute shall attend the meeting with the Expert referred to in paragraph 1.4 above. Summit and the Contractor each agree to send an authorised representative or nominee to any meeting of this kind under this Building Contract or under a Related Contract, which they may be requested to

attend. The parties hereby agree that the Trust shall be entitled to attend any meeting with the Expert referred to in paragraph 1.4 above, as Summit's nominee.

- 1.6 At the meeting referred to in paragraph 1.4 above, Summit's representative (or its nominee) shall, as a preliminary matter, either:
- (a) confirm to the Expert that Summit (or its nominee) accepts the proposed consolidation of the Related Dispute with the Dispute; or
 - (b) inform the Expert that Summit (or its nominee) does not accept the proposed consolidation of the Related Dispute with the Dispute.
- 1.7 Where paragraph 1.6(a) above applies, the Expert shall immediately order consolidation of the Dispute and the Related Dispute and shall have the authority and the power referred to in paragraph 1.10 below.
- 1.8 Where paragraph 1.6(b) above applies, the Expert shall issue within one (1) day of the meeting referred to in paragraph 1.4 above his written decision, which shall not include any reasons, as to whether or not there is demonstrably no basis or ground for consolidation of the Dispute and the Related Dispute. If the Expert determines that there is demonstrably no basis or ground for consolidation of the Dispute and the Related Dispute, the Dispute and the Related Dispute shall not be consolidated. If the Expert determines otherwise, or if the Expert has failed or is unable to reach a decision within one (1) day of the meeting referred to in paragraph 1.4 above, the Expert shall immediately order consolidation of the Dispute and the Related Dispute and shall have the authority and the power referred to in paragraph 1.10 below.
- 1.9 Notwithstanding anything to the contrary, a Related Dispute shall only be consolidated with a Dispute under this Building Contract if the Expert receives the particulars set out in paragraph 1.2 above within fourteen (14) days of the referral of the Dispute under this Building Contract to the Expert.
- 1.10 The Expert shall have the authority and the power to consolidate the Dispute and the Related Dispute, and to direct that all procedural and/or evidential matters arising in both the Dispute and the Related Dispute are consolidated in whatever manner the Expert considers shall lead to the fair and expeditious resolution of both the Dispute and the Related Dispute and the parties (including the party to the

Related Dispute) shall thereafter abide by and implement such consolidation and any such direction.

- 1.11 In the event that the Related Dispute is consolidated with the Dispute, the Expert shall reach a decision on the Dispute and the Related Dispute at the same time and in any event within twenty-eight (28) days of the earlier of the referral of the Dispute or the referral of the Related Dispute, or such longer period as is agreed by the parties to the Dispute and the Related Dispute after the date that the Related Dispute has been consolidated with the Dispute. The Expert shall be entitled to extend the said period of twenty-eight (28) days by up to fourteen (14) days with the consent of the party by whom the relevant dispute was referred.
- 1.12 Without fettering or restricting the Expert's power and authority in any way, it is the intention of Summit and the Contractor that in the event that the Related Dispute is consolidated with the Dispute, the Expert shall, insofar as is relevant, practicable and appropriate, come to the same conclusion as to the facts and apply the same reasoning and analysis in reaching a decision on both the Dispute and the Related Dispute.
- 1.13 In the event that an adjudicator under a Related Contract (the "Related Expert") orders that a Dispute under this Building Contract be consolidated with a Related Dispute with which he is dealing under the Related Contract; then:
- (a) notwithstanding paragraph 2.1(f) in Section 2 above, with effect from the time of such order, the Expert shall cease to have authority or jurisdiction to determine the Dispute which shall instead be determined by the Related Expert and the appointment of the Expert under this Building Contract shall cease; and
 - (b) such order shall be binding on Summit and the Contractor and both of them shall acknowledge the appointment of the Related Expert as the adjudicator of the Dispute, with Summit procuring that the third party who is a party to the Related Contract shall with effect from the time of such order comply with the requirements of the Related Contract (including if applicable any requirement or direction of the Related Expert appointed under such Related

Contract) as to the future conduct of the determination of the Dispute and the Related Dispute; and

- (c) notwithstanding Rule 24A of the Adjudication Rules, Summit and the Contractor shall be jointly responsible with the third party who is a party to the Related Contract for the Related Expert's fees and expenses including those of any specialist consultant appointed under the adjudication procedure in the Related Contract, in respect of the period in which the Dispute is consolidated with the Related Dispute pursuant to an order of the Related Expert (the "Consolidated Adjudication Costs"). Summit and the Contractor agree that the Related Expert shall have the discretion to make directions to require Summit, the Contractor and the third party who is a party to the Related Contract to pay or make contribution to the Consolidated Adjudication Costs in different proportions. If no such directions are made, Summit, the Contractor and the third party who is a party to the Related Contract shall bear the Consolidated Adjudication Costs in equal shares, and if Summit, the Contractor or the third party has paid more than such equal share, that party or third party shall be entitled to a contribution from the other party, parties or third party, as the case may be; and
- (d) notwithstanding anything to the contrary a Dispute under this Building Contract shall only be consolidated with a Related Dispute, if the Related Expert receives particulars of the Dispute within fourteen (14) days of the referral of the Dispute to the Expert under this Building Contract.

Schedule

Part 12 - Design Assumptions

DESIGN ASSUMPTIONS

FM Management Facilities

This is the requirement of the facilities management office functions.

Facilities and equipment required.

- The Facilities management offices require dedicated offices for the following personnel:

F.M. Contract Manager	12.25m ²
Financial Manager	12.25m ²
Personnel Manager	9.10m ²
Risk Management	9.10m ²
Training Officer	9.10m ²
Records Room	9.10m ²

- Additional open plan accommodation is required to accommodate a further 2 people- 24.8m².
- Access to conference rooms
- A bay for beverage preparation
- Easy access to male/female toilet facilities.
- All office accommodation should have suitable points to the I.T. network.
- All office accommodation should have telephone points and handsets.

- All the above accomodation should have suitable furniture and fittings.

Car Parking

Service Overview

To provide a free car park for patients and visitors to the Trust. Trust/Summit staff will park free of charge in controlled areas.

Facilities and Equipment required.

- Road signage and markings to inform and to direct traffic effectively around the site.
- Roadway design that permits access at all times to "Blue Light" routes for permitted vehicles.
- Staff car park entrance/exit to have access barrier.
- All entrance and exit barriers to include a voice intercom help button, linked to the main security console. All barriers to have a remote operation facility.
- Car Parks and roadways to be adequately lit to provide personal safety and security and to permit the operation of CCTV cameras.
- All car park areas to be provided with suitable type and number of grit bins.
- All surfacing/roadway makeup to be suitable for the traffic flows and volume.
- Car parks to have appropriate falls/drainage to prevent surface ponding.
- Road and path design to enable full and unrestricted access for the disabled/elderly.

Grounds Maintenance

Service Overview

It is intended to subcontract the majority of the grounds maintenance duties, however there will be a dedicated on-site presence of 1 or 2 groundsmen to undertake minor daily tasks.

Facilities and Equipment to be provided.

- There will be a requirement for dedicated office accommodation of 8.7m².
- Staff will require suitable changing/shower facilities, comprising cloakroom, W. C and a shower.
- An appropriate dedicated messing facility will be required.
- A secure covered area of approx 45m² will be required for storing vehicles and equipment. Within this area a suitable hose and reel for washing vehicles and equipment is required. Access is required via 3 metre wide roller shutter doors.
- A separate room of approx 25m² to be serviced suitable for its purpose as a machinery equipment store/workshop is required.
- A dedicated fertiliser store with a sealed floor, drain, dilution and washdown facilities is required.
- A dedicated chemical store with a sealed floor, drain, dilution and washdown facilities is required.
- A secure external compound area will be required with access and working lighting. This to be adjacent to the storage area described above. Within the compound an external bulk storage facility is required for road gritting materials.

- Suitable salt/grit bins will be provided at all pedestrian access points, along the "blue light" routes and key roadways not less than 100 metres apart. Bins to be located at any road incline/change in level.
- All landscaped areas will minimise maintenance obligations and will enable easy access for required maintenance.

Domestic Services

Service Overview

To provide a cleaning service throughout the hospital. Additionally, to prepare and serve beverages to patients.

Facilities and Equipment to be provided.

- All wards/departments to be provided with a cleaners room (DSR) consisting of hot and cold water to a low level sink and not being less than 2.23m². The room should have hand washing facilities, a suitable lockable cupboard and shelving.
- There will be a requirement for 7 zonal offices/stores of approx 13.3m². Separate secure storage within these areas is required for chemicals.
- All ward, department, stairs and common areas will have a suitable number of low level power points spaced in order to allow safe working practices.
- All surfaces to be selected in accordance with the relevant HTM. Trust control of infection policy and to facilitate ease of cleaning.
- All external/internal glazed areas should be accessible for cleaning, using safe and reasonable methods.
- Atrium or high level glazed areas will have suitable access systems to facilitate safe internal cleaning methods.

- Changing/shower facilities are required for both male and female staff.

Linen & Laundry

Service Overview

A fully managed linen rental service will be provided to wards and departments with a daily "top up" service to linen cupboards.

Facilities and Equipment Required

- Staff will use F.M. changing facilities.
- At all wards/departments two linen cupboards each of not less than 1.5 metres width, and 600mm depth are required. The cupboards should have shelving at height intervals of 80cm.
- Soiled, segregated linen to be held in the disposal hold at each ward/department (refer to portering assumptions).

Clean linen.

- To be not less than 75m² to include a supervisors office. The area to have heating to keep linen dry and lighting suitable for linen inspection activities. The area should have access to IT/telecommunications systems. It should be adjacent to the delivery bay but segregated from the soiled linen area.
- The area will have not less than 50 linear metres of appropriate linen storage racking.
- A dedicated sewing room of not less than 17m² is required with equipment to allow measuring, alteration and marking of uniforms to be undertaken. Within the area a discrete changing facility is required.

- A dedicated uniform issue room of approx. 21m² is required with uniform dispensing counter and suitable storage.
- The above clean linen rooms to be interlinked.

Soiled linen hold

- This area to be not less than 31m² to be suitably ventilated and finishes to allow thorough cleaning. This should be adjacent to the delivery bay.

Patient Owned Clothing Laundry

- This area not to be less than 29m². To include services, equipment and finishes suitable for the laundering, drying, finishing and storage of patient clothing.

Portering (including waste)

Service Overview

- The portering service will be responsible for the internal movement of goods and patients around the hospital.

Facilities and Equipment required

- All portering staff will use the facilities management changing facilities.
- A dedicated portering base will be required of approximately 13 m² to include beverage making facilities.
- A porters control office will be required with access to ward order comms, IT and telecom systems and will be approximately 12m². An additional porters base is required within the A&E Department.
- An electric tug charging facility suitable for 2 units will be required.

- Appropriate wall protection at skirting and dado levels will be placed along all corridors and hospital streets.
- Floor finishes should be suitable for electric tug traffic at level zero. At all other levels flooring should be suitable for trolley traffic.
- All corridors to be used for deliveries should have protected corners. Tug delivery routes should have tug turning circles. The main service corridor should enable two way tug traffic movement. Doors on tug traffic routes to have hold open facilities and all doors where trolley movement could be expected should have suitable protection and be robust.
- A dedicated mail room with "pigeon hole" system, sorting benches, an area for a franking machine and with suitable environmental conditions is required - this area to be approximately 41m². A suitable secure point is required for Post Office and out of hour deliveries.

Waste

- All ward/departments will require disposal holds to accommodate storage of:
 - Dirty linen
 - Soiled (infected) linen
 - Domestic waste
 - Clinical waste
 - Recyclable waste (if required)
- All disposal holds will require suitable drainage to enable wash downs to be undertaken.
- An internal refuse/waste hold adjacent to the loading bay is required where waste can be stored prior to removal to the central waste compound.

- A hard standing area adjacent to the loading bay is required for the parking of a clinical waste storage/ transporter.
- An external waste compound adjacent to the loading bay is required for the storage of domestic waste. This area should be suitable for the location of skips, compactor and waste containers. The area should have services including lighting, power for the compactor, wash down facilities and should be secure including vermin proof.

Security Services:

- All alarms are duplicated in the security room and switchboard.
- All access areas have CCTV coverage to fully meet the Developed Specification.
- Lighting levels and CCTV cameras meet legal requirements.
- The number of viewing screens provided minimises the viewing rotation sequence as far as is practical.
- Provide a secure security room to a minimum area of 25m².

Estates Maintenance Services:

- The engineering design solution is in full compliance with the Developed Specification.
- There is safe and appropriate access to all components and plant provided within the Specification. The Approved Service Provider will supply any specialist handling equipment they require.
- The BMS system will monitor the environment and, energy consumption within the Hospital

- All plant and building fabric has been designed to allow/ensure safe and suitable access, including routes of access, for maintenance, removal and/or replacement. The Approved Service Provider will supply any suitable access equipment they require.
 - The designer has fully complied with their obligations under CDM Regulations
 - All engineering systems shall be designed to allow all required zonal close/drain downs to meet the Trusts operational requirements as detailed in the contract.
 - All goods lifts shall be provided with a manual key override and are suitable for the distribution of all goods that would reasonably be expected within a hospital
 - The design has taken into account the Design Life Criteria as referred to in Part 4 of the Specification and has had due regard to the requirements of economic maintenance.
 - All plant, equipment, components and systems to be fully year 2000 compliant
- | | | |
|-----------------------------|---|------------------|
| • Estates manager Office | - | 8m ² |
| • Estates meeting Rooms | - | 8m ² |
| • Estates Management office | - | 75m ² |
- Estates Workshops of minimum area 170m² will be fitted with all equipment as detailed in the Room Data Sheets
 - All workshops will be designed to ensure a safe working environment for all staff
 - The Heating and Ventilation Systems are monitored and controlled through the BMS system. Other plant and equipment alarms are interfaced with the BMS.
 - Insofar as is practical and subject to the company continuing to trade commitments will be obtained from plant and equipment suppliers regarding spares availability, servicing and after sales support.

Switchboard Services:

- Provide a communications room of minimum area of 30m²
- The switchboard will allow the installation of an Auto Attendance Facility
- Provide 5 No. Telephonists stations and 1 No Supervisor stations
- Communications Room to be secure and have remote door release facility.

Schedule

Part 13 - Summit Preliminaries

1. Provide the items referred to in paragraphs 1,3 and 4 of the Trust Representative Requirements set out in Part 11 of the Schedule to the Development Agreement.
2. Provide documentation to the Trust as required by Paragraph 5 of the Monitoring Procedure in Part 1 of the Schedule to the Development Agreement.
3. Subject to Clause 16.2, in addition to the Construction Related Records and any drafts thereof which the Contractor shall provide for the Trust in accordance with the provisions of Paragraph 7 of Part 5 of the Schedule to the Development Agreement, the Contractor shall provide a further two copies of all of the same and shall deliver one copy to each of Summit (for the shared use of, Summit and the Financier's Technical Adviser) and Serco.
4. Wherever products are specified by proprietary name and the phrase "or equivalent" is not included, it is to be deemed included.
5. Provide twelve progress photographs from agreed points at monthly intervals and submit six prints size 8" X 4" of each negative or as otherwise agreed.
6. At the beginning of each week provide for information for Summit records showing, for each day of the previous week:
 - The number and description of craftsmen, labourers and other persons employed on or in connection with the Works, including those employed by the Contractor and sub-contractors.
 - The number, type and capacity of all mechanical and power-operated plant employed on the Works.

Include a detailed cost report within the combined monthly progress report to Summit.

- 7 7.1 Reference should be made to the Development Agreement. The process will be organised and conducted generally as stated in the Q.A. System. Specifically the following will be adopted:
- 7.2 Where approval of a product is specified the requirement for approval relates to a sample of the product and not to the product as used in the Works. Submit a sample or other evidence of suitability. Do not confirm orders or use the product until approval of the sample has been obtained. Retain approved sample in good, clean condition on site. Ensure that the product used in the Works matches the approved sample.
- 7.3 Where a sample of finished work is specified for approval, the requirement for approval relates to the sample itself (if approval of the finished work as a whole is required this is specified separately). Obtain approval of the stated characteristic(s) of the sample before proceeding with the Works. Retain approved sample in good, clean condition on site. Ensure that the relevant characteristic(s) of the Works match the approved characteristic(s) of the sample. Remove samples which are not part of the finished Works when no longer required.
- 7.4 Inspection or any other action by Summit must not be taken as approval of products or work. When commenting on inspections Summit will refer in express terms to:
- Date of inspection
 - Part of the work inspected
 - Respects or characteristics which are reviewed
 - Extent and purpose of the comments
 - Any associated conditions.

Appoint a Person in Charge who shall be responsible for all aspects of the Work and give maximum possible notice to the Client before changing the Person in Charge.

8. Comply with the Joint Code of Practice "Fire Prevention on Construction Sites" published by the Building Employers Federation, the Loss Prevention Council, and the National Contractors Group.
9. The Contractor shall employ on the Works only such persons as are careful, skilled and experienced in the performance of the duties required of them, and;

Summit shall be at liberty to object to and to require the Contractor to remove from the Works any person employed by them, who, in the opinion of Summit, misconducts himself or is incompetent or negligent in the performance of his duties or fails to conform with any particular aspect of site safety or persists in any conduct which is prejudicial to safety or health, and such person shall not again be employed upon the Project without the permission of Summit.

10. The Contractor shall ensure that normal vehicular and pedestrian traffic access adjacent to the site and adjoining facilities are not impeded at any time during the execution of the works.
11. The Contractor must make himself aware of the existing live services outwith the boundary of the site and if any are damaged due to any cause within the Contractor's control, he shall arrange and pay for prompt reinstatement and immediately inform the Summit.
- 12.1 Adequately protects and preserve, except those which are to be removed. Replace to approval or treat as instructed any species or areas damaged or removed without approval.
- 12.2 Unless specified otherwise do not:
 - Dump spoil, rubbish or material within the branch spread.

- Excavate or disturb the topsoil within the branch spread.
- Change level of ground within an area 3m beyond the branch spread.

Allow for protecting same against damage and/or subsidence as a result of work of this works contract, all to the approval of the Contractor.

- 12.3 Prevent damage to existing buildings, fences, gates, walls, roads, paved areas and other site features which are to remain in position during the execution of the Works.

Allow for conforming with any requirements of the Local Authority and for not removing or ceasing any protective measures until all risk of damage and/or subsidence is past.

- 13 The Contractor will be required, at all times, to clear away to a place on site at ground level or equivalent thereto prior to removal from site, as directed by Summit, all rubbish resulting from his work and shall keep access to the works clear at all times. Upon practical completion or completion of areas as required by the Contractor, of his work, he will properly clean up and leave them and any other areas made available to him for the purpose of executing the work clean and tidy to the reasonable satisfaction of Summit. Failure to comply with this instruction will result in all costs incurred by Summit in clearing the rubbish being charged to the Contractor.

14. Provide the following for Summit and Summit's Representative:-

- .1 by prior arrangement, shared access to the Contractor's meeting room(s) (which shall be of sufficient size to cope with Project meetings.
- .2 suitable sanitary accommodation, maintained in a clean condition (to be shared with the Trust's Representative and the Contractor's supervisory staff.
- .3 three car parking spaces.

Schedule

Part 14 - Building Contract Design Development Procedure

1. Submission of Reviewable Design Information

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

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

1.1.2 The Contractor may proceed to full implementation (which shall include *inter alia* the carrying out of construction work) in the case of any Submitted Item which is returned from Summit's Representative endorsed "no comment" or pursuant to paragraph 1.1.31 below. If Summit's Representative returns the Submitted Item endorsed "comments" the Contractor shall:

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

1.1.2.2 revise the same and re-submit the to Summit's Representative in accordance with this Part 14 of the Schedule; or

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

If the Contractor amends the Submitted Item, it shall send a copy of the Submitted Item as amended to Summit's Representative within 10 business days (or such

other period as may be practical) of receiving the comments of Summit's Representative.

- 1.1.3 If Summit's Representative fails to return any Submitted Item (including any re-Submitted Item) duly endorsed within 10 Business Days (or such longer period as the parties may have previously agreed of receipt of the Submitted Item, then Summit's Representative shall be deemed to have returned the Submitted Item to the Contractor marked "no comment".
- 1.2 If Summit's Representative raises comments on any Submitted Item pursuant to paragraph 1.1., he shall state the ground in paragraph 3 of this Part 14 of the Schedule upon which such comments are based, and the evidence or other information necessary to substantiate such ground. Summit's Representative shall state his ground specifically and not generally. To the extent that Summit's Representative purports to comment on a Submitted Item related to Reviewable Design Information other than on the basis set out in this Part 14 of the Schedule or fails to comply with the provisions of this paragraph 1.2., such comments may be treated by Contractor as "no comment" in which event the Contractor shall intimate this to Summit's Representative and in the event of disagreement the matter will be referred for determination under the Dispute Resolution Procedure.
- 1.3 If the Dispute Resolution Procedure finds in favour of the Contractor in respect of any matter referred to it pursuant to this Part 14 of the Schedule then the matter shall be deemed to be a Relevant Event and the provisions of Clause 25 of this Building Contract shall apply.

2. Further Information

- 2.1 Subject to paragraph 2.2. below, if Summit's Representative reasonably so requires within 5 Business Days of the date of submission of the Submitted Item, the Contractor shall submit any further or other information, data or documents which may be reasonably so required by Summit's Representative in order to determine whether he has a legitimate basis for commenting or objecting in accordance with this Part 14 of the Schedule.
- 2.2 The Contractor shall not be required by the provisions of paragraph 2.1 to submit to Summit's Representative any information, data or documents of a commercially

sensitive nature. However, if the Contractor does not submit any such information, Summit's Representative shall be entitled to;

- 2.2.1 Comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
- 2.2.2 Object to the Submitted Item, where information, data and documents which are submitted would not enable an experienced and competent person fulfilling a role similar to that of Summit's Representative to determine acting reasonably whether he has a legitimate basis for commenting or objecting in accordance with this Part 14 of the Schedule on the grounds that insufficient information, data and documents have been provided to enable Summit's Representative so to determine.

3. Grounds of Objection

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

- 3.1.1 If the Contractor's ability to perform its obligations under this Building Contract would be materially adversely affected by the acceptance of the Submitted Item; or
- 3.1.2 The acceptance of the Submitted Item would materially adversely affect any right of Summit under this Building Contract or its ability to enforce any such right; or
- 3.1.3 The acceptance of the Submitted Item would materially adversely affect Summit's ability to perform its obligations under this Building Contract; or
- 3.1.4 The Submitted Item is inconsistent with the terms of the Trust Requirements or the Specification.

3.2 Summit's Representative shall act properly and reasonably in raising any comments or objections in accordance with paragraph 3.1.

4. No Objection

4.1 To avoid doubt, a reference in this Building Contract to their being "no objection" under the Building Contract Design Development Procedure in relation to a particular matter means that the relevant Submitted Item shall have been submitted in accordance with the provisions of this Part 14 of the Schedule and returned (or deemed returned) by Summit's Representative with an endorsement of "no comment" or returned with an endorsement "comments", in the latter case; the matter having been amended by the Contractor in accordance with such comments.


Alan D. Cooper
Subcontractor, witness

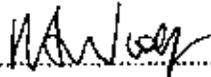

J. Hinton ATTORNEY
Subcontractor, witness

Law Hospital PFI Project

This is to confirm each of our consent and approval (i) to replace the current pages in the Construction Contract between each of Sir Robert McAlpine Limited and Summit Healthcare (Law) Limited in relation to the above project signed on 16 June 1998 to add the attached agreed definition of Specified Perils, and (ii) to replace the current page of the Guarantee Bond No. PB30022317 currently signed on behalf of each of Sir Robert McAlpine Limited and New Hampshire Insurance Company and to be signed with such amendments by and delivered to Summit Healthcare (Law) Limited to delete the words marked on the attached page (Clause 16).

.....
For Sir Robert McAlpine Limited

Dated


.....
For Summit Healthcare (Law) Limited

Dated 19.6.98

.....
For New Hampshire Insurance Company

Dated

Law Hospital PFI Project

This is to confirm each of our consent and approval (i) to replace the current pages in the Construction Contract between each of Sir Robert McAlpine Limited and Summit Healthcare (Law) Limited in relation to the above project signed on 16 June 1998 to add the attached agreed definition of Specified Perils, and (ii) to replace the current page of the Guarantee Bond No. PB30022317 currently signed on behalf of each of Sir Robert McAlpine Limited and New Hampshire Insurance Company and to be signed with such amendments by and delivered to Summit Healthcare (Law) Limited to delete the words marked on the attached page (Clause 16).


.....
For Sir Robert McAlpine Limited
Dated 19.6.98.

.....
For Summit Healthcare (Law) Limited
Dated

.....
For New Hampshire Insurance Company
Dated

Law Hospital PFI Project

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.....
For Sir Robert McAlpine Limited

.....
For Summit Healthcare (Law) Limited

Dated

Dated

 M. ANDERSON

.....
For New Hampshire Insurance Company

Dated 23/6/98

Building Contract

Insert new definition after definition of "Site Materials" as follows:

"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;

address shown in the Schedule to this Guarantee Bond or at such other address as it may from time to time notify in writing to the other party.

- 13.2 A notice or demand served by first class post shall be deemed duly served on the second Business Day after the date of posting and a notice or demand sent by hand shall be deemed to have been served at the time of delivery unless served after 5.00 pm in the place of intended receipt in which case it will be deemed served at 9.00 a.m. on the following Business Day.
- 13.3 In proving service of any notice it will be sufficient to prove, in the case of a letter, that such letter was properly stamped or franked first class, addressed and placed in the post.
14. The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes with the Guarantor (without limitation of, or prejudice to, any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Building Contract.
15. The Employer may assign or charge this Guarantee Bond or any benefit arising from it in favour of any one or all of the Beneficiaries (as defined in the Collateral Deed) and/or the Substitute (as defined in the Building Contract Direct Agreement) and their permitted successors, transferees and assignees on such terms as it sees fit without the consent of the Guarantor and without affecting, changing or releasing the Guarantor from its obligations under this Guarantee Bond, provided however that the Guarantor shall be entitled to deal only with the Employer in respect of this Guarantee Bond and shall not be deemed to have knowledge of, or obligations in respect of, such assignment unless and until the Employer shall give notice of any such assignment or charge to the Guarantor substantially in the form of the Notice of Assignment set out in Part 1 of the Appendix to this Guarantee Bond.
16. All references to the Employer in this Guarantee Bond shall include the Security Trustee as identified in any Notice of Assignment given to the Guarantor pursuant to Clause 15 ~~provided an Enforcement Notice (as defined in the Notice of Assignment) has also been given~~ following which event, the Security Trustee shall be entitled to exercise all rights of the Employer under this Guarantee Bond in place of the Employer.
- 17.1 This Guarantee Bond shall be governed by and construed in accordance with the laws of Scotland.
- 17.2 Each of the persons constituting the Contractor, the Guarantor and the Employer separately prorogate the non-exclusive jurisdiction of the Court of Session in Scotland in relation to any disputes arising hereunder.
- 17.3 Without prejudice to any other permitted mode of service, the parties agree that service of any writ, notice or other document for the purpose of any proceedings begun in Scotland shall be duly served upon if delivered personally or sent by registered post, in the case of:
- (a) the Contractor to Sir Robert McAlpine Limited, 11 Elmbank Street, Glasgow G2 4PB (marked for the attention of Mr D M Boyle);

BY THIS POWER OF ATTORNEY made on 25 June 1998 SIR ROBERT McALPINE LIMITED whose registered office is Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR (hereinafter referred to as the "Principal") hereby appoints NEW HAMPSHIRE INSURANCE COMPANY of 120 Fenchurch Street, London, EC3M 5BP as its attorney (the "Attorney") and in the Principal's name or otherwise and on its behalf to execute and deliver that certain novation agreement set out at Part III to Guarantee Bond No: PB 30022317 issued by New Hampshire Insurance Company in favour of Summit Healthcare (Law) Limited in the circumstances described in clause 6.1 of such Guarantee Bond.

This power of attorney shall be irrevocable save with the consent of the Attorney and is given by way of security to secure the performance of the obligation owed by the Principal to New Hampshire Insurance Company under clause 6.1 of the Guarantee Bond to enter into the novation agreement referred to above.

This power of attorney (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this agreement or its formation) shall be governed by and construed in accordance with English Law.

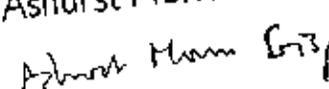
IN WITNESS where of this power of attorney has been executed as a deed on 25 June 1998.

Executed as a deed by)
SIR ROBERT McALPINE LIMITED)
acting by)

 Director

 ~~Director~~/Secretary



We certify this to be
a true copy
Ashurst Morris Crisp


SERVICES SUBCONTRACT

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

between

SUMMIT HEALTHCARE (LAW) LIMITED

and

SERCO LIMITED

Dundas & Wilson
Sakire Court
20 Castle Terrace
EDINBURGH
EH1 2EN

SERVICES SUBCONTRACT

between

SUMMIT HEALTHCARE (LAW) LIMITED (Registered No 182649) whose registered office is situated at Saltire Court, 20 Castle Terrace, Edinburgh EH1 2EN ("Summit"); and

SERCO LIMITED (Registered No 242246) whose registered office is situated at Serco House, Hayes Road, Southall, Middlesex UB2 5NJ ("Serco").

WHEREAS

- (A) Law Hospital National Health Service Trust ("the Trust") wishes to procure the provision of a new hospital at Netherton to be known as the New Law District General Hospital and certain services in relation to that hospital and Summit has or is about to enter into a Project Agreement and related agreements with the Trust which will secure the required hospital and services for the Trust.
- (B) Summit wishes to sub-contract to Serco the provision of, and Serco is willing to provide, certain services in relation to that hospital on the terms and subject to the conditions of this Agreement.

NOW THEREFORE IT IS HEREBY AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:-

Additional Costs has the meaning set out in Part 1 of the Schedule;

Deep Clean has the meaning set out in Part 1 of the Schedule;

Design Assumptions has the meaning set out in Clause 12.3;

Dispute Resolution Procedure means the procedure referred to in Clause 25 and set out in Part 9 of the Schedule to this Agreement;

Guarantee means the guarantee in the Agreed Form to be given by the Guarantor in favour of Summit;

Guarantor means Serco Group plc (Registered No 2048608) whose registered office is situated at Dolphin House, Windmill Road, Sunbury-on-Thames, Middlesex TW16 7HT;

Indemnified has the meaning set out in Clause 22.5;

Indemnifier has the meaning set out in Clause 22.5;

Interim Security Services has the meaning set out in Part 1 of the Schedule;

Interim Estates Services has the meaning set out in Part 1 of the Schedule;

Initial Term means the period of seven years from and after the Operational Date;

Master Definitions Schedule means the document so entitled signed by the Trust and Summit and dated on the Execution Date, as amended or supplemented at any time;

Mobilisation Period has the meaning as set out in Clause 2.A.1 of this Agreement;

Mobilisation Services means all activities to be undertaken by Serco during the Mobilisation Period in preparation for the performance of the Services including, without limitation, preparation testing and implementation of programmes and procedures for training, management and administration, drafting of operating manuals, negotiation and preparation of sub-contracts, management, administration and training;

parties means Serco and Summit;

Recovery Amount has the meaning set out in Clause 22.3;

Serco Residual Cap has the meaning set out in Clause 23;

Serco Contract Officer means the person nominated from time to time by Serco under Clause 10.15;

Services has the same meaning as in the Master Definitions Schedule subject (in respect of the Estates Maintenance Service) as provided in Clause 9 and Part 6 of the Schedule and subject further as provided in Clause 18.9.

1.2 Unless otherwise defined in this Agreement, any word or expression given a meaning in the Master Definitions Schedule or, failing which, in the DBFO Contracts (as such expression is defined in the Master Definitions Schedule) shall have the same meaning when used in this Agreement.

1.3 In this Agreement, unless the context otherwise requires:-

1.3.1 a reference to a Clause is a reference to a clause of this Agreement;

1.3.2 reference to a numbered Provision shall be a reference to the paragraph of the General Provisions bearing that number;

1.3.3 any reference in this Agreement to a document "**in the Agreed Form**" is a reference to a document approved by Summit and Serco a copy of which has been signed for the purpose of identification by or on behalf of each of them;

1.3.4 any reference to a statutory provision includes a reference to all amendments and modifications to that provision and any subsequent legislation made from time to time under it (and in each case whether before or after the entering into of this Agreement) subject to potential adjustments in payment under the Change Provisions;

1.3.5 references to the singular include the plural and vice versa and references to any gender include the other genders;

1.3.6 references to a "**person**" include any individual, firm, unincorporated association, public organisation or body corporate including any Governmental Authority;

- 1.3.7 any reference to a public organisation shall be deemed to include a reference to any successor to that public organisation or any organisation or entity on which the functions or responsibilities of that public organisation have been conferred or imposed, including without limitation under or pursuant to the Scotland Bill 1998 following its enactment;
- 1.3.8 headings and indices shall be ignored for the purpose of construing this Agreement;
- 1.3.9 any references to an agreement or other document includes (subject to all relevant approvals) a reference to that agreement or document as amended supplemented, substituted, novated or assigned;
- 1.3.10 the words "herein", "hereto" and "hereunder" refer to this Agreement as a whole and not to the particular clause, schedule, part, section, paragraph or annex in which that word may be used;
- 1.3.11 reference to a "subsidiary" or "holding company" shall be construed according to Section 736 of the Companies Act 1985 (as amended) and to a "subsidiary undertaking" shall be construed according to Section 258 of that Act (as amended).
- 1.4 The Schedule forms part of and shall be construed as one with this Agreement.
- 1.5 The language of this Agreement is English. All correspondence, drawings, design data, test reports, certificates, specifications and information shall be supplied by the supplying party entirely in English.
- 1.6 In any case where Serco is to use reasonable endeavours to procure or ensure compliance by any other party, it shall ensure that that person contracts to so comply and shall take all reasonable steps available to it to enforce such contractual provisions.
- 1.7 References to persons for whom Summit is responsible in terms of this Agreement shall be construed in accordance with Clause 11.1, references to persons for whom Serco is responsible in terms of this Agreement shall be construed in accordance with Clause 10.14 and references to persons for whom the Trust is responsible in terms of the DBFO Contracts

shall be construed in accordance with Clause 8.2 of the Project Agreement. References in this Agreement to any person for whom Summit or the Trust, or either of them, is responsible shall not include Serco or any person for whom Serco is responsible in terms of this Agreement.

1.8 If there is any conflict between the terms of this Agreement and the provisions of any of the DBFO Contracts referred to in or incorporated by reference into this Agreement, the terms of this Agreement shall prevail.

1.9 If any provision of any DBFO Contract delegated to Serco under this Agreement provides for Summit to use reasonable endeavours to procure or ensure compliance with an obligation by Approved Service Providers and/or Permitted Sub-contractors, Serco shall comply with that obligation in terms of this Agreement.

2. **CONDITION PRECEDENT AND MOBILISATION SERVICES**

2.1 This Agreement, with the exception of this Clause 2 and Clause 14, shall not come into effect until the Project Agreement has become unconditional in accordance with its terms (save for any provision of the Project Agreement requiring the terms of this Agreement to have become unconditional).

2.2 Immediately upon execution of this Agreement:-

2.2.1 Serco shall deliver to Summit:-

- (a) the Services Direct Agreement executed by Serco;
- (b) the Guarantee executed by the Guarantor;
- (c) a copy, certified as a true copy by its Company Secretary, of the minutes of a meeting of its board of directors in the Agreed Form authorising Serco to execute and deliver and perform its obligations under this Agreement and the Services Direct Agreement; and
- (d) a copy, certified as a true copy by the Company Secretary of the Guarantor, of the minutes of a meeting of the board of directors of the Guarantor in the

Agreed Form authorising the Guarantor to execute and deliver and perform its obligations under the Guarantee;

2.2.2 Summit shall deliver to Serco a copy, certified as a true copy by its Company Secretary, of the minutes of a meeting of its board of directors in the Agreed Form authorising Summit to execute and deliver and perform its obligations under this Agreement.

2.3 If the Project Agreement ceases to have effect in terms of Clause 3.2 thereof, then this Agreement shall thereupon immediately cease to have effect from that date and, notwithstanding any other provisions of this Agreement, neither party shall have any liability to the other under this Agreement save for any breach of this Clause 2 and/or Clause 14.

2A 2A.1 The Mobilisation Period will commence at the start of the twenty-fourth month after Financial Close and continue until the Services Commencement Date;

2A.2 During the Mobilisation Period, Serco shall perform the Mobilisation Services to Summit's reasonable satisfaction;

2A.3 In consideration of the performance by Serco of the Mobilisation Services, Summit shall pay to Serco the fixed amount of £739,746 Indexed from 1 April 1996 by monthly instalments (subject to delivery by Serco to Summit of a VAT invoice) of £54,000 (Indexed from 1 April 1996) in each of the first nine months and £84,582 (Indexed from 1 April 1996) in each of the following three months from the start of the Mobilisation Period, payment to be made within 15 Business Days of the end of the month to which the relevant invoice relates;

2A.4 The final date for payment of any sum which becomes due pursuant to this Clause 2A shall be the date on which Serco is entitled to terminate this Agreement as a result of an event referred to in Clause 18.5.

2A.5 Within five days after the date upon which payment becomes due pursuant to this Clause 2A (or would have become due if Serco had carried out its obligations under this Agreement and no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts) (but without prejudice to any

other provision of this Agreement) Summit shall provide a notice specifying the amount if any of the payment made or proposed to be made and the basis upon which such amount has been calculated.

3. TRANSITION SERVICES

3.1 During the Transition Period, Serco shall provide, or (subject as provided in this Agreement) procure the provision of, the Transition Services and shall observe, perform and comply with the obligations of Summit under Clause 17 (other than Clause 17.3.6) of the Project Agreement in each case at such time or times and in such manner as to ensure compliance by Summit with the terms of Clause 17 (other than Clause 17.3.6) of the Project Agreement but without prejudice to Clause 11.2.6.

3.2 In consideration of the provision and management by Serco of the Transition Services, Summit shall in accordance with and subject to the following provisions of this Clause 3 make payment to Serco of:-

3.2.1 the Transition Payment less the aggregate amount of (i) any of the Transition Costs which have been incurred by Summit or its sub-contractors (other than Serco) and (ii) a mark-up of ½% of the Transition Costs; and

3.2.2 all costs incurred by Serco which are reimbursable by the Trust pursuant to Clause 17.3.4 of the Project Agreement.

Within ten Business Days of the end of each calendar month during the Transition Period (or within ten Business Days of expiry of the Transition Period, as the case may be) Serco shall issue to Summit an invoice (being a VAT invoice, if applicable) for the amount due under this Clause 3.2 in respect of the immediately preceding calendar month together with such supporting documents and evidence as Summit may reasonably require. Summit will pay such invoice within ten Business Days thereafter including any VAT (if applicable) due thereon.

3.3 Summit shall notify Serco of all costs incurred or likely to be incurred by or on behalf of Summit or its sub-contractors (other than Serco) in the provision of the Transition Services and any likely changes in those costs in sufficient time to enable Serco to compile the

- forecasts required by Clauses 17.3.3 and 17.3.5 of the Project Agreement and Serco shall include those costs in all forecasts and amendments to such forecasts prepared by it in compliance with those Clauses.
- 3.4 Within three Business Days of the end of each calendar month during the Transition Period (or within three Business Days of expiry of the Transition Period, as the case may be) Serco shall provide such details of the Transition Costs incurred by Serco (for the avoidance of doubt, excluding any profit) as shall enable Summit to supply an invoice to the Trust in accordance with Clause 17.3.6 of the Project Agreement. Summit shall thereafter supply an invoice to the Trust in respect of the Transition Payment which shall include the Transition Costs so notified by Serco and the management fee referred to in Clause 17.3.1(b) of the Project Agreement. Serco shall provide to Summit (or, at Summit's direction, the Trust) all supporting information and evidence of the Transition Costs incurred by Serco as the Trust may require from Summit under Clauses 17.3.1 and/or 17.3.6 of the Project Agreement.
- 3.5 Notwithstanding the foregoing provisions of this Clause 3, Serco shall not be entitled to receive in respect of the amounts payable to it pursuant to Clause 3.2 above any amounts greater than those which Summit is entitled to recover from the Trust and which are referable to the payments due to Serco pursuant to this Clause 3 in accordance with Clauses 17.3.4 and 17.3.6 of the Project Agreement (as agreed or determined thereunder) (but without prejudice to Serco's right to pursue claims for any reduction or shortfall directly against the Trust pursuant to Clause 22.6 as applicable).
- 3.6 The final date for payment of any sum which becomes due pursuant to this Clause 3 shall be the date on which Serco is entitled to terminate this Agreement as a result of an event referred to in Clause 18.5.
- 3.7 Within five days after the date upon which payment becomes due pursuant to this Clause 3 (or would have become due if Serco had carried out its obligations under this Agreement and no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts) (but without prejudice to any other provision of this Agreement) Summit shall provide a notice specifying the amount if any of the payment made or proposed to be made and the basis upon which such amount has been calculated.

- 3.8 Nothing in this Clause 3, and no breach by Serco of its obligations under this Clause 3, shall affect Serco's rights or obligations in relation to the provision of the Services under this Agreement. In particular, but without limitation, no breach by Serco of its obligations under this Clause 3 shall give rise to or be counted towards any right to terminate this Agreement.
- 3.9 Summit shall advise Serco of the date on which Summit anticipates that the Transition Commencement Date will occur by not less than three months written notice to Serco and shall thereafter keep Serco informed as to any anticipated change to such date. If the Transition Commencement Date does not occur within 21 days after the date first so notified (other than as a result of any act or omission of Serco or persons for whom Serco is responsible under this Agreement) then Summit shall reimburse Serco all reasonable and proper costs incurred by Serco as a direct result of such delay up to a maximum amount of £10,000 for each whole week of delay after that 21 day period and up to a maximum aggregate amount of £250,000, provided that Serco shall use all reasonable endeavours to mitigate such costs.
- 3.10 Serco shall indemnify Summit on demand from and against all claims, costs, losses, damages, liabilities and expenses suffered or incurred by Summit as a result of or in connection with any breach of Clauses 3.1, 3.3 and 3.4 by Serco or any person for whom Serco is responsible in terms of this Agreement provided that Serco's maximum aggregate liability under this Clause 3.10 (save in respect of any liability or liabilities arising as a result of or in connection with any failure to observe, perform and/or comply with the obligations of Summit under Clauses 17.2.1 and 17.5.2 of the Project Agreement which liability shall not be limited by virtue of this Clause 3.10) shall not exceed ¹⁶/₁₇ of the aggregate management fee paid to Summit under Clause 17.3.1(b) of the Project Agreement.
- 3.11
- 3.11.1 Summit shall procure that the Contractor shall provide training in the operation and maintenance of mechanical and electrical elements of plant and Group 1 equipment for appropriate Serco staff in accordance with the proposal to be developed in accordance with Clause 3.11.2 below.
- 3.11.2 During the Transition Period Summit shall supply Serco with a draft proposal for training Serco Personnel no later than 6 months prior to the Contractual Practical Completion Date and (without prejudice to Clause 25) the parties shall, acting

reasonably, endeavour to reach agreement on such proposals no later than 1 month after supply of the same to Serco. If the parties cannot reach agreement within that period either party may refer any dispute to the Disputes Resolution Procedure.

4. COMMISSIONING PERIOD

4.1 Serco shall during the Commissioning Period at the Hospital:-

4.1.1 perform its obligations specified in Section A of Part 1 of the Schedule in accordance with Applicable Laws and Good Industry Practice and the reasonable instructions of Summit; and

4.1.2 provide all assistance to Summit and its sub-contractors in relation to their commissioning activities at the Hospital during the Commissioning Period as Summit shall reasonably request.

4.2 Serco shall indemnify Summit on demand against any claims, losses, damages expenses or other liabilities suffered or incurred by Summit as a result of failure by Serco to comply with its obligations under Clause 4.1 but without prejudice to Clause 22.2 below.

4.3 In consideration of performance by Serco of its obligations under Clause 4.1 and Section A of Part 1 of the Schedule, Summit shall make payment to Serco in accordance with Section B of Part 1 of the Schedule.

5. SERVICES

5.1 Subject to Clause 2, Summit, relying on the representations of Serco in Clause 12.1, appoints Serco exclusively (subject as provided in the Change Provisions and as otherwise expressly provided in this Agreement) to provide, or procure the provision of, the Services throughout the Initial Term (but subject to Clauses 6.2, 18 and 21.5 (early termination)) on the terms and subject to the conditions set out in this Agreement and Serco accepts such appointment.

5.2 During the Initial Term, Serco shall provide, or (subject as provided in this Agreement) procure the provision of, the Services and shall observe, perform and comply with the obligations of Summit under the Services Agreement (including, for the avoidance of doubt, the General Provisions, the Output Specification and the Method Statements) in each case at such time or times and in such manner as to ensure compliance by Summit with the terms of

the Services Agreement unless expressly otherwise provided in Clause 8 or Clause 9 of this Agreement.

- 5.3 No guarantee is given by Summit in respect of the levels of demand for the Services which the Trust will require during the Initial Term or any period during the Initial Term.
- 5.4 Serco confirms that it has been involved in the negotiation of the DBFO Contracts (for the avoidance of doubt including the Output Specification and the Method Statements), in so far as they relate to the Services, and has copies of and has had the opportunity to fully consider the terms of those contracts and has taken those terms into account in entering into this Agreement. Serco acknowledges that it will not have any claim against Summit arising from any misunderstanding or inaccurate interpretation by Serco of any provision of any of the DBFO Contracts.
- 5.5 Serco shall not knowingly act or omit to act in such a way as to cause Summit or any of its sub-contractors to be in breach of any obligations on the part of Summit or any of its sub-contractors under the DBFO Contracts not delegated to Serco under this Agreement except to the extent that such obligations conflict or interfere with Serco's obligations under this Agreement.
- 5.6 Each of Serco and Summit undertake to co-operate in good faith with the other in order to facilitate the performance of this Agreement and, in particular, each party will have due regard to any reasonable and proper representation made by the other on any matter which may affect the respective rights, obligations and liabilities of the parties under this Agreement or under any other agreement or instrument at any time entered into by either of them in connection with the Project.
- 5.7 If either Serco or Summit becomes aware of any conflict or inconsistency between or within any of the documents forming part of or incorporated by reference into this Agreement or any requirement thereof or any instruction properly issued thereunder, that party shall inform the other accordingly and the parties shall meet, discuss in good faith and use reasonable endeavours to agree the manner in which such conflict or inconsistency shall be resolved but failing such agreement, either party may refer the matter in dispute to be resolved under the Dispute Resolution Procedure.

6. **DURATION**

6.1 This Agreement shall, subject to Clause 2, commence on the date of execution of this Agreement and shall subsist until the last day of the Initial Term, but subject to the lawful exercise of any termination rights set out in this Agreement and to Clause 6.2.

6.2 Subject to the provisions of the Services Direct Agreement, this Agreement shall (without prejudice to the rights of either party in respect of any antecedent breach or in respect of any right or obligation which is expressed to survive the termination of this Agreement) unless previously terminated in accordance with its terms terminate and cease to have effect automatically on the date of termination of the Project Agreement.

7. **PAYMENT**

In consideration of the performance by Serco of its obligations under this Agreement, Summit shall make payments to Serco in accordance with Part 2 of the Schedule.

8. **EXCLUDED OBLIGATIONS**

Unless otherwise agreed in writing by Summit and Serco from time to time, Serco shall not be obliged to perform any of the following obligations of Summit under the Services Agreement:-

8.1 any obligations of Summit to the extent they relate to the Equipment Services;

8.2 the obligations of Summit under Clause 4.2 of and Part 2 of the Schedule to the Services Agreement (utilities) and paragraphs 2 and 5 (save, in the case of paragraph 5, in respect of maintenance obligations) of the Appendix to Part 8 of the Output Specification (Utilities Contingency Provision) subject as provided in Clause 10.2;

8.3 the obligations of Summit under Clause 5.4 of the Services Agreement (consultation) subject as provided in Clause 10.15;

8.4 the obligations of Summit under Provision 3.2 (patient confidentiality) subject as provided in Clause 14.6;

8.5 the obligations of Summit under Provisions 7.1 and 7.2 (agreement management) subject as provided in Clause 10.15;

- 8.6 the obligations of Summit under Provision 8.1 (prompt payment) subject as provided in Clause 10.9.5;
- 8.7 the obligations of Summit under Provision 10 (reputation of the Trust) subject as provided in Clause 10.8;
- 8.8 the obligations of Summit under Provision 11 (Approved Service Providers);
- 8.9 the obligations of Summit under Provision 12 (market testing) subject as provided in Clause 10.6;
- 8.10 the obligations of Summit under Provision 15 and Part B of the Schedule (Penalty Points);
- 8.11 the obligations of Summit under Provisions 16.2.5 to 16.2.8;
- 8.12 the obligations of Summit under Provision 18 (status of Summit) subject as provided in Clause 29.11;
- 8.13 the obligations of Summit under Provision 20 (Tax Deduction Scheme);
- 8.14 the obligations of Summit under Provision 22.1 (security) subject as provided in Clause 17.4;
- 8.15 any obligations of Summit under Provision 4 and Part A of the Schedule to the General Provisions (payment mechanism) subject as provided in Part 2 of the Schedule;
- 8.16 the obligations of Summit under Parts D and E of the Schedule to the General Provisions (Change Provisions) subject as provided in Clause 10.5 and Part G of the Schedule to the General Provisions (Reinstatement);
- 8.17 the obligation of Summit to provide as part of the Summit Items, the patient meal trolleys and the central dishwasher and ward pantry dishwashers pursuant to Part 1 of

the Schedule to the Services Agreement (Trust Related Materials) and the obligations of Summit under paragraph 1.7 of Part 1 of the Schedule to the Services Agreement; and

8.18 the obligations of Summit in relation to the IT Network, IT Software and IT Repairs under Part 8 of the Output Specification.

9. ESTATES MAINTENANCE

The provisions of Part 6 of the Schedule shall apply with regard to the parties' respective responsibilities for the Estates Maintenance Service and the parties shall comply with their respective obligations under Part 6 of the Schedule.

10. ADDITIONAL SERCO OBLIGATIONS

10.1 Latent Defects

10.1.1 Serco shall promptly upon becoming aware of any defect or any circumstance likely to give rise to any defect in the Buildings during the Commissioning Period and the Initial Term notify Summit and give Summit details of such defect or circumstances of which Serco is or becomes aware.

10.1.2 In performing the Services, Serco shall use all reasonable endeavours consistent with Serco's obligations under this Agreement to ensure that it does not thereby prejudice any rights which Summit may have against the Contractor under the Building Contract. Serco acknowledges that it has been provided with a copy of the Building Contract.

10.1.3 Serco acknowledges that during the Commissioning Period and from the Services Commencement Date the Contractor will require access to the Hospital and/or the Site for the purposes of remedying such snagging items as may be set out in the list attached to the Certificate of Contractual Practical Completion.

10.2 Utilities

10.2.1 Serco shall, and shall use all reasonable endeavours to procure that its sub-contractors shall, carry out its activities at the Hospital in an energy and water efficient manner (but, notwithstanding the foregoing, shall not be required to reimburse Summit for any amounts Summit is obliged to pay to the Trust pursuant to

paragraph 3.2 of Part 2 of the Schedule to the Services Agreement) and shall provide training to its staff in this regard and shall co-operate in the development and implementation of an energy (and, if required by the Trust, water) efficiency programme to be prepared by Summit and the Trust in terms of paragraph 3 of Part 2 of the Schedule to the Services Agreement and shall provide to Summit or, at Summit's direction, the Trust such information and advice as the Trust may reasonably request pursuant to or as is otherwise required by paragraph 1.2 of Part 2 of the Schedule to the Services Agreement.

10.2.2 Serco shall pay for its own line rental and call charges in respect of telephones used by it in its FM Manager's office at the Hospital.

10.2.3 Serco shall perform Summit's obligations under paragraph 2 of Part 2 of the Schedule to the Services Agreement (Interruptible Gas Supply) at such time or times and in such manner as to ensure compliance by Summit with that provision provided that the liability of Serco for failing so to do shall not exceed 75% of that of Summit to the Trust in respect of each failure and provided that Summit shall not without the consent of Serco agree a period shorter than 4 hours for requiring the interruption of the gas supply.

10.2.4 Serco shall perform Summit's obligations under paragraph 4 of Part 2 of the Schedule to the Services Agreement (Monitoring of Usage) at such time or times and in such manner as to ensure compliance by Summit with such provisions.

10.2.5 Serco shall as soon as reasonably practicable advise Summit in the event that the Reserve Fuel begins to be used.

10.3 Insurance

Serco shall procure that insurance is effected and maintained in accordance with the requirements of Section B of Part 3 of the Schedule.

10.4 Default

Serco shall promptly inform Summit in writing of:-

10.4.1 any breach or default under this Agreement or any of its contracts with Permitted Sub-Contractors of which it is aware; and

10.4.2 any event described in Clause 18.1 (events of default);

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

10.5 Change

Serco shall:-

10.5.1 make available to Summit or, at the direction of Summit, the Trust, such information, documents, assistance and co-operation at such time or times and in such manner (i) as Summit may request to ensure compliance by Summit with the provisions of the Change Provisions in so far as they relate to the Services and Serco's obligations under this Agreement and (ii) as otherwise requested by Summit in connection with those provisions;

10.5.2 implement and/or comply with any Change in accordance with the terms thereof in so far as relative to the Services and its obligations under this Agreement subject, where Summit is entitled to or subject to an adjustment in the payments to it under the DBFO Contracts, to an adjustment in the payments to be made under this Agreement as provided in Part 2 of the Schedule to this Agreement; and

10.5.3 procure similar co-operation, assistance, information, documents and compliance of or from its Permitted Sub-contractors.

10.6 Market Testing

Without prejudice to the provisions of Clause 16, Serco shall, at no additional cost to Serco unless Summit agrees to pay such costs:-

10.6.1 co-operate with Summit and the Trust in the operation of the market testing procedure in Provision 12 and provide such information and documents to Summit, the Trust and potential tenderers as Summit may request to facilitate the market testing procedure with a view to achieving a smooth handover from Serco to any incoming service provider (but excluding the provision of any Proprietary Information of Serco);

10.6.2 sell to the incoming service provider, with effect from the relevant Market Testing Date, all Related Materials (save for any Transferring Related Materials which shall transfer at nil cost), subject to such Related Materials being in an appropriate and satisfactory condition and not excessive in quantity, redundant or obsolete and reasonably suitable for their purpose at a price to be agreed or, failing agreement, at their market value and on the basis that Serco shall warrant to the incoming service provider that it has good title to such Related Materials;

10.6.3 if the market testing procedure fails to produce a new service provider as envisaged in Provision 12.7.1, Serco shall assist in effecting a smooth handover of the Services from it to Summit and/or the Trust, as the case may be.

10.7 **Summit Approval**

If any provision of any DBFO Contract delegated to Serco under this Agreement requires in respect of any matter the consent or approval or agreement of the Trust or, but for the delegation to Serco, of Summit in respect of that matter, such matter shall also require the consent or approval or agreement of Summit, not to be unreasonably withheld or delayed provided that, in the case of matters requiring the consent or approval or agreement of the Trust, Summit shall be deemed to be acting reasonably in withholding or refusing such consent or approval or agreement if such consent or approval or agreement on the part of the Trust has been withheld or refused.

10.8 **Reputation of the Trust**

Serco shall not, and shall use all reasonable endeavours to procure that no Personnel shall, knowingly do or omit to do anything in relation to this Agreement or otherwise which may bring the standing or reputation of the Trust or the Hospital into disrepute or attract adverse publicity to the Trust or the Hospital.

10.9 Permitted Sub-contractors

- 10.9.1 Serco may only subcontract the provision of all or any part of the Services in accordance with, and shall comply with, Provision 13 and with the prior written consent of Summit and on such terms and subject to such reasonable conditions as may be specified by Summit in any such consent.
- 10.9.2 Serco shall ensure that no Permitted Sub-contractor to whom the employment of any Employees is to transfer (whether by operation of the Directive, the Employment Regulations or otherwise) shall commence the provision of Services until it has entered into a Services Direct Agreement with the Trust save in terms of paragraph 2(d) of the Trust Objection Procedure when such direct agreement shall be entered into as soon as reasonably practicable (but in any event within two weeks of completion of such procedure).
- 10.9.3 Notwithstanding the appointment of any Permitted Sub-contractor, Serco shall remain liable for the performance of its obligations under this Agreement.
- 10.9.4 Serco shall not amend, terminate or waive any default under any contract with any Permitted Sub-contractor without the prior written consent of Summit, such consent not to be unreasonably withheld or delayed.
- 10.9.5 Serco shall include in its contracts with any Permitted Sub-contractor a written undertaking to pay for the relevant goods and/or services within 30 days, or such longer period (i) as may result in commercial benefit to the Project or (ii) as the Trust may agree, after receipt of the supplier's invoice and (provided that such goods and/or services have been supplied in accordance with the relevant agreement and such liability to pay has arisen and there is no dispute in good faith and in accordance with the conditions of the relevant contract for resolution of disputes regarding the amount due) shall comply with the undertaking to pay.
- 10.9.6 Serco shall include in any contract with a Permitted Sub-contractor a provision that such contract will terminate immediately upon the termination (for any reason) of this Agreement and no compensation payable upon any such termination (in aggregate under or in respect of all such subcontracts) shall be greater than that

payable in relation to the termination of such sub-contract on termination of this Agreement on the principles set out in Clause 20 and Part 5 of the Schedule.

10.9.7 Serco shall provide to Summit details (excluding prices) of all contracts with Permitted Sub-contractors and of all amendments to such contracts within five Business Days of the date such contract or amendment thereto is entered into or made.

10.10 Licences

10.10.1 Serco shall observe, perform and comply with the obligations of Summit under Clauses 10.6, 10.8 and 10.9 of the Project Agreement to the extent they relate to the Services and Serco's obligations hereunder at such time or times and in such manner as to ensure compliance by Summit with the provisions of those Clauses. Serco shall exhibit to Summit on request any permits, licences, consents or authorisations the responsibility of Serco under this Clause.

10.10.2 On expiry or termination of this Agreement, to the extent any such permits, licences, consents or authorisations the responsibility of Serco under Clause 10.10.1 are in Serco's name, Serco shall, at Summit's request, use all reasonable endeavours to procure the transfer of any such permit, licence, consent or authorisation to Summit or its nominee (and, in taking out any such permit, licence, consent or authorisation, shall (in so far as it is able) procure this is transferable to Summit or its nominee at no cost) and/or shall sign all documents and provide all assistance as Summit may reasonably require (at no cost to Serco unless Summit agrees to pay such costs) in relation to that transfer or to secure the issue of a new permit, licence, consent or authorisation to Summit or its nominee.

10.11 Applicable Laws etc

Without prejudice to Serco's obligation to provide the Services to ensure compliance by Summit with its obligations under the Services Agreement, Serco shall perform its obligations under this Agreement in accordance with all Applicable Laws, Industry Standards and Good Industry Practice.

10.12 Personnel

Serco shall not, and shall ensure that none of the persons for whom it is responsible under this Agreement shall, interfere with Summit or the Trust or persons for whom they are responsible under this Agreement or the DBFO Contracts, as the case may be, in performing their obligations under the DBFO Contracts.

10.13 Communications to the Trust

Any notices or communications to be made by Serco or its Permitted Sub-contractors to the Trust in performance of Serco's obligations under this Agreement shall be sent to the Trust directly with a copy sent to Summit at the same time, unless Summit requires in relation to any specific notices or communications or any category of notices or communications that these should first be approved by Summit in which case Serco shall not send any such notice or communication to the Trust unless it shall first have been approved by Summit and shall obtain such approval in sufficient time to ensure compliance with its obligations under this Agreement. Summit undertakes not to delay any consideration of any notice or communication submitted to it for approval under this Clause provided always Serco has given it a reasonable time in which to do so consistent with the obligations of Serco under this Agreement.

10.14 Persons for whom Serco is responsible

Serco acknowledges that, as between Summit and Serco, it will be responsible pursuant to this Agreement for the acts or omissions of its employees, agents, lessees, sub-lessees, its Permitted Sub-contractors and its sub-contractors to the same extent to which Serco would be responsible under the terms of this Agreement if they were its own acts or omissions.

10.15 Serco Contract Officer

Serco shall appoint at least two months prior to the Transition Commencement Date (and thereafter throughout the duration of this Agreement ensure that at all times there is appointed) a Serco Contract Officer to be Serco's representative and to supervise the performance by Serco of the Services and Serco's other obligations under this Agreement and his identity shall be notified to Summit by notice in writing from time to time together with details of his duties, functions and authority. Serco shall procure that the Serco Contract Officer consults the Summit Contract Officer and the Trust Contract Officer on a regular basis and as often as is necessary with a view to ensuring the efficient provision of the Services in accordance with this Agreement.

10.16 Trust Objection Procedure

Where any provision of the DBFO Contracts delegated to Serco under this Agreement requires any submission to the Trust Objection Procedure, Serco shall in making such submission comply with the requirements of the Trust Objection Procedure in relation to that submission including compliance with Trust requests for information under that procedure with a view to ensuring compliance by Summit of its obligations and requirements under that procedure.

10.17 Contamination

Serco shall be responsible for appropriate treatment or removal as described in Clause 26.10.3 of the Project Agreement of and costs relating to Contamination arising due to the act, default or omission of Serco or any person for whom Serco is responsible in terms of this Agreement and shall indemnify Summit in respect thereof.

10.18 Remedy by Trust

Without prejudice to Serco's other obligations under this Agreement, Serco shall remedy any failure to perform notified by the Trust in accordance with Provision 16.2 within the timescale required by or in terms of Provision 16.2, failing which Summit shall be entitled, but not obliged, to effect such remedy.

10.19 Services Monitoring Procedures

Summit shall be entitled to the same rights to audit the carrying out of the Services Monitoring Procedures as those to which the Trust is entitled in terms of the Services Monitoring Procedures provided that if the Trust has served a warning notice under Provision 15, Summit shall be entitled to such additional rights in relation thereto as it shall require in relation to the Services the subject of the warning notice.

10.20 Auto Attendant Facility

Serco shall purchase, install, maintain, replace and use in the provisions of the Switchboard Services an auto attendant facility approved by Summit, such approval not to be unreasonably withheld, and may remove the auto attendant facility on expiry or termination of this Agreement, provided it makes good any damage caused by such removal.

10.21 Manuals etc

Subject to Summit procuring the supply of such items or documents from the Contractor in accordance with Clause 11.6 below, Serco shall take or maintain custody of log books, all manuals, test certificates, drawings, plans, building regulations and other similar items and documents from the Contractor at Contractual Practical Completion Date for use in the Estates Maintenance Service, keep these in a secure place and permit access to them by Summit and its nominees at all reasonable times, update these in conjunction with performance of the Estates Maintenance Service and deliver them up to Summit or as it may direct on termination or expiry of this Agreement. For the avoidance of doubt, all documents and items shall remain at all times the property of Summit.

10.22 Serco shall observe perform and comply with the obligations of Summit in Part 11 of the Schedule to the Project Agreement to the extent that such relates to the Services and Serco's obligations hereunder at such time or times and in such manner as to ensure compliance by Summit with the provisions thereof.

11. SUMMIT'S OBLIGATIONS

11.1 Persons for whom Summit is responsible

Summit acknowledges that, as between Serco and Summit, it will be responsible pursuant to this Agreement for the acts or omissions of its employees, agents, lessees, sub-lessees, its Approved Service Providers, its Permitted Sub-contractors and its sub-contractors (other than, in each case, Serco or persons for whom Serco is responsible in terms of Clause 10.14 and the Trust, or persons for whom the Trust is responsible in terms of the DBFO Contracts) to the same extent to which Summit would be responsible under the terms of this Agreement if they were its own acts or omissions.

11.2 General Obligations

Summit shall:-

11.2.1 effect and maintain the insurance specified in and otherwise comply with its obligations under Section A of Part 3 of the Schedule;

11.2.2 promptly supply or procure the supply to Serco of such information as Serco shall reasonably request to enable it to perform its obligations under this Agreement at such time or times as Serco may reasonably request including information made

available to Summit by the Trust in relation to the Services under the DBFO Contracts, such information being limited to information which Summit is entitled to receive and does receive (using reasonable endeavours to obtain such information) from any third party or is otherwise within the possession or control of Summit;

- 11.2.3 not amend or agree the construction of any term of the DBFO Contracts (including, for the avoidance of doubt, the Output Specification, the Method Statements and relevant provisions of the Master Definitions Schedule referred to therein used in the construction or interpretation thereof) performance of which is delegated to Serco under this Agreement or which otherwise directly relates to performance by Serco of its obligations under this Agreement without the prior written consent of Serco, such consent not to be unreasonably withheld or delayed;
- 11.2.4 not release or waive any obligations of the Trust under the DBFO Contracts where to do so would have a material adverse effect on Serco's performance of its obligations or exercise of its rights under this Agreement without the prior written consent of Serco, such consent not to be unreasonably withheld or delayed;
- 11.2.5 not amend the Building Contract nor release or waive any of the obligations of the Contractor under the Building Contract where to do so would have a material adverse effect on Serco's performance of its obligations or exercise of its rights under this Agreement without the prior written consent of Serco, such consent not to be unreasonably withheld or delayed;
- 11.2.6 not knowingly act or omit to act in such a way as to cause Serco or any of its sub-contractors to be in breach of any obligations on the part of Serco or any of its sub-contractors in relation to the performance of the Services except to the extent that such obligations conflict or interfere with Summit's obligations under the DBFO Contracts.

11.3 **Summit Contract Officer**

The Summit Contract Officer shall be the representative of Summit in respect of all matters arising under or connected with this Agreement and his identity shall be notified in writing to Serco from time to time together with details of his duties, functions and authority.

11.4 Spare Parts

Summit shall make available to Serco free of charge for use in the Estates Maintenance Service any spare parts for the Hospital made available, at no extra cost, to Summit by the Contractor.

11.5 Method Statements

Summit shall, at Serco's request and expense, implement the procedure set out in Clause 8 of the Services Agreement subject to the consent of Summit (not to be unreasonably withheld) to any changes to the Method Statements for the Estates Maintenance Service and any other changes which, in the reasonable opinion of Summit would adversely impact on Summit.

11.6 Manuals

Summit shall procure the supply to Serco:

11.6.1 by 4 months prior to the Contractual Practical Completion Date, preliminary draft manufacturers' technical data; and

11.6.2 by 8 weeks prior to the Contractual Practical Completion Date the items and documents referred to and on the terms referred to in paragraph 7 of Part 5 of the Schedule to the Development Agreement;

11.6.3 by 8 weeks prior to the Services Commencement Date the final handover documents referred to and on the terms referred to in paragraph 7 of Part 5 of the Schedule to the Development Agreement;

in each case so far as these are necessary to enable Serco properly to provide the Estates Maintenance Service and the Interim Estates Services.

12. WARRANTIES AND DESIGN ASSUMPTIONS

12.1 Serco represents and warrants to Summit, at the date of this Agreement and on the basis that such warranties will be deemed to be repeated at Financial Close, that:-

12.1.1 Serco:

12.1.1.1 is validly incorporated; and

- 12.1.1.2 has the power and capacity to execute this Agreement and perform its obligations and exercise its rights under this Agreement;
- 12.1.2 it will not by entering into or performing its obligations or exercising its rights under this Agreement be in breach of or cause to be breached any restriction (whether arising in contract or otherwise) binding on Serco or any of its assets or undertaking which would adversely affect its performance of this Agreement or permit termination of this Agreement;
- 12.1.3 it has all necessary powers to own its assets and carry on its business as now conducted;
- 12.1.4 this Agreement constitutes a binding obligation on Serco and is enforceable in accordance with its terms.
- 12.2 Without prejudice to Clause 22.6, Serco acknowledges that, in entering into this Agreement, it is not relying upon any documentation supplied by Summit whether or not originally derived from the Trust and Summit acknowledges that in entering into this Agreement it is not relying upon any documentation supplied by Serco, save in each case as otherwise expressly provided in this Agreement.
- 12.3 Serco acknowledges that, provided that the Hospital is constructed in accordance with the design assumptions set out in Part 7 of the Schedule ("the Design Assumptions") and in accordance with the Development Agreement the design of the Hospital will satisfy its requirements to enable it to perform the Services in accordance with the terms of this Agreement.
- 12.4 Summit shall copy to Serco documents, plans and/or drawings produced as part of the detailed design development process subsequent to Financial Close and (in consideration of payment by Summit of £40,000 which amount shall (subject to the delivery by Serco to Summit of a VAT invoice in respect thereof) be payable within 15 days of Financial Close) Serco shall notify Summit in writing promptly if it believes the detailed design would or is likely to conflict with the Design Assumptions and otherwise provide comments and suggestions but without prejudice to Clause 12.5. The final date for payment of the sum

referred to in this Clause 12.4 shall be the date on which Serco is entitled to terminate this Agreement as a result of an event referred to in Clause 18.5. Within five days after the date upon which payment becomes due pursuant to this Clause 12.4 (or would have become due if Serco had carried out its obligations under this Agreement and no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts) (but without prejudice to any other provision of this Agreement) Summit shall provide a notice specifying the amount if any of the payment made or proposed to be made and the basis upon which such amount has been calculated.

12.5 Subject to the provisions of Clause 12.6 below, if the Hospital fails to comply in any material respect with the Design Assumptions at the Contractual Practical Completion Date, otherwise than as agreed in writing by Summit with Serco, such that this materially adversely affects the performance by Serco of the Services then, subject to Clause 22.3, Summit shall indemnify Serco against the additional costs properly, necessarily and reasonably incurred in the performance of the Services as a result of such non-compliance provided that Serco shall use all reasonable endeavours to mitigate such costs.

12.6 Serco shall within five days of request by Summit inspect the Hospital to verify compliance with the Design Assumptions and shall promptly advise Summit following such inspection and in any event within five days thereof of any non-compliance in this respect and, for this purpose, Summit shall permit Serco reasonable access to the Hospital a reasonable period prior to the Contractual Practical Completion Date. Summit shall have no liability to Serco pursuant to Clause 12.5 and Serco shall be deemed to be satisfied that the Hospital complies with the Design Assumptions to the extent that Serco omits to advise Summit of any non-compliance with the Design Assumptions in accordance with Clause 12.5 to the extent such non-compliance was readily apparent to Serco upon making such inspection or which would have been readily apparent to an experienced provider of services similar to the Services having taken all reasonable steps in making such inspection for such purposes. In the event that Serco does so advise Summit within the required period Serco and Summit shall (without prejudice to Clause 25) endeavour to agree what if any effect the matter or matters advised will have on the performance by Serco of the Services, and in the event of a failure to agree within two days of Serco having advised Summit as aforesaid the matter shall be resolved under the Dispute Resolution Procedure.

12.7 The provisions of Clause 12.5 represent the sole and exclusive remedy of Serco, and Summit shall have no further liability of whatsoever nature to Serco, in respect of any failure of the Hospital to comply with the Design Assumptions for any purposes connected with performance of the Services or Serco's obligations under this Agreement.

13. **ORGANISATION, CO-OPERATION AND INFORMATION**

13.1 Serco shall make available to Summit or, at the direction of Summit, the Trust or its nominees such co-operation, assistance, attendance at meetings, reports, information and access (including access to key Personnel and to inspect equipment, materials and records at the Site and to test and take samples) at such time or times and in such manner as Summit may request to ensure compliance by Summit with the provisions of Clauses 5.5, 5.6, 14, 15 and 18 of the Project Agreement in so far as they relate to the Services and Serco's obligations under this Agreement. Serco shall procure similar co-operation, assistance, information and access is given by its Permitted Sub-contractors.

13.2 Without prejudice to the provisions of Clause 13.1, Serco shall:-

13.2.1 provide to Summit such additional information as Summit may reasonably request in relation to Serco's obligations under this Agreement within such time as Summit shall reasonably request such information being limited to information which Serco may from time to time have within its possession or control, or which Serco is entitled to receive and does receive (using reasonable endeavours to obtain) from any third party including a Permitted Sub-contractor;

13.2.2 provide to Summit such assistance as Summit may reasonably require in relation to the performance by Summit of its obligations under the DBFO Contracts consistent with the obligations of Serco under this Agreement;

13.2.3 co-operate with Summit and its other sub-contractors and the Trust in order to ensure the efficient provision of and interface between the Services, the Equipment Services and the clinical services of the Trust and, without prejudice to the generality of the foregoing, participate in the preparation and review from time to time of the Liaison Procedures, and/or provide Summit with such assistance and documents as it may require to agree the Liaison Procedures with the Trust in consultation with Serco, and comply with the provisions and co-operate in the operation of the Liaison Procedures

in so far as they relate to the provision of the Services and Serco's obligations under this Agreement and the interface of the Services with the Equipment Services and the clinical services of the Trust;

13.2.4 so far as may be permissible under all Applicable Laws and contracts of employment, provide to Summit such access as it may reasonably require to the premises used for the purposes of, records relating to and key Personnel engaged in the Services on reasonable notice during normal working hours, save in the case of an emergency when such notice as is practicable shall be given; and

13.2.5 so far as it is able having taken all steps reasonably practical to so procure, procure similar co-operation, assistance, information, access and compliance by its Permitted Sub-contractors.

13.3 Serco shall exercise all due care and diligence in the preparation of information and documents referred to in this Clause 13 and shall ensure the same are accurate (in all material respects) and not misleading and shall ensure that at all times there shall be adequate security and retention arrangements for all such documents and information which shall in all cases be retained by Serco for a period not less than required by law or seven years from receipt thereof whichever is the greater, save with the consent of Summit and the Trust.

13.4 The provisions of Part 4 of the Schedule shall have effect regarding participation by Serco in the Joint Operating Group and the parties shall comply with their respective obligations in Part 4 of the Schedule. Serco acknowledges that the provisions of Clause 11 of the Project Agreement regulate the operation of the Joint Operating Group. Serco shall procure that any Serco representative on the Joint Operating Group will attend meetings of the Trust's sub-committees where so requested by the Trust in accordance with Clause 11.7 of the Project Agreement.

13.5 Serco shall provide, at no additional cost to Serco unless Summit agrees to pay such costs, such reasonable assistance as may be required by any person from time to time appointed as Technical Adviser under the Finance Facilities Agreements and shall provide such information as he may reasonably require to enable him to discharge his proper duties and functions.

14. **CONFIDENTIALITY**

14.1 Each party shall treat all Confidential Information of the other party and its sub-contractors as confidential and Serco shall treat all Confidential Information of the Trust, of which it becomes aware by reason of the operation of this Agreement, as confidential, except as may be necessary for the performance of any obligations under this Agreement and in the case of Summit, the Project Documents, and each party shall use all reasonable endeavours to prevent the disclosure of such Confidential Information by their respective officers, employees, agents or sub-contractors, but so that Serco acknowledges Summit may supply information to the Trust or its nominees in accordance with the DBFO Contracts and that the Trust may disclose information where permitted and subject as provided in Clause 12.2 of the Project Agreement. This Clause 14 shall survive any termination of this Agreement.

14.2 Clause 14.1 shall not apply to Confidential Information which:-

14.2.1 prior to its receipt by the recipient was in the possession of the recipient and at its free disposal;

14.2.2 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;

14.2.3 is or becomes generally available to the public otherwise than through the act or default of the recipient or its agent or employees;

14.2.4 is required to be disclosed 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 or (provided tenderers shall first agree in writing to be bound by a confidentiality undertaking substantially in the terms of this Clause 14 and excluding Proprietary Information of Serco) in connection with a market testing under Provision 12; or

14.2.5 is required to be disclosed under Clause 18 of the Project Agreement after receipt of a confidentiality undertaking referred to in Clause 12.2.5 of the Project Agreement.

14.3 Nothing in this Clause 14 shall prohibit Summit from disclosing information to its current or prospective financiers, shareholders, the Promoters, any Associated Company of Summit

(excluding any company or undertaking which is a direct competitor of Serco), any rating agency, 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 and to its or their respective professional advisers, auditors, agents or representatives provided that any recipient of Confidential Information contemplated by this Clause 14.3 shall first agree in writing to be bound by a confidentiality undertaking substantially in the terms of this Clause 14.

14.4 Nothing in this Clause 14 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 or any Associated Company of Summit for the purpose of performing its obligations under the Project Documents or as otherwise provided therein, provided that any recipient of Confidential Information contemplated by this Clause 14.4 has agreed in writing to be bound by a confidentiality undertaking substantially in the terms of this Clause 14.

14.5 Serco shall use all reasonable endeavours to ensure that the conditions of employment of its Personnel shall permit disclosure of such conditions in accordance with the provisions of Clause 13 and this Clause 14.

14.6 Serco shall at all times, whether before or after termination of this Agreement, and shall use all reasonable endeavours to procure that all Permitted Sub-Contractors and all Personnel (being Personnel who have access to confidential information relating to patients) shall, keep as confidential all information relating to all patients in the Hospital, not use (save for the purpose of performing any of its obligations under this Agreement) or disclose any of that information and make every reasonable effort to prevent the use (save as aforesaid) or disclosure of any of that information by a third party, and comply with the requirements of all Trust procedures from time to time in relation to patient confidentiality. The provisions of Clause 14.2 shall apply to this Clause in the same manner as they apply to Clause 14.1.

15. LICENCE OF INTELLECTUAL PROPERTY RIGHTS

15.1 Serco shall grant, and shall procure the grant by any relevant third parties (including Permitted Sub-Contractors), of such licences or sub-licences of Intellectual Property to the

Trust and shall supply, and shall procure the supply by any relevant third parties, of any relevant software or (subject to the provisions of the Data Protection Act 1984) database on such terms and at such time or times as are necessary to ensure compliance by Summit with the terms of Clauses 20.1, 20.2, 20.3 (excluding the licence from the IT Software Supplier), 20.6, 20.8 and 20.9 of the Project Agreement in so far as they relate to Serco and its Permitted Sub-contractors and the performance by Serco of its obligations hereunder. In the case of sub-licences granted or to be granted as required by Clause 20.3 of the Project Agreement, Summit shall pay to Serco any costs reimbursable by the Trust in respect of any such sub-licences procured by Serco.

- 15.2 Serco hereby grants to Summit, an irrevocable, non-exclusive, royalty-free licence during the Initial Term and at all times thereafter subject as provided in Clause 15.8 to use all Intellectual Property owned by Serco whether now in existence or coming into existence during the continuance of this Agreement developed for and relating to the provision of the Services and Serco's obligations under this Agreement, including, for the avoidance of doubt, any software developed or supplied to fulfil any obligation of Serco under this Agreement, solely for the purposes of (a) performing Summit's obligations to the Trust under the DBFO Contracts and (b) in relation to operation of the Hospital and performance of the Services. Summit may not sub-licence, transfer, or assign this licence without the prior written consent of Serco such consent not to be unreasonably withheld nor make any alterations, adaptations or additions to the subject matter of the Intellectual Property. Summit acknowledges that Serco is and will remain the sole owner of any such software or Intellectual Property and Summit shall acquire no right, claim or interest in any such software or Intellectual Property during the continuance of this Agreement or thereafter, save in terms of any licence granted under or in terms of this Clause 15.
- 15.3 Where Serco procures a sub-licence by a third party (including a Permitted Sub-contractor) in favour of the Trust in terms of Clause 15.1. Serco shall use reasonable endeavours to procure the grant of such a sub-licence by such third party on the same terms in favour of Summit at no additional cost (or if there is an extra cost occasioned thereby and Summit still requires the grant of such a licence, Summit agrees to pay such extra cost).
- 15.4 Summit shall comply with the reasonable instructions of Serco in relation to the use of Intellectual Property licensed under Clause 15.2 including procedures to avoid infringement of any third party rights and notification of any third party claims.

- 15.5 In accordance with the terms of the licence granted by the Trust to Summit under Clause 20.5 of the Project Agreement, Summit hereby grants to Serco an irrevocable, non-exclusive, royalty free licence during the continuance of this Agreement to use all, if any, Intellectual Property owned by the Trust, whether now in existence or coming into existence during the continuance of this Agreement, for any purpose relating to the provision of the Services. Summit shall, at Serco's request and expense, and subject to the approval of the Trust, grant to any Permitted Sub-contractor of Serco, appointed in accordance with this Agreement, a licence on substantially the terms of this Clause 15.5. Serco shall comply, and procure compliance by its Permitted Sub-contractors, with any instructions of the Trust in relation to the use of such Intellectual Property including procedures to avoid infringement of any third party rights and notification of any third party claims.
- 15.6 Serco shall indemnify Summit (or, at its direction, the Trust) on demand and hold Summit and the Trust harmless from and against all claims made or brought by any persons for or on account of actual or alleged infringement of any Intellectual Property licensed under or in terms of Clauses 15.1, 15.2 and 15.3 save to the extent, in the case of Intellectual Property licensed to Summit under Clause 15.2, that any such infringement is due to failure by Summit to comply with the reasonable instructions of Serco in the use of such Intellectual Property as aforesaid or use by Summit of such Intellectual Property for a purpose for which it was not licensed under this Clause 15.
- 15.7 Subject to Clause 22.3, Summit shall indemnify Serco on demand and hold it harmless from and against all claims made or brought by any persons for or on account of actual or alleged infringement of any Intellectual Property licensed by Summit to Serco under Clause 15.5 save to the extent that such infringement is due to failure by Serco to comply with any instructions of the Trust in the use of such Intellectual Property or use by Serco of such Intellectual Property for a purpose for which it was not licensed under Clause 15.5.
- 15.8 All licences of Intellectual Property created by or pursuant to Clauses 15.2 and 15.3 shall (without cost to Summit save as provided in Clause 15.3) survive termination or expiry of this Agreement (however caused) save in respect of (a) Proprietary Information of Serco or (b) where the terms of any sub-licence procured from a third party under Clause 15.3 provide otherwise, in which case such licences or sub-licences (or the appropriate part) shall, automatically terminate on termination or expiry of this Agreement, as the case may be.

- 15.9 To the extent that any of the Intellectual Property licensed to Summit and/or the Trust under Clauses 15.2 and 15.3 is generated by or maintained on a computer or in any other machine readable format, Serco shall procure, at no charge to Summit, for the duration of this Agreement, 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 the Trust and/or Summit or its nominee to access and otherwise use that data for the purposes set out in this Agreement.
- 15.10 Serco and Summit shall, at the reasonable request of the other or as required by the Trust in terms of Clause 20.10 of the Project Agreement, execute all documents and do all such further acts which may be necessary to bring into effect or to confirm the terms of any licence or sub-licence created by or pursuant to this Clause 15.
- 15.11 In implementation of Clause 21 of the Project Agreement, Serco shall, within six months from Financial Close, submit to Summit for approval the procedures and practices which Serco proposes to adopt for maintaining security of data, materials and documents (including without limitation all documents referred to in Clause 14 of the Project Agreement), including arrangements for the backing-up and subsequent recovery of information stored in electronically retrievable form. The parties shall agree such procedures and practices and thereafter Serco shall submit such procedures and practices for approval by the Trust in accordance with Clause 21 of the Project Agreement and comply with the Trust Objection Procedure in relation thereto. Any disputes shall be referred to the Dispute Resolution Procedure. Serco shall, and shall procure that its sub-contractors shall, comply with such procedures and practices as approved by the Trust. If Serco wishes to change such procedures and practices, the parties shall consult together regarding such proposed changes and Serco shall submit any proposals for change approved by Summit to the Trust in accordance with Clause 21 of the Project Agreement.

16. EMPLOYEES

The provisions of Part 8 of the Schedule shall apply with regard to employees and the parties shall comply with their respective obligations set out in Part 8 of the Schedule.

17. USE OF PREMISES

- 17.1 Summit shall provide or procure there is provided to Serco and its Permitted Sub-contractors such non-exclusive access to the Trust's Facilities and/or the Site as may be necessary to enable them to fulfil their obligations under this Agreement but not otherwise and subject as provided in Provision 9.2. Serco acknowledges it has been involved in the negotiation of the Liaison Procedures and the DBFO Contracts and that the access rights and the limitations set out therein are acceptable to it and further acknowledges that the Trust may restrict or deny Serco and its Permitted Sub-contractors access to the Site or any part(s) thereof, from time to time, in accordance with the Liaison Procedures.
- 17.2 Serco shall, and shall procure that its Permitted Sub-contractors shall, at all times comply with the instructions and regulations of the Trust and the reasonable instructions and regulations of Summit (provided these do not conflict with the instructions and regulations of the Trust with which Serco is obliged to comply) while present at the Hospital and/or the Site including, without limitation, all such regulations, conditions or Applicable Laws as Summit is obliged to comply with under the DBFO Contracts.
- 17.3 Serco shall co-operate reasonably with Summit, its employees, agents, contractors and sub-contractors and any person authorised by Summit to be on the Site or at the Hospital and with the Trust's employees, agents, contractors and sub-contractors and shall exercise its rights of access under Clause 17.1 so that no inconvenience or disruption is caused to Summit or the Trust or persons for whom they are responsible in terms of this Agreement or the DBFO Contracts respectively but nothing shall require Serco to act in a manner which would prevent, impede or interfere with the proper delivery of the Services by Serco or a Permitted Sub-contractor.
- 17.4 Subject to Clause 22.2 and Part 3 of the Schedule, loss of or damage to any goods, materials or equipment provided by Serco in the course of the performance of its obligations under this Agreement and any other goods, materials or equipment owned by Serco or for which Serco is responsible shall be at the sole risk of Serco. Serco shall be responsible for the security of all Related Materials and any other goods and equipment belonging to Serco and its Permitted Sub-contractors relating to the provision of the Services.
- 17.5 Serco undertakes to take good care of the accommodation, furnishings, fixtures, equipment and other materials made available by Summit and the Trust to Serco for its performance of

the Services. Within 30 days following the Operational Date, Serco shall prepare an inventory and schedule of the condition of all furniture, fixtures, equipment and other materials provided to Serco by Summit and/or the Trust for the provision of the Services, such inventory and schedule of condition to be subject to Summit approval, acting reasonably. Serco shall maintain and update the inventory on an annual basis provided it has received all necessary information from Summit to enable it to do so. Serco shall compensate Summit for any uninsured loss of or damage to any such furniture, fixtures, equipment or materials (fair wear and tear excluded).

17.6 Serco shall advise Summit and its sub-contractors from time to time of its proposed Planned Preventative Maintenance and/or Statutory and Mandatory Inspection and Testing programmes and both parties shall co-operate regarding programming this so far as reasonably practicable not to impact on their own individual access requirements and those of the Trust and Summit's other sub-contractors but, subject always to the requirements of the Liaison Procedures.

18. TERMINATION

18.1 Summit Termination Rights

Subject to Clause 18.7, if:-

18.1.1 any act of insolvency occurs in respect of Serco or the Guarantor (in the case of an act of insolvency in respect of Serco specified in Clauses 18.1.1.3, 18.1.1.4 and 18.1.1.5 only where the event has a material adverse effect on Serco's ability to perform any of its material obligations under this Agreement) and for the purposes of this Clause 18.1.1 "act of insolvency" means:-

18.1.1.1 a receiver, administrator, administrative receiver or liquidator being appointed and not being withdrawn, set aside or discharged within 20 Business Days over all or a material part of the assets of Serco or the Guarantor other than a solvent liquidation in terms which have been expressly and previously approved by Summit in writing (acting reasonably); or

18.1.1.2 a petition being presented or a resolution being passed for the making of an administration order in respect of Serco or the Guarantor unless a

resolution is passed not to proceed with the proposed course of action or such petition is not granted or is withdrawn, set aside or discharged in each case within 20 Business Days; or

18.1.1.3 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 Serco or the Guarantor other than in the course of a solvent corporate restructuring the terms of which have been expressly and previously approved by Summit in writing (acting reasonably); or

18.1.1.4 any encumbrancer taking possession of or being appointed over, or any diligence (other than to found jurisdiction or on the dependence of an action), distress, arrestment, execution or other similar process being levied or enforced and, in any such case, not being withdrawn, set aside or discharged within 20 Business Days on all or any part of the assets of Serco or the Guarantor in any such case in respect of an amount exceeding £75,000; or

18.1.1.5 Serco 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(1)(e) of the Insolvency Act 1986 except and for so long as Serco provides to Summit evidence to Summit's reasonable satisfaction that Serco or the Guarantor is in the course of negotiation with its financiers with a view to re-scheduling or re-financing its debts or resolving the issue in question and Summit is satisfied (acting reasonably) that such refinancing, restructuring or other resolution is likely to succeed within a reasonable time thereafter;

18.1.2 Serco commits a Material Breach (not otherwise listed in this Clause 18.1) of this Agreement, a Material Breach for this purpose being a material and substantial breach of any of the terms of this Agreement in respect of which a Service Penalty Point is not and could not have been awarded but which has a material adverse effect on the carrying out, by the Trust, of clinical activities from the Site or where such breach has or will have a materially adverse effect on Summit (including without

limitation such a breach which would constitute an event of default under the Finance Facilities Agreement) and in respect of which:-

18.1.2.1 notice is given by Summit to Serco within 120 days of Summit becoming aware of the breach giving reasonable details of the matter complained of; and

(a) if capable of remedy, Serco has not commenced and thereafter completed remedial action within a reasonable period from the date of receipt of the notice from Summit which period shall be specified in the notice; or

(b) if irremediable, Serco has not compensated 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 which period shall be specified in such notice; and

18.1.2.2 the issue of whether a Material Breach has occurred and/or whether the remedy period given to Serco is reasonable has (in the case of any dispute) first been resolved by the Dispute Resolution Procedure;

18.1.3 sufficient Service Penalty Points are awarded to Serco in any period of twelve months such that Summit shall be entitled to terminate this Agreement pursuant to Clause 18.10;

18.1.4 the Serco Residual Cap is reduced to less than £1,500,000 (Indexed from 1 April 1996);

18.1.5 the Service Score is less than 80% for any Service for any two consecutive months but disregarding for these purposes any failures agreed or determined as having been caused by any default of Summit or any person for whom Summit is responsible in terms of this Agreement;

18.1.6 Serco's right to provide more than one of the Services terminates under Clause 18.9;

18.1.7 there is a fundamental breach by Serco of the terms of this Agreement including abandonment;

18.1.8 the Guarantee ceases to be in full force and effect;

then, whilst any such termination event (specified in Clauses 18.1.1 to 18.1.8) is subsisting in any such case, without prejudice to any of its other rights or remedies, Summit may within six months of the happening of such event (or such longer period as may be agreed) at its discretion:-

(a) terminate this Agreement by notice in writing having immediate effect or on such notice (not exceeding three months) as it may at its option determine and the terms of Clauses 19 and 20 (and any other provisions of this Agreement as to rights and obligations on termination) shall apply; or

(b) serve notice of default on Serco requiring Serco at Summit's option either:-

(i) 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 as Summit (acting reasonably) may agree in writing is reasonable in the circumstances prevailing at the relevant time); or

(ii) 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 that rectification or remedy shall be completed, in which case the terms of Clause 18.2 shall apply.

18.2 Where Serco puts forward a programme following notice under Clause 18.1(b)(ii), Summit shall have 28 days in which to notify Serco 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 Serco 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 Serco's programme as reasonable or substitute such programme as he believes to be reasonable having regard to the representations of both parties.

18.3 If:-

18.3.1 the breach(es) specified in a notice of default served under Clause 18.1(b) is or are not rectified or remedied:-

18.3.1.1 before the expiry of the period referred to in Clause 18.1(b)(i) (if applicable); or

18.3.1.2 where Serco puts forward a programme pursuant to Clause 18.1(b)(ii) 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 18.2, (unless due to Force Majeure or Suspension Event in which case the programme shall be extended by a period which is reasonable having regard to the period during which the Force Majeure or Suspension Event subsisted);

18.3.2 then Summit may terminate this Agreement by notice in writing having immediate effect or on such notice (not exceeding three months) as it may at its option determine and the terms of Clauses 19 and 20 (and any other provisions of this Agreement as to rights and obligations on termination) shall apply.

18.4 Without prejudice to the rights of Summit under this Clause 18 if the Trust serves notice of default on Summit under Clause 22.1(b) of the Project Agreement and that default is due to a breach by Serco of its obligations hereunder then Serco shall, at its own cost, either remedy the breaches referred to in that notice within such period as the Trust may require or cooperate with Summit and provide to Summit such information and proposals as it may request within such time as it may require to enable Summit to put forward a programme to remedy the breaches as required in terms of Clauses 22.1(b)(ii) and 22.2 of the Project

Agreement and/or agree any amendments to the programme with the Trust and Serco shall further comply with the terms of any programme agreed or determined in accordance with Clause 22.2 of the Project Agreement. Summit will not agree to any such programme or amend any such programme without the prior written consent of Serco, not to be unreasonably withheld or delayed.

18.5 Serco Termination Rights

Subject to Clause 18.7, if:-

18.5.1 there are sums due and payable under this Agreement by Summit to Serco (which sums are not in dispute) which sums have not been paid within 30 days following receipt by Summit of written notice of non-payment from Serco and provided that Serco shall also have served a second written notice of non-payment specifying the intention to terminate this Agreement which second written notice may not be served prior to the 20th day following service of the written notice of non-payment referred to above and the amount of such sums equals or exceeds:-

and

18.5.1.1 in the case of sums which are referable to amounts which Summit is entitled to recover from the Trust under the DBFO Contracts, and which have not been recovered by Summit from the Trust, £100,000 Indexed from Financial Close (exclusive of VAT); or

18.5.1.2 in the case of sums which are referable to amounts which Summit is entitled to recover from the Trust under the DBFO Contracts and which have been recovered by Summit from the Trust, £5,000 Indexed from Financial Close (exclusive of VAT); or

18.5.1.3 in the case of sums which are not referable to amounts which Summit is entitled to recover from the Trust under the DBFO Contracts, £5,000 Indexed from Financial Close (exclusive of VAT);

and provided that in circumstances where the Trust has become entitled to terminate the DBFO Contracts pursuant to Clause 22.1.1 of the Project Agreement (act of insolvency) the 30 day period referred to in Clause 18.5.1 above shall be deemed to be a 7 day period, and Serco shall not be required to serve a second written notice;

18.5.2 control (as defined in Section 416 of the Income and Corporation Taxes Act 1988) of Summit becomes vested in a person who is, or persons acting in concert amongst whom is, a direct competitor of Serco (and provided that, in the event of any termination of this Agreement in such circumstances no compensation, damages or other payment of whatsoever nature shall be paid to Serco (without prejudice to Clause 19.8))

then, whilst any such Termination Event (specified in Clauses 18.5.1 or 18.5.2) is subsisting in any such case, without prejudice to any of its other rights or remedies, Serco may within six months of the happening of such event (or such longer period as may be agreed) terminate this Agreement by notice in writing having immediate effect or on such notice (not exceeding three months) as it may at its option determine (but provided that in the event of any termination pursuant to Clause 18.5.2 not less than 6 months notice shall be given) and the terms of Clauses 19 and 20 and any other provisions of this Agreement as to rights and obligations on termination shall apply.

18.6 Summit and Serco's rights under this Clause 18 are in addition and without prejudice to any other rights or remedies Summit or Serco may have, including without limitation but subject to the provisions of Clause 23 any claim for the amount of any loss or damage suffered by Summit or Serco on account of the acts or omissions of Serco or Summit, as the case may be whether pursuant to any guarantee given in accordance with the terms of this Agreement or otherwise, but subject always as provided in this Agreement.

18.7 Summit and Serco acknowledge that their rights of termination are subject to the terms of the Services Direct Agreement and any exercise by the Trust or Financiers of their rights under any such direct agreement.

18.8 Summit and Serco confirm that they have no rights to terminate this Agreement save as set out in Clause 6.2, in this Clause 18 and in Clause 21.5.

18.9 Termination of individual Services

18.9.1 If the Trust terminates the provision by Summit of any one or more Services under the DBFO Contracts (whether under Provision 15, Provision 17, under the Change Provisions or otherwise) then that Service or Services shall thereupon immediately

cease to be provided by Serco under this Agreement, Serco shall cease to be entitled to payment for that Service or Services under Part 2 of the Schedule and the provisions of Clause 19.6 shall apply.

18.9.2 If, in respect of any Service, 90 or more Service Penalty Points are accumulated in any period of 12 consecutive months, Summit will be entitled by written notice to Serco given within three months thereafter to terminate the provision by Serco of that Service under this Agreement and, if any such notice is given, Serco shall cease to provide that Service under this Agreement from the date specified in such notice, Serco shall cease to be entitled to payment for that Service under Part 2 of the Schedule and the provisions of Clause 19.6 shall apply.

18.9.3 Without prejudice to Clause 18.1.2, Summit may terminate the provision of any one of the Services by notice in writing to Serco within four months of the happening of such event if Serco commits a material breach (not otherwise listed in this Clause 18.9) of its obligations in respect of that Service under this Agreement, a material breach for this purpose being a material and substantial breach of the terms of this Agreement in relation to that Service which is not dealt with and cannot be dealt with by the award of Service Penalty Points but which has a material adverse effect on the carrying out, by the Trust, of clinical activities from the Site or where such breach has or will have a materially adverse effect on Summit and in respect of which:-

18.9.3.1 notice is given by Summit to Serco within 120 days of becoming aware of the breach giving reasonable details of the matter complained of; and

(i) if capable of remedy Serco 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

(ii) if irremediable Serco has not compensated 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 as specified in the notice; and

18.9.3.2 the issue of whether a material breach has occurred and/or whether the remedy period given to Serco is reasonable has (in the case of any dispute) first been resolved by the Dispute Resolution Procedure.

18.10 Termination of Agreement by reference to Penalty Points

Subject to Clause 18.7, if there are accumulated in respect of Serco in any period of twelve consecutive months a number of Service Penalty Points which equals or exceeds the Summit Threshold Points (see Provision 15.8 of the General Provisions) then Summit will be entitled pursuant to and subject to Clause 18.1 to terminate this Agreement.

19. CONSEQUENCES OF EARLY TERMINATION/EXPIRY

19.1 In the event of this Agreement terminating or expiring in either case on any early termination of the DBFO Contracts, Serco shall observe, perform and comply with, and procure that its Permitted Sub-contractors observe, perform and comply with, the provisions of Clauses 23.1.1 and 23.1.4 (other than Clause 23.1.4(e)) of the Project Agreement to the extent they relate to the Services and the performance of Serco's obligations hereunder at such time or times and in such manner as to ensure compliance by Summit with the provisions of those Clauses.

19.2 On any expiry of this Agreement at the end of the Term, Serco shall provide such assistance as the Trust may require, in accordance with Clause 25.5.3 of the Project Agreement, to ensure an orderly transfer of responsibility for the provision of the Services or equivalent services to be provided by the Trust or a new service provider thereafter.

19.3 On any early termination or on the expiry of this Agreement without any early termination of the DBFO Contracts:-

19.3.1 Serco shall deliver to Summit all documents and data in the possession or control of Serco which relate to the performance, monitoring, management and reporting of the Services and its obligations hereunder (and which shall at the request of Summit be delivered in electronic file format or other electronic media to the extent such documents and data exist in such medium), excluding Proprietary Information of Serco, but including all documents, manuals, certificates, drawings, log books and

other such items made available by the Contractor in relation to the Hospital and held by Serco for the purpose of the Estates Maintenance Service;

- 19.3.2 the responsibility for the provision of the Services shall be transferred from Serco and shall vest in Summit or its nominee and Serco shall have no further right or obligation to provide the Services;
- 19.3.3 Summit may, at its option, require Serco or its Permitted Sub-contractors to transfer to Summit or its nominee any materials or equipment relating to the provision of the Services at a price to be agreed and, in default of agreement, at their market value, as independently valued and on the basis that Serco warrants that it has good title to such materials and equipment save that Transferring Related Materials will transfer at no cost and, save where such termination is caused by Serco breach, Serco may at its option require Summit (or the incoming service provider) to acquire such equipment and materials at a price to be agreed or at their market value provided that such items are not redundant or obsolete, excessive in quantity and in reasonable condition and suitable and required for performance of the Services;
- 19.3.4 Serco will ensure that there is removed from the Site all materials and equipment belonging to Serco or its Permitted Sub-contractors which are not to be acquired by Summit or its nominee under Clause 19.3.3 and will, and will ensure that its Permitted Sub-contractors and their employees, vacate the Site;
- 19.3.5 Serco shall do all such other reasonable acts or things necessary to accomplish a smooth transition of the management of the Services to the new service provider;
- 19.3.6 save as required or permitted in terms of Clause 19.3.1, each party shall, within thirty days of such expiry or early termination, return all documentation, statements and other materials (and all copies) supplied under or in connection with Serco's performance of the Services which contains Confidential Information of the other party or the Trust (or its sub-contractors) and, if requested, either party shall certify in writing to the other that it has fully complied in all respects with this provision after the return of such documentation;

- 19.3.7 if Summit so elects any contract entered into by Serco in respect of this Agreement shall be novated or assigned to Summit or such other person as Summit may elect with effect from the expiry or termination of this Agreement and upon such election Serco shall take all necessary steps and execute such documents as and when necessary to give effect to such novation or assignment to Summit or such other person and Serco shall indemnify Summit or such other person in respect of any liability arising from any breach of contract prior to such novation or assignment.
- 19.4 In order to facilitate the requirements of Clause 19.3.7 Serco undertakes to Summit that with effect from the date hereof, it will ensure that any contract it enters with any Permitted Sub-contractor:
- 19.4.1 will contain an undertaking by the party or parties contracting with Serco to novate or assign the benefit and burden of any such contract to Summit (or as it may direct) if so requested by Serco (and in this respect, Serco shall only make such request to any such contracting party if so requested by Summit) immediately prior to the expiry or termination of this Agreement;
- 19.4.2 will not contain any terms which would have the effect of depriving Summit (or its nominee) of all or a substantial part of the benefit of any such novated or assigned contract or of imposing on it obligations which are more onerous than those imposed on Serco.
- 19.5 On the expiry or termination of this Agreement, Serco shall indemnify Summit (and/or, at its direction, the Trust) on demand and hold them harmless in relation to all losses, actions, claims, demands, costs, charges and expenses arising out of any action or claim by any person in relation to the termination of its contract with Serco or a Permitted Sub-contractor as a result of the expiry or termination of this Agreement save where the termination of this Agreement is otherwise than due to Serco default.
- 19.6 Serco shall, at no cost to Summit, provide such assistance and comply with such timetable as the Trust may require, or as Summit may reasonably require, for the purpose of ensuring an orderly transfer of responsibility for provision of a Service upon the transfer of responsibility for a particular Service from Summit under Provision 17 or Serco under Clause 18.9, as the

case may be, or the deletion of a Service under the Change Provisions. Such assistance may include, (without limitation) so far as permitted by law:-

- 19.6.1 delivery of documents and data in the possession or control of Serco which relate to performance, monitoring, management and reporting of that Service (and which shall at the request of Summit be delivered in electronic file format or other electronic media to the extent such documents and data exist in such format) but excluding Proprietary Information of Serco provided that Summit shall permit Serco, its agents and representatives reasonable access to such documents subsequent to such transfer, where in the possession or under the control of the Trust, to the extent such access is made available by the Trust;
 - 19.6.2 delivery of data relating to the terms and conditions of employment and employment records of those of Serco's employees who may be affected by the Employment Regulations and/or the Directive upon any transfer of responsibility for the provision of a Service;
 - 19.6.3 the transfer of any materials or equipment relating to the provision of that Service at a price to be agreed or, failing agreement, at their market value as independently valued or otherwise the removal of such materials and equipment from the Site (save that Transferring Related Materials will transfer at no cost).
- 19.7 Serco undertakes that it shall not knowingly do or omit to do anything which may be reasonably likely to adversely affect the ability of the Trust or Summit to ensure an orderly transfer of responsibility for provision of a Service or the Services.
- 19.8 Termination of this Agreement shall not affect any rights and obligations under this Agreement in relation to antecedent breach as at the date of termination or which are expressed to survive the termination of this Agreement and shall not affect this Clause 19 or Clauses 10.1.2, 10.17, 14, 15.8, 20 and 23, which shall remain in full force and effect.
- 19.9 Where, following termination of this Agreement, compensation may be recoverable pursuant to Clause 24 of the Project Agreement, Serco shall provide to Summit such information as Summit may reasonably request to enable it to calculate the amount of any compensation so recoverable.

19.10 If Summit proposes to terminate this Agreement pursuant to Clause 18.1, Summit shall, having regard (acting reasonably) to the urgency with which it requires to substitute Serco with a new Approved Service Provider taking account, for these purposes, the level of the Serco Residual Cap and the extent and speed at which it may be reducing, undertake either a market testing exercise on the same terms as described in Provision 12 of the General Provisions (but without inviting Serco to retender) or a different bona fide competitive tendering exercise. If the contractual terms on which such tender is based taken as a whole are more onerous than those to which Serco is subject under this Agreement, then to the extent Summit incurs additional costs as a result of such more onerous terms, the sums recoverable under Clause 23.4 shall be reduced to that extent.

20. COMPENSATION

20.1 Save as otherwise expressly provided in this Clause 20, Serco shall not be entitled to any compensation, damages or any other payment of whatsoever nature on expiry or termination (for whatever reason) of this Agreement but without prejudice to the provisions of Part 5 of the Schedule and to Clause 19.8.

20.2 If this Agreement is terminated prior to Contractual Practical Completion, other than in terms of Clauses 18.1, 18.3, 18.5.2, 18.10 or 21.5 or termination of the DBFO Contracts as a result of or in connection with any breach of this Agreement by Serco or any act or omission of Serco or any person for whom Serco is responsible in terms of this Agreement, then Serco shall be entitled to compensation as a result of such termination equal to the aggregate of (i) all amounts (if any) owing or accrued to Serco under this Agreement up to the date of termination and (ii) Serco's irrecoverable reasonable costs arising from the tendering, negotiation and entering into of this Agreement to the extent not already reimbursed by Summit and/or the Promoters less (iii) any prepayments received by Serco which relate to the period after the date of termination or payment deductions accrued but not yet incurred up to the date of termination.

20.3 If this Agreement:-

20.3.1 is terminated by Serco pursuant to Clause 18.5.1; or

20.3.2 terminates under Clause 6.2, other than as a result of or in connection with (i) breach of this Agreement by Serco or any act or omission of Serco or any person for whom it is responsible in terms of this Agreement, or (ii) termination of the DBFO Contracts under Clause 26.7 or 26.8 of the Project Agreement;

in either case on or after Contractual Practical Completion then Summit shall pay to Serco the Serco Compensation Amount calculated in accordance with and as provided in Section A of Part 5 of the Schedule.

20.4 If this Agreement:-

20.4.1 is terminated pursuant to Clause 21.5 (Force Majeure); or

20.4.2 terminates under Clause 6.2 as a result of termination of the DBFO Contracts under Clause 26.7 or 26.8 of the Project Agreement;

in either case on or after Contractual Practical Completion then Summit shall pay to Serco the Serco Compensation Amount calculated in accordance with and as provided in Section B of Part 5 of the Schedule.

20.5 Amounts payable under this Clause 20 shall be payable by Summit within forty days of agreement or determination of the applicable sum or in circumstances where there is no termination of the DBFO Contracts, after 20 Business Days after the date of termination of this Agreement or the date of agreement or determination of the applicable sum, whichever is the later.

20.6 Where termination of this Agreement occurs as a result of or contemporaneously with the DBFO Contracts, Serco shall not be entitled to receive in respect of the amounts payable to it pursuant to this Clause 20 any amounts greater than those which Summit is entitled to recover from the Trust and which are referable to the payments due to Serco under this Clause 20 pursuant to Clause 24 of and Schedule 10 to the Project Agreement (as agreed or determined thereunder) (but without prejudice to Serco's right to pursue claims for any reduction or shortfall directly against the Trust pursuant to Clause 22.6 as applicable).

- 20.7 The final date for payment of any sum which becomes due pursuant to this Clause 20 shall be as set out in Clause 20.5 above.
- 20.8 Within five days after the date upon which payment becomes due pursuant to this Clause 20 (or would have become due if Serco had carried out its obligations under this Agreement and no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts (but without prejudice to any other provision of this Agreement)) Summit shall provide a notice specifying the amount if any of the payment made or proposed to be made and the basis upon which such amount has been calculated.
- 20.9 The payments made pursuant to Clauses 20.2, 20.3 and 20.4 are in full and final settlement of any liability of Summit for the acts, omissions or events which are the grounds of termination and Serco shall not be entitled to any other compensation, damages or payment of whatsoever nature in respect of such but without prejudice to Clause 19.8.

21. FORCE MAJEURE/SUSPENSION EVENTS

- 21.1 Neither party shall be in breach of an obligation under this Agreement to the extent it is unable to perform or is delayed in performing that obligation in whole or in part by reason of Force Majeure or a Suspension Event (or the consequences thereof) provided that Serco shall only be relieved of liability to the extent that Summit is entitled to be relieved from liability under the Project Agreement in relation to the provision of the Services. Serco shall be entitled to any extension of time for performance as is granted to Summit under the DBFO Contracts in respect of any obligation under the DBFO Contracts delegated to Serco under this Agreement.
- 21.2 If either party shall seek to rely on this Clause 21, it shall as soon as reasonably practicable give notice to the other with all available particulars of the act or matter claimed as a Force Majeure event or a Suspension Event. The party so affected shall take all reasonable steps to remedy or mitigate the failure to perform and keep the other party informed of the steps so being taken.
- 21.3 If a Force Majeure or a Suspension Event occurs then payment will be dealt with under paragraph 7 of Part 2 of the Schedule.

- 21.4 If Serco is unable as a result of the event of Force Majeure or the Suspension Event, to provide any of the Services, Summit may at its own cost obtain the affected Services from any third party until Serco resumes the provision of the affected Services. Serco shall give such assistance and information to that third party which is reasonably necessary to enable that third party to provide the affected Services (and shall procure like co-operation from each Permitted Sub-Contractor) but neither Serco nor its Permitted Sub-Contractors shall in so doing be obliged to reveal any commercially sensitive information or make available any Proprietary Information.
- 21.5 If either party is unable to perform all or any material part of its obligations under this Agreement as a consequence of Force Majeure for a continuous period in excess of nine months, either party may, following consultation with a view to resolving the matter for a period of not less than 60 days, terminate this Agreement by giving one month's prior notice in writing and the compensation provisions in Clause 20 shall apply.

22. INDEMNITIES

22.1 Serco shall indemnify Summit and/or, (at Summit's direction,) any person for whom Summit is responsible in terms of this Agreement or the Trust or any person for whom the Trust is responsible in terms of the DBFO Contracts on demand and hold them harmless against all costs, damages, losses, claims, demands, expenses and liabilities (including reasonable legal and other professional expenses) incurred by them:-

22.1.1 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 any person for whom Summit is responsible in terms of this Agreement or the Trust or any person for whom the Trust is responsible in terms of the DBFO Contracts or any other person in each case if and to the extent that it is caused by Serco or any person for whom Serco is responsible in terms of this Agreement;

22.1.2 in repairing or reinstating or replacing any assets owned by or in the possession of Summit or any person for whom Summit is responsible in terms of this Agreement or the Trust or any person for whom the Trust is responsible in terms of the DBFO Contracts which have been lost or damaged if and to the extent that such loss or damage has been caused by Serco or any person for whom Serco is responsible in terms of this Agreement;

- 22.1.3 as a direct result of any Prosecution against Summit or any person for whom Summit is responsible in terms of this Agreement or the Trust or any person for whom the Trust is responsible in terms of the DBFO Contracts brought against them as a result of the breach or non-performance of any obligations of Serco under this Agreement;
- 22.1.4 in respect of any increase in insurance premiums or policy excesses as a result of any claims made on account of any matter for which Serco is responsible under the indemnities in this Clause 22.1;
- 22.1.5 as a result of any damages or compensation payable to any workmen or other person in the employment of Serco or any person for whom it is responsible in terms of this Agreement;
- 22.1.6 as a result of a breach by Serco or any person for whom it is responsible in terms of this Agreement of its obligations under this Agreement including, but not limited to any costs, losses and liabilities suffered by Summit under or in connection with the Project Documents, including (without limitation) any reduction or deductions of sums payable to Summit by the Trust pursuant to the DBFO Contracts, any increase in the amounts payable by Summit under the Finance Facilities Agreements including for these purposes the inter-company loan agreement between Summit and the Subsidiary and any costs, losses or expenses arising as a result of the acceleration of Financial Indebtedness; and
- 22.1.7 as set out in Clauses 3.10, 4.2, 10.2.3, 10.17, 15.6, 19.5, 23.4, and Part 8 of the Schedule;

provided always that:

- (a) Serco will not be obliged to pay more than once for the same costs, loss or damage;
- (b) in the event that any costs, loss or damage are incurred by any person for whom Summit is responsible under this Agreement or the Trust or any person for whom the Trust is responsible in terms of the DBFO Contracts which is recoverable under any indemnity in or referred to in this Clause 22.1, then Summit shall either be entitled to

recover those costs or that loss or damage from Serco hereunder on behalf of and as agent for that person or shall direct Serco to, in which case Serco shall indemnify the relevant person directly in respect of those costs or that loss or damage.

22.2 Subject to Clause 22.3, Summit shall indemnify Serco (or, at the direction of Serco, its Permitted Sub-contractors) on demand and hold them harmless against all costs, damages, losses, claims, demands, expenses and liabilities (including reasonable legal and other professional expenses) incurred by them:-

22.2.1 as a direct result of any claim for or in respect of the death or personal injury of any person employed or engaged by Serco or its Permitted Sub-contractors or any patients or visitors to the Hospital or any other person if and to the extent that it is caused by Summit or any person for whom Summit is responsible in terms of this Agreement or the Trust or any person for whom the Trust is responsible in terms of the DBFO Contracts;

22.2.2 in repairing or reinstating or replacing any assets which are owned by or in the possession of Serco or its Permitted Sub-contractors which have been lost or damaged if and to the extent that such loss or damage has been caused by Summit or any person for whom Summit is responsible in terms of this Agreement or the Trust or any person for whom the Trust is responsible in terms of the DBFO Contracts;

22.2.3 as a direct result of any Prosecution brought against Serco or any Permitted Sub-contractor as a result of the breach or non-performance of Summit's obligations under this Agreement or the Trust's obligations under the DBFO Contracts;

22.2.4 as a result of the breach or non-observance by the Trust or any persons for whom it is responsible in terms of the DBFO Contracts of any of its obligations under the DBFO Contracts;

22.2.5 as a result of a breach by Summit or any person for whom it is responsible in terms of this Agreement of its obligations under this Agreement; and

22.2.6 as set out in Clauses 12.5, 15.7 and paragraph 3 of Part 8 of the Schedule;

provided always that:-

- (a) Serco shall, to the extent that any such matter arises where Summit is liable to indemnify Serco or any of its Permitted Sub-contractors in terms of Clauses 22.2.1, 22.2.2 or 22.2.3 claim under the relevant insurance policy (or policies) effected and maintained by Summit or Serco in terms of Part 3 of the Schedule and use all reasonable endeavours to pursue such claims and, to the extent that such recovery is made, Summit's liability under this Clause 22.2 shall be reduced accordingly or, to the extent Summit has already indemnified Serco or its Permitted Sub-contractors, Serco shall reimburse such amounts to Summit not to exceed the amount paid by Summit provided that Summit shall be obliged to indemnify Serco for all reasonable costs incurred in connection with making such claims but without prejudice to Serco's rights under this Clause 22.2 to the extent that no recovery is made under such insurance (including to the extent of any policy excesses);
 - (b) Summit shall not be obliged to pay more than once for the same costs, loss or damage;
 - (c) in the event that any costs, loss or damage are incurred by any Permitted Sub-contractor which are recoverable under any indemnity in or referred to in this Clause 22.2, then Serco shall either be entitled to recover that loss or damage from Summit hereunder on behalf of and as agent for such Permitted Sub-contractor or shall direct Summit to, in which case Summit shall, indemnify the Permitted Sub-contractor directly in respect of those costs or that loss or damage;
 - (d) in the case of Clause 22.2.4 the liability of Summit shall be limited to the additional costs reasonably and properly incurred by Serco and its Permitted Sub-Contractors in the performance of Serco's obligations under this Agreement.
- 22.3 To the extent that any liability or obligation of Summit whether under Clause 22.2 or otherwise arising pursuant to this Agreement relates to any act or omission or default of the Trust or any person for whom the Trust is responsible in terms of the DBFO Contracts or any act or omission or default of a sub-contractor of Summit (other than Serco), including, without limitation, the Approved Service Provider providing the Equipment Services and/or the Contractor, Serco shall be entitled to recover from Summit (under any indemnity set out

or referred to in Clause 22.2 or otherwise as a result of any claim arising pursuant to this Agreement) only to the extent of and no more than the Recovery Amount. In this Clause 22.3, the "Recovery Amount" means the amount (net of any costs of recovery properly incurred which have not been recovered by Summit from the Trust or such sub-contractor, or Serco, provided that for these purposes, costs incurred at Serco's direction or in complying with Serco's directions shall be deemed to have been properly incurred) which Summit is entitled to recover under and in accordance with the DBFO Contracts or the relevant sub-contract (as agreed or determined thereunder), as the case may be, in respect of the event or circumstances giving rise to Summit's obligation to indemnify Serco under this Agreement or any claim by Serco against Summit hereunder. Summit may satisfy any of the indemnities set out or referred to in Clause 22.2 by procuring that another person indemnifies Serco directly in respect of any such claim. The conduct of any proceedings by or on behalf of Summit against the Trust or any such sub-contractor as referred to above shall be carried out in accordance with Clause 22.6 below.

- 22.4 Where either party makes a claim under any indemnity set out or referred to in this Clause 22, that party shall take all reasonable steps to avoid or mitigate the costs, loss and/or damage in respect of which such claim is made.
- 22.5 Subject to Clauses 22.3 and 22.6, if any claim is made or action brought against either party ("the Indemnified") by any third party arising out of the matters indemnified under this Clause 22, the other party ("the Indemnifier") shall be promptly notified thereof and may at its own expense conduct all negotiations for the settlement thereof and any litigation or other proceedings that may arise therefrom. The Indemnified shall not, unless and until the Indemnifier has failed within a reasonable period in the circumstances to take over the conduct of the negotiations, litigation or other proceedings, make any settlement or admission in respect of such claim or action. The Indemnifier shall be responsible for all costs associated with the conduct of such negotiations, litigation or other proceedings and shall further indemnify the Indemnified from and against all costs, liabilities and expenses which may be suffered or incurred by the Indemnified in respect thereof. The Indemnifier shall keep the Indemnified fully informed of the conduct of all negotiations, litigation or other proceedings and the Indemnified shall provide all reasonable assistance, at the cost of the Indemnifier (but excluding the costs of reasonable management time), to the Indemnifier for the purpose of contesting such claim or action and in connection with such negotiations, litigation or other proceedings. Serco agrees that Summit may further pass the conduct of

any such claims or actions to its Approved Service Providers, Permitted Sub-contractors, the Contractor or the Trust in which case, subject as aforesaid, Serco shall provide all reasonable assistance to such Approved Service Providers, Permitted Sub-contractors, the Contractor or the Trust in accordance with this Clause.

22.6 In circumstances where Serco's entitlement to recover from Summit under any indemnity or otherwise pursuant to this Agreement is limited in terms of Clause 22.3, the following provisions shall apply:-

22.6.1 Serco shall notify Summit of its claim against Summit without avoidable delay and of its intention to conduct a claim in accordance with Clause 22.6.2 below against the Trust or the person for whom the Trust is responsible in terms of the DBFO Contracts or the relevant sub-contractor as appropriate (and in any event within 1 month of becoming aware of the occurrence of the event giving rise to such claim) and shall supply a copy of the relevant documents to Summit;

22.6.2 subject to the provisions of this Clause, on the giving of the notice pursuant to Clause 22.6.1, Serco shall be entitled, at its costs, to conduct the claim against the Trust or the person for whom the Trust is responsible in terms of the DBFO Contracts or the relevant sub-contractor as appropriate in the name of Summit and shall have the conduct of any incidental negotiations and Summit shall give Serco or its nominee all reasonable co-operation, access and assistance, at the cost of Serco, for the purposes of the conduct of such claim provided that Summit is indemnified to its reasonable satisfaction in respect of any costs, expenses and liabilities it may suffer or incur as a result of the conduct of the claim by Serco and Serco shall keep Summit fully informed and shall consult with Summit about the conduct of any such claim;

22.6.3 if, in the reasonable opinion of Summit, it becomes apparent that the claim relates to wider issues affecting more than one of Summit and/or Summit's sub-contractors then Summit may notify Serco that it is taking over the conduct of such claim and of any incidental negotiations and, upon receipt of such notice, Serco shall take all steps reasonably necessary to transfer the conduct of such claim to Summit and shall provide Summit with all reasonable co-operation, access and assistance for the purposes of such claim. Summit shall keep Serco fully informed and shall consult with Serco about the conduct of such claims and shall use all reasonable endeavours

to pursue such claim and Serco's right to indemnification shall include all reasonable costs incurred by it in the conduct of the claim by it until transfer of the conduct of the claim to Summit;

22.6.4 if Serco fails to give notice to Summit that it wishes to conduct a claim pursuant to Clause 22.6.2 within the one month period referred to in Clause 22.6.1 above, Summit shall be entitled to conduct such claim and to defend, compromise or settle such claim as it sees fit.

23. LIABILITIES/REMEDIES

23.1 Subject to Clause 23.2, the maximum aggregate liability of Serco in respect of (i) all claims under Clauses 4.2, 10.2.3, 10.17, 22.1.4 (to the extent arising otherwise than as a result of Serco breach), 22.1.6, and 23.4, (ii) all deductions made under paragraphs 2 to 5 (inclusive) of Part 2 of the Schedule and (iii) additional costs agreed or determined under Clause 23.3 shall be limited to and shall in no event exceed £2,000,000 (Indexed from April 1996) provided that:-

23.1.1 there shall be disregarded or added back in for the purposes of calculating this limit on liability any amounts recovered under any insurance policy or from a third party and Serco shall use all reasonable endeavours to effect such recovery and shall promptly notify Summit of any such recovery;

23.1.2 deductions under paragraph 4 (No Substantive Service) and 5 (Self help) of Part 2 of the Schedule shall be reduced (for the purposes of calculating this limit on liability) by an amount equal to any net saving in Serco's costs relating to the matter the subject of deduction;

23.1.3 there shall be disregarded or added back in for the purpose of calculating this limit on liability costs the subject of any claim to the extent these would have been incurred by Serco if the circumstances giving rise to the claim had not arisen;

and the maximum aggregate remaining liability of Serco in terms of this Clause at any time and from time to time, taking into account at such time claims and deductions made and costs incurred, adjustments made or to be made and indexation, is referred to in this Agreement as the "Serco Residual Cap". Serco shall provide to Summit such information

and evidence and access to such records as Summit may reasonably require to determine the amount of the Serco Residual Cap from time to time including, without limitation, information relating to all costs referred to in this Clause 23.1. Serco shall further notify Summit in writing with each invoice submitted in terms of paragraph 8 of Part 2 of the Schedule its calculation of the amount of the Serco Residual Cap at that time (but, for the avoidance of doubt, Serco's calculation may be disputed at any time by Summit). Any such dispute shall be determined in accordance with the Dispute Resolution Procedure.

23.2 If at any time this Agreement has become terminable by Summit on account of Serco default in circumstances where Serco could reasonably be treated as having constructively abandoned its responsibilities under this Agreement, the Serco Residual Cap shall thereupon be deemed to become £3,000,000 (Indexed from April 1996) and, for the avoidance of doubt, no account shall be taken in ascertaining the amount of the Serco Residual Cap of any liabilities incurred by Serco prior to that point in time.

23.3 Serco shall notify Summit from time to time in writing of the amount of any additional costs incurred by it in performing the Services as a result of the occurrence of a Legislative Change requiring a change in the Output Specification, other than an Eligible Change, and shall provide to Summit all information and evidence as Summit may reasonably require to substantiate such notification. The parties shall endeavour in good faith to agree the amount of such additional costs but, failing such agreement within ten Business Days of receipt by Summit of such notice from Serco, either party may refer the matter to the Dispute Resolution Procedure for determination.

23.4 If:-

23.4.1 this Agreement is terminated by Summit under Clause 18; or

23.4.2 this Agreement terminates under Clause 6.2 as a result of a breach of this Agreement by Serco or any act or omission of Serco or any person for whom Serco is responsible in terms of this Agreement; or

23.4.3 Summit terminates the provision by Serco of any one or more Services under Clause 18.9;

then Serco shall indemnify Summit on demand from and against all losses, liabilities, claims, costs and expenses suffered or incurred by Summit as a result of, or in connection with, the termination of this Agreement or such Service or Services, as the case may be, including, without limitation, costs in relation to obtaining a replacement service provider to perform the Service or Services on the terms of this Agreement as are additional to those which would have been incurred by Summit pursuant to this Agreement but for termination of this Agreement or the Service or Services, as the case may be and any costs, losses and liabilities suffered by Summit under or in connection with the Project Documents, including (without limitation) any reductions or deductions of sums payable to Summit by the Trust pursuant to the DBFO Contracts, any increase in the amounts payable by Summit under the Finance Facilities Agreements including for these purposes the inter-company loan agreement between Summit and the Subsidiary and any costs, losses or expenses arising as a result of the acceleration of Financial Indebtedness.

23.5 Summit shall not be liable to Serco for any loss of profit, loss of business or financing costs suffered or incurred by Serco or any person for whom it is responsible in terms of this Agreement as a result of any breach of this Agreement by Summit.

23.6 Serco shall not be liable to Summit for any costs, losses or liabilities under the Finance Facilities Agreement suffered or incurred by Summit or any person for whom it is responsible in terms of this Agreement as a result of any breach of this Agreement by Serco provided that the provisions of this Clause 23.6 shall not apply to any claims brought under the Clauses referred to in Clause 23.1(i) of this Agreement

23.7 Each party shall take all reasonable steps to mitigate any loss it may suffer as a result of the performance or failure to perform by the other party of this Agreement.

24. **AVAILABILITY**

24.1 Without prejudice to Serco's obligations under this Agreement, Serco shall so perform its obligations under this Agreement that none of the Affected Areas as defined in Part A of the Schedule to the General Provisions shall at any time be Unavailable as a result (wholly or partly) of any of the following:-

24.1.1. failure by Serco properly to carry out its obligations under this Agreement in respect of Estates Maintenance Services;

24.1.2 any other breach of this Agreement or act or omission on the part of Serco, or any person for whom it is responsible under this Agreement.

24.2 Without prejudice to the other provisions of this Agreement, if any Affected Area becomes Unavailable, Serco shall discharge its obligation in relation to Estates Maintenance Services so as to minimise the Unavailability and to remedy the Unavailability as soon as reasonably practicable.

24.3 Serco shall promptly copy to Summit any notices served upon Summit or Serco (at the Help Desk or otherwise) pursuant to the DBFO Contracts.

25. **DISPUTE RESOLUTION PROCEDURE**

The provisions of Part 9 of the Schedule shall apply with regard to any difference or dispute ("a Dispute") of whatever nature between Summit of the one part and Serco of the other part arising under the Agreement (including, without limitation, any question of interpretation).

26. **NOTICES**

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

26.1.1 if to Summit: Summit Healthcare (Law) Limited
c/o Dr. William Moyes
The British Linen Bank Limited
PO Box 49
4 Melville Street
Edinburgh EH3 7NZ
Fax No: 0131 - 243 - 8391

Copy to: Mr M. J. Collard, McAlpine Healthcare Limited, Eaton
Court, Maylands Avenue, Hemel Hempstead, Herts HP2
7TR
Fax No: 01442 - 230024

26.1.2 if to Serco: Mr John Jeffery
Serco Limited
Alderney House
No. 4 Sandy Lane
Teddington
Middlesex TW11 0DU
Fax No: 0181 614 3737

Copy to: Mr D. Smith, Serco Health Limited, Alderney House, No. 4
Sandy Lane, Teddington, Middlesex TW11 0DU
Fax No: 0181 614 3737

or, in either case, to such other addresses and/or facsimile number in the United Kingdom and/or marked for such other attention as may from time to time be specified by the relevant party to the other, by notice given in accordance with this Clause 26, for the purposes of this Clause 26.1.

26.2 Any notice or other communication to be given by one party to the other under, or in connection with the matters contemplated by this Agreement 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:-

26.2.1 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

26.2.2 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

26.2.3 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.

27. **LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the Law of Scotland and the parties irrevocably submit to the non-exclusive jurisdiction of the Court of Session, Scotland and waive any plea of forum non conveniens. The submission in this Clause 27 shall not preclude proceedings in any other court of competent jurisdiction subject always as provided in the Dispute Resolution Procedure.

28. **RESTRICTIVE TRADE PRACTICES ACT**

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

29. **GENERAL**

29.1 The rights and obligations under this Agreement may not be assigned, transferred, sub-contracted or otherwise disposed of in whole or in part by either party without the prior written consent of the other except:-

29.1.1 to the extent expressly provided in this Agreement;

29.1.2 in the case of Summit, by way of a fixed and/or floating charge or charges given to any Financier, as security for any Financial Indebtedness under the Finance Facilities Agreements; and

29.1.3 in terms of the Services Direct Agreement.

29.2 No amendment to this Agreement shall have effect unless agreed in writing signed by a duly authorised representative of each party. Each party acknowledges that it does not enter into

this Agreement in reliance on any representation, warranty or other undertaking by any party not expressly set out or referred to in this Agreement.

- 29.3 No delay by or omission of either party in exercising any right, power, privilege or remedy under this Agreement 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.
- 29.4 Nothing in this Agreement shall be construed as establishing or implying a partnership, joint venture or agency.
- 29.5 If any provision in this Agreement shall be or become illegal, invalid or unenforceable, the effectiveness of the remaining provisions of this Agreement shall not be prejudiced or impaired.
- 29.6 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 Agreement.
- 29.7 Each party shall be responsible for paying its own costs and expenses in relation to the preparation, execution and implementation of this Agreement, 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.
- 29.8 This Agreement together with all provisions of the DBFO Contracts referred to in or incorporated by reference into this Agreement constitutes the entire agreement of the parties in relation to the subject matter of this Agreement and supersedes any prior negotiations, proposals, agreements and representations (whether written, oral or implied) relating thereto between the parties or their respective professional advisers.
- 29.9 No announcement shall be made by either party in connection with this Agreement without the prior written consent of the other, not to be unreasonably withheld or delayed, save as required by law or the requirements of any recognised stock exchange on which the Bonds are traded at any time.

- 29.10 All financial obligations arising in the performance of Serco's obligations under this Agreement shall be the sole responsibility of Serco, except as expressly stated to the contrary in this Agreement.
- 29.11 Except where expressly authorised in writing by Summit, Serco shall not hold itself out as the agent of Summit or the Trust and shall have no power to bind or pledge the credit of or otherwise have any dealings on behalf of either of them. Serco shall not say or do anything that may lead any other person to believe that Serco is acting as the agent of the Trust or Summit.
- 29.12 Subject to Clause 29.1, this Agreement shall enure for the benefit of and be binding on the respective permitted successors in title and permitted assignees of each party, who shall procure that each such transferee executes an agreement with the other party by which the transferee agrees to be bound by this Agreement.
- 29.13 Any sum payable under this Agreement not paid by the due date (or, where payable on demand, on that demand being made) shall (unless otherwise stated or a different rate is specified) 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, provided that in any case where it is determined that Summit is entitled to any sum which it would have been entitled to deduct from the Serco Payment or by which Summit would have been entitled to reduce the Serco Payment had the same not been disputed, interest will be payable upon such sum at the Bond Rate calculated on a daily basis with quarterly rests from the date of such Serco Payment until the due date for payment following upon such determination.
- 29.14 29.14.1 Subject to Clause 29.14.3, all references to amounts in this Agreement are references to those amounts exclusive of any VAT which is or may be properly chargeable in relation to any supply for which they form the consideration.
- 29.14.2 (a) Each party shall pay to the other party an amount equal to any VAT properly chargeable in respect of any supply made to it under this Agreement against delivery of a valid VAT invoice in respect of that supply which, in all material respects, complies with the requirements of Part III of the Value Added Tax Regulations 1995.

(b) If the amount of the Serco Payment is adjusted pursuant to Part 2 of the Schedule (or under any other provision of this Agreement) or if a sum of money shall become due for payment by or to Summit any monies payable shall have added to them a sum equal to any appropriate adjustment in respect of the VAT chargeable by reference to the final value of the supply of any goods and/or services under this Agreement and a credit note shall be issued where appropriate for VAT purposes.

29.14.3 (a) Where any cost, fee, expense or disbursement is to be indemnified or reimbursed to any party or to be taken into account in any computation, in each case, under this Agreement, the amounts to be indemnified, reimbursed or deducted shall be taken to be the amount of that cost, fee, expense or disbursement net of any VAT chargeable thereon to the extent such VAT is recoverable as input tax by the recipient of any supply to which the cost, fee, expense or disbursement relates.

(b) Where (i) any cost, fee, expense or disbursement referred to in Clause 29.14.3(a) above includes an amount in respect of VAT chargeable thereon and (ii) any party (acting reasonably) certifies that it is unable to recover such VAT as input tax from H M Customs & Excise (such certificate to be conclusive and binding, save in the case of manifest error) the cost, fee, expense or disbursement shall, to the extent so certified, be reimbursed, indemnified or taken into account in any computation (as the case may be) together with an amount equal to any VAT chargeable thereon.

29.15 Summit and Serco shall, in carrying out their respective obligations under this Agreement, act at all times in good faith.

30. **CORRUPT GIFTS AND PAYMENT OF COMMISSION**

30.1 Serco warrants that in entering this Agreement it has not (and to the best of its knowledge none of its Permitted Sub-contractors nor the Guarantor have) done any of the following (hereafter "prohibited acts"):-

30.1.1 offered, given or agreed to give any director, member, employee or representative of the Trust any gift or consideration of any kind as an inducement or reward:-

30.1.1.1 for doing or not doing (or for having done or not having done) any action in relation to the obtaining or performance of this Agreement or the DBFO Contracts; or

30.1.1.2 for showing or not showing favour or disfavour to any person in relation to this Agreement or the DBFO Contracts;

30.1.2 entered into this Agreement in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, to any director, member, employee or representative of the Trust unless before the Execution Date particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Trust and Summit.

30.2 Nothing in this Clause 30 shall prevent the Guarantor, Serco or its Permitted Sub-contractors from paying any proper commission or bonus to their employees pursuant to their terms of employment.

31. SET OFF

Subject as otherwise expressly provided in this Agreement or as required by law, all sums due under this Agreement shall be paid in full without set-off, counter-claim, withholding or other deduction save that there may be deducted therefrom any sums which have been determined pursuant to the Dispute Resolution Procedure or by a competent court to be due and payable or previously agreed to be due and payable.

31.2 If any sum, other than interest, payable by either party to the other party in accordance with this Agreement pursuant to any indemnity obligation or otherwise pursuant to or in connection with any breach of contract shall be subject to a charge to taxation in the hands of the recipient, the sum payable shall be increased to such sum as will ensure that after payment of such taxation the recipient shall be left with a sum equal to the sum that it would have received in the absence of such charge to taxation, provided that the payer shall not be required to make an increased payment (a "Tax Payment") under this Clause 31.2 to the

extent that the Tax Payment represents taxation chargeable in respect of the profit element due to the recipient in respect of any amounts payable by either party to the other party pursuant to this Agreement provided further that this Clause shall not apply to payments to be made by Summit under Clause 20 nor to increase any sum payable beyond any limit on that payment expressly provided for in this Agreement.

32. **NEW SERVICES**

Nothing in this Agreement shall prevent either the Trust or Summit from entering into arrangements with third parties for the provision of services which are not Services, and neither the Trust nor Summit is obliged to offer the provision of such services to Serco first or at all provided that, where the Trust consults with Summit, Summit shall consult with Serco with regard to the Trust's requirements for such services where it is given sufficient time by the Trust to do so.

33. **INVALIDITY**

33.1 If any of Clauses 3.5, 20.6, 22.3, and Paragraph 8.5 of Part 2 to the Schedule of this Agreement is or are held to be or are rendered void or ineffective or will otherwise be unenforceable on the part of Summit by or as a result of any Applicable Law then the parties hereby agree that any such clause or clauses of this Agreement so held or rendered shall be of no further force and effect and this Agreement shall be construed and interpreted as if such clauses do not form part of this Agreement.

33.2.1 If, in respect of any amount to which Clauses 3.5, 20.6, 22.3, and paragraph 8.5 of Part 2 of the Schedule of this Agreement applies, the restrictions to entitlement referred to in Clauses 3.5, 20.6, 22.3, and paragraph 8.5 of Part 2 of the Schedule of this Agreement are held to be or are rendered void or ineffective or will otherwise be unenforceable on the part of Summit (an "Act Event"), then Serco and Summit agree that, notwithstanding the other provisions of this Agreement, the due date for payment of any Additional Amount under this Agreement shall be sixty (60) days after the date that, but for this provision, such amount would have been payable.

33.2.2 For the purposes of this Clause 33.2, an "Additional Amount" is an amount equal to the difference between the amount that Serco is entitled to receive under this Agreement and the amount that Serco would have been entitled to recover under this Agreement if the restrictions to entitlement referred to in Clauses 3.5, 20.6, 22.3, and paragraph 8.5 of Part 2

of the Schedule of this Agreement had not been held to be or rendered void, ineffective or otherwise unenforceable, as determined by Summit's Contract Officer acting reasonably and with reference to any relevant rates or prices set out in this Agreement.

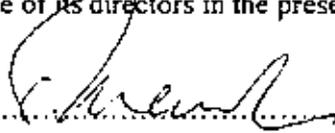
IN WITNESS WHEREOF this Agreement consisting of this and the preceding 66 pages together with the Schedule is executed as follows:-

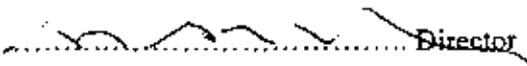
SUBSCRIBED for and on behalf of
SUMMIT HEALTHCARE (LAW) LIMITED
at LONDON on
the 16th day of June 1998 by
one of its directors in the presence of:-

Alan D. Cooper Witness
Alan D. Cooper Full Name
20 CASTLE TERRACE Address
EDINBURGH

 Director
MICHAEL JOHN COLLIER Full Name

SUBSCRIBED for and on behalf of
SERCO LIMITED
at LONDON on
the 16th day of June 1998 by
one of its directors in the presence of:-

 Witness
EDWARD MARSTON Full Name
126 HIGH STREET Address
BRISTOL AVENUE, BRISTOL BS1 4PA

 Director
JOHN D.M. SEFFERY Full Name

This is the Schedule referred to in the Services Sub-Contract between Summit Healthcare (Law) Limited and Serco Limited

THE SCHEDULE

PART 1

SERVICES DURING COMMISSIONING PROCEDURE

Section A

1. Serco shall, during the Commissioning Period at the Hospital, undertake the following matters:-
 - (a) a deep clean and, where appropriate, clinical cleaning being the cleaning to be carried out following the builders' clean in order to bring the Hospital to the standard of cleanliness required in the Output Specification ("Deep Clean"). For the avoidance of doubt the Deep Clean will be a single event occurring prior to the Services Commencement Date (or if the Commissioning Services are delayed in the circumstances detailed in Part 7 of the Schedule to the Project Agreement prior to the Operational Date) and not a recurring event;
 - (b) the same obligations as the Estates Maintenance Services (but excluding the Performance Measurement System) ("Interim Estates Services");
 - (c) security services to the extent of four persons during the day and evening and two persons at night, including receipt/responsibility for keys and responsibility for permitting access to the Hospital to persons permitted access by Summit in accordance with a programme drawn up by Summit and notified to Serco daily at least 24 hours in advance, compliance by its security personnel with that programme such that, without prejudice to the foregoing, Serco shall not permit or refuse access other than in accordance with that programme unless otherwise instructed by the Summit Contract Officer ("Interim Security Services"); and
 - (d) such other matters and services as Summit may request including matters and services requested of Summit after 90 days from the Contractual Practical Completion Date up to the Operational Date ("the Additional Services").

2. Serco shall further during the Commissioning Period (without the right to additional payment therefor):-
 - (a) install a computerised Planned Preventative Maintenance System and prepare hard copy log books in such form as may be approved by Summit acting reasonably;
 - (b) receive from the Trust the Autocad Station at the Site;
 - (c) make available its staff for training on systems by the Contractor on the basis of a programme to be agreed.

Section B

In consideration of performance by Serco of its obligations under Clause 4.1 and Section A of this Part of the Schedule, Summit shall in respect of the Commissioning Period make payment to Serco as follows:-

- (a) Serco shall not be entitled to any additional payment in respect of the Deep Clean;
- (b) the additional sum of £19,889 (Indexed from 1 April 1996) in respect of Interim Security Services;
- (c) the sum of £214,941 (Indexed from 1 April 1996) in respect of the Interim Estates Services plus the cost incurred by Serco of all Components irrespective of their cost during the Commissioning Period in accordance with and subject to the other provisions of Part 6 of the Schedule to this Agreement; and
- (d) the sum of £45,000 (Indexed from 1 April 1996) in respect of the consumables and management of the above services; and
- (e) the costs properly incurred by or on behalf of Serco in the provision of the Additional Services (excluding any profit) as demonstrated to Summit on an open book basis ("the Additional Costs") plus a margin of 10% of the Additional Costs provided that Serco shall, and shall procure that its sub-contractors shall, use all reasonable endeavours to minimise the Additional Costs consistent with its obligations under this Agreement and provided that no

Additional Costs shall be payable in respect of any Additional Services requested by Summit as a result of any breach by Serco of its obligations hereunder.

Within five Business Days after the end of each calendar month during the Commissioning Period (or within five Business Days of expiry of the Commissioning Period, as the case may be) Serco shall provide an invoice to Summit for the amounts due to Serco in respect of the preceding calendar month (being the amounts referred to in paragraphs (b)-(d) of Section B as apportioned on a pro-rata basis between each month of the Commissioning Period (or part thereof) together with such Additional Costs as defined in paragraph (e) above incurred by Serco in the preceding month and Serco shall provide to Summit all supporting information and evidence of such amounts due by Summit as Summit may reasonably require. Summit will pay such invoice within ten Business Days thereafter including any VAT (if applicable) due thereon.

The final date for payment of any sum which becomes due pursuant to this Section B shall be the date on which Serco is entitled to terminate this Agreement as a result of an event referred to in Clause 18.5.

Within five days after the date upon which payment becomes due pursuant to this Section B (or would have become due if Serco had carried out its obligations under this Agreement and no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts) (but without prejudice to any other provision of this Agreement) Summit shall provide a notice specifying the amount if any of the payment made or proposed to be made and the basis upon which such amount has been calculated.

Section C

Without prejudice to Clause 11.2.6, Serco shall not be responsible for any failure to perform its obligations under Section A above to the extent that such failure arises from:-

- (a) Serco's inability to obtain appropriate access for its personnel for training and access for personnel of the Trust prior to and during the Contractor's commissioning of the plant and the Hospital;
- (b) Serco's inability to obtain access to the Hospital to witness the testing and commissioning of the plant and equipment and provided that (after the Transition Commencement Date) Serco shall make available appropriate personnel to witness such in accordance with the

Validation/Testing schedule developed in accordance with the requirements of paragraph 1.1 of Part 5 of the schedule to the Development Agreement:

- (c) Summit's failure to provide reasonable training on the operation of the plant in accordance with the proposal referred to in Clause 3.11.2 commensurate with the requirements of an experienced facilities management provider (and provided that Serco shall make appropriate personnel available for such training);
 - (d) Summit's failure to implement the Validation/Testing schedule referred to above; and
 - (e) if Summit or any persons for whom it is responsible in terms of this Agreement interferes with Serco in the performance of its obligations in terms of this Part 1 of the Schedule,
- save in each case as a result of any act or omission of Serco or as a result of any breach by it of its obligations hereunder.

PART 2
PAYMENT

1. Serco Payment

Subject to the provisions of paragraphs 2 to 7 (inclusive) of this Part 2 and the other provisions of this Agreement, Summit shall pay to Serco in respect of each Month during the Initial Term in accordance with the provisions of this Part 2, the sum ("the Serco Payment") being the aggregate of the following amounts (each adjusted so far as applicable by the Change Provisions) for that Month:-

- 1.1 the Indexed Services Total less the Management Portion ("the Serco Capacity Element"); and
- 1.2 the Usage Element (excluding the Utilities Payment) less the Management Portion ("the Serco Usage Element");

provided that, if any Service ceases to be provided by Serco under this Agreement, Serco shall cease to be entitled to payment for that Service and the necessary adjustments shall be made to this Clause and provided further that no deductions shall be made under paragraphs 2 to 6 (inclusive) unless and until the same shall have been agreed by Serco or determined to be due under the Disputes Resolution Procedure applicable to Disputes between the Trust and Summit under the DBFO Contracts.

2. Performance Deductions - Unavailability

Summit shall be entitled to deduct from the Serco Payment the amount of any Unavailability Deductions arising as a result of breach of Serco's obligations under this Agreement or otherwise recover such Unavailability Deductions from Serco which recovery shall be made at Summit's discretion either by deducting such amount from the Serco Payment payable in respect of any subsequent Month or Months (which amount shall be taken into account and deducted on the relevant invoice(s) to be provided by Serco in accordance with paragraph 8.1 below) or by recovery of such amount as a debt due from Serco which amount shall become due and payable by Serco within 5 days of written demand in respect thereof by Summit.

3. **Performance Deductions - Performance Measurement System**

Summit shall be entitled to reduce the Serco Payment applicable in any Month by the PMS Deduction for that Month or otherwise recover the PMS Deductions from Serco which recovery shall be made at Summit's discretion either by deducting such amount from the Serco Payment payable in respect of any subsequent Month or Months (which amount shall be taken into account and deducted on the relevant invoice(s) to be provided by Serco in accordance with paragraph 8.1 below) or by recovery of such amount as a debt due from Serco which amount shall become due and payable by Serco within 5 days of written demand in respect thereof by Summit.

4. **Performance Deductions - No Substantive Service**

Summit shall be entitled to reduce the Serco Payment applicable in any Month by the aggregate of all Relevant Deductions in respect of the Month or Months to which the Period or Periods relate calculated in accordance with the procedure for calculating such deductions set out in paragraph 9 of Part A to the Schedule to the General Provisions (any allocation of such deductions between Months being on a pro rata basis) or otherwise recover all Relevant Deductions from Serco which recovery shall be made at Summit's discretion either by deducting such amount from the Serco Payment payable in respect of any subsequent Month or Months (which amount shall be taken into account and deducted on the relevant invoice(s) to be provided by Serco in accordance with paragraph 8.1 below) or by recovery of such amount as a debt due from Serco which amount shall become due and payable by Serco within 5 days of written demand in respect thereof by Summit.

5. **Self Help**

Summit shall be entitled to reduce the Serco Payment applicable in any Month by the aggregate of all costs incurred by Summit under Provision 16.2 of the General Provisions or under Clause 10.18 in respect of that Month or otherwise recover such costs from Serco which recovery shall be made at Summit's discretion either by deducting such amount from the Serco Payment payable in respect of any subsequent Month or Months (which amount shall be taken into account and deducted on the relevant invoice(s) to be provided by Serco in accordance with paragraph 8.1 below) or by recovery of such amount as a debt due from Serco which amount shall become due and payable by Serco within 5 days of written demand in respect thereof by Summit.

6. **Industrial Action**

Summit shall be entitled to reduce the Serco Payment applicable in any Month by any amounts deducted from the Unitary Payment by the Trust in accordance with paragraph 9.9 of Part A of the Schedule to the General Provisions in that Month or otherwise recover such amounts from Serco which recovery shall be made at Summit's discretion either by deducting such amount from the Serco Payment payable in respect of any subsequent Month or Months (which amount shall be taken into account and deducted on the relevant invoice(s) to be provided by Serco in accordance with paragraph 8.1 below) or by recovery of such amount as a debt due from Serco which amount shall become due and payable by Serco within 5 days of written demand in respect thereof by Summit.

7. **Force Majeure**

During any period when paragraph 10.3 of Part A of the Schedule to the General Provisions applies, Serco shall:-

- (a) for the first six weeks thereof be entitled, in substitution for any amounts otherwise due to it pursuant to paragraph 1 of this Part 2, to all costs reasonably, properly and necessarily incurred by Serco in respect of the period in question in performing the Services in compliance with this Agreement excluding, for the avoidance of doubt, all loss of profit of Serco and its Permitted Sub-contractors; and
- (b) thereafter be entitled to payment in terms of paragraph 1 of this Part 2 disapplying any Additional Unavoidable Services Operating Costs as referred to in paragraph 10 of Part A of the Schedule to the General Provisions except to the extent such Additional Unavoidable Services Operating Costs constitute costs incurred by Serco; and

Serco shall have an obligation to mitigate its costs incurred in performing the Services and, in doing so, shall comply with the instructions of the Trust.

8. **Payment Procedure**

- 8.1 Serco shall provide Summit as soon as reasonably practicable and in any event within 5 Business Days of the final day of each Month with an invoice for the Serco Payment applicable for that Month itemising the amount of each of the Serco Capacity Element and

the Serco Usage Element and any amounts to be deducted therefrom pursuant to paragraphs 2 to 6 (inclusive) of this Part 2.

- 8.2 Summit shall pay to Serco the amounts due to Serco pursuant to this Part 2 on or prior to the date falling five Business Days after the end of the Month following the Month to which the payment relates or, if later, within 15 Business Days after receipt by Summit of the invoice issued pursuant to paragraph 8.1.
- 8.3 Each of Summit and Serco shall have the right at reasonable hours and on giving reasonable notice to the other to examine the books and records of the other, or, in the case of Serco, any relevant Permitted Sub-contractor, to the extent necessary to verify the accuracy of any information provided pursuant to this Part 2 and Serco shall permit the Trust to examine its books and records, and those of its sub-contractors where the Trust so requires in terms of paragraph 12.5 of Part A of the Schedule to the General Provisions.
- 8.4 Within 5 Business Days after the expiry or termination of this Agreement, Serco will pay to Summit any overpayment of the Serco Payment as a consequence of any deductions under paragraphs 2 to 6 (inclusive) not having been made.
- 8.5 Notwithstanding the foregoing provisions of this Part 2, Serco shall not be entitled to receive, in respect of amounts payable to it pursuant to this Part 2, any amounts greater than those which Summit is entitled to recover from the Trust and which are referable to the payments due to Serco pursuant to this Part 2 in accordance with Paragraph 12 of Part A of the Schedule to the General Provisions (as agreed or determined thereunder) (but without prejudice to Serco's right to pursue claims for any reduction or shortfall directly against the Trust pursuant to Clause 22.6 as applicable).
- 8.6 The final date for payment of any sum which becomes due pursuant to paragraph 8.2 of this Part 2 of the Schedule to this Agreement shall be the date on which Serco is entitled to terminate this Agreement as a result of an event referred to in Clause 18.5.
- 8.7 Within five days after the date upon which payment becomes due hereunder (or would have become due if Serco had carried out its obligations under this Agreement and no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts) (but without prejudice to any other provision of this Agreement) Summit shall

provide a notice specifying the amount if any of the payment made or proposed to be made and the basis upon which such amount has been calculated.

9. **Change**

It is envisaged that any adjustments to payments under the DBFO Contracts consequent upon a Change the subject of Clause 10.5 will be made to the Indexed Services Total and/or the Usage Element but, if this is not the case, then appropriate adjustments shall be made to paragraph 1 of this Part 2.

PART 3
INSURANCE

SECTION A - SUMMIT INSURANCE

1. Insured Risks

1.1 Subject to paragraph 6, Summit shall effect and maintain in full force and effect the following insurances during the period commencing on the Contractual Practical Completion Date and ending on the expiry of the Initial Term:-

1.1.1 all risks insurance for the buildings and all other insurable assets of Summit and Serco comprised in the Hospital and the Site to their full replacement value, naming Summit and amongst others Serco as appropriate, as the insured parties;

1.1.2 at least six months business interruption cover;

1.1.3 third party legal liability insurance in respect of loss or damage to any property or death of or injury to any person with a minimum amount of cover for each occurrence of at least £50,000,000, (Indexed from Financial Close) and naming Summit and amongst others Serco, as appropriate, as the insured parties;

1.1.4 employers' liability insurance for Summit only to comply with the Employer's Liability (Compulsory Insurance) Act 1969 or any amendment or re-enactment thereof;

1.1.5 such other insurances as are required by law to be taken out by Summit.

2. Insurance Terms

2.1 All insurances required to be effected under paragraph 1 of Section A of this Part 3 shall be effected with a reputable insurer(s), in such form and on such terms as Serco has approved (acting reasonably) under this paragraph 2 provided that it shall be deemed unreasonable for Serco to withhold its consent to (i) any of the terms envisaged in the Insurance Report prepared for Summit by Sedgwicks dated March 1998 and copied to Serco prior to the Execution Date or (ii) any insurances so far as taken out in accordance with the requirements of the Collateral Deed. Not less than 14 days (save in case of emergency when such notice

as is practicable will be given) before any insurances are effected under paragraph 1 of Section A of this Part 3, Summit shall give notice to Serco of:-

2.1.1 the identity of the insurer(s); and

2.1.2 a summary of the principal terms and conditions of the proposed insurances (including the amounts of any excesses) or any revision to those insurances;

but shall not, for the avoidance of doubt, unless requested by Serco and such policy documents are available at that time be required to submit the policy documents.

2.2 Each policy or contract shall contain provision for 30 days prior written notice of cancellation or non renewal to be given to Serco by the insurers.

3. Further Summit Obligations

3.1 Summit shall as soon as reasonably practicable provide to Serco a copy of the insurance policy(ies), a copy of the receipt for the premium for the current period of insurance and all notices and certificates of renewal or other evidence reasonably satisfactory to Serco of renewal of the appropriate insurance policies.

3.2 Summit and Serco shall and shall procure that any persons for whom they are responsible in terms of this Agreement shall:-

3.2.1 duly perform its obligations under and not knowingly fail to comply with the terms of all policies or other contracts of insurance; and

3.2.2 in particular, but without limitation, insofar as reasonably practicable shall not knowingly do or omit to do anything by which any such policy or contract may be or become void or voidable at the instance of any insurer(s) or which would entitle any insurer(s) to refuse to pay any claim.

3.3 Save as otherwise expressly provided, the subsistence of any insurances under this Part 3 shall not relieve Serco from any of its obligations or liabilities to Summit under this Agreement.

4. **Application Of Proceeds**

The proceeds of any claim to which Serco is entitled under any insurance required to be taken out under paragraph 1 above shall be applied in satisfaction of the third party claim in reinstatement of the damage or in reimbursement of the specific insured loss unless otherwise agreed in writing by Summit, any of its other sub-contractors named as insured on the relevant policy, Serco, Financiers and the Trust or as otherwise required pursuant to the Finance Facilities Agreements.

5. **Costs**

Serco shall be responsible for payment (limited to £500 (Indexed from Financial Close per claim) of all excesses under the insurance policies for physical loss of or damage to property taken out under paragraph 1.1.1 of this Section A but shall not, subject as provided in Clause 22.1.4, be responsible for payment of any part of the premium for such insurance policies.

6. **Market Availability**

Notwithstanding the foregoing provision of this Section A, Summit shall not be in breach of its obligations under this Agreement in respect of:-

6.1 insurances which are the subject of this Section A but are not maintained by Summit:

- (a) for so long as Summit ceases to be required to insure that risk in terms of Clause 26 of the Project Agreement;
- (b) for so long as Summit ceases to be required to maintain such insurance in terms of paragraph 6 of Part A of the Third Schedule to the Collateral Deed;

in which case Summit shall not be required to take out that insurance for either Summit, Serco or its Permitted Sub-contractors.

SECTION B SERCO INSURANCE

1.1 **Insured Risks**

1.1 Serco shall effect and maintain in full force and effect or procure that its sub-contractors effect and maintain in full force and effect the following insurances during the period

commencing on Contractual Practical Completion Date and ending on the expiry of the Initial Term:-

1.1.1 employers' liability insurance to comply with the Employer's Liability (Compulsory Insurance) Act 1969 any statutory orders made thereunder or any amendment or re-enactment thereof and which is to include a waiver of subrogation against Summit and its contractors, sub-contractors, employees and agents;

1.1.2 such other insurances as are required by law to be taken out by Serco or its sub-contractors.

2. Insurance Terms

2.1 All insurances required to be effected under paragraph 1 of Section B of this Part 3 shall be effected with a reputable insurer(s), in such form and on such terms as Summit has approved (acting reasonably) under this paragraph 2. Accordingly, not less than 14 days (save in case of emergency when such notice as is practicable will be given) before any insurances are effected under paragraph 1 of Section B of this Part 3, Serco shall submit to Summit for approval (such approval not to be unreasonably withheld or delayed):-

2.1.1 the identity of the insurer(s); and

2.1.2 a summary of the principal terms and conditions of the proposed insurances (including the amount of any excesses) or any revision to those insurances;

but shall not, for the avoidance of doubt, unless requested by Summit and such policy documents are available at that time be required to submit the policy documents.

2.2 Each policy or contract shall contain provision for 30 days prior written notice of cancellation or non renewal to be given to Summit by the insurers.

3. Further Serco Obligations

3.1 Serco shall as soon as reasonably practicable provide to Summit a schedule of the principal terms of the insurance policy(ies), a copy of the receipt for the premium for the current period of insurance and all notices and certificates of renewal or other evidence reasonably satisfactory to Summit of renewal of the appropriate insurance policies.

3.2 Serco shall and shall procure that its sub-contractors shall:-

3.2.1 duly perform its obligations under and not knowingly fail to comply with the terms of all policies or other contracts of insurance; and

3.2.2 in particular, but without limitation, insofar as reasonably practicable shall not knowingly do or omit to do anything by which any such policy or contract may be or become void or voidable at the instance of any insurer(s) or which would entitle any insurer(s) to refuse to pay any claim.

3.3 Save as otherwise expressly provided, the subsistence of any insurances under this Section B of this Part 3 shall not relieve Serco from any of its obligations or liabilities to Summit under this Agreement.

4. Application Of Proceeds

The proceeds of any claim under any insurance required to be taken out under paragraph 1 of this Section B shall be applied in satisfaction of the third party claim or reinstatement of the damage unless otherwise agreed in writing by Serco and Summit.

5. General

5.1 So far as reasonably practicable, Serco shall, and shall procure that its sub-contractors shall, comply with such claims management procedure as Summit may put in place from time to time and as notified to Serco.

5.2 Subject to compliance by Summit with its obligations under Section A of this Part 3, Serco and its sub-contractors shall be deemed to be satisfied with any insurance taken out by Summit on their behalf.

5.3 Each party shall give to the other prompt notification of any claim with respect to any of the insurance policies referred to in this Part 3 accompanied by full details of the incident giving rise to such claim and shall afford each other all such assistance as may be required for the preparation and negotiation of insurance claims.

- 5.4 Serco and Summit shall comply with all the conditions of such insurance policies and all requirements of insurers in connection with the settlement of claims, the recovery of losses and prevention of accidents, and each shall bear at its own cost the consequences of any failure on its part so to do.
- 5.57 Serco shall, and shall procure that its Permitted Sub-contractors shall, disclose to Summit at not less than monthly intervals all information which may be material in relation to the insurances which Summit has arranged under this Agreement and the DBFO Contracts upon which it or such persons are respectively named as insured until the expiry of such insurances and shall permit Summit to forward all such information to the relevant insurers. Summit shall disclose to Serco when reasonably required all information which may be material in relation to the insurances which Serco has arranged under paragraph 1.1.3 of this Section B and shall permit Serco to forward all such information to the relevant insurers.

PART 4

JOINT OPERATING GROUP

1. **General**

The provisions of this Part 4 shall regulate participation by Summit and Serco in the Joint Operating Group.

2. **Liaison**

2.1 Summit and Serco agree that at least three days prior to each meeting of the Joint Operating Group they shall meet to discuss the items on the agenda for that meeting of the Joint Operating Group.

2.2 Serco and Summit undertake to each other that they will act in concert in relation to all issues on which, under paragraph 2.1, they have agreed to do so.

3. **Representative on Joint Operating Group**

Summit shall procure that one nominee of Serco shall be appointed as a representative to the Joint Operating Group and, if appropriate, procure the removal of any such nominee and appointment of another nominee in his place at the request of Serco.

PART 5

COMPENSATION

SECTION A - SUMMIT BREACH

If this Agreement is terminated in the circumstances envisaged in Clause 20.3 then the Serco Compensation Amount will be calculated according to the following formula:-

$$SCA = a + b + \left(\frac{c}{24} \times 10\% \times 2d \right)$$

where

SCA means the Serco Compensation Amount

- a means the Serco Breakage Costs;
- b means all amounts due and owing or accrued under this Agreement but unpaid at the date of actual termination less all amounts pre-paid which relate to a period after the date of actual termination and all payment deductions accrued but not yet incurred up to the date of actual termination;
- c means the lesser of 24 and the number of whole months remaining until the expiry of the Initial Term; and
- d means the Serco Payment for the previous twelve months less any deductions or reductions made during that period pursuant to paragraphs 2 to 6 inclusive of Part 2 of the Schedule to this Agreement.

Serco Breakage Costs means all costs and liabilities reasonably, properly and necessarily incurred by Serco as a consequence of the termination of this Agreement provided that Serco will (and will use all reasonable endeavours to procure that its Permitted Sub-contractors will) take all reasonable steps to minimise the amount of such costs or damages.

SECTION B - FORCE MAJEURE

If this Agreement is terminated in the circumstances envisaged in Clause 20.4, then the Serco Compensation Amount will be calculated according to the following formula:-

$$SCA = a + b$$

as defined above.

PART 6
ESTATES MAINTENANCE

1. Definitions

In this Part 6 of the Schedule, the following words and expressions shall have the following meanings:-

Asset Renewal Plan means the five year rolling plan to be prepared by Summit pursuant to paragraph 3.1;

Component means any item of Group 1 equipment (or any part or parts thereof) and/or the Hospital or any part or parts thereof (but excluding any materials);

Component Threshold means £2,500 (Indexed from April 1996);

Estates Repair means any work of repair, replacement and/or reinstatement of or to the Hospital and/or Group 1 equipment which is able to be carried out as a discrete task and not comprising Planned Preventative Maintenance, Statutory and Mandatory Inspecting and Testing, First Line Maintenance and excluding the renewal of assets as set out in the Asset Renewal Plan;

Qualifying Serco Estates Repair means a Serco Estates Repair for which either (i) the prime cost of a Component necessary to effect such repair exceeds the Component Threshold or (ii) the prime cost of 5 or less of the same Components all of which are necessary to effect such repair (but in each case excluding VAT) exceeds the Component Threshold;

Serco Estates Repair means any Estates Repair the cost of which, including the prime cost of Components, labour (but excluding the costs of any management time or the costs of personnel engaged in the Estates Maintenance Services in so far as such Estates Repair can be carried out without conflicting with Serco's obligations pursuant to paragraph 2.1 below), plant, materials, sub-contract work, professional fees (if any) and a 10% margin (but in each case excluding any VAT) does not exceed the Relevant Amount;

Summit Estates Repair means any Estates Repair the cost of which, including the prime cost of Components, labour (but excluding the costs of any management time or the costs of

personnel engaged in the Estates Maintenance Services in so far as such Estates Repair can be carried out without conflicting with Serco's obligations pursuant to paragraph 2.1 below), plant, materials, sub-contract work, professional fees (if any) and a 10% margin (but in each case excluding any VAT) exceeds the Relevant Amount:

Relevant Amount means Five thousand Pounds sterling (£5,000) (Indexed from April 1996).

2. Estates Maintenance Service

2.1 In compliance with Clause 5.2, Serco shall save as expressly otherwise provided in this Part 6 observe, perform and comply with the obligations of Summit in relation to the Estates Maintenance Service under the Services Agreement, at such time or times and in such manner as to ensure compliance by Summit with such obligations.

2.2 Serco shall undertake all Planned Preventative Maintenance, Statutory and Mandatory Inspecting and Testing, First Line Maintenance and Serco Estates Repairs in accordance with the Output Specification for the Estates Maintenance Services in each case at no additional cost to Summit save as provided in Clause 2.3.

2.3 In the case of a Qualifying Serco Estates Repair, Summit shall pay to Serco the prime cost of the Component or Components which exceed the Component Threshold, provided that such prime cost of the Component or Components has been notified in advance (except in the case of an emergency when Serco shall be entitled to take appropriate temporary measures) to Summit and Summit has agreed with such cost, such agreement not to be unreasonably withheld or delayed.

2.4 Serco shall be responsible for undertaking in accordance with and subject to the provisions of paragraph 4, all Summit Estates Repairs as may from time to time become necessary in order to ensure compliance by Summit with its obligations in relation to the Estates Maintenance Service under the Services Agreement.

3. Asset Renewal Plan/PPM Programme

3.1 Summit shall be responsible for the preparation of an Asset Renewal Plan dealing with the renewal and/or replacement of Components which plan shall be based on the estimate of asset maintenance cycles and life expectancies as referred to in Part 4 of the Specification and Summit shall copy the Asset Renewal Plan to Serco at least 12 weeks prior to the

Services Commencement Date. Summit shall further update the Asset Renewal Plan annually and copy the updated Asset Renewal Plan to Serco prior to 1 November in each year. The preparation and updating of the Asset Renewal Plan from time to time shall be undertaken in consultation with Serco and Serco shall provide all assistance and information in relation thereto as Summit may reasonably request. Serco shall, within 10 Business Days of receipt from Summit of the Asset Renewal Plan and each update of the Asset Renewal Plan notify Summit in writing if it does not agree with the Asset Renewal Plan which it shall be entitled to do by reason only that it reasonably believes that a Component requires renewal and/or replacement prior to the date specified for such in the Asset Renewal Plan as a result of its useful economic life having expired such that the cost to Serco of performing its obligations in relation to the Estates Maintenance Service is materially increased. (Without prejudice to Clause 25) the parties shall in good faith endeavour to resolve any such dispute but failing any agreement within 20 Business Days of receipt by Serco of such Asset Renewal Plan either party may refer the matter to the Dispute Resolution Procedure provided that Summit shall not in any case be obliged to renew and/or replace a Component provided it (i) agrees to reimburse Serco's additional costs reasonably and necessarily incurred in performing its obligations in relation to the Estates Maintenance Service and provided that Serco will use all reasonable endeavours to mitigate such costs and (ii) Summit would not as a result of failure to renew and/or replace such Component be in breach of the Services Agreement.

Following agreement of the Asset Renewal Plan in accordance with the foregoing procedures of this Clause Summit shall put such Plan to the Trust for agreement in accordance with the terms of the Output Specification.

- 3.2 3.2.1 No later than 24 weeks prior to the Services Commencement Date Serco shall deliver to Summit the draft PPM Programme for the period from the Contractual Practical Completion Date (and through the Services Commencement Date) until 31 March in the next following year together with such supporting documents as Summit may reasonably require, and (without prejudice to Clause 25) the parties shall consult together in good faith to agree that PPM Programme within 6 weeks after delivery of the same by Serco. If such PPM Programme is not agreed within such period either Party may refer the matter or matters in dispute to the Disputes Resolution Procedure.

3.2.2 Serco shall issue the agreed PPM Programme to Summit by the Contractual Practical Completion Date. The Estates Interim Services shall be carried out in accordance with such PPM Programme.

3.2.3 Serco shall have the right to propose variations and/or amendments to such PPM Programme on receipt and review of the documents received in accordance with Clause 11.6.3 of this Agreement and the Asset Renewal Plan in accordance with paragraph 3.1 and without prejudice to Clause 25 the parties shall consult together in good faith to agree such variation/amendments. If such variations/amendments are not agreed by 6 weeks prior to the Services Commencement Date either party may refer any matters in dispute to the Dispute Resolution Procedure.

3.3 Prior to 1 January in each year following the Services Commencement Date, Serco shall deliver to Summit the draft PPM Programme for the period from 1 April until 31 March in the next following year or the immediately following year, as the case may be, together with such supporting documents as Summit may reasonably require and the parties shall (without prejudice to Clause 25) consult together in good faith to agree the PPM Programme. If the PPM Programme is not agreed by 1 February in each year following Services Commencement Date either party may refer any matters in dispute to the Dispute Resolution Procedure. The PPM Programme shall take into account the relevant Asset Renewal Plan agreed or determined under paragraph 4.

Following agreement of the PPM Programme in accordance with the foregoing provisions of this Clause Summit shall put such programme to the Trust for agreement in accordance with the requirements of the Output Specification.

4. **Additional Work**

4.1 Summit may, subject to giving reasonable notice, require Serco to undertake asset renewal in accordance with the Asset Renewal Plan (as amended in accordance with any requirements of the Trust in the course of agreeing such in accordance with the Output Specification) and shall pay the cost thereof to Serco in accordance with the provisions of paragraph 6.

4.2 If Serco, in implementation of its obligations under paragraph 2, is required to undertake a Summit Estates Repair, it shall promptly notify Summit in writing as soon as it becomes aware of the requirement for such work giving full details of the circumstances and an estimate of the cost. In the event of a dispute, as to whether or not such work falls within the

definition of a Summit Estates Repair either party may subject to paragraph 4.4 refer the matter to the Disputes Resolution Procedure. Serco shall be entitled to an additional payment from Summit in respect of such work in accordance with the provisions of paragraph 6.

4.3 Any work which

(i) Summit requires Serco to undertake in accordance with Clause 4.1 above; or

(ii) Serco is required to carry out pursuant to Clause 4.2 above

shall be referred to as "Additional Work".

4.4 Pending agreement or determination under paragraph 4.2, unless paragraph 4.5 applies, Serco shall undertake or continue to undertake Additional Work in compliance with its obligations under paragraph 2 and/or 4.1 but without prejudice to Serco's rights under this Part 6.

4.5 Summit may at any time and from time to time notify Serco in writing to cease carrying out any item of Additional Work in which case Serco shall cease carrying out such work in accordance with the notice from Summit and Serco shall comply with Summit's reasonable instructions in relation thereto but shall otherwise have no further responsibility for such Additional Work or any consequences resulting from the carrying out or any delay or failure in the carrying out of such Additional Work where such consequences result from Summit's instruction to cease carrying out such work but without prejudice to the outcome of any reference to the Dispute Resolution Procedure under paragraph 4.2 or any rights or remedies of Summit in respect of other delay or failure by Serco to comply with its obligations in relation to the Estates Maintenance Services. If, prior to receipt of a notification pursuant to this paragraph 4.5, Serco has, in carrying out Additional Work pursuant to paragraph 4.4, reasonably incurred any additional costs specifically in relation to such Additional Work then (save where notification has been served in circumstances where Serco is in breach of its obligations pursuant to paragraph 2) if agreed or determined that such work falls within the definition of Additional Work, Serco shall be entitled to be paid such costs, the amount to be agreed between the parties or determined by reference to the Dispute Resolution Procedure.

5. **Additional Work Undertaken by Summit**

In terms of paragraph 4.5 or paragraph 6, Summit may at its option itself undertake or procure the undertaking of any Additional Work and Serco shall provide all such assistance and information as Summit may reasonably require in this regard including but not limited to making available Personnel engaged in the Estates Maintenance Services and plant and consumables held by Serco for the purposes of or used in the Estates Maintenance Service. If in providing such assistance and information Serco reasonably incurs any additional costs which specifically relate to the provision of such assistance and information then it shall be entitled to be paid such costs subject to it having used all reasonable endeavours to minimise the amount of such costs. The amount of any payment to be made to Serco hereunder shall be as agreed between the parties.

Amounts agreed or determined pursuant to paragraphs 4 and 5 above shall become payable within 10 Business Days of the date of agreement or determination thereof.

6. **Implementation of Additional Work**

Unless paragraph 4.5 applies, Serco shall undertake (or procure the undertaking of) the Additional Work (where relevant as agreed or determined) in accordance with the Services Agreement and the following provisions shall apply except in the case of an emergency when Serco shall be permitted to take appropriate temporary measures):-

- 6.1 Serco shall as and when Summit may reasonably require submit to Summit for approval a specification, method statement and scope of work for each task of Additional Work (such specification to comply with the Services Agreement and that part of the Output Specification relating to the Estates Maintenance Service and to be in accordance with all Applicable Laws) and Serco and Summit shall seek to agree, without prejudice to the other provisions of this part 6 of the Schedule to this Agreement, a price for the Additional Work;
- 6.2 if so required by Summit, Serco shall submit to Summit for approval a list of tenderers to undertake the Additional Work, to which Summit may add;
- 6.3 Serco shall if so required procure quotations for the Additional Work and shall itself submit a quotation to Summit for such Additional Work which quotations shall in

either case be disclosed to Summit and accompanied by reasonably detailed supporting evidence;

- 6.4 if Summit shall exercise its right under paragraph 5 Summit may itself enter into a contract with a third party (including, any tenderers referred to in paragraph 6.2) for the relevant part of the Additional Work (but without prejudice to Serco's obligations under this Part 6), and in such case Serco shall provide such assistance as Summit may reasonably require to monitor compliance by such third party with the provisions of any contract so entered into by Summit (subject to payment of Serco's reasonable charges in respect thereof to be agreed between the parties) which amounts shall become payable within 10 days of the date of agreement and Summit shall supply to Serco copies of all invoices paid to any such tenderer;
- 6.5 Serco shall consult with Summit in the appointment of any tenderer hereunder to carry out any Additional Work and shall not appoint any such tenderer or undertake the work itself without the prior written consent of Summit;
- 6.6 if Summit shall not exercise its rights under paragraph 5, upon completion of such Additional Work (as certified by Summit's Contract Officer) Serco shall submit to Summit Serco's invoice (including any VAT, if applicable, thereon) for an amount no larger than the agreed price or quotation referred to above (plus any agreed variations) (setting out to Summit's reasonable satisfaction all the details of the work carried out and the cost incurred thereby) Summit shall pay such invoice within 10 Business Days thereafter;
- 6.7 the final date for payment of any sum which becomes due pursuant to this Part 6 of the Schedule to this Agreement shall be the date on which Serco is entitled to terminate this Agreement as a result of an event referred to in Clause 18.5; and
- 6.8 within five days after the date upon which payment becomes due pursuant to this Part 6 of the Schedule to this Agreement (or would have become due if Serco had carried out its obligations under this Agreement and no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts) (but without prejudice to any other provision of this Agreement) Summit

shall provide a notice specifying the amount if any of the payment made or proposed to be made and the basis upon which such amount has been calculated:

PROVIDED ALWAYS that Summit shall not be obliged to compensate Serco in respect of (i) any work, materials, labour or overhead costs forming part of the Additional Work if due to a failure on the part of Serco to include any (or adequate) provisions in respect thereof in the PPM Programmes or (ii) due to a failure by Serco to undertake its obligations under this Part 6 or (iii) labour costs of Personnel engaged in the Estates Maintenance Services and Serco shall, and shall use all reasonable endeavours to procure that its sub-contractors shall, minimise the costs of the Additional Work consistent with its obligations hereunder including making available Personnel engaged in the Estates Maintenance Service to undertake such Additional Work where reasonably practicable.

7. Serco shall give to Summit not less than 10 Business Days' notice of the date upon which it requires Summit's Contract Officer to certify the completion of any work carried out as part of the Additional Work. Serco shall allow, *inter alia*, Summit and any technical adviser appointed by it or its financiers to inspect and to make reasonable representations which shall be acted upon by Serco to the reasonable satisfaction of Summit. Summit reserves the right to reject any goods, plant, materials or equipment which are not in accordance with the agreed specification of the Additional Works. When the Additional Work has been completed in accordance with this Agreement to the reasonable satisfaction of Summit and any such technical adviser, Summit's Contract Officer shall within not more than 5 Business Days after Serco's notice certify the same by written notice to Serco.
8. Title in any materials, goods, plant or equipment intended to form part of the Additional Work shall vest in Summit upon such materials, goods, plant or equipment having been placed on the Site, or, if earlier on the date of payment by Summit for such materials, goods, plant and/or equipment. Risk in all such materials, goods, plant or equipment intended to form part of the Additional Work shall remain with Serco until such materials, goods, plant or equipment have been incorporated into the Hospital and certified by Summit's Contract Officer in accordance with paragraph 7. If any materials, goods, plant or equipment have been rejected by Summit in accordance with paragraph 7 then title in such rejected materials, goods, plant or equipment shall revert to Serco.

9. Serco warrants that there will be no legal or equitable encumbrance over any materials, goods, plant or equipment title in which has vested in Summit in accordance with paragraph 8. Serco shall indemnify and keep indemnified Summit against any losses or claims arising out of any breach of this warranty.
10. Serco shall use all reasonable endeavours to procure warranties from any supplier or manufacturer of any materials, goods, plant or equipment which forms part of the Additional Work and Serco shall take all reasonable steps to:-
 - 10.1 enforce such warranties as and when reasonably necessary; and
 - 10.2 ensure that the benefit of such warranties (so long as they remain valid) are assignable without restriction to Summit or to such person as Summit may nominate.
11. Paragraphs 7 to 10 (inclusive) shall not apply if and to the extent that Summit itself enters into the contract for the relevant Additional Work in accordance with paragraph 6.4.
12. To the extent that the Construction (Design and Management) Regulations 1994 ("the CDM Regulations") are applicable to any work carried out under this Agreement in order for Serco to comply with its obligations as to maintenance:
 - 12.1 Serco shall perform or procure the performance of all obligations, requirements and duties arising under the CDM Regulations in respect of that work;
 - 12.2 Serco will perform the duties and obligations of the principal contractor and the planning supervisor for the purposes of the CDM Regulations; and
 - 12.3 Summit will perform the duties and obligations of the client for the purposes of the CDM Regulations and deliver a duly executed declaration to the Health & Safety Executive pursuant to Regulation 4(1) of the CDM Regulations.

PART 7
DESIGN ASSUMPTIONS

DESIGN ASSUMPTIONS

FM Management Facilities -

This is the requirement of the facilities management office functions.

Facilities and equipment required.

- The Facilities management offices require dedicated offices for the following personnel:

F.M. Contract Manager	12.25m ²
Financial Manager	12.25m ²
Personnel Manager	9.10m ²
Risk Management	9.10m ²
Training Officer	9.10m ²
Records Room	9.10m ²

- Additional open plan accommodation is required to accommodate a further 2 people- 24.8m².
- Access to conference rooms
- A bay for beverage preparation
- Easy access to male/female toilet facilities.
-
- All office accommodation should have suitable points to the I.T. network.
- All office accommodation should have telephone points and handsets.

- All the above accomodation should have suitable furniture and fittings.

Car Parking

Service Overview

To provide a free car park for patients and visitors to the Trust. Trust/Summit staff will park free of charge in controlled areas.

Facilities and Equipment required.

- Road signage and markings to inform and to direct traffic effectively around the site.
- Roadway design that permits access at all times to "Blue Light" routes for permitted vehicles.
- Staff car park entrance/exit to have access barrier.
- All entrance and exit barriers to include a voice intercom help button, linked to the main security console. All barriers to have a remote operation facility.
- Car Parks and roadways to be adequately lit to provide personal safety and security and to permit the operation of CCTV cameras.
- All car park areas to be provided with suitable type and number of grit bins.
- All surfacing/roadway makeup to be suitable for the traffic flows and volume.
- Car parks to have appropriate falls/drainage to prevent surface ponding.
- Road and path design to enable full and unrestricted access for the disabled/elderly.

Grounds Maintenance

Service Overview

It is intended to subcontract the majority of the grounds maintenance duties, however there will be a dedicated on-site presence of 1 or 2 groundsmen to undertake minor daily tasks.

Facilities and Equipment to be provided.

- There will be a requirement for dedicated office accommodation of 8.7m².
- Staff will require suitable changing/shower facilities, comprising cloakroom, W. C and a shower.
- An appropriate dedicated messing facility will be required.
- A secure covered area of approx 45m² will be required for storing vehicles and equipment. Within this area a suitable hose and reel for washing vehicles and equipment is required. Access is required via 3 metre wide roller shutter doors.
- A separate room of approx 25m² to be serviced suitable for its purpose as a machinery equipment store/workshop is required.
- A dedicated fertiliser store with a sealed floor, drain, dilution and washdown facilities is required.
- A dedicated chemical store with a sealed floor, drain, dilution and washdown facilities is required.
- A secure external compound area will be required with access and working lighting. This to be adjacent to the storage area described above. Within the compound an external bulk storage facility is required for road gritting materials.

- Suitable salt/grit bins will be provided at all pedestrian access points, along the "blue light" routes and key roadways not less than 100 metres apart. Bins to be located at any road incline/change in level.
- All landscaped areas will minimise maintenance obligations and will enable easy access for required maintenance.

Domestic Services

Service Overview

To provide a cleaning service throughout the hospital. Additionally, to prepare and serve beverages to patients.

Facilities and Equipment to be provided.

- All wards/departments to be provided with a cleaners room (DSR) consisting of hot and cold water to a low level sink and not being less than 2.23m². The room should have hand washing facilities, a suitable lockable cupboard and shelving.
- There will be a requirement for 7 zonal offices/stores of approx 13.3m². Separate secure storage within these areas is required for chemicals.
- All ward, department, stairs and common areas will have a suitable number of low level power points spaced in order to allow safe working practices.
- All surfaces to be selected in accordance with the relevant HTM. Trust control of infection policy and to facilitate ease of cleaning.
- All external/internal glazed areas should be accessible for cleaning, using safe and reasonable methods.
- Atrium or high level glazed areas will have suitable access systems to facilitate safe internal cleaning methods.

- Changing/shower facilities are required for both male and female staff.

Linen & Laundry

Service Overview

A fully managed linen rental service will be provided to wards and departments with a daily "top up" service to linen cupboards.

Facilities and Equipment Required

- Staff will use F.M. changing facilities.
- At all wards/departments two linen cupboards each of not less than 1.5 metres width, and 600mm depth are required. The cupboards should have shelving at height intervals of 80cm.
- Soiled, segregated linen to be held in the disposal hold at each ward/department (refer to portering assumptions).

Clean linen.

- To be not less than 75m² to include a supervisors office. The area to have heating to keep linen dry and lighting suitable for linen inspection activities. The area should have access to IT/telecommunications systems. It should be adjacent to the delivery bay but segregated from the soiled linen area.
- The area will have not less than 50 linear metres of appropriate linen storage racking.
- A dedicated sewing room of not less than 17m² is required with equipment to allow measuring, alteration and marking of uniforms to be undertaken. Within the area a discrete changing facility is required.

- A dedicated uniform issue room of approx. 21m² is required with uniform dispensing counter and suitable storage.
- The above clean linen rooms to be interlinked.

Soiled linen hold

- This area to be not less than 31m² to be suitably ventilated and finishes to allow thorough cleaning. This should be adjacent to the delivery bay.

Patient Owned Clothing Laundry

- This area not to be less than 29m². To include services, equipment and finishes suitable for the laundering, drying, finishing and storage of patient clothing.

Portering (including waste)

Service Overview

- The portering service will be responsible for the internal movement of goods and patients around the hospital.

Facilities and Equipment required

- All portering staff will use the facilities management changing facilities.
- A dedicated portering base will be required of approximately 13 m² to include beverage making facilities.
- A porters control office will be required with access to ward order comms, IT and telecom systems and will be approximately 12m². An additional porters base is required within the A&E Department.
- An electric tug charging facility suitable for 2 units will be required.

- Appropriate wall protection at skirting and dado levels will be placed along all corridors and hospital streets.
- Floor finishes should be suitable for electric tug traffic at level zero. At all other levels flooring should be suitable for trolley traffic.
- All corridors to be used for deliveries should have protected corners. Tug delivery routes should have tug turning circles. The main service corridor should enable two way tug traffic movement. Doors on tug traffic routes to have hold open facilities and all doors where trolley movement could be expected should have suitable protection and be robust.
- A dedicated mail room with "pigeon hole" system, sorting benches, an area for a franking machine and with suitable environmental conditions is required - this area to be approximately 41m². A suitable secure point is required for Post Office and out of hour deliveries.

Waste

- All ward/ departments will require disposal holds to accommodate storage of:
 - Dirty linen
 - Soiled (infected) linen
 - Domestic waste
 - Clinical waste
 - Recyclable waste (if required)
- All disposal holds will require suitable drainage to enable wash downs to be undertaken.
- An internal refuse/waste hold adjacent to the loading bay is required where waste can be stored prior to removal to the central waste compound.

- A hard standing area adjacent to the loading bay is required for the parking of a clinical waste storage/ transporter.
- An external waste compound adjacent to the loading bay is required for the storage of domestic waste. This area should be suitable for the location of skips, compactor and waste containers. The area should have services including lighting, power for the compactor, wash down facilities and should be secure including vermin proof.

Security Services:

- All alarms are duplicated in the security room and switchboard.
- All access areas have CCTV coverage to fully meet the Developed Specification.
- Lighting levels and CCTV cameras meet legal requirements.
- The number of viewing screens provided minimises the viewing rotation sequence as far as is practical.
- Provide a secure security room to a minimum area of 25m².

Estates Maintenance Services:

- The engineering design solution is in full compliance with the Developed Specification.
- There is safe and appropriate access to all components and plant provided within the Specification. The Approved Service Provider will supply any specialist handling equipment they require.
- The BMS system will monitor the environment and, energy consumption within the Hospital

- All plant and building fabric has been designed to allow/ensure safe and suitable access, including routes of access, for maintenance, removal and/or replacement. The Approved Service Provider will supply any suitable access equipment they require.
- The designer has fully complied with their obligations under CDM Regulations
- All engineering systems shall be designed to allow all required zonal close/drain downs to meet the Trusts operational requirements as detailed in the contract.
- All goods lifts shall be provided with a manual key override and are suitable for the distribution of all goods that would reasonably be expected within a hospital
- The design has taken into account the Design Life Criteria as referred to in Part 4 of the Specification and has had due regard to the requirements of economic maintenance.
- All plant, equipment, components and systems to be fully year 2000 compliant
- Estates manager Office - 8m²
- Estates meeting Rooms - 8m²
- Estates Management office - 75m²
- Estates Workshops of minimum area 170m² will be fitted with all equipment as detailed in the Room Data Sheets
- All workshops will be designed to ensure a safe working environment for all staff
- The Heating and Ventilation Systems are monitored and controlled through the BMS system. Other plant and equipment alarms are interfaced with the BMS.
- Insofar as is practical and subject to the company continuing to trade commitments will be obtained from plant and equipment suppliers regarding spares availability, servicing and after sales support.

Switchboard Services:

- Provide a communications room of minimum area of 30m²
- The switchboard will allow the installation of an Auto Attendance Facility
- Provide 5 No. Telephonists stations and 1 No Supervisor stations
- Communications Room to be secure and have remote door release facility.

PART 8
EMPLOYEES

1. Serco shall observe, perform and comply with the obligations of Summit under Clause 16 of the Project Agreement in each case at such time or times and in such manner as to ensure compliance by Summit with the terms of Clause 16 of the Project Agreement to the intent and effect that, and both parties shall use all reasonable endeavours to procure that, pursuant to the Employment Regulations and/or the Directive the contracts of employment between the Trust and/or Hospital Hygiene Limited and the Employees will have effect on or after the Transition Commencement Date as if originally made between Serco and the Employees but the parties agree that the provisions of Clause 16 shall apply irrespective of whether or not the Employment Regulations and/or the Directive apply to transfer the contracts of employment of the Employees to Serco as aforesaid.
2. Serco shall indemnify Summit (or, at its direction, any of its sub-contractors other than Serco) from and against all costs, expenses, claims, liabilities, losses and damages of any nature whatsoever suffered or incurred by Summit or its sub-contractors by or in relation to or in connection with the Employees or any other Personnel of Serco or its sub-contractors whenever arising or made (including after termination of this Agreement) save to the extent (a) that a recovery is made by Summit under any indemnity granted by the Trust under Clause 16 of the Project Agreement or (b) caused by any act or omission (but for the avoidance of doubt excluding any termination of this Agreement in accordance with its terms) of Summit or any person for whom it is responsible in terms of this Agreement.
3. Subject to Clause 22.3, Summit shall indemnify Serco (or, at the direction of Serco, its Permitted Sub-contractors) on demand and hold them harmless against all costs, damages, losses, claims, demands, expenses and liabilities (including reasonable legal and other professional expenses) incurred by them as a result of any breach by the Trust of its obligations to Summit and/or any Approved Service Provider under Clause 16 of the Project Agreement, including for these purposes, any breach of warranty or indemnity given by the Trust thereunder.
4. Notwithstanding the provisions of paragraph 1, Serco shall not be obliged to observe, perform and comply with the obligations of Summit to the Trust as set out in Clauses 16.11.1 and 16.18.4 of the Project Agreement.

PART 9

Dispute Resolution

SECTION 1: NEGOTIATION BETWEEN THE PARTIES

If a Dispute arises under, out of or in connection with this Agreement then, except where a Dispute is expressly stated in this Agreement to be referable to an Expert, the parties may agree to refer the Dispute to an official of Summit (nominated from time to time for that purpose by Summit, failing which, the Chief Executive of Summit) and an official of Serco (nominated from time to time for that purpose by Serco, failing which, the Chief Executive of Serco), who shall meet and use their reasonable endeavours to negotiate (in good faith) to resolve the Dispute, and whose unanimous decision shall be binding on the parties.

SECTION 2: DISPUTE RESOLUTION PROCEDURE

1. REFERRAL TO EXPERT FOR ADJUDICATION

- 1.1 If either party does not agree to use the procedure referred to in Section 1 above, or if the procedure referred to in Section 1 above does not resolve a Dispute arising under, out of or in connection with this Agreement within ten (10) days of the date of referral, or if a Dispute is expressly stated in this Agreement to be referable to an expert and/or a dispute resolution procedure, then either party may refer such Dispute to an adjudicator agreed between the parties or appointed in accordance with the procedure specified in paragraph 2 below (the "Expert") for adjudication in accordance with the procedure specified in paragraph 2 below.

2. ADJUDICATION PROCEDURE

- 2.1 Any Dispute arising under this Agreement which is referred to the Expert for adjudication shall be adjudicated in accordance with the ORSA Adjudication Rules - 1998 Version 1.2 (the "Adjudication Rules"), provided always that:-

- (a) all references to the Adjudicator in the Adjudication Rules shall be deemed and treated as a reference to the Expert as defined in Section 2, paragraph 1.1 above.
- (b) the following words shall be deleted from the Adjudication Rules:
 - (i) "Contract' means the agreement which includes the agreement to adjudicate in accordance with these Rules" in lines 2 to 4 of Rule 2 ;
 - (ii) "of £100" in line 5 of Rule 7(i);
 - (iii) "an arbitrator appointed pursuant to the Contract and/or" in lines 3 and 4 of Rule 16;
 - (iv) "or arbitration" in line 3 of Rule 31;
 - (v) "or arbitration" in line 6 of Rule 31;
- (c) Rule 1(i) shall be deleted from the Adjudication Rules;
- (d) Rule 1(ii) shall be deleted from the Adjudication Rules;
- (e) the party giving written notice pursuant to Rule 3(i) shall, at the same time, also give a copy of the notice to the Adjudicator;
- (f) notwithstanding Rules 14 and 33, no party shall, save in the case of bad faith on the part of the Adjudicator make any application whatsoever to a competent court in relation to the conduct of the Adjudication or the decision of the Adjudicator until after the Contractual Practical Completion Date or the alleged Contractual Practical Completion Date of the Works or termination or alleged termination of this Agreement, unless and until the prior written consent of both Summit and Serco has been obtained;
- (g) notwithstanding Rules 14 and 33, no party shall make any application whatsoever to a competent court in relation to the conduct of the Adjudication or the decision of the

Adjudicator after that date being the later of, ninety (90) days from the decision of the Adjudicator or ninety (90) days from the Contractual Practical Completion Date;

- (h) notwithstanding Rules 14 and 33, no party shall make any application whatsoever to a competent court in relation to the conduct of the Adjudication or the decision of the Adjudicator unless it shall involve the pursuit of a claim or a counterclaim of a monetary value in excess of £150,000 (Indexed from Financial Close), or in the case of claims or counterclaims of a lesser monetary value arising out of the same facts and circumstances, an aggregate monetary value of £300,000 (Indexed from Financial Close), on a net present value basis using a discount rate of the Bond Rate;
- (i) Rule 19(x) and Rule 19 (xiii) shall be deleted from the Adjudication Rules;
- (j) Rule 21(v) shall be deleted from the Adjudication Rules;
- (k) Rule 24 shall be deleted from the Adjudication Rules;
- (l) Rule 28 shall be deleted from the Adjudication Rules;
- (m) Rule 32 shall be deleted from the Adjudication Rules;
- (n) the following Rules shall be inserted in the Adjudication Rules;
 - (i) "1A. The following rules meet the requirements of adjudication procedure as set out in section 108 of the Housing Grants, Construction and Regeneration Act 1996; Part I of the Scheme for Construction Contracts (Scotland) Regulations 1998 shall thus not apply".
 - (ii) "2A. "Contract" means this Agreement and shall include the agreement to adjudicate in accordance with these Rules."
 - (iii) "2B. "Chairman of ORSA" means the President for the time being of ORSA, or such other officer as is authorised to deputise for him;

- (iv) "2C. "ORSA" means the Law Society of Scotland;
- (v) "19A. The Adjudicator shall only reach his decision after holding an oral hearing, and with or without having endeavoured to facilitate an agreement between the parties".
- (vi) "19B. Upon becoming aware that the dispute is the same or arises out of substantially the same facts as a dispute which has previously been referred to adjudication under the Contract, the Adjudicator shall immediately resign."
- (vii) "21A. The Adjudicator may require any Party to pay or make contribution to, the legal costs of another Party arising in the Adjudication, and/or the legal costs of any party to a dispute arising under, out of, or in connection with any other contract between any Party and that third party which relates to the Contract (the "Related Dispute") where the adjudication of the Related Dispute has been consolidated or joined with the Adjudication of the Dispute between the Parties (the "Consolidated Adjudication"), to the extent that the legal costs of that third party arise in respect of the Related Dispute during the period in which the Related Dispute is consolidated or joined with the Dispute between the Parties.
- (viii) "24A. Save as aforesaid, the Parties shall be jointly responsible for the Adjudicator's fees and expenses including those of any specialist consultant appointed under 19(viii) (the "Costs of Adjudication"), the Adjudicator shall have the discretion to make directions to require any Party to pay or make contribution to the Costs of Adjudication and/or the fees and expenses of any adjudicator and specialist consultant appointed in relation to the Consolidated Adjudication. If no such directions are made, the Parties shall bear the Costs of Adjudication in equal shares, and if any Party has paid more than such equal share, that Party shall be entitled to contribution from other Parties accordingly."
- (ix) "28A. Every decision of the Adjudicator shall be implemented without delay. The Parties shall be entitled to such reliefs and remedies as are set out

in the decision, and shall be entitled to summary enforcement thereof, regardless of whether such decision is or is to be the subject of any challenge or review. No Party shall be entitled to raise any right of set-off, counterclaim or abatement in connection with any enforcement proceedings. The Parties agree and bind themselves to each other to docket every decision with their consent and to registration of the Adjudicator's decision in the Books of Council and Session for execution."

- (x) "30A. All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment hereunder shall be treated as confidential by the Adjudicator and each Party to the Adjudication (save as otherwise agreed between the Parties) and shall be returned to the owner on completion of the Adjudication proceedings."

- (xi) "32A. These Rules shall be governed by and construed in accordance with the law of Scotland and the Parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Session, Scotland and waive any plea of forum non conveniens."

SECTION 3: RELATED DISPUTES

1. CONSOLIDATION OF DISPUTES

- 1.1 In the event of a Dispute arising under, out of or in connection with this Agreement which in the opinion of Summit relates to a dispute or potential dispute ("Related Dispute") arising under, out of, or in connection with any other contract between Summit and a third party (all such contracts being referred to as the "Related Contracts"), and where the Related Dispute has been referred to an adjudicator for determination under an adjudication procedure ("the Related Procedure") which meets the requirements set out in section 108 of the Housing Grants, Construction and Regeneration Act 1996 and is in all material respects equivalent to the adjudication procedure in this Part 9 of the Schedule, Summit may or may procure that the other party to the Related Dispute shall as soon as practicable, and in any case within fourteen (14) days of the referral of the Dispute to the Expert, give to the Expert conducting

the adjudication under this Agreement and also to the other parties to the Dispute and the Related Dispute the particulars set out in paragraph 1.2 below.

1.2 The particulars referred to in paragraph 1.1 above are:-

- (a) a copy of the Related Contract;
- (b) a preliminary statement from Summit and/or, as the case may be, the other party to the Related Dispute setting out:-
 - (i) the basis and grounds for consolidation of the Related Dispute and the Dispute;
 - (ii) the cases of the parties to the Related Dispute;
 - (iii) any relief sought by the parties to the Related Dispute; and
 - (iv) a list of any documents served in relation to the Related Dispute.

Any such particulars sent by Summit to the Expert and the other parties to the Dispute shall be sent at the same time to the other party to the Related Dispute.

1.3 On receiving the particulars set out in paragraph 1.2 above prior to the Contractual Practical Completion Date and within fourteen (14) days of the referral of the Dispute to the Expert, the Expert shall, at the request of Summit, immediately order consolidation of the Dispute and the Related Dispute and shall have the authority and the power referred to in paragraph 1.10 below .

1.4 On receiving the particulars set out in paragraph 1.2 above on or after the Contractual Practical Completion Date and within fourteen (14) days of the referral of the Dispute to the Expert, the Expert shall immediately request that the parties to the Dispute and the other party to the Related Dispute attend a meeting with the Expert with a view to determining whether or not the Dispute and the Related Dispute should be consolidated.

- 1.5 Summit shall use its reasonable endeavours to procure that an authorised representative of the other party to the Related Dispute shall attend the meeting with the Expert referred to in paragraph 1.4 above. Summit and Serco each agree to send an authorised representative or nominee to any meeting of this kind under this Agreement or under a Related Contract which they may be requested to attend. The parties hereby agree that the Trust shall be entitled to attend any meeting with the Expert referred to in paragraph 1.4 above, as Summit's nominee.
- 1.6 At the meeting referred to in paragraph 1.4 above, Summit's representative (or its nominee) shall, as a preliminary matter, either:
- (a) confirm to the Expert that Summit (or its nominee) accepts the proposed consolidation of the Related Dispute with the Dispute; or
 - (b) inform the Expert that Summit (or its nominee) does not accept the proposed consolidation of the Related Dispute with the Dispute.
- 1.7 Where paragraph 1.6(a) above applies, the Expert shall immediately order consolidation of the Dispute and the Related Dispute and shall have the authority and the power referred to in paragraph 1.10 below.
- 1.8 Where paragraph 1.6(b) above applies, the Expert shall issue within one (1) day of the meeting referred to in paragraph 1.4 above his written decision, which shall not include any reasons, as to whether or not there is demonstrably no basis or ground for consolidation of the Dispute and the Related Dispute. If the Expert determines that there is demonstrably no basis or ground for consolidation of the Dispute and the Related Dispute, the Dispute and the Related Dispute shall not be consolidated. If the Expert determines otherwise, or if the Expert has failed or is unable to reach a decision within one (1) day of the meeting referred to in paragraph 1.4 above, the Expert shall immediately order consolidation of the Dispute and the Related Dispute and shall have the authority and the power referred to in paragraph 1.10 below.
- 1.9 Notwithstanding anything to the contrary, a Related Dispute shall only be consolidated with a Dispute under this Agreement if the Expert receives the particulars set out in paragraph 1.2

above within fourteen (14) days of the referral of the Dispute under this Agreement to the Expert.

- 1.10 The Expert shall have the authority and the power to consolidate the Dispute and the Related Dispute, and to direct that all procedural and/or evidential matters arising in both the Dispute and the Related Dispute are consolidated in whatever manner the Expert considers shall lead to the fair and expeditious resolution of both the Dispute and the Related Dispute and the parties (including the party to the Related Dispute) shall thereafter abide by and implement such consolidation and any such direction.
- 1.11 In the event that the Related Dispute is consolidated with the Dispute, the Expert shall reach a decision on the Dispute and the Related Dispute at the same time and in any event within twenty eight (28) days of the earlier of the referral of the Dispute or the referral of the Related Dispute, or such longer period as is agreed by the parties to the Dispute and the Related Dispute after the date that the Related Dispute has been consolidated with the Dispute. The Expert shall be entitled to extend the said period of twenty-eight (28) days by up to fourteen (14) days with the consent of the party by whom the relevant dispute was referred.
- 1.12 Without fettering or restricting the Expert's power and authority in any way, it is the intention of Summit and Serco that in the event that the Related Dispute is consolidated with the Dispute, the Expert shall, insofar as is relevant, practicable and appropriate, come to the same conclusion as to the facts and apply the same reasoning and analysis in reaching a decision on both the Dispute and the Related Dispute.
- 1.13 In the event that an adjudicator under a Related Contract ("the Related Expert") orders that a Dispute under this Agreement be consolidated with a Related Dispute with which he is dealing under the Related Contract, then:
- (a) notwithstanding anything in the Adjudication Rules or in Section 2 above, with effect from the time of such order, the Expert shall cease to have authority or jurisdiction to determine the Dispute which shall instead be determined by the Related Expert and the appointment of the Expert under this Agreement shall cease; and

- (b) such order shall be binding on Summit and Serco and both of them shall acknowledge the appointment of the Related Expert as the adjudicator of the Dispute, with Summit procuring that the third party who is a party to the Related Contract shall with effect from the time of such order comply with the requirements of the Related Contract (including if applicable any requirement or direction of the Related Expert appointed under such Related Contract) as to the future conduct of the determination of the Dispute and the Related Dispute; and
- (c) notwithstanding Rule 24A of the Adjudication Rules, Summit and Serco shall be jointly responsible with the third party who is a party to the Related Contract for the Related Expert's fees and expenses including those of any specialist consultant appointed under the adjudication procedure in the Related Contract, in respect of the period in which the Dispute is consolidated with the Related Dispute pursuant to an order of the Related Expert (the "Consolidated Adjudication Costs"). Summit and Serco agree that the Related Expert shall have the discretion to make directions to require Summit, Serco and the third party who is a party to the Related Contract to pay or make contribution to the Consolidated Adjudication Costs in different proportions. If no such directions are made, Summit, Serco and the third party who is a party to the Related Contract shall bear the Consolidated Adjudication Costs in equal shares, and if Summit, Serco or the third party has paid more than such equal share, that party or third party shall be entitled to a contribution from the other party, parties or third party, as the case may be; and
- (d) notwithstanding anything to the contrary a Dispute under this Agreement shall only be consolidated with a Related Dispute, if the Related Expert receives particulars of the Dispute within fourteen (14) days of the referral of the Related Dispute to the Related Expert under the Related Contract.

SERVICES SUBCONTRACT

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

between

**SUMMIT HEALTHCARE (LAW)
LIMITED**

and

SERCO LIMITED

DATED 17 June 1998

(1) SERCO GROUP PLC

- and -

(2) SUMMIT HEALTHCARE LAW LIMITED

**PARENT COMPANY GUARANTEE
NEW LAW DISTRICT GENERAL HOSPITAL - SERVICES SUB-CONTRACT**

ASHURST MORRIS CRISP
Broadwalk House
5 Appold Street
London EC2A 2HA

Tel: 0171 638 1111
Fax: 0171 972 7990
Ref: LMM/539120

THIS GUARANTEE

BY

- (1) **SERCO GROUP PLC** (Company Registration No. 2048608) having its registered office at Serco House, Hayes Road, Southall, Middlesex UB2 5NJ (the "Guarantor"); and

TO

- (2) **SUMMIT HEALTHCARE (LAW) LIMITED** (Company Registration No. 182649) having its registered office at Saltire Court, 20 Castle Terrace, Edinburgh (the "Employer")

WHEREAS

- (A) Serco Limited (the "Subsidiary"), has entered into a contract dated 16th June 1998 with the Employer in relation to the provision of certain Services at the New Law District General Hospital as described in the contract (the "Services Sub-Contract").
- (B) The Guarantor is the beneficial owner of one hundred per cent. (100%) of the issued share capital of the Subsidiary.
- (C) The Guarantor has agreed to guarantee all the obligations of the Subsidiary under the Services Sub-Contract on the terms set out below.

NOW IT IS HEREBY AGREED as follows:-

1. The Guarantor in consideration of the Employer entering into the Services Sub-Contract with the Subsidiary, for itself, its successors and assigns, hereby absolutely, irrevocably and (except as expressly provided herein) unconditionally guarantees to the Employer as a continuing guarantee the due, proper and punctual performance by the Subsidiary of all the terms, conditions, obligations and agreements on the part of the Subsidiary contained in the Services Sub-Contract (including, without limitation, the payment of monies) and agrees that if the Subsidiary shall in any respect fail to perform any of its obligations (including, without limitation, the payment of monies) arising under the Services Sub-Contract or shall commit any breach of or fail to fulfil any warranty as set out in the Services Sub-Contract, then the Guarantor will forthwith perform and fulfil in place of the Subsidiary each and every obligation or warranty in respect of which the Subsidiary has defaulted or as may be unfulfilled by the Subsidiary. The Guarantor shall be liable to the Employer for any and all losses, damages, expenses, liabilities, claims, costs or proceedings which the Employer may suffer or incur by reason of the said failure or breach: provided always that the Guarantor's liability under this Guarantee shall not exceed that of the Subsidiary under the Services Sub-Contract determined on the basis that the Services Sub-Contract is valid, enforceable and has full force and effect.
2. The Guarantor covenants and agrees with the Employer that any act, event, circumstance or omission which but for the provisions of this Clause 2 may affect, change or release the Guarantor from its obligations under this Guarantee, including, without limitation:-

- (i) waiver by the Employer of any terms, provisions, conditions, obligations and agreements of or under the Services Sub-Contract or any failure to make demand upon or take action against the Subsidiary;
- (ii) any modification or changes, however fundamental, to the Services Sub-Contract or referred to in the Services Sub-Contract;
- (iii) the giving by the Employer of any consent to an assignment or the making of any assignment of the Services Sub-Contract;
- (iv) the granting of extensions of time or other indulgence to the Subsidiary;
- (v) any dealings between the Employer and the Subsidiary;
- (vi) the avoidance or termination of the Services Sub-Contract or the employment of the Subsidiary for default by the Subsidiary; and
- (vii) (except to the extent that such breach is not caused by the Subsidiary and affects, changes or releases the Subsidiary from its obligations under the Services Sub-Contract) any breach by the Employer of any terms of the Services Sub-Contract;

may be made and done without notice to or the consent of the Guarantor and no such act, event, circumstance or omission shall in any way affect, change or release the Guarantor from its obligations under this Guarantee and the liability of the Guarantor hereunder shall not be in any way affected thereby.

3. This Guarantee shall remain in full force and effect until performance in full of the terms, conditions, obligations and agreements on the part of the Subsidiary contained in the Services Sub-Contract notwithstanding any act, event, circumstance or omission which but for the provisions of this Clause 3 may affect, change or release the Guarantor from its obligations under this Guarantee, including, without limitation:-

- (i) the insolvency, liquidation, receivership, reorganisation, amalgamation, reconstruction or any analogous event of the Subsidiary, the Guarantor or any other person;
- (ii) any disclaimer of the Services Sub-Contract by a liquidator of the Subsidiary, the Guarantor or any other person;
- (iii) any change in the status, function, control or ownership of the Subsidiary; and/or
- (iv) unenforceability or invalidity of any obligations of the Subsidiary so that this Guarantee shall be construed as if there were no such unenforceability or invalidity.

4. Until the terms, conditions, obligations and agreements on the part of the Subsidiary contained in the Services Sub-Contract have been unconditionally and irrevocably performed in full the Guarantor shall not by virtue or as a result of any payment or performance by it under this Guarantee in respect of the Services Sub-Contract:-

- (a) be subrogated to any rights, security or moneys held or received or receivable by the Employer; or
 - (b) receive, claim or have the benefit of any payment, distribution, security or indemnity from the Subsidiary or (if and for so long as the Employer has any unsatisfied claims outstanding or pending against the co-sureties) any such co surety; or
 - (c) unless so directed by the Employer (when the Guarantor will prove in accordance with such directions) claim as a creditor of the Subsidiary in competition with the Employer.
5. The Guarantor shall hold in trust for the Employer and forthwith pay or transfer (as appropriate) to the Employer any such payment (including an amount equal to any such set-off), distribution or benefit of such security, indemnity or claim in fact received by it in breach of Clause 4.
6. No delay or omission of the Employer in exercising any right, power or privilege hereunder shall impair such right, power or privilege or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the Employer herein provided are cumulative and not exclusive of any rights or remedies provided by law.
7. A waiver given or consent granted by the Employer under this Guarantee will be effective only if given in writing to the Guarantor and then only in the instance and for the purpose for which it is given.
- 8.1 If at any time any one or more of the provisions of this Guarantee is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof shall not be in any way affected or impaired thereby.
- 8.2 As a separate and alternative stipulation the Guarantor unconditionally and irrevocably agrees that any sum expressed to be payable by it or obligation to be performed by it under this Guarantee but which is for any reason (whether or not now existing and whether or not now known or becoming known to the Guarantor) not recoverable from or enforceable against the Guarantor on the basis of a guarantee shall nevertheless be recoverable from or enforceable against the Guarantor as if the Guarantor were the sole principal debtor or obligor (where relevant).
- 9.1 Save as specifically otherwise provided in this Guarantee any notice, demand or other communication to be served under this Guarantee may be served upon a party hereto only by posting by first class post or delivering the same by hand or sending the same by facsimile transmission to the party to be served at its address or facsimile number shown immediately after its name on the signature page of this Guarantee or at such other address or number as it may from time to time notify in writing to the other party.

- 9.2 A notice or demand served by first class post shall be deemed duly served on the second business day after the date of posting and a notice or demand sent by hand or facsimile transmission shall be deemed to have been served at the time of delivery or transmission unless served after 5.00 pm in the place of intended receipt in which case it will be deemed served at 9.00 a.m. on the following business day. For the purposes of this paragraph "business day" means a day on which commercial banks are open for business in Edinburgh or London.
- 9.3 In proving service of any notice it will be sufficient to prove, in the case of a letter, that such letter was properly stamped or franked first class, addressed and placed in the post and, in the case of facsimile transmission, that such facsimile was duly transmitted on a business day to a current facsimile number of the addressee at the address referred to below.
10. The Employer may assign or charge this Guarantee or any benefit arising from it in favour of the Financiers to the Employer under the Summit Assignment (as amended, varied or supplemented from time to time) and their permitted successors, transferees and assigns on such terms as it sees fit without the consent of the Guarantor and without affecting, changing or releasing the Guarantor from its obligations under this Guarantee. Subject to the terms of the Services Sub-Contract Direct Agreement dated 16 June 1998 (as amended, varied or supplemented from time to time) the Employer may not otherwise assign or charge this Guarantee without obtaining the Guarantor's prior written consent.
11. This Guarantee shall be governed by and construed in accordance with the laws of Scotland and each of the persons constituting the Guarantor and the Employer separately prorogate the non-exclusive jurisdiction of the Court of Session in Scotland in relation to any disputes hereunder the parties

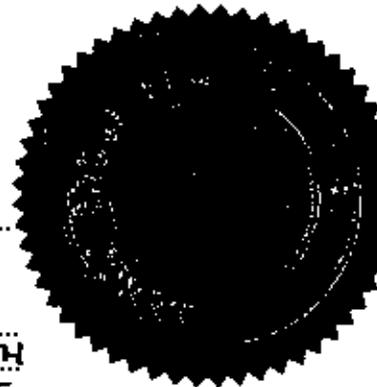
IN WITNESS whereof this agreement consisting of this and the preceding three pages has been executed as follows:-

Subscribed for and on behalf of
 SERCO GROUP PLC
 at Raymond
 on 17 day of JUNE 1998

acting by
RICHARD WHITE (Director)
CHRISTOPHER HYMAN (Secretary)

[Signature]
[Signature]

in the presence of
 Witness [Signature]
 Full name DAVID MARK SMITH
 Address 13 DAVEN COURT
MOUNT AUBREY PARKING
LONDON



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

at MICHAEL JOHN COLLARD.

on 17th day of June 1998

by MICHAEL JOHN COLLARD Director

and DW CAMPING Services Ltd Director/Secretary

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.....
Director

Alan D. Campbell
.....
Director/Secretary

Roby Christie Witness.
ROBY CHRISTIE
26 SOUTH TRINITY ROAD
EDINBURGH.