PROJECT AGREEMENT

between

LOTHIAN PRIMARY CARE
NATIONAL HEALTH SERVICE TRUST

and

ROBERTSON HEALTHCARE
(FINDLAY HOUSE) LIMITED
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AGREEMENT

between

(1) LOTHIAN PRIMARY CARE NATIONAL HEALTH SERVICE TRUST, constituted under the National Health Service (Scotland) Act 1978 as amended by the National Health Service and Community Care Act 1990 and having its principal place of business at Astley Ainslie Hospital, 133 Grange Loan, Edinburgh, EH9 2HL and any successor NHS Trust or body ("the Trust" which expression shall include its statutory successors); and

(2) ROBERTSON HEALTHCARE (FINDLAY HOUSE) LIMITED, a company incorporated under the Companies Acts (registered number SC210173) and having its registered office at 10 Perimeter Road, Pinefield Industrial Estate, Elgin IV30 6AE ("the Operator")

RECITALS

(A) The Trust has the functions conferred on it by the National Health Service (Scotland) Act 1978 (as amended).

(B) In implementation of certain functions, the Trust invited tenders from interested persons for the financing, design and construction of, and the provision of certain services in connection with Findlay House, a geriatric care facility.

(C) Proposals were submitted on behalf of the Operator. Following negotiations, it appears to the Trust to be expedient for the purpose of, or in connection with, the discharge of its functions to enter into this Agreement, which sets out the terms and conditions upon which the Operator will carry out the Project.

(D) The Agreement is entered into under the Government’s Private Finance Initiative.


BY WHICH IT IS AGREED:-

PART 1 - DEFINITIONS AND INTERPRETATION
1. Definitions

In this Agreement the following expressions shall, unless otherwise specified or where the context otherwise requires, have the following meanings:

**Abandon** not to carry out any Works contemplated by the construction programme at the Site for a period of more than 30 consecutive days;

**Access Road** has the meaning ascribed to it in Clause 15.12;

**Act** means the National Health Service (Scotland) Act 1978 as amended by the National Health Service and Community Care Act 1990 and the Health Act 1999;

**Actual Cost (Electricity)** means, in any period (which shall be the period agreed between the Operator and its electricity supplier as being the period for which the Operator shall be invoiced by such supplier for the electricity consumption at the Facilities; the Operator being obliged to notify the Trust of the length of such period), the actual cost to the Operator per kilowatt hour of electricity;

**Actual Cost (Gas)** means, in any period, (which shall be the period agreed between the Operator and its gas supplier as being the period for which the Operator shall be invoiced by such supplier for the gas consumption at the Facilities; the Operator being obliged to notify the Trust of the length of such period), the actual cost to the Operator per kilowatt hour of gas;

**Adjudicator** means the individual appointed to adjudicate in accordance with Part E of the Schedule (Dispute Resolution Procedure);

**Agreed Form** means the form of that document approved by the Parties and signed for and on behalf of each Party for the purposes of identification or entered into between the Parties on the Execution Date;
Applicable Laws means, as the context requires, all or any laws, statutes, statutory instruments, proclamations, by-laws, directives, regulations, rules, orders, or delegated or subordinate legislation, in each case having the force of law or any enforceable community right within the meaning of section 2 of the European Communities Act 1972 in the United Kingdom, at any time or from time to time in force and which in any way affect or impact on any of the matters referred to in or to be done under any one or more of the Project Documents;

Appointment means, in relation to each Consultant, a document appointing such Consultant in the Agreed Form to be entered into between the Operator, or the Contractor, as appropriate;

Assumptions means the following factors:-

(a) the market valuations achieved for any recent transactions involving the sale or valuation of companies involved in PFI projects;

(b) the aggregate amount of the share capital of the Operator and the Junior Debt then outstanding at the Termination Date;

(c) the terms and conditions of the Junior Debt as at Financial Close

(d) assuming full performance of the Trust’s and the Operator’s obligations under this Agreement; and

assuming,

(i) a willing buyer and a willing seller on an arm’s length basis;

(ii) a sale of the whole of the Operator as a going concern;

(iii) in relation to the Trust, a covenant typical of a Primary Care NHS Trust of a similar size to the Trust in the United Kingdom (ignoring for this purpose any default by the Trust); and
that the Site and the Facilities will be deemed for the purposes of these Assumptions to have remained in the ownership of the Operator, notwithstanding any transfer pursuant to Clause 47.4.1A.

Base Energy Consumption (Electricity) means 232,680 kWh per annum of electricity, prorated for the period in question according to the number of days in such period;

Base Energy Consumption (Gas) means 1,163,400 kWh per annum of gas, prorated for the period in question according to the number of days in such period;

Building Warrants means all such building warrants as are required for the design, construction and completion of the Works and every part thereof;

Business Day means a weekday (other than a Saturday or a Sunday) on which banks are open for domestic business in Edinburgh.

Broker’s Letter of Undertaking means the broker’s letter of undertaking (annexed to Part F of the Schedule) to be granted to the Trust by the Operator’s insurance brokers;

Business Interruption Uninsurable Risk means a risk covered by Business Interruption Insurance in relation to a risk covered by the property damage insurance (being insurance number 4 in Part F of the Schedule) and for which after the Operational Date:

(a) insurance is not available within the world wide insurance market with reputable insurers of good standing in respect of that risk; or

(b) the terms offered in respect of that risk are such that the risk is not generally being insured against in the world wide insurance market;

to the extent that the Operator and other prudent contractors in the health sector or in the same or substantially similar businesses would cease to operate such businesses in order to mitigate the effect of that risk becoming uninsured and the Operator has demonstrated this to the Trust;
Calculation Schedule means the Schedule that the Operator must supply to the Trust in accordance with paragraph 2.7 of Part B of the Schedule (Payment Mechanism);

Change in Control means any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (including the control over the exercise of voting rights conferred on that equity share capital or the control over the right to appoint or remove directors);

Charge Nurse means at any particular time the senior nurse on duty at the House at that time;

Certificate of Availability means a certificate issued by the Independent Tester pursuant to Clause 21 (Commissioning Procedure and Completion) in the form set out in Part I of the Schedule;

CDM Regulations means the Construction (Design and Management) Regulations 1994;

Change has the meaning given to it in Part D of the Schedule (Change Procedure);

Change Procedure means the procedure for changes in the Design Specification, the Works, the Services, the Equipment, the Services Requirements or otherwise (and whether requested by the Trust or the Operator) or changes of Applicable Laws or any Industry Standard Changes and any required adjustments to the Services Fee, as set out in Part D of the Schedule (Change Procedure);

Cleaning Method Statement means a statement setting out, in detail, and in accordance with Applicable Laws, Good Industry Practice, the current Infection Control Guidance, the Industry Standard and (provided always that the current Infection Control Guidance is complied with) the manufacturers cleaning guidelines for an item provided by the Operator at the House, the cleaning methods to be used, the kinds of materials to be used and chemicals to be employed in respect of the cleaning services carried out by the Trust as each Cleaning Method Statement shall be developed and agreed in accordance with Clause 35B (Cleaning Method Statement) of this Agreement;
Clinical Functionality means

(a) the following matters as shown on the scale drawings being drawings A99071/L/(00)03 and A99071/L/(90)(4) referenced in the contract drawing register contained in the Construction Implementation Requirements:

(i) the points of access to and within the Site and the House;

(ii) the adjacencies between different Hospital departments; and

(iii) the adjacencies between rooms within the House;

(b) the quantity, description and areas (in square metres) of those rooms and spaces shown on the Schedules of Accommodation contained in the Construction Implementation Requirements;

(c) the location and relationship of equipment, furniture, fittings and user terminals as shown on the drawings A99071/A/(7); A99071/4/(17); 3700/NC and A99071/L/(4) referenced in the contract drawing register contained in the Construction Implementation Requirements; in respect of:

(i) all bed and trolley positions;

(ii) internal room elevations; and

(iii) actual ceiling layouts;

(d) The location of and the inter-relationships between rooms within a department as shown on drawings A99071/L/(00)(11) referenced in the contract drawing register contained in the Construction Implementation Requirements;

but only insofar as each of the matters listed in (a) to (d) above relate to or affect Clinical Use;
Clinical Services means the medical, nursing, para-medical, pharmacy and other clinical and administrative services and functions to be carried out, from time to time, by the Trust at the House;

Clinical Use means the use of a room or space to the extent that it is used by the Trust or its employees, tenants, agents and/or contractors but not, to avoid doubt, Operator Parties for carrying out the Clinical Services;

Collateral Warranties means the collateral warranties in the Agreed Form in favour of the Trust and executed by each of the Consultants;

Confidential Information means:-

(a) all information designated as such by either Party in writing,

(b) all information relating to the identity, condition or medical history of a patient (or former patient) of the Trust at the House or other establishments of the Trust, and

(c) all information that relates to the business, affairs, activities, financial position, prices, prospects, proposals, trade secrets, know-how, personnel, customers or suppliers of either Party;

Construction Direct Agreement means the Construction/Trust Direct Agreement in the Agreed Form among the Trust, the Operator and the Contractor;

Construction Implementation Requirements means the standards, specifications, procedures in the Agreed Form as such Construction Implementation Requirements may be amended from time to time in accordance with this Agreement;

Construction Timetable means the non-binding (save (subject to Clause 18) in respect of the Planned Operational Date) construction timetable, in the Agreed Form;
Consultants means all consultants appointed, from time to time, by the Contractor in relation to the Works in each case with the prior approval of the Trust (not to be unreasonably withheld or delayed), including, without limitation, all architects, structural engineers, M & E engineers, environmental consultants, quantity surveyors, planning supervisors and design consultants;

Contamination means all pollutants or contaminants including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour);

Contractor means Robertson Group (Construction) Limited, incorporated under the Companies Acts (Company Number SC164854) and having its registered office at 10 Perimeter Road, Pinefield Industrial Estate, Elgin, IV30 6AE or, subject to the Trust's rights under this Agreement, such other reputable and substantial building contractor or contractors as the Operator may from time to time appoint in addition, or in substitution, to carry out the Works, in each case with the prior approval of the Trust (not to be unreasonably withheld or delayed);

Convictions means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and orders (including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of The Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);

Core Construction Requirements means the standards, specifications procedures and other requirements set out in Sections 1 and 3 of Part J of the Schedule (Design Specification) as such Core Construction Requirements may be amended from time to time in accordance with this Agreement;

Debt to Equity Ratio has the meaning given to it in the Facility Agreement;
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<td>has the meaning given to it in the Facility Agreement;</td>
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<td>means the Availability Deductions, Non-Space-related Service Shortfall Deductions and Reporting Failure Deductions;</td>
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<td>Delay Events</td>
<td>means a delay caused by any of the matters referred to and as set out in Clause 18.1 (Delay Events);</td>
</tr>
<tr>
<td>Design and Build Contract</td>
<td>means the Building Contract for the carrying out of the Works in the Agreed Form to be entered into between the Operator and the Contractor;</td>
</tr>
<tr>
<td>Design Data</td>
<td>means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing and/or operation of the Facilities;</td>
</tr>
<tr>
<td>Design Development Procedure</td>
<td>means the procedure set out in Part G of the Schedule (Design Development Procedure);</td>
</tr>
<tr>
<td>Design Specification</td>
<td>means the Core Construction Requirements and the Construction Implementation Requirements forming Part J of the Schedule as such Design Specification may be amended from time to time in accordance with the terms of this Agreement;</td>
</tr>
<tr>
<td>Detailed Design</td>
<td>means the detailed design to be developed by the Operator pursuant to the Design Development Procedure;</td>
</tr>
<tr>
<td>Detailed Maintenance Schedule</td>
<td>means the schedule to be developed in accordance with Clause 35A.2.B of this Agreement;</td>
</tr>
<tr>
<td>Differential Cost (Electricity)</td>
<td>means the amount by which the Actual Cost (Electricity) differs from the Threshold Cost (Electricity);</td>
</tr>
<tr>
<td>Differential Cost (Gas)</td>
<td>means the amount by which the Actual Cost (Gas) differs from the Threshold Cost (Gas);</td>
</tr>
<tr>
<td>Directive</td>
<td>means the Acquired Rights Directive (EC 77/187) as amended from time to time;</td>
</tr>
</tbody>
</table>
Discriminatory Change in Law has the meaning given to it in Part D of the Schedule (Change Procedure);

Disposition means the Disposition of the Site, in the Agreed Form, to be granted by the Trust in favour of the Operator on the Operational Date;

Dispute Resolution Procedure means the procedure set out in Part E (Dispute Resolution Procedure) of the Schedule;

Encumbrance includes any fixed or floating security including without limitation any standard security, assignation in security, pledge, lien, floating charge, hypothecation, security interest, title retention or other preferential right or rights having the effect of creating a security;

Equipment means all equipment to be installed or utilised at or in connection with the House (including any equipment installed or utilised on the Site) as set out in the Core Construction Requirements and the Equipment List including all replacements of (and additions to) that equipment from time to time, but always excluding the Trust Equipment;

Equipment List means the list, forming Section 3 of Part J of the Schedule (Design Specification) setting out equipment to be provided by the Operator, at the Facilities, on the Operational Date, and to be maintained, repaired and renewed in accordance with this Agreement;

Execution Date means the date on which this Agreement is executed by the Parties;

Expiry of the Term means the date on which the Term expires or would expire but for early termination in accordance with this Agreement;

Extension of Time means an extension of the period allowed for completion of the Works, as referred to and awarded in accordance with Clause 18 (Delay Events);

Facilities means the House, buildings and other facilities together with all supporting infrastructure (including all and any plant and Equipment) and amenities located at the Site (including without limitation, all roads, footpaths, car parks, fences and other barriers, drainage systems, electrical conduits, lighting, heating and grassed and
landscaped areas located on the Site), all as required to enable the Operator to comply with its obligations under this Agreement, all as the same may be varied, amended or supplemented from time to time in accordance with this Agreement;

**Facility Agreement** means one of the Finance Agreements being the Loan Agreement between The Governor and Company of the Bank of Scotland and the Operator for the provision of senior debt finance executed on the Execution Date or such other loan agreement for the provision of senior debt finance as the Operator may enter into with a party providing senior debt finance pursuant to a Relevant Refinancing Arrangement in terms of clause 55 of this Agreement;

**Facility Manager** means Steven Barron, or such other person or persons appointed by the Operator in accordance with Clause 40 (The Facility Manager, the Trust Manager, the Charge Nurse and Agreement Management);

**Failure** shall have the meaning ascribed to it in Part B of the Schedule (Payment Mechanism);

**Finance Agreements** means the agreements executed on the Execution Date providing finance to be used by the Operator exclusively in connection with the Project;

**Financial Close** means the date agreed and recorded by the Parties as the date of satisfaction of the conditions precedent in Clause 3 (Conditions) (or upon which they are waived by the relevant party);

**Financial Model** means the financial model relating to the Project entitled “Base Model at Financial Close”, a copy of which has been delivered to the Trust establishing the financial projections of the Operator as at the Execution Date, and as may be amended from time to time pursuant to the Change Procedure or any Relevant Refinancing Arrangements;
**Financier** means The Governor and Company of the Bank of Scotland (or another member of the HBOS group being a Qualifying Bank) providing finance in connection with the Project under the Finance Agreements (including any transfeere or assignee of its interest therein insofar as not restricted by Clause 55 (Refinancing);

**Financier Direct Agreement** means the Lenders Direct Agreement in the Agreed Form among the Trust, the Operator and the Financier;

**Financier Standard Security** means the Standard Security in respect of the Site (including the Facilities) to be executed by the Operator in favour of the Financier or following a refinancing, any financier providing finance in connection with the Project;

**Force Majeure** means any of the events referred to in Clause 50.1 (Force Majeure/Relief Events);

**Functional** means in relation to an item of Equipment that:-

(a) such item is mechanically sound and if such item is electrical that it is safe and complies with all Applicable Laws at the date of its procurement (in the event of such item being replaced that such item complies with all Applicable Laws and safety standards at the time of replacement and shall be equivalent to or of higher quality and specification than the item being replaced); and/or

(b) such item is capable of being used for the purpose for which it was intended or designed; and/or

(c) such item is suitable for use by the Findlay House patient group; and/or

(d) if such item is upholstered, it is free from

(i) staining caused by human waste which cannot be removed by a domestic washing machine washing process or damp wipe cleaning; and/or

(ii) ingrained staining; and/or
(iii) other excessive staining; and/or

e) if such item is upholstered, it is not excessively faded or it is not threadbare; and/or

f) such item is not excessively chipped or otherwise excessively disfigured; and/or

g) the design of such item is in keeping with the items of Equipment surrounding such item

and the words “Function” and “Functioning” shall be construed accordingly;

**Ground Physical and Geophysical Investigation** means the investigation of all the conditions of and surrounding the Site and of any extraneous materials in, on or under the Site (including its surface and subsoil) to enable the Facilities to be designed and constructed and the Works to be carried out with due regard for those conditions and the seismic activity (if any) in the region of the Site;

**Good Industry Practice** means using standards, practices, methods and procedures conforming to Applicable Laws and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

**HTM Guidelines** means the Health Technical Memoranda listed in Part M of the Schedule;

**Helpdesk** means the telephone helpdesk that the Operator must provide in accordance with paragraph 3 of Part H of the Schedule (Performance Monitoring);

**Hazardous Materials** means each of the materials referred to in Clause 2.1.5.3 of the Design and Build Contract granted by the Contractor in favour of the Trust;

**HoldCo** means Robertson Healthcare (Findlay House) Holdings Limited, incorporated under the Companies Act (registered number SC220931) and having its registered office at 10 Perimeter Road, Pinefield Industrial Estate, Elgin, Morayshire, IV30 6AE;
Hotel Services means the catering, cleaning, laundry, sewing, portering and hairdressing services;

House means the geriatric hospital to be constructed by the Operator at the Site pursuant to this Agreement and to be known as “Findlay House”;

Improvement Notice means a notice served by the Trust on the Operator under Clause 41.5 (Performance Monitoring) specifying that it is an Improvement Notice and setting out the circumstances for which it has been served;

Independent Tester means Currie & Brown Consulting Limited, a company incorporated under the Companies Acts (Company Number 01347474) and having its registered office at The Red House, High Street, Redbourn, St Albans, Herts, AL3 7LE;

Independent Tester Appointment means the appointment among the Operator, the Trust, the Financier and the Independent Tester in the Agreed Form to be executed on or before the Execution Date;

Index means in respect of any month the value attributed to that month in the RPI;

Indexed means, in respect of any Payment Year n, increased in accordance with the following formula:-

\[ 1 + \frac{(I_n - I_0)}{I_0} \]

Where:

In equals the Index for the month of February in Payment Year n-1 provided that, for the first Payment Year In equals the Index for the month of February prior to the commencement of the first Payment Year;

Io equals the Index for the month of September 2000 being 171.7

Indirect Losses means loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or a claim for consequential loss or for indirect loss of any nature;
Industry Standards means (other than any rules, regulations and codes of practice which give effect to Applicable Laws generally and do not principally relate to the operation or provision of hospital or healthcare premises) any rules, regulations and codes of practice (not constituting Statutory Requirements) which are:

(a) mandatory on the Trust through general compliance being required by; or

(b) advised to the Operator by the Trust and recommended to the Trust by SEHDME or the National Health Service (or their successors) and which are applicable to the Works, the Facilities and/or the Services provided they are published and publicly available or the existence and contents have been notified to the Operator by the Trust, including, without prejudice to the foregoing generality the HTM Guidelines;

Industry Standards Change means a change to the Industry Standards (either by (a) alteration of the Industry Standards applying at the Execution Date or (b) Industry Standards being published or issued after the Execution Date) as such change will be notified by the Trust to the Operator from time to time;

Infection Control Guidance means the Trust’s policy in respect of infection control as at Financial Close as such policy may be amended and notified to the Operator from time to time (provided that any such amendment shall be deemed to be a Trust Change);

Insurances means all policies and contracts of insurance (including any renewals of or amendments to such contracts) effected or to be effected in relation to the Project in terms of Clause 12 (Insurances) and Part F of the Schedule;

Insured Risks means the risks covered by the Insurances but not the Business Interruption Insurance;
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insured Termination Event</td>
<td>means damage to the Facilities against the occurrence of which the Operator is insured pursuant to Part F of the Schedule, the occurrence of which may give rise to termination of this Agreement pursuant to Clause 5.4.3 of Part F of the Schedule;</td>
</tr>
<tr>
<td>Intellectual Property</td>
<td>means, as the context requires, current and/or future interests in copyright and rights in the nature of copyright, design rights, patents, trade and service marks (whether registered or unregistered) and all know-how;</td>
</tr>
<tr>
<td>Interest Rate</td>
<td>means 4% per annum above the base rate for the time being of The Bank of Scotland;</td>
</tr>
<tr>
<td>Junior Debt</td>
<td>means the amounts for which the Operator is indebted under the terms of the Loan Stock Instrument granted by the Operator to HoldCo;</td>
</tr>
<tr>
<td>Lease</td>
<td>means the lease of the Site to be granted by the Operator to the Trust on the Operational Date in the Agreed Form under Clause 23.1 (Lease);</td>
</tr>
<tr>
<td>LIBOR</td>
<td>has the meaning given in the Facility Agreement;</td>
</tr>
<tr>
<td>Loan Stock Instruments</td>
<td>means the agreements of that name of even date herewith to be granted by the Operator and HoldCo;</td>
</tr>
<tr>
<td>Local Authority Completion Certificate</td>
<td>means (a) a temporary habitation certificate issued by the Local Authority or (b) the certificate to be issued by the Planning Authority under the Building (Scotland) Acts confirming completion of the Works in compliance with all necessary consents and permitting occupation of the Site;</td>
</tr>
<tr>
<td>Long Stop Date</td>
<td>means the date falling 40 weeks after the Planned Operational Date as extended under Clause 18.1;</td>
</tr>
<tr>
<td>Maintenance Schedule</td>
<td>means a schedule of Maintenance Works in respect of the House and the remainder of the Site in terms of the Operator’s obligations under this Agreement developed in accordance with Clause 35A (Maintenance Schedule);</td>
</tr>
</tbody>
</table>
**Maintenance Works** means any works required for the maintenance repair, replacement or renewal of the Facilities (but not the plant and Equipment) in accordance with the Operator’s obligations under this Agreement (provided that, in the event of an item requiring replacement or renewal, the Operator shall ensure that such item shall be replaced with an item of equivalent or higher quality and specification than the quality and specification for that item as set out in the Design Specification);

**Month** means a calendar month;

**Necessary Consents** means all permissions, consents, licences, certificates, building warrants, authorisations and other approvals (including the Planning Permission, Building Warrants, Statutory Road Consents and Local Authority Completion Certificate) and relaxations issued under or as required by Applicable Laws or any other applicable legally binding requirement relating to the Works or Services but excluding any Trust Consents;

**Off-Site Works** means those works to be carried out on the Property including works to the Access Road including:

(a) realignment of the same and the provision of footpaths all as shown on drawing A99071/P.02 rev C prepared by Messrs HLM Architects;

(b) connection of the site drainage to the existing 300mm diameter combined surface and foul water sewer located on Seafield Street, Edinburgh;

(c) installation of a new water main installed from Seafield Street, Edinburgh;

(d) provision of a new low voltage three phase and neutral electricity supply;

(e) provision of a new dedicated telecommunications line from the existing cable located within Seafield Street, Edinburgh;

(f) installation of a new gas supply to be located within the roadway of Seafield Street
outwith the Site boundary. The new gas main shall be connected to a new gas meter housing located on the boundary of the Site. These works consist of exposing part of the existing gas main, effecting a connection and reinstating the existing road and footpath affected by these works;

(g) the disconnection of services within the boiler house;

(h) forming and joining the new car park entrance roadway onto the existing entrance bellmouth;

(i) without prejudice to the terms of Clause 16.8.5 making good to the reasonable satisfaction of the Trust Manager any damage caused by the works listed above and the existing road and footpath affected by these;

(as the Off-Site Works may be revised from time to time subject to prior approval by the Trust);

**Open Market Value**

means the price at which the sale of the Site (including the Facilities) would have been completed unconditionally for cash consideration on the date of valuation (which shall be the date occurring 19 months prior to the natural expiry of the Lease), assuming the sale of the Site (including the Facilities) as a whole and further assuming:-

(a) a willing seller;

(b) that, prior to the date of valuation, there had been a reasonable period (having regard to the nature of the Site (including the Facilities) and the state of the market) for the proper marketing of the interest, for the agreement of the price and terms and for the completion of the sale;

(c) that no account is taken of any additional bid by the Operator acting as a prospective purchaser with a special interest;

(d) that both parties to the transaction had acted knowledgeably, prudently and
without compulsion;

**Open Market Hospital Value** means the price at which the sale of the Site (including the Facilities) would have been completed unconditionally for cash consideration on the date of valuation (which shall be the date of the relevant event of default in terms of Clause 44 or Clause 45), assuming the sale of the Site (including the Facilities) as a whole and further assuming:-

(a) a willing seller;

(b) that, prior to the date of valuation, there had been a reasonable period (having regard to the nature of the Site (including the Facilities) and the state of the market) for the proper marketing of the interest, for the agreement of the price and terms and for the completion of the sale;

(c) that no account is taken of any additional bid by the Operator acting as a prospective purchaser with a special interest;

(d) that both parties to the transaction had acted knowledgeably, prudently and without compulsion; and

that the Site and Facilities are being purchased for use as a care home.

**Operator Party** means the Operator’s agents and contractors (including without limitation the Contractor and the Service Provider) and its or their subcontractors of any tier and its or their directors, officers, employees (including the Facilities Manager) and workmen in relation to the Project and “Operator Parties” shall be construed accordingly;

**Operational Date** means the date on which the Independent Tester issues the Certificate of Availability pursuant to Clause 21.6 of this Agreement;

**Operator Event of Default** has the meaning given in Clause 44;

**Operator's Representations** means the representations and warranties of the Operator set out in this Agreement;
Parties means the Trust and the Operator and “Party” shall be construed accordingly;

Payment Month has the meaning given to it in paragraph 1 of Part B of the Schedule;

Payment Year has the meaning given to it in paragraph 1 of Part B of the Schedule;

Period of Indemnity means the period commencing on the day upon which an Insured Risk occurred and ending on the earlier of (a) the date of completion of any works carried out in accordance with Clause 10 of the Financier Direct Agreement or if the Financier Direct Agreement no longer applies paragraph 5.3 of Part F of the Schedule or (if that Insured Risk was an Uninsurable Risk) the date of completion of works carried out pursuant to Clause 51.11A and (b) fifteen months of the date of the occurrence of a Relevant Incident;

Period for Remedy shall have the meaning ascribed to it in Part H (Performance Monitoring) of the Schedule;

Permitted Encumbrance means (a) any Encumbrance granted or required to be granted in terms of the Finance Agreements; (b) any lien arising solely by operation of law in the ordinary course of business in respect of any obligation which is not overdue for settlement; (c) any Encumbrance granted with the prior written consent of the Trust; and (d) the Lease;

Plan means the demonstrative (but taxative in respect of the Access Road and the Site) plan appended to Part J of the Schedule;

Planned Operational Date means 2 June 2003, as the same may be extended by Delay Events in accordance with Clause 18 (Delay Events);

Planning Application means the application for detailed planning permission in relation to the Site and all modified, additional or substitutional applications (in each case submitted in the form approved by the Trust (such approval not to be unreasonably withheld or delayed));
Planning Authority means the City of Edinburgh Council or its statutory successor(s) having responsibility and local jurisdiction for all aspects of planning or building control and related matters;

Planning Permission means the written decision issued by the City of Edinburgh Council on 29 March 2001 (Application No: 00/02790/FUL) pursuant to the Planning Application together with any plans or documents docketed by the Planning Authority in relation thereto;

Project means the undertaking of the Works and the provision of the Services and Equipment for the Facilities all in accordance with this Agreement;

Project Agreement means this Agreement and the Schedule to this Agreement;

Project Documents means the Project Agreement, the Lease, the Design and Build Contract, the Construction Direct Agreement (Trust), the Collateral Warranties, the Disposition, the Deed of Servitude, the Ranking Agreement, the Services Contract and the Services Direct Agreement (Trust), the Finance Agreements and the Financier Direct Agreement;

Prohibited Person means a person, firm or company who is directly engaged in the production or sale of arms, tobacco, alcohol or pornography;

Property means ALL and WHOLE that piece of ground part of the Estate of Craigentinny lying on the south west of the public road from Leith to Portobello and extending to twelve acres and three quarters of an acre or thereby Imperial Measure in the City, Parish of Edinburgh and County formerly of Edinburgh and now Midlothian which subjects are described in, disposed by and coloured pink on the plan annexed and subscribed as relative to Feu Charter by Sydney Richardson Christie Miller in favour of the Parish Council of the Parish of Leith dated the Second and recorded in the Division of the General Register of Sasines applicable to the County of Edinburgh (now Midlothian) on the Fourth, both days of November Nineteen hundred and one delineated, for illustrative purposes only, in blue on the Plan;
Qualifying Bank has the meaning set out in the Facility Agreement;

Ranking Agreement means the ranking agreement in the Agreed Form among the Operator, the Trust and the Financier to be executed on or before the Operational Date or, following a refinancing, the ranking agreement to be executed by a financier providing finance in connection with the Project pursuant to Clause 55;

Receptionist means such person as may be appointed by the Operator from time to time to carry out the Receptionist Services;

Reception and Administration Services means the Reception and Administration Services detailed in Services Requirements, (Part K of the Schedule) and listed in the Services Table;

Rectification Notice means an Intimation requiring the Operator to remedy a Failure;

Relief Events means any of the events referred to in Clause 50.2 (Force Majeure/Relief Events);

Retained Subjects means the Property under exception of the Site;

Room Data Sheets means the room data sheets forming part of the Core Construction Requirements;

RPI means the General Index of Retail Prices (All Items) published by or on behalf of HM Government;

Schedule means the Schedule to this Agreement;

SEHDME means Scottish Executive Health Department Management Executive and any successor organisation or organisations that may from time to time undertake its roles and responsibilities or any of them;

Service Provider means Robertson Facilities Management Limited (registered number SC185956) having its registered office at 10 Perimeter Road, Pinefield Industrial Estate, Elgin IV30 6AE and their permitted successors as sub-contractors to the Operator in relation to the provision of the Services;
Services means the services including the Reception and Administration Services specified in Part K of the Schedule (Services Requirements) as the same may be amended in accordance with the provisions of this Agreement;

Services Direct Agreement means the agreement in the Agreed Form among the Trust, the Operator and the Service Provider;

Services Contract means any agreement between the Operator and any Service Provider relating to the provision of the Services;

Services Fee means the unitary fee payable (subject to the terms of this Agreement) by the Trust to the Operator pursuant to Clause 8 (Payment Obligations) and Part B of the Schedule (Payment Mechanism) as such Services Fee shall be adjusted in terms of this Agreement;

Services Requirements means the requirements of Part K of the Schedule as such may be amended from time to time in accordance with this Agreement;

Services Table means the table set out in Part K of the Schedule (Services Requirements);

Services Term means the period commencing on the Operational Date and ending on the last day of the Term;

Site means the site at Eastern General Hospital, Edinburgh (which site forms part of the Property) on which the Facilities are to be constructed as such site is delineated in red on the Plan;

Snagging Matters means minor items of outstanding work (including in relation to landscaping) which either individually or, when taken together are such that they would normally be contained in a snagging list under a building contract for a construction project of this size and nature in accordance with Good Industry Practice provided that no such item will impair the Trust's use and enjoyment of the Facilities or the carrying out by the Trust of the Clinical Services, the Hotel Services or the performance of the Services by the Operator;
Statutory Roads Authority means each of the City of Edinburgh Council or its statutory successor(s) having responsibility and local jurisdiction for all aspects of highways and East of Scotland Water Authority or its successor(s) having responsibility for all aspects of sewerage and drainage and related matters;

Statutory Roads Consents means such planning permission or permissions and/or consents as are required for the layout and construction on or outside of the Site of all roads, roundabouts and footpaths required by the Statutory Roads Authority or the Planning Authority or otherwise to form part of the infrastructure of the Site and as are required to allow unrestricted vehicular and pedestrian access to and egress from the Site and the House;

Statutory Requirements means the requirements of or arising or imposed under any Applicable Laws;

Taxes means all present and future taxes, charges, imposts, duties or levies of any kind whatever and whether imposed by a local, municipal, governmental, state, federal, treaty, or other body of authority in the United Kingdom or elsewhere together with any penalties, additions, fines, surcharges or interest and “Tax” and “Taxation” shall be construed accordingly;

Term means, subject to Clauses 44 (Operator Events of Default) and 45 (Trust Events of Default) and Clause 50 (Force Majeure/Relief Events), the period commencing on the Execution Date and ending on the thirtieth anniversary of the Planned Operational Date as such period may be extended, if applicable, in accordance with clause 4.3 (Duration) or if this Agreement is terminated in accordance with its terms, such shorter period as ends on the Termination Date;

Termination Date means the date of termination of this Agreement in accordance with its terms;

Threshold Cost (Electricity) means 4.53 pence (without VAT) Indexed per kilowatt hour of electricity;

Threshold Cost (Gas) means 1.0024 pence (without VAT) Indexed per kilowatt hour of gas;
Title Deeds means those copy writs relating to the Site which are set out in Part L of the Schedule;

Trust Change has the meaning given to it in Part D of the Schedule (Change Procedures);

Trust Consents means the food handling certificate to be obtained by the Trust in relation to the kitchen facilities in the House;

Trust Energy Adjustment means Trust Energy Adjustment (Electricity) plus Trust Energy Adjustment (Gas);

Trust Energy Adjustment (Electricity) means, for any period, the amount calculated by multiplying the Differential Cost (Electricity) (if any) by the lower of (a) kWh of electricity used at the Facilities and (b) the Base Energy Consumption (Electricity);

Trust Energy Adjustment (Gas) means, for any period, the amount calculated by multiplying the Differential Cost (Gas) (if any) by the lower of (a) kWh of gas used at the Facilities and (b) the Base Energy Consumption (Gas);

Trust Equipment means the equipment and items which the Trust is to provide at the Facilities and any and all replacements of such equipment and any other equipment and items supplied, from time to time, to the House by the Trust (but excluding equipment provided by the Trust pursuant to the exercise of its rights under Clause 46A);

Trust Manager means such person or persons as may be appointed by the Trust from time to time to represent the Trust in accordance with Clause 40;

Trust Party means any of the Trust's agents, contractors and sub-contractors of any tier and its or their directors, officers and employees, and/or other healthcare providers at the Facilities with the authority of the Trust but excluding the Operator, any Operator Party and statutory undertakers and utilities and “Trust Parties” shall be construed accordingly;

Trust Standard Security means the standard security in respect of the Site in the Agreed Form to be executed by the Operator in favour of the Trust;
Trust's Auditor means KPMG or such other registered auditor of the Trust from time to time;

Trust's Representations means the representations and warranties by the Trust in this Agreement;

User Group means the group described as such established and maintained by the Parties and the Service Provider pursuant to Clause 42;

VAT means Value Added Tax as provided for in the Value Added Tax Act 1994 or any Applicable Laws amending the same and any similar sales, consumption or turnover tax replacing or introduced in addition to or substitution for the above;

Working Hours means between the hours of 0800 and 1600 Monday to Friday;

Works means the works required in accordance with the Construction Implementation Requirements for the design, construction, fitting out, testing and commissioning of the Facilities (including the supply, installation and commissioning of any plant and equipment (including the Equipment)), the design and construction of the access road (including any footpaths) within the Site and the car park and all landscaped areas within the Site and the Off Site Works to be carried out by or at the direction of the Operator in accordance with and subject to the terms of this Agreement;

Works Packages means a group of work tasks that grouped together are associated with a specific trade or sectional part of the Works, all as particularly referred to as “Works Packages” in Appendix 2 of the Construction Implementation Requirements.

1.2 Interpretation

In interpreting this Agreement, unless otherwise specified or the context otherwise requires:

1.2.1 the Schedule to this Agreement is an integral part of this Agreement and any reference to this Agreement includes a reference to the Schedule;

1.2.2 references to Clauses, Schedules, Recitals and Annexures are to
Clauses of and Schedules, Recitals and Annexures to this Agreement;

1.2.3 any reference to a statutory provision includes a reference to all amendments and modifications relating to that provision and any subsequent legislation made from time to time under it (and in each case whether before or after the entering into of the Project Documents, subject always to the potential adjustment of the Services Fee pursuant to the Change Procedure);

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

1.2.5 references to a *“person”* include any individual firm unincorporated association or body corporate including any governmental body or authority;

1.2.6 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 which has taken over the functions or responsibilities of that public organisation including, without limitation, under or pursuant to the Scotland Act 1998;

1.2.7 headings and indices are inserted for convenience only and shall be ignored for the purpose of construing this Agreement;

1.2.8 general words introduced by the word “other” shall not be given a restrictive meaning because they are preceded by words indicating a particular class of acts, matters or things or because they are followed by particular examples intended to be embraced by general words;

1.2.9 any references to an agreement or other document includes (subject to all relevant approvals) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned;

1.2.10 reference to a *“subsidiary” or “holding company”* shall be construed according to Section 736 of the Companies Act 1985 and to a *“subsidiary undertaking”* shall be construed according to Section 258 of that Act;

1.2.11 in the case of any ambiguity, inconsistency or conflict, the provisions in the main body of the Agreement shall (unless expressly stated in writing to the contrary) take priority over the provisions of any part of the Schedule;

1.2.12 if a change in the currency of the United Kingdom occurs, this Agreement shall be amended as necessary to reflect the change in currency and put both parties in the same position, so far as possible, that they would have been in if no change in currency had occurred. In the event of dispute, the amendments to this Agreement which are necessary to reflect the above, shall be determined in accordance with the Dispute Resolution Procedure; and
1.2.13 unless otherwise provided, any notice, instruction, certificate, consent, approval, determination, agreement or waiver which requires to be issued, made or given in terms of this Agreement shall require to be issued, made or given in writing, and the words “notify”, “instruct”, “certify”, “consent”, “approve”, “determine”, “agree” or “waive”, or derivations therefrom, shall be construed accordingly.

PART 2 - APPOINTMENT

2. Appointment of the Operator

2.1 The Trust, (a) relying on the Operator’s Representations, (b) in consideration of the obligations and duties assumed by the Operator under the Project Documents, and (c) on and subject to the terms and conditions of the Project Documents, appoints the Operator exclusively (subject to the terms of the Project Documents) to undertake and complete the Works, to provide maintain, repair, renew and replace the Equipment, maintain, repair and renew the Facilities and to provide the Services throughout the Term (but in all cases subject to the lawful exercise of any termination rights set out or referred to in this Agreement).

2.2 The Operator (a) relying on the Trust’s Representations, (b) in consideration of the obligations and duties assumed by the Trust under the Project Documents to which it is a party, and (c) on and subject to the terms and conditions of the Project Documents to which it is a party, accepts the appointment made under Clause 2.1.

3. Conditions

3.1 Conditions Precedent

This Agreement, with the exception of Clause 2 (Appointment of Operator), the obligations in Clause 3.2, the warranties in Clause 5 (Warranties), Clause 58 (Confidentiality), Clause 60 (Notices), Clause 61 (Law and Jurisdiction), and Clause 64 (General), shall not come into effect until:

3.1.1 the parties to them execute in self proving form and deliver:

(a) this Agreement;
(b) the Design and Build Contract;
(c) the Services Contract;
(d) the Finance Agreements;
(e) the Collateral Warranties;
(f) the Appointments;

(g) the Services Direct Agreement;

(h) the Construction Direct Agreement

(i) the Financier Direct Agreement;

(j) the Independent Tester Appointment;

(k) the Broker’s Letter of Undertaking

and a copy of each of the above documents to which the Trust is not a party, together with the Financial Model, has been delivered to the Trust duly certified as a true, complete and up-to-date copy;

3.1.1A the Lease, Disposition, Deed of Servitude, the Ranking Agreement and the Trust Standard Security are in Agreed Form;

3.1.2 the Trust has received evidence satisfactory to it:

(a) that all initial conditions precedent to the availability of debt for the Operator under the Finance Agreements have been fulfilled (or waived by the Financier), other than any that will be fulfilled by the execution of the Project Documents by the Trust; and

(b) of the name of the beneficial owner(s) of the shares in the Operator and HoldCo and that the relevant owners have subscribed for, and been issued, such shares;

3.1.3 the Operator has delivered to the Trust, in form and substance reasonably acceptable to the Trust:

(a) a certified copy of the minutes of a meeting of its board of directors and HoldCo’s board of directors, authorising the Operator and HoldCo respectively to undertake the Project and to execute and deliver the Project Documents to which it and HoldCo, respectively, is a party, and approving the documents required to be in the Agreed Form; and

(b) certified copies of the Operator’s certificate of incorporation and memorandum and articles of association, and certified copies of the HoldCo’s certificate of incorporation and memorandum and articles of association; and

3.1.4 the Trust has delivered to the Operator, in a form and substance reasonably acceptable to the Operator (a) a certified copy of a minute of approval of the Trust, authorising the Trust to undertake the Project and to execute and deliver the Project Documents to which it is a party, and approving the documents required to be in Agreed Form (b) a Certificate issued under the National Health Service
(Private Finance) Act 1997 in the Agreed Form (c) evidence of the appointment of the signatories on behalf of the Trust of the Project Documents to which the Trust is a party (d) certified copies of the standing orders and standing financial instructions of the Trust;

3.1.5 The Trust has paid to the Operator the sum of £5000 in respect of its contribution towards the maintenance of the Site’s boundary walls.

3.2 **Fulfilment of Conditions Precedent**

Each Party shall use all reasonable endeavours to procure that the conditions set out in Clause 3.1 for which it is responsible are satisfied as soon as possible on or after the Execution Date. If any of those conditions are not satisfied or waived within 60 days of the Execution Date the Project Documents shall cease to have effect from that date, and neither Party shall have any liability to the other under the Project Documents.

3.3 **Waiver of Conditions**

Any of the conditions set out in Clause 3.1 may be waived by either Party with the consent of the other in writing making express reference to the relevant condition. Any waiver shall take effect from the date on which it is given.

4. **Duration**

4.1 This Agreement shall, subject to Clause 3.1 (**Conditions Precedent**), commence on the Execution Date and shall subsist until the last day of the Term, subject to the lawful exercise of any termination rights set out or referred to in this Agreement. Any provisions which are expressed in this Agreement to continue after the Term shall so continue.

4.2 The Term shall be extended as provided in Clause 4.3.

4.3 The Trust may, not later than two years prior to the Expiry of the Term, intimate to the Operator that it wishes to negotiate with the Operator an extension of not less than 1 year of the Term and the Trust and the Operator will, in good faith, negotiate the terms and conditions on which the Term may be extended. If the Trust and the Operator fail to unconditionally agree such terms and conditions the provisions of Clause 49 (**Options**) shall have effect.

5. **Warranties**

5.1 **Operator Warranties**

The Operator warrants and undertakes to the Trust (which warranties and undertakings will be deemed to be repeated on Financial Close) that:

5.1.1 each the Operator and HoldCo:

(a) is validly incorporated;
(b) has the power and capacity to execute the Project Documents, and perform its obligations and exercise its rights under them; and

(c) has not traded at any time since its incorporation;

5.1.2 except for liabilities that have arisen from the Operator and HoldCo, respectively, preparing to enter and/or entering into the Project Documents, the Operator and HoldCo, respectively, have no material obligations;

5.1.3 the information on the Operator and HoldCo in Part A of the Schedule is true and accurate and no offer or other arrangement is outstanding at the Execution Date by which (a) any person is at the Execution Date or at any time thereafter, entitled to or obliged to subscribe for or take any interest in any share capital in the Operator or HoldCo, (b) any alteration to the constitution of the board of directors of the Operator and/or HoldCo may take effect;

5.1.4 the certified copies of the memorandum of association and articles of association of the Operator and HoldCo delivered to the Trust under Clause 3.1.3 are true and accurate and that no proposals are outstanding to amend those documents;

5.1.5 the Operator is entitled to grant the licence specified in Clause 43 (Intellectual Property);

5.1.6 the Operator will not by entering into or performing its obligations or exercising its rights under the Project Documents, be in breach of or cause to be breached any restriction (whether arising in contract or otherwise) binding on the Operator or any of its assets or undertakings;

5.1.7 none of the authorised share capital (issued or unissued) of the Operator is subject to any Encumbrance (save in accordance with the Finance Agreements);

5.1.8 the Operator has no subsidiaries or subsidiary undertakings;

5.1.9 the design of the Works will, in all material respects, comply with the Core Construction Requirements; and

5.1.10 the Works will comply with and satisfy the Core Construction Requirements.

5.2 Trust Warranties

The Trust warrants and undertakes to the Operator (which warranties will be deemed to be repeated on Financial Close) that:-
5.2.1 the Trust is incorporated as the Lothian Primary Care National Health Service Trust under the Act and is existing under the laws of Scotland;

5.2.2 the Trust has full power and authority to enter into, and to fulfil its obligations under, this Agreement and the Project Documents (to which it is a party);

5.2.3 the Project Documents to which it is a party constitute legal, valid and binding obligations and, subject to any necessary stamping and registration, are enforceable against the Trust in accordance with their terms;

5.2.4 the Trust has taken all necessary action to authorise the execution, delivery and performance of the Project Documents (to which it is a party) in accordance with their terms; and

5.2.5 the Trust is not engaged in any litigation or arbitration proceedings, as pursuer or defender and, so far as the Trust is aware, having made reasonable enquiries, there are no such proceedings pending or threatened either by or against the Trust, nor are there any circumstances which, in the reasonable opinion of the Trust, will give rise to any such proceedings, in all cases which:-

(a) in any way questions its power or authority to enter into or perform its obligations under the Project Documents (to which it is a party) or

(b) would have a material adverse effect on its ability to perform its obligations under the Project Documents (to which it is a party)

6. Funding Arrangements

6.1 All financial obligations arising in the performance of the Operator's obligations under this Agreement and the other Project Documents shall be the sole responsibility of the Operator, except as expressly stated to the contrary in any of the Project Documents.

6.2 Except where expressly authorised in writing by the Trust or by the terms of this Agreement, the Operator shall not hold itself out as the agent of the Trust and shall have no power to bind the Trust, pledge the credit of the Trust or otherwise have any dealings on behalf of the Trust.

6.3 The Operator will not:

6.3.1 create or have outstanding any Encumbrance on the whole or any part of its undertaking or assets, present or future to secure any present or future obligations of the Operator or of any other person and which adversely affects the Operator's ability to perform its obligations under this Agreement or the Project Documents other than:-
(a) liens arising by operation of law, which shall be released by the Operator promptly;

(b) under or pursuant to the Finance Agreement; or

(c) Encumbrances arising in the ordinary course of business;

6.3.2 subject to the provisions of Clause 55 (Refinancing) incur any indebtedness (of any kind), other than its obligations under the Finance Agreements and any other Project Document or assume or guarantee any indebtedness (of any kind) of any other person.

6.4 The Operator will advise the Trust forthwith of any breaches of the Finance Agreements which may lead to accelerated payment or enforcement action thereunder and the action being taken to remedy same.

7. **Transfer of Shares**

7.1 Without prejudice to Clauses 44 (Operator Events of Default) or 45 (Trust Events of Default), the Operator shall procure that before the Operational Date no interest in any shares in the Operator or any shares in HoldCo shall be transferred by any person without the prior written consent of the Trust (which consent shall not be unreasonably withheld).

7.2 The Operator shall provide the Trust with such information on the identity of the proposed transferee, the nature of its business activities and its financial status as the Trust may reasonably require.

7.3 No Change in Control (at any time) in any or all of the shares of the Operator (or HoldCo) shall be permitted without the prior written approval of the Trust where the person acquiring control is a Prohibited Person.

7.4 A breach of Clause 7.3 shall constitute a material breach.
PART 3 - PAYMENT AND GENERAL OBLIGATIONS

8. Payment Obligations

8.1 In consideration of the provision of the Services by or on behalf of the Operator in accordance with the terms of this Agreement the Trust shall, as and from the Operational Date, pay the Operator the Net Monthly Services Payment, calculated in accordance with Part B of the Schedule (Payment Mechanism).

8.2 The Net Monthly Services Payment in respect of any Payment Month shall, in exchange for a valid VAT invoice be paid within 5 Business Days (or if such day is not a Business Day, on the next following Business Day) by BACS transfer (or any equivalent replacement) of the later of:

(a) the last day of the Payment Month to which the Net Monthly Services Payment relates; and

(b) the date of delivery by the Operator to the Trust of a Calculation Schedule in respect of the previous Payment Month.

8.3 If the Trust, acting in good faith, disputes any part of a VAT invoice submitted under Clause 8.2, then the Trust will provide prior to the due date for payment of such invoice written notice of such disputed amount (with reasons for such amount being disputed) and the undisputed amount shall be paid when due in accordance with Clause 8.2 and the disputed amount shall be paid, together with interest (at the Interest Rate) from the date on which such payment has been due to the actual payment within 10 Business Days of the date on which the Parties agree or it is determined under the Dispute Resolution Procedure that the same is payable.

8.3A Unless expressly stated herein to the contrary, each party shall be entitled, without prejudice to any other right or remedies, to receive interest on any payment not duly made pursuant to the terms of this Agreement on the due date calculated from day to day at a rate per annum equal to the Interest Rate from the day after the date on which payment was due up to and including the date of payment.

8.4 All payments under this Agreement shall be exclusive of any VAT properly chargeable thereon. The Parties shall, on demand and against the delivery by the other Party of a valid VAT invoice, pay the other VAT at the rate then properly chargeable.

8.5 The Trust shall be solely responsible for paying the rates (if any) relating to the Facilities and all bills relating to all water and sewerage usage at the Facilities.

8.6 Without prejudice to paragraph 2.13 of Schedule Part B, the Operator shall (using reasonable endeavours to pay in sufficient time to take advantage of all
early settlement discounts) pay to the relevant suppliers all charges for gas and electricity in respect of the Facilities. The Operator shall also be responsible for paying the standing charges for the telephone lines serving the Facilities which it is required to install in accordance with the Construction Implementation Requirements and the costs of all telephone calls made on those telephone lines by persons engaged by the Operator or any Operator Party in the provision of the Services.

8.6A Subject to Clause 8.6C, the Operator shall provide, in sufficient time, a declaration form in a format approved by Customs & Excise (or their successors) to each of the suppliers who are about to supply gas and electricity to the Facilities stating that the use of such supplies qualifies as a qualifying use and that a reduced rate of VAT and an exemption from climate change levy shall therefore apply to all such supplies.

8.6B Subject to Clause 8.6C, in the event that the Operator does not comply with its obligations under Clause 8.6A above, the Trust shall only be liable for VAT and climate change levy payments to the extent it would have been liable if the Operator had fully complied with such obligations.

8.6C Clauses 8.6A and 8.6B shall only apply if and to the extent that the Facilities qualify for a reduced rate of VAT as described in Clause 8.6A.

8.7 The Operator shall generally observe and perform, at the expense of the Operator, all present and future regulations and requirements of all such relevant local or other competent authorities and of the gas, electricity, telecommunication, water and other utility providers.

8.8 If the Operator fails to pay timeously or if the payments to be made pursuant to Clause 8.6 are otherwise in default, then in the event of such default continuing for a period of 10 Business Days following the giving of notice by the Trust to the Operator requiring the same to be remedied, the Trust may make such payments and the Operator shall reimburse the Trust on demand.

8.9 If the Trust claims that the Operator owes the Trust any sum of money under this Agreement (or if the Operator disputes such claim, when it is determined under the Dispute Resolution Procedure that such sum or some other sum is payable by the Operator to the Trust), the Trust shall be entitled to deduct the sum that is claimed by the Trust or determined by the Dispute Resolution Procedure to be payable to the Trust from any payment due by the Trust to the Operator under this Agreement.

8.10 If the Operator claims that the Trust owes the Operator any sum of money under this Agreement (or if the Trust disputes such claim, when it is determined by the Dispute Resolution Procedure that such sum or some other sum is payable by the Trust to the Operator), the Operator shall be entitled to deduct the sum that is claimed by the Operator or determined by the Dispute Resolution Procedure to be payable to the Operator, from any payment due by the Operator to the Trust under this Agreement.
8.11 If, following a Change in Law, HM Customs & Excise (or any other relevant taxation authority) determines that supplies to be made to the Trust by the Operator pursuant to this Agreement are such that VAT attributable to such supplies should not be recoverable by the Operator, the Trust and Operator shall co-operate, as far as is practicable, to ensure that the Operator is left in no better and no worse a position than it would have been had such determination not been made and its supplies were taxable (including but not limited to making such amendments to the Agreement as the Operator and the Trust shall agree acting reasonably and to adjustments to the Services Fee).

8A European Economic and Monetary Union

8A.1 If as a result of the implementation of European economic and monetary union (“Monetary Union”):-

8A.1.1 sterling ceases to be lawful currency of the United Kingdom and is replaced by euro; or

8A.1.2 sterling and the euro are at the same time recognised by the Bank of England as the lawful currency of the United Kingdom, and the Trust so requires

then reference in the Project Documents to sterling shall be construed as reference to the euro translated at the Exchange Rate (as hereinafter defined).

8A.2 For the purposes of this Clause 8, “Exchange Rate” means the rate of exchange recognised by the European Central Bank for the conversion of sterling into the euro for the purposes of implementation of Monetary Union.

8A.3 If, following the implementation of Monetary Union in the United Kingdom, or any part thereof, the Trust and the Operator agree, the Project Documents will be amended to the extent the Trust and the Operator agree to be necessary to reflect the implementation of Monetary Union and to put the parties in the same position, so far as possible, as they would have then had Monetary Union not occurred. Both parties shall act reasonably with regard to the implementation of this Clause 8A.3.

9. Indexation/Increase in Services Fee

9.1 The Services Fee to be payable with effect from the Operational Date is, subject to any adjustment in accordance with the terms of this Agreement, the amount as shown in Part N of the Schedule. Such Services Fee shall, in respect of the first and last Payment Years, be prorated according to the number of days in the first and the last Payment Years.

9.2 The Services Fee shall be increased as follows:-

9.2.1 at the commencement of each Payment Year the Services Fee for that Payment Year as shown in Part N of the Schedule (such Part N of the Schedule shall be amended to reflect the changes to the Financial Model from time to time pursuant to the Change Procedure or any
Relevant Refinancing Arrangements) shall be multiplied by:–

\[
1 + \left( \frac{(\text{RPI}_z - \text{RPI}_p)}{\text{RPI}_p} \right)
\]

where:

in the case of the first Payment Year “\(\text{RPI}_z\)” is the value of RPI for the month 2 months before the Operational Date;

and in the case of each subsequent Payment Year

“\(\text{RPI}\)” is the value of RPI for the month of February in the preceding Payment Year;

“\(\text{RPI}_p\)” is the value of RPI for the month of September 2000, being 171.7

9.2A.1 The Operator will calculate the increase in the Services Fee in accordance with clause 9.2 and the Operator will notify the same to the Trust. If the Trust disputes the calculation, and the parties cannot agree such calculation, then the calculation shall be referred to the Adjudicator under the Dispute Resolution Procedure.

9.2A.2 If, during any period relevant to the adjustment of sums payable under this Agreement by reference to RPI, the basis of computation of RPI has changed, any published official reconciliation between the two bases of computation shall be binding on the parties. In the absence of any such official reconciliation, adjustments shall be applied to the latest RPI figure to make it as nearly as practicable fairly comparable with the figure with which it is being compared.

9.2A.3 If RPI ceases to be published, or is not published in any period relevant to the application of any formula set out in this Agreement, such alternative index which the parties agree produces as nearly as possible the same result shall be substituted therefor until RPI shall again be published (if at all).

9.2A.4 If the reference date used in the computation of RPI shall change, the figure taken to be shown shall be the figure which would have been shown in RPI if the original reference date had been retained.

9.2A.5 If it becomes impossible for any reason whatever to calculate the amounts by
which the sums payable hereunder should be adjusted by reference to RPI or any alternatives thereto, the parties shall agree such alternative method of adjustments as a basis for the making of subsequent payment under this Agreement as most closely reflects the intent of RPI.

9.2A.6 If the parties have not reached agreement within 30 Business Days of the occurrence of any circumstance or event referred to in Clauses 9.2A.2, 9.2A.3, 9.2A.4 or 9.2A.5 either party may refer the dispute for determination by an Adjudicator under the Dispute Resolution Procedure.

9.2A.7 Pending agreement by the parties or the decision of the Adjudicator, accounts and invoices in respect of payments due hereunder shall be prepared and submitted on the basis of the last figure available for RPI and such accounts shall be deemed to be in respect of amounts properly payable for the purposes of this Agreement.

9.2A.8 If the Adjudicator so determines, RPI shall be adjusted or replaced by a substitute index or by such other provisions providing for the adjustment of payments under this Agreement, as the Adjudicator may determine. Upon the parties reaching agreement or the decision of the Adjudicator as to an appropriate alternative index or adjusted RPI or other adjusted mechanism, the necessary payments and repayments (together with interest thereon at the rate specified in Clause 9.2A.7) shall be made between the parties in order to give effect to the agreement or decision of the Adjudicator with effect from the date on which it is so agreed or determined that the circumstances or event giving rise to the procedures under this Clause 9.2A occurred, but taking account of payments made pursuant to Clause 9.2A.7.

9.3 Any dispute regarding any increase in the Services Fee shall be referred to the Dispute Resolution Procedure.

10. **Trust's General Obligations**

10.1 During the Term, the Trust shall (and, where applicable, shall ensure that any sub-contractors engaged by it other than the Operator or any Operator Party shall) :-

(a) act in accordance with Good Industry Practice and all Applicable Laws applicable to it in the carrying out of its obligations under this Agreement;

(b) inform the Operator promptly after the Trust becomes aware of any likely change to the status of the Trust;

(c) ensure that it or its employees do not (other than pursuant to an entitlement in terms of this Agreement) wilfully or negligently obstruct the Operator or its Service Providers in the performance of its or their obligations under this Agreement; and

(d) inform the Operator promptly if at any time the Trust becomes unable to meet any of its financial obligations under this Agreement and keep the Operator fully informed as to the action being taken to remedy the
10A  **Trust Responsibility**

10A.1 The Trust acknowledges that, as between the Operator and the Trust, it will be responsible under this Agreement for the acts and omissions (whether negligent or not) of:-

10A.1.1 all Trust Parties; and

10A.1.2 the Trust Manager

to the same extent to which the Trust would be responsible under the terms of this Agreement as if they were its own acts or omissions. To avoid doubt, the Operator and not the Trust shall be responsible for the acts and omissions (whether negligent or not) of the patients and their visitors at the Facilities.

11. **Operator's General Obligations**

11.1 The Operator shall (and, where applicable, shall ensure that each Operator Party shall):

11.1.1 comply at all times with all Applicable Laws and (as provided to it from time to time by the Trust) Industry Standards which are

(a) specifically applicable to the Works and the provision of the Services; and

(b) which relate or apply to the Site and/or the Facilities;

11.1.2 perform its obligations under this Agreement in accordance with Good Industry Practice, Applicable Law and the Necessary Consents;

11.1.3 comply at all times with Industry Standards (including, for the avoidance of doubt, any amendment or modification to any Industry Standards or introduction of new Industry Standards pursuant to an Industry Standards Change);

11.1.4 use all reasonable endeavours to ensure that the Trust is kept fully aware at all times of all material matters affecting, or which may affect, in any material way, the Works, or the performance of the Services and the actions which the Operator proposes to take to mitigate the effect of any such matter;

11.1.5 forthwith notify the Trust of any claim brought against the Operator arising out of or relating to the Project;

11.1.6 be solely responsible for securing the grant and all subsequent renewals, extensions and modifications of any permits, licences, consents and authorisations (including but not limited to, Necessary Consents) necessary to carry out the Project and perform the Services (save that the Operator shall not be responsible for the Trust
11.1.7 ensure that it performs its obligations under the Project Documents in a manner that complies with all current and relevant permits, licences and authorisations.

11.2 The Operator shall not, during the Term:

11.2.1 engage in any business, other than entering into the Project Documents, and the performance of its obligations and any related and consequential transactions thereunder;

11.2.2 form or acquire any subsidiary or subsidiary undertaking;

11.2.3 consolidate or merge with or into any other entity or convey or transfer any material part of its undertaking or assets, either individually or substantially as an entirety, to any person;

11.2.4 acquire any business or undertaking or sell or dispose of its business or undertaking or a substantial part thereof;

11.2.5 amend its memorandum and articles of association to permit the Operator no longer to be a single purpose vehicle; or

11.2.6 increase its authorised or issued share capital or issue or grant any interest in respect of any of the shares comprised in its share capital to any Prohibited Person who is not one of its shareholders as at the Execution Date or enter into any agreement, arrangement in each case without the Trust’s prior written consent (not to be unreasonably withheld or delayed). The restrictions in this Clause 11.2 shall apply, making any necessary changes, to any subsidiary or subsidiary undertaking of the Operator.

12. Insurances

The Operator shall procure that Insurances satisfying the Insured Risks are effected and maintained in accordance with the requirements of Part F of the Schedule and the Operator shall comply with its obligations as set out in Part F of the Schedule.

13 Operator Responsibility

The Operator shall not be relieved from or excused of any responsibility, liability or obligation under this Agreement by the appointment of any Operator Party. The Operator shall, as between itself and the Trust, be responsible for the performance, acts, defaults, omissions, breaches and negligence of all Operator Parties. All references in this Agreement to any act, default, omission, breach or negligence of the Operator shall be construed accordingly to include any such act, default, omission, breach or negligence of an Operator Party.
PART 4 - THE WORKS

14A The Design and Construction Process

14A.1 Subject to Clause 16.1 the Operator shall carry out the design, construction, fitting out, testing and commissioning of the Facilities (including the supply, installation and commissioning of any plant and equipment), the design and construction of the access road (including any footpaths), the car park and all landscaped areas within the Site and the Off Site Works:

14A.1.1 so as to procure satisfaction of the Core Construction Requirements;

14A.1.2 in accordance with the Construction Implementation Requirements; and

14A.1.3 in accordance with the terms of this Agreement.

To avoid doubt but subject to Clause 16.1, the obligations in Clauses 14A.1.1, 14A.1.2 and 14A.1.3 are independent obligations. In particular:

(a) the fact that the Operator has complied with the Construction Implementation Requirements shall not be a defence to an allegation that the Operator has not satisfied the Core Construction Requirements; and

(b) the fact that the Operator has satisfied the Core Construction Requirements shall not be a defence to an allegation that the Operator has failed to comply with the Construction Implementation Requirements.

14B Design and Construction Responsibility

14B.1 The Operator undertakes that it has used, and will continue to use, the degree of skill and care in the design and construction of the Facilities that would reasonably be expected of a competent professional designer and/or building contractor experienced in carrying out design and/or construction activities of a similar nature, scope and complexity to those comprised in the Works.

14C NHS Construction Projects - Corporate Identity and Signage

14C.1 The Parties acknowledge that the Trust may, from time to time, be required to procure the erection of hoarding, site boards, plaques and/or other signage in connection with the Project:
14C.1.1 When requested by the Trust acting reasonably, the Operator shall procure the erection and maintenance of such hoarding, site boards, plaques and/or other signage as the Trust may require.

14C.1.2 The size, design, information disclosed, position and materials used in connection with such hoarding, site boards, plaques and/or other signage shall be approved by the Trust, such approval not to be unreasonably withheld.

14C.1.3 For the purposes of this Clause 14C, the Trust shall be deemed to be acting reasonably where any proposals made by it and/or any approvals exercised by it conform with any relevant guidance issued to NHS Trusts by the Scottish Executive (or any successor department) in relation to such matters whether by Health Service Circular or otherwise.

14C.1.4 For the avoidance of doubt any instructions or requests issued to or received by the Operator, under this clause after the Execution Date shall be deemed to be a Trust Change.

14D Trust Design Approval

14D.1 The Trust confirms to the Operator that from a review of the Construction Implementation Requirements by the Trust it appears that the Construction Implementation Requirements meet the Core Construction Requirements subject to such review and confirmation not in any way or to any extent:-

14D.1.1 relieving the Operator from its obligations to provide the Services or in connection with any obligations or liabilities of the Operator in connection with any failures in respect of the Services;

14D.1.2 prejudicing the Trust or diminishing the exercise of any right or remedy available to the Trust in terms of the Project Agreement in connection with the Services;

14D.1.3 extending to matters which the Trust and its technical advisers exercising their respective skills and experience would not have been able to discover from the face of the Construction Implementation Requirements or ought reasonably to have inferred, using their respective skills and experience;

14D.1.4 extending to (a) the planning consent drawings, (b) financial information, (c) site, geo-technical, topographical, ground condition, building condition reports, investigations or survey or any drawings relative thereto, (d) construction and services methodology and details e.g. levels, thickness of elements of the building works or loadings etc; and

14D.1.5 relieving the Operator from its obligations to complete the Works to meet the performance standards set out in the Core Construction Requirements;
14D.1.6 confirming or approving that specific products, materials, suppliers or sub-contractors used or to be used by or on behalf of the Operator will enable the Works to meet the Core Construction Requirements;

14D.1.7 relieving the Operator in respect of liabilities or obligations in connection with any latent and/or inherent defects within or of the Works irrespective of when same materialise and whether as a result of the design, specification, construction or supervision of the Works.

14D.2 The Operator shall develop and finalise the design and specification of the Works and the Trust shall review the Works Packages in accordance with Schedule Part G of the Schedule (Design Development Procedure) and the provisions of this Clause:

14D.2.1 The Operator shall submit the Works Packages and the design of any variations developed in accordance with the procedure set out in Part D of the Schedule (Change Mechanism) to the Trust’s Representative for review under Part G of the Schedule (Design Development Procedure). The Operator shall not commence or permit the commencement of construction of the part or parts of the Facilities to which such Works Packages relate until it has submitted the appropriate Works Packages and is entitled to proceed with the Works Package in accordance with Part G of the Schedule.

14D.2.2 The Operator shall allow the Trust’s Representative, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the Trust’s Representative as soon as practicable following receipt of any written request from the Trust’s Representative.

14E Clinical Functionality

Subject to the provisions of Clause 14D the Trust confirms that, as at the Execution Date, it has reviewed the drawings referred to in the definition of “Clinical Functionality” which drawings form part of the Construction Implementation Requirements and that such drawings satisfy the Trust’s requirements in respect of Clinical Functionality, so far as can reasonably be determined given the level of detail set out on those drawings.

14. Planning

14.1 The Operator shall, at its own cost, apply for or otherwise seek, and shall obtain, the detailed planning permission in relation to the Facilities and any other Necessary Consent which is required for the Works to be carried out pursuant to the Construction Implementation Requirements and shall implement the same in accordance with their terms. The Trust shall apply for or otherwise seek and obtain the Trust Consent and shall implement the same
in accordance with its terms.

14.2 To the extent not purified before the Execution Date, the Operator shall provide the Trust with such information regarding the progress of the purification of any conditions attached to the Planning Permission as the Trust shall reasonably require. The Operator shall use all reasonable endeavours to ensure that such conditions are purified within such timescales as are requisite to enable the Works to be carried out in compliance with this Agreement and completed by the Planned Operational Date.

14.3 The submission of any information regarding the Planning Permission and any other Necessary Consents to the Trust and any comments by it thereon shall in no way relieve the Operator of any of its obligations under this Agreement.

15. Licence to Enter

15.1 Subject to Clause 15.2, the Trust hereby grants to the Operator, the Contractor and the Consultants and their agents and employees with or without vehicles, plant and equipment, the exclusive right subject to Clauses 15.2 and 15.3, until the date when the Operator acquires heritable title to the Site in accordance with Clause 22 of this Agreement or, if earlier, the Termination Date, to occupy every part of the Site to enable the Operator to discharge its obligations under this Agreement. The date upon which the Operator acquires the heritable title to the Site in accordance with the provisions for the sale of the Site at Clause 22 hereof shall be the date when the interest of the Operator as licensee shall merge into the interest of the Operator as heritable proprietor. The Operator will (and will procure that all Operator Parties will) exercise the foregoing rights in such manner as to cause as little nuisance, damage and disturbance as practicable (having due regard to the nature of the Works and the Operator's duties and obligations under this Agreement) and shall make good any damage to the Site (and for this purpose Works carried out by the Operator properly carrying out its obligations in respect of the Works shall not be deemed to be damage) and the Operator shall, on demand, indemnify the Trust in respect of all claims and demands made against it arising from the Operator's negligence or default in relation to its exercise of the foregoing rights.

15.2 The Operator acknowledges that the Trust and the Trust Parties will be entitled to unrestricted access to the Site during Working Hours (subject to the Trust and Trust Parties complying with all health and safety regulations) and having been given at least 24 hours verbal advance notice by the Trust to the Operator (unless in case of an emergency) and for the purpose of monitoring (but not for the purpose of requesting to open up) the progress of the Works and (in the two months prior to the anticipated Operational Date) for the purpose of installing Trust Equipment and of staff training and familiarisation and other purposes considered reasonably appropriate or necessary by the Trust. The Trust will procure that when exercising its rights under this clause that all its staff, agents and invitees comply with the reasonable requirements of the Operator in relation to health and safety on the Site and do not interfere with or impede the Operator and/or the Contractor and/or the Consultants in carrying out the Works. The Trust shall on demand make good any damage to
the Site or the Works or any property of the Operator, the Contractor and the Consultants and their agents and employees and sub-contractors of any tier caused by the exercise of the rights set out in this Clause 15.2.

15.3 Subject to complying with his obligations under Clause 15.4 the Trust Manager shall have the right at any time (having given at least 24 hours verbal advance notice) prior to the anticipated Operational Date to request the Operator to open up and inspect any part or parts of the Works where the Trust Manager reasonably believes that such part or parts of the Works is or are defective (in this context meaning not compliant with this Agreement) and the Operator shall comply with such request.

15.4 Prior to exercising his right pursuant to Clause 15.3 above, the Trust Manager shall notify the Operator of his intention to exercise such right, setting out detailed reasons.

15.5 If following the exercise of the Trust Manager of his right pursuant to Clause 15.3, the inspection shows that the relevant part or parts of the Works are not defective, any delay caused to the Works by the exercise of such rights shall, subject to (and in accordance with) the provisions of Clause 18 (Delay Events) be treated as a Compensation Event.

15.6 If following the exercise by the Trust Manager of his right pursuant to Clause 15.3, the inspection shows that the relevant part or parts of the Works is or are defective, the Operator shall rectify and make good such defect(s) and any consequence of such rectification and/or making good defect(s) shall be carried out by the Operator at no cost to the Trust and the Operator shall not be entitled to any extension of time in relation to such rectifications and making good of the Works.

15.7 If, following the exercise by the Trust Manager of his right pursuant to Clause 15.3, the Trust Manager is of the opinion that the inspection shows that the relevant part or parts of the Works is or are defective and the Operator does not agree with such opinion, the matter shall be determined in accordance with Part E of the Schedule (Dispute Resolution).

15.8 Subject to clause 15.9, the Trust grants to the Operator, the Contractor, the Consultants and their agents and employees the right to enter:-

15.8.1 the Retained Subjects to the extent required to demolish the joiners shop lying partly within the Retained Subjects and shown coloured black on the Plan; and

15.8.2 the gatehouse lying within the Retained Subjects and shown cross hatched on the Plan for any purpose associated with the demolition of the joiner’s shop.

15.9 The Operator shall exercise its right pursuant to clause 15.8 above on prior written appointment with the Trust. The Operator undertakes to carry out the said demolition works in such a way as to cause the least inconvenience and disruption to the Retained Subjects and will make good to the satisfaction of
the Trust any damage to the Retained Subjects and the Site arising from the exercise of the right set out in Clause 15.8. The demolition works will be carried out in accordance with all necessary statutory consents and those will be exhibited to the Trust prior to commencement of the said demolition works. The Operator shall, on demand, indemnify the Trust in respect of all claims and demands made against it arising from the exercise of the foregoing right by the Operator. For the avoidance of doubt the terms of Clause 16.1 apply to the exercise of the right in terms of the 15.8.

15.10 On completion of the said demolition works the Operator shall clear away and remove from the Retained Subjects all plant, machinery, surplus material, rubbish and temporary works of every kind and leave the Retained Subjects in a condition to the satisfaction of the Trust.

15.11 The Operator shall not and the Operator shall ensure that any Operator Party shall not park any vehicles used in connection with the Works and/or the Services on the Retained Subjects unless with the prior agreement of the Trust.

15.12 For the period prior to the Operational Date the Trust grants to the Operator, the Contractor the Consultants and their agents and employees (i) a right of access and egress for pedestrians and vehicles (including heavy vehicles) over and across that part of the access road shown hatched on the Plan and as same may be modified by the Off Site Works (“the Access Road”) forming part of the Property and (ii) a right of entry to and access to and egress from the Retained Subjects and to carry out the Off Site Works in relation to the Access Road.

15A The Site

15A.1 The condition of the Site shall be the sole responsibility of the Operator. Accordingly (without prejudice to any other obligation of the Operator under this Agreement), the Operator shall be deemed to have:-

(a) carried out a Ground Physical and Geophysical Investigation and to have inspected and examined the Site and its surroundings and (where applicable) any existing structures or works on, over or under the Site;

(b) satisfied itself as to the nature of the Site conditions, the ground and the subsoil, the form and nature of the Site, the loadbearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution of the Works;

(c) satisfied itself as to the adequacy of the rights of access to and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement (such as additional land or buildings outside the Site);

(d) without prejudice to the terms of Clause 22.5.2 satisfied itself as to the possibility of interference by persons of any description
whatsoever (other than the Trust), with access to or use of, or rights in respect of, the Site, with particular regard to the owners of any land adjacent to the Site; and

(e) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.

16. The Works - the Operator's obligations

16.1 The Operator shall, at its own cost, execute the Works in accordance with:

16.1.1 all Applicable Laws relating to the Works;
16.1.2 this Agreement;
16.1.3 Good Industry Practice; and
16.1.4 the Necessary Consents;

using only materials and goods which are of sound and satisfactory quality so as to procure the satisfaction of the Core Construction Requirements and that the Certificate of Availability is issued by the Planned Operational Date. In the event of a conflict between the Core Construction Requirements and the Construction Implementation Requirements the Core Construction Requirements shall take precedence.

16.2 The Operator will not commence the Works, or any relevant part, until it holds all Necessary Consents required for such commencement.

16.3 The Operator will:-

16.3.1 advise the Trust forthwith on becoming aware of any delay in carrying out of the Works in accordance with the Construction Timetable;
16.3.2 ensure that no amendments or variations are made to the Design Specification otherwise than following consultation with and approval by the Trust or in accordance with the Change Procedure;
16.3.3 procure that no Hazardous Materials and no substance generally known to be deleterious or not in accordance with Good Industry Practice or British standards or, where British standards are not available, European standards at the time of use will be utilised in the Works;
16.3.4 without prejudice to the Operator's other obligations, comply with all requirements of Clause 16.10;
16.3.5 procure that the Contractor takes the steps a reasonable contractor would take in carrying out Works in order to minimise insofar as is reasonably possible, the disruption to the owners and occupiers of adjacent properties.
16.4 The Operator will not:

16.4.1 vary or alter the terms (being terms material to the Trust) of, or terminate, the Design and Build Contract (save in accordance with its terms) except with the prior written consent of the Trust (not to be unreasonably withheld or delayed); or

16.4.2 insofar as it is able, permit the Contractor to terminate, vary or alter the Design and Build Contract or permit any of the Consultants to terminate their respective Appointments.

16.5 If the Design and Build Contract or any of the Appointments of the Consultants shall be terminated then (without prejudice to the Trust’s rights under Clause 44 (Operator Events of Default)) the Operator will ensure that, as soon as reasonably practicable, a new Design and Build Contract or Appointment (as the case may be) shall be entered into (a) in a substantially similar form to that terminated or otherwise in a form previously approved in writing by the Trust and (b) with a party previously approved in writing by the Trust (such approval in each case not to be unreasonably withheld or delayed) and in each case a further Collateral Warranty in favour of the Trust shall be executed by the new party who has been appointed and shall be delivered to the Trust within 5 Business Days after the Design and Build Contract or Appointment shall have been entered into.

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

16.6.1 satisfied itself as to the suitability of the Site for the Works for the purposes of taking access to the Site, and the nature and extent of the risk assumed by it in relation to the Project Documents; and

16.6.2 gathered and be satisfied with all information necessary to discharge its obligations under the Project Documents and obligations to be assumed as a result of the Necessary Consents and Applicable Laws.

16.7 The Operator shall not be relieved from any obligation under this Agreement in relation to the Works should any information or documentation whether obtained from the Trust or otherwise (including information or documentation made available by the Trust) (but excluding for the avoidance of doubt the Core Construction Requirements and the Services Requirements) be incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of such information and without prejudice to the generality of the foregoing, the Operator will be fully responsible for the Works.

16.8 The Operator will:

16.8.1 procure that all roads, footpaths and access ways with the lighting and markings pertaining thereto, drains, sewers, pipes, wires, cables and other service transmission media to be constructed as part of the Works shall be of such a type and shall be constructed in such a
manner as to comply with all Applicable Laws and the requirements of Statutory Authorities and relevant utility provider;

16.8.2 pay and satisfy in full with the intent that the Trust shall accordingly be freed and relieved from, all claims for fees, charges, fines (unless caused by a Trust Party), penalties (unless caused by a Trust Party), taxes, outgoings and other payments whatsoever which may become payable or be demanded by any competent authority or public service company in respect of the Works or as a consequence of the carrying out of the Works unless such claims are disputed by the Operator, acting in good faith and having reasonable and substantial grounds and that no matter when such fees and the like are rendered;

16.8.3 within 3 Business Days from receipt thereof by the Operator or the Contractor, transmit to the Trust Manager a copy of any notice, consent, approval, certificate, decision, or other document (being material to the Trust) received by the Operator or the Contractor from any public service company or relevant utility provider, Statutory Authority or other public authority in respect of the Works or any part thereof and if any such document contains a requirement (whether or not such is required also by Applicable Laws) that something be done or not done in connection with the Works or any part thereof then, provided that the Operator does not (having reasonable and substantial grounds) dispute such requirement, forthwith comply fully with the same and to continue so to comply and free and relieve the Trust of the costs of complying with all such notices, consents, approvals, certificates, decisions or other documents;

16.8.4 in the event that the Operator does not (having reasonable and substantial grounds) comply with any such requirement as is referred to in Clause 16.8.3 above, the Operator shall free and relieve the Trust from all liability including costs, demands and expenses as a consequence thereof;

16.8.5 make good to the same standard as the Access Road is in at the Execution Date (by reference to dilapidation survey and photographs) any damage to the Access Road and any services therein, arising out of or in the course of or by reason of the execution of the Works or any part thereof and to reinstate the Access Road or such services to the reasonable satisfaction of the Trust Manager and where appropriate the owners and the competent local authority;

16.8.6 procure that the Access Road and roads and footpaths giving access to the Site are, at least twice per week or more frequently at the request of the Trust (which request may be made verbally), cleared of mud and stones arising out of or in the course of or by reason of the execution of the Works or any part thereof;

16.8.7 prior to the Operational Date not use any roads within the Property other than the Access Road or the roads coloured light blue on the
plan in the Agreed Form of the Property (the “Other Access Roads”) without the Trust's consent (not to be unreasonably withheld or delayed);

16.8.7A prior to the Operational Date use all reasonable endeavours (having regard to the nature of the Works and the Off-Site Works) not to obstruct the Access Road and if the Access Road and/or the Other Access Roads is/are obstructed despite the Operator having used all reasonable endeavours not to obstruct the Access Road and/or the Other Access Roads, the Operator shall ensure that any such obstruction is removed as soon as possible. Notwithstanding the foregoing provisions the Operator shall ensure that prior to the Operational Date all and any ambulances or similar vehicles and any Trust staff have access to any buildings erected on the Retained Subjects at all times;

16.8.8 during the period that it is carrying out the Works comply with any title conditions affecting the Site as disclosed by the Title Deeds.

16.8A Within 5 Business Days of receipt thereof by the Trust (or the Trust Manager), the Trust will transmit to the Operator a copy of any notice, consent, approval, certificate, decision, or other document received by the Trust (or the Trust Manager) from any public service company or relevant utility provider, Statutory Authority or other public authority in respect of the Works or any part thereof.

16.9 Not used

16.10 16.10.1 Without prejudice to Clause 16.10.2 the Operator shall procure the maintenance and updating of the health and safety file prepared for the House and the remainder of the Site and ensure its availability in accordance with the CDM Regulations.

16.10.2 Within 5 Business Days of the Execution Date, the Operator shall make and serve on the Health and Safety Executive a declaration pursuant to and in the form required by CDM Regulation 4 to the effect that the Operator will act as the Client in relation to the Project for all the purposes of the CDM Regulations. The Operator shall forthwith send a copy of the declaration to the Trust Manager and upon receipt of notice from the Health and Safety Executive that it has received the declaration the Operator shall send a copy of such notice to the Trust Manager. During the Term the Operator will forthwith as and when required serve upon the Health and Safety Executive such further declarations under CDM Regulation 4 as may be necessary in order to procure that in respect of all works carried out under the Project the Operator will act as the Client for all the purposes of the CDM Regulations.

16.10.3 The Operator shall make available for inspection by the Trust Manager copies of each and every health and safety file to be
prepared by it pursuant to the CDM Regulations and of every amendment or update made to such file during the Term.

16.11 The Operator and the Trust shall continue to liaise during the development of the design for the House and the remainder of the Site in accordance with the procedures set out in Part G of the Schedule (Design Development Procedure).

17. Monitoring of the Works

Without prejudice to Clause 16 (The Works - the Operator's Obligations) the Operator will, at all times, upon request, keep the Trust and the Trust Manager fully advised of progress in relation to the Works and installation of the Equipment and without prejudice to that generality, will provide the Trust with such information in relation to the Works, in such format, as the Trust may, from time to time, reasonably require.

18. Delay Events

18.1 If the Operational Date will or is likely to be prevented from occurring by the Planned Operational Date by one of the following events (each such event being a “Delay Event”), namely:-

18.1.1 Force Majeure or any Relief Event;

18.1.1A opening up of part of the Works pursuant to Clause 15.3 where such part of the Works is not subsequently found to be defective;

18.1.2 the instigation and implementation of any Trust Change or a Deemed Change or a Necessary Works Change pursuant to the Change Procedure;

18.1.3 any material breach of its obligations under this Agreement, by the Trust or a Trust Party, or any other act or omission of the Trust or a Trust Party which prevents the Operator from carrying out its obligations pursuant to this Agreement (but only to the extent that such breach has not been caused or contributed to by the Operator or any Operator Party);

18.1.4 any strike by employees of the Trust or a Trust Party which prevents the Operator from carrying out its obligations pursuant to this Agreement (but only to the extent that such breach has not been caused or contributed to by the Operator or any Operator Party);

18.1.5 an industrial dispute affecting industry in Scotland as a whole or an industrial dispute affecting the whole or a significant part of a particular industry or an industrial dispute affecting the preparation, manufacture or transportation of any goods or materials required for the Works or labour required for the Works (but only to the extent that such industrial dispute has not been caused or contributed to by the Operator or any Operator Party);

18.1.6 the discovery or presence of (a) human remains on consecrated land,
(b) unexploded bombs or munitions, or (c) fossils and antiquities;

18.1.7 the occurrence of an Insured Risk,

then, provided the Operator's obligations under this Agreement have been affected, and the Operator has used (and shall continue to use) all reasonable endeavours in accordance with Good Industry Practice to minimise any such delay, then the Trust Manager acting reasonably and objectively shall grant an Extension of Time to the Planned Operational Date as is fair and reasonable in relation to the Delay Event.

18.2 The Operator shall give notice to the Trust Manager as soon as it or the Contractor can reasonably foresee the occurrence of a Delay Event or, if the same is not reasonably foreseeable, as soon as it or the Contractor shall become aware of such Delay Event. If the Operator wishes to claim an Extension of Time based on any Delay Event then not later than 15 Business Days after such notification (if at that time the additional time needed can be accurately forecast), the Operator shall give further notice to the Trust Manager:

18.2.1 claiming an Extension of Time (and specifying the amount of time) in terms of this Clause 18.2;

18.2.2 stating upon which Delay Event the claim is based and whether the Delay Event continues;

18.2.3 detailing the circumstances from which the Delay Event arises;

18.2.4 specifying the records which the Operator will maintain in order to substantiate its claim for extra time;

18.2.5 estimating the consequence which such Delay Event may have upon the achievement of the completion of the Works;

18.2.6 detailing the measures which the Operator and/or the Contractor proposes to adopt, in accordance with Good Industry Practice, to mitigate the consequences of such Delay Event.

18.3 The Operator shall provide the Trust Manager with such further information regarding the Operator’s claim for an Extension of Time as the Trust Manager may reasonably consider necessary. The Operator shall afford the Trust Manager reasonable facilities for investigating the validity of the Operator’s claim including, without limitation, on-site inspection.

18.4 If the Trust Manager declines to allow, or delays unreasonably in determining a request for, an Extension of Time to the Planned Operational Date or if the Operator disputes any Extension of Time allowed then either party shall be entitled to refer the matter to an Adjudicator for determination in accordance with the Dispute Resolution Procedure (which determination shall include permitting the Adjudicator to determine the Extension of Time to be granted).
18.5 If a Delay Event referred to in Clauses 18.1.1A, 18.1.3 or 18.1.4 (each a “Compensation Event”) occurs the Operator shall be entitled to payment from the Trust in accordance with this Clause 18.5 (including Clause 18.5A) in respect of such Compensation Event.

18.5A.1 In the event of a Compensation Event having occurred the Operator’s sole right to compensation shall be as provided for in this Clause 18.5A. To avoid doubt, no other Delay Event shall entitle the Operator to receive any compensation save as otherwise provided in Part D of the Schedule (Change Procedures).

18.5A.2 Subject to Clause 18.5A.3 if it is agreed, or determined, that there has been a Compensation Event and the Operator has incurred loss and/or expense as a direct result of such Compensation Event the Operator shall be entitled to such compensation as would place the Operator in no better or no worse position than it would have been in had the relevant Compensation Event not occurred. The Operator shall promptly provide the Trust Manager with any additional information he may require in order to determine the amount of such compensation.

18.5A.3 The Operator shall take all reasonable steps so as to minimise the amount of compensation due in accordance with this Clause 18.5A in relation to any Compensation Event and any compensation payable shall:

18.5A.3.1 exclude any amounts incurred or to be incurred as a result of any failure of its employees or an Operator Party to comply with Clause 18; and

18.5A.3.2 be reduced by any amount which the Operator will recover under any insurance policy (or would have recovered if it had complied with the requirements of this Agreement or of any policy of insurance required under this Agreement) which amount, to avoid doubt, shall not include any excess or deductibles or any amount over the maximum amount insured applicable to any such insurance policy.

18.5A.4 In the event that the Trust Manager and the Facility Manager cannot agree on the amount payable to the Operator in accordance with Clause 18.5 (including Clause 18.5A) shall be referred to the Dispute Resolution Procedure.

19. Programme and Dates for Completion

19.1 The Operator shall complete the Works by the Planned Operational Date. Subject to Clauses 44 (Operator Events of Default), 47 (Effect of Termination) and 48 (Compensation on Termination) and Clause 21.6, the Trust shall not be entitled to claim liquidated or general damages in respect of any delay which elapses between the Planned Operational Date and the Operational Date.
PART 5 - THE OPERATIONAL DATE

20. Independent Tester

20A Appointment

20A.1 The Parties shall, prior to the date of this Agreement, appoint a suitably qualified and experienced consultant to act as the Independent Tester for the purposes of this Agreement upon the terms of the Independent Tester Appointment.

20A.2 Neither the Trust nor the Operator shall, without the other's prior written approval (not to be unreasonably withheld or delayed):

20A.2.1 terminate, repudiate or discharge the Independent Tester Appointment or treat the same as having been terminated, repudiated or otherwise discharged;

20A.2.2 waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Tester; or

20A.2.3 vary the terms of the Independent Tester Appointment or the service performed or to be performed by the Independent Tester.

20A.3 The Parties shall comply with and fulfil their respective duties and obligations arising under or in connection with the Independent Tester Appointment.

20A.4 Co-operation

20A.4 The Parties agree to co-operate with each other generally in relation to all matters within the scope or in connection with the Independent Tester Appointment. All instructions and representations issued or made by either of the Parties to the Independent Tester shall be simultaneously copied to the other and both Parties shall be entitled to attend all inspections undertaken by or meetings involving the Independent Tester.

20.1 In the event of the Independent Tester's Appointment being terminated otherwise than for full performance, the Parties shall liaise and co-operate with each other in order to appoint, in accordance with this Clause 20, a replacement consultant to act as the Independent Tester as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his appointment shall, unless otherwise agreed, be as set out in the Independent Tester Appointment mutatis mutandis.

20.2 In the event the Parties fail to agree the identity and/or terms of a replacement Independent Tester in accordance with Clause 20.1, within ten (10) Business Days of the incumbent Independent Tester's Appointment being terminated,
then such disagreement shall be referred for resolution in accordance with the Dispute Resolution Procedure.

20B Transfer of Trust staff and equipment prior to Operational Date

20B.1 The Operator and the Trust will each negotiate in good faith after the Execution Date in order to develop a transfer programme for the transfer of the Trust’s staff and the Trust Equipment by a date four months prior to the anticipated Operational Date, into such a state as will represent the final requirements of the Trust, acting reasonably, for the transfer of such staff and Trust Equipment to the House in advance of the Operational Date. Failing agreement by that date, the development of the transfer programme shall be determined by the Adjudicator under the Dispute Resolution Procedure.

20B.2 The Operator shall (or shall procure that the Contractor shall) give the Trust access to the Facilities at such times as may be set out in the transfer programme as agreed or determined to enable the Trust to transfer its staff and equipment prior to the Operational Date.

21. Commissioning Procedure and Completion

21.1 The Operator will give the Trust at least 4 months’ prior written notice of the date on which it considers that it will complete the Works.

21.2 The Operator shall notify the Independent Tester and the Trust Manager of the date when the Operator (acting reasonably) considers that the Works will be complete in accordance with the Design Specification and this Agreement not less than 25 Business Days prior to such anticipated completion.

21.3 The Parties each undertake to co-operate with the Independent Tester to ensure that the Independent Tester is familiar with all necessary aspects of the Project for the purposes of its role as described in this Clause 21.

21.4 Notwithstanding Clause 15.3, the Trust Manager shall be entitled on giving 24 hours prior verbal notice to inspect the Works at any time during the 25 Business Day period specified in Clause 21.2 and to attend any completion tests. The Operator shall, if so requested, accompany the Trust Manager on any such inspection or to any such completion tests.

21.5 Not used

21.6 The Parties agree that pursuant to the terms of the Independent Tester Appointment, the Independent Tester shall, when appropriate to do so pursuant to the terms of this Agreement and the Independent Tester Appointment, issue the Certificate of Availability. In the event that the Independent Tester does not issue the Certificate of Availability on the date on which the 25 Business Day period specified in Clause 21.2 expires and, as a result of this, the Operational Date occurs after the expiry of such 25 Business Day period then the Operator shall pay the Trust by way of damages for each day from (and including) the date of the expiry of such 25 Business Day period to (but not including) the
Operational Date the actual costs incurred by the Trust (including any staff costs) as a result of the Certificate of Availability not having been issued as aforesaid PROVIDED THAT the Operator shall not be liable to pay any costs exceeding £10,000 per calendar week. PROVIDED FURTHER THAT if a Delay Event occurs during such 25 Business Day period the Trust shall not be entitled to claim damages as aforesaid in respect of the period of time during which such Delay Event subsisted. The costs referred to in this Clause 21.6 shall be a debt due by the Operator to the Trust and payable on demand.

21.7 Not used

21.8 Not used

21.9 The Independent Tester shall be entitled to issue the Certificate of Availability notwithstanding that there are Snagging Matters. Where there are Snagging Matters, the Independent Tester shall append to the Certificate of Availability a schedule which shall specify the Snagging Matters.

21.10 Following the issue of a schedule specifying the Snagging Matters, the Operator shall, in consultation with the Trust Manager and in such manner as to cause as little disruption as reasonably practicable to the Trust’s provision of the Clinical Services and the Hotel Services rectify all Snagging Matters within 30 days of the date of the issue of the Certificate of Availability.

21.11 If, within 30 days of the date of issue of the Certificate of Availability, the Operator has failed to rectify the Snagging Matters specified in the schedule of Snagging Matters appended to the Certificate of Availability the Trust may at its option either elect to carry out the works necessary to rectify the Snagging Matters by itself (or engage others), at the risk and cost of the Operator (and to avoid doubt, the provisions of Clause 52.2 shall apply) or to make deductions in terms of Part B of the Schedule (Payment Mechanism).

21.12 The issue of the Certificate of Availability shall in no way affect the obligations of the Operator under this Agreement including in respect of any defects.

21.A Demonstrations

21.A.1 At least five Business Days prior to the Operational Date, the Operator will organise, at a time and date acceptable to the Trust, a demonstration at the House for the Charge Nurses and the Hotel Services supervisor (each a “Trust Team Member”) (a) in relation to all operational aspects of the House which may have an impact on the environment of the House and/or relate to the Clinical Services or the Hotel Services; and (b) in relation to the operation of all items of Equipment. The Operator shall ensure, in relation to these demonstrations, that adequate information is provided prior to the demonstrations taking place. If a Failure occurs as a direct result of a Trust Team Member not attending such demonstration and the Operator fails to rectify such Failure within the relevant Period for Remedy, then the Availability Deduction or the Non Space-related Service Shortfall Deduction (as the case may be in relation to such Failure) shall not apply provided that the Operator rectifies such Failure as soon as reasonably possible after the occurrence of the
event giving rise to such Failure (and in that event the Operator shall be entitled to claim from the Trust any reasonable expenses it incurs in rectifying that Failure).

21.A.2 For as long as any item of Equipment is in use or available for use pursuant to this Agreement, the Operator shall make available for the use of the Trust’s employees, sub-contractors, agents and representatives all necessary instructions, guidelines and technical manuals and all other documentation reasonably required for the operation of such Equipment.

22. Sale of the Site

22.1 The Trust agrees to sell and the Operator agrees to purchase the Site as at and with effect from the Operational Date.

22.2 The purchase price for the Site will be £450,000 exclusive of VAT payable on the Operational Date.

22.3 The Operator acknowledges that prior to the Execution Date it has examined and is satisfied as to the whole terms and conditions of the title to the Site as disclosed by the Title Deeds and that, subject to implementation by the Trust of its obligations in terms of Clause 22.4 and the terms of Clause 22.5, the Operator is satisfied as to the validity and marketability of the Trust's title to the Site as disclosed by the Title Deeds.

22.4 On the Operational Date, and in exchange for payment of the purchase price pursuant to Clause 22.2 and in exchange for the Trust Standard Security validly executed in self proving form by the Operator and the Ranking Agreement validly executed in self proving form by the Operator and the Financier, the Trust will deliver to the Operator:

22.4.1 the validly executed Disposition and Deed of Servitude together with a form CPB2 and cheque for recording dues in respect of the Deed of Servitude;

22.4.2 clear Form 10/11 Reports in respect of the Site and the Property including Searches in the Register of Inhibitions and Adjudications, brought down as near as practicable to the Operational Date and showing no entries prejudicial to the grant of the Disposition or the Deed of Servitude by the Trust and that at the cost of the Trust;

22.4.3 such documents and evidence as the Keeper may require to enable the interest of the Operator in the Site (including those rights granted in terms of the Deed of Servitude) to be registered in the Land Register without exclusion of indemnity under Section 12(2) of the Land Registration (Scotland) Act, declaring that the Trust will clear the records of any entry, deed, decree or diligence prejudicial to the Operator’s interest and/or which may be recorded in the Property or Personal Register or to which effect may be given in the Land Register in the period from the date of the Form 10/11 Report referred to in Clause 22.4.2 to the date occurring 14 days after the Operational Date and which would cause the Keeper to make an
entry on, or qualify his indemnity in, the Land Certificate to be issued in respect of that interest, other than such as are created by or against the Operator or have been disclosed to and accepted by the Operator in writing prior to the Operational Date. Notwithstanding the delivery of the Disposition this Clause shall remain in full force and effect and may be founded on;

22.4.4 entry to and vacant possession of the Site subject to the Lease and any third party rights in terms of this Agreement.

22.4A Within five Business Days following the Operational Date the Trust shall (i) execute the Ranking Agreement in self proving form and (ii) register the executed Ranking Agreement in the Books of Council and Session and in the Land Register. Thereafter the Trust shall provide one extract each to the Operator and the Financier and that within five Business Days of receipt from the Books of Council and Session.

22.5.1 The Operator and the Trust agree that no additional rights or obligations which may arise at common law as a result of the grant of the Lease apply between the parties.

22.5.2 The Trust warrants that:

22.5.2.1 The Trust has not received any written notices materially prejudicially affecting the Site, the Access Road or the Trust’s interest therein.

22.5.2.2 The Trust has not received any notification of any breach or infringement of any title conditions, restrictions or stipulations contained in the Title Deeds in relation to the Site or the Access Road.

22.5.2.3 So far as the Trust is aware, it has complied in all material respects with the conditions of any notices received in respect of the Site or the Access Road.

22.5.2.4 Save as disclosed at Clause 22.5A below, so far as the Trust is aware, there are no third parties in adverse occupation of the Site or the Access Road.

22.5.2.5 Save as disclosed at Clause 22.5A below, so far as the Trust is aware, there are no servitude rights, rights of way or any third party rights over and affecting the Site which are not referred to in the Title Deeds.

22.5.3 The Trust will not between the Execution Date and the Operational Date grant or permit to be granted any burdens, restrictions, conditions or reservations in respect of the Site.

22.5A The Operator acknowledges and accepts that the occupiers (currently Arnold Clark Insurance Services) of the subjects known as 64 Craigentinny Avenue North, Edinburgh adjoining the south-east boundary of the Site exercise a
right of pedestrian access for fire escape purposes only, onto and over the Site. The approximate location of the fire escape used by the said occupiers is shown marked on the drawing numbers A99071/P.02 revC2 and A99.071 L (90) 002 revA forming part of Part L of the Schedule.

22.6 The cost of stamping and recording the Disposition will be borne by the Operator.

22.7 The Trust warrants and undertakes that it has not elected and (except as herein mentioned) will not elect to waive exemption from liability to Value Added Tax in respect of any dealings with the Site or any part thereof and consequently Value Added Tax shall not be payable on the purchase price. If the Trust is compelled by statute to waive the VAT exemption in respect of the Site, the Trust will notify the Operator of same within seven days of the Operational Date and a copy of the election and a valid VAT invoice addressed to the Operator will be delivered on the Operational Date.

22.8 If this Agreement is terminated, for any reason, prior to the Operational Date, this Clause 22 shall be deemed to be terminated and of no effect.

23. Lease

23.1 On the Operational Date the Operator will grant and the Trust will accept the Lease.

23.2 The Trust acknowledges that prior to the Execution Date it has examined and is satisfied with the whole terms and conditions of the title to the Site as disclosed by the Title Deeds and that subject to implementation by the Operator of its obligations in terms of Clause 23.3 the Trust is satisfied that the Operator will have a valid and marketable title to the Site as disclosed by the Title Deeds and following delivery by the Trust to the Operator of the validly executed Disposition.

23.3 On the Operational Date the Operator will:-

23.3.1 and the Trust will execute the Lease (in self proving form) and the Operator will deliver to the Trust such executed Lease. Thereafter, the Trust will within five Business Days thereafter arrange for the Lease to be stamped and registered in the Books of Council and Session and in the Land Register and the Trust shall provide one extract to the Operator within five Business Days of receipt from the Books of Council and Session. If the Lease has not been executed by both the Trust and the Operator on the Operational Date then provided the Trust has complied with its obligations under clause 22.4 the Lease will be deemed to have taken effect as at the Operational Date;

23.3.2 (provided the Trust has complied with its obligations under Clauses 22.4.1 and 22.4.2) deliver to the Trust Form 10/11 Reports including Searches in the Register of Inhibitions and Adjudications for the prescriptive period brought down as near as practicable to the Operational Date and showing no entry prejudicial to the grant of the
23.3.3 (provided the Trust has complied with its obligations under Clause 22.4) deliver to the Trust such deeds, documents and evidence (including plans) as the Keeper may require to enable the interest of the Trust in the Site (including those rights granted in terms of the Deed of Servitude) to be registered in the Land Register without exclusion of indemnity under Section 12(2) of the said Act, declaring that the Operator will clear the records of any entry, deed, decree or diligence prejudicial to the Trust’s interest and/or which may be recorded in the Property or Personal Register or to which effect may be given in the Land Register in the period from the date of the Form 10/11 Report referred to in Clause 23.3.2 to the date occurring 14 days after the Operational Date and which would cause the Keeper to make an entry on or qualify his indemnity in the Land Certificate to be issued in respect of that interest in the Site other than such as are created by or against the Trust or have been disclosed to and accepted by the Trust in writing prior to the Operational Date. Notwithstanding the delivery of the said Lease this Clause shall remain in full force and effect and may be founded upon;

23.3.4 deliver Searches in the Register of Charges and Company file in respect of the Operator including any details regarding striking off or the appointment of any Receiver or Administrator or Liquidator, brought down as near as practicable to the Operational Date and showing no impediment to the grant of the Lease.

23.4 If this Agreement is terminated, for any reason, prior to the Operational Date, this Clause 23 shall be deemed to be terminated.
PART 6 - PROVISION OF EQUIPMENT AND SERVICES

24. Provision, Maintenance, Repair and Replacement of Equipment

24.1 The Operator undertakes to procure, maintain, repair and replace, the Equipment for the exclusive use of the Operator, (where appropriate) the Service Provider and the Trust, any Trust Party and the patients and visitors at the Site in accordance with the provisions of this Clause 24.

24.2 The Operator will procure that each item of Equipment meets and satisfies the technical and other specifications applicable to that item of Equipment as detailed in the Core Construction Requirements and the Equipment List.

24.3 The Equipment will be made available by the Operator to the Trust fully installed and fully Functional by the Operational Date and at all times throughout the Services Term.

24.4 The Operator will, during the Services Term:-

24.4.1 maintain an accurate asset register identifying all Equipment (including all replacements and renewals of such Equipment) and maintain in safe custody all relevant documentary evidence which relates to the Equipment (including invoices, bills of sale, warranties and guarantees and maintenance agreements) and allow the Trust reasonable access on reasonable notice to inspect and take copies of such register and documentary evidence;

24.4.2 provide itself or procure the provision of, all necessary training in respect of the operation and use of the Equipment for the benefit of the Trust and its employees;

24.4.3 comply with all product recall recommendations of any manufacturer or supplier of the Equipment from time to time and procure the provision of suitable alternative equipment to the Trust, at no additional cost to the Trust, for the duration of any such recall periods;

24.4.4 procure that, other than in respect of a Permitted Encumbrance all Equipment is and remains beneficially owned by the Operator and not create or subsist any third party interest in any Equipment; and

24.4.5 use its reasonable endeavours to acquire the Equipment with the benefit of the industry standard warranties and product guarantees available in the circumstances, and on the basis (so far as practical) that all such warranties and guarantees (if still in force) shall be transferred the Trust after Expiry of the Term or termination of this Agreement (where applicable) and/or during the Services Term shall
be enforceable by the Trust (or a replacement operator or service provider) in accordance with their terms.

24.5 If the Trust determines, from time to time, that it has a requirement for additional equipment, then it may at its option:

24.5.1 request the Operator to provide such equipment in accordance with the Change Procedure (and such request shall be deemed to be a Trust Change); or

24.5.2 provide such equipment itself; or

24.5.3 require a third party to procure such equipment at its sole cost and risk.

Clauses 24.2, 24.3 and 24.4 shall apply in the event of Clause 24.5.1 applying.

25. **The Operator’s obligation to provide the Services**

25.1 During the Services Term the Operator will at all times provide, or procure the provision of, the Services in accordance with the terms of this Agreement and, in particular, the Services Requirements, Applicable Laws, Good Industry Practice and Industry Standards.

25.2 The Operator will provide, or procure the provision of, at its own expense, all staff, equipment, materials and consumables (excluding for these purposes the Equipment) required for the provision of the Services in accordance with Clause 25.1 above.

25.3 The Operator will, at its own expense, keep all equipment and materials specified in Clause 25.2 in a serviceable and clean condition and properly maintained and will repair or replace any such equipment or materials damaged or made unserviceable (whether by the wrongful act or omission of the Operator, through wear or tear or obsolescence or otherwise) in order to provide the Services at all times in accordance with the Services Requirements.

25.4 The Operator will store and keep all hazardous materials or equipment used or stored at the Facilities by the Operator in accordance with Applicable Laws and, if appropriate, Industry Standards and ensure that all hazardous materials are properly and clearly labelled on all containers. The chemical composition of the hazardous materials to be used by the Operator in or at the Facilities will be declared by it to the Trust for approval prior to the storage or use of such hazardous materials at the Facilities.

26. **Further Services Obligations of the Operator**

During the Services Term the Operator will:

26.1 Not used

26.2 in an emergency vary its work patterns as required by the Trust Manager or the Charge Nurse and adhere to such varied patterns for the duration of the
26.3 procure that the Facility Manager consults the Trust Manager on a regular basis and as often as is necessary to ensure provision of the Services in accordance with this Agreement;

26.4 provide assistance and advice to the Trust on all matters relating to the provision of the Services or otherwise in connection with this Agreement whether of a technical or non-technical nature to ensure the provision of the Services in accordance with this Agreement;

26.5 ensure that the Services are carried out by the Operator and/or Service Provider(s) appointed and continuing in that role in accordance with this Agreement and by no other person;

26.6 ensure compliance with instructions given by the Trust (acting reasonably), the police and the fire service in relation to dangers and safety on the Site;

26.7 ensure that all goods supplied by the Operator in connection with performance of the Services and the provision of the Equipment are of satisfactory quality and so far as the Operator is aware free from defects in design, material and workmanship and comply, where applicable, with Applicable Laws and Industry Standards;

26.8 provide the Trust, on request, with such reports and information in relation to the Services which the Trust may reasonably require provided that this does not result in a material departure from or addition to its other obligations under the Agreement or give rise to significant additional cost or disruption to the Operator;

26.9 ensure that a full time maintenance person able to carry out routine maintenance work is based on the Site during Working Hours;

26.10 in complying with its obligations to provide the Services, take access to the Site at reasonable times and use reasonable endeavours to minimise disruption to adjacent proprietors in so taking access.

27. Services Obligations of the Trust

27.1 During the Service Term the Trust shall provide reasonable access to the Operator and the Service Providers to the Site at all reasonable times to enable the Operator to perform its obligations under this Agreement. PROVIDED THAT the Trust will only be obliged to comply with the obligation referred to in this clause 27.1 in relation to the Access Road so long as it is the owner of the Access Road and as long as the Access Road is not taken over for maintenance by the local authority.

27.2 For the avoidance of doubt but subject to Clause 27.1, from and after the Operational Date, the Trust will maintain the Access Road to the same standard as it is in at the Operational Date so long as the Trust is the owner of the Access Road and as long as the Access Road is not taken over for maintenance by the local authority.
27.3 Without prejudice to the terms of the Deed of Servitude and subject to the Operator’s obligations under Clause 16.8.7A, the Trust shall be obliged as long as the Trust is the owner of the Access Road and as long as the Access Road is not taken over by the local authority for maintenance to use all reasonable endeavours to ensure that the Access Road remains open for normal traffic at all times or to use all reasonable endeavours to remove any obstruction (provided that such obstruction is not caused or contributed to by the Operator or an Operator Party) which has a materially adverse effect on the construction process or the provision of the Services as soon as practicable, which for the avoidance of doubt shall include the clearance of snow and ice.

28. Inspections

28.1 The Trust Manager and any other person so authorised by the Trust and any inspector appointed by the Environmental Health Authority or similar authority shall be entitled without prior notice at any reasonable time to inspect the premises, equipment, materials, consumables and information used by the Operator, and any Service Provider or any other person providing one or more of the Services, in the provision of the Services and to test and take samples.

28.2 The Operator shall co-operate with the Trust Manager and any person so authorised by the Trust and shall provide, and shall procure that any person providing one or more of the Services shall provide, all reasonable assistance in order to facilitate the carrying out of the inspections and others referred to in Clause 28.1.

28.3 The Operator shall send copies of the Environmental Health Inspector's reports or notices to the Trust Manager as soon as reasonably possible after its receipt thereof and in any event within 3 Business Days of its receipt thereof.

28.4 If at any time the Operator does not comply with the mandatory requirements of a report referred to in Clause 28.3, within the timescale prescribed by the Environmental Health Inspector, the Trust may (itself or through others) take such action it considers appropriate to procure compliance with such recommendations and the Operator shall reimburse within 5 Business Days of demand the Trust in respect of all substantiated costs and expenses (including administration costs) incurred by the Trust in taking such action.

29. Alteration in nature or scope of the Services

29.1 The Trust will be entitled, at any time during the Services Term, to request an alteration in the provision of the Services by the Operator including, without limitation, additions to or reduction in the category, description or frequency of provision of the Services and alterations to the Services Requirements.

29.2 The Trust will give notice to the Operator of such alterations as referred to in Clause 29.1 above in accordance with the Change Procedure.

29.3 Any alteration to the Services Fee to be made by the Trust to the Operator as a result of the alteration, if any, and the mechanism for dealing with the
alteration will be dealt with in accordance with the Change Procedure.

29.4 Nothing in this Agreement will prevent the Trust from entering into arrangements with third parties for the provision of services which are not Services, and the Trust is not obliged to offer the provision of such services to the Operator first. If the Trust proposes to enter into any such arrangements it will give reasonable prior notice to the Operator and the Trust shall procure that any such third party service providers will not wilfully interfere with or wilfully impede the Operator and/or the Service Providers in providing the Services and shall indemnify the Operator against any additional costs reasonably and properly incurred by the Operator as a result of any malicious act, wilful omission or default of such third party service providers.

29.5 Any provision of additional services which it is agreed will be provided by the Operator will be deemed to be included as Services for the purposes of the obligations of the Operator in this Agreement and the Services Requirements will be amended accordingly.

29.6 The Trust will be entitled to require the Operator (without any change to the Services Fee) to make or procure minor alterations to the Services on an ad hoc temporary basis provided that there is no adverse effect (including financial effect) (other than immaterial) on the Operator.

30. Not Used

31. Not Used

32. Not Used

33. Service Providers

33.1 Subject to the prior written approval of the Trust (not to be unreasonably withheld or delayed) in relation to any service provider providing a material part of the Services the Operator shall procure that such a person is appointed who shall be able to carry out any or all of such Services on such terms as are consistent with the terms of this Agreement.

33.2 In considering whether to approve a replacement or additional or other service provider the Trust may, without limitation, take into account:

33.2.1 the financial standing of the proposed service provider;

33.2.2 the technical and managerial experience and ability of the proposed service provider; and

33.2.3 the experience of the proposed service provider, its employees and its customer references.

33.3 Any proposal by the Operator to change the identity of a Service Provider or
the terms of any contract with a Service Provider will not be permitted or implemented unless and until approved in writing by the Trust (such approval not to be unreasonably withheld or delayed).

33.4 The Operator will provide the Trust with a copy of all service contracts with service providers as soon as reasonably practicable after the same are executed.

33.5 Not used

33.6 The Operator will not amend or vary in any material respect the terms of any Service Contracts without the prior written consent of the Trust (not to be unreasonably withheld or delayed).

33.7 Subject to Clauses 33.1 to 33.6 (inclusive) the Service Provider may further sub-contract the provision of all or any part of any of the Services in respect of which it has been appointed provided that the Operator will ensure that such sub-contracts are consistent with the relevant Project Documents.

33.8 The Trust shall, having first consulted with the Operator, be entitled to sub-contract any of its obligations under this Agreement and shall give written notice to the Operator with reasonable particulars of the sub-contractor proposed. Notwithstanding the foregoing the Trust shall be entitled to choose and engage at its sole discretion one or more sub-contractors in relation to the Hotel Services but the Trust will, where lawful, permit an Operator Party to tender for the provision of the Hotel Services. The Trust shall ensure that any sub-contractors carrying out the Hotel Services shall not impede the ability of the Operator or the Service Providers from time to time, to perform their obligations under the Agreement or the Services Contracts.

34. Staff

34.1 Not used.

34.2 The Operator shall procure that there are employed in and about the provision of the Services only such persons as are skilled and experienced in activities they are required to perform.

34.3 The Operator shall procure that each person engaged in and about the provision of the Services is at all times properly and sufficiently trained and instructed (having regard to, where relevant, the relevance of the following items to the tasks they are to perform) with regard to:

34.3.1 the task or tasks such person has to perform;

34.3.2 all relevant provisions of this Agreement (including without limitation obligations of confidentiality);

34.3.3 Not used

34.3.4 all Applicable Laws, Industry Standards and Good Industry Practice;
34.3.5 the need for those working in a Health Service environment to be courteous and considerate;

34.3.6 Infection Control Guidance;

34.3.7 security arrangements;

34.3.8 the obligation to disclose offences given that staff employed within the Trust’s premises are subject to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

34.4 The Operator shall procure that in respect of all persons employed or seeking to be employed by the Operator or relevant Service Provider as the case may be complies with Lothian Primary Care NHS Trust’s status as an Equal Opportunities Employer.

34.5 The Operator shall ensure that it (and shall procure that any relevant Service Provider) complies with all Applicable Laws prohibiting discrimination in relation to employment on the grounds of sex, colour, disability, race, ethnic or national origin or religion in respect of all persons employed or seeking to be employed by the Operator or relevant Service Provider as the case may be.

34.6 The Trust Manager or the Charge Nurse may draw to the attention of the Operator any act or omission of the Operator or any person for whom the Operator is responsible which the Trust Manager or the Charge Nurse considers to be a breach of discipline. In such cases the Operator should immediately take such action as is appropriate to ensure that such a perceived breach does not recur.

34.7 Save as expressly provided in this Agreement, the Operator shall be entirely responsible for the employment and conditions of service of the Operator’s or its sub-contractor’s staff.

34.8.1 The Operator shall procure that all potential staff or persons performing any of the Services who may reasonably be expected in the course of their employment or engagement to have access to persons receiving Clinical Services at the House are questioned concerning their Convictions.

34.8.2 The Operator shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the completion of a police check, is employed without the Trust’s prior written consent (such consent not to be unreasonably withheld or delayed).

34.8.3 The Operator shall procure that no person under the age of 16 years is employed in connection with the Services.

34.9.1 Not used.

34.9.2 In the event of industrial disputes by staff directly employed by the Trust or its sub-contractors (other than the Operator or an Operator Party) the Operator shall co-operate with such reasonable directions and instructions as may be
specified by the Trust Manager in order to ensure as far as reasonable the continued provision of the Services. In these circumstances the Trust will reimburse the additional costs of the Operator resulting from such industrial disputes and will not impose deductions to the Services Fee where such deductions would otherwise be directly caused by such dispute.

35. Not used

35A. Maintenance Schedules

35A.1.1 The Operator shall prepare and submit to the Trust Manager:-

35A.1.1.1 not later than three months prior to the Planned Operational Date a Maintenance Schedule in respect of the Facilities for the first Payment Year;

35A.1.1.2 not later than 2 months prior to the beginning of each Payment Year, a Maintenance Schedule in respect of the Facilities for the next succeeding Payment Year;

35A.1.2 Not used.

35A1.3 Each Maintenance Schedule shall specify:-

35A.1.3.1 in reasonable detail all Maintenance Works planned to be carried out in respect of the Facilities in the relevant Payment Year to ensure that the Facilities comply with the Design Specification and the Services Requirements and the Operator’s obligations under this Agreement;

35A.1.3.2 the proposed start and end dates and times for each element of Maintenance Works (and provided that any Maintenance Work which may cause any disruption or inconvenience to the normal operation of the Facilities shall be scheduled to take place at a time to reasonably minimise such disruption or inconvenience);

35A.1.3.3 in reasonable detail any disruption to the use of the Facilities or inconvenience to users, which may arise in the relevant Payment Year as a result of the Maintenance Works proposed in the Maintenance Schedule and the working methods to be employed to minimise such disruption or inconvenience.

35A.2 Review of Maintenance Schedules

35A.2.1 Not later than 1 month after the date of receipt of any Maintenance Schedule issued pursuant to Clause 35A.1.1, the Trust Manager may serve notice on the Operator giving in detail the Trust Manager’s representations on the content of such Maintenance Schedule. The Operator shall be obliged to take such representations into account if, but only if:-
35A.2.1.1 the Trust Manager is reasonably of the view that the Maintenance Schedule does not make provision for sufficient Maintenance Works in the relevant Payment Year as to comply with the Operator's obligations under this Agreement; or

35A.2.1.2 Not used

35A.2.1.3 the Trust Manager is reasonably of the view that the carrying out of the Maintenance Works in accordance with the Maintenance Schedule would cause unreasonable disruption or inconvenience to the users and/or the use of the Facilities, which would be alleviated by one or more amendments to the Maintenance Schedule.

In that event the Operator and the Trust Manager shall use all reasonable endeavours to agree on any amendments to the Maintenance Schedule which may be reasonable and appropriate and in the absence of such agreement the same shall be determined by the Dispute Resolution Procedure.

35A.2A The Maintenance Schedule:-

35A.2A.1 submitted to the Trust Manager pursuant to Clause 35A.1.1 in respect of which no representations are made by the Trust Manager under Clause 35A.2.1; or

35A.2A.2 as amended by agreement between the Operator and the Trust Manager pursuant to Clause 35A.2.1; or

35A.2A.3 as determined in accordance with the Dispute Resolution Procedure;

shall be the Maintenance Schedule for the relevant Payment Year.

35A.2B Ten Business Days prior to the first day of each Month, the Operator shall issue to the Charge Nurse a detailed description of the Maintenance Works described in a Maintenance Schedule agreed or determined pursuant to Clause 35A.2.1 (the “Detailed Maintenance Schedule”) to be carried out in the next following Month, setting out the Operator's requirements for access to particular areas of the Facilities and the proposed date and timing of such Maintenance Works (and provided that any Maintenance Works which may cause any disruption or inconvenience to the normal operation of the House shall be scheduled to take place at a time to reasonably minimise such disruption or inconvenience).

35A.2C If the Charge Nurse is reasonably of the view that the carrying out of the Maintenance Works set out in a Detailed Maintenance Schedule at the time and date specified in such Detailed Maintenance Schedule would cause unreasonable disruption or inconvenience to the user and/or the use of the Facilities, the Charge Nurse will give notice to
that effect to the Operator within 2 Business Days from date of receipt of such Detailed Maintenance Schedule. In that event the Operator and the Charge Nurse shall in good faith negotiate and agree on such amendments to the Detailed Maintenance Schedule as may be reasonable and appropriate. If such agreement has not been reached within 5 Business Days of the date of the Charge Nurse’s notice as aforesaid, such amendments to the Detailed Maintenance Schedule shall be determined by the Trust Manager whose decision shall be final and binding. The Trust shall be responsible for any additional costs incurred by the Operator as a direct result of any amendments required to the Detailed Maintenance Schedule as a result of such determination (the “Additional Maintenance Costs”) by the Trust Manager provided that (a) the Operator has taken all reasonable steps to minimise the amount of the Additional Maintenance Costs; (b) the amount of the Additional Maintenance Costs shall be calculated to result in the Operator being in no better or no worse position than it would have been had the amendments required to the Detailed Maintenance Schedule as a result of such determination by the Trust Manager not occurred; (c) the Operator has provided the Trust Manager with any information he may require in order to determine the amount of the Additional Maintenance Costs.

35A.3. Maintenance Works

35A.3.1 The Operator shall not effect any Maintenance Works except:-

35A.3.1.1. A in accordance with a Detailed Maintenance Schedule issued pursuant to Clause 35A.2B (as amended pursuant to Clause 35A.2C); or

35A.3.1.1 in accordance with Clause 35A.3.2

35A.3.1.2 in accordance with Clause 35A.3.3

35A.3.2 If the need arises for un-programmed maintenance or repair works (not (a) being of a minor nature or (b) falling within the terms of Clause 35A.3.3) requiring Maintenance Works otherwise than in accordance with a Detailed Maintenance Schedule the Operator shall advise the Trust Manager of such need and request approval of the proposed commencement date and estimated duration of and resultant disruption or inconvenience resulting from the requisite Maintenance Works. The Operator shall not commence Maintenance Works unless the Trust grants its approval which approval shall not be unreasonably withheld or delayed, provided that the Trust Manager is satisfied that the Operator will keep any inconvenience or disruption to the users and the use of the Facilities caused by the carrying out of such works to a minimum.

35A.3.3 If an urgent need arises for un-programmed maintenance or repair works (otherwise than in accordance with a Detailed Maintenance Schedule or Clause 35A.3.2) the Operator may effect such
maintenance works, provided that the Operator shall as soon as reasonably practicable advise the Trust Manager of such maintenance works and the reasons therefor and shall take all reasonable steps to minimise the duration of such maintenance works and the disruption (if any) thereof to the provision of the Services and the use of the Facilities. For the avoidance of doubt the provisions of Parts K and B of the Schedule shall apply.

35B. Cleaning Method Statement

35B.1 The Trust shall prepare and submit to the Facility Manager not later than 3 months prior to the Planned Operational Date a Cleaning Method Statement in respect of the cleaning services (which shall relate to the interior of the House, (including fittings and fixtures and the Equipment located within the House) but shall not include the exterior of the House) and if there is any change in the relevant Industry Standard and/or Infection Control Guidance then the Trust will prepare and submit to the Facility Manager a further Cleaning Method Statement which shall take into account such change in the relevant Industry Standard and/or Infection Control Guidance. The Facility Manager shall only be entitled to object to such Cleaning Method Statement if by adhering to such Cleaning Method Statement the Trust would invalidate any manufacturer’s guarantees relating to the item(s) cleaned or would not comply with the manufacturers’ guidelines or would materially affect the expected lifecycle of the item cleaned in accordance with the Cleaning Method Statement. The Trust will clean the House in accordance with the Cleaning Method Statement. Any failure by the Trust to clean the House as aforesaid will be dealt with in terms of Clause 42.8.

35B.2 Any dispute relating to the Cleaning Method Statement will be determined by the Dispute Resolution Procedure.

35B.3 The Operator shall be responsible for the provision, repair, maintenance and renewal of all relevant Equipment in accordance with this Agreement so as to enable the Trust to carry out the cleaning services in accordance with the Cleaning Method Statement.

35C Redecoration of the House

On or around the fifth anniversary of the Operational Date and every five years thereafter during the Services Term, the Operator shall redecorate the interior of the House if the parties agree that such redecoration is required. For the avoidance of doubt, this Clause shall not apply to the Equipment.

36. Disclosed Data

36.1 The Trust has made available to the Operator prior to the Execution Date certain materials, documents and data (the “Disclosed Data”) related to the design and construction of the Works, the operation and maintenance of the House, the Site and other matters which are or may be relevant to the Project.
and the obligations undertaken by the Operator under this Agreement. The Disclosed Data includes, without limitation, all such materials, documents and data which were provided to the Operator in connection with the Invitation to Negotiate but does not include any deed, document or materials comprising the Title Deeds or any other documents, materials, plans or information provided by the Trust in relation to the Trust’s ownership of the Site.

36.2 Other than in the case of fraud or negligent misrepresentation, the Trust shall not be liable to the Operator (whether in contract, delict or otherwise howsoever and whether or not arising out of any negligence (not constituting negligent misrepresentation) on the part of the Trust or any agent, adviser or contractor of the Trust) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.

36.3 The Trust gives no warranty or undertaking that the Disclosed Data represents all of the information in its possession or control (either during the tender or bidding for the Project or at the Execution Date) relevant or material to the Project or the obligations undertaken by the Operator under this Agreement. The Trust shall not be liable to the Operator in respect of any failure to disclose or make available (whether before or after the Execution Date) to the Operator any information, documents or data, nor to keep the Disclosed Data up to date, nor to inform the Operator (whether before or after the Execution Date) of any inaccuracy, error, omission, unfitness for purpose, defects or inadequacy of the Disclosed Data.

36.4 The Operator acknowledges and confirms:-

36.4.1 it has conducted its own analysis and review of the Disclosed Data and has before the execution of this Agreement satisfied itself as to the accuracy, completeness and fitness for purpose of all such Disclosed Data upon which it places reliance;

36.4.2 it shall not be entitled to make any claim against the Trust or any of its agents, advisers or contractors, whether in damages or for extensions of time or additional payments under this Agreement, on the grounds of any misunderstanding or misapprehension in respect of the Disclosed Data or the matters referred to in Clause 36.4.1 or on the grounds that incorrect or insufficient information relating thereto or to the Site was given to it by any person, whether or not in the employ of the Trust; and

36.4.3 it shall not be relieved from any risks or obligations imposed on or undertaken by it under this Agreement on any such ground as is referred to in Clause 36.4.2.

36.5 Nothing in this Clause 36 shall derogate from the Trust’s warranties contained in Clause 5.2.

37. Not Used
PART 7 - EMPLOYEES

38. Employees

38.1 The Parties consider that the transactions contemplated by this Agreement at the Execution Date potentially constitute one or more transfer(s) of an undertaking or part of an undertaking for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (the “Employment Regulations”) and/or the Directive (as amended from time to time) but that this may not be certain as a matter of law.

38.2 Notwithstanding Clause 38.1, at the Execution Date the Trust cannot identify any employees employed by the Trust in the undertaking or part which may be transferring and the Trust shall continue to employ each of its employees. The Operator, its contractors hereunder or any Service Provider shall not assume responsibility for and shall have no right to employ or liability for, any of the Trust’s employees by virtue of entering into this Agreement.

38.3 If any contract of employment of any employee of the Trust or of any contractor or agent of the Trust, or any collective agreement relating to any such employee, has effect by virtue of the Employment Regulations and/or the Directive (as amended from time to time), by operation of law or otherwise as if originally made between the Operator, its contractors hereunder or any Service Provider and that person, or between the Operator, its contractors hereunder or any Service Provider and the relevant trade union, the Operator shall notify the Trust in writing within 14 days of becoming aware of such effect. The Trust, or any contractor or agent of the Trust, may offer employment to such transferred employee (“Transferred Employee”) within 21 days of that written notification. If after that period has elapsed, the Transferred Employee has not been offered such employment or has not accepted such offer, the Operator, its contractors hereunder or any Service Provider may terminate the contract of employment or collective agreement of any Transferred Employee forthwith.

38.4 The Trust shall indemnify the Operator on demand and/or, on the Operator’s demand, its contractors hereunder and any Service Provider, and hold them harmless in respect of all liabilities incurred by the Operator and/or its contractors hereunder and any Service Provider arising in connection with the transfer to the Operator and/or its contractors hereunder and any Service Provider of any Transferred Employees, including, but not limited to:

38.4.1 any liabilities arising out of the termination of any contract of employment of any Transferred Employee or of any collective agreement pursuant to Clause 38.3, and/or out of any claim by or in respect of any Transferred Employee for which it is alleged the Operator, its contractors hereunder or any Service Provider are liable; and
38.4.2 any liabilities incurred by the Operator and/or its contractors hereunder or any Service Provider to or on behalf of the relevant trade union; and

38.4.3 all liabilities which arise out of a complaint of failure to comply with any requirement of Regulation 10 of the Employment Regulations or in respect of an award of compensation under Regulation 11.

38.5 For the purposes of Clause 38 of this Agreement only “liability” and “liabilities” includes any award, compensation, damages, demands, fine, loss, order, penalty, payment made by way of settlement and costs and expenses (including interest) reasonably incurred in connection with a claim or complaint to a tribunal or court or otherwise or investigation (including any investigation by the Equal Opportunities Commission or the Commission for Racial Equality or the Disability Rights Commission or any other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from any such investigation). Legal costs and expenses are to be assessed on an agent/client, client paying basis.

38.6 The Parties acknowledge and agree that if the Operator is successful in winning the tender for the supply of the Hotel Services the provisions of clause 38 shall have no effect in relation to employees employed by the Trust to supply Hotel Services.

38.7 The Parties acknowledge and agree that if the Operator, its contractor hereunder or any Service Provider shall cease for whatever reason to provide the Services contemplated by this Agreement at the Execution Date, the contracts of employment of the Transferred Employees or any other employee of the Operator its contractor hereunder or any Service Provider during the subsistence of this Agreement (the “Affected Employees”) together with any collective agreement which relates to the employment of any Affected Employee shall transfer by virtue of the Employment Regulations to the Trust then the Trust shall give effect to the same as if they had been originally entered into between the Trust or any provider of services to the Trust and the individual concerned on the date on which the Affected Employees are deemed to have transferred to the Trust (“the Re-Transfer Date”).

38.8 All obligations in respect of the Affected Employees including without prejudice to the foregoing generality, unpaid wages, benefits, pensions contributions and other emoluments, tax and national insurance payments (including PAYE) contributions to retirement benefits schemes and bonus and commission arrangements (“Transfer Financial Obligations”) prior to but not including the Re-Transfer Date shall be borne by the Operator or its contractor hereunder or any Service Provider).

38.9 All Transfer Financial Obligations relative to the period from and including the Re-Transfer Date shall be borne by the Trust or the provider of services to the Trust.

38.10 In relation to entitlement to holiday pay for the Affected Employees the following shall apply:
38.10.1 where the Affected Employee has taken more than his proportionate holiday for the then current holiday year prior to the Re-Transfer Date, the Trust or the provider of services to the Trust shall not be obliged to make any reimbursement in respect thereof to the Operator, its contractor hereunder or any Service Provider; and

38.10.2 where the Affected Employee has taken less than his proportionate holiday in the then current holiday year prior to the Re-Transfer Date, the Trust shall or shall procure that any provider of services to the Trust shall bear the cost of such entitlement arising thereafter in full without recourse to any reimbursement from the Operator its contractor hereunder or any Service Provider.

38.11 The Operator shall, or procure that any contractor hereunder or any Service Provider shall, indemnify the Trust on demand by the Trust and hold it harmless from and against all losses, damages, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including reasonable legal expenses) incurred in connection with or as a result of:

38.11.1 any claim or demand by any Affected Employee arising under statute, contract, custom and practice or at common law including without prejudice to the foregoing generality, any claim for unfair dismissal, redundancy, unlawful deductions, sex, race or disability, discrimination, equal pay, wrongful dismissal, breach of contract and any claim in delict or otherwise arising or resulting from any act, fault or omission of the Operator in relation to each such Affected Employee prior to the Re-Transfer Date.

38.11.2 any claim under statute or at common law by any trade union or staff association or any other workers' representative within the meaning of the Employment Regulations arising from or connected with any failure by the Operator to comply with any legal obligations to that trade union, staff association or other worker representative whether under Regulation 10 of the Employment Regulations or otherwise and whether any such claim arises or has its origin before, on or after the Re-Transfer Date.

save in each case to the extent that such claim or demand arises out of any breach hereunder by the Trust of any of its obligations (or any act, fault or omission by the Trust)

38.12 The Trust shall indemnify the Operator its Contractor hereunder or any Service Provider on demand by the Operator in respect of all liabilities, claims, demands, costs, losses, awards, penalties, fines, damages and expenses arising or which have arisen in connection with or as a result of:

38.12.1 any claim or demand by an Affected Employee arising under statute, contract, custom and practice or at common law including, without prejudice to the foregoing generality, any claim for unfair dismissal, redundancy, unlawful deductions, sex, race or disability
discrimination, equal pay, wrongful dismissal, breach of contract and any claim in delict or otherwise arising or resulting from any act, fault or omission of the Trust in relation to that Affected Employee on or after the Re-Transfer Date;

38.12.2 any claim, either under statute or at common law or by any trade union or staff association or other worker representative within the meaning of the Employment Regulations arising from or connected with any failure by the Trust to comply with its obligations to such trade union, staff association or other worker representative, whether under Regulation 10 of the Employment Regulations or otherwise and whether such claim arises or has its origin before, on or after the Re-Transfer Date.

38.13 The Operator shall ensure that the terms of Clauses 38.6 to 38.12 are repeated, mutatis mutandis in any Services Contract or other relevant subcontract.
PART 8 - OPERATIONAL REQUIREMENTS

39. Information requirements and reports

39.1 The Operator will use all reasonable endeavours to procure all reasonable assistance (including the provision to the Trust of all information the Trust reasonably requires) from each Service Provider to enable the Trust to satisfy any requests lawfully made by third parties, including (without limitation) the SEHDME, any commissioning authority, any Health Council, HM Treasury, the Scottish Executive, Parliament and the European Commission, provided that such obligation will not extend to any proprietary information or Intellectual Property (not licensed to the Trust) of the Operator or such Service Provider.

39.2 Without limiting Clause 39.1, the Operator will provide to the Trust, as soon as reasonably practicable, such assistance as the Trust reasonably requires in connection with any requests properly made of the Trust by the Trust's Auditor (or its duly appointed representatives) for information associated with the giving of any audit certificate by that person or the undertaking of any value for money survey associated with the Trust and/or the Project.

39.3 The Operator shall provide to the Trust all such reports, accounts, documents and information in relation to the Operator, its employees and the Services as the Trust may, from time to time, reasonably require provided this does not result in a material departure from or addition to its other obligations under this Agreement or give rise to significant cost to the Operator. The Operator will provide the Trust with a copy of the annual reports and accounts of the Operator as soon as reasonably practicable after same are signed by, or on behalf of, the Operator and (if relevant) its auditors.

39.4 The Operator shall exercise all due care and diligence in the preparation of information and documents referred to in this Clause 39 and as set out elsewhere in this Agreement and shall ensure that at all times there shall be adequate security and retention arrangements which shall in all cases be retained by the Operator for a period not less than that required by Applicable Laws or five years whichever is greater, unless otherwise agreed.

40. The Facility Manager, the Trust Manager, the Charge Nurse and Agreement Management

40.1 The Operator shall appoint the Facility Manager who shall act as the Operator's agent in connection with this Agreement (except in relation to termination of this Agreement or where acts of the Facility Manager are specifically excluded) and shall superintend and be responsible for the day to day management of the Project on behalf of the Operator.

40.2 The Operator shall procure that the Facility Manager shall:
40.2.1 carry out and complete all the tasks, duties and responsibilities assigned to him in terms of this Agreement; and

40.2.2 attend all meetings with the Trust Manager when reasonably required by the Trust Manager; and

40.2.3 during the Services Term the Facility Manager (or a suitably qualified substitute during such period that the Facility Manager is absent due to holidays or any other reason) is contactable by the Charge Nurse and/or Trust Manager during Working Hours.

40.3 The Operator agrees and acknowledges that the Facility Manager shall be deemed to have full power and authority to act on behalf of the Operator (save in relation to amendment or variation to this Agreement, termination of this Agreement or where acts of the Facility Manager are specifically excluded) so that subject to the terms of this Clause 40.3 any action taken or right or power exercised by the Facility Manager which may be taken or exercised by the Operator under this Agreement shall be binding on the Operator as if taken or exercised by the Operator.

40.4 The Operator may, after seeking and receiving the Trust’s consent in writing (such consent not to be unreasonably withheld or delayed), replace the Facility Manager at any time.

40.5 The Trust agrees and acknowledges that in the discharge of his functions under this Agreement, the Facility Manager shall not owe any personal duty to the Trust.

40.6 The Trust may appoint a person to be the Trust Manager and the Trust agrees and acknowledges that the Trust Manager shall be deemed to have full power and authority to act on behalf of the Trust so that any action taken or right or power exercised by the Trust Manager which may be taken or exercised by the Trust (save in relation to amendment or termination of this Agreement or where the acts of the Trust Manager are specifically excluded) shall be binding on the Trust as if taken or exercised by the Trust.

40.7 The Operator agrees and acknowledges that in the discharge of his functions under this Agreement the Trust Manager shall not owe any personal duty to the Operator.

40.8 Not Used

40.9 If the Trust changes a Trust Manager it shall notify the Operator of that change promptly. In the event that the Trust removes a Trust Manager, then, until it appoints a replacement, any notification to be made by the Operator to the Trust Manager shall be made to the Trust and any action which requires to be taken by the Trust Manager shall be taken by the Trust (in each case acting through its Hospital General Manager). The Trust shall notify such removal forthwith to the Operator and until such intimation is received the Operator shall be entitled to continue to rely upon the actings of the Trust Manager.
40.10 The Operator shall, and shall procure that the Service Provider(s) and their employees, agents and sub-contractors of any tier shall, promptly comply with all reasonable requests and directions of the Trust Manager or the Charge Nurse (to the extent that such requests are in accordance with the provisions of this Agreement and provided that the Operator and/or the Service Provider shall not be required to comply with such instructions where such compliance would require the Operator and/or the Service Provider to incur any additional expenditure which it would not otherwise be obliged to incur in accordance with this Agreement).

40.10A.1 The principal role of the Charge Nurse shall be to provide a day to day contact, on site, with the Operator for the routine operation of this Agreement, but unless pursuant to a specific delegation issued under Clause 40.10A.2 or specifically referred to elsewhere in the Agreement, the Charge Nurse shall not act as an agent or delegate of the Trust Manager or the Trust for the purposes of this Agreement and shall have no power or authority to bind the Trust or to vary the terms of this Agreement in any material way and the Operator acknowledges and accepts that subject to Clause 40.10 it shall not act on the basis of, or otherwise rely upon, any act or omission of the Charge Nurse for the purposes of this Agreement, unless pursuant to such delegation.

40.10A.2 The Trust may, at any time by written notice to the Operator, delegate all or part of the Trust Manager’s functions and powers under this Agreement specifying in such notice which such functions and/or powers are to be delegated to one or more persons (including the Charge Nurse) and to terminate such delegation and the following provisions shall apply in such case:-

40.10.A.2.1 the appointment or termination shall be effective on the date specified in the notice (which shall not be earlier than the date of the notice or the date of service of the notice on the Operator);

40.10.A.2.2 any act of the delegate shall for the purposes of this Agreement constitute an act of the Trust Manager and all reference to the Trust Manager in this Agreement (apart from this Clause 40.10.A.2) shall be taken as reference to such delegate; and

40.10.A.2.3 except as expressly authorised by the Trust and notified in writing to the Operator no delegate may make or authorise the making of a Change, or amend or vary this Agreement.

40.11 The Operator shall address any material enquiries and notify any material difficulties about procedural or contractual matters in writing to the Trust Manager and shall comply with any formal procedures for addressing enquiries or notifying difficulties which the Trust may have in place from time to time.
41. **Performance Monitoring**

41.1 The Operator shall monitor and report to the Trust upon the performance of the Services in accordance with the terms of Part H of the Schedule (Performance Monitoring).

41.2 Without prejudice to any other rights of the Trust, the Charge Nurse or the Trust Manager or any other person appointed by the Trust to carry out the task may inspect at any time any area of the Facilities from which or in which Services are being provided or are to be or have been provided. Any written complaint regarding any failure of the Operator or any person for whom the Operator is responsible to perform its obligations in respect of the provision of the Services which is received by either Party shall be notified to the other and at the option of the Trust may form part of a report to the User Group.

41.3 If at any time during the Services Term the Operator receives a Rectification Notice the Operator shall:-

41.3.1 ensure that it complies with its obligations under Part H of the Schedule (Performance Monitoring); and

41.3.2 remedy the cause of the Failure forming the subject of the Rectification Notice in the relevant Period for Remedy set out in the Services Table in Part K of the Schedule (Services Requirements).

41.4 Not used.

41.5 If at any time after the Operational Date:-

41.5.1 Availability Deductions and Non Space-related Service Shortfall Deductions, taken together for any Payment Month amount to more than 20% of the Basic Monthly Services Fee for that Payment Month (other than by reason of an event of Force Majeure or a Relief Event); or

41.5.2 Availability Deductions and Non Space-related Service Shortfall Deductions, taken together for any three Payment Months in any period of 6 Payment Months amount to more than 20% of the Basic Monthly Services Fee for each of those three Payment Months (other than by reason of an event of Force Majeure or a Relief Event); or

41.5.3 Non Space-related Service Shortfall Deductions for any Payment Month amount to more than 10% of the Basic Monthly Services Fee for that Payment Month (other than by reason of an event of Force Majeure or a Relief Event); or

41.5.4 Non Space-related Service Shortfall Deductions for any three Payment Months in any period of 6 Payment Months amount to more than 10% of the Basic Monthly Services Fee for each of those three Payment Months (other than by reason of an event of Force Majeure or a Relief Event)
the Trust Manager may serve an Improvement Notice on the Operator.

41.6 In the event that more than one Improvement Notice is served under Clause 41.5 in any period of 6 months, the Trust Manager may, after notice to the Operator, increase the level of monitoring of the Services to such extent as is reasonable in all the circumstances until such time as the Operator shall have demonstrated to the satisfaction of the Trust Manager (acting reasonably) that it is performing and will continue to perform its obligations under this Agreement. The notice to the Operator shall specify the additional monitoring measures to be taken by the Trust Manager in monitoring the Services as a result of the circumstances which gave rise to an Improvement Notice being sent. The Trust alone shall bear the costs it incurs in exercising its rights under this Clause.

42. User Group

42.1 The Trust and the Operator shall, as soon as practicable after the Execution Date, establish and maintain throughout the Term a User Group.

42.1A The functions of the User Group shall be:

42.1A.1 to provide a means for the joint review of issues relating to all day to day aspects of the performance of this Agreement;

42.1A.2 to provide a forum for joint strategic discussion, considering actual and anticipated changes in the market and business of the Trust, and possible variations of this Agreement to reflect those changes or for the more efficient performance of this Agreement;

42.1A.3 to provide a means of resolving disputes or disagreements between the parties amicably;

42.1A.4 to discuss and agree on the matters referred to in Clause 42.8 (subject to the provisions of Clause 42.8).

42.2 The User Group shall comprise an equal number of representatives of (a) the Trust and (b) the Operator and the Service Providers and shall be chaired by one of the Trust's representatives ("the Chairman").

42.3 Each of the Trust, the Operator and the Service Providers may appoint and remove, and appoint replacements of, its representatives on the User Group at any time.

42.4 Subject to Clause 42.8 the User Group's role is to make recommendations to the Parties (which the Parties may accept or reject at their complete discretion). The User Group shall not have authority to change any of the Project Documents. Subject to Clause 42.8, the User Group shall not have authority to make any decision binding on the Parties and neither Party shall be relieved of any liability nor have any liability or right or benefit varied by any review, discussion or recommendation of the User Group.
42.5 The User Group shall have a secretary (the “Secretary”) who shall be appointed by the User Group, or failing such appointment, who shall be appointed by the Trust.

42.6 The User Group shall regulate its own proceedings, save in respect of the following matters:-

42.6.1 each member of the User Group shall have one vote;

42.6.2 the Chairman shall not have a casting vote;

42.6.3 if the Chairman is not present within 15 minutes of the start of a meeting, the members of the User Group appointed by the Trust shall nominate a chairman of the meeting;

42.6.4 each member of the User Group may appoint 1 alternate (and remove and replace that alternate) to attend and vote on their behalf;

42.6.5 resolutions of the User Group must have the affirmative vote of representatives of both Parties;

42.6.6 the User Group shall meet once every month during the Term;

42.6.7 any member of the User Group may require the Secretary to convene a meeting of the User Group, which shall be held on not less than 2 weeks’ and not more than 3 weeks’ notice, save in the case of a matter requiring urgent consideration, when such notice as shall be reasonable in the circumstances shall be given by the Secretary;

42.6.8 meetings of the User Group may be held by telephone or by video conference provided all participants can hear and speak to each other at the same time.

42.7 Minutes of all proceedings of the User Group shall be kept by the Secretary and shall be circulated to the Trust and to the Operator as soon as practicable after the relevant meeting.

42.8 At each User Group meeting the Operator shall have an opportunity to point out any failure by the Trust or a Trust Party to comply with the Cleaning Method Statement which directly results in the Operator not being able to comply with the Services Requirements in relation to one or more Services (a “Trust Failure”) since the earlier of (a) 31 days prior to the date of that User Group meeting and (b) the date of the previous User Group meeting. The Operator shall provide details of the alleged Trust Failure and also provide the Trust with such information in relation to such Trust Failure as the Trust, acting reasonably, may require. If the parties agree (or if they do not and that disagreement is referred to the Dispute Resolution Procedure which determines) that a Trust Failure has occurred then the following procedure shall apply:
42.8.1 The Trust may elect to remedy such Trust Failure itself (or procure that such Trust Failure is remedied by a third party) in which case the Operator shall not, until the Trust remedies such Trust Failure, incur any Deductions pursuant to Part B of the Schedule if such Deductions would otherwise fall to be made as a direct consequence of such Trust Failure;

42.8.2 The Trust shall be entitled to require the Operator to remedy the Trust Failure and the Operator shall remedy such Trust Failure within a period of time and at a cost previously agreed with Trust (both parties acting reasonably). In the absence of an agreement as to such period of time and/or cost either party may refer the matter to be determined under the Dispute Resolution Procedure. The Trust shall pay such costs as previously agreed or determined within 21 days of the later of (a) the date of the Trust (acting reasonably) determining that the Operator has remedied the Trust Failure and (b) the Trust having received an invoice from the Operator for the cost of remedying such Trust Failure. If the Operator fails to remedy that Trust Failure within the period of time agreed or determined under the Dispute Resolution Procedure, the Trust shall thereafter be entitled to make Deductions pursuant to Part B of the Schedule in respect of Failures arising out of the circumstances amounting to the Trust Failures or

42.8.3 The Trust may elect not to remedy such Trust Failure and in that case the Operator shall not be obliged to maintain (if it were otherwise obliged to maintain that item under this Agreement) the item affected by such Trust Failure (as such state shall be recorded in a memorandum signed by the Trust Representative and the Facility Manager) in a state better than the state of such item following such Trust Failure PROVIDED THAT the Operator shall remain obliged to replace or renew such item when that item would otherwise (assuming that no Trust Failure had occurred) normally be replaced or renewed in accordance with Good Industry Practice as part of the Operator’s life cycle replacement programme which it will carry out during the Project Term. For the avoidance of doubt, the Operator will suffer no Deductions pursuant to Part B of the Schedule in respect of any Failures caused directly or materially contributed to by an election by the Trust not to remedy such Trust Failure.

If there is a dispute between the Parties because they cannot agree (a) whether or not a Trust Failure has occurred or (b) whether or not a Trust Failure has directly resulted in or contributed to the Operator not being able to comply with the Services Requirements in relation to one or more Services or (c) whether or not the Operator has contributed to the Trust Failure through non-provision, bad maintenance or bad repair of the cleaning Equipment (for which the Operator is responsible in terms of this Agreement) or (d) or if there is any other dispute arising from a Trust Failure either Party may, at any time, refer such dispute to be determined in accordance with the Dispute Resolution Procedure. If the Operator does not notify the Trust of the occurrence of a Trust Failure at a User Group meeting then no Trust Failure shall be deemed to have occurred since the earlier of (a) 31 days prior to the
date of that User Group meeting and (b) the date of the previous User Group meeting. The Operator shall have no remedy against the Trust for any Trust Failure save as set out in this Clause 42.8.

43. Intellectual Property

43.1 The Operator hereby grants to the Trust and shall use its reasonable endeavours to procure the grant by all Service Providers, the Contractor and the Consultants of an irrevocable, non-exclusive, royalty-free licence to use, for any purpose associated with this Agreement or any of the other Project Documents or in relation to the establishment of the Facilities (during the period of this Agreement), all Intellectual Property specified in Clause 43.2.

43.2 The Intellectual Property licensed by or pursuant to this Clause 43 shall be all Intellectual Property (whether now in existence or coming into existence during the Term) relating to the design, construction, fitting out, completion, commissioning or testing of the Facilities (including the House), the operation and maintenance of the Facilities (including the House) (to the extent that the Operator shall have responsibility for the same) and the provision of the Services.

43.3 The Trust shall comply with the reasonable requirements of the Operator in relation to the use of the Intellectual Property, licensed pursuant to Clause 43.1 including procedures to avoid infringement of any third party rights and notification of any third party claims.

43.4 To the extent that any of the Intellectual Property referred to in this Clause 43 is generated by or maintained on a computer or in any other machine readable format, the Operator shall procure, at no charge to the Trust, the grant of a licence or sub-licence for and supply of any relevant software or (subject to the provisions of the Data Protection Acts 1984 and 1998) database to enable the Trust or its nominee to access and otherwise use that data for the purposes set out in this Agreement.

43.5 The Operator shall indemnify the Trust 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 to the Trust under this Clause 43 save to the extent that such infringement is due to failure by the Trust to comply with the reasonable instructions of the Operator as specified in Clause 43.3, or the use by the Trust of such Intellectual Property for a purpose for which it was not licensed under Clause 43.1.

43.6 Any licences of Intellectual Property created by or pursuant to this Clause 43 shall, if the Trust exercises its option to purchase the Site pursuant to Clause 47 (Effect of Termination) or Clause 49 (Options) survive termination of this Agreement or any other Project Document (however caused).

43.7 The Operator (or any Service Provider) will not be entitled, without the Trust's prior written consent, to use or apply to register any mark or logo which is the same as, or similar to, the logo of the Trust, from time to time.
44A  Change Procedure

44A.1  The provisions of Part D of the Schedule shall apply in respect of Changes.
PART 9 - EARLY TERMINATION AND STEP-IN RIGHTS

44. Operator Events of Default

44.1 The provisions of Clauses 44.2 and 44.2A will apply if any of the following events of default occur:-

44.1.1 any act of insolvency occurs in respect of the Operator, including:-

44.1.1.1 a receiver, administrator, administrative receiver, manager or liquidator being appointed over all or any of the assets of the Operator (other than pursuant to a solvent liquidation in terms which have been expressly and previously approved in writing by the Trust, acting reasonably);

44.1.1.2 any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into by or in relation to the Operator;

44.1.2.3 any encumbrancer taking possession of or being appointed over, or any diligence, distress, arrestment (other than to found jurisdiction or on the dependence of an action), execution or other process being levied or enforced (and not being discharged within twenty one days) on, all or a material part of the assets of the Operator;

44.1.2.4 the Operator ceasing to carry on business; or

44.1.2.5 any application or petition is made or any meeting convened with a view to making an administration order in respect of the Operator, unless such meeting resolves not to proceed with the proposed course of action;

44.1.2 there is any transfer of any interest in shares in the Operator which does not comply with the requirements of Clause 7 (Transfer of Shares);

44.1.3 this Agreement is repudiated by the Operator or the Operator abandons the Project;

44.1.4 the Operator commits a material breach (not otherwise listed in this Clause 44.1) of any of its material obligations under this Agreement which breach, if capable of remedy, has not been so remedied within a period of 60 days of receipt of a written notice from the Trust requiring the breach to be remedied under threat of termination of this Agreement;
44.1.5.1 Availability Deductions in excess of 60% of the Basic Monthly Services Fee having been applied for one or more consecutive Payment Months other than by reason of an event of Force Majeure or a Relief Event;

44.1.5.2 Availability Deductions in excess of 35% of the Basic Monthly Services Fee having been applied for three or more Payment Months in any twelve months period, other than by reason of an event of Force Majeure or a Relief Event;

44.1.5.3 Non Space-related Service Shortfall Deductions taken together amount to more than 10% of the Basic Monthly Services Fee for 3 or more Payment Months in any 12 months period, other than by reason of an event of Force Majeure or a Relief Event;

44.1.5.4 if in any 12 month period the Operator receives 5 or more Improvement Notices in terms of Clause 41.5;

44.1.6 if the Operator has defaulted under the Facility Agreement and the Financier has enforced the Financier Standard Security;

44.1.7 the Operational Date has not occurred within 40 weeks of the Planned Operational Date as extended pursuant to Clause 18.1 (Delay Events);

44.1.8 at any time up to the Operational Date the Operator Abandons the Works and it is agreed or determined (in terms of the Dispute Resolution Procedure) that there is no reasonable prospect of the Operational Date occurring by the date specified in Clause 44.1.7;

44.1.9 a breach of Clause 54 (Corrupt Gifts) of this Agreement;

44.1.10 a breach of Clause 63 (Assignation) by the Operator;

44.1.11 the Operator has failed to rebuild or reinstate the Facilities (a) during the subsistence of the Financier Direct Agreement by the date falling two months after the proposed date for completion of the reinstatement works as set out in the reinstatement plan referred to in the Financier Direct Agreement or (b) after the senior debt under the Facility Agreement has been paid in full, pursuant to paragraph 5.4.3 of Schedule Part F (such failure being an Insured Termination Event).

44.2 If any of the events specified in Clauses 44.1.1. to 44.1.11 (inclusive) occur, then in any such case, and without prejudice to any of its other rights or remedies, the Trust may at any time thereafter at its discretion:

44.2.1 (in the case of the events specified in Clauses 44.1.1, 44.1.2, 44.1.4, 44.1.6, 44.1.7, 44.1.10 or 44.1.11) terminate this Agreement by notice in writing having immediate effect, in which case the terms of Clauses 47 (Effect of Termination) and 48 (Compensation on Termination) shall apply; or
44.2.2 (in the case of the events specified in clauses 44.1.1, 44.1.2, 44.1.4, 44.1.7 or 44.1.10) suspend performance in whole or in part by the Parties of the terms of this Agreement, including (without limitation) the Trust's obligations of payment, until the Operator has demonstrated to the Trust's reasonable satisfaction that it will perform and is capable of performing its obligations under this Agreement; or

44.2.3 except in the case of any event under Clause 44.1.4, serve notice of default on the Operator requiring the Operator, at the Trust's option, either:-

44.2.3.1 to remedy the breach(es) referred to in that notice of default within 60 days of the date of receipt of that notice (or such longer period agreed in writing by the Trust in its absolute discretion); or

44.2.3.2 within 14 days of the date of receipt of that notice to put forward a reasonable programme to remedy the breach(es), such programme to be in writing and specify the proposed remedy in reasonable detail and the latest date by which it is proposed that that remedy shall be completed, in which case the terms of Clause 44.3 shall apply.

44.2A The consequences of a breach of Clause 44.1.9 are set out in Clause 54.

44.3 Where the Operator puts forward a programme following notice under Clause 44.2.3.2, the Trust shall have 28 days from the date of receipt of such programme in which to notify the Operator in writing that it does not accept that programme as reasonable, failing which the Trust shall be deemed to have accepted that programme. Where the Trust notifies the Operator that it does not accept that programme, the Parties shall endeavour within seven days from the date of receipt of such notice by the Operator 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.

44.4 If:-

44.4.1 the breach(es) specified in a notice of default served under Clause 44.2.3 is or are not remedied:-

44.4.1.1 before the expiry of the period referred to in Clause 44.2.3.1 (if applicable); or

44.4.1.2 where the Operator puts forward a programme pursuant to Clause 44.2.3.2 which has been either accepted by the Trust or determined by the Dispute Resolution Procedure to be reasonable, in accordance with that programme; or
44.4.2 the Operator has not demonstrated within a reasonable period of time to the Trust’s reasonable satisfaction that it will perform and is capable of performing its obligations under this Agreement;

then the Trust may terminate this Agreement and/or any one or more of the other Project Documents by notice in writing having immediate effect, and the terms of Clauses 47 (Effect of Termination) and 48 (Compensation on Termination) shall apply.

44.5 Not used

44.6 The Trust acknowledges that the rights of termination contained in this Agreement are subject to the terms of the Financier Direct Agreement and to the exercise by the Financier of any rights it may have under the Financier Direct Agreement.

44.7 The Trust confirms that it has no rights to terminate this Agreement other than those expressly referred to in this Agreement.

45. Trust Events of Default

45.1 Subject to Clause 45.2, the Operator may terminate this Agreement by notice in writing having immediate effect to the Trust if:

45.1.1 the Trust commits a material breach of any of its obligations under this Agreement (other than an obligation to pay a monetary sum) which material breach materially adversely affects the Operator's ability to perform its obligations under this Agreement which breach, if capable of remedy, has not been so remedied within a period of 60 days of the date of receipt of a written notice from the Operator requiring the breach to be remedied;

45.1.2 the Trust is in default of its payment obligations to the Operator to the extent that any sum equal to or in excess of one month’s Basic Monthly Services Fee (either singly or in aggregate is outstanding for 20 Business Days or more provided that no sum will be considered outstanding if it is being withheld by the Trust in accordance with this Agreement or as a result of a bona fide dispute);

45.1.2A the Trust makes payments persistently late, which shall occur if the Trust delays (by more than 15 days on 3 or more occasions in any 12 month period) payment to the Operator of any part of the Services Fee and which is not the subject of a bona fide dispute and which the Trust is not entitled to set off or withhold or deduct in terms of this Agreement and at any time after the third such occasion the Operator has served notice on the Trust warning it of potential persistent late payment and referring specifically to this Clause 45.1.2A, provided that if after such notice the payment then next due by the Trust is paid within the time due for payment the period of 12 months referred to in this Clause 45.1.2A shall be deemed to have ended and a new period to have commenced for the purpose of calculating the
45.1.3 there is any change of legislation which renders illegal or impossible performance of the whole or any material part of the Trust's obligations under this Agreement which would materially adversely affect the Trust's ability to perform its obligations (including the ability of the Trust to pay the whole amount of the Services Fee and any payments to be made by it (if any) on Expiry on the Term and/or on termination of this Agreement);

45.1.4 there is any amendment or repeal (or Proposed amendment or repeal (without re-enactment, consolidation or replacement by Applicable Law having an equivalent effect) of the National Health Service (Private Finance) Act 1996, the National Health Service (Residual Liabilities) Act 1996, the National Health Service and Community Healthcare Act 1990, the National Health Service (Scotland) Act 1978 or any statutory order establishing the Trust or defining its purposes and functions or the enactment of any legislation, any of which has or would have a material adverse effect on the Trust's power or ability to perform its obligations under this Agreement unless such powers or obligations are or would be assumed by some other party or successor capable of performing the Trust's obligations under this Agreement. For the purposes of this Clause 45.1.4 “Proposed” means (a) in the case of a bill being introduced by the Government of the United Kingdom at its second reading in the first House of Parliament into which it is introduced or the bill passing a second reading in the first House of Parliament into which it is introduced or (b) in the case of subordinate legislation the proposed statutory instrument or order being laid before Parliament in draft; or (c) in the case of a directive, regulation or decision of the European Union, its adoption;

45.1.5 there is a dissolution of the Trust (except where its rights and obligations have been transferred to a statutory successor capable of performing the Trust’s rights and obligations under this Agreement);

45.1.6 (i) the Trust does not intimate to the Operator in writing that the Trust intends to fund a Necessary Change arising from a Discriminatory Change in Law in accordance with paragraph 5.3 of Section 3 of Part D of the Schedule within 20 Business Days of the date of receipt of a written notice from the Operator requiring the Necessary Change to be funded or (ii) the Trust makes an intimation to the Operator that it is going to fund a Necessary Change within 20 Business Days of the date of receipt of a written notice by the Operator as aforesaid but fails to do so within 20 Business Days of the date of the Trust’s intimation.

45.2 The Operator shall only be entitled to terminate this Agreement if it has given SEHDME and the First Minister written notice of default by the Trust (copied to the Trust) specifying in reasonable detail the default and the action required to remedy same and either such default has not been remedied within a period of 60 days (or 30 Business Days in relation to the event of default set out in
Clause 45.1.2 and Clause 45.1.2A) of such notice.

45.3 Not Used

45.4 The Operator confirms that it has no rights to terminate this Agreement other than those expressly referred to in this Agreement.

46A. Trust Rights of Step-In

46A.1 Without prejudice to any other right or remedy of the Trust, if the Operator has failed (or if otherwise both Parties agree that the Operator will so fail) to meet any of its obligations under this Agreement, including, without limitation, any of the provisions set out in the Services Requirements:

46A.1.1 the Trust may notify the Operator, where practicable in writing or if verbally, followed as soon as practicable thereafter by notice in writing, of such failure and may in that notice require the Operator to remedy such failure to perform, without additional charge to the Trust within such reasonable period as specified by the Trust; or

46A.1.2 if the Operator fails to remedy such failure to perform within that timescale, or if the Trust, acting reasonably, considers that it is not appropriate to give notice of failure to the Operator as such failure:

46A.1.2.1 will create (or has created) an immediate and serious threat to health and safety;

46A.1.2.2 will result (or has resulted) in a material interruption, or material disruption, to the provision of the Services, the Hotel Services or Clinical Services;

46A.1.2.3 will cause (or has caused) a material breach by the Trust of its statutory obligations;

46A.1.2.4 will constitute (or has constituted) an emergency or threat to the well being and care of patients,

then the Trust may, but is not bound to, take steps or engage others to take such temporary, emergency remedial steps or other action it considers appropriate, and may partially or totally suspend the right and obligation of the Operator to provide the relevant part of the Service.

46A.2 The Trust shall have no liability to the Operator for any damage which has occurred prior to the exercise of the Trust of its rights under Clause 46A or damage which results from the breach by the Operator of any of its obligations under this Agreement but the Trust shall indemnify the Operator for any damage caused or any failure by it or its employees, agents or contractors (other than the Operator or an Operator Party) to comply with Good Industry Practice all Applicable Laws, Industry Standards or manufacturers’ warranties granted to the Operator and/or a Service Provider as notified to the Trust prior to the Trust taking such action which the Operator would have had to
The action taken by the Trust under Clause 46A.1 shall only be to the minimum extent, and for the minimum period, as is reasonable to mitigate or preclude the event giving rise to the Trust's action or remedy the failure.

46A.3 The Operator shall not suffer deductions pursuant to Part B of the Schedule (Payment Mechanism) arising directly from the failure giving rise to the Trust's entitlement to take action under Clause 46A.1.2 provided that the Trust has, in fact, exercised its rights under clause 46A.1.2. If the Trust has, in fact, exercised its rights in terms of Clause 46A.1.2 then for so long and to the extent that the Trust has exercised such rights, and this prevents the Operator from providing any part of the Services:-

46A.3.1 the Operator shall be relieved of its obligations to provide such part of the Services; and

46A.3.2 the Trust shall be entitled to deduct all substantiated and reasonable (unless incurred in an emergency) costs, losses and expenses incurred by the Trust in exercising such rights from any amount payable to the Operator under the provisions of this Agreement.

46B. Non-Default Termination

Force Majeure and Voluntary Termination

46B.1 If, the circumstances referred to in Clause 50.10 apply, either party may exercise its rights in terms of Clause 50.10.

46B.2 The Trust shall be entitled to terminate this Agreement at any time on 12 months’ written notice to the Operator. In the event of notice being given by the Trust in accordance with this Clause 46B.2, the Trust shall, at any time before expiration of such notice, be entitled to direct the Operator, where the Works (or any part of the Works) or any Service (or any elements of any Service) have not been commenced to refrain from commencing any such Works or Services (or to procure the same).

Expiry

46B.3 Subject to the provisions of Clause 4.3, this Agreement shall terminate automatically at the end of the Term. Without prejudice to the right of the Operator against the Trust in respect of any breaches by the Trust of its obligations under this Agreement arising before the termination of this Agreement, the Operator shall not be entitled to any compensation for termination of this Agreement on expiry of the Term. Without prejudice to the right of the Trust against the Operator in respect of any breaches by the Operator of its obligations under this Agreement arising before the termination of this Agreement the Trust shall not be entitled to any compensation for termination of this Agreement on Expiry of the Term.
47. **Effect of Termination**

47.1 Notwithstanding any provision of this Agreement, on service of a notice of termination, this Agreement shall only terminate in accordance with the provisions of this Clause.

**Continued effect - no waiver**

47.2 Notwithstanding any breach of this Agreement by either party, and without prejudice to any other rights which the other party may have in relation to it, the other party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of either party to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

**Continued performance**

47.3 Subject to the terms of this Agreement and without prejudice to the foregoing generality subject to any exercise by the Trust of its rights under this Agreement to perform, or to procure a third party to perform, the obligations of the Operator, the parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or notice of termination, until the termination of the Agreement becomes effective in accordance with the provisions of this Clause.

**Transfer to Trust of Assets, Contracts etc.**

47.4 On the service of a notice of termination in accordance with this Agreement for any reason before the expiry of the Term:-:

47.4.1 conditional upon the payment of compensation to the Operator pursuant to clause 48, if prior to the Operational Date, the Operator shall (in so far as any transfer shall be necessary fully and effectively to transfer property to the Trust or its nominees), transfer to, and there shall vest in, the Trust or its nominees such part of the Works and/or the Facilities as shall have been constructed and such items of the Equipment as shall have been procured by and/or installed by the Operator in the Works and if the Trust so elects:

(i) all construction plant and materials and installation equipment remain available to the Trust for the purposes of completing the Works provided that the Trust pays the Contractor’s reasonable charges for the materials and for allowing to use said plant and equipment;

47.4.1A if after the Operational Date, the Trust shall, (a) in relation to compensation on termination being payable pursuant to the following Parts of Part C of the Schedule (i) Part 1, (ii) Part 3 and (iii) Part 4 in exchange for vacant possession of the Site including the Facilities in favour of itself and the documents detailed below be obliged to pay to
the Operator the Open Market Hospital Value for the Site including the Facilities (the Open Market Hospital Value for the Site including the Facilities will be agreed between the Parties or, in the event of disagreement, determined pursuant to the Dispute Resolution Procedure) but such payment shall be subject to the provisions of Part 1, Part 3 or Part 4 of Part C of the Schedule as appropriate, or (b) in relation to compensation on termination being payable pursuant to paragraph 2 (Retendering Election) of Part 2 of Part C of the Schedule in exchange for vacant possession of the Site including the Facilities in favour of a nominee of the Trust and the documents detailed below be obliged to pay the Operator the sum described in paragraph 3.11 of Part 2 of Part C of the Schedule but such payment shall be subject to the provisions of Part 2 of Part C of the Schedule or (c) in relation to compensation being payable pursuant to paragraph 4 (No Retendering Procedure) of Part 2 of Part C of the Schedule in exchange for vacant possession of the Site including the Facilities in favour of the Trust and the documents detailed below be obliged to pay to the Operator the sum described in paragraph 4.5 of Part 2 of Part C of the Schedule but such payment shall be subject to the provisions of Part 2 of Part C of the Schedule. The method and timing of the payment of the sums referred to in this Clause 47.4.1A are set out in Part 5 of Part C of the Schedule.

The following items will be delivered to the Trust by the Operator in exchange for the sum referred to above:-

(a) a validly executed disposition of the Site and the Facilities in favour of the Trust or its nominees all in terms acceptable to the Trust acting reasonably;

(b) a Land Certificate containing no exclusion of indemnity under Section 12(2) of the Land Registration (Scotland) Act 1979 except in respect of any matter disclosed in or ascertainable from the Title Deeds and showing the Operator as registered proprietor of the Site and Facilities (or if the land certificate has not been released by the Keeper pending a previous application, then certified copies of all documents sent to the Keeper in support of the outstanding applications or required by the Keeper to process the outstanding applications together with Form 10 report);

(c) a Form 12 Report (including Searches in the personal registers) brought down as near as practicable to the date of entry under the last mentioned disposition and showing no entries adverse to the Operator’s interest, the cost of said report being the responsibility of the Operator;

(d) a Search in the Charges Register against the Operator showing no entries (other than the Trust Standard Security) prejudicial to the grant of the said disposition;
(e) discharges of any securities (other than the Trust Standard Security) granted by the Operator over the Site and Facilities (together with a cheque for land registration dues (including the land registration dues in respect of the Trust Standard Security) and the appropriate land register forms) and letters of non-crystallisation in respect of any floating charges.

In addition, the Operator will deliver to the Trust such documents and evidence (but not a plan) as the Keeper of the Land Register may require to enable the interest of the Trust to be registered in the Land register as a registered proprietor of the whole Site and Facilities without exclusion of indemnity under Section 12(2). The Land Certificate to be issued to the Trust will disclose no entry, deed or diligence prejudicial to the Trust’s interest, other than such as are created by, or against, the Trust or have been disclosed to and accepted by the Trust prior to the date of settlement, including any matter disclosed in or ascertainable from the Title Deeds.

47.4.2 the Operator shall hand over to, and there shall vest in, the Trust (or its nominees), free from all encumbrances, the Equipment;

47.4.3 if the Trust so elects, the Operator shall procure that any of the Design and Build Contract, the Services Contracts and/or the Independent Tester Agreement shall be novated or assigned to the Trust, provided that where termination occurs under Clause 45 the consent of the Contractor, the Service Provider or the Independent Tester (as the case may be) shall be required;

47.4.4 the Operator shall either itself offer, or (so far as it is able) procure that any Operator Party shall (as the case may be), offer to sell to the Trust or its nominees at a fair value (determined as between a willing vendor and willing purchaser, with any disputes as to such fair value being determined pursuant to Part E of the Schedule (Dispute Resolution Procedure)), free from any security interest or other interest, restriction or claim, all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by the Operator or any Operator Party which would be reasonably required by the Trust or its nominees in connection with the operation of the Facilities or the provision of the Services;

47.4.5 the Operator shall deliver to the Trust (as far as not already delivered to the Trust) one complete set of:

(i) “as built drawings” showing all alterations or changes made to the Facilities since the Operational Date; and

(ii) maintenance, operation and training manuals for the Facilities;

47.4.6 the Operator shall use all reasonable endeavours to procure that the benefit of all manufacturer’s warranties in respect of mechanical and electrical plant and equipment used or made available by the Operator under this Agreement and included in the Facilities are assigned, or otherwise transferred, to the Trust; and
47.4.7 the Operator shall deliver to the Trust all information in relation to the Affected Employees required for the Trust to comply with its obligations in terms of Clause 38 except where such information is required by Law to be retained by the Operator or any Operator Party (in which case complete copies shall be delivered to the Trust).

47.5 The Operator shall ensure that provision is made in all relevant contracts to ensure that the Trust will be in a position to exercise its rights, and the Operator will be in a position to comply with its obligations, under Clause 47.4.

**Termination**

47.6 On completion of the transfer required by Clause 47.4 (except in so far as any of the requirements of that Clause may be waived by the Trust) and the payment of compensation from the Trust to the Operator pursuant to Clause 48, the Lease and this Agreement shall terminate and, save as provided in Clause 47.9, all rights and obligations of the Trust and the Operator under this Agreement shall cease and be of no further force and effect. For the avoidance of doubt, nothing in this clause 47.6 shall limit the rights of either party to recover losses, damages, costs or expenses incurred prior to the date on which the rights and obligations of the parties ceased in accordance with this clause 47.6 but only insofar as not already taken into account within the calculation of Compensation on Termination.

**Transitional arrangements**

47.7 On the termination of this Agreement for any reason save in relation to termination on Expiry of the Term when the provisions of Clause 49 shall apply, the Operator shall have the following duties:

47.7.1 for a reasonable period both before and after any such termination, the Operator shall co-operate fully with the Trust and any successor providing services to the Trust in the nature of any of the Services or any part of the Services in order to achieve a smooth transfer of the manner in which the Trust obtains services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of the Trust and members of the public;

47.7.2 the Operator shall, as soon as practicable after termination, remove from the Site all moveable property not acquired by the Trust pursuant to Clause 47.4 (or not belonging to the Trust or any Trust Party) and if it has not done so within forty (40) Business Days after any notice from the Trust requiring it to do so the Trust may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and shall hold any proceeds less all costs incurred to the credit of the Operator;

47.7.3 the Operator shall forthwith deliver to the Trust’s Representative:

(i) any keys to the Facilities; and
(ii) comply with Clause 43.6; and

47.7.4 the Operator shall, as soon as practicable, vacate the Site and shall leave the Site and the Facilities in a safe, clean and orderly condition.

47.8 If the Trust wishes to conduct a competition prior to the Expiry of the Term with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Services or any of them) following the expiry of this Agreement, the Operator shall co-operate with the Trust fully in such competition process including (without limitation) by:

47.8.1 providing any information which the Trust may reasonably require to conduct such competition but, for the avoidance of doubt, information which is commercially sensitive to the Operator shall not be provided (and, for the purpose of this Clause 47.8.1 commercially sensitive shall mean information which would if disclosed to a competitor of the Operator give that competitor a competitive advantage over the Operator and thereby prejudice the business of the Operator); and

47.8.2 assisting the Trust by providing all (or any) participants in such competition process with access to the Site and the Facilities.

Continuing Obligations

47.9 Save as otherwise expressly provided in this Agreement:

47.9.1 termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination; and

47.9.2 termination of this Agreement shall not affect the continuing rights and obligations of the Operator and the Trust under Clauses 5, 8, 10, 11, 12, 36, 38, 39, 43, 44, 45, 46, 47.7 and 47.8, 48, 49, 52, 53, 54, 59, 60, 61, 64 or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

48. Compensation on Termination

48.1 If this Agreement is terminated pursuant to Clause 50.10 then the Trust shall pay compensation to the Operator in accordance with Part 3 of Part C of the Schedule (Compensation on Termination).

48.2 If this Agreement is terminated pursuant to Clause 44 or Clause 50.9, then the Trust shall pay compensation to the Operator in accordance with Part 2 of Part C of the Schedule (Compensation on Termination).

48.3 If this Agreement is terminated pursuant to Clause 45, or Clause 46B.2 then the Trust shall pay compensation to the Operator in accordance with Part 1 of Part C of the Schedule (Compensation on Termination).
48.4 If this Agreement is terminated pursuant to Clause 54.3, then the Trust shall pay compensation to the Operator in accordance with Part 4 of Part C of the Schedule (Compensation on Termination).

48.5 Subject to Clause 48.12, to the extent that the amount of compensation payable under this Clause 48 is less than zero, an amount equal to the sum by which such compensation falls below zero shall be due and payable by the Operator to the Trust on the due date of payment of the compensation.

48.5A For the avoidance of doubt, any amount payable pursuant to Clauses 47 and 48 shall be calculated so as to avoid double counting.

*Tax equalisation*

48.6 Where a payment is to be made to the Operator pursuant to Clauses 48.1 or 48.3 (a “Compensation Payment”) and the Operator has a Relevant Tax Liability in respect of such payment, then the amount of the Compensation Payment to be made by the Trust to the Operator shall be increased so as to ensure that the Operator is in the same position (after account is taken of the Relevant Tax Liability) as it would have been in had it not been for such Relevant Tax Liability.

48.7 For the purposes of this Clause 48:

48.7.1 “Relief” shall mean any relief, allowance or deduction in computing profits or tax or a credit against, or right to repayment of, tax granted by or pursuant to any legislation for tax purposes;

48.7.2 a “Relief derived from the Project” is a Relief which arises in connection with the Project and includes any Relief arising as a consequence of the distribution of any amount obtained in respect of the Project (other than a Compensation Payment) by the Operator (whether by way of interest, dividend or other distribution, repayment, reduction or redemption of capital or indebtedness or return of assets or otherwise); and

48.7.3 The Operator shall be regarded as having a “Relevant Tax Liability” in respect of a Compensation Payment to the extent that:

(i) it has a liability for tax in consequence of or in respect of a Compensation Payment (“Actual Liability”); or

(ii) it would have had a liability for tax within paragraph (i) above but for the utilisation of a Relief other than a Relief derived from the Project (“Deemed Liability”).

48.8 In determining whether the Operator has a Relevant Tax Liability by reason of a Compensation Payment, it should be assumed that any Reliefs derived from the Project which are available to the Operator (or would have been so available but for a surrender by the Operator of such Reliefs by way of group or consortium relief) for offset against the Compensation Payment, or against tax in relation to the same, have been so offset to the maximum extent possible.
48.9 The Operator shall keep the Trust fully informed of all negotiations with the Inland Revenue in relation to any Relevant Tax Liability in respect of a Compensation Payment. The Operator shall not agree, accept or compromise any claim, issue or dispute relating to such Relevant Tax Liability without the prior written consent of the Trust, which shall not be unreasonably withheld or delayed. The Trust may, if it considers in good faith that such action is justified having regard to the likely costs and benefits, direct the Operator to resist, appeal, defend or otherwise dispute the Relevant Tax Liability in respect of the Compensation Payment, provided that the cost of any such dispute (including any interest or penalties incurred) shall be at the Trust’s expense. However, if the Operator obtains professional advice from an independent person with relevant expertise that any resistance, appeal, defence or other mode of dispute is not likely to result in any more beneficial position in relation to the Relevant Tax Liability, the Operator shall be entitled not to continue with such resistance, appeal, defence or other mode of dispute. Where any resistance, appeal, defence or other mode of dispute results in a more beneficial position in relation to the Relevant Tax Liability, an adjustment will be made to the amount payable under Clause 48.6 to reflect such outcome.

48.10 Any increase in the amount of a Compensation Payment which is payable under Clause 48.6 shall be paid on the later of five (5) Business Days after a demand therefor (together with evidence in sufficient detail for the Trust to satisfy itself of the Relevant Tax Liability and its calculation) is made by the Operator and:

48.10.1 in the case of an Actual Liability, five (5) Business Days before the date on which the relevant tax must be paid to the tax authority in order to avoid incurring interest and penalties; and

48.10.2 in the case of a Deemed Liability, five (5) Business Days before the date on which tax which would not have been payable but for the utilisation of the relevant Relief must be paid in order to avoid incurring interest or penalties (whether by the Operator or otherwise) and, for the purposes of determining when the Relief would otherwise have been utilised, Reliefs shall be regarded as utilised in the order in which they arise.

48.11 The Trust shall have the right to pay the amount payable under Clause 48.6 direct to the Inland Revenue in satisfaction of the relevant tax due by the Operator.

Rights of Set-Off

48.12 For the avoidance of doubt, the Trust’s obligations to make any payment of compensation to the Operator pursuant to this Clause are subject to the Trust’s rights under Clause 8.9, save that the Trust agrees not to set-off any amount agreed or determined as due and payable by the Operator to the Trust against any payment of termination compensation under Clauses 48.1 or 48.3 except to the extent that such termination payment exceeds the Senior Debt Amount payable to the Financier.

Full and final settlement
48.13  (a) Subject to the provisions of paragraph 2.1 of Section 5 of Part C of the Schedule (*Compensation on Termination*) any compensation paid pursuant to Clause 48 shall be in full and final settlement of any claim, demand and/or proceedings of the Operator in relation to any termination of this Agreement, the Leases and/or any Project Document (and the circumstances leading to such termination) and the Operator shall be excluded from all other rights and remedies in respect of any such termination, and

(b) the compensation payable (if any) pursuant to any of Clauses 48.1 to 48.4 above shall be the sole remedy of the Operator and the Operator shall not have any other right or remedy in respect of such termination.
PART 10 - OPTIONS AT END OF TERM AND HANDOVER

49. Options

49.1 If the Trust and the Operator fail to agree unconditionally the terms and conditions on which the Term should be extended pursuant to Clause 4.3 (Duration), then this Agreement shall expire in accordance with its terms and not later than 18 months prior to the Expiry of the Term, the Trust shall notify the Operator whether or not the Trust proposes to vacate the Site on Expiry of the Term.

49.2 If the Trust notifies the Operator that it proposes to vacate the Site on Expiry of the Term, pursuant to Clause 49.1 or if the Trust has failed to notify the Operator pursuant to Clause 49.1, the following provisions will apply:-

49.2.1 not later than 8 weeks after Expiry of the Term, the Trust will:-

49.2.1.1 itself vacate and procure that its employees, agents and contractors vacate the Site;

49.2.1.2 procure that all property and equipment belonging to or in the possession of the Trust, its employees, agents or contractors (other than the Operator, its employees and/or any Operator Parties) is uplifted and removed from the Site and that all damage thereby caused is made good; and

49.2.1.3 discharge all its outstanding obligations to the Operator under this Agreement as soon as reasonably practicable following the Expiry of the Term;

49.2.2 on the Expiry of the Term, the Trust shall execute and deliver such documents as are necessary to demonstrate the termination of the Lease (failure to do so timeously will be a ground for irritancy thereof) and the Trust shall deliver to the Operator a validly executed discharge of the Trust Standard Security; and

49.2.3 the vacation by the Trust and termination of the Lease shall not prejudice the other provisions of the Project Agreement nor the rights of the Trust and the Operator against each other in respect of any antecedent breaches thereof.

49.3 Not used.

49.4 If, on Expiry of the Term, the Trust does not propose to vacate the Site and has so notified the Operator and the Operator has not negotiated an extension of the Term pursuant to Clause 4.3 (Duration) or if the Trust and the Operator have agreed an extension of the Term pursuant to Clause 4.3 and if on expiry of such extension of the Term the Trust does not propose to vacate the Site and has so notified the Operator:-
the Operator shall, as soon as is practical deliver to the Trust a validly executed disposition (in terms required by the Trust acting reasonably) of the Site including the Facilities in favour of the Trust, or its nominees; and

the Trust shall, in exchange for vacant possession of the Site including the Facilities and the documents detailed below pay to the Operator the lower of (a) the Open Market Value for the Site including the Facilities and (b) £1,000,000. The Open Market Value for the Site including the Facilities will be agreed between the Parties or, in the event of disagreement, determined pursuant to the Dispute Resolution Procedure.

The following items will be delivered to the Trust by the Operator in exchange for the sum referred to above:-

(a) a validly executed disposition of the Site including the Facilities in favour of the Trust or its nominees all in terms acceptable to the Trust acting reasonably;

(b) a Land Certificate (containing no exclusion of indemnity under Section 12(2) of the Land Registration (Scotland) Act 1979 except in respect of any matter disclosed in or ascertainable from the Title Deeds and showing the Operator as registered proprietor of the Site and Facilities (or if the land certificate has not been released by the Keeper pending a previous application, then certified copies of all documents sent to the Keeper in support of the outstanding applications or required by the Keeper to process the outstanding applications together with Form 10 report);

(c) a Form 12 Report (including Searches in the personal registers) brought down as near as practicable to the date of entry under the last mentioned disposition and showing no entries adverse to the Operator’s interest, the cost of said report being the responsibility of the Operator;

(d) a Search in the Charges Register against the Operator showing no entries (other than the Trust Standard Security) prejudicial to the grant of the said disposition;

(e) discharges of any securities (other than the Trust Standard Security) granted by the Operator over the Site and Facilities (together with a cheque for land registration dues (including the land registration dues in respect of the Trust Standard Security) and the appropriate land register forms) and letters of non-crystallisation in respect of any floating charges.

In addition, the Operator will deliver to the Trust such documents and evidence other than a plan as the Keeper of the Land Register
may require to enable the interest of the Trust to be registered in the Land Register as a registered proprietor of the whole Site including the Facilities without exclusion of indemnity under Section 12(2). The Land Certificate to be issued to the Trust will disclose no entry, deed or diligence prejudicial to the Trust’s interest, other than such as are created by, or against, the Trust or have been disclosed to and accepted by the Trust prior to the date of settlement, including any matter disclosed in or ascertainable from the Title Deeds.

49.4.3 the Operator shall deliver to the Trust (as far as not already delivered to it) one complete set of:-

(i) “as built drawings” showing all alterations or changes made to the Facilities since the Operational Date; and

(ii) maintenance, operation and training manuals for the Facilities; and

49.4.4 the Operator shall use all reasonable endeavours to procure that (insofar as permitted by law) the benefit of all manufacturer’s warranties in respect of mechanical and electrical plant and equipment used or made available by the Operator under this Agreement and included in the Facilities are assigned, or otherwise transferred, to the Trust; and

49.4.5 the Operator shall deliver to the Trust (insofar as permitted by law) all information in relation to the Affected Employees required for the Trust to comply with its obligations in terms of Clause 38 except where such information is required by Law to be retained by the Operator or any Operator Party (in which case complete copies shall be delivered to the Trust).

Following receipt by the Operator of an amount equal to the amount referred to in Clause 49.4.2 the Operator shall, as soon as reasonably practicable, vacate the Site.
PART 11 - FORCE MAJEURE/RELIEF EVENTS

50. Force Majeure/Relief Events

50.1 For the purpose of this Clause 50, “Force Majeure” means:-

50.1.1 war, civil war, armed conflict or terrorism; or

50.1.2 nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Operator; or

50.1.3 pressure waves caused by devices travelling at sonic or supersonic speeds,

which directly causes either Party (“the Affected Party”) to be unable to comply with all or a material part of its obligations under this Agreement.

50.2 For the purpose of this Clause 50, “Relief Event” means:

50.2.1 failure by any statutory undertaking (including utility providers), local authority or other like body to carry out works or provide services;

50.2.2 any blockade or embargo falling short of Force Majeure;

50.2.3 fire, explosion, lightning, storm, tempest, flood, drought, earthquake, bursting or overflowing of water tanks, apparatus or pipe, riot and civil commotion;

50.2.4 Not Used

50.2.5 any official or unofficial strike, lockout, go slow or other dispute generally affecting the construction industry, building maintenance or facilities management industry or a significant sector of it;

provided that in the case of each or any of the events set out in this clause 50.2:-

50.2.5.1 any such event does not itself constitute Force Majeure;

50.2.5.2 any such event shall only be a Relief Event where its occurrence is beyond the reasonable control of the Affected Party and does not arise out of circumstances which are or should be in the knowledge of the Affected Party at the time of entering into this Agreement and shall not have arisen as a result of the acts, omissions, negligence or default of the Affected Party;

50.2.5.3 lack of funds shall not be interpreted as a Relief Event; and
50.2.5.4 “Affected Party” means the Party unable, having taken all reasonable steps to avoid the Relief Event, to perform in whole or in part its obligations under this Agreement by reason of such event and for the purposes of this Clause the Trust shall be deemed not to be a contractor of the Operator and the Operator shall be deemed not to be a contractor of the Trust.

50.3 Subject to Clauses 50.4, 50.5, 50.6A, 50.6B, 50.6C, 50.6D and 50.8 neither Party shall be in breach of an obligation under this Agreement or any Project Document to the extent that it is unable to perform that obligation in whole or in part by reason of an event of Force Majeure or a Relief Event or the occurrence of an Insured Risk which is uninsurable in accordance with Clause 51 (but subject to Clause 51).

50.4 Notwithstanding 50.3 above, if a Relief Event or an event of Force Majeure or a risk which is uninsurable occurs which results in the Trust receiving none or only part of any Service or the standard to which any Service is provided is diminished the provisions of Part B of the Schedule (Payment Mechanism) shall apply. Provided always that in the event of an event of Force Majeure only the maximum deduction in any one Payment Month shall not exceed 25% of the Basic Monthly Services Fee for the duration of such event of Force Majeure. To avoid doubt, if an event of Force Majeure occurs prior to the Operational Date, the Operator shall not be entitled to receive any compensation other than as expressly provided in Clause 48 (Compensation on Termination).

50.5 Where a party is (or claims to be) affected by a Relief Event or a Force Majeure event or a risk which is uninsurable:-

50.5.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Relief Event or an event of Force Majeure or a risk which is uninsurable as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and

50.5.2 it shall not be entitled to rely upon the relief afforded to it pursuant to Clause 50.3 of this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure (if any) to comply with its obligations under Clause 50.5.1 above.

50.6 The Party claiming relief shall serve written notice on the other Party within five (5) Business Days of it becoming aware of the relevant Relief Event or the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event or an event of Force Majeure.

50.6A A subsequent written notice shall be served by the Party claiming relief on the other party within a further five (5) Business Days of the notice referred to in
Clause 50.5 which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the Relief Event or an event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Clause 50.5, the date of the occurrence of the Relief Event or an event of Force Majeure and an estimate of the period of time required to overcome it (and/or its effects).

50.6B The Party claiming relief shall notify the other as soon as the consequences of the Relief Event or an event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.

50.6C If, following the issue of any notice referred to in Clause 50.6, the Party claiming relief receives or becomes aware of any further information relating to the Relief Event or an event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other Party as soon as reasonably possible.

50.6D If the effect of any one or more events of Force Majeure or Relief Events lasts continuously for more than 90 days then the Parties shall endeavour to agree any modifications to this Agreement which shall be equitable having regard to the nature of the event of Force Majeure or the Relief Event.

50.7 If the Operator is the Party affected by the event of Force Majeure or the Relief Event, the Trust may obtain the affected Services or any of them from any third party until the Operator resumes the provision of the affected Services. The Operator 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 Service Provider (and any sub-contractors of any tier engaged in the provision of the Services)), but the Operator or any of the Service Providers shall not be obliged to reveal any commercially sensitive information, or make available intellectual property proprietary to any of them.

50.8 The Trust shall have no liability to the Operator for any damage which has occurred prior to the exercise of the Trust of its right in terms of Clause 50.7 or damage which results from the breach by the Operator of any of its obligations under this Agreement but the Trust shall indemnify the Operator for any damage caused by the third party referred to in Clause 50.7 during the period during which the Trust exercised its rights under Clause 50.7.

50.9 Subject to Part F of the Schedule the Operator shall be obliged to reinstate and make good any damage caused to the Facilities, the Site and/or the Equipment as a result of a Relief Event as soon as reasonably practicable and to the standards specified in the then current Design Specification or with such variations as the Operator and the Trust may both deem necessary and desirable. To this extent the Operator shall (subject to the terms of the Financier Direct Agreement) apply all monies received by virtue of any relevant policy of insurance effected by the Operator in so remedying and making good the Facilities, the Site and/or the Equipment (as the case may be) and shall make up any shortfall from its own monies. If the Operator has not remedied
or made good the Facilities, the Site and/or the Equipment (as the case may be) to the reasonable satisfaction of the Trust within such period as the Trust may reasonably require (having regard to the nature and extent of damage and, in the case of reconstruction of, or substantial structural repair work being carried out in relation to, the Facilities, being a period not less than that required to obtain all Necessary Consents and to carry out the relevant works, subject always to extensions of time due to the occurrence of Delay Events) from the date of the occurrence of such Relief Event, the Trust may terminate this Agreement by giving one month's prior notice in writing to the Operator and the provisions of Clause 47 (Effect of Termination) and Clause 48.2 (Compensation on Termination) shall apply.

50.10 If either Party is unable to perform all or any part of its obligations under this Agreement as a consequence of an event of Force Majeure or a Relief Event for a continuous period in excess of 120 days, either Party may, following consultation with the other with a view to resolving the matter for a period of not less than 30 days, terminate this Agreement by giving one month's prior notice in writing and the provisions of Clause 48.1 shall apply.
PART 12 - MISCELLANEOUS

51. Uninsurable Risks

51.1 If, upon expiry or cancellation of any policy of insurance (other than a policy of insurance in relation to business interruption (number 5 of the insurances for the Operational Phase) which insurance forms part of Part F of the Schedule (“Business Interruption Insurance”) the Operator is obliged to take out and maintain pursuant to Part F of the Schedule and the Operator (save where such cancellation is due to any act or omission of the Operator and/or the Operator Parties) either:

51.1.1 is, or will be, unable to obtain a replacement policy of insurance in respect of all or any of the Insured Risks covered by that policy from a reputable insurer with a credit rating from Standard and Poor's Corporation (or its successors) of at least A- (or its equivalent) transacting business in the United Kingdom to meet its obligations under Part F of the Schedule; or

51.1.2 the costs of such replacement policy exceed, or will exceed the Commercial Price (as defined in the paragraph below), then the Operator shall, as soon as practicable upon becoming aware of the same, but in any event, if practicable, at least 60 days before the expiry or cancellation of the relevant policy, notify the Trust in accordance with Clause 51.2.

The “Commercial Price” means a price agreed between the Parties (taking into account the Operator's obligations under this Agreement, the premium previously paid by the Operator and the price and terms at which such insurance has previously been available in the European Union) which is the maximum commercially justifiable price which could be expected to be paid by the Operator.

51.2 The notice to be provided by the Operator to the Trust under Clause 51.1 will contain a statement of:-

51.2.1 in the case of Clause 51.1.1, the relevant Insured Risk(s) in respect of which insurance cannot be obtained;

51.2.2 in the case of Clause 51.1.2, the relevant Insured Risk(s) which has/have caused the Commercial Price to be exceeded;

51.2.3 the premium payable in the previous year in respect of all of the relevant Insured Risks and, in the case of Clause 51.1.2 the proposed premium for the year in question; and

51.2.4 the Operator's proposals as to what it considers reasonable and appropriate to mitigate, manage and control the relevant Insured Risk or Risks (which proposals may include, without limitation proposals
to amend or vary the Services and/or to alter the Facilities pursuant to the Change Procedure).

51.3 Following receipt of the Operator's notice pursuant to Clause 51.2, the Trust may by notice in writing request, and the Operator will, as soon as reasonably practicable following such request, provide such additional information as the Trust may reasonably require, and the Trust and the Operator will use reasonable endeavours for a period of no more than 60 days from the date of receipt of the notice to agree the relevant Insured Risks in respect of which the Operator is unable to obtain insurance from an insurer as specified in Clause 51.1, failing which either Party may refer the relevant Dispute to the Dispute Resolution Procedure.

For the purposes of this Clause 51, (a) such risks agreed or determined to arise under Clause 51.1.1 shall from the date of expiry of the insurance policy in respect thereof be referred to as “Uninsurable Risks”, (b) such risks agreed or determined to have caused the Commercial Price to be exceeded shall be referred to as “Insurance B Risks”. PROVIDED THAT a Business Interruption Uninsurable Risk shall not be capable of becoming an Uninsurable Risk or an Insurance B Risk. The provisions in relation to the Business Interruption Uninsurable Risk are set out in Clause 51.12.

51.4 The Trust shall have the option (at its sole discretion) by giving written notice to the Operator within 5 Business Days from the date of agreement or determination of the Insurance B Risks under Clause 51.3 (the “Option Period”) to agree to pay, 5 Business Days prior to each date upon which price for the relevant Insured Risks is due, the Excess so that the insurance in respect of the Insurance B Risk/s remains in force and the Project Agreement is unaffected (where “Excess” means the amount by which the aggregate of the proposed premium payable for the year in question for all Insurance B Risks exceeds the Commercial Price attributable to those risks and so that in subsequent years while the Trust is still paying the Excess the agreed Commercial Price attributable to those risks will be Indexed from the year in which it was originally calculated.)

51.5 In the case of any Insurance B Risk if the Trust does not exercise the option to pay the Excess (as defined in Clause 51.4) within the Option Period then this Agreement shall continue and the Insurance B Risk shall be treated as an Uninsurable Risk or Risks for the purposes of this Clause 51 and will, subject to Clause 51.11A, become an event of Force Majeure from the date of expiry of the insurance policy in respect thereof.

51.6 Not used

51.7 If an Insured Risk becomes or is treated as an Uninsurable Risk, the Services Fee shall be reduced in each year of the Term during which such a risk remains uninsured, by a sum equivalent to the premium attributable to that Uninsured Risk immediately prior to it becoming an Uninsurable Risk Indexed annually from the date upon which such premium was last payable by it (or, for any part of a year, a proportionate part of such sum).
If the Uninsurable Risk at any time ceases to be an Uninsurable Risk then the Trust shall notify the Operator and 60 days following such notice or, if later, the earliest practicable date upon which the Operator can effect insurance in respect of such risk. The Operator shall forthwith take out and maintain insurance for such risk and such risk will cease to be an event of Force Majeure, Clause 51.11A shall no longer apply and such risk will again become an Insured Risk.

The Trust may give notice at any time to the Operator notifying the Operator that it no longer wishes to pay the Excess, in which case the Insurance B Risk will become an Uninsurable Risk from the date of expiry of the insurance policy. In that event the Services Fee shall be reduced in each year of the Term in which such risk remains uninsured by a sum equivalent to the premium (excluding the Excess) attributable to that Uninsured Risk immediately prior to it becoming an Insurance B Risk Indexed annually from the date upon which such premium (excluding the Excess) was last payable by it (or, for any part of a year, a proportionate part of such sum).

If the Trust exercises its option under Clause 51.4 to agree to pay the Excess and the Trust shall not have paid the Excess on the date of expiry of any insurance in respect of the Insurance B Risks then the Insurance B Risks will become Uninsurable Risks until the date of payment of the Excess. In that event the Services Fee shall be reduced in each year of the Term in which such risk remains uninsured by a sum equivalent to the premium (excluding the Excess) attributable to that Insurance B Risk immediately prior to it becoming an Uninsurable Risk Indexed annually from the date upon which such premium (excluding the Excess) was last payable by it (or, for any part of a year, a proportionate part of such sum).

Pending agreement or determination of Uninsurable Risks under Clause 51.3, any Insured Risks the subject of notice from the Operator under Clause 51.1 and 51.2 shall be treated as events of Force Majeure on expiry of the insurance in respect of such Insured Risks but without prejudice to the application of Clauses 51.4 and 51.5 on such agreement or determination being reached.

Following the occurrence of an Uninsurable Risk the Trust shall, within 20 days, notify the Operator whether it has determined, at its sole discretion, (i) to pay to the Operator an amount equal to the insurance proceeds which would have been payable had the relevant insurance continued to be available (payment to be made to the Insurance Proceeds Account in which case the Agreement shall continue) and the Uninsurable Risk shall not be treated as an event of Force Majeure (“Option 1”) (paragraph 5 of Part F of the Schedule shall apply in relation to any reinstatement works), or (ii) to terminate this Agreement in which case the provisions of Clause 47 (Effect of Termination) and Clause 48.1 (Compensation on Termination) shall apply. If the Trust has, at its sole discretion, determined that it will exercise Option 1 then it will pay the amount agreed or determined by the Dispute Resolution Procedure (Part E of the Schedule) within 20 days of such agreement or determination.

The Operator shall notify the Trust of any risk covered under Business Interruption Insurance becoming a Business Interruption Uninsurable Risk
within 20 days of becoming aware of the same and, in any event, at least 20 days before the expiry of any existing Business Interruption Insurance in respect of such Risk.

51.11C Where there is a Business Interruption Uninsurable Risk, the Services Fee shall be reduced in each year for which the Business Interruption Insurance in respect of that Risk is not maintained, by an amount equal to the premium paid by the Operator in respect of the relevant Risk in the year prior to it becoming a Business Interruption Uninsurable Risk (Indexed). Where the Risk is a Business Interruption Uninsurable Risk for part of a year only, the reduction in the Services Fee shall be pro rated to the number of months for which the Risk was a Business Interruption Uninsurable Risk.

51.11D Where there is a Business Interruption Uninsurable Risk, the Operator shall approach the insurance market on a regular basis and in any event at intervals not less than six months to establish whether the relevant Risk remains a Business Interruption Uninsurable Risk. Where such a Risk which was previously a Business Interruption Uninsurable Risk ceases to be so, and the Operator has become aware that this is the case, the Operator shall forthwith take out and maintain the Business Interruption Insurance for such Risk and the provisions of Clause 51.12 shall no longer apply to that Risk and FURTHER the reduction in the Services Fee as set out in Clause 51.11C will no longer apply.

51.12 Following the occurrence of a Business Interruption Uninsurable Risk the Trust shall within 20 days notify the Operator whether it has determined, at its sole discretion (i) to terminate the Agreement in which case the provisions of Clause 47 (Effect of Termination) and Clause 48.1 (Compensation on Termination) shall apply or (ii) to pay to the Operator during the Period of Indemnity the lesser of the following:

(a) (1) on or before the day they fall due under the terms of the Facility Agreement all amounts of principal and interest but not any accrued arrears (“Repayments”) PLUS (2) all fixed costs for which the Operator is liable as a matter of contract (including the Service Contract) or law and which first falls due for payment during the Period of Indemnity but excluding payments (i) to the extent that the relevant liability could have been avoided or mitigated by the Operator; (ii) which are not entirely at arm’s length; (iii) which are due to holders of Junior Debt or share capital in the Operator in that capacity; (iv) which represent Indirect Losses suffered or allegedly suffered by any person; (v) which represents fines, penalties or damages for unlawful act or breach of contract or other legal obligation; (vi) against the occurrence of which the Operator is required to maintain alternative insurance in accordance with this Agreement (unless such insurance has become an Uninsurable Risk in terms of Clause 51.1); (vii) to the extent that the Operator has a remedy against another person in respect of the same liability LESS all sums standing to the credit of the Debt Service Reserve Account; and
the Availability Deductions, the Non Space-Related Service Shortfall Deductions and the Failure Repetition Deductions (the “Monthly Deductions”) from the Services Fees made pursuant to Part B of the Schedule attributable to the damage to the Facilities;

all to the extent that such payments, costs or Monthly Deductions referred to in sub clauses (a) and (b) above incurred would have been covered by the relevant Business Interruption Insurance.

51A. **ADJUSTMENT OF OPERATIONAL INSURANCE PREMIUM**

51A.1 In relation to the insurances listed under the heading “Operational Phase” of Part F of the Schedule (the “Operational Insurances”) the Operator shall not later than 60 days prior to the Planned Operational Date, deliver to the Trust quotations based on the scope of insurance and level of deductibles in relation to the Operational Insurances (each a “Quotation”) from not less than 5 reputable insurers in the European insurance market (up to two of whom shall be chosen by the Trust).

51A.2 Following notification to the Trust under Clause 51A.1, if the lowest Quotation which can be effected is lower than the amount entered in the Financial Model as at the Execution Date in respect of the Operational Insurances (£30,000 (Indexed) (the “Original Insurance Amount”)), such figure will replace the Original Insurance Amount for the purposes of the Financial Model and this Agreement. In the event that none of the Quotations is lower than the Original Insurance Amount the Original Insurance Amount will not be replaced and the Operator shall take out and maintain an Operational Insurance with any one of the insurers who provided a Quotation.

52. **Indemnities**

52.1 The Operator shall indemnify the Trust on demand and hold it harmless against all damages, losses, claims, demands, expenses (including reasonable legal and other professional expenses), costs, liabilities, fines, penalties and compensation orders which it may sustain:-

52.1.1 as a direct result of any claim for or in respect of the death or personal injury of any person employed or engaged (directly or indirectly) by the Trust, any patients of or visitors to the Facilities or any other third parties present at the Site if and to the extent that such claim is attributable to the negligence or default of the Operator, any Operator Party or any other person for whom the Operator is legally responsible;

52.1.2 as a result of loss or damage to any property (heritable or moveable) or any assets owned by or in the possession of the Trust, its officers, employees, agents, patients and visitors and other third parties present at the Site, if and to the extent that such loss or damage is directly caused by the negligence or default of the Operator, any Operator Party or any other person for whom the Operator is legally responsible; and
52.1.3 as a direct result of any prosecution or action (whether for infringement of Intellectual Property or otherwise) brought against the Trust arising from a breach of any Applicable Laws for which the Operator is responsible under this Agreement or due to the breach or non-performance by the Operator of its obligations under this Agreement.

52.2 The Trust shall indemnify the Operator and/or, at the Operator's direction, the Contractor and/or the Service Provider, on demand and hold it and them harmless against all damages, losses, claims, demands, expenses (including reasonable legal and other professional expenses), costs, liabilities, fines, penalties and compensation orders which are sustained by the Operator and/or the Contractor and/or the Service Provider:-

52.2.1 as a direct result of any claim for or in respect of the death or personal injury of any person employed or engaged by the Operator, the Contractor, the Service Provider or any patient at or visitors to the Facilities if and to the extent that it is caused by the negligence or default of the Trust, Trust Party or any person for whom the Trust is legally responsible;

52.2.2 subject to the provisions of Clause 42.8 as a direct result of loss or damage to any property (heritable or moveable) or any assets owned by or in the possession of the Operator, the Contractor, the Service Provider or any person for whom the Operator is legally responsible, patients and visitors and other third parties present at the Facilities, if and to the extent that such loss or damage is directly caused by the negligence or default of the Trust or its employees or contractors (other than the Operator or the Operator Parties); and

52.2.3 as a direct result of any prosecution or action brought against the Operator, the Contractor, the Service Provider or any person for whom the Operator is legally responsible arising from a breach of Applicable Laws for which the Trust is responsible under this Agreement or due to the breach or non-performance by the Trust of its obligations under this Agreement or any of the other Project Documents to which the Trust is a party;

provided always that:-

(a) the Operator shall, to the extent that any such matter arises where the Trust is liable to indemnify the Operator or any other party at the Trust's request claim or shall use all reasonable endeavours to procure that such other party shall claim under the relevant insurance policy (or policies) effected and maintained by the Operator in accordance with the requirements of Part F of the Schedule and use all reasonable endeavours to pursue such claims. To the extent that recovery is made by the Operator, the Trust's liability under this Clause 52.2 shall be reduced accordingly or, to the extent the Trust has already indemnified the Operator or such person, the Operator
shall reimburse such amounts to the Trust (not to exceed the amount paid by the Trust provided that the Trust shall be obliged to indemnify the Operator, or at the direction of the Operator such other person, for all reasonable costs incurred in connection with making such claims) but without prejudice to the Operator’s rights under this Clause 52.2 to the extent that no recovery is made under such insurance (including to the extent of any policy excesses);

(b) the Trust will meet any increase in insurance premiums or policy excesses as a direct result of claims made and recovered by the Operator under paragraph (a) above.

52.3 If any claim is made or action brought against either Party (the “Indemnified”) arising out of the matters under which they are indemnified in terms of this Clause 52 the other Party (the “Indemnifier”) shall be promptly notified thereof and with the consent of the Indemnified (acting reasonably) 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 of or admission in respect of such claim or action. The Indemnifier shall (if such claim or action is successful against the Indemnified) be responsible for all costs associated with the conduct of such negotiations, litigation or other proceedings and shall (if such claim or action is successful against the Indemnifier) 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.

52.4 Settlement of any claim under this Agreement shall, to that extent, satisfy any other claim which is capable of being made simultaneously in respect of the same subject matter.

52.5 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.

52.6 Save as otherwise expressly provided in this Agreement, the Trust and the Operator expressly exclude liability for indirect or consequential loss or damage which may arise out of the performance or non-performance of this Agreement or in connection with a provision, purported provision or failure in the provision of the Services which includes, for the avoidance of doubt, the loss of profit, business, revenue, goodwill or anticipated savings (whether or not caused by the negligence of the Operator or any Operator Party, the Trust or any Trust Party) resulting therefrom.
52.7 Subject to and without limiting or affecting any other express right of the Trust pursuant to this Agreement the rights of the Trust under Part B of the Schedule (Payment Mechanism) to make:-

(a) Availability Deductions;
(b) Non Space-related Service Shortfall Deductions;
(c) Failure Repetition Deductions; and
(d) Reporting Failure Deductions

shall be the sole and exclusive remedy of the Trust as between the Trust and the Operator in respect of:-

(i) the Unavailability of any Space; and

(ii) the breach by the Operator of its obligation to perform or procure the performance of the Services.

PROVIDED that nothing in this Clause 52.7 shall prevent or restrict the right of the Trust to seek interim interdict, interdict or interim specific implement, specific implement or other discretionary remedies of the court.

52.8 The Trust shall not be entitled to reduce or avoid any amount payable by it to the Operator under Clause 52.2 of this Agreement to the extent that the Trust’s basis for reducing or avoiding the payment otherwise payable under Clause 52.2 is in reliance by the Trust on the fact that any entitlement of the Contractor under the Design and Build Contract or, the Service Provider under the Services Contract to recover or claim sums from the Operator as a consequence of the same act or omission of the Trust in respect of which the Trust itself is liable to the Operator under Clause 52.2 is conditional on the Operator receiving from the Trust payment of those sums to which it is entitled; and the Trust acknowledges that the Operator is entitled to recover and receive from the Trust such amounts or payments for the benefit of those person(s).

52.8A The Operator shall not be entitled to reduce or avoid any amount payable by it to the Trust under Clause 52.1 of this Agreement to the extent that the Operator’s basis for reducing or avoiding the payment otherwise payable under Clause 52.1 is in reliance by the Operator on the fact that any entitlement of any person employed or engaged (directly or indirectly) by the Trust to recover or claim sums from the Trust as a consequence of the same act or omission of the Operator in respect of which the Operator itself is liable to the Trust under Clause 52.1 is conditional on the Trust receiving from the Operator payment of those sums to which it is entitled; and the Operator acknowledges that the Trust is entitled to recover and receive from the Operator such amounts or payments for the benefit of those persons(s).

52.9 Where this Agreement provides specifically for any right of a party on breach of any other party’s obligations under this Agreement, the entitlement to exercise that right will be to the exclusion of all other rights (other than specific
implement or interim specific implement, interdict or other discretionary remedies of the court or interim interdict or their equivalent in any jurisdiction) of the first mentioned party howsoever arising at common law in respect of the circumstances constituting such breach.

52.10 No party shall have a right to damages at common law in relation to this Agreement and all such rights are hereby waived.

52.11 The Trust and the Operator shall take all reasonable steps to mitigate any loss incurred or accruing to the other Party arising in connection with the provisions of this Agreement and, in particular, the terms of this Clause 52.

53. Status of the Operator

53.1 In carrying out its obligations under the Agreement and the other Project Documents the Operator acknowledges that it is acting as principal and not as the agent of the Trust.

53.2 Except where expressly provided for in the Agreement the Operator shall not say or do anything that may lead any other person to believe that the Operator is acting as the agent of the Trust.

54. Corrupt Gifts

54.1 The term “Prohibited Act” means:

54.1.1 offering, giving or agreeing to give to the Trust or any other public body or to any person employed by or on behalf of the Trust or any other public body and any gift or consideration of any kind as an inducement or reward:

(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Trust or any other public body; or

(ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Trust or any other public body;

54.1.2 entering into this Agreement or any other agreement with the Trust or any other public body in connection with which commission has been paid or has been agreed to be paid by the Operator on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to the Trust;

54.1.3 committing any offence:

(a) under the Prevention of Corruption Act 1889-1916;
(b) under any Applicable Law creating offences in respect of fraudulent acts; or

(c) at common law, in respect of fraudulent acts in relation to this Agreement or any other agreement with the Trust or any other public body; or

54.1.4 defrauding or attempting to defraud or conspiring to defraud the Trust or any other public body.

54.2 The Operator confirms that in entering into this Agreement it has not committed any Prohibited Act.

54.3 If the Operator (or anyone employed by or acting on behalf of them) commits any Prohibited Act, then the Trust shall be entitled to act in accordance with paragraphs (a) to (f) below:

(a) if a Prohibited Act is committed by the Operator or by an employee acting under the authority of or with the knowledge of any one or more directors of the Operator, then the Trust may terminate the Agreement with immediate effect by giving written notice to the Operator;

(b) if the Prohibited Act is committed by an employee of the Operator not acting under the authority of or with the knowledge of any one or more directors of the Operator, then the Trust may give written notice to the Operator of termination and the Agreement will terminate, unless within twenty (20) Business days of receipt of such notice the Operator terminates the employee’s employment and (if necessary) procures the performance of the relevant part of the Services by another person;

(c) if the Prohibited Act is committed by a Service Provider or the Operator or any other person performing on behalf of the Operator any material function with this Agreement (“Operator Associate”) or by an employee of that Operator Associate acting for the Operator then the Trust may give written notice to the Operator of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Operator terminates the relevant sub-contract and procures the performance of the relevant part of the Services by another person, where relevant, in accordance with the Clause 63 (Assignment);

(d) if the Prohibited Act is committed by an employee of an Operator Associate not acting under the authority of or with the knowledge of any one or more directors of that Operating Associate then the Trust may give notice to the Operator of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Operator procures the termination of the employee’s employment and (if necessary) procures the performance of the relevant part of the Services by another person;
(e) if the Prohibited Act is committed by any other person not specified in paragraphs (a) to (d) above, then the Trust may give notice to the Operator of termination and this Agreement will terminate unless within twenty (20) Business Days the Operator procures the termination of such person’s employment and of the appointment of their employer (where such person is not employed by the Operator or the Operator Associate and (if necessary) procures the performance of the relevant part of the Services by another person; and

(f) any notice of termination (having immediate effect) under this Clause 54.3 shall specify:-

(i) the nature of the Prohibited Act;

(ii) the identity of the party who the Trust believes has committed the Prohibited Act; and

(iii) the date on which the Agreement will terminate in accordance with the applicable provisions of this Clause 54.3;

and the terms of Clauses 47 (Effect of Termination) and 48.4 (Compensation on Termination) shall apply.

54.4 Without prejudice to its other rights or remedies under this Clause 54, the Trust shall be entitled to recover from the Operator:-

(a) the amount or value of any such gift, consideration or commission; and

(b) any other loss sustained in consequence of any breach of this Clause 54.

54.5 The Operator shall notify the Trust of the occurrence (and details) of any Prohibited Act promptly on the Operator becoming aware of its occurrence.

54.6 Nothing contained in this Clause 54 shall prevent the Operator from paying any proper commission or bonus to its employees within their agreed terms of employment.

55. Refinancing

55.1 In relation to any Finance Agreement but only in so far as permitted in this Clause 55, the Operator may at any time during the Services Term put in place Relevant Refinancing Arrangements on such terms as it shall determine to be appropriate provided that the Relevant Refinancing Arrangements comply with the provisions of this Clause 55.
55.2 The Operator and the Trust agree that under no circumstances shall the Services Fee be increased by reason of any Relevant Refinancing Arrangements or any Rescue Refinancing.

55.2A The Operator shall liaise with the Trust and shall provide the Trust with a copy of the relevant agreement in settled form together with a Relevant Refinancing Notice in accordance with the provisions of Clause 55.3 not less than ten (10) Business Days before it intends to enter into any Relevant Refinancing Arrangement. The Operator shall not enter into any Relevant Refinancing Arrangement:-

55.2A.1 where such proposed Relevant Refinancing Arrangement has the effect of:-

(a) increasing Senior Debt as shown in the Financial Model immediately preceding the Refinancing Financial Model (as defined in Clause 55.3) (the “Pre-Refinancing Financial Model”) at the end of any six monthly accounting period shown in the Pre-Refinancing Financial Model by more than 10% of the maximum level of Senior Debt shown in the Pre-Refinancing Financial Model; and/or

(b) increasing the Debt to Equity Ratio beyond 97:3.

55.2A.2 where the party who proposes to provide finance under the Relevant Refinancing Arrangements has not given an undertaking to the Trust that it, on implementation of the Relevant Refinancing Arrangements, shall enter into a financier direct agreement in the same terms as the Financier Direct Agreement and a ranking agreement in the same terms as the Ranking Agreement in force immediately prior to the implementation of the Relevant Refinancing Arrangements.

55.2B Other than in the case of Relevant Refinancing Arrangements within the limits set out in Clause 55.2A.1, the Operator and the Trust agree that any Relevant Refinancing Arrangements or any Rescue Refinancing shall not result in any increase to any payment due by the Trust under Schedule Part C (Compensation on Termination).

55.3 If the Operator wishes to implement the proposed Relevant Refinancing Arrangements the Refinancing Financial Model (being the new financial model proposed by the Operator and approved by the Trust to replace the Financial Model) shall be run immediately before implementation of such arrangements taking account of the interest rates, fees, charges and other costs (including any breakage costs and any other costs arising from the early termination of the existing funding arrangements and all costs incurred by the Trust), debt amortisation profile and other changes which would take effect if the arrangements were implemented (“the Revised Inputs”). Prior to the proposed Relevant Refinancing Arrangements taking effect the Operator shall give a notice (a “Relevant Refinancing Notice”) to the Trust providing the Trust with the proposed Refinancing Financial Model together with full particulars of the computation of the proposed Trust’s Refinancing Share. On entering into a
Relevant Refinancing Arrangement that complies with the provisions of Clause 55.2A the Operator shall update the Refinancing Financial Model on or immediately after implementation of the Relevant Refinancing Agreement taking account of the Revised Inputs as at that time including the actual interest rates on which the Relevant Refinancing Agreement was concluded and shall give to the Trust a notice (the “Updated Refinancing Notice”) providing the Trust with the Updated Refinancing Financial Model together with full particulars of the computation of the Trust’s Refinancing Share. Within 21 days after receipt of the Updated Refinancing Notice (or, if later, within 21 days after receipt by the Trust of such further particulars relating to the proposed Updated Refinancing Financial Model as the Trust may reasonably request by notice to the Operator given within 21 days after receipt of the Updated Refinancing Notice) the Trust shall notify (“the Trust’s notification”) the Operator as to whether or not it agrees with the proposed Trust’s Refinancing Share (specifying, in the case of rejection, that it does not agree such amounts, all material details then available to it of the grounds on which it does not agree). If the parties shall have failed to agree the Trust’s Refinancing Share within 14 days of the Trust’s notification under this Clause 55.3, either the Trust or the Operator may refer such matters as have not been so agreed to the Dispute Resolution Procedure with a request that the Trust’s Refinancing Share be determined.

55.4 The Operator shall as soon as practicable after the Relevant Refinancing Arrangements have been determined, but in any event not later than 5 Business Days after the Trust’s Refinancing Share has been agreed or determined, notify the Trust of whether the Senior Debt Refinancing Proceeds are to be received by the Operator in the form of a lump sum or on an ongoing basis. If the Senior Debt Refinancing Proceeds (either in part or in whole) are to be received by the Operator in a lump sum, the Trust’s Refinancing Share shall be paid by the Operator to the Trust 5 Business Days after the Effective Refinancing Date. If the Senior Debt Refinancing Proceeds are received by the Operator (either in part or in whole) on an ongoing basis the Trust’s Refinancing Share shall be paid by the Operator to the Trust by way of a reduction in the Services Fee (which reduction shall be reflected in the Refinancing Financial Model) applicable for the remainder of the Services Term. The reduction of the Services Fee shall be implemented as soon as practicable after the Effective Refinancing Date but in any event not later than the first day on which the Net Monthly Services Payment becomes due in accordance with Clause 8.2 above occurring subsequent to the Effective Refinancing Date. If such day falls within 5 Business Days prior to the day on which the Net Monthly Services Fee becomes due implementation shall take place prior to the date on which the next following Net Monthly Services Fee becomes due PROVIDED ALWAYS that the reduction in the Services Fee shall be backdated to the Refinancing Date.

55.5 If the parties agree that the Trust’s Refinancing Share is paid by way of reduction of the Services Fee or if it is determined by the Dispute Resolution Procedure, the revised Services Fee will then, with effect from the Refinancing Date, become the Services Fee for each Payment Year (or part Payment Year) from the Refinancing Date to the end of the Services Term and this Agreement shall be amended accordingly.
If the parties shall have failed to agree on a matter relating to this Clause 55 either the Trust or the Operator may refer such matters as have not been so agreed to the Dispute Resolution Procedure.

On implementation of the Relevant Refinancing Arrangements (or, in the case of a Rescue Refinancing, within 30 Business Days of the Rescue Refinancing), the Operator shall deliver to the Trust validly executed in self proving form by the Operator and the party providing senior debt finance under the Relevant Refinancing Arrangements (a) a financier direct agreement in the same terms as the Financier Direct Agreement in force immediately prior to the implementation of the Relevant Refinancing Arrangements or Rescue Refinancing as the case may be and (b) a ranking agreement in the same terms as the Ranking Agreement in force immediately prior to the implementation of the Relevant Refinancing Arrangements or Rescue Refinancing as the case may be.

On implementation of the Relevant Refinancing Arrangements the Trust shall as soon as reasonably practicable execute in self proving form the financier direct agreement and ranking agreement delivered to the Trust by the Operator pursuant to Clause 55.7.

In Clauses 55, the following expressions have the following meanings:

“Debt to Equity Ratio” means the ratio of any outstanding Senior Debt to the aggregate of the amount (i) subscribed in share capital of the Operator and (ii) advanced to the Operator by way of subordinated loan by its shareholders;

“Effective Refinancing Date” means the latest of: (a) the Refinancing Date; and (b) the date on which the Operator notifies the Trust in accordance with Clause 55.4; and (c) the date on which the Trust’s Refinancing Share is agreed or determined;

“the Trust’s Refinancing Share” an amount equal to 50 per cent of the Senior Debt Refinancing Proceeds either taken as a lump sum and/or as a reduction of the Services Fee for the remainder of the Term;

“Refinancing Financial Model” that version of the Financial Model as shall exist after having implemented the Relevant Refinancing Arrangements and, for the avoidance of doubt, incorporating the Trust’s Refinancing Share;

“Relevant Refinancing Arrangements” means a refinancing (save for a Rescue Refinancing) of the Project by the Operator by means of prepayment of all or a portion of Senior Debt financed by borrowings incurred
for such prepayment or the alteration or amendment of the Facility Agreement which results in a reduction of the cost of finance to the Operator;

“Rescue Refinancing” means a refinancing occurring in order to cure or prevent the occurrence of (a) an Operator Event of Default or (b) the occurrence of an event of default (however described) under the Facility Agreement;

“Senior Debt” means all amounts which are: (i) outstanding from time to time under the Facility Agreement and (ii) shown in the Pre-Refinancing Financial Model as liabilities of the Operator;

“Senior Debt Refinancing Proceeds” means (after deduction of all fees, charges and costs associated with the implementation of the Relevant Refinancing Arrangements) the amount received by the Operator as a capital sum or any reduced payments to be made by the Operator under the Facility Agreement on an ongoing basis (as appropriate) as a result of the implementation of the Relevant Refinancing Arrangements, all as determined by reference to the Refinancing Financial Model but only in so far as such implementation affects the Senior Debt element of the financing of the Operator as shown in the Financial Model in force immediately prior to the implementation of the Relevant Refinancing Arrangements;

“Refinancing Date” means the date on which the refinancing takes effect;

56. Security

56.1 The Operator shall be responsible for the security of all Equipment and any other goods, materials and equipment belonging to the Operator, or Operator Parties relating to the provision of the Services or the Equipment. The Trust shall comply with all reasonable requests of the Operator in maintaining the security of the Facilities and the House provided this does not result in a material departure from or addition to the Trust’s other obligations or give rise to significant cost or disruption to the Trust.

56.2 All property of the Operator (and that of any Operator Party) in the House or on the remainder of the Site shall be there at the risk of the Operator or the relevant Operator Party.
58. **Confidentiality**

58.1 Each party shall (and the Operator shall procure that all Service Providers shall) treat all Confidential Information of the other Party as confidential (except as may be necessary for the performance of any obligations under the Project Documents) and use all reasonable endeavours to prevent its disclosure by their respective officers, employees, agents or sub-contractors, but so that the Trust shall be entitled to disclose any information reasonably required for the purposes of accountability to the First Minister, to Parliament and the Scottish Executive, (provided that the Operator is given notice of such disclosure and it is disclosed on the basis that it is confidential information). This Clause 58 shall survive any termination of this Agreement.

58.2 Clause 58.1 shall not apply to Confidential Information which:

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

58.2.2 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;

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

58.2.4 is required to be disclosed by Applicable Laws, or the order of any competent court;

58.2.5 is required to be disclosed in any public register; or

58.2.6 is required to be disclosed to the Trust’s auditors or the Adjudicator for the purposes of resolving a dispute under the Dispute Resolution Procedure.

58.3 Nothing in this Clause 58 shall prohibit the Operator from disclosing information to its funders, shareholders legal and financial advisors or, where reasonably necessary to enable any of the Project Documents to be duly performed, to any Service Provider, provided that any recipient of Confidential Information contemplated by this Clause 58 shall first agree in writing to be bound by the terms of this Clause 58.

59. **Dispute Resolution Procedure**

59.1 The Parties shall use their best efforts to negotiate in good faith and settle amicably any dispute during the Term.

59.2 Any dispute not capable of resolution under Clause 59.1 unless specifically excluded from reference to Dispute Resolution within the terms of this
Agreement shall become subject to the terms of Part E of the Schedule (Dispute Resolution Procedure).

60. Notices

Unless otherwise specified in this Agreement notice or other communication to be given by one party to another under, or in connection with the matters contemplated by this Agreement or any other Project Document shall be communicated as follows:-

(a) if to the Trust, to:-

Lothian Primary Care NHS Trust
St Roque
Astley Ainslie Hospital
133 Grange Loan
Edinburgh
EH9 2HL

Fax No: 0131 537 9500
Attention: Chief Executive

(b) if to the Operator, to:-

Robertson Healthcare (Findlay House) Limited
10 Perimeter Road
Pinefield Industrial Estate
Elgin
Morayshire
IV30 6AE

Fax No: 01343 546265
Attention: Chairman

(c) if to SEHDME, to:-

The Director of Finance
Scottish Executive
Scottish Executive Health Department
St Andrew’s House
Regent Road
Edinburgh EH1 3DT

(d) if to the First Minister, to:-

The Office of the First Minister
St Andrew’s House
Regent Road
Edinburgh
EH1 3DG
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 60, for the purposes of this Clause 60. All notices shall be copied in each case to the Trust’s Representative and the Facility Manager.

60.1 Any notice or other communication to be given by one Party to another under, or in connection with the matters contemplated by this Agreement or any other Project Document 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:-

60.1.1 in the case of delivery by hand prior to 5.00pm on a Business Day, when delivered and in any other case on the Business Day following the date of delivery; or

60.1.2 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

60.1.3 in the case of facsimile where the transmission occurs prior to 5.00pm 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.

61. **Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with Scots Law and subject to Clause 59 the Parties irrevocably submit to the jurisdiction of the Court of Session, Scotland and waive any plea of forum non conveniens.

62. **Not Used**

63. **Assignation**

63.1 The rights and obligations of both Parties under this Agreement and the other Project Documents may not be assigned, transferred, sub-contracted or otherwise disposed of in whole or in part without the other Party’s prior written consent except:

63.1.1 to the extent expressly provided in this Agreement;

63.1.2 the Operator may assign its rights and obligations under the Project Documents by way of security to a Financier under the Finance Agreements provided the Financier has entered into a financier direct agreement with the Trust and the Operator in the same terms as the Financier Direct Agreement in force immediately prior to the
assignation and a ranking agreement in the same terms as the Ranking Agreement in force immediately prior to the assignation; and

63.1.3 the Trust may assign its rights and obligations under the Project Documents to any statutory body upon whom its functions shall devolve, provided such statutory body is legally capable and can be legally bound to perform the obligations of the Trust under the Project Documents.

64. General

64.1 No amendment to this Agreement or any other Project Document shall have effect unless agreed in writing signed by the Chief Executive of the Trust (or such other signatory of the Trust having authority to sign such amendment) and a director of the Operator. The Operator and the Trust each acknowledge that it does not enter into this Agreement or any other Project Document in reliance on any representation, warranty or other undertaking by the Trust not expressly set out or referred to in this Agreement.

64.2 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.

64.3 Nothing in this Agreement shall be construed as establishing or implying a partnership, joint venture or agency.

64.4 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.

64.5 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 and any other Project Document.

64.6 Each Party shall be responsible for paying its own costs and expenses in relation to the preparation, execution and implementation of this Agreement and any other Project Document, except where expressly provided to the contrary and except for any award of costs or expenses by a competent court.

64.7 Subject to Clause 63.1, this Agreement shall endure for the benefit of and be binding on the respective successors in title and permitted assignees of each Party, who shall procure that each such transferee executes a deed with the other Party by which the transferee agrees to be bound by this Agreement.

64.8 This Agreement and the other Project Documents constitute the entire agreement between the Parties in respect of the Project and supersede all prior proposals, representations, agreements and negotiations (whether written, oral or implied) relating thereto between the Parties or their respective professional advisers.
Subject to and to the extent expressly provided in this Agreement and, to avoid doubt, without prejudice to the Financier Direct Agreement it is expressly declared that no rights shall be conferred under or arising out of this Agreement upon any person other than the Trust and the Operator and
without prejudice to the generality of the foregoing, there shall not be in any circumstances be created by this Agreement a *jus quaesitum tertio* in favour of any person whatsoever.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding 126 pages are, together with the annexed Schedule, executed as follows:-

Subscribed for and on behalf of the Trust at by
Chairman and Executive
Directors on 2002 in the presence of:-

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>Andreana Elizabeth Adamson</strong></td>
<td><strong>Steven James Shon</strong></td>
</tr>
<tr>
<td>Executive Director</td>
<td>Witness</td>
</tr>
<tr>
<td><strong>William Garth Morrison</strong></td>
<td><strong>Steven James Shon</strong></td>
</tr>
<tr>
<td>Chairman</td>
<td>Full Name</td>
</tr>
<tr>
<td>9A Claremont Crescent</td>
<td><strong>Edinburgh</strong></td>
</tr>
<tr>
<td></td>
<td>Address</td>
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</table>

Subscribed for and on behalf of the Operator at by
of
, Director on in the presence of:-

<p>| | |</p>
<table>
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<tbody>
<tr>
<td><strong>William George Robertson</strong></td>
<td><strong>Alan Cassels</strong></td>
</tr>
<tr>
<td>Director</td>
<td>Witness</td>
</tr>
<tr>
<td></td>
<td><strong>Alan McLeod Cassels</strong></td>
</tr>
<tr>
<td>Full Name</td>
<td></td>
</tr>
<tr>
<td>3 Glenfinlas Street</td>
<td><strong>Edinburgh</strong></td>
</tr>
<tr>
<td></td>
<td>Address</td>
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</tbody>
</table>
This is the Schedule referred to in the foregoing Project Agreement between Lothian Primary Care National Health Service Trust and Robertson Healthcare (Findlay House) Limited

THE SCHEDULE
## Operator Information

| 1 | Name: | Robertson Healthcare (Findlay House) Limited |
| 2 | Date of Incorporation | 18th August 2000 |
| 3 | Registered Number | SC 210173 |
| 4 | Registered Office | 10 Perimeter Road, Pinefield Industrial Estate, Elgin, IV30 6AE |
| 5 | Directors | |

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>William George Robertson</td>
<td>“Dun Donnachaidh”, 44 Hamilton Drive, Elgin, Morayshire, IV30 2NL</td>
</tr>
<tr>
<td>Hilda Mary Robertson</td>
<td>“Dun Donnachaidh”, 44 Hamilton Drive, Elgin, Morayshire, IV30 2NL</td>
</tr>
<tr>
<td>6</td>
<td>Secretary</td>
</tr>
<tr>
<td>7</td>
<td>Subsidiary undertakings at the date of this agreement</td>
</tr>
<tr>
<td>8</td>
<td>Authorised and issued share capital at the date of this agreement</td>
</tr>
<tr>
<td>9</td>
<td>Name and address of registered holder</td>
</tr>
</tbody>
</table>

| Robertson Healthcare (Findlay House) Holdings Limited, 10 Perimeter Road, Pinefield Industrial Estate, Elgin, IV30 6AE | 43,000 Ordinary Shares | £430 |

Each share referred to in box 9 above will be subscribed at £1 rather than the par value of 1p in order to facilitate the establishment of a share premium account.

| 10 | Loan Stock at the date of this Agreement issued as follows: |

| Name and address of registered holder | Nominal value of Loan Stock |

| Robertson Healthcare (Findlay House) Holdings Limited, 10 Perimeter Road, Pinefield Industrial Estate, Elgin, IV30 6AE | £325,000 |

| 11 | Loan Stock Provisions | As per Loan Stock Instrument executed by the Operator dated of even date herewith. |
### Hold Co Information

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<thead>
<tr>
<th></th>
<th>Name</th>
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<tbody>
<tr>
<td>1</td>
<td>Robertson Healthcare (Findlay House) Holdings Limited</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Date of Incorporation</td>
<td>5th July 2001</td>
</tr>
<tr>
<td>3</td>
<td>Registered Number</td>
<td>SC 220931</td>
</tr>
<tr>
<td>4</td>
<td>Registered Office</td>
<td>10 Perimeter Road, Pinefield Industrial Estate, Elgin, IV30 6AE</td>
</tr>
<tr>
<td>5</td>
<td>Directors</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Name</strong></td>
<td><strong>Address</strong></td>
</tr>
<tr>
<td></td>
<td>William George Robertson</td>
<td>“Dun-Donnachaidh”, 44 Hamilton Drive, Elgin, Morayshire, IV30 2NL</td>
</tr>
<tr>
<td></td>
<td>Hilda Mary Robertson</td>
<td>“Dun-Donnachaidh”, 44 Hamilton Drive, Elgin, Morayshire, IV30 2NL</td>
</tr>
<tr>
<td>6</td>
<td>Secretary</td>
<td>Ian Clark</td>
</tr>
<tr>
<td>7</td>
<td>Subsidiary undertakings at the date of this agreement</td>
<td>Robertson Healthcare (Findlay House) Limited</td>
</tr>
<tr>
<td>8</td>
<td>Authorised and issued share capital at the date of this agreement</td>
<td>43,000 ordinary shares of £0.01 each</td>
</tr>
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<td>9</td>
<td>Name and address of registered holder</td>
<td>Number and class of shares held</td>
</tr>
<tr>
<td></td>
<td>Robertson Group (Scotland) Limited</td>
<td>21,500 ordinary shares</td>
</tr>
<tr>
<td></td>
<td>William George Robertson and Hilda Mary Robertson, both of “Dun Donnachaidh”, 44 Hamilton Drive, Elgin, Morayshire, IV30 2NL and Alexander Philip Manson of “Kilbean”, Old Meldrum, Inverurie, Aberdeenshire, AB51 0DN, the current trustees of the Donnachaidh Retirement Trust (the “Donnachaidh Fund”).</td>
<td>21,500 ordinary shares</td>
</tr>
</tbody>
</table>

Each share referred to in box 9 above will be subscribed at £1 rather than the par value of 1p in order to facilitate the establishment of a share premium account.

<table>
<thead>
<tr>
<th></th>
<th>Loan Stock at the date of this Agreement issued as follows:</th>
<th>Nominal value of Loan Stock</th>
</tr>
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<tbody>
<tr>
<td>10</td>
<td>Name and address of registered holder</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Robertson Group (Scotland) Limited</td>
<td>£108,334</td>
</tr>
<tr>
<td></td>
<td>The Donnachaidh Fund</td>
<td>£108,333</td>
</tr>
<tr>
<td></td>
<td>William George Robertson and Hilda Mary Robertson, both of “Dun-Donnachaidh”, 44 Hamilton Drive, Elgin, Morayshire, IV30 2NL and Moray Firth Trustees of 7 Mayne Road, Elgin, IV30 1RY, the current Trustees of the Robertsons of Elgin Executive Retirement Fund.</td>
<td>£108,333</td>
</tr>
<tr>
<td></td>
<td>Loan Stock Provisions:</td>
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<td></td>
<td>As per Loan Stock Instrument executed by HoldCo dated of even date herewith.</td>
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</table>
PART B
PAYMENT MECHANISM

1. Definitions

In this Part B of the Schedule, unless the context otherwise requires:-

**Availability Deduction** or **AD** means the deduction (if any) from the Basic Monthly Services Fee as a result of one or more Spaces having been Unavailable, Unavailable but Used or Unavailable and Unoccupied during the previous Payment Month, calculated in accordance with paragraph 2.3 below;

**Availability Failure** means a failure, in respect of any Space, to provide any one of the Services identified in the Services Table as having a Failure type “A” in accordance with the Services Requirements, except where any such failure results from an Exception and any Availability Failure shall be deemed to be Remedied once such failure has been remedied and the Operator has notified the Trust to that effect;

**Basic Monthly Services Fee** or **BMSF** means the sum calculated in accordance with paragraph 2.1 below;

day means for the purposes of this Part B of the Schedule a period of 24 consecutive hours beginning at 00.00 hours;

**Daily Weighted Space Rate** or **DWSR** means the following:-

\[
\text{DWSR} = \frac{\text{Services Fee}}{\text{Number of days in Payment Year} \times \text{total Weighted Spaces}}
\]

**Exception** means:-

(a) a breach by the Trust of any of its express obligations under this Agreement which has an adverse impact on the performance of the Services; or

(b) the implementation of Trust Change, Industry Standards Change or a Discriminatory Change in Law within the timescale agreed between the Trust and the Operator (both acting reasonably); or

(c) Maintenance Works being carried out in accordance with an agreed Detailed Maintenance Schedule; or
(d) the inability of the Operator or any Operator Party (save to the extent such inability has been caused or contributed to by the Operator or any Operator Party) to obtain water supplies or sewerage services directly arising from a failure of the relevant statutory undertaker to provide such supplies or services; or

(e) the proprietor of the Retained Subjects exercising its right of access over the Site in order to maintain the boundaries in terms of the Disposition but only to the extent that such exercise of such rights has an adverse impact on the performance of the Services.

**Failure** means an Availability Failure or a Non Space-related Service Failure;

**Failure Repetition** means the occurrence of the events set out in paragraph 2.5 below. Any Failure Repetition shall give rise to a Failure Repetition Deduction;

**Failure Repetition Deduction** or **FRD** means the total deduction (if any) calculated in accordance with paragraph 2.5 below from the Basic Monthly Services Fee for a Failure Repetition;

**Intended Purpose** means the general form of activity for which a Space was intended or designed as ascertained by reference to the Design Specification and the Services Requirements;

“**Multiplier**” means, for the purposes of calculating a Failure Repetition Deduction, 1.5

**Net Monthly Services Payment** or **NMSP** means the sum determined in accordance with paragraph 2.2 below;

**Non Space-related Service Failure** or **NS Service Failure** means a failure to provide any one of those Services, identified in the Services Table of the Services Requirements as having a failure type “NSS”, in accordance with the Services Requirements except where any such failure results from an Exception;

**Non Space-related Service Shortfall** or **NSSS** means the continuation of a NS Service Failure after the expiry of the relevant Period for Remedy (as defined in Part H of the Schedule (Performance Monitoring)); a NSSS shall continue until it has been Remedied;

**Non Space-related Service Shortfall Deduction** or **NSSSD** shall be applied on a daily basis in respect of each Non Space-related Service Shortfall by multiplying the amount relating to the Deduction Grade Category (as each Deduction Grade Category is set out in the sixth column opposite each Non Space-related Service in the Services Table) by the number of events (if more than one) of Non Space-related Service Shortfalls occurring in any day (for the avoidance of doubt, the amounts relating to the various Deduction Grade Categories shall be Indexed);

**Payment Month** means a calendar month during the Services Term, save for:-
(a) the first Payment Month which shall be the period commencing on the Operational Date and ending on the last day of the same calendar month; and

(b) the last Payment Month which shall be the period commencing on the first day of the calendar month in which the Termination Date or the Expiry of the Term occurs and ending on the earlier of:

(i) the Termination Date; and

(ii) the Expiry of the Term (as the case may be);

Payment Year means

(a) in respect of the first Payment Year, the period commencing on the Operational Date and ending on (and including) the next 31 March;

(b) thereafter, each period of 12 months commencing on each 1 April and ending on (and including) the next 31 March; or

(c) in respect of the last Payment Year, the period commencing on 1 April and ending on (and including) the earlier of:

(i) the Termination Date; and

(ii) the Expiry of the Term (as the case may be);

Remedied means that the Operator has remedied (a) the Availability Failure and the Space is no longer Unavailable and is once again capable of being Used and/or (b) has remedied a NS Service Failure and all relevant Services are once again provided in accordance with the Services Requirements; the word “Remedied” shall be construed accordingly;

Reporting Failure means a failure by the Operator to make a deduction in a Calculation Schedule in respect of an event which ought to give rise to a deduction from the Basic Monthly Services Fee;

Reporting Failure Deduction or RFD means a deduction (if any) from the Basic Monthly Services Fee for a Reporting Failure calculated in accordance with paragraph 2.6 below;

Services Fee or SF means in respect of each Payment Year the amount shown in Part N of the Schedule for that Payment Year and prorated in respect of the first and last Payment Years according to the number of days in the first and last Payment Year. Such Services Fee shall be adjusted in terms of this Agreement;

Space means each of the Spaces comprised in the Areas (as such Areas are listed in the Weighted Spaces Table);

Unavailable means that there is in relation to any Space the continuation after the expiry of the relevant Period for Remedy of any Availability Failure in
respect of that Space and the Trust has determined that the Space is not capable of being Used and “Available” will be construed accordingly;

**Unavailable but Used** means in relation to any Space the continuation after the expiry of the relevant Period for Remedy of any Availability Failure in respect of that Space but the Trust has determined to Use that Space for any portion of the remainder of the day after the time the Space became Unavailable;

**Unavailable and Unoccupied** means that there is in relation to any Space the continuation of any Availability Failure in respect of that Space but that Space is not Used by the Trust (other than by virtue of it having become Unavailable);

**Used** means use of a Space for its Intended Purpose and excludes:-

(a) any use of a Space for the time necessary for an orderly evacuation of such Space; and

(b) any incidental use of such Space provided that such incidental use shall not exceed 1 hour in total in any day

and the words “Use” or “Using” shall be construed accordingly;

**Weighted Space** or **WS** means in relation to each Area the product of the Weighting Factor for that Area and the number of Spaces allocated to that Area both as set out in the Weighted Space Table forming Part B1 of the Schedule (Weighted Spaces Table);

**Weighted Spaces Table** means the table forming Part B1 of the Schedule listing the Areas, the total number of Spaces allocated to each Area and the Weighting Factor applicable to each of the Areas; e.g. if a Single Bedroom becomes Unavailable, Unavailable but Used or Unavailable and Unoccupied the Weighted Spaces in relation to that single bedroom will be calculated as follows:-

\[
1(\text{Area}) \times 10 (\text{Weighting Factor}) \times 15 (\text{Spaces per Area}) = 150 \text{ Weighted Spaces.}
\]

2. **Calculations**

2.1 The amount of the Basic Monthly Services Fee for a Payment Month shall be:-

2.1.1 for each Payment Month in the first Payment Year that sum calculated in accordance with the following formula:

\[
\frac{SF}{365(\text{or}366 \text{in leap year})} \times \text{days in irrelevant Payment Month}
\]

Where:

SF is the Services Fee for the first Payment Year;

2.1.2 for each Payment Month during the second and each subsequent Payment Year, one twelfth (1/12) of the Services Fee for the Payment Year in question;
2.1.3 for each Payment Month in the last Payment Year (where such Payment Year ends on the Expiry of the Term) that sum calculated in accordance with the following formula:

\[
SF \times \frac{\text{days in relevant Payment Month}}{365 (or 366 in leap year)}
\]

Where:

SF is the Services Fee for the last Payment Year

2.1.4 the Basic Monthly Services Fee in respect of the Payment Month in which this Agreement is terminated in accordance with this Agreement prior to the Expiry of the Term shall be calculated as follows:

\[
LBMSF = \frac{SF(\text{pre TD}) \times \text{Days (pre TD)}}{\text{DY} \times \left[ \frac{SF(\text{pre TD}) \times n}{12} \right]}
\]

LBMSF = the Basic Monthly Services Fee in respect of the Payment Month in which the Termination Date occurs

SF (pre TD) = Services Fee applicable to the Payment Year in which the Termination Date occurs

Days (pre TD) = days from the commencement of the Payment Year in which the Termination Date occurs to (and including) the Termination Date

DY = number of days in the year in which the Termination Date occurs

n = number of Payment Months from the commencement of the Payment Year in which the Termination Date occurs up to but excluding the Payment Month in which the Termination Date occurs

2.2 The Net Monthly Services Payment for each Payment Month until the last Payment Month shall be:

the Basic Monthly Services Fee for the relevant Payment Month

minus the following, calculated by reference to the preceding Payment Month, namely:

(a) any Availability Deductions; and

(b) any Non Space-related Service Shortfall Deductions; and

(c) any Failure Repetition Deductions; and

(d) any Reporting Failure Deductions;
That is to say,

\[ \text{NMSP} = \text{BMSF} - (\text{AD} + \text{NSSSD} + \text{FRD} + \text{RFD}) \]

In the last Payment Month, the Net Monthly Services Payment shall be calculated by reference to deductions applicable to the last Payment Month itself together with those applicable to the preceding Payment Month.

2.2.1 The Availability Deductions, Non Space-related Service Shortfall Deductions, Failure Repetition Deductions and Reporting Failure Deductions, in respect of any Payment Month shall in aggregate not exceed the Basic Monthly Services Fee for that Payment Month.

2.3 The Availability Deduction shall be calculated for each day (or part thereof) during which a Weighted Space was Unavailable, Unavailable but Used or Unavailable and Unoccupied during the preceding Payment Month, by reference to the Weighted Spaces which were Unavailable, Unavailable but Used or Unavailable and Unoccupied during such day (or part thereof) as follows:-

2.3.1 for the Weighted Spaces which were Unavailable during the day:

\[ X_1 = \text{WS}_1 \times \text{DWSR} \times 150\% \]

2.3.2 for the Weighted Spaces which were Unavailable but Used during the day:

\[ X_2 = \text{WS}_2 \times \text{DWSR} \times 50\% \]

2.3.3 for the Weighted Spaces which were Unavailable and Unoccupied during the day:

\[ X_3 = \text{WS}_3 \times \text{DWSR} \times 50\% \]

Where:

“\text{WS}_1” is the total Weighted Spaces which were Unavailable and not (a) Unavailable but Used, or (b) Unavailable and Unoccupied.

“\text{WS}_2” is the total Weighted Spaces which were Unavailable but Used.

“\text{WS}_3” is the total Weighted Spaces which were Unavailable and Unoccupied.

\[ \text{AD} = X_1 + X_2 + X_3 \]

Provided that:-

(1) If a Weighted Space was Unavailable during any time of a day such Weighted Space shall be deemed to be Unavailable for the entire day.
(2) If condition (1) above does not apply but a Weighted Space, during any time of a day, has been Unavailable but Used such Weighted Space shall be deemed to have been Unavailable but Used for the entire day.

(3) If conditions (1) and (2) above do not apply but a Weighted Space, during any time of a day, has been Unavailable and Unoccupied such Weighted Space shall be deemed to have been Unavailable and Unoccupied for the entire day.

(4) If conditions (1), (2) and (3) above do not apply a Weighted Space shall be deemed to have been Available.

Provided further that:-

If any Weighted Space in an Area was (a) Unavailable or (b) Unavailable but Used or (c) Unavailable and Unoccupied the entire Area comprising such Weighted Space shall be deemed to be (a) Unavailable or (b) Unavailable but Used or (c) Unavailable and Unoccupied as the case may be.

2.4 If arising out of the same event a Weighted Space becomes Unavailable in respect of which an Availability Deduction falls to be made and there is a Non Space-related Service Failure in respect of which a Non Space-related Service Shortfall Deduction falls to be made the only Deduction in respect of that day and in respect of that event shall be the higher of (a) the Availability Deduction and (b) the Non Space Related Service Shortfall Deduction which falls to be made in respect of that Weighted Space.

2.5 If the same Availability Failure occurs three or more times in any Payment Month then the Availability Deduction shall be multiplied by the Multiplier to produce the FRD, provided that the FRD shall be applied instead of, and not in addition to, the Availability Deduction that would otherwise be made in respect of the third and each subsequent occurrence of the event giving rise to a Failure Repetition. e.g. If an Availability Failure attracts a deduction of £100, the deduction applied in respect of the third and each subsequent occurrence of such Availability Failure would attract a deduction of £150.

2.6 If it is agreed or determined that there has been a Reporting Failure in calculating the Net Monthly Services Payment for the Payment Month during which such agreement is reached or determination is made, the Operator will make the deduction which it is agreed or determined ought to have been made but for the Reporting Failure (“Deduction”) from the relevant Basic Monthly Services Fee and, in addition, the Operator shall apply the Reporting Failure Deduction, being a sum equal to 25% of the Deduction (or 50% of the Deduction where it is agreed or determined that the Reporting Failure has been due to fraud or wilful default of any party).

2.7 In respect of each Payment Month, the Operator shall prepare a calculation schedule (“the Calculation Schedule”) in such form as the Parties may agree from time to time (a “Pro forma” Calculation Schedule is appended to Schedule Part B2) and which shall set out a calculation (or a value of “nil” or a blank, if
that shall be the case) for each of the factors set out in the above paragraphs 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6.

2.8 Not used

2.9 Any arithmetical or computational error agreed or determined to have occurred in any Calculation Schedule shall be corrected (without any penalty or interest adjustment) in the invoice for the Payment Month during which the same has been agreed or determined.

2.10 The Operator will calculate the Services Fee applicable to the relevant Payment Year at the commencement of each Payment Year in accordance with Clause 9.1 of the Agreement and will notify the same to the Trust. If the Trust disputes the calculation, and the Parties cannot agree such calculation, then the calculation shall be referred to the Adjudicator under the Dispute Resolution Procedure. Increases in the Services Fee which fall to be made as a result of such calculation will not be made until the calculation of the Services Fee is agreed or determined, provided that any such increase will take effect from the commencement of the Payment Year. Any increase attributable to the period before such calculation was agreed or determined - as reduced by any deduction which would fall to be made in accordance with the provisions of this Part of the Schedule - will be paid in one lump sum by the Trust to the Operator at the end of the Payment Month in which such calculation is agreed or determined together with interest at LIBOR.

2.11 Amendments to the form of the Calculation Schedule may be proposed by the Operator and will be accepted by the Trust provided the Trust is satisfied that the Calculation Schedule in its amended form is capable of accurately calculating the same results, based on the same input data, as the Calculation Schedule first agreed.

2.12 The Operator shall submit to the Trust on having been given 24 hours’ notice by the Trust all books and records (including, if so required by the Trust, data in electronic form) to enable the Trust to verify the accuracy of any matter relating to the Services and, in particular, of any Calculation Schedule.

2.13 Within 10 Business Days of a receipt by the Operator of an invoice for gas or electricity used at the Facilities the Operator shall submit such invoice to the Trust together with a calculation showing the Trust Energy Adjustment (if any) in respect of such invoice. The Trust (acting reasonably) shall be entitled to request and the Operator shall deliver to it any supporting particulars as it may reasonably consider necessary. Within 10 Business Days of the later of the date of receipt by the Trust of:

(a) the date of receipt by the Trust of such invoice and calculation; and

(b) the date of receipt by the Trust of the last set of any supporting particulars requested by it as aforesaid,

the Trust shall confirm to the Operator whether or not it agrees with the Operator’s calculation of the Trust Energy Adjustment. In the event that the
Parties fail to agree the amount of the Trust Energy Adjustment within 5 Business Days of the date of the Trust’s confirmation, either Party may refer the matter to Dispute Resolution. If it is agreed by the Parties or determined under the Dispute Resolution Procedure that the Trust Energy Adjustment is a positive amount, the Trust shall pay to the Operator such amount within 10 Business Days. If it is agreed by the Parties or determined under the Dispute Resolution Procedure that the Trust Energy Adjustment is a negative amount the Operator shall pay such amount to the Trust within 10 Business Days.
### PART B1
WEIGHTED SPACES TABLE

<table>
<thead>
<tr>
<th>Area</th>
<th>Number of Areas</th>
<th>Weighting Factor</th>
<th>Spaces per Area</th>
<th>Weighted Spaces per Area</th>
<th>Total Weighted Spaces per Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aromatherapy/Snoozel Room</td>
<td>1</td>
<td>1</td>
<td>14</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Assisted Bathrooms</td>
<td>6</td>
<td>5</td>
<td>14</td>
<td>70</td>
<td>420</td>
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<tr>
<td>Charge Nurses Office</td>
<td>1</td>
<td>2</td>
<td>9</td>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>Clean Linen Store</td>
<td>1</td>
<td>1</td>
<td>7</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Day Toilet</td>
<td>12</td>
<td>3</td>
<td>3</td>
<td>9</td>
<td>108</td>
</tr>
<tr>
<td>Dining Room</td>
<td>2</td>
<td>5</td>
<td>53</td>
<td>265</td>
<td>530</td>
</tr>
<tr>
<td>Disposal Dirty Linen</td>
<td>1</td>
<td>1</td>
<td>9</td>
<td>9</td>
<td>9</td>
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<tr>
<td>Dry Food Store</td>
<td>1</td>
<td>3</td>
<td>5</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>DSR</td>
<td>2</td>
<td>3</td>
<td>8</td>
<td>24</td>
<td>48</td>
</tr>
<tr>
<td>Entrance Area</td>
<td>1</td>
<td>3</td>
<td>11</td>
<td>33</td>
<td>33</td>
</tr>
<tr>
<td>Female Staff Changing</td>
<td>1</td>
<td>2</td>
<td>25</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>Frozen Food Store</td>
<td>1</td>
<td>7</td>
<td>7</td>
<td>49</td>
<td>49</td>
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<tr>
<td>General Office</td>
<td>1</td>
<td>2</td>
<td>14</td>
<td>28</td>
<td>28</td>
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<tr>
<td>Hairdressing Room</td>
<td>1</td>
<td>1</td>
<td>16</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Kitchen</td>
<td>1</td>
<td>10</td>
<td>27</td>
<td>270</td>
<td>270</td>
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<tr>
<td>Kitchen Supervisor’s Office</td>
<td>1</td>
<td>2</td>
<td>5</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Laundry</td>
<td>1</td>
<td>7</td>
<td>25</td>
<td>175</td>
<td>175</td>
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<tr>
<td>Linen Cupboard</td>
<td>6</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>12</td>
</tr>
<tr>
<td>Lounge</td>
<td>6</td>
<td>2</td>
<td>20</td>
<td>40</td>
<td>240</td>
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<tr>
<td>Male Staff Changing</td>
<td>1</td>
<td>2</td>
<td>13</td>
<td>26</td>
<td>26</td>
</tr>
<tr>
<td>Multi-purpose Room</td>
<td>1</td>
<td>1</td>
<td>25</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Nursing Office</td>
<td>2</td>
<td>2</td>
<td>12</td>
<td>24</td>
<td>48</td>
</tr>
<tr>
<td>Office OT/PAM</td>
<td>1</td>
<td>2</td>
<td>8</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Quiet Room</td>
<td>1</td>
<td>1</td>
<td>13</td>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>Reception Vestibule</td>
<td>1</td>
<td>3</td>
<td>7</td>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>Reminiscence Room</td>
<td>1</td>
<td>1</td>
<td>17</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>Seminar Room</td>
<td>1</td>
<td>2</td>
<td>26</td>
<td>52</td>
<td>52</td>
</tr>
<tr>
<td>Servery</td>
<td>2</td>
<td>3</td>
<td>16</td>
<td>48</td>
<td>96</td>
</tr>
<tr>
<td>Sewing Repair Room</td>
<td>1</td>
<td>2</td>
<td>10</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Single Bedroom including En-Suite WC/WHB</td>
<td>46</td>
<td>10</td>
<td>15</td>
<td>150</td>
<td>6900</td>
</tr>
<tr>
<td>Single Bedroom including En-Suite WC/WHB/Shower</td>
<td>2</td>
<td>10</td>
<td>19</td>
<td>190</td>
<td>380</td>
</tr>
<tr>
<td>Sluice Room</td>
<td>2</td>
<td>8</td>
<td>9</td>
<td>72</td>
<td>144</td>
</tr>
<tr>
<td>Smoking Room</td>
<td>1</td>
<td>7</td>
<td>13</td>
<td>91</td>
<td>91</td>
</tr>
<tr>
<td>Staff Room</td>
<td>1</td>
<td>2</td>
<td>19</td>
<td>38</td>
<td>38</td>
</tr>
<tr>
<td>Store</td>
<td>3</td>
<td>1</td>
<td>5</td>
<td>5</td>
<td>15</td>
</tr>
<tr>
<td>Treatment Room</td>
<td>2</td>
<td>10</td>
<td>14</td>
<td>140</td>
<td>280</td>
</tr>
<tr>
<td>Twin Bedroom including En-Suite WC/WHB</td>
<td>6</td>
<td>10</td>
<td>27</td>
<td>270</td>
<td>1620</td>
</tr>
</tbody>
</table>

Car park and Access Road (deemed space - equivalent to a single bedroom)
Circulation (deemed space - equivalent to a single bedroom)
Landscaped Areas (deemed space - equivalent to a single bedroom)
## PART B2
### PRO FORMA CALCULATION SCHEDULE

<table>
<thead>
<tr>
<th>Summary Sheet</th>
<th>£</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Monthly Services Fee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less Deductions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Availability Deductions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non Space Related Service Shortfall Deductions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure Repetition Deductions (*)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reporting Failure Deductions (*)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Deductions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Monthly Services Payment</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(*) Note that the Failure Repetition Deductions and the Reporting Failure Deductions are not calculated by this Model and must be calculated by hand on a separate schedule to be attached.

If #N/A appears in one of the above figures then this indicates that one or more of the inputs has exceeded its maximum allowable value.
PART C
COMPENSATION ON TERMINATION

Part 1
Compensation on Termination

1. Compensation on Termination for Trust Default and Voluntary Termination

1.1 If the Operator terminates this Agreement pursuant to Clause 45 (Trust Events of Default) or the Trust exercises its right pursuant to Clause 46 B.2 the Trust shall pay to the Operator the “Trust Default Termination Sum” as set out in paragraph 1.2 below.

1.2 The Trust Default Termination Sum shall be an amount equal to the aggregate of:

(a) the Senior Debt Amount

(b) Redundancy Payments and Sub-Contractor Losses; and

(c) The amount for which the share capital of the Operator and the Junior Debt could have been sold on open market basis (taking into consideration the Assumptions and assuming that the Open Market Value as at the Expiry of the Term shall be £1,000,000 (which £1,000,000 shall therefore be discounted back at a rate of 5.5% per annum from the Expiry of the Term (assuming, for the purposes of this paragraph only, that the Expiry of the Term would occur on the date falling 30 years from the Execution Date) to the Termination Date).

LESS, to the extent it is a positive amount, the aggregate of (without double counting):

(d) all credit balances on any bank accounts held by or on behalf of the Operator on the Termination Date and the value of any right of the Operator to receive insurance proceeds (save where such insurance proceeds are held in the Insurance Account and are to be applied in accordance with clause 10 of the Financier Direct Agreement (or, in the event that the Financier Direct Agreement has terminated, in accordance with paragraph 5 of Part F of the Schedule) in reinstatement or in the case of third party legal liability or employer's liability in satisfaction of the claim) or sums due and payable from third parties (but only when received from third parties) but excluding any claims under any Sub-Contracts which have not yet been determined or have been determined but not yet paid provided that in such case the Operator shall assign any such rights and claims under the Sub-Contracts to the Trust and give the Trust reasonable assistance in prosecuting such claims;

(e) the market value of any other assets and rights of the Operator (other than those assets and rights transferred to the Trust pursuant to this Agreement, including, for the avoidance of doubt, the Site and the Facilities less liabilities of the Operator properly incurred in carrying out its obligations under this Agreement as at the
Termination Date to the extent realised before the Invoice Date provided that no account should be taken of any liabilities and obligations of the Operator arising out of:

(i) agreements or arrangements entered into by the Operator to the extent that such agreements or arrangements were not entered into in connection with the Operator’s obligations in relation to the Project; or

(ii) agreements or arrangements entered into by the Operator to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm’s length terms; and

(f) amounts which the Trust is entitled to set off pursuant to Clause 48.12 of the Agreement.

AND FURTHER LESS the amount payable by the Trust under Clause 47.4.1A.

1.2A For the avoidance of doubt, the aggregate of the amount payable by the Trust pursuant to Clause 47.4.1A and the Trust Default Termination Sum calculated in terms of paragraph 1.2 of this Part 1 of Part C of the Schedule shall not be less than the Senior Debt Amount.

1.3 To the extent that such assets and rights referred to in paragraph 1.2(e) are not realised and applied pursuant to that paragraph the Operator shall on payment of the Trust Default Termination Sum transfer and/or assign title to such assets and rights to the Trust.

The Trust Default Termination Sum shall be payable in accordance with Part 5 of this Part C of the Schedule.
Part 2

Retendering

1. If the Trust terminates this Agreement pursuant to Clause 44 (Operator Events of Default) the Trust shall pay to the Operator such sum as is calculated according to this Part 2 of Part C of the Schedule.

2. Retendering Election

2.1 The Trust shall be entitled but not obliged to retender the provision of the Project in accordance with paragraph 3 (Retendering Procedure) and the provisions of paragraph 3 (Retendering Procedure) shall apply if:

(a) the Trust notifies the Operator on or before the date falling twenty (20) Business Days after the Termination Date; and

(b) the Financiers have not exercised their rights to step-in under Clause 4 (Representative) of the Financier Direct Agreement; and

(c) the Operator or the Financiers have not procured the transfer of the Operator’s rights and liabilities under this Agreement to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so; and

(d) there is a Liquid Market;

but otherwise the Trust shall require a determination in accordance with paragraph 4 (No Retendering Procedure) and the provisions of that paragraph shall apply.

3. Retendering Procedure

3.1 The objective of the Tender Process shall be to enter into a New Agreement with a Compliant Tenderer.

3.2 The Trust shall use all reasonable endeavours to complete the Tender Process as soon as practicable.

3.3 The Trust shall as soon as reasonably practicable notify the Operator of the Qualification Criteria (which for the avoidance of doubt shall include the transfer of the Site and the Facilities to any New Operator) and the other requirements and terms of the Tender Process, including the timing of the Tender Process and shall act reasonably in setting such requirements and terms.

3.4 The Operator authorises the release of any information by the Trust under the Tender Process that is reasonably required as part of the Tender Process.
3.5 For all or any part of a month, falling within the period from the Termination Date to the Compensation Date, the Trust shall pay to the Operator:

(a) the Post Termination Service Amount for each completed month, on or before the date falling ten (10) Business Days after the end of that month; and

(b) the Post Termination Service Amount for the period from the end of the last completed month until the Compensation Date, on or before the date falling twenty (20) Business Days after the Compensation Date.

3.6 The Operator may, at its own cost, appoint a person to monitor the Tender Process for the purpose of monitoring and reporting to the Operator and the Financier on the Trust’s compliance with the Tender Process.

3.7 The Tender Process Monitor shall enter into a confidentiality agreement with the Trust in a form acceptable to the Trust and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to the Trust as to compliance with the Tender Process. The Trust shall not be bound to consider or act upon such representations but acknowledges that such representations may be put to the Adjudicator in the event of a disagreement as to the Adjusted Highest Compliant Tender Price. The Tender Process Monitor will not disclose confidential information to the Operator or the Financier but shall be entitled to advise the Operator and the Financier on whether it considers that the Trust has acted in accordance with the Tender Process and correctly determined the Adjusted Highest Compliant Tender Price.

3.8 If any Post Termination Service Amount is less than zero then it shall be carried forward and shall be set off against any future positive Post Termination Service Amounts.

3.9 As soon as practicable after tenders have been received, the Trust shall (acting reasonably) review and assess the Compliant Tenders and shall notify the Operator of the Adjusted Highest Compliant Tender Price.

3.10 If the Operator refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with Clause 59 (Dispute Resolution Procedure), the Trust shall irrespective of such dispute be entitled to enter into a New Agreement.

3.11 The Adjusted Highest Compliant Tender Price shall be paid to the Operator in accordance with Part 5 of Part C of the Schedule.

3.12 The Trust may elect, at any time prior to ascertaining the Adjusted Highest Compliant Tender Price, to follow the no retendering procedure under paragraph 4 (No Retendering Procedure) by notifying the Operator that this election has been made and shall follow such procedure if a New Agreement has not been entered into on or before the date falling two years after the Termination Date unless the Trust has already determined the Adjusted Highest Compliant Tender Price.

4. **No Retendering Procedure**
4.1 Subject to paragraph 4.2, if the provisions of this paragraph 4 (No Retendering Procedure) apply the Operator shall not be entitled to receive any Post Termination Service Amount.

4.2 If the Trust elects to require a determination in accordance with this paragraph 4 (No Retendering Procedure) after it has elected to follow the procedure under paragraph 3 (Retendering Procedure), then the Trust shall continue to pay to the Operator each Post Termination Service Amount until the Compensation Date, in accordance with paragraph 3 (Retendering Procedure).

4.3 In agreeing or determining the Estimated Fair Value of the Agreement the Parties shall be obliged to follow the principles set out below:

(a) all forecasts of revenues and costs should be calculated on a real basis as at the Termination Date with effect that nominal forecast revenues and costs are inflation linked and indexed up to the Termination Date but un inflated thereafter and revenues and costs forecast to arise after the Termination Date which are known in nominal terms are rebased to the Termination Date using suitable deflation factors;

(b) the total of all payments of the full Services Fee forecast to be made from the Termination Date to the Expiry of the Term shall be calculated and discounted at the Project IRR;

(c) the total of all costs reasonably forecast to be incurred by the Trust as a result of termination shall be calculated and discounted at the Project IRR such costs to include (without double counting):

(i) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;

(ii) the costs of providing the Services reasonably forecast to be incurred by the Trust from the Termination Date to the Expiry of the Term to the standard required by the Agreement; and

(iii) any rectification costs required to deliver the Project to the standard required (including any costs reasonably forecast to be incurred by the Trust to complete the Works) and additional operating costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs for the purposes of this paragraph) the aggregate of:-

(a) any insurance proceeds received by the Trust for the purpose of meeting such rectification costs pursuant to policies maintained in accordance with Clause12; and

(b) amounts payable by the Trust in respect of Capital Expenditure reasonably and demonstrably incurred by the Operator under Part D of the Schedule (Changes Procedure) which have not been paid and for which evidence of such
expenditure is capable of being provided to the Trust if so required but excluding any Capital Expenditure incurred by the Operator and for which the Operator is responsible pursuant to paragraph 6.2 or paragraph 9.2 of Section 3 of Part D of the Schedule.

in each case such costs to be forecast at a level that will deliver the full Services Fee.

4.4 If the Parties cannot agree on the Estimated Fair Value of the Agreement on or before the date falling twenty (20) Business Days after the date on which the Trust elected or was obliged to require an expert determination in accordance with this paragraph 4 (No Retendering Procedure), then the Estimated Fair Value of the Agreement shall be determined in accordance with Clause 59 (Dispute Resolution Procedure).

4.5 The Adjusted Estimated Fair Value of the Agreement together with £1,000,000 discounted back at the rate of 5.5% per annum from the Expiry of the Term (assuming, for the purposes of this paragraph only, that the Expiry of the Term would occur on the date falling 30 years from the Execution Date) to the Termination Date shall be paid to the Operator in accordance with Part 5 of Part C of the Schedule.
Part 3

Force Majeure

1. Consequences of Termination for Force Majeure

1.1 If the Operator or the Trust terminates this Agreement pursuant to Clause 50.10 (Force Majeure) the Trust shall pay to the Operator the “Force Majeure Termination Sum” as set out in paragraph 1.2.

1.2 The Force Majeure Termination Sum shall be an amount equal to the aggregate of:

(a) the Senior Debt Amount;

(b) Redundancy Payments and Sub-Contractor Losses (but excluding therefrom any claims for loss of profit);

(c) an amount equal to all amounts paid to the Operator by way of subscription for shares in the capital of the Operator less dividends and other distributions paid to the shareholders of the Operator; and

(d) an amount equal to the Junior Debt less an amount equal to the aggregate of payments of interest or other distributions paid on the Junior Debt.

LESS, to the extent it is a positive amount, the aggregate of (without double counting):

(e) all credit balances on any bank accounts held by or on behalf of the Operator on the Termination Date and the value of any right of the Operator to receive insurance proceeds (save where such insurance proceeds are held in the Insurance Account and are to be applied in accordance with Clause 10 of the Financier Direct Agreement (or, in the event that the Financier Direct Agreement has terminated, in accordance with paragraph 5 of Part F of the Schedule) in reinstatement, restoration or replacement or in the case of third party legal liability or employer’s liability in satisfaction of the claim) or sums due and payable from third parties (but only when received from third parties) but excluding any claims under any Sub-Contracts which have not been determined or have been determined but not yet paid provided that in such case the Operator shall assign any such rights and claims under the Sub-Contracts to the Trust and give the Trust reasonable assistance in prosecuting such claims;

(f) the market value of any other assets and rights of the Operator (other than those transferred to the Trust pursuant to this Agreement, including, for the avoidance of doubt, the Site and the Facilities) less liabilities of the Operator properly incurred in carrying out its obligations under this Agreement as at the Termination Date to the extent realised before the Invoice Date provided that no account should be taken of any liabilities and obligations of the Operator arising out of:
(i) agreements or arrangements entered into by the Operator to the extent that such agreements or arrangements were not entered into in connection with the Operator’s obligations in relation to the Project; and

(ii) agreements or arrangements entered into by the Operator to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm’s length terms; and

(g) amounts which the Trust is entitled to set off pursuant to Clause 48.12 of this Agreement.

AND FURTHER LESS the amount payable by the Trust under Clause 47.4.1A

1.2A For the avoidance of doubt, the aggregate of the amount payable by the Trust pursuant to Clause 47.4.1A and the Force Majeure Termination Sum calculated in terms of paragraph 1.2 of this Part 3 of Part C of the Schedule shall not be less than the Senior Debt Amount.

1.3 The Force Majeure Termination Sum shall be paid in accordance with Part 5 of this Part C of the Schedule.

1.4 To the extent that such assets and rights referred to in paragraph 1.2(e) are not realised and applied pursuant to that paragraph, the Operator shall on payment of the Force Majeure Termination Sum transfer and/or assign title to such asset and rights to the Trust.
Part 4

Corrupt Gifts

1. Consequences of Termination for Corrupt Gifts

1.1 If the Trust terminates this Agreement pursuant to Clause 54.3 (Corrupt Gifts) the Trust shall pay to the Operator the “Corrupt Gifts Termination Sum” as set out in paragraph 1.2.

1.2 The Corrupt Gifts Termination Sum shall be:

(a) an amount equal to the Senior Debt Amount;

LESS, to the extent it is a positive number, the aggregate of (without double counting):

(b) all credit balances on any bank accounts held by or on behalf of the Operator on the Termination Date and the value of any right of the Operator to receive insurance proceeds save where such insurance proceeds are held in the Insurance Account and are to be applied in accordance with Clause 10 of the Financier Direct Agreement (or in the event that the Financier Direct Agreement has terminated, in accordance with paragraph 5 of Part F of the Schedule) in reinstatement, restoration or replacement or in the case of third party legal liability or employers liability in satisfaction of the claim, demand, proceedings or liability) or sums due and payable from third parties (but only when received from third parties) but excluding any claims under any Sub-Contracts which have not yet been determined or which have been determined but not yet paid provided that in such case the Operator shall assign any such rights and claims under the Sub-Contracts to the Trust and give the Trust reasonable assistance in prosecuting such claims; and

(c) the market value of any other assets and rights of the Operator (other than those transferred to the Trust pursuant to this Agreement including, for the avoidance of doubt, the Site and the Facilities) less liabilities of the Operator properly incurred in carrying out its obligations under this Agreement as at the Termination Date to the extent realised before the Invoice Date provided that no account should be taken of any liabilities and obligations of the Operator arising out of:

(i) agreements or arrangements entered into by the Operator to the extent that such agreements or arrangements were not entered into in connection with the Operator’s obligations in relation to the Project; and
(ii) agreements or arrangements entered into by the Operator to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm’s length terms.

AND FURTHER LESS the amount payable by the Trust under Clause 47.4.1A.

1.2A For the avoidance of doubt, the aggregate of the amount payable by the Trust pursuant to Clause 47.4.1A and the Corrupt Gifts Termination Sum calculated in terms of paragraph 1.2 of this Part 4 of Part C of the Schedule shall not be less than the Senior Debt Amount.

1.3 The Corrupt Gifts Terminations Sum shall be paid in accordance with Part 5 of this Part C of the Schedule.

1.4 To the extent that such assets and rights referred to in paragraph 1.2(c) are not realised and applied pursuant to that paragraph the Operator shall on payment of the Corrupt Gifts Termination Sum transfer and/or assign title to such assets and rights to the Trust.
Part 5

General

All payments in terms of this Part 5 of Part C of the Schedule shall be subject to Clause 48.5A.

1. **Payment and Interest**

   *Following termination for Trust Default, Force Majeure or Corrupt Gifts*

1.1 In respect of the termination payments to be made pursuant to Clause 47.4.1A and to any of Parts 1, 3 or 4 of this Part C of the Schedule, as soon as practicable after, and in any event within twenty (20) Business Days of, the Termination Date the Operator shall give to the Trust an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to the Trust, justifying the amount of the relevant termination sum including a breakdown of each of the individual elements of such sum.

1.2 Subject to paragraph 1.3 below, the Trust shall pay to the Operator:

   (a) the relevant termination sum within forty (40) Business Days of the Invoice Date; and

   (b) interest on the relevant termination sum (or any part of such sum that remains outstanding) from the Termination Date until the date of payment:

      (i) at the No Default Interest Rate for the period from (but excluding) the Termination Date to (and including) the date which is forty (40) Business Days after the Invoice Date; and

      (ii) thereafter, at the Default Interest Rate.

1.3 The Trust shall be entitled to pay the Force Majeure Termination Sum and the Open Market Hospital Value referred to in Clause 47.4.1A in 4 equal instalments by serving notice on the Operator within thirty (30) Business Days of the Invoice Date, in which case the provisions of paragraph 1.4 shall apply.

1.4 In the event that the Trust elects to pay the sums referred to in paragraph 1.3 above in instalments pursuant to paragraph 1.3 then:

   (a) the first such instalment (together with interest therein calculated pursuant to (b) below) shall be due on the first Business Day occurring six (6) months after the date of the Trust’s notice served pursuant to paragraph 1.3 above and the remaining instalments (together with interest therein calculated pursuant to (b) below) shall be due, respectively, on the first Business Day occurring twelve (12), eighteen (18) and twenty-four (24) months after the date of such notice; and
(b) the Trust shall pay interest on the Force Majeure Termination Sum (or any part of such sum that remains outstanding) from the Termination Date until the date of payment equal to the No Default Interest Rate;

(c) if the Trust fails to make a payment under paragraphs 1.4(a) or 1.4(b) in full within twenty (20) Business Days of the date due for payment, then the outstanding amount of the sums referred to in paragraph 1.3 above shall be immediately due and payable and the Trust shall pay interest on such sum at the Default Interest Rate.

**Following Retendering**

1.5 Subject to paragraphs 1.6 and 1.7 hereof, following a retendering exercise under Part 2 of this Part C of the Schedule the Trust shall pay to the Operator an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling twenty (20) Business Days after the later of:

(a) the date on which the Trust receives the Market Value of the New Agreement unless this falls later than 40 Business Days after the date on which the Trust enters into the New Agreement in which event the Trust will pay this amount no later than 40 Business Days following the date on which the Trust enters into the New Agreement; and

(b) if the Operator has referred a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution pursuant to paragraph 3.10 of Part 2 of Part C of this Schedule, the date on which the dispute is finally determined in accordance with Clause 59 (Dispute Resolution Procedure) provided that if the dispute referred by the Operator to Dispute Resolution concerns only a proportion of the Adjusted Highest Compliant Tender Price then the Trust shall pay the undisputed proportion of such sum no later than 20 Business Days after the date referred to in (a) above.

1.6 If the Adjusted Highest Compliant Tender Price is zero or a negative number then, on entering into the New Agreement with the New Operator, the Trust shall have no obligation to make any payment to the Operator and (if a negative number) an amount equal to the sum of the Adjusted Highest Compliant Tender Price shall be due and payable by the Operator to the Trust on the date of the New Agreement.

**Following no retendering**

1.7 If the Trust follows the no retendering procedure set out in paragraph 4 of Part 2 of Part C of the Schedule then, subject to paragraph 1.8, the Trust shall pay to the Operator an amount equal to the sum set out in paragraph 4.5 of Part 2 of Part C of the Schedule no later than the date falling twenty (20) Business Days after the date on which the Adjusted Estimated Fair Value of the Agreement has been agreed or determined in accordance with paragraph 4 of Part 2 of Part C of the Schedule together with interest on such amount calculated in accordance with paragraph 1.2(b) above unless the Trust has paid
Post Termination Service Amounts pursuant to paragraph 4.2 of Part 2 of Part C of the Schedule.

1.8 To the extent that the sum set out in paragraph 4.5 of Part 2 of Part C of the Schedule is less than zero, then an amount equal to the sum by which the sum set out in paragraph 4.5 of Part 2 of Part C of the Schedule falls below zero shall be due and payable by the Operator to the Trust on the Compensation Date.

2. **Full and Final Settlement**

2.1 Any and all sums irrevocably paid by the Trust to the Operator under this Schedule will be in full and final settlement of each party’s rights and claims against the other for breaches and/or termination of this Agreement and any other Project Document whether under contract, delict or otherwise but without prejudice to:

(a) any antecedent liability of the Operator to the Trust which the Trust has been unable to set off pursuant to Clause 48.12 of this Agreement;

(b) the provisions of Clause 48.5;

(c) any antecedent liability of either party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the Trust Default Termination Sum, Adjusted Highest Compliant Tender Price, or Adjusted Fair Value of the Agreement, the Force Majeure Termination Sum or the Corrupt Gifts Termination Sum as the case may be; and

(d) any liabilities arising in respect of any breach by either Party of their obligations under Clause 47.9 (Continuing Obligations) of this Agreement which arises or continues after the Termination Date.

2.2 If either the Adjusted Highest Compliant Tender Price or (as the case may be) the Adjusted Fair Value of the Agreement is zero or a negative number the Trust shall be released from all liability to the Operator for breaches and/or termination of this Agreement and any other Project Document whether under contract, delict or otherwise save for:

(a) any antecedent liability of the Trust which arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining the Adjusted Highest Compliant Tender Price or the Adjusted Fair Value of the Agreement (as the case may be); and

(b) any liabilities arising in respect of any breach by either party of their obligations under Clause 47.9 (Continuing Obligations) of this Agreement which continues after the Termination Date.

3. **Costs**
The costs and/or expenses to be taken into account in the calculation of all termination sums due pursuant to this Part C of the Schedule shall only be such costs and/or expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

4. **Undisputed Amounts**

If the calculation of any termination amount is disputed and either only a portion is disputed or the Trust asserts that a sum is payable lower than that asserted by the Operator to be payable, the Trust shall pay the undisputed portion or (as the case may be) the said lower sum and the dispute shall relate to the disputed portion or to the excess claimed by the Operator over the said lower sum.

5. **Outstanding Senior Debt Amount**

5.1 The Trust shall be entitled to rely on the certificate of the Financiers’ Agent as conclusive as to the amount of the Senior Debt Amount outstanding at any relevant time.

5.2 The receipt of the Financiers’ Agent shall discharge the Trust’s obligation to pay any element of compensation due to the Operator that is equal to the Senior Debt Amount (and where appropriate any accrued interest or breakage costs as certified in accordance with paragraph 5.1. above).
Part 6

Definitions

**Adjusted Estimated Fair Value of the Agreement** means the Estimated Fair Value of the Agreement adjusted as follows:

(a) where in respect of any month or part of a month from the Termination Date to the Compensation Date the Post Termination Service Amount is a negative number, the aggregate of all such negative Post Termination Service Amounts shall be set against and shall reduce the Estimated Fair Value of the Agreement (if such sums have not been set-off by the Trust pursuant to paragraph 3.8 of Part 2 of Part C of the Schedule);

the aggregate of the following amounts shall be deducted from the Estimated Fair Value of the Agreement;

(b) the Post Termination Service Amounts actually paid by the Trust to the Operator prior to the Compensation Date;

(c) the Tender Costs; and

(d) amounts that the Trust is entitled to set off or deduct,

the aggregate of the following amounts shall be added to the Estimated Fair Value of the Agreement:-

(e) all credit balances on any bank accounts held by or on behalf of the Operator on the date that the Estimated Fair Value is calculated; and

(f) any insurance proceeds and other amounts owing to the Operator (and which the Operator is entitled to retain), to the extent not included in (e);
to the extent that:

(i) (e) and (f) have not been directly taken into account in calculating the Estimated Fair Value of the Agreement; and

(ii) the Trust has received such amounts in accordance with this Agreement;

**Adjusted Highest Compliant Tender Price**

means the price offered by the Compliant Tenderer (if any) with the highest tender price, adjusted as follows:

(a) where in respect of any month or part of a month from the Termination Date to the Compensation Date the Post Termination Service Amount is a negative number, the aggregate of all such negative Post Termination Service Amounts shall be set against and shall reduce such highest tender price (if such amounts have not been set-off by the Trust pursuant to paragraph 3.8 of Part 2 of this Part C of the Schedule);

the aggregate of the following amounts shall be deducted from such highest tender price:

(b) the Post Termination Service Amounts actually paid by the Trust to the Operator prior to the Compensation Date;

(c) the Tender Costs;

(d) amounts that the Trust is entitled to set off or deduct,

the aggregate of the following amounts shall be added to such highest tender price:

(e) all credit balances on any bank accounts held by or on behalf of the Operator on the date that the highest priced Compliant Tender is received; and

(f) any insurance proceeds and other amounts owing to the Operator (and which the Operator is entitled to retain),
to the extent not included in (d);

to the extent that:

(i) (e) and (f) have not been directly taken into account in that compliant Tender; and

(ii) the Trust has received such amounts in accordance with this Agreement;

Compensation Date means either:

(a) the date referred to in paragraph 1.5 of Part 5 of Part C of the Schedule or

(b) if paragraph 4 of Part 2 of Part C of the Schedule (No Retendering Procedure) applies, the date referred to in paragraph 1.7 of Part 5 of Part C of the Schedule;

Compliant Tender means a tender that meets all of the Qualification Criteria;

Compliant Tenderer means a tenderer who submits a Compliant Tender;

Deemed New Agreement means an agreement on the same terms and conditions as this Agreement, as at the Termination Date, but with the following amendments:

(a) if this Agreement is terminated prior to the Operational Date, then the Long Stop Date shall be extended by a period to allow a New Operator (had one been appointed) to achieve the Operational Date prior to the Long Stop Date; and

(b) any accrued payment deductions and Improvement Notices shall, for the purpose of Clause 44.1.5, be cancelled;

(c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry of the Term; and

(d) the provisions of Clause 49 of this
Agreement shall not apply.

**Default Interest Rate**

means 2% over the No Default Interest Rate;

**Discount Rate**

means Project IRR;

**Estimated Fair Value of the Agreement**

means the amount determined in accordance with paragraph 4 of Part 2 of this Schedule (No Retendering Procedure) that a third party would pay to the Trust as the market value of the Deemed New Agreement;

**Fair Value**

means the amount at which an asset or liability could be exchanged in an arms length transaction between informed and willing parties, other than in a forced or liquidated sale;

**Financiers’ Agent**

means the person appointed as agent for the Financiers under the Facility Agreement and authorised to act on behalf of the Financiers;

**Invoice Date**

means, in respect of the Trust Default Termination Sum, the Force Majeure Termination Sum or the Corrupt Gifts Termination Sum (as appropriate), the date that is the later of:

(a) the date on which the Trust receives an invoice from the Operator for the relevant termination sum; and

(b) the date on which the Trust receives the supporting evidence required pursuant to paragraph 1.1 of Part 5 of this Part C of the Schedule;

**Insurance Account**

means account number 00100054, Sort Code 80-26-43 held with The Governor and Company of the Bank of Scotland and the Operator shall notify the Trust of any change to the Insurance Account particulars;

**Junior Debt**

means the outstanding balance of subordinated debt as such outstanding balance is as shown in the Financial Model;

**Liquid Market**

means that there are sufficient willing bidder(s) in the market for PFI or similar agreements (in either case the same as or similar to this
Agreement) for the price that is likely to be achieved through the retendering process in paragraph 3 of Part 2 of this Part C of the Schedule (Retendering Procedure) to be a reliable indicator of Fair Value for the New Agreement;

**Market Value Availability Deduction Amount**

means for any month or part of a month, an amount equal to the average monthly availability deduction that was made to the Services Fee under Clause 8 in the six month period immediately preceding the Termination Date, less an amount equal to any availability deduction that was made for a Space (as defined in Part B of the Schedule) which was unavailable at the Termination Date but which has subsequently become available whether as a result of the Trust incurring Rectification Costs or otherwise;

**Market Value of the Agreement**

means the value of the consideration payable by the New Operator to the Trust in consideration for the entering into of the New Agreement;

**Maximum Service Payment**

means the Services Fee payable at any time before any deductions under Clause 8 and Part B of the Schedule of the Agreement but allowing for indexation under Clause 9;

**New Agreement**

means an agreement on the same terms and conditions as this Agreement at the Termination Date, but with the following amendments:

(a) if this Agreement is terminated prior to the Operational Date, then the Long Stop Date shall be extended by a period to allow a New Operator to achieve the Operational Date prior to the Long Stop Date; and

(b) any accrued deductions under Part B of the Schedule which could lead to termination pursuant to Clauses 44.1.5.1, 44.1.5.2 or 44.1.5.3, and accrued Improvement Notices shall be cancelled; and

(c) the term of such agreement shall be equal to the term from the Termination Date until the Expiry of the Term; and
(d) any other amendments which do not adversely affect the Operator;

**New Operator**

Means the person who has entered or who will enter into the New Agreement with the Trust;

**No Default Interest Rate**

Means the interest rate equivalent to the interest rate that would be determined by Clause 5.1 of the Facility Agreement, assuming an applicable margin of 1.2% per annum;

**Post Termination Service Amount**

Means for the purposes of paragraph 3 of this Part 2 of Part C of the Schedule *(Retendering Process)*, for the whole or any part of a month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Service Payment which would have been payable under this Agreement had this Agreement not been terminated, less an amount equal to the aggregate of:

(a) the reasonable and proper cost to the Trust of procuring the Services;

(b) the Market Value Availability Deduction Amount for that month; and

(c) the Rectification Costs incurred by the Trust in that month;

**Project IRR**

Means 9.84%;

**Qualification Criteria**

Means the criteria that the Trust requires tenderer to meet as part of the Tender Process, which shall be:

(a) compliance with the New Agreement terms;

(b) the financial ability to pay the capital sum tendered and the financial ability to deliver the Services for the price tendered

(c) the tenderer may only bid on the basis of a single capital payment on the date the New Agreement is entered into;

(d) the tenderer is experienced in providing the Services or similar services;
(e) the technical solution proposed by the tenderer is capable of delivery and the tenderer is technically capable of delivering the Services; and

(f) any other tender criteria agreed by the Trust and the Operator;

**Rectification Costs**

means, for the purposes of any Termination Date that occurs after the Operational Date, an amount equal to the reasonable and proper costs incurred by the Trust in a particular month or part of a month in ensuring that the Services are available;

**Redundancy Payments**

means redundancy payments and other termination payments which are required under Applicable Laws to be made to employees of the Operator reasonably and properly incurred by the Operator arising as a direct result of terminating this Agreement (provided that the Operator shall use all reasonable endeavours to mitigate its loss) and provided that in calculating such amount no account should be taken of any liabilities and obligations of the Operator arising out of:

(a) contracts of employment or other agreements or arrangements entered into by the Operator to the extent that such contracts of employment agreements or arrangements were not entered into in connection with the Project; and/or

(b) contracts of employment or other agreements or arrangements entered into by the Operator to the extent that such contracts of employment agreements or arrangements were not entered into in the ordinary course of business and on commercial arm’s length terms;

**Senior Debt Amount**

means the aggregate of:

(a) amounts outstanding at the date of termination of this Agreement (excluding amounts referred to in paragraph (b) below), including interest accrued at the
No Default Interest Rate as at that date (excluding default interest on sums not paid on the due date), from the Operator to the Financier under the Facility Agreement; and

(b) all amounts (excluding interest and principal) payable to the Financier as a result of a prepayment under the Facility Agreement, including costs of early termination of interest rate hedging arrangements and other breakage costs, subject to the Operator and the Financier mitigating all such costs to the extent reasonably possible (unless the amount or the formula for determining the amount of such costs are fixed in advance under the terms of the Facility Agreement),

provided that

(A) if the Termination Date occurs prior to the Operational Date then the amount under paragraph (a) above shall not exceed an amount equal to the aggregate of (i) interest accrued at the No Default Interest Rate as at the Termination Date plus (ii) the lesser of (1) 120% of the principal amount of Senior Debt shown in the current Financial Model projected to be advanced as at the Termination Date and (2) the principal amount of Senior Debt actually drawn down or applied to be drawn down or capable of application to be drawn down in terms of the Facility Agreement plus (iii) without double counting all additional principal advanced by the Financier in connection with the financing of any Change and in connection with any financing agreed with the Trust arising from the occurrence of a Compensation Event; and

(B) if the Termination Date occurs on or after the Operational Date then the amount under paragraph (a) above shall not exceed the amount equal to the aggregate of (i) interest accrued at the No Default Interest Rate as at the Termination Date plus (ii)
120% of the maximum amount of the authorised principal amount of the Senior Debt as shown in the Financial Model plus
(iii) without double counting all additional principal advanced by the Financiers in connection with the financing of any Change and in connection with any financing agreed with the Trust arising from the occurrence of a Compensation Event.

Sub-Contracts

means the Design and Build Contract and the Services Contract entered into with Robertson Facilities Management Limited (and Robertson Facilities Management Limited’s permitted successor PROVIDED THAT such successor shall have entered into a contract upon the same terms or substantially the same terms as the Services Contract between the Operator and Robertson Facilities Management Limited and which contract with such successor shall not impose greater liabilities on the Trust in relation to Sub-Contractor Losses than the Services Contract between the Operator and Robertson Facilities Management Limited and a services direct agreement on the same or substantially the same terms as the Services Direct Agreement)

Sub Contractors

means the Contractor and/or Robertson Facilities Management Limited (and Robertson Facilities Management Limited’s permitted successor PROVIDED THAT such successor shall have entered into a contract upon the same terms or substantially the same terms as the Services Contract between the Operator and Robertson Facilities Management Limited and which contract with such successor shall not impose greater liabilities on the Trust in relation to Sub-Contractor Losses than the Services Contract between the Operator and Robertson Facilities Management Limited and a services direct agreement on the same or substantially the same terms as the Services Direct Agreement)
Sub-Contractor Losses

means:

(a) in the period prior to the Operational Date
the amount reasonably and properly
payable by the Operator to the Contractor
under the terms of the Design and Build
Contract as a direct result of the
termination of this Agreement provided
that such amount shall be reduced to the
extent that the Operator fails to use all
reasonable endeavours to mitigate such
amount; and

(b) in the period from the Operational Date
the amount reasonably and properly
payable by the Operator to the Sub
Contractor providing the Services as a
direct result of the termination of this
Agreement (but not any Surplus Amount
payable to the Sub-Contractor pursuant to
clause 9.3.5.1 of the Services Contract
between the Operator and Robertson
Facilities Management Limited) provided
that such amount shall be reduced to the
extent that the Operator fails to use all
reasonable endeavours to mitigate such
amount;

provided that in both cases no account should be
taken of any liabilities and obligation of the
Operator to the Sub-Contractors arising out of:

(i) agreements or arrangements entered
into by the Operator and the Sub-
Contractors to the extent that such
agreements or arrangements were
not entered into in connection with
those parties obligations in relation
to the Project; and/or

(ii) agreements or arrangements
entered into by the Operator and the
Sub-Contractors to the extent that
such agreements or arrangements
were not entered into in the ordinary
course of business and on
commercial arm’s length terms;
**Suitable Substitute Provider** as defined in the Financier Direct Agreement;

**Tender Costs** means the reasonable and proper costs of the Trust incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Agreement;

**Tender Process** means the process by which the Trust requests tenders from any parties interested in entering into a New Agreement, evaluates the responses from those interested parties and enters into a New Agreement with a new service provider, in accordance with paragraph 3 of Part 2 of Part C of this Schedule (Retendering Procedure); and

**Tender Process Monitor** means the person appointed under paragraph 3.6 of Part 2 of Part C of the Schedule.
PART D

CHANGE PROCEDURE

Additional Definitions

For the purposes of the Change Procedures contained in this Part D of the Schedule the following expressions shall have the following meanings:-

Base Case  means the output as at the Execution Date from the Financial Model and the formulae and logic relating thereto.

Capital Expenditure  means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time.

Change  means any Trust Change, Change in Law or Discriminatory Change in Law.

Change Adjustment  means an alteration to the Services Fee which in terms of this Agreement is directed to be made pursuant to this Part D of the Schedule (Change Procedures).

Change in Law  means (A) each of the following:-

(a) any applicable judgement of a relevant court of law which changes a binding precedent;

(b) the introduction, amendment, modification or repeal of any Applicable Law having effect in the United Kingdom or any part of it after the Execution Date and which is binding upon either of the Parties but specifically excluding any Applicable Law which comes into effect after the Execution Date and was published on or before the Execution Date :-

(i) in a draft Bill as part of a Governmental Departmental consultation paper or consultation paper published by the Scottish Executive;

(ii) in a Bill;

(iii) in a draft Statutory Instrument or draft Scottish Statutory Instrument; or
(iv) as a proposal in the Official Journal of the European Communities

(but only in so far as the items referred to in sub clauses (i) to (iv) above are when enacted after the Execution Date in substantially the same form) (i) to (iv) being together referred to in this Part D of the Schedule as “Foreseeable Legislation and

(B) subject to paragraph 9 of Section 3 of Part D of this Schedule, the introduction, amendment or modification of an Industry Standard after the Execution Date.

Cost Increase

in respect of implementation of a Trust Change means the amount if any by which:-

(a) the Costs which would be incurred by the Operator in carrying out the Works and/or providing the Services including such Trust Change;

exceed

(b) the Costs which would have been incurred by the Operator in carrying out the Works and/or providing the Services without such Trust Change.

Cost Saving

in respect of implementation of a Trust Change means the amount if any by which:-

(a) the Costs which would have been incurred by the Operator in carrying out the Works and/or providing the Services without such Trust Change;

exceed

(b) the Costs which would be incurred by the Operator in carrying our the Works and/or providing the Services including such Trust Change.

Competitive Tenders

means quotes or tenders from three or more persons of sufficient expertise (in the reasonable opinion of the Trust Manager) to carry out a Trust Change or a Necessary Change and of sound financial standing (other than the costs of procuring additional finance).

Costs

means (a) the proper and reasonable sums paid or which would have been paid, or which will be likely, to be paid by
the Operator to the Contractor and/or to any other person employed by the Operator in carrying out the Works and/or providing the Services or (b) Lump Sum Quotation (as the case may be) (including the costs of procuring additional finance).

Cumulative Capital Expenditure means the:

Capital Expenditure that has been incurred by the Operator during the Services Term in implementing Necessary Changes required by a Change in Law (other than a Discriminatory Change in Law).

Debt Service Cover Ratio has the meaning ascribed to it in the Facility Agreement as at the Execution Date.

Deemed Change means a Discriminatory Change in Law which does not require a Necessary Change but which gives rise to Relevant Costs or Relevant Savings for the purposes of Section 3 of this Part D of the Schedule (for the avoidance of doubt, an Industry Standards Change shall not be a Deemed Change in Law).

Discriminatory Change in Law means any Change in Law (but for the avoidance of doubt such Change in Law shall not include an Industry Standards Change)

(i) the effect of which is to discriminate directly against:

(a) geriatric hospitals whose design, construction, financing and operation are procured by a contract under the PFI (or any similar successor programme) in relation to other geriatric hospital projects; or

(b) companies undertaking projects procured by contracts under the PFI (or any similar successor programme) in relation to other companies undertaking similar projects; or

(c) Findlay House in relation to other hospitals/similar facilities; or

(d) the Operator in relation to other companies, save that:

(i) such action shall not be a Discriminatory
Change in Law where it is in response to any act or omission on the part of the Operator or any Operator Party which is illegal (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);

(ii) such action shall not be deemed to discriminatory solely on the basis that its effect on the Operator is greater than its effect on other companies; and

(iii) a change in taxes or the introduction of a tax affecting companies generally or a change in VAT shall be deemed not to be discriminatory in any circumstances subject to Clause 8.11;

**Loan Life Cover Ratio** has the meaning ascribed to it in the Facility Agreement as at the Execution Date.

**Lump Sum Quotation** means a fixed price quotation for the implementation of a Trust Change together with all such information including quantities as the Trust may reasonably require to enable it properly to evaluate such quotation.

**Necessary Change** means a Necessary Service Change or a Necessary Works Change (or both) as the case may be.

**Necessary Service Change** means a change to the Service Requirements (whether by addition, modification, omission or otherwise) which is required as a result of a Change in Law.

**Necessary Works Change** means a change to the Design Specification (whether by addition, modification, omission or otherwise) which is required as a result of a Change in Law.

**Operator Change** means an Operator Service Change and/or an Operator Works Change.

**Operator Service Change** means a change requested by the Operator pursuant to Section 2 of this Part of the Schedule for a Change (whether by addition, modification, omission or otherwise) to the Services Requirements.

**Operator Works Change** means a change requested by the Operator pursuant to Section 2 of this Part of the Schedule for a change (whether by addition, modification, omission or otherwise) to the Design Specification.
**Post Tax Equity IRR** means the equity internal rate after tax on the Operator being 15.37%.

**Relevant Cost** means losses, costs or expenses, or a reduction in revenues (other than one giving rise to a compensating adjustment under any provision of this Agreement) suffered or incurred by the Operator as a result of a Change in Law or Discriminatory Change in Law as the case may be.

**Relevant Saving** means any gain or saving or the earning of an increased revenue (other than one giving rise to a compensating adjustment under any provision of this Agreement) made by the Operator as a result of a Change in Law or Discriminatory Change in Law as the case may be.

**Trust Change** means a Trust Works Change and/or a Trust Services Change.

**Trust Services Change** means a change requested by the Trust pursuant to Section 1 of this Part of the Schedule for a change (whether by addition, modification, omission or otherwise) to the Services Requirements.

**Trust Works Change** means a change requested by the Trust pursuant to Section 2 of this Part of the Schedule for a change (whether by addition, modification, omission or otherwise) to the Core Construction Requirements.
SECTION 1: TRUST CHANGES

1. Trust's right to request a Trust Change

The Trust shall be entitled at any time during the Term to request a Trust Change and the Operator shall implement such changes, subject to and in accordance with paragraphs 2 to 7 of this Section.

2. Operator's right to refuse to implement a Trust Change

The Operator shall be entitled to decline to implement a Trust Change only in the following circumstances:-

(i) where it is not technically feasible or otherwise impractical; or

(ii) where it will delay the Operational Date (except to the extent that both an Extension of Time and compensation therefor in terms of Clause 18 (Delay Events) of this Agreement) has been agreed or determined; or

(iii) where the implementation of the Trust Change is dependent upon the issue of a new or revised Necessary Consent which, the Operator having used all reasonable endeavours, has failed to obtain; or

(iv) where it is a Trust Works Change and requested less than 3 months prior to the Planned Operational Date unless the date specified in paragraph 3(b) occurs after the Planned Operational Date; or

(v) where, having used all reasonable endeavours the Operator has failed to obtain funding for the Trust Change (and the Trust has not agreed to fund the Trust Change itself); or

(vi) the Trust Change is unlawful for Trust to execute; or

(vii) the Trust Change is contrary to title conditions;

(viii) the Trust Change leads to default under the Facility Agreement; or

(ix) the Trust Change is contrary to Good Industry Practice.

3. Procedure for requesting a Trust Change

3.1 If the Trust wishes to make a Trust Change, the Trust Manager shall issue a notice (“a Trust Change Notice”) to the Operator specifying:-

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(a) the nature and extent of the Trust Change and whether the change comprises a Trust Works Change or a Trust Services Change or both; and

(b) in the case of a Trust Works Change, the date on which the Trust wishes the same to be implemented and in the case of a Trust Services Change the date from which the Trust wishes such change to take effect (which shall be a reasonable date having regard to the nature of the Trust Services Change); provided that unless otherwise agreed, any Trust Change Notice in respect of a Trust Services Change issued prior to the commencement of the Services Period shall be deemed to take effect on the Operational Date or as soon as practicable thereafter; and

(c) whether it requires the Operator to submit to it:

(i) a Lump Sum Quotation (the Operator having complied with the provisions of paragraph 5A.1) in respect of the Trust Change; and/or

(ii) the Operator’s calculations (the “Calculations”) of the increase or decrease in the Services Fee which would result from carrying out the procedures set out in paragraph 5 below (assuming completion of these procedures by a reasonable date specified in the Calculations) (together with such information as the Trust would reasonably require to enable it to properly evaluate the basis for such Calculations); and/or

(iii) in the case of a Trust Works Change, where the Trust Works Change would reasonably involve the Operator increasing its bank or funding facilities to enable it to fund the Trust Works Change prior to reimbursement by way of an increase in the Services Fee in accordance with paragraph 5 below, a requirement for the Operator to submit to the Trust an indication of the timescale involved and likelihood of success in achieving the necessary funding; and/or

(iv) any other information which the Trust may (acting reasonably) request.

4. Evaluation of a Trust Change

4.1 Within 1 month of receiving a Trust Change Notice the Operator shall deliver to the Trust a written evaluation of the Trust Change proposed in the Trust Change Notice which written evaluation must contain any information requested by the Trust in the Trust Change Notice together with:

(a) any observations of the Operator on whether the proposed Trust Change would have any consequential impact on the obligations of the Operator (including the Design Specification and/or the Service Requirements and/or the Necessary Consents) under this Agreement and a timetable for carrying out the Trust Change; and
(b) where the date by which the Trust wishes the Trust Change to be implemented occurs prior to the Planned Operational Date, the Operator’s evaluation of whether the proposed change would give rise to any requirement for an Extension of Time under Clause 18 (Delay Events) and the Operator’s best estimate of such Extension of Time;

(c) in respect of each Competitive Tender obtained by the Operator in accordance with paragraph 5A.1, copies of each Competitive Tender.

4.2 If the Trust disputes any matter in the written evaluation (including, but without limitation, the amount of a Lump Sum Quotation and/or the basis or accuracy of the calculations made pursuant to paragraph 5 below (the “Calculations”) (a “Dispute”) the Trust shall notify the Operator of such Dispute and the Trust and the Operator shall endeavour to reach agreement on and resolve such Dispute, failing which either Party may, at any time, refer the Dispute to an Adjudicator for resolution in accordance with the Dispute Resolution Procedure.

5. Financial Adjustments

5A.1 The Operator shall, if required to do so by the Trust under paragraph 3 above, obtain Competitive Tenders and the most economically advantageous Competitive Tender shall form part of the Lump Sum Quotation or the Calculations under paragraphs 4.1 and 4.2 above.

5.1 The Operator shall calculate:

(a) the Cost Increase or Cost Saving, if any, that would result from implementing the Trust Change; and

(b) the adjustments that should be made to the Services Fee in accordance with paragraph 5.2 to compensate the Operator for the amount of such Cost Increase or Cost Saving as the case may be.

5.2 (a) The Operator shall re-run the Financial Model amended by the amount of:

(i) the Cost Increase as expenditure by the Operator on the date or dates when such expenditure will be likely to be incurred; or

(ii) the amount of the Cost Saving as a saving in expenditure by the Operator on the date or dates when such saving will be likely to be achieved;

(b) The Operator shall then adjust the Services Fee as from the commencement of the Payment Month after the Payment Month in which the amount of the relevant expenditure or saving will be likely to take place (or from such other date as the Parties may agree) by an amount such that the adjustment, will result in the following being no better or no worse in the re-run Financial Model:
(i) the Post Tax Equity IRR derived from a further re-run of the so amended Financial Model using the same tax assumptions and substituting the Services Fee multiplied by such factor or factors in place of the Services Fee used in the Base Case; and

(ii) the Loan Life Cover Ratio in current and future periods;

(iii) the Debt Service Cover Ratio in current and future periods.

6. **Confirmation or cancellation of a Trust Change**

6.1 Within 1 month of the date on which the Trust receives the written evaluation referred to in paragraph 4.1 (or, if later, the date on which a Dispute is resolved between the Parties or is determined in accordance with paragraph 4.2), the Trust Manager shall serve a notice on the Operator either confirming the Trust Change (a “Confirmation Notice”) or cancelling the Trust Change Notice (a “Cancellation Notice”). If the Trust issues a Cancellation Notice it will meet on written demand all reasonable costs properly incurred by the Operator in progressing the Trust Change.

6.2 A Confirmation Notice shall specify:

(a) that the Trust accepts the Lump Sum Quotation submitted by the Operator in respect of the Trust Change the subject of that Confirmation Notice (as that Lump Sum Quotation may be modified in accordance with paragraph 4.2 above); or

(b) that the Trust accepts the Calculations produced by the Operator (as such Calculations may be modified in accordance with paragraph 4.2) and shall pay for the implementation of the Trust Change by way of an adjustment to the Services Fee in accordance with paragraph 5 with effect from completion of implementation of the Trust Works Change and/or the implementation of the Trust Services Change (as the case may be) (provided that the Trust will be entitled to pay for a Trust Change only by a lump sum payment in terms of Clause 6.5 where the Operator has been unable to obtain funding for the Trust Change (or relevant part thereof)); and

(c) if paragraph 3.1(c) (iii) above applies, whether the Trust wishes to defer implementation of the Trust Change until the Operator has notified the Trust that it has obtained the necessary additional funding outlined in the Operator’s written evaluation submitted under paragraph 4.1 (provided that the Operator shall be obliged to use reasonable endeavours to procure such funding and shall be obliged to notify the Trust within 2 Business Days of it receiving confirmation that the required facilities have or have not been made available to it); and
(d) the variations to the Core Construction Requirements, the Services Requirements and any other term of this Agreement.

6.3 Subject to paragraph 6.4 below, if the Trust Manager fails to serve a Confirmation Notice or a Cancellation Notice as specified in paragraph 6.1 above, then the Trust Change Notice will be deemed to have been withdrawn and in that event the Trust shall be liable to pay to the Operator a sum equal to the costs reasonably and properly incurred by the Operator in preparing the written evaluation referred to in paragraph 4.1.

6.4 In the event that the Operator fails to give notice to the Trust under paragraph 6.2(c) within three months (or such longer period as the Trust Representative may notify in writing) from the date of notification by the Trust of its intention under paragraph 6.2(c) the Trust Change Notice shall be deemed to have been withdrawn and in that event the Trust shall not be liable for the costs of preparing the written evaluation prepared by the Operator in accordance with paragraph 4.1.

6.5 Where the Trust has served a Confirmation Notice under paragraph 6.2 in which it has accepted that it will fund a Trust Change by way of paying a Lump Sum Quotation submitted by the Operator in respect of a Trust Change, there shall be no further change or adjustments made to the Services Fee in accordance with this paragraph 6.

7. Effect of a Trust Change

7.1 A Confirmation Notice shall have the effect of varying the Core Construction Requirements and/or the Service Requirements (as the case may be) or of varying any other provision of this Agreement as a consequence to the extent provided in such Confirmation Notice with effect from the date specified in such notice under paragraph 3.1(b) (or such other date that may be agreed between the Parties), and as soon as practicable thereafter the Operator shall implement such Trust Change and shall be bound by this Agreement in so doing as if the Trust Works Change or the Trust Services Change formed part of the Core Construction Requirements or the Service Requirements (as the case may be) or other provision of this Agreement.
SECTION 2 : OPERATOR CHANGES

1. Operator’s right to request an Operator Change

The Operator may, from time to time during the Term, request an Operator Change by serving a notice (an “Operator Change Notice”) on the Trust Manager.

2. Evaluation of an Operator Change

An Operator Change Notice shall be accompanied by a written evaluation of the proposed Operator Change which shall deal with the following matters:-

(a) the Operator’s best estimate of the capital cost of implementing a proposed Operator Works Change or the saving to the Operator of capital expenditure in respect of any Operator Works Change or any increase or reduction in operating costs to the Operator of providing the Services in accordance with a proposed Operator Service Change or as a consequence of a proposed Operator Works Change; and

(b) any other impact which the proposed Operator Change may have on the Project, including whether it may prevent or prejudice the Operator from performing its obligations under this Agreement.

3. Trust’s right to approve an Operator Change

The Operator shall not proceed with any proposed Operator Change without the prior consent of the Trust Manager which may be withheld in the Trust’s absolute discretion if:-

(a) the proposed Operator Change is in respect of the Core Construction Requirements or the Service Requirements; or

(b) the proposed Operator Change is not in accordance with Good Industry Practice; or

(c) the proposed Operator Change is likely, in the opinion of the Trust Manager to prejudice the achievement of the Operational Date by the Planned Operational Date; or

(d) in relation to a proposed Operator Works Change affecting the Construction Implementation Requirements only, upon implementation thereof the Construction Implementation Requirements would be less likely to achieve compliance with the Core Construction Requirements than the Construction Implementation Requirements prior to such implementation, or the Works would
not be of a standard of structural, mechanical or electrical performance equal to or better than that of the Works required under the Construction Implementation Requirements prior to such implementation; or

(e) in relation to a proposed Operator Service Change, the performance of the Service in accordance therewith would be materially less likely to achieve compliance with the Service Requirements or would provide compliance to a lower standard or quality than the performance of the Service in accordance with the Service Requirements prior to the implementation of the proposed Operator Service Change, or would have an adverse effect on the use of the Facilities; or

(f) the proposed Operator Change would result in an increase in the Services Fee,

but which may not be unreasonably withheld in any other circumstances. The Trust will not be entitled to withhold its consent to an Operator Change arising by reason of Foreseeable Legislation or the introduction, amendment or modification of an Industry Standard prior to the Operational Date. The Trust Manager shall be bound to issue its response to the proposed Operator Change within 10 Business Days after receipt of an Operator Change Notice which failing the proposed Operator Change shall be deemed to have been approved by the Trust.

4. Operator Changes at Operator's Risk

Notwithstanding paragraph 3, no Operator Change consented to by the Trust will give rise to any Extension of Time nor any adjustment to the Services Fee save where the contrary is specifically agreed by the Trust at its entire discretion.

5. Implementation of an Operator Change

Subject to paragraph 6,

5.1 the Operator undertakes to implement an Operator Service Change to which the Trust Manager has consented with all due diligence and within a reasonable period of time after such consent and shall be bound by this Agreement in so doing as if the Operator Service Change formed part of the Service Requirements.

5.2 the Operator undertakes to carry out with all due diligence and complete within a reasonable period of time all work required to comply with any Operator Works Change to which the Trust Manager has consented and shall be bound by this Agreement in so doing as if the Operator Works Change formed part of the Design Specification.
6. **Withdrawal of an Operator Change**

At any time prior to implementation of an Operator Change, the Operator may withdraw the relevant Operator Change Notice and the rights and obligations of the Parties under this Agreement shall be construed as if such Operator Change Notice had not been issued.
SECTION 3: CHANGES IN LAW

1. Scope

Paragraphs 1 to 9 below shall apply if there shall be a Change in Law or a Discriminatory Change in Law which applies to the Operator in the performance of its obligations under this Agreement or which affects the Trust.

2. Procedures for requesting a Necessary Change

2.1 Either Party may request a Necessary Change by serving a notice (a “Necessary Change Notice”) on the other Party.

2.2 If the Party on whom the Necessary Change Notice is served disputes:

   (a) that a Necessary Change is required; or

   (b) that the Necessary Change the subject of the Necessary Change Notice arises from a Discriminatory Change in Law,

that Party may within 10 Business Days of receiving the Necessary Change Notice refer such dispute to an Adjudicator for resolution in accordance with the Dispute Resolution Procedures.

3. Evaluation of a Necessary Change

3.1 If the Necessary Change Notice is served by the Operator on the Trust, then on the date of such service, or if the Necessary Change Notice is served by the Trust on the Operator, within 15 Business Days of such service, the Operator shall deliver to the Trust Manager a written evaluation (an “Evaluation”) of the proposed Necessary Change.

3.2 An Evaluation delivered under paragraph 3.1 shall specify:

   (a) whether the Necessary Change is required by a Change in Law or by Discriminatory Change in Law;

   (b) the nature of the Necessary Change and state whether it comprises a Necessary Service Change and/or a Necessary Works Change or both and the date on which or from which such Necessary Service Change or a Necessary Works Change must be implemented or take effect;
(c) if the proposed Necessary Change is a Necessary Works Change occurring prior to the Planned Operational Date the Operator's best estimate of any Extension of Time that may be required;

(d) if the proposed Necessary Change arises from a Discriminatory Change in Law, the Operator's best estimate of the adjustment to the Services Fee that the Operator calculates will be required in accordance with paragraph 5 to reflect any Relevant Costs and/or Relevant Savings arising from the Necessary Change;

(e) if the Necessary Works Change is to be carried out after the Operational Date the Operator shall as soon as possible carry out Competitive Tenders in respect of the implementation of a Necessary Works Change if such Necessary Works Change is estimated by the Operator (acting reasonably) as costing in excess of £35,000 (Indexed). In that event the Operator shall deliver to the Trust all evidence required by the Trust in relation to such Competitive Tenders and the Operator shall appoint the person who has submitted the most economically advantageous tender. If the Necessary Works Change is estimated by the Operator (acting reasonably) as costing less than £35,000 (Indexed) the Operator shall as soon as possible deliver to the Trust all information reasonably requested by the Trust to establish that such estimate represents value for money for the Trust. The Operator acknowledges and accepts that the Trust requires to show that the price for the works to be carried out pursuant to a Necessary Works Change represents value for money;

(f) any other impact which the Necessary Change may have on the Project, including whether it may prevent or prejudice the Operator from performing its obligations under this Agreement,

and following the service of the Evaluation the Trust and the Operator shall endeavour to agree the matters set out in the Evaluation and such modifications to this Agreement as may be necessary to ensure compliance with the Necessary Change. If the Trust and the Operator fail to reach agreement, within 10 days the matter may, on the application of either Party, be referred to an Adjudicator for resolution in accordance with the Dispute Resolution Procedures.

4. Implementation of a Necessary Change

4.1 Subject to paragraphs 5 and 6 below, the Operator undertakes to implement any Necessary Service Change with all due diligence and within a reasonable period of time (as such reasonable period of time (if any) will have been agreed between the Parties in advance of the Operator undertaking to implement any Necessary Service Change) after the Parties have reached agreement, or the Adjudicator's determination has been made, on the modifications referred to in paragraph 3.2 and shall be bound by this Agreement in so doing as if the Necessary Service Change formed part of the Service Requirements; provided that if the Operator is
required to implement it by a certain date as result of a Change in Law, then the Operator shall do so.

4.2 Subject to paragraphs 5 and 6 below, the Operator undertakes to carry out with all due diligence and complete within a reasonable period of time (as such reasonable period of time will have been agreed between the Parties in advance of the Operator undertaking to implement any Necessary Works Change) after the Parties have reached agreement, or the Adjudicator’s determination has been made, on the modifications referred to in paragraph 3.2 all work required to comply with any Necessary Works Change and shall be bound by this Agreement in so doing as if the Necessary Works Change formed part of the Design Specification; provided that if the Operator is required to implement it by a certain date as a result of a Change in Law, then the Operator shall do so.

5. Funding of Necessary Changes required by a Discriminatory Change in Law and Deemed Changes

5.1 In the event of a failure of the Parties to agree the Evaluation in respect of paragraph 3.2 hereof and such Evaluation has been determined by an Adjudicator pursuant to paragraph 3.2 then within 60 days of such determination, the Operator shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to the Trust.

5.2 Subject to paragraph 5.1 if the Operator has used its reasonable endeavours to obtain funding for Capital Expenditure required in the circumstances set out in paragraph 5.1 above but has been unable to do so it shall notify the Trust of that fact and the Trust shall use its reasonable endeavours to procure funding for such Capital Expenditure.

5.3 If a Necessary Change arising from a Discriminatory Change in Law requires Capital Expenditure in order to implement it and the Operator is unable to procure funding for the same in accordance with paragraph 5.1, and the circumstances referred to in Clause 45.1.6 of the Agreement apply the Operator may terminate this Agreement by notice to the Trust and the provisions of Part 1 of Part C of the Schedule (Compensation on Termination) shall apply.

5.4 If:

(a) a Necessary Service Change arises as a result of a Discriminatory Change in Law; and/or

(b) the Operator has been able to procure funding of Capital Expenditure for which the Trust is responsible in terms of paragraph 6.3 below required to implement a Necessary Change in accordance with paragraphs 5.1 or 5.2 above; or

(c) if there is a Deemed Change,
adjustments shall be made to the Services Fee with effect from the completion of the Necessary Change, or as the case may be, the date on which the Deemed Change takes effect, in order to take account of any Relevant Costs and Relevant Savings and the principles of paragraph 5 of Section 1 of this Part D of the Schedule shall apply to the calculation of such adjustment.

6. Funding of Necessary Changes required by a Change in Law

6.1 If a Necessary Change arises as a result of a Change in Law (save for a Discriminatory Change in Law), subject to paragraph 5.4 above, no adjustments shall be made to the Services Fee in respect of any Relevant Costs or Relevant Savings.

6.2 The Operator shall be responsible for all Capital Expenditure which arises as a result of a Necessary Change (except for Capital Expenditure arising as a result of a Discriminatory Change in Law) arising after the Operational Date up to a maximum Cumulative Capital Expenditure of £60,000. To avoid doubt, the Operator shall be responsible for all Capital Expenditure which arises as a result of a Necessary Change (other than a Discriminatory Change in Law) prior to the Operational Date.

6.3 For the avoidance of doubt, the Trust shall be responsible for all Capital Expenditure in respect of Necessary Changes arising out of a Change of Law after the Operational Date, except the Capital Expenditure as set out in paragraph 6.2 above.

7. Deemed Changes

7.1 On the occurrence of a Deemed Change, the Operator shall immediately notify the Trust of the circumstances constituting the Deemed Change and shall provide the Trust with the Operator's calculation of the Relevant Costs or Relevant Savings arising from the Deemed Change, together with such information as the Trust may reasonably require in order to substantiate such calculation.

7.2 Notwithstanding the terms of paragraph 7.1 above, the Trust may, on the occurrence of a Deemed Change, notify the Operator of the circumstances constituting the Deemed Change, in which event the terms of paragraph 7.1 above shall apply as if the references therein to “the Trust” were to “the Operator” and vice versa.

7.3 If there is any dispute as to whether or not there is a Deemed Change, or as to the Relevant Costs or Relevant Savings arising therefrom, either Party may refer such dispute to an Adjudicator for resolution under the Dispute Resolution Procedures.
8. **Mitigation**

Each of the Parties will use their reasonable endeavours to mitigate any Relevant Costs and to maximise any Relevant Savings.

9. **Industry Standard**

9.1 When carrying out the Works the Operator shall comply (at its own expense which expense shall, for the avoidance of doubt, not form part of the Cumulative Capital Expenditure referred to in paragraph 6.2 hereof) with the Industry Standards and any Industry Standard Change which occurs prior to the Operational Date applicable to the Works.

9.2 During the Services Term the Operator shall comply in accordance with this paragraph 9.2 with all Industry Standards to the extent that they apply to the Project Provided that if the Trust has notified the Operator that an Industry Standard Change has occurred which increases or will increase the Operator’s costs of providing the Project, the Operator will only be responsible for paying up to a maximum of £2000 (Indexed) in any Payment Year in complying with that Industry Standards Change. If however the costs of complying with that Industry Standards Change in any Payment Year would exceed £2,000 (Indexed), such Industry Standards Change will be deemed to be a Trust Change (save that the Operator shall pay, on demand, to the Trust, the sum of £2,000 (Indexed)).
SECTION 4 : GENERAL

1. Following the adjustment to calculate the new prices following a Change the Financial Model as adjusted in accordance with this Part D of the Schedule shall be the Financial Model for the purposes of this Agreement.
PART E
DISPUTE RESOLUTION PROCEDURE

Section 1
Not used

Section 2
RULES

General
Subject to Clause 59 of this Agreement, any dispute or difference (references to “dispute” throughout the Adjudication Rules aforementioned (“the Rules”) shall include any difference) arising under this Agreement or with regard to any matter or thing whatsoever arising out of this Agreement or in connection therewith which is referred to the Adjudicator or to the Dispute Resolution Procedure for adjudication shall be adjudicated in accordance with the Rules.

The Rules meet the requirements of the adjudication procedure set out in section 108 of the Housing Grants, Construction and Regeneration Act 1996 (the “1996 Act”).

Commencement
1. The Rules shall apply upon either Party giving written notice to the other Party requiring adjudication, and identifying in general terms the dispute in respect of which adjudication is required.

2. Within 7 days from the date of such notice, and provided that he is willing and able act, any agreed Adjudicator under Rule 6 or nominated Adjudicator under Rule 7(ii) or replacement Adjudicator under Rule 8 shall give written notice of his acceptance of appointment to both Parties.

3. The date of the referral of the dispute shall be the date that the Adjudicator so confirms his acceptance.

4. Notice requiring adjudication may be given at any time and notwithstanding that litigation has been commenced in respect of such dispute.

5. More than one such notice requiring adjudication may be given arising out of this Agreement.

Appointment
6. Where the Parties have agreed upon the identity of an adjudicator who confirms his readiness and willingness to embark upon the Adjudication within 7 days of the notice requiring adjudication, then that person shall be the Adjudicator.

7. Where the Parties have not so agreed upon an adjudicator, or where such person has not so confirmed his willingness to act, then the Party who is seeking the appointment of the Adjudicator and the referral of the dispute to Adjudication may apply to the Chairman, Vice-Chairman, President or Vice-President of either the Royal Incorporation of Architects in Scotland or the Scottish Building Employers Federation or the Royal Institution of Chartered Surveyors in Scotland or the National Specialist Contractors Council (“the Nominator”) for a nomination and the selection of the Nominator shall be made by the said Party at a time not earlier than when any dispute arises. The following procedure shall apply:-

(i) The application shall be in writing, accompanied by a copy of this Agreement and, if required, other evidence of the agreement of the Parties that the Rules should apply and a copy of the written notice requiring adjudication.

(ii) The Nominator shall endeavour to secure the appointment of an Adjudicator and the referral to him of the dispute within 7 days from the application to the Nominator.

(iii) Any person so appointed (and not any person named in this Agreement whose readiness or willingness is in question), shall be the Adjudicator.

8. The Nominator shall have the power by written notice to the Parties to replace the Adjudicator with another nominated person as Adjudicator if and when it appears necessary to him to do so. The Nominator shall consider whether to exercise such power only if either Party shall represent to him that the Adjudicator is not acting impartially, or that the Adjudicator is physically or mentally incapable of conducting the Adjudication, or that the Adjudicator is failing with necessary despatch to proceed with the Adjudication or make his decision. In the event of a replacement under this Rule, directions and decisions of the previous Adjudicator shall remain in effect unless reviewed and replaced by the new Adjudicator, and all timescales shall be recalculated from the date of the replacement.

9. Where an adjudicator has already been appointed in relation to another dispute arising out of this Agreement, the Nominator may appoint either the same or a different person as Adjudicator.

Agreement

10. An agreement to adjudicate in accordance with the Rules shall be treated as an offer made by each of the Parties to the Nominator and to any Adjudicator to abide by the Rules, which offer may be accepted by conduct by appointing an Adjudicator or embarking upon the Adjudication respectively.
Scope of the adjudication

11. The scope of the Adjudication shall be the matters identified in the notice requiring adjudication, together with
   (i) any further matters which both Parties agree should be within the scope of the Adjudication, and
   (ii) any further matters which the Adjudicator determines must be included in order that the Adjudication may be effective and/or meaningful.

12. The Adjudicator may rule upon his own substantive jurisdiction, and as to the scope of the Adjudication.

The purpose of the adjudication and the role of the adjudicator

13. The underlying purpose of the Adjudication is to resolve disputes between the Parties that are within the scope of the Adjudication as rapidly and economically as is reasonably possible.

14. Subject to Rule 39, decisions of the Adjudicator shall be binding until the dispute is finally determined by legal proceedings, or by agreement between the Parties.

15. The decision of the Adjudicator shall reflect the legal entitlements of the Parties.

16. The Adjudicator shall have the like power to open up and review any certificates or other things issued or made pursuant to this Agreement as would a court or arbiter given such powers and the power to award damages.

17. The Adjudicator shall act fairly, impartially and in accordance with the Applicable Law, but shall not be obliged or empowered to act as though he were an arbiter.

Conduct of the adjudication

18. The Adjudicator shall establish the procedure and timetable for the Adjudication.

19. Without prejudice to the generality of Rule 18, the Adjudicator may if he thinks fit:-
   (i) Require the delivery of written statements of the dispute;
   (ii) Require either Party to produce a bundle of key documents, whether helpful or otherwise to that Party’s case, and to draw such inference as may seem proper from such bundle that may become apparent;
   (iii) Require the delivery to him and/or the other Party of copies of any documents other than documents that would be privileged from production to a court;
   (iv) Limit the length of any written or oral submission;
(v) Require the attendance before him for questioning of either Party or employee or agent of either Party; provided always that should the Adjudicator do this he shall immediately disclose all relevant information to the other Party to comment upon;

(vi) Make site visits;

(vii) Make use of his own specialist knowledge;

(viii) Obtain advice from specialist consultants, provided that at least one of the Parties so requests or consents;

(ix) Review and revise any of his own previous directions;

(x) Conduct the Adjudication inquisitorially, and take the initiative in ascertaining the facts and the law.

20. The Adjudicator may reach his decision with or without the holding of an oral hearing.

21. The Adjudicator shall exercise such powers with a view of fairness and impartiality, giving each Party a reasonable opportunity, in light of the timetable, of putting his case and dealing with that of his opponent.

22. The Adjudicator may not

(i) Require any advance payment of or security for his fees;

(ii) Receive any written submissions from one Party that are not also made available to the other;

(iii) Refuse any Party the right at any hearing or meeting to be represented by a representative of that Party’s choosing who is present;

(iv) Act or continue to act in the face of a conflict of interest;

(v) Require any Party to pay or make contribution to the legal costs of the other Party arising in the Adjudication;

(vi) act as an adjudicator in relation to a Dispute if the referring party has contacted him in relation to the dispute prior to the service of the notice in accordance with Rule 1 above.

23. The Adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the Parties after the dispute has been referred to him. The Adjudicator shall be entitled to extend the said period of 28 days by up to 14 days with the consent of the Party by whom the dispute was referred. As soon as possible after he has reached a decision, the Adjudicator shall deliver a copy of the decision to each of the Parties to this
Agreement. Upon becoming aware that the dispute is the same substantially the same as a dispute which has previously been referred to adjudication under this Agreement, and a decision has been issued in that adjudication, the Adjudicator shall immediately resign.

Adjudicator's fees and expenses

24. The Parties shall be jointly responsible for the Adjudicator's fees and expenses including those of any specialist consultant appointed under the Rules (the “Costs of Adjudication”), and the Adjudicator shall have the discretion to make directions regarding the apportionment of the Costs of Adjudication. If no such directions are made, the Parties shall bear the Costs of Adjudication in equal shares.

25. The Adjudicator’s fees shall not exceed the rate of £1,000 (Indexed) per day, plus expenses and VAT.

Decisions

26. The Adjudicator may in any decision direct the payment of such compound or simple interest as may be commercially reasonable.

27. All decisions shall be in writing. If requested by either Party, not later than 7 days from the date of delivery his decision to both Parties, the Adjudicator shall provide reasons for that decision.

Enforcement

28. 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 enforcement thereof including to take further proceedings, regardless of whether such decision is or is to be the subject of any challenge or review. Neither Party shall be entitled to any right of set-off, counterclaim or abatement in connection with any enforcement proceedings. Where either Party or the Adjudicator wishes to register the decision for execution in the Books of Council and Session, the other Party shall, on being requested to do so, forthwith consent to such registration by subscribing the decision before a witness which failing within 7 days of such request, the same may be subscribed on behalf of the defaulting Party by the Deputy Principal Clerk of the Court of Session.

Immunity, confidentiality and non-compellability

29. Neither the Nominator, nor the Adjudicator nor any employee or agent of any of them shall be liable for anything done or not done in the discharge or purported discharge of their functions, whether in negligence or otherwise, unless the act or omission is in bad faith.

30. The Adjudication and all matters arising in the course thereof are and will be kept confidential by the Parties except insofar as necessary to implement or enforce any...
decision of the Adjudicator or as may be required for the purpose of any subsequent proceedings.

31. In the event that either Party seeks to challenge or review any decision of the Adjudicator in any subsequent litigation, the Adjudicator shall not be joined as a party to, nor shall he be cited or otherwise required to give evidence or provide his notes in such litigation.

32. Neither Party shall, save in case of bad faith on the part of the Adjudicator, make any application to the courts whatsoever in relation to the conduct of the Adjudication or the decision of the Adjudicator until such time as the Adjudicator has made his decision, or refused to make a decision.

33. 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.

34. The Rules shall be governed by and construed in accordance with the law of Scotland and the parties irrevocably submit to the exclusive jurisdiction of the Court of Session, Scotland.

Related disputes

35. The Parties shall continue to comply with, observe and perform all their obligations under the Project Agreement regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Part E of the Schedule.

36. In the event of a dispute arising under this Agreement (a “Dispute”), the Operator may, if the dispute has not already been referred to the Adjudicator, give notice to the Trust of the intention to refer, and forthwith, refer such a dispute to the Adjudicator if, in the opinion of the Operator, the dispute has a substantial and close connection and raises common issues of fact with a dispute (a “Related Dispute”) arising under, out of, or in connection with the Design and Build Contract or Services Contract or any other contract between the Operator 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 which meets the requirements set out in Section 108 of the 1996 Act and is in all material respects equivalent to the adjudication procedure in paragraph 1 of this Part of the Schedule (the “Related Procedure”) the Operator, shall as soon as practicable, and in any case within 4 days of the date when a party to the Related Contract (the “Referring Party”) gave notice of his intention to refer the Related Dispute to adjudication under the Related Procedure, give to the Adjudicator 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 37 hereof.

37. The particulars referred to in paragraph 36 above are:
(a) a copy of the Related Contract;

(b) a preliminary statement from the Operator and/or, as the case may be, the other
    party to the Related Dispute setting out:-

    (i) the basis and grounds for conjoining 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 the Operator to the Adjudicator and to the other
parties to the Dispute shall be sent at the same time to the other party to the
Related Dispute, accompanied by a request that such party attend the preliminary
meeting referred to in paragraph 38.

38. The Operator shall use its reasonable endeavours to procure that an authorised
representative of the other party to the Related Dispute shall attend the preliminary
meeting with the Adjudicator to be held in accordance with Paragraph 39 or, if such
preliminary meeting shall already have taken place such further preliminary meeting (in
accordance with paragraph 39), either party to the Dispute shall be entitled to instruct
the Adjudicator or the Adjudicator may choose to convene a further preliminary
meeting. The parties each agree to send an authorised representative to any meeting of
this kind under a Related Contract which they may be requested to attend.

39. At the meeting or preliminary meeting or further preliminary meeting (as the case may
be) referred to in Paragraph 38 (which shall take place within 3 days of distribution of
the particulars referred to in Clause 37) the Trust Manager shall, as a preliminary matter,
either:-

    (a) confirm to the Adjudicator that the Trust accepts the proposed consolidation or
        conjoining of the Related Dispute with the Dispute; or
    
    (b) inform the Adjudicator that the Trust does not accept the proposed
        consolidation or conjoining of the Related Dispute with the Dispute in which
        case the Related Dispute shall not be consolidated or conjoined.

39A. If the Trust accepts the proposed consolidation or conjoining of the Related Dispute
and the Dispute the Adjudicator shall conduct the Adjudication relative to the Related
Dispute (in accordance with the procedure and rules set out in paragraphs 18 to 23 of
this Part of the Schedule, where: (1) references to Dispute shall be deemed to include a
reference to Related Dispute; (2) references to party, parties, both parties and associated
references shall be deemed to include a reference to the parties to the Related Dispute;
and (3) references to adjudication shall be deemed to include adjudication of both the
Dispute and the Related Dispute; and subject to that procedure and those rules shall have the authority and the power to direct all procedural and/or evidential matters arising in both the Dispute and the Related Dispute as consolidated or conjoined in whatever manner the Adjudicator shall consider is consistent with the provisions of this Part E of the Schedule related to procedural and/or evidential matters, only with such variations thereto as the Adjudicator shall notify to the parties and which are consistent with the said procedure and rules and considered to be necessary to lead to the fair and expeditious resolution of both the Dispute and the Related Dispute. The parties (including the party to the Related Dispute) shall thereafter abide by and implement such consolidation or conjoining and any such directions.

39B. In the event of proceedings before the Adjudicator, if Paragraph 39(a) applies, the Adjudicator shall forthwith order consolidation or conjoining of the Dispute and the Related Dispute (such order being issued to the parties to the Dispute and the Related Dispute and to the adjudicator appointed under the Related Dispute) and shall have the authority and the power referred to in Paragraph 39A above.

39C. Notwithstanding the provisions of paragraph 3 of this Part E of the Schedule, the date when the Adjudicator issues his order requiring the conjoining or consolidation of the Dispute and the Related Dispute shall be the date when the Dispute and the Related Dispute are together referred to adjudication. For the avoidance of doubt, the foregoing procedure for the conjoining or consolidation of a Dispute and a Related Dispute has the object of securing the appointment of the Adjudicator and the referral of the Dispute and the Related Dispute to him within 7 days of the Referring Party giving notice of his intention to refer the Related Dispute to adjudication under the Related Procedure.

39D. Notwithstanding anything to the contrary, a Related Dispute shall only be conjoined with or consolidated with a Dispute under this Agreement if

(a) the Adjudicator receives the particulars set out in paragraph 37 above within 5 days of the Referring Party giving notice of his intention to refer the Related Dispute to adjudication under the Related Procedure; and

(b) the Trust confirms that it accepts the proposed consolidation or conjoinder of the Dispute and Related Dispute;

(c) the Adjudicator issues his order conjoining or consolidating the Dispute and the Related Dispute within 7 days of the Referring Party giving notice of his intention to refer the Related Dispute to adjudication under the Related Procedure.

39E. In the event that the Related Dispute is conjoined or consolidated with the Dispute, the Adjudicator shall reach a decision on the common elements of the Dispute and the Related Dispute at the same time and in any event within 28 days of the Referring Party giving notice of his intention to refer the Related Dispute to adjudication under the Related Procedure or such longer period as is agreed by all of the parties to the Dispute and the Related Dispute after that date that the Related Dispute has been consolidated.
or conjoined with the Dispute. The Adjudicator shall be entitled to extend the said period of 28 days by up to 14 days with the consent of the Referring Party.

Without fettering or restricting the Adjudicator’s power and authority in any way, it is the intention of the Operator and the Trust that in the event that the Related Dispute is conjoined or consolidated with the Dispute, the Adjudicator shall, insofar as is relevant, practicable and appropriate, come to the same conclusion as to the common facts and apply the same reasoning and analysis in reaching a decision on both the Dispute and the Related Dispute.

39F. In the event of consolidation or conjoiner of the Dispute and the Related Dispute in terms of paragraph 39 the Adjudicator’s costs shall be borne as the Adjudicator shall specify.

40. Notwithstanding Rules 14 and 32 and subject to Rule 41, neither Party shall make any application whatsoever to the Court of Session in relation to the conduct of the Adjudication or the decision of the Adjudicator after the date ninety (90) days from the decision of the Adjudicator.

41. Notwithstanding Rules 39, 14 and 32, neither Party shall make any application whatsoever to the Court of Session 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 £50,000 (Indexed) 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 in excess of £100,000 (Indexed);

42. The Rules shall be governed by and construed in accordance with the law of Scotland and the parties irrevocably submit to the exclusive jurisdiction of the Court of Session, Scotland.

Section 3

Continued Performance

Performance of this Agreement shall continue during the conduct of the Dispute Resolution Procedure in accordance with its terms unless the Parties agree to suspend performance, or unless and to the extent that, such continuation is impossible given the nature of the dispute or unless prevented from doing so by interdict or interim interdict granted by a court of competent jurisdiction.
PART F

INSURANCES

Insured Risks

At its sole expense, the Operator shall effect and maintain the following insurances:

CONSTRUCTION PHASE

1. **Construction All Risks**

   **Cover**

   “All Risks” of loss, destruction or damage to the facilities from any cause not excluded.

   **Insured Parties**

   1. The Trust
   2. The Operator
   3. The Contractor and all sub-contractors of any tier including their professional advisers for their site activities only
   4. The Service Provider
   5. The Financier (only whilst amounts are outstanding under the Facility Agreement)

   **Construction Period**

   From the Agreement Date to the Operational Date plus 12 months maintenance thereafter.

   **Sum Insured**

   The value of all works undertaken in relation to the Facilities including all designs, drawings, specifications and plans to be provided, all plant, machinery, equipment, unfixed materials and other goods and all other property for incorporation or use in connection with or incorporation into the Facilities whether supplied by or on behalf of the Operator or installed by any contractor or sub-contractor or otherwise.
Geographical Limits

United Kingdom

Deductible

£2,500 applicable to each every loss increased to £100,000 for DE5

Extensions:

Full Guarantee Maintenance Clause
Automatic Increase Clause (125%)
Automatic Reinstatement Clause
Debris Removal Clause (10% or £250,000 maximum)
Other Interests Clause
Increased Cost of Construction - Incomplete/Unbuilt Works Clause (£250,000)
Extra Charges Clause
Public Authorities Clause
Professional Fees Clause (Scale)
Plans and Documents Clause (£100,000)
Additional Cost of Working Clause (120%)
Full Value Terrorism (Annually renewable)
Multiple Insureds Clause
Defective Design, Materials and Workmanship [DE5]
Minimisation of Loss Expenses
Claims Preparation Costs
Negligent Breakdown
Off-site Storage (£100,000)
Inland Transit
Principals Interest
Free Issue Materials
Munitions of War Clause
Land clean up costs only insofar as they relate to loss or damage on the Project site resulting from a claim under Section 1 of the Policy
Own Plant Concealed Damage
Immobilised Plant
72 hour Clause
Non Invalidation Clause
Waiver of Subrogation Clause (retained against suppliers of medical equipment)
Non Vitiation Clause
Testing and Commissioning limited to 14 days any one item.
Lenders Special Condition

Condition:

Fire Prevention - Joint Code of Practice
Exclusions:

Vehicles, Aircraft and Waterborne Vessels
Wear and Tear/Gradual Deterioration
War and Nuclear Risks (Standard Market Wording)
Sonic Bangs
Normal Upkeep/Making Good
Sea or Air Transit (unless specific provision has been made)
Unexplained Shortages
Consequential Loss (Fines and Penalties)
Loss of or Damage to Contractors or Sub-Contractors Plant and Equipment, owned, borrowed, leased or hired Date Recognition
Money, Deeds, Bonds and Securities
Existing Structures
Financial Loss

2. Advanced Loss of Revenue and Increased Costs of Working

Cover

Loss of gross revenue and additional increased costs of working arising from a delay in the commencement of commercial operations as a result of physical loss destruction or damage caused under the Construction All Risks policy

Insured Parties

1. The Operator
2. The Financier (only whilst amounts are outstanding under the Facility Agreement)

Period

From the Agreement Date to the Operational Date plus 12 months maintenance thereafter.

Sums Insured

1. £1,200,000 (loss of revenue)
2. £250,000 (increased cost of working)

Indemnity Period

24 months from the commencement of damage
Geographical Limits

United Kingdom

Deductible

21 days waiting period in the aggregate

Extensions

Full Terrorism cover
Denial of Access
Public Utilities Clause
Accountants Clause
Infectious Diseases
Non Vitiation Clause
Lenders Special Conditions

Exclusions:

War and Nuclear Risks
Sonic Bangs
Non-Availability of Funds
Redesigning the Project
Fines or Damages for breach of contract, for late or non-completion of orders or for any penalties of any nature

3. Third Party Liability

Cover

Indemnity in respect of the Legal Liability of the Insured Parties to pay damages, costs and expenses to third parties as a result of:-

(a) death, bodily injury, illness or disease contracted by any person

(b) loss of or damage to property

(c) obstruction, loss of amenities, trespass, nuisance, interference, stoppage of traffic, interference with any easement, right of air, light, water or way happening during the period of insurance and arising out of or in connection with the Project.
Insured Parties

1. The Trust
2. The Operator
3. The Contractor and all sub-contractors of any tier including their professional advisers for their site activities only
4. The Service Provider
5. Financier (only whilst amounts are outstanding under the Facility Agreement)

Period

From the agreement date to the Operational Date plus 12 months maintenance thereafter.

Limit of Indemnity

Primary Layer - £1M any one occurrence or series of occurrences arising from one cause and unlimited in any one period of insurance but in the aggregate in the period for sudden and accidental pollution.

Excess Layer - £9M in excess of £1M

Geographical Limits

United Kingdom

Deductible

£2,500 each and every occurrence in respect of third party property damage

Extensions

Contingent Motor Liability
Liability assumed under contract (as per agreed wording)  Health and Safety at Work Clause
Cross Liability Clause
Sudden, Identifiable, Unintended and Unexpected Pollution Clause
Waiver of Subrogation
Non Vitiation Clause
Defence Costs and Expenses in addition to the limit
Defective Premises Act 1972
Data Protection Act 1984
Consumer Protection Act 1974
Food Safety Act 1990
Munitions of War
Lenders Special Conditions

Exclusions

Property owned or in custody or in the control of the insured
Vessels or Craft intended to travel through water, air or space
Employers' Liability
Fines, Penalties, Punitive or Exemplary Damages
Liquidated Damages
War and Nuclear Risks
Professional Liability (fault, error or omission)
Contract Works
Motor Vehicles
21.2.1

4. OPERATIONAL PHASE

Property All Risks

Cover

All Risks of Physical Loss or Damage to the facilities from any cause not otherwise excluded

Insured Parties

1. The Operator
2. The Trust
3. The Service Provider
4. Financier (only whilst amounts are outstanding under the Facility Agreement

Period

From the Operational Date for 12 months and annually renewable thereafter for the duration of the services term.

Sums Insured

All risks of physical loss or damage to the Facilities and Equipment and Trust assets from any cause not excluded during the period of insurance.
Geographical Limits

United Kingdom

Deductible

£5,000 each and every loss

Extensions

Full Terrorism Cover
Day One Reinstatement + 25% non adjustable
Public Authorities Clause
Professional Fees (included in sum insured)
Debris Removal (included in sum insured)
Expediting Expenses (£2,000,000)
Temporary Removal
Loss of Metered Water (£50,000)
Capital Additions Clause
Replacement of Locks (£5,000)
Automatic Reinstatement of sum insured
Waiver of Subrogation
Non Vitiation Clause
Outdoor Property
Deep Clean Operations
Mechanical/Electrical Breakdown
Reproducing documents or computer records including accidental or malicious damage clause
72 hour clause
Lenders Special Conditions

Exclusions

War Risks, Radioactive Contamination as per standard market wording
Wear and Tear, Gradual Deterioration but this shall not exclude subsequent damage resulting from an ensuing clause which is not otherwise excluded
Unexplained Shortages
Defects in Design, Materials or Workmanship other than subsequent damage resulting from an ensuing cause which is not otherwise excluded
Inherent Vice, Latent Defects, Change in Water Table, Operational Error or Omission, Corrosion, Rust, Change in Temperature, Dampness, Dryness, Wet or Dry Rot, Shrinkage Evaporation, Loss of Weight, Change in Colour, Flavour or Texture or Finish, Vermin, Insects, Marring or Scratching
Deliberate Act of Supply Authority in withholding the supply of Water, Gas, Electricity or Fuel
Normal Settlement or Bedding down of new Structures
Acts of Fraud or Dishonesty
Collapse or cracking of buildings unless the damage to the building results from a defined peril (which term includes subsidence or landslip) and is not otherwise excluded
Damage to moveable property in the open other than fences, gates or signs caused by wind, rain, hail, sleet, snow, flood or dust
Damage to property undergoing any process
Vehicles, Aircraft and Waterborne Craft

5. Business Interruption

Cover

If any of the Insured Property under Section 7 (Property All Risks) is lost, destroyed or damaged by any of the risks insured under Section 1, including loss or damage which would be indemnifiable but for the application of any excess/deductibles, which causes interruption to or interference with the operation of the Facilities, this insurance will indemnify

(a) The Insured (other than Approved Service Providers) in respect of:-

(i) Loss of Gross Revenue

(ii) Additional expenditure necessarily and reasonably incurred by the insured for the sole purpose of avoiding or diminishing payments under Item (i), but not exceeding the additional amount which would have been payable under Item (i) had such expenditure not been incurred

less any sum saved during the Indemnity Period in respect of any charges and expenses of the business payable out of Gross Revenue which may cease or be reduced in consequence of the Damage subject to the Limit of Indemnity shown below.

(b) Additional Increased Costs of Working

Insured Parties

1. The Operator
2. The Service Provider
3. Financier (only whilst amounts are outstanding under the Facility Agreement)
**Period**

From the Operational Date for 12 months and annually renewable for the duration of the services term.

**Sum Insured**

1. £1,200,000 – gross revenue  
2. £250,000 Additional Increased Cost of Working

**Indemnity Period**

24 months from the commencement of damage

**Deductible**

7 days of each and every loss

**Extensions**

Public Utilities Clause  
Automatic Reinstatement of Sum Insured  
Full Terrorism Clause  
Non Vitiation Clause  
Bomb Threats and Unlawful Occupation  
Interruption caused or contributed to by physical loss or damage to property in the vicinity of the care facility which shall prevent or hinder the use of the care facility or access thereto  
Interruption caused by infections or disease or biological contamination whether at and/or in the vicinity of the care facility including such interruption by the order of or on the advice of any public authority  
Interruption caused by damage to the supply of water, gas, electricity or telecommunications systems to the care facility  
Material Damage Waiver  
Declaration Linked Clause  
Alternative Premises Clause  
Subrogation waiver  
Lenders Special Conditions

**Exclusions**

Fines and Penalties  
War and Kindred Risks  
Pollution
6. **Third Party Liability**

**Cover**

The legal liability of the insured arising from

(i) death, bodily injury, disease or illness sustained by any person  
(ii) loss of or damage to property  
(iii) obstruction, loss of amenities, trespass, nuisance, interference, stoppage  
of traffic, interference with any easement, right of air, light, water or way

**Insured Parties**

1. The Operator  
2. The Service Provider  
3. Financier (only whilst amounts are outstanding under the Facility Agreement)  
4. The Trust but only insofar as this affects their Vicarious Liability and specifically excluding any risks of an operational nature which they may attract whilst acting as an NHS Trust or providing soft services being:

   - Catering  
   - Domestic services  
   - Window cleaning  
   - Portering

**Period**

From the Operational Date for 12 months and annually renewable thereafter for the duration of the Services Period

**Limit of Indemnity**

£10,000,000 any one occurrence or series of occurrences attributable to one cause and in the aggregate in the Period in respect of Products Liability Insurance

**Geographical Limits**

United Kingdom
Deductible

£5,000 each and every occurrence in respect of third party property damage

Extensions

Cross Liabilities Clause
Non Vitiation Clause
Liability assumed under Contract (as per agreed wording)
Waiver of Subrogation
The Insured includes the respective officers, directors, agents, servants and employees of each insured
To include cover for the following or their updated equivalent:
  Consumer Protection Act 1987
  Data Protection Act 1984
  Health and Safety at Work Act 1974
  Food Safety Act 1990
Prosecution Defence costs in addition
Defective Premises Act 1984
Canteen and Welfare Facilities
Food Poisoning and Legionella Extension Clause
Costs in addition to the limit of indemnity
Contingent Motor Liability
Consumer Protection Act
ABI Pollution Clause
Lenders Special Conditions

Principal Exclusions

Employers Liability
Vehicles, Aircraft and Waterborne Craft
Defective Design
Deliberate Acts and Omissions
Professional Advice
War Risks, Radioactive Contamination as per standard market wording
Fines or Penalties or Liquidated Damaged imposed by regulatory or statutory authorities or courts
Professional Negligence
No exclusion to apply in respect of liability assumed under Contract Liability arising from pollution or contamination unless caused by a sudden, identifiable, unintended and unexpected incident which takes place in its entirety at a specific time and place anywhere within the geographical limits excluding any actions raised in the U.S.A., its territories and possessions, Puerto Rico and Canada
Property belonging to or in the charge or under the control of the insured but this does not apply in respect of third party or property being worked upon Liability arising out of the use of mechanically propelled vehicles for which
SPECIAL ENDORSEMENTS FOR ALL POLICIES

**Right to Initiate Claim**

Each Insured shall have the right (but not the obligation) to initiate a claim under this Insurance Policy, however only the Insured who has the right to receive indemnity shall be entitled to receipt of indemnity from the Insurers.

**Subrogation Waiver**

The Insurers hereby agree to waive all rights of subrogation howsoever arising which they may have or acquire against any of the Insured parties or their officers, directors, employees and assigns out of any occurrence in respect of which any claim is admitted hereunder save where such rights of subrogation are acquired in consequence of fraud.

**Non-vitiation**

The Insurers undertake to the Insureds that the policy shall not be invalidated as regards their respective rights and interests and that the Insurers will not seek directly or indirectly to avoid any liability under this policy because of any act, neglect, error or omission made by any other Insured (whether occurring before or after the inception of the policy) including without limitation, any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured, any breach of non-fulfilment by any other Insured whether not any such act, neglect, error or omission could if known at any time have affected any decision of the Insurers to grant the policy, to agree to any particular term or terms of the policy (including without limitation this provision) and the amount in relation to this policy or to liability which might arise thereunder.

**Cancellation**

The Insureds shall be advised in writing:

(a) 30 days (or such lesser period (if any) as may be specified from time to time by Insurers in the case or war risks and kindred perils) before any cancellation is to take effect if any Insurer cancels or gives notice of such
cancellation of any insurance relative to the Project for any reason including non-payment of premium.

(b) 30 days (or such lesser period (if any) as may be specified from time to time by Insurers in the case of war risks and kindred perils) before any reduction in limits or coverage, any increase in deductibles or any termination before the original expiry date is to take effect.

(c) at least 30 days before any suspension of any insurance is to take effect.

(d) of any act or omission or of any event of which the Insurer has knowledge and which might invalidate or render unenforceable in whole or in part any insurance relative to the Project.

**Separate Policy**

Each of the parties comprising the Insured shall for the purpose of this Policy be considered a separate entity the words “the Insured” applying to each as if they were separately and individually insured provided that the total liability of the Insurers under each section of this Policy to the Insured collectively shall not (unless the Policy) specifically permits otherwise) exceed the Limit of Indemnity stated to be insured hereby.

**Disclosure**

An Insured shall have no duty of disclosure except in relation to information made available to them by any other Insured relating to the Project.

**Non-payment of Premiums**

The Agent shall (whether or not it is an insured party under the policy) not be liable for the payment of any premium under this policy or to perform any other obligation owned to the Insurers (subject to the above endorsement - Disclosure) and there shall be no right of set-off for unpaid premiums in relation to claims monies payable to the Agent but this shall not relieve it from its obligations to pay any premium due under this policy.

**Non-contribution**

The Insurers waive all rights of contribution against any insurance effected by the Insured other than insurance which has been specifically arranged for this Project.
**Loss Payee**

For claims under this Policy the Insurers undertake to make all payments direct to the account of the Company with the Agent, number (sort code 80-26-43) account number 00100054.

**Novation of Contract**

It is hereby understood and agreed that in the event of novation of the Project Agreement and/or Building Contract and/or FM Contract to any other party and at the option of such party this policy shall continue in force until expiry of the Period of Insurance (including any extensions thereto) for the benefit of such party, subject to the agreement of the Insurer and provided that prompt notice of novation is given to the Insurer. In the event that the Insurer does not agree to continue cover in respect of such party cover in respect of that party shall notwithstanding continue for a period of 90 days from the date of issue of notice to such party by the Insurer of the non-continuance.

It is understood and agreed that such party shall acquire no greater benefit under this Policy than would have been enjoyed by the original Insured.

**INSURANCE TERMS**

1. During the subsistence of the Financier Direct Agreement clauses 10 and 11 thereof shall take precedence over the provisions of paragraphs 2 to 5 inclusive of this Part F of the schedule.

2. All insurances required to be effected under paragraph 1 of this Part F shall be effected and maintained by the Operator at its own cost with a reputable insurer(s), in such form as the Trust has approved (acting reasonably). Not less than 14 days before any Insurances are effected under paragraph 1 of this Part F, the Operator shall submit to the Trust for approval:

   2.1.1 the identity of the insurer(s); and

   2.1.2 the principal terms and conditions of the proposed Insurances or any revision to those insurances

2.2 Each policy or contract of insurance in respect of the Insurances shall:

   2.2.1 be maintained in the joint names of the parties (save for the Trust who shall be co-insured and not joint insured) specified in the insurances listed above in this Part F of the Schedule; or
2.2.2 where the Trust cannot be named as co-insured contain a waiver of subrogation as against the Trust and provision for 30 days prior written notice of cancellation or non-renewal or amendment to be given to the Trust by the insurers.

2.3 The Trust may require (at the cost of the Trust) the Operator to increase its insurance cover in respect of any of the Insured Risks and any consequent increase in the Services Fee will be dealt with through the Change Procedure.

3. Further Operator Obligations

3.1 The Operator shall promptly provide to the Trust 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.

3.1A The Operator shall, at all relevant times, at its own cost effect and maintain in full force those insurances it is required to effect by any Applicable Law. Where appropriate such insurance shall contain a provision that the Trust is named co-insured.

3.2 The Parties shall (including the Trust and any Trust Party where the Trust is a co-insured on any insurance policy) and the Operator shall procure that all Operator Parties shall, and any persons on the Site at either Party’s instance shall:

3.2.1 duly perform its, and their, obligations under and comply with the terms of all policies or other contracts of insurance; and

3.2.2 in particular, but without limitation, shall not 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 The subsistence of any insurances under this paragraph 3 shall not relieve the Operator from any of its obligations or liabilities to the Trust under the Project Documents.

4. Trust’s Right to Insure

4.1 If the Operator is in default of its obligations under this Part F, the Trust may take out the relevant Insurance and the costs of that Insurance shall be a debt due to the Trust from the Operator payable on demand. The Trust may deduct any amount so paid by it from any amounts payable by the Trust to the Operator under the Project Documents.
5. **Application of Proceeds**

5.1 The Operator shall apply any proceeds or any insurance policies effected in terms of this Agreement in the case of a third party liability or employers liability or any other type of liability insurance in satisfaction of the claims giving rise to the payment of the proceeds. Unless (a) any event entitling the Trust to terminate this Agreement has occurred, or (b) this Agreement has terminated due to Force Majeure or the occurrence and subsistence of a Relief Event, the proceeds of any other claim under the Insurances shall be applied in or towards the cost of reinstatement of the damage giving rise to that claim. If either (a) or (b) of this paragraph 5.1 applies, the proceeds shall be paid to the Trust for application by it in such manner as it shall determine.

5.2 The Operator shall procure the endorsement at all times on all policies or other contacts of insurance in respect of the Insurances of a loss payee clause giving effect to paragraph 5.1 of this Part F.

5.3 In the event that the whole or a substantial part of the Facilities are destroyed or damaged by a single Insured Risk or a series of Insured Risks (“a Relevant Incident”) at any time after the Operational Date then:-

5.3.1 the provisions of Part B of the Schedule (Payment Mechanism) shall apply (except where the Facilities are a constructive total loss in which event the Trust shall not be obliged to make any payment to the Operator relating to the period commencing on the date of such damage or destruction and ending on the date when the Facilities are again available in full);

5.3.2 the Operator shall use all reasonable endeavours to find suitable alternative accommodation for the Trust (subject to the Trust’s approval) which shall be occupied at the cost of the Trust;

5.3.3 the Operator shall deliver as soon as practicable and in any event within 1 month of the date on which the Relevant Incident occurred, a plan prepared by the Operator (the “Reinstatement Plan”) for the carrying out of the works necessary (the “Reinstatement Works”) to repair, reinstate or replace the part or parts of the Facilities in accordance with 5.3.6 below. The Reinstatement Plan shall set out:-

5.3.3.1 if not the Contractor, the identity of the person proposed to effect the Reinstatement Works; and

5.3.3.2 the proposed terms and timetable upon which the Reinstatement Works are to be effected.
Provided that the Trust is satisfied (acting reasonably) that the Reinstatement Plan will enable the Operator to comply with paragraph 5.3.6 below:

5.3.4.1 the Reinstatement Plan will be adopted;

5.3.4.2 the Operator will enter into contractual arrangements (the “Reinstatement Contracts”) to effect the Reinstatement Works with the person identified in the approved Reinstatement Plan on the terms approved by the Trust (acting reasonably) provided that the Reinstatement Contracts may, at the Trust’s option, require to include an agreement among the Trust, the Operator and the contractor for the Reinstatement Works in terms, mutatis mutandis of the Construction Direct Agreement, in which event the Operator shall procure that the contractor for the Reinstatement Works enters into the same;

5.3.4.3 the proceeds received under any physical damage policy in respect of the Relevant Incident (the “Relevant Proceeds”) (together with any interest accrued thereon) will be paid to the Operator as required by the Operator to enable it to make payments in accordance with the Reinstatement Contracts and to meet any other costs and expenses of the Operator for the sole purposes of financing the Reinstatement Works;

5.3.4.4 the provisions of this Agreement relating to the Works shall apply mutatis mutandis to the Reinstatement Works; and

5.3.4.5 the Trust agrees and undertakes that, subject to compliance by the Operator with its obligations under this paragraph 5.3, and provided that the Operator procures that the Reinstatement Works are carried out and completed in accordance with the Reinstatement Contracts, it shall not exercise any right which it might otherwise have to terminate this Agreement by virtue of the event which gave rise to the claim for the Relevant Proceeds.

5.3.5 If the Trust is not satisfied, on reasonable grounds, that the Reinstatement Plan will enable the Operator to comply with 5.3.6 below, the Operator shall amend the Reinstatement Plan so that the Trust is so satisfied, failing which the matter shall be referred to the Dispute Resolution Procedure. If it is agreed that the Reinstatement Plan or determined that the Reinstatement Plan will not enable the Operator to comply with 5.3.6 below, the Trust will be entitled to elect, by notice to the Operator to terminate this Agreement and the Trust shall pay compensation to the Operator as if this Agreement had been terminated in accordance with Clause 48.1 (Force Majeure compensation) treat the Relevant Incident as being an Insured Termination Event.

5.3.6 The Operator shall carry out any works required to repair, reinstate or replace any part of the Facilities in accordance with the Design Specification.
5.3.7 Save as provided by this paragraph 5.3 the Operator shall remedy any damage or destruction at its own expense as soon as practicable after such damage or destruction occurs and recommence full provision of the affected Services immediately upon completion of such rectification.

5.4 In the event that the whole or a substantial part of the Facilities are destroyed or damaged by a single Insured Risk or a series of Insured Risks (“a Relevant Incident”) at any time after the Operational Date then:-

5.4.1 The legal principle of rei interitus shall not apply.

5.4.2 Where such damage or destruction arises as a consequence of the acts omissions or negligence of the Trust or those for whom the Trust are in law responsible the Trust shall pay on demand the costs reasonably incurred or likely to be incurred by the Operator in making good such damage or destruction to the extent the Operator is unable to recover the same from its insurers, unless such inability to recover is due to any breach of the terms and conditions of the insurance policy by the Operator or an Operator Party; provided that the Operator shall be obliged to account to the Trust in respect of any sums recovered from its insurers;

5.4.3 The Lease shall not be terminated by reason of any damage to or destruction of the Facilities or any part thereof but shall, notwithstanding any such damage or destruction and any rule of law to the contrary, remain in full force and effect and endure for the period of the Lease. However, if the Facilities or any parts thereof are destroyed or damaged by a Relevant Incident and have not been rebuilt or reinstated within fifteen months of the date of such damage or destruction then the Trust will be entitled to elect, by notice to the Operator to treat the Relevant Incident as being an Insured Termination Event.
**Broker's Letter of Undertaking**

June 2002

The Chief Executive  
Lothian Primary Care NHS Trust  
Astley Ainslie Hospital  
133 Grange Loan  
EDINBURGH  
EH9 2HL

Dear Sir,

We confirm that the insurances (the **“Insurances”**) are in effect on and in respect of the risks set out in the attached cover notes as at the date hereof. Terms defined in the Project Agreement between the Trust and Robertson Healthcare (Findlay House) Limited (the “Operator”) dated 4th June 2002 (the “Agreement”) shall have the same meaning in this letter.

Pursuant to instructions received from the Operator and in consideration of your approving our appointment or continuing appointment as brokers in connection with the insurances covered by this letter, we hereby undertake in respect of the interests of the Insured Parties and the Trust in the insurances referred to in the attached cover notes, binder or certificate form:

1. to use our reasonable endeavours to incept each policy substantially in the forms detailed in Part F of the Schedule of the Agreement and to have each endorsed substantially in the forms attached hereto and to notify you promptly where we fail to do so;

2. (i) to advise you promptly upon receipt of notice of any material changes, which we know to be material notification to us, which are proposed to be made in the terms of the Insurances and which, if effected, would result in any material reduction in limits or coverage (including those resulting from extensions) or in any increase in deductibles, exclusions or exceptions, and

   (ii) to notify you at least 30 days prior to ceasing to act as brokers to the Operator (unless owing to circumstances beyond our control we cannot give such notice in which case we shall notify you promptly upon becoming aware that we shall cease, or that we have ceased, so to act);

3. to advise you without unreasonable delay
(a) if any insurer cancels or gives notice of cancellation of any of the Insurances and in any event at least 30 days before such cancellation is to take effect (unless owing to circumstances beyond our control we are unable to do so in which case we shall notify you promptly upon becoming aware of such cancellation or notice of cancellation);

(b) of any act of omission or of any event of which we have knowledge and which might reasonably be foreseen as invalidating or rendering unenforceable in whole or in part of the Insurances; and

(c) of any claim under any of the Insurances notified to us (and to advise each of the Operator, the Contractor and the Service Provider of any such claim);

4. to disclose to the insurers (in confidence) and to you any fact, change of circumstance or occurrence which we know to be material to the risks insured against under the Insurances promptly when we become aware of such fact, change of circumstance or occurrence (always providing that the foregoing shall not act to vary or displace the duty of disclosure of the Insured Parties);

5. to hold the insurance slips or contracts, the policies with any renewal thereof of any new or substitute policies (in each case, issued only with your consent), to the extent held by us.

The above undertakings are given:

(a) subject to our lien, on the policies referred to above for premiums due under the policies and subject to any insurers’ right of cancellation (if any) following default in excess of 30 days in payment of such premiums, but we undertake to advise you as soon as practicable if any such premiums are not paid to us by the due date and to give you reasonable opportunity of paying such amounts of such premiums outstanding before notification of cancellation on behalf of the insurers; and

(b) subject to our continuing appointment for the time being as insurance brokers to the Operator (such appointment continuing in any event until the expiry of the relevant claims period).

This letter shall be governed by and construed in all respects in accordance with [English] law.

Yours faithfully
MARSH UK LTD

ROBERT D URE
Director and PFI Practice Leader.
PART G
DESIGN DEVELOPMENT PROCEDURE

1. Design Development during Construction

1.1 During the design and construction of the Facilities the Trust Manager shall be kept informed on a regular basis by the Operator on the progress of design development in relation to the Facilities. The Operator shall ensure that the Contractor shall prepare the Works Packages. The Contractor and the Operator shall discuss the details of the Works Packages and, in particular, any technical drawings, room data sheets and detailed specification for all plant and equipment, fittings, finishings and fixtures to be installed by or on behalf of the Operator. Upon conclusion of such discussions each Works Package shall be submitted to the Trust Manager in accordance with paragraph 2 of this Part G of the Schedule prior to it becoming part of the Detailed Design to be incorporated in the Facilities.

2. Submission of Works Package

2.1 The Operator shall submit two copies of the Works Package (each such package as submitted shall hereinafter be referred to as “the Submitted Item”) to the Trust Manager in sufficient time (taking account of the procedure hereinafter referred to) to comply with the Construction Timetable and the following procedure shall apply:

2.1.1 The Operator may proceed to full implementation (which shall include \textit{inter alia} the carrying out of construction work) in the case of any Submitted Item which is returned from the Trust Manager endorsed “no comment” or pursuant to paragraph 2.1.2 below. If the Trust Manager returns the Submitted Item endorsed “comments” the Operator shall:

2.1.1.1 amend the Submitted Item in accordance with the Trust Manager’s comments; or

2.1.1.2 revise the same and re-submit them to the Trust Manager in accordance with this Part G of the Schedule.

If the Operator amends or revises the Submitted Item, it shall send a copy of the Submitted Item as amended to the Trust Manager.

2.1.2 If the Trust Manager fails to return any Submitted Item (including any re-Submitted Item) duly endorsed by the date identified in the Works Package Programme (which Works Package Programme shall have been agreed with the Trust Manager in advance) as being the date by which the Works Package of which the Submitted Item forms part has to be finally agreed then the Trust Manager shall be deemed to have returned the Submitted Item to the Operator marked “no comment”.

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2.2 If the Trust Manager raises comments on any Submitted Item pursuant to paragraph 2.1, he shall state the ground upon which such comments are based in accordance with paragraph 4. The Trust Manager shall state his ground specifically and not generally.

3. Further Information

3.1 The Trust Manager, acting reasonably, shall be entitled to require the Operator to submit to it any further or relevant information, data or documents. The Operator shall not be required to submit to the Trust Manager any information, data or documents of a commercially sensitive nature. However, if the Operator does not submit any such information, the Trust Manager shall be entitled to:

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

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

4. Grounds of Objection

4.1 The Trust Manager may raise comments in relation to any Submitted Item on the ground that the Submitted Item is in breach of any Applicable Laws and/or Industry Standards but otherwise may raise comments in relation to the Submitted Item only if the Submitted Item is in the reasonable opinion of the Trust Manager inconsistent with the terms of the Core Construction Requirements.

4.2 The Trust Manager shall act properly and reasonably in raising any comments or objections in accordance with paragraph 4.1.

5. Effect of approval

5.1 No approval or comment or any failure to give or make an approval or comment by the Trust under this Part G of the Schedule shall constitute a Trust Change. If, having received comments from the Trust, the Operator considers that compliance with those comments would constitute a Trust Change, the Operator shall notify the Trust thereof. If it is agreed or determined under the Dispute Resolution Procedure that a Trust Change would arise if comments were complied with, the Trust may, if it wishes, promote a Trust Change in respect of those comments. Any failure by the Operator to notify the Trust that it considers compliance with any comments of the Trust would amount to a Trust Change shall constitute an irrevocable acceptance by the Operator.
that any compliance with the Trust’s comments shall be without cost to the Trust and any extension of time.

5.2 No approval or comments or any failure to give or make an approval or comment by the Trust under this Part G of the Schedule shall relieve the Operator from its obligations under this Agreement or prejudicing the Trust or diminishing the exercise of any right or remedy available to the Trust in terms of the Project Agreement.
PART H
PERFORMANCE MONITORING

1. Introduction

The Operator shall monitor the provision of the Services in accordance with paragraphs 1 to 5 inclusive below. The Trust’s rights of monitoring are set out in paragraph 6 below.

2. Self Monitoring System

2.1 The Operator shall implement a system of regular inspection of those of the Services which are capable of being inspected and keep records of the date, time, nature and results or findings of such inspections. If those inspections reveal a Failure, the Operator shall ensure that such Failures are reported to the Helpdesk in accordance with this Part H.

2.2 The Trust may inspect any records kept by the Operator in accordance with paragraph 2.1 above after giving the Operator not less than 1 Business Day’s notice of its intention to do so.

3. Helpdesk

3.1 The Operator shall ensure that a manned Helpdesk facility is continuously available 24 hours a day for the Trust or the Operator to report any Failure or to request a Service. The Helpdesk contact number shall be prominently displayed within the House.

The Operator shall ensure that all calls to the Helpdesk are answered within 30 seconds by a Helpdesk operator in person and not by means of a pre-recorded message, voicemail or telephone answering service.

The Operator shall ensure that the Helpdesk is supported by a computer system that will:-

(a) be compatible with the telephone system installed by the Trust. (If the Operator in any Payment Month has not complied with its obligation to answer a call to the Helpdesk within 30 seconds so as to comply with the Services Requirements the Trust shall inform the Operator thereof on the last Business Day of each week);

(b) log the length and nature of calls made or received;
(c) set the resolution process in motion;
(d) record completion times of any remedial action taken pursuant to a call; and
(e) provide the necessary input including any information relevant for the Calculation Schedule (as defined in Part B of the Schedule (Payment Mechanism)).

3.2 In the event that the computerised Helpdesk fails to function properly, the Operator shall ensure that written records are kept of all Rectification Notices received by the Helpdesk and shall ensure that these are entered into the computerised system when it becomes operational.

3.3 The duties of the operators of the Helpdesk will be the following tasks:-

(a) receiving and entering Rectification Notices into the computerised system;
(b) in the absence of receiving notification from the Trust to that effect, correctly identifying to which Service a Rectification Notice relates and recording this on the system;
(c) logging the Period for Remedy;
(d) contacting the Service Provider or other sub-contractor;
(e) responding to enquiries from a caller concerning a Rectification Notice made previously to the Helpdesk by that caller;
(f) monitor the progress of the resolution of each Failure;
(g) reporting back to the caller on the action being implemented to remedy the Failure that that caller reported; and
(h) obtaining information from the system as required for the Operator’s management purposes, reporting requirements and the Calculation Schedule.

3.4 Period for Remedy means the resolution period set out in the Services Table contained in the Services Requirements in respect of each of the Services listed in the Services Table contained in Part K of the Schedule. Such resolution period will commence from the time an Intimation (as hereinafter defined) has been Received (as hereinafter defined) either by the Helpdesk or the Receptionist (being the person carrying out the Reception and Administration Services set out in the Services Requirements).

Where the Trust has previously denied access to the Operator to remedy a Failure, such resolution period will commence at the time at which access to remedy such Failure is granted by the Trust. The Trust will not be entitled to deny access to the Operator or an Operator Party if a Failure has occurred after 1700 hours and the Operator or an Operator Party commences rectification of such Failure during the period between 1700 hours on the day on which the Failure occurred and 0700 on the next following day.
Where the relevant entry for a Service in the Services Table states that a Period for Remedy is “Immediate” the Period for Remedy shall be 5 minutes from Intimation of the Failure.

If the Operator is restricted in its provision of a Service by virtue of clauses 2.4.1, 2.4.2, 2.4.3, 2.4.4 and 2.4.5 of the Deed of Servitude and such restriction causes a Failure then (provided that such Failure has not been caused or contributed to by the Operator or an Operator Party) the Trust will grant to the Operator such extension to the relevant Remedy Period as is reasonable in the circumstances.

**Intimation** means each of the following:-

(a) a Failure reported by telephone by a person (including the Operator or any Operator Party) to the Helpdesk and Received by the Helpdesk operator;

(b) a Failure reported in person (including the Operator or any Operator Party) to the Receptionist at the House and Received by the Receptionist.

**Received** means:-

(a) in relation to a Failure reported (with adequate details) by telephone to the Helpdesk the time when the person making such call has finished that call (as the start and end times of such call shall be logged by the Helpdesk); and

(b) in relation to a Failure reported to the Receptionist the time when the Receptionist finished noting down the Failure.

4. **Reporting to Helpdesk**

4.1 If a Rectification Notice is lodged by a Trust employee, or the Operator or any Operator Party that person will provide the following details to the Helpdesk:

(a) his/her name; and

(b) his/her telephone extension number; and

(c) details of the nature of the Failure (provided that such Trust employee shall not be obliged to identify the Service to which the Rectification Notice applies).

5. **Provision of Data to the Trust**

5.1 Within 3 Business Days of the last Business Day of each Month during the Payment Year the Operator shall provide the Trust with a monitoring report. Such monitoring report shall be in such form as agreed between the Trust and the Operator not later than three months before the Planned Operational Date as stated on the Execution Date. If the
Parties cannot so agree on the form of such monitoring reports, either Party may refer the matter for determination in accordance with the Dispute Resolution Procedure.

5.2 Each monitoring report shall include *inter alia* the number and details in relation to Rectification Notices and Failures which were received or occurred during the Payment Month to which that monitoring report relates.

5.3 If in any Payment Month the Operator has not complied with its obligation under paragraph 3 above to answer a call to the Helpdesk within 30 seconds the Trust shall inform the Operator thereof on the last Business Day of each week.

5.4 The Trust shall be entitled, upon giving reasonable notice to the Operator, to have access to (and take, at its own expense, copies of) all records, data and other documents compiled, held and used by the Operator for the purpose of compiling monitoring reports under paragraph 5 above (including, but limited to, the information kept by the Operator in accordance with paragraph 2 of this Part H).

6. **Trust’s rights of monitoring**

6.1 In addition to receiving the monitoring reports under paragraph 5.1 above, the Trust may (at its own cost, except as specifically provided in this Agreement) monitor and assess the performance of the Operator in providing the Services (including the carrying out of spot checks) provided that in so doing the Trust shall use reasonable endeavours not to interfere with, hinder or prevent the Operator from carrying out its responsibilities under this Agreement.

6.2 The Trust may, acting reasonably, upon giving the Operator not less than one Business Day’s notice of his intention to do so, carry out joint inspections of the Services with the Operator.
 PART I

CERTIFICATE OF AVAILABILITY

To: (1) Lothian Primary Care National Health Service Trust (“the Trust”); (2) Robertson Healthcare (Findlay House) Limited (“the Operator”); (3) The Governor and Company of the Bank of Scotland (“the Financier”).

1. As provided for in (a) the Project Agreement dated [ ] between the Trust and the Operator (“the Agreement”), and (b) the Independent Tester Appointment (“the Appointment”) entered into between us, the Trust, the Operator and the Financier dated [ ], we as Independent Tester having exercised reasonable skill, care in accordance with the Appointment do hereby certify and confirm that:

(a) the Contractor has achieved a state of practical completion under the Design and Build Contract on [ ] (save for the existence of Snagging Matters (if any));

(b) the Contractor has completed the Works so as to fully comply with the Design Specification and conform to our Checklist;

(c) the Works comply with all Industry Standards, all Applicable Laws and Good Industry Practice insofar as they relate to the Works;

(d) all Necessary Consents required in respect of the Works have been issued or obtained to enable full occupation and use;

(e) the installation of the Equipment required to be installed in accordance with the Agreement by the Contractor is complete and the Equipment is in full working order; and

2. We have informed the Contractor of the Snagging Matters which are required to be undertaken. A schedule of these snagging works is attached hereto.

In this Certificate, all words and expressions shall have the meanings given to them in the Agreement.

.....................................................
For and on behalf of the Independent Tester

…………………………………………
Date
…………………………………………
Place

Appendix to the Certificate of Availability

Independent Tester’s Check List

Satisfactory completion of the following Check List, although not exhaustive, shall tend to indicate that the Facility is reasonably suitable for the commencement of providing the Trust’s services and that the Works have achieved a state of practical completion.

1. GENERAL FACILITIES MANAGEMENT REQUIREMENTS

1.1 The Helpdesk is in place and “live”, contactable by telephone, and procedures for giving notification to the Helpdesk are in place in accordance with the Services Requirements.

1.2 The Facility Manager responsible for the Facilities is known to the Trust and is contactable during normal office hours.

1.3 Fire protection, portable fire appliance systems, and all other fire fighting equipment is in place and has been tested and made operational and is identified with signage throughout the Facility in accordance with the requirements of the local fire master and the Trust’s fire officer.

1.4 The fire evacuation/assembly points are identified and fire signage is in place in accordance with the requirements of the local fire master and the Trust’s fire officer.

1.5 A fire prevention audit has been carried out in accordance with the Services Requirements.

2. BUILDING, ENVIRONMENTAL, AND MAINTENANCE REQUIREMENTS

2.1 The Works have reached a state of practical completion with the exception of the Snagging Matters.
2.2 All Necessary Consents required in respect of the Works have been issued or obtained to enable full occupation and use of the Facilities.

2.3 The Equipment asset register is in existence and is current at the Facility.

2.4 The operational insurances required in terms of the Agreement are in place as evidenced by cover noted.

2.5 Fire detection and alarm systems are in place and have been tested and made operational at the Facility in accordance with the requirements of the local fire master and the Trust’s fire officer.

2.6 The toilets, wash hand basins, showers and baths are in place and have been tested in conditions of maximum usage (for example, all baths being filled, and all showers used, simultaneously) and made operational at the Facility in accordance with the Design Specification and Services Requirements.

2.7 The hearing induction loops are in place, have been tested, and are operational.

3. ENERGY AND UTILITIES REQUIREMENTS

3.1 Foul water drainage and surface water drainage systems connected to the public sewers are in place at the Facility and functioning properly. There is documentary evidence that the local Authority is satisfied with the design and installation of the drainage system.

3.2 Hot and cold water supplies have been tested and are fully operational and provide a constant and safe supply to allow occupation of the Facility, in accordance with Applicable Laws and the Design Specification. Testing/commissioning procedures in accordance with HTM 2027 and 2040 shall be used.

3.3 Emergency lighting has been installed, has been tested, and is fully operational to allow occupation of the Facility in accordance with all Applicable Laws and the Design Specification. The contractor has certification to show full compliance with applicable law, and HTM 2011 emergency supplies.

3.4 All lighting has been installed and tested, and lighting levels are in accordance with all Applicable Laws and the Design Specification. There are test results available to substantiate this assertion.

3.5 The gas supply systems have been tested and are fully operational. This to include tests on gas tightness and on combustion analysis on specific appliances. All of which shall be in accordance with Applicable Laws and the Design Specification.

3.6 The electricity supply system has been tested and is fully operational. Test results in accordance with applicable law, supported by IEE 16th Edition and further requirements under HTM 2020 Electrical Low Voltage.

3.7 The mechanical ventilation systems have been tested and are operational. All in accordance with Design Specification and meeting HTM 2025 (Ventilation Systems).
3.8 The generator is in place, has been tested, and is fully operational. The set complies with the statutory BS and the HTM 2011 (Emergency Supplies). There are test results available to confirm commissioning procedures.

4. SECURITY REQUIREMENTS

4.1 A CCTV system is in place and fully operational at the Facility. The external lighting has been installed and operationally tested, and provides a sufficient level of light to ensure that the CCTV systems and its recordings are not compromised at any time.

4.2 The electronically operated locking systems, with vandal proof push button combination locks and isolating switches, integrated into the fire alarm system have been tested and are fully operational.

4.3 Access control systems are in place and have been tested, commissioned and made operational at the Facility.

4.4 All systems to stop residents suffering from dementia from “wandering” have been tested and are fully operational.

5. CLEANING REQUIREMENTS

5.1 The Facilities shall have been cleaned by Operator and shall be in a condition suitable for occupation by the Trust’s staff and the frail elderly and psycho-geriatric patient group.

6. GROUNDS AND LANDSCAPING

6.1 The grounds including all landscaped gardens, parking facilities, access routes, paths, hard surfaces, fences, walls, and all other specifications are completed in accordance with the Design Specification.

6.2 All pedestrian and vehicular accesses and courtyards have been completed and are available in accordance with the Design Specification and are in a satisfactory and safe condition to allow access to and egress from (a) the main entrance of the Facility, (b) the access road, and (c) the car parks.

7. EQUIPMENT

7.1 All the Equipment as detailed in the Equipment List, has been installed within the Facilities, is in place, and (where applicable) has been tested and made fully operational.

7.2 Copies of all manufacturer’s/supplier’s equipment manuals are available at the Facilities.
Section 1 - Core Construction Requirements.

1. CORE CONSTRUCTION REQUIREMENTS

The following commentary, in conjunction with Findlay House Room data sheets, sets out the Core Construction Requirements for the Project.

2. BUILDING REQUIREMENTS

2.1 Site of Findlay House

Findlay House shall be built within the existing Eastern General Hospital site at Seafield Street, Edinburgh. The site of the new facility shall comprise 2.8 acres, including landscaped gardens, parking facilities and access routes. Access shall be from Seafield Street.

2.2 Schedule of Accommodation

The House shall have a minimum of institutional features and an emphasis on domestic-style accommodation and furnishings. The design solution shall allow the division of the 60 beds into small groups of ten beds. The Schedule of Accommodation includes the following essential features:

- 48 single bedrooms
- 6 double bedrooms
  (ii) en-suite toilet facilities for all bedrooms
  (iii) additional en-suite shower facilities for two of the single bedrooms
- assisted bathroom facilities
- on-site support services
- purpose-designed accommodation for recreational and therapeutic activities
- safe and secure therapeutic gardens.

A full schedule is given in Appendix 1.

2.3 Room Data Sheets

A set of Room Data Sheets is given in Appendix 2. The sheets provide information regarding the activities undertaken in each room, environmental data (temperature, lighting levels, sound transmission etc.), design characteristics, and a schedule of components.
2.4 Architectural Design Considerations

As indicated above, the House shall consist largely of single bedrooms with en-suite facilities, in a single storey building, serviced from a support services area (catering, laundry and other hotel services).

Standards of finish shall equal that of a quality private nursing home development, both internally and externally; an austere, institutional appearance must be avoided. Finishes (wallpaper, floor coverings, curtains etc.) throughout the facility shall be of superior quality. The Trust shall be involved in the interior design process up to and including final approval of all finishes.

The design shall provide small scale domestic style accommodation, centred on caring for groups of ten patients, enabling either the frail elderly or dementia patients to be cared for. It is important that the design should be flexible enough to accommodate changes in the numbers of either patient group as the ratio of dementia to frail may change over time.

The rooms shall be grouped in a simple manner to assist patients and visitors to find their way around. The whole building shall, as far as possible, have a domestic feel rather than that of a hospital; this shall apply both internally and externally.

All areas must be accessible by wheelchair. Bathrooms shall allow access for lifting aids and grab rails. Corridor widths must allow for the passage of wheelchairs and patients with walking aids, etc.

There shall be a main entry/exit point for patients, staff, and visitors with a flat or ramped approach suitable for wheelchairs and trolleys.

A separate entry/exit point is required for supplies, refuse collection etc.

The building shall be served from a dual access (footpath and carriageway) cul-de-sac connecting to a distributor road with pavements. A road specification suitable for cars and light vans will be adequate. Parking bays shall be provided for cars of visitors and staff and for service vehicles. Space shall be reserved for disabled visitors’ cars in close proximity to the main entrance.

The design shall incorporate features that minimise the transmission of sound within the building.

2.5 Equipment and Fittings

Equipment, fixtures, and fittings (such as curtains and floor coverings) making up the interior design shall have a unity in both natural and artificial light. The design should not be overly rigid, as patients will have the opportunity to bring in personal items of furniture. Storage furniture shall be lockable. Sharp features shall be avoided in all furniture. Chairs, in particular, must be stable since they will be used as supports. All soft furnishings must be flameproof.

Generally, finishes and surface fixtures must be of an appropriate quality and easily maintained. Bump bars, corner beads, and in some situations such as corridors, below
bar protection will be required. Handrails shall be fitted in corridors. Care must be taken in the selection of appropriate soft floor coverings. Primary and secondary barrier flooring shall be installed at the entrance to the facility. Soft floor coverings shall be impervious, stain resistant, and anti-static.

Equipment (including furniture) is listed in the Room Data Sheets in the Schedule of Components provided for each room (except where the specification is the responsibility of the bidder) and in Section 3 of Part J of the Schedule. Generally, the equipment list is not prescriptive but simply indicates the facilities that must be provided. However, in certain circumstances a particular item is specified by manufacturer and/or model description; where this occurs the specified item must be provided.

2.6 Engineering Design Considerations

2.6.1 General

Compliance with all current and applicable Industry Standards is required. Additional essential design guidance is contained in CIBSE Guide Books A, B & C and further valuable complementary guidance on engineering services is available in the Health Building Notes and Technical Memoranda published by the Department of Health. Reference shall also be made to the SHHD “Guidance on the Control of Legionella in Health Care Premises”, particularly with respect to DHCW services, and tempered water.

Special care is required in order to ensure that patients cannot injure themselves on exposed engineering installations. Indicator panels and controls for most items shall be restricted to staff areas. Surface temperatures shall not exceed 50°C. Sharp corners and projections on equipment in patient areas must be avoided. The design of the hot water system must ensure that a safe temperature of 43°C is not exceeded in any patient area. Fire and security systems are also required.

2.6.2 Heating

A low pressure hot water heating system with low surface temperature emitters shall be provided throughout the building. Energy efficient control of the heating system is essential and each of the options for control, listed below, shall be given the strongest consideration at the design stage:

a. Day/night zoning of the accommodation.
b. Night setback.
c. Weather compensation.
d. Optimum start for any boost period required.
e. Thermostatic radiator valves.

None of the above facilities shall compromise the operation of building fabric or plant frost protection controls.

Minimising plant and equipment noise levels is an important consideration where the elderly are concerned. As a consequence, transmitted noise and vibration from the heating installation is unacceptable.
2.6.3 Ventilation

Due to the high capital and revenue costs of mechanical ventilation systems, maximum advantage must be taken of natural ventilation. For those areas that require a provision for mechanical ventilation, the plant must be controlled to keep fan running periods to a minimum commensurate with acceptable environmental standards.

Discharges for extract systems must be protected against back draughts and sited to avoid re-introduction of exhaust air into the building.

Mechanical extraction shall be provided, as necessary, in accordance with Health Technical Memoranda and Health Building Notes (HBNs) and must meet all local authority requirements.

Tempered fresh air must be supplied, as appropriate, to make up extract losses. Where systems are suitably grouped, heat recovery should be considered where it can be shown to be economically viable. In these circumstances, care must be taken to avoid cross contamination from exhaust to supply air streams.

Any ducting breaching a fire compartment must be fitted with approved fire dampers and any flexible ducting must comply with Fire Code HTM 81 – 86.

2.6.4 Water

Cold water storage sufficient for at least 24 hours shall be provided. The quantity of water per bed/day shall satisfy statutory requirements including any bye-law compliance. In the absence of statutory compliance, 230 litres/bed/day must be allowed when calculating cold water storage requirements. Drinking water outlets shall be provided in all servery and food preparation rooms. Supplies shall be taken direct from the mains or a potable water storage system. The cold water storage and distribution system must be insulated to enable the temperature to be held below 20°C. Domestic hot water storage sufficient for 45 litres/bed/day shall be provided. It must be stored, distributed and delivered consistent with the guidance relating to Legionnaires Disease in health care premises and with HSE (HSG(70)).

Care must be taken to ensure that the water pressure and pipe sizing on both hot and cold supplies is sufficient to overcome the resistance of thermostatic control valves in order to ensure the adequate flow rates at the point of supply.

Minimum required flow rates and pressures for specialist baths and the like should be obtained from the manufacturer.

Thermostatic control valves complying with the requirements of DO8 shall be fitted to all domestic hot water outlets, except in areas where there is a requirement for hot water in excess of 43°C.

Manufacturers’ guidelines and recommendations must be followed in relation to flow rates, and dynamic and static pressure ranges. Manufacturers should be consulted to ensure that the pressure parameters available will comply with acceptable operational tolerances.
The DHCW system must comply with HTM 2027, HTM 2040 and HSG 70.

2.6.5 Electrical Services

2.6.5.1 General Power

Generally, where earth leakage may constitute a danger, electrical systems shall be protected by the use of Residual Circuit Current Breakers to ensure the safety of patients.

The installation shall include wiring and fittings for general and special lighting, small power, heating and ventilation power and control, call and security systems, special equipment i.e. cooker, disposal unit, telephone and TV/radio systems. It must comply with the current fully amended edition of the Regulations for the Electrical Installation of Buildings issued by the Institution of Electrical Engineers.

Local switchgear and distribution boards shall be sited to minimise the length of circuit wiring. They must be in well-ventilated positions, sited for ease of access and safety during maintenance and repair operations. These areas must be identified as maintenance areas fitted with suitable locks and doors with approved European standard signage.

2.6.5.2 Lighting

The lighting installation shall be designed for economy in running and maintenance costs. Reference should be made to the room data sheets as these give illumination (lux) levels. Where appropriate, lighting of a domestic character should be installed. The design shall be compatible with the Chartered Institute of Building Services Lighting Guide “Hospitals and Health Care Buildings”. Compliance with the aforementioned guide is recommended to ensure appropriate illuminance levels are achieved within the House.

2.6.5.3 Emergency Lighting

An emergency lighting system shall be provided. The design and installation of the system shall comply with BS5266. Further guidance on design requirements is provided in HTM 2011.

2.6.6 Emergency Electrical Services

The Emergency Supply required shall be AC with the same number of phases, rated voltage and frequency as the normal supply. In general, an engine driven 415v, three phase 50Hz AC generator set may be the most convenient and economical means of providing an emergency supply for the load demands of this particular healthcare facility.

The load requirements for the premises should be determined using the design considerations given within HTM 2011. This will help to determine the essential load requirements for both power and lighting. The set shall be designed for automatic start up in the event of a prolonged fall in normal supply voltage. A time delay of a maximum of 15 seconds shall be allowed between loss of normal supply and connection of the generator set to the essential services in line with BS 5266.
The prime mover shall be continuously rated as defined in ISO 3046. It should be capable of operating at the rated load for a period of 12 consecutive hours (now known as a Class A). It shall also be a category 1 – (100% load acceptance) and preferably be diesel fuelled (BS2867 light oil, oil/water cooled, cold start device).

In an emergency generator set, the only excitation arrangement that is acceptable is the A.C. brushless type. It shall comply fully with BS5000 Part 3. It shall be designed to supply its rated output at a power factor of 0.8 LAG, nominated voltage and frequency at the engine revs/minute.

The Control Loop for the Emergency Supply System shall be designed within the requirements of HTM 2011.

In order to ensure no encroachment on hospital activity, the design of the emergency supply system shall consider other concerns such as environmental issues, noise abatement, bulk fuel storage, delivery of fuels, manual re-fuelling etc. The siting of the installation in relation to patient accommodation must be given detailed consideration.

The Operator shall arrange for a 415V, three phase, 50 Hz mobile generator – set “plug-in” facility.

Suitably rated switchgear should be identified within the 415V, three-phase essential services system of the premises provided with Grade D protection and interlocked ready to be utilised for temporary emergency connection. An earth bar connection shall also be made available for connection to the earth terminal of a generator base plate.

Base Rate - It is suggested this may be achieved by a plug-in facility rated to BS4343 (IEC 309) industrial plugs and connections.

It would also be desirable to reserve a parking space for a mobile emergency generator set in close proximity to an allocated switch or “plug-in” point.

2.6.7 Patient/Nurse Call System

A patient/nurse call system shall be provided. This system shall enable a nurse working alone in one sub-section to summon assistance from staff in any of the other areas. The nurse call system should only be cancelled by a nurse on entering the patient’s room. The system shall be addressable with a logging facility. The system shall also be capable of recording events and shall be connected to external doors to monitor and control access/egress.

A status indication panel shall be required for all lockable exit doors and gates.

2.6.8 Fire Alarm and Detection System

An automatic fire alarm and detection system shall be provided. It must comply with the Building Regulation (Scotland) Act and the guidance contained in HTM Fire Code 81–86, as well as all relevant British Standards. The Scottish Home and Health Department document “Fire Safety in New Hospital Buildings” is recommended for advice in respect of general fire precautions.
2.6.9 Security System

A CCTV system shall be provided externally with sufficient cameras to give coverage of the perimeter of the House, all car parking areas, and the main front and rear entrances. Pictures shall be relayed back to a monitor via a sequencer. A 24-hour recording facility shall be provided.

Suitable external lighting shall be required to ensure CCTV surveillance systems are not compromised during periods of reduced daylight and as such the external lighting shall be designed to deliver the required level of illuminance, this lighting to be automatically initiated via photo-cell control.

All secure garden areas shall have electronically operated locking systems with vandal-proof push button combination locks and isolating switches; these will be integrated into the fire alarm system such that they open in the event of an alarm.

2.6.10 Telephones

The telephone system shall be compatible with Lothian Health area network presently managed by Cable and Wireless.

The telephone wiring system must comply with BS6701. Care must be taken to ensure cabling is run on a separate cable tray from power cables to avoid possible sources of RFI.

Two direct exchange lines and three tie lines linked to the Lothian Health area network shall be required for Trust use.

A single direct exchange line shall be required for the telephone in the office.

A fixed payphone with an acoustic hood shall be provided in the Reception/Waiting Area.

Telephone jack points shall be installed in all bedrooms to allow patients to make and receive calls using a portable pay telephone provided by the Operator.

2.6.11 Television Sockets

Television aerial socket outlets shall be provided in all bedrooms, sitting and dining rooms. The UHF video signals required for each television set should be derived from a common aerial installation. Signal boosting amplifiers and attenuators must also be given careful consideration to ensure adequate signal strength and balance at each aerial outlet.

2.6.12 Hearing Induction Loop

An induction loop, complying with BS6083, to assist the hard of hearing shall be provided in the sitting and dining areas.

2.6.13 Shaver Sockets

Shaver sockets, provided in all en-suite areas, shall comply with BS 3535 BRT1.
2.7 **Landscaping**

The surrounding area of the House shall be landscaped to include separate secure gardens for the frail and dementia patient groups. Effective perimeter planting schemes are required for the northeast and southeast boundaries to the site, as these back on to commercial premises. Raised planting facilities shall be provided in designated areas to allow those able-bodied patients to participate in gardening activities. The House garden should also cater for the disabled gardener.

Further information is given in the detailed landscape requirements set out in Appendix 3.

2.8 **Internal Plants**

Appropriate planting shall be provided in the public areas.

2.9 **Planning and Building Control Approvals**

The Operator shall ensure that all statutory planning and building control approvals are in place prior to any on-site works commencing.
### Appendix 1

#### Schedule of Accommodation

<table>
<thead>
<tr>
<th>Room Description</th>
<th>Room Nos.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aromatherapy/Snoozel Room</td>
<td>1</td>
</tr>
<tr>
<td>Assisted Bathrooms</td>
<td>6</td>
</tr>
<tr>
<td>Bed Store</td>
<td>1</td>
</tr>
<tr>
<td>Charge Nurses Office</td>
<td>1</td>
</tr>
<tr>
<td>Clean Linen Store</td>
<td>1</td>
</tr>
<tr>
<td>Day Toilet</td>
<td>12</td>
</tr>
<tr>
<td>Dining Room</td>
<td>2</td>
</tr>
<tr>
<td>Disposal Dirty Linen</td>
<td>1</td>
</tr>
<tr>
<td>Dry Food Store</td>
<td>1</td>
</tr>
<tr>
<td>DSR</td>
<td>2</td>
</tr>
<tr>
<td>Entrance Area</td>
<td>1</td>
</tr>
<tr>
<td>Female Staff Changing</td>
<td>1</td>
</tr>
<tr>
<td>FM Store</td>
<td>2</td>
</tr>
<tr>
<td>Frozen Food Store</td>
<td>1</td>
</tr>
<tr>
<td>General Office</td>
<td>1</td>
</tr>
<tr>
<td>Hairdressing Room</td>
<td>1</td>
</tr>
<tr>
<td>Kitchen</td>
<td>1</td>
</tr>
<tr>
<td>Kitchen Supervisor's Office</td>
<td>1</td>
</tr>
<tr>
<td>Laundry</td>
<td>1</td>
</tr>
<tr>
<td>Linen Cupboard</td>
<td>6</td>
</tr>
<tr>
<td>Lounge</td>
<td>6</td>
</tr>
<tr>
<td>Male Staff Changing</td>
<td>1</td>
</tr>
<tr>
<td>Multi-purpose Room</td>
<td>1</td>
</tr>
<tr>
<td>Nursing Office</td>
<td>2</td>
</tr>
<tr>
<td>Office OT/PAM</td>
<td>1</td>
</tr>
<tr>
<td>Quiet Room</td>
<td>1</td>
</tr>
<tr>
<td>Reception Vestibule</td>
<td>1</td>
</tr>
<tr>
<td>Reminiscence Room</td>
<td>1</td>
</tr>
<tr>
<td>Seminar Room</td>
<td>1</td>
</tr>
<tr>
<td>Servery</td>
<td>2</td>
</tr>
<tr>
<td>Sewing Repair Room</td>
<td>1</td>
</tr>
<tr>
<td>Single Bedroom including En-Suite WC/WHB</td>
<td>46</td>
</tr>
<tr>
<td>Single Bedroom including En-Suite WC/WHB/Shower</td>
<td>2</td>
</tr>
<tr>
<td>Sluice Room</td>
<td>2</td>
</tr>
<tr>
<td>Smoking Room</td>
<td>1</td>
</tr>
<tr>
<td>Staff Room</td>
<td>1</td>
</tr>
<tr>
<td>Store</td>
<td>3</td>
</tr>
<tr>
<td>Treatment Room</td>
<td>1</td>
</tr>
<tr>
<td>Twin Bedroom including En-Suite WC/WHB</td>
<td>6</td>
</tr>
</tbody>
</table>
Appendix 2

Room Data Sheets
Landscape Requirements

1 SITE CONSTRAINTS AND OPPORTUNITIES

This refers to the area of level ground in the north east corner of the Eastern General site as shown in Appendix 1.

1.1 General Site Description

Within the Site there are several mature cherry trees.

The north-east and south-east boundaries are defined by red brick walls approximately two metres high. Buildings have been constructed directly off the wall head along half of the north-east boundary, and all of the south-east boundary, providing total visual enclosure.

The south-west boundary is defined by a change in level, rising steeply upwards at the southern corner, where there is an area of poorly maintained woodland. The western end of this boundary is enclosed by a more gentle slope, at the top of which there is a well maintained privet hedge.

The combination of trees and steeply sloping land visually encloses the site.

The north-western outlook is relatively open, even although the existing chapel and gatehouse buildings, just beyond the site boundary, are likely to be retained.

1.2 Existing trees

Along the north-east boundary, there are nine mature birch trees, which provide a light screen to the walling. These must be retained, and any necessary tree surgery undertaken to ensure they are healthy and in a safe condition. The Trust acknowledges that the Operator has obtained an arboriculturalist’s report which forms part of the Construction Implementation Requirements.

In the north-eastern corner, there is an area of woodland and scrub vegetation, and a tenth, small and suppressed birch. At the very least, thinning is required, the removal of the suppressed birch, the removal of all elm trees, as these will be prone to Dutch Elm Disease, and a general clean out. If the area is retained, regular maintenance will be required to keep it clean and in good condition.

Proposals for this area should seek to visually enhance the Site, and must include a management plan for its development over a minimum 20 year period.

The remainder of the south-west boundary is defined by a well maintained privet hedge at the top of a gentle banking. This should be retained if possible and maintained regularly to ensure a well maintained appearance. It should also be protected during the construction period with chespale fencing.
Any trees that are retained must be protected during the construction period in accordance with BS 5837, Code of practice for trees in relation to construction. Chesvale fencing must be erected to ensure that construction traffic is kept well away from the crowns and root system. The Operator must ensure that no materials are stored over the root systems of trees that are to be retained. Ground levels must not be changed in the vicinity of any trees to be retained.

2. TREE PROTECTION AND SOILING

Quality control at this stage is essential

2.1 Existing trees

Existing trees to be retained must be protected to the spread of crown with Chesvale fencing, before demolition and site work commences.

2.2 Soil

Allowance must be made for ripping of subsoil with a tine to alleviate areas of site compaction prior to spreading topsoil; breaking up the soil with a JCB bucket handle will not be adequate. The source of the topsoil must be checked and allowance made for obtaining a soil analysis prior to accepting the soil. Topsoil must be well draining, fertile, weed free, and uncontaminated.

3. GARDEN REQUIREMENTS

3.1 General Requirements

Proposals for general site landscaping shall take account of the following:

- **North-east boundary:** the impact of the brick wall and buildings above it shall be minimised by additional planting between and around the birch trees. The use of climbers and shrubs, evergreen and deciduous, with varied foliage colour and seasonal interest shall help to brighten up the appearance of this boundary wall, and to screen it. Dwarf pine may be included, as this associates well with Birch. A minimum of 20 climbing plants (non-clinging varieties supported by trellis mounted to the wall by battens) shall be provided along with approximately 200m² of medium-to-large shrubs at an average density of 3 - 3.5 per m², depending on varieties chosen.

- **South-east boundary:** approximately 10 metres width along the whole length of this boundary shall be planted to screen and minimise the visual impact of the wall and buildings above. This shall include medium-to-large shrubs, as above, and light foliaged trees such as birch, rowan, and native cherries. The shrub planting shall include a proportion of evergreen material to provide winter cover. A proportion of the trees shall be extra-heavy standard nursery stock, to provide visual impact from the outset. This shall require a minimum of 8 large nursery stock trees (minimum 14-16 cm girth, rootballed) and approximately 700m² of feathered whips and shrubs. The whips shall be 1.5 - 1.8m in height, planted in groups at an average spacing of 1.5 metre centres, and covering approximately 30% of the area. The shrubs shall be planted at a density of between 2.5 and 3.5 per m², depending on the size and variety, and shall be interspersed with the whips and covering the remainder of the area. The front of the planting area shall be planted
with low ground cover shrubs only at a density of 4 per m², using small-to-medium height varieties to create a neat and colourful edging. Additional large trees shall be required if the existing tree grouping in the north east corner is removed, following the arboriculturist’s report.

- **Specimen replacement trees**: appropriate stock shall be planted, on a one-for-one basis to replace any of the mature cherry trees which have to be felled within the site. The replacement trees shall be rootballed with a minimum girth of 18 - 20cm, with a minimum of 3 allowed for, sited at appropriate locations within the development to provide an attractive outlook from the building. Species must be selected with care to avoid trees which might become too spreading with age, or which have roots which could lift or otherwise damage adjacent hard surfacing.

- **The nursing home main entrance area**: this shall have decorative planting in appropriate areas, including suitable shrubs and herbaceous material. Allowance shall be made for planting of bedding plants in season to provide a changing display. This planting must provide a welcoming, domestic appearance, and take into account the landscape setting of the building. General ‘amenity’ type planting will not be acceptable. The area of planting will depend on the detailed design and external layout of the buildings, but a minimum allowance of between 100 - 150m² shall be made, using shrubs and herbaceous plants at a minimum density of 4 per m². Small decorative trees may be appropriate to provide a vertical emphasis to the design.

### 3.2 Detailed Garden Design Requirements

Separate gardens shall be provided for the dementia patients and the frail elderly patients; these two garden areas shall not be adjacent.

The ‘dementia’ garden shall have a **minimum** area of 200m², so as to accommodate a ‘circular’ path, grass, patios and shrubs. Depending on the design of the building, a larger area to allow for active walking is preferable.

For the frail elderly, while there is little need for a ‘circular’ pathway, sheltered patios and seating areas are essential, in combination with lawn, planting beds and trees. The area shall be similar to that allowed for the dementia garden, with sheltered seating areas providing privacy for visiting friends and relatives.

### Design issues

- **(iv)** These gardens must designed to provide a safe enclosed environment.
- **(v)** The gardens must be on level ground, and the access to them must be ‘barrier-free’ from the communal areas within the buildings.
- **(vi)** The design shall allow easy supervision by staff without intrusion. “See and be seen” - disorientated people often suffer anxiety and need to be able to see the staff and the way back to the building. Particularly for the dementia patients, the access route must be visibly clear, and logical, with no barriers to negotiate.
- **(vii)** Access to the garden and paths around the garden must be wide enough for wheelchair use, the minimum width being to allow for one wheelchair to pass an ambulant person. In this instance there must be ‘passing places’ along the path to allow 2 wheelchairs to pass each other.
(viii) Path gradients shall, in general, not exceed 1:15 maximum. Where a gradient of 1:18 is unavoidable, handrails shall be provided, with a rail just above ground level to prevent wheelchairs running off the edge of the path and to provide a guide for those with walking sticks and poor vision.

(ix) For the dementia garden, views out from the garden may not be beneficial, as they can encourage the desire to wander.

(x) The gardens shall be designed to provide a ‘domestic character’.

(xi) The patios and path layout shall be located to ensure privacy for bedrooms.

(xii) Particularly for those with dementia, the design shall be reminiscent of their childhood era, with a familiar atmosphere. Colours, seats, paving materials and planting design should not be modern and ‘up-to date’ - but instead echo the period of the patients’ youth.

(xiii) A water feature may be considered in both gardens, as the sound of running water is therapeutic. However, the design of such features shall not involve a pond or lying water.

Structure of Gardens

(xiv) Raised planting facilities shall be provided in designated areas to allow able-bodied patients to participate in gardening activities.

(xv) The path route shall start from the patio or entrance to the building, and shall lead those using it back to the beginning, i.e. it shall be circular or a figure of eight.

(xvi) Seating and rest areas shall be sheltered, with trellises and pergolas. This is especially important for the frail elderly, who are particularly susceptible to the cold. Seating areas shall be sufficiently large to allow for a minimum of 600mm between the front edge of the seat (or wheelchair) and the main pedestrian flow. There shall also be a minimum of 900mm to one side of the seat for a wheelchair user.

(xvii) Trellises and pergolas can also be used to divide the gardens into ‘rooms’, so that a degree of privacy is provided along the path routes. Care must be taken to retain visibility of the garden from the building.

(xviii) A combination of lawn, planting beds and suitable trees shall be provided to allow the creation of a ‘domestic’ environment. ‘Institutional’ design with ‘amenity’ shrubs should be avoided.

Microclimate

(xix) There shall be protection from direct sun and wind, and glare must be minimised - strong contrasts of light and shade are disorientating.

(xx) If the doors from the building to the garden are glazed, the orientation must be carefully considered. For example, glare or reflection from setting sun could deter patients from re-entering the building.

Furnishings

(xxi) For both dementia and frail elderly gardens, garden seats shall be solid traditional wooden seats, with arms for ease of getting up and down.

(xxii) In the dementia garden, the use of certain artefacts as ‘memory’ triggers is recommended. Such items may include traditional garden furniture, bird tables, and specialist items which relate to the culture of the particular locality.
Bird tables are particularly useful as they provide a point of visual interest to sit and watch. If used, they should be sturdily constructed (as patients may lean on them) and sited on hard surfacing with access from the path.

An external tap is useful, both for general garden maintenance and for staff to allow some patients to water the garden. Any taps should be unobtrusively positioned to minimise the chance of patients tampering with them.

The provision of a gate within the garden for dementia patients should be considered, as this allows the freedom of opening and shutting at will, something which is often denied within the rest of the complex. The gate should have self closing, double swing hinges to allow it to open in either direction. It should not have a latch, as this would probably prove difficult to operate for those with dementia. The design of the gate should echo those of 50 years ago. An ideal location for a gate is to position it between the posts of a pergola so forming a gated archway over a path.

All woodwork (trellis, pergola) shall be made of ‘finished’ wood, to avoid a rough timber finish on which patients could snag themselves. It shall be stained with a good quality wood stain, the colour to be agreed with the client.

Paving materials

Paved surfaces shall be non-slip, smooth, non-reflective, warm in colour and of domestic scale.

The finished surface must be level. With paving slabs, a staggered jointing pattern rather than a ‘grid’ pattern will lessen the likelihood of uneven jointing. ‘Riven stone effect’ slabs must not be used.

For the circular path, a directional jointing pattern is beneficial. Small unit paving (monoblock or setted appearance) will be easier to use than slabs for a meandering path.

Loose aggregates (gravel or bound gravel) are not appropriate, due to use of wheelchairs and the shuffling gait of dementia patients.

Kerb edging may be useful around shrub beds to prevent soil spill. Where the path runs through grass, raised edgings shall be avoided as these would create a barrier to accessing the grass.

Drainage (e.g. gullies) must be discreet. Manhole covers must be concealed by use of recessed covers to allow the slabbing or pavior pattern to continue.

Planting Do’s

Use plants which provide seasonal colour and familiar fragrance.

Bright colour in terms of flowers and leaves can be used to great advantage, for example, they attract patients interest, and have been shown to help with speech and recognition, however, avoid too many conflicting colours which might be confusing.

Use plants which are associated with gardens, not municipal planting. ‘Low maintenance’ does not necessarily mean dull - some herbaceous ground cover plants can effectively smother weeds.

Use plants which can trigger memory, currently this means plants in common use over 50 years ago.

Use plants which encourage birds and butterflies.
(xxxviii) Consider the use of several larger specimen shrubs, i.e. semi-mature plants. These will provide a mature atmosphere and although they may cost more than standard nursery stock, only one will be required where 4 or more smaller shrubs would have been needed.

(xxxix) Fruit trees allow harvesting, so providing a useful activity within the garden.

**Planting Don’ts**

(xl) Avoid poisonous plants, either from sap (which could harm if picked) or berries (which might be eaten). Use prickly plants with care, i.e. not in locations where they might overhang the pathway and cause injury.

(xli) Avoid dark evergreen plants as the dark colour may create an oppressive, gloomy atmosphere (Conifers, Viburnum, Berberis, some Cotoneasters e.g. microphyllus). However, they can be used purposely as a deterrent, to discourage access to particular areas of the garden, for example, the boundaries.

(xlii) Avoid steep bankings - or if these are unavoidable, protect and plant with suitable ground cover plants to discourage access, and provide protective handrails.

(xliii) Avoid use of trees with heavy leaves such as Sycamore - when the leaves fall in the autumn they can dangerous because slow decomposition forms a slippery surface. Similarly, trees which produce a heavy berry crop can be slippery if dropped and squashed on a hard surface.

**General Planting Points**

(xlv) Elderly people generally prefer light shade to sitting in the full sun. Light foliaged trees can therefore be useful in this respect, for example, Birch and Rowan varieties. Some of these have interesting bark texture and colour and can be useful as ‘waymarkers’ (e.g. Birch, or Tibetan Cherry).

(xlv) Those with failing sight see light colours and reds and yellows more easily.

(xlvi) Fragrance is potent stimulant both for memory and for waymarking. Smell must be distinctive. Avoid using too many perfumed plants, as this may prove confusing.

**Boundary Fencing**

(xlvii) The boundary fencing shall be strong and secure. Gaps between the pales shall be between 25 and 40mm maximum, as patterns of strong light penetrating a fence can be disorientating to the patients.

(xlviii) The fencing shall be stained a dark colour to the Trust’s choice, such as brown or green. Light, bright colours of woodstain shall be avoided, as this may encourage dementia patients to approach the boundary.

(xlix) Within the garden, the boundary fencing shall be softened and concealed with planting.

(l) Gates through the fencing (for maintenance access only) shall be concealed as far as possible.
Aftercare

A well designed, constructed and planted garden can be destroyed in a few seasons if it is poorly maintained, and therefore allowance must be made for high quality ongoing maintenance for the life of the development. Maintenance proposals must form an integral part of all submissions, and shall include the following:

(i) Mulching: all planted areas shall be mulched with composted bark mulch on completion of planting and this shall be topped up each year as required. The approximate depth required is 40 -50mm.

(ii) Weed control: all planting areas must be kept weedfree and healthy, including the application of herbicides and pesticides as required. Hand hoeing is preferred. Chemicals must be used with great care, as dementia patients may eat or touch the plant material.

(iii) Summer display: allow for the provision of annual bedding plants to give colour in the summer months.

(iv) Thinning, pruning, renovation and plant replacement: as plants grow, mature, die, do not thrive, or simply outgrow their location, replacements will be required.

(v) Checking all new and existing trees: including adjusting tree supports and removing them as required, pruning and undertaking arboricultural work as required.

(vi) Grass: cut the grass regularly and keep it weedfree with edges trimmed. Allowance for scarifying shall also be made, so that grass areas are kept in good condition.

(vii) Fertilising: grass areas shall be fertilised once per three years and shrub beds once per year in the Spring.

(viii) Staining and repairing woodwork as required: to keep the trellis, seats, gate, pergola and fencing in good condition.

(ix) Hard surfacing: remedial work as required to ensure that the hard surfaced areas are maintained in a safe condition at all times, including spraying to remove weed growth or build up of algae.

4 PLANT LIST

There are many shrubs and herbaceous plants which can be used successfully in any planting scheme, providing colour, shape, flowers, autumn colour and so on. The plants in the following list are those which will specifically add to a scheme for the frail elderly and dementia patients in addition to the basic range, widely used in landscape schemes. The spacing of these will depend on both the size of the plant supplied and its ultimate size. If planted small (e.g. between 30 cm and 60 cm high), closer planting would be necessary to achieve visual impact, but this will require thinning after 5 years or so. Allow for a planting spacing of 3 to 4 per m² for shrubs, 10-12 per m² for heathers and 6-8 per m² for herbaceous plants.

Shrubs

(ix) **Acer palmatum**: Japanese maple, dwarf, slow growing, attractive leaf colour. Worth planting as a larger specimen shrub.
Azaleas and Rhododendrons: although these need an acid soil, they are available in a variety of sizes, shapes and colour to suit all locations. Generally Spring flowering.

Camellia varieties: evergreen, flowers late winter / early Spring, acid soil, sheltered position, large coloured flowers. A good specimen wall shrub for a patio.: there are many different Cotoneasters - but this one is often seen clothing the walls of houses. It has white flowers, red berries and good autumn colour.

Clematis varieties: good for training up the trellis and pergola.

Deutzia varieties: attractive small garden shrub, flowers May to July.

Heaths and Heathers: good for rockery - very nostalgic for many, need acid soil - and careful maintenance. Year round interest depending on variety

Escallonia varieties: good background shrub, evergreen with pink flowers

Fuchsia: F. riccartonii is hardy - good background shrub. smaller ones are more applicable for planters and are not always hardy. Flowers have always appealed to children, hence attraction for Alzheimers patients.

Hydrangea: good late flowering shrubs, and popular garden shrub. H. macrophylla - good for 'accent' plant. H. petiolaris is a self clinging climber for walls.

Lavendula: traditional, aromatic shrub - good for front of borders

Lavatera: late flowering - needs staking, sheltered position, cottage garden type shrub, site against boundary wall or fence

Lonicera periclymenum: honeysuckle - a fragrant climber, suitable for growing up a pergola, trellis or against fence

Magnolia soulangiana: flowering, specimen shrub, worth getting as a large container grown plant.

Mahonia japonica or ‘Charity’: a specimen plant, winter flowering with yellow spikes. Will grow in shade, good for back of border.

Philadelphus: many varieties, strongly perfumed plant

Pyracantha varieties: common as a wall shrub, spiny, evergreen. White flowers in the spring and red berries in from autumn to winter

Roses: these have always been favourite plants with most garden lovers. Some require a high degree of maintenance, but there are many which do not need so much care but still provide an attractive show. The following are reliable:

Front of border: Rosa Tip Top (pink), Rosa Baby Bio (yellow), R. Bonica, R. The Fairy, R. Yesterday, R. Marjorie Fair, R. Red Blanket, Rosa Frau Dagmar Hastrup

Hedging: R. Sarah van Fleet, R. rugosa varieties e.g. Frau Dagmar Hastrup

Back of border: R. nevada, R. Canarybird, R. Felicia

Spirea: several useful varieties, such as S. ‘Goldflame’, which is for front of borders, yellow foliage; S. arguta, commonly called bridal wreath, white flowers in spring, mid to rear of border.

Syringa (lilac): For back of border, a very common garden plant

Weigela florida varieties: reliable, easy, attractive foliage plant, variegated or purple, pink flowers
Herbaceous perennials

Whilst many herbaceous plants die down in the winter months, they are an important addition to the garden in Spring, Summer and Autumn. There is an extensive range to choose from, and the following grow well, are not too much of a maintenance burden and may form part of the memory of many older people. Unfortunately, favourites such as Aconitum, Delphinium and Dicentra are poisonous and therefore must be excluded. Appropriate herbaceous plants include:

- **Astilbe**: attractive frothy appearance - needs damp position
- **Campanula**: both large and small varieties, easy to grow
- **Chrysanthemum**: shasta daisy
- **Geranium**: G. Johnsons Blue, G endressi, G psilostemum, front of border
- **Helleborus**: Christmas and Lenten rose, front of border
- **Heuchera**: front of border, ground cover, path edging
- **Herbs**: such as Chives, Sage, Thyme,
- **Hosta**: attractive foliage, good around the base of roses or other plants which are bare at the base
- **Lupinus**: dwarf and larger varieties available
- **Paeony**: an ‘old fashioned’ plant
- **Phlox paniculata**: scented
- **Troillius**: early summer plant, likes damp conditions

Trees

Trees can be used to form a focal point in a garden, particularly if they are chosen for some particular attribute such as bark colour, seasonal variation or flower. It is important, however to ensure that the tree chosen is not going to become ultimately too large for the garden, and that it is not planted too close to the building. Generally, small garden trees should be no closer to a building than about 4 metres. A medium size tree should be at least 6 metres away and a large tree 10 or more metres away. The following trees are small to medium sized and are generally suitable for a garden situation:

- **Betula pendula, B.jacquemontii**: light foliage, white bark, and especially good as a ‘marker’ tree for visual location.
- **Malus varieties**: crab apple, wide range of blossom and fruit colour.
- **Pyrus varieties**: e.g. salicifolia pendula, ornamental pear, resembling a small weeping willow and Pyrus calleryana ‘Chanticleer’, a good upright tree with white blossom and autumn colour.
- **Prunus varieties**: many different varieties. P. serrula has decorative stem, others have autumn colour and blossom. Do not plant close to slabbing as roots tend to lift slabs. Some varieties are very spreading and may grow too wide.
- **Sorbus aucuparia varieties**: a light foliaged tree, with spring flowers and autumn berries, and some varieties have ornamental bark. Berry colour can be white, pink, yellow or red depending on variety.

Larger trees may be appropriate in some larger garden areas, such as Acer platanoides varieties, Prunus avium (gean) or Scots pine. Conifers may also be appropriate in certain situations - e.g. when used as screening in fast growing but well maintained hedges, or dwarf conifers in heather beds or rock gardens.
Section 2 - Construction Implementation Requirements.
Agreed Form document; contained in two folders.

Section 3
Equipment List

Generally:-

PART A:- Details loose equipment and furniture to be supplied, fitted and maintained by the Operator as at Operational Date and over the Services Term.

PART B:- Details equipment to be supplied, fitted and maintained by the Operator as at Operational Date and over the Services Term, and are items which will predominately be used by persons carrying out the Hotel Services.

Whilst the majority of equipment is detailed as being provided and where applicable installed by named manufacturers and suppliers, it should be noted that the final supplier choice and specification can be changed at the discretion of the Operator should it wish to pursue alternative suppliers / manufacturers as long as such equipment is of the same or better quality as that indicated in this list and the Trust has given its prior agreement (not to be unreasonably withheld or delayed) to such alternative suppliers/manufacturers.

PART A:-

The following items of loose equipment and furniture to be supplied, fitted and maintained by the Operator as at Operational Date and over the Services Term within the following areas:-

- Bedroom Single (With ensuite) 2no
- Bedroom Single (With ensuite no shower) 46no
- Twin Bedroom (With access to ensuite) 6no
- Bed Store 1no
- Dining Rooms 2no
- Quiet Room 2no
- Lounge (Original spec) 3no
- Lounge (Revised spec for 6 people) 3no
- Disposal / Dirty Linen Store 1no
- Entrance Reception Area 1no
- Seminar Room 1no
• Multi Purpose Room 1no
• Charge Nurse Office 1no
• Nursing Office 2no
• General Office 1no
• Aromatherapy / Snoozlem Room 1no
• Reminiscence Room 1no
• Staff Changing Male 1no
• Staff Changing Female 1no
• WC Day / Visitors 12no
• Assisted Bathroom 6no
• Treatment Room 2no
• Sluice 2no
• Social Space Within Corridors
• House Items

• Bedroom Single (With ensuite) (Equipment Per Room):

  Bedside Cabinet - Alliance AL116 - 1no
  Wardrobe – Alliance AL315 -1no
  NE Winchester Bed -1no
  Softform Mattress – All Vinyl Mattress - 1no
  Easy Chair – Finland F201 – 1no
  Visitor Chair – F834 Stacking Chair With Arms – 1no
  Toilet Brush / Holder - 1no
  Toiletries Cupboard / Unit – Alliance AL115 – 1no
  Chest Of Drawers – Alliance AL 245 – 1no
  Colour Television – 14” – 1no

• Bedroom Single (With ensuite no shower) (Equipment Per Room):

  Bedside Cabinet - Alliance AL116 - 1no
  Wardrobe – Alliance AL315 -1no
  NE Winchester Bed -1no
  Softform Mattress – All Vinyl Mattress - 1no
  Easy Chair – Finland F201 – 1no
  Visitor Chair – F834 Stacking Chair With Arms – 1no
  Toilet Brush / Holder - 1no
  Toiletries Cupboard / Unit – Alliance AL115 – 1no
  Chest Of Drawers – Alliance AL 245 – 1no
  Colour Television – 14” – 1no

• Twin Bedroom (With access to ensuite) (Equipment Per Room):

  Bedside Cabinet - Alliance AL116 - 2no
  Wardrobe – Alliance AL315 -2no
  NE Winchester Bed -2no
  Softform Mattress – All Vinyl Mattress - 2no
  Easy Chair – Finland F201 – 2no
  Visitor Chair – F834 Stacking Chair With Arms – 2no
Toilet Brush / Holder - 1no
Toiletries Cupboard / Unit – Alliance AL115 – 2no
Chest Of Drawers – Alliance AL 245 – 2no
Colour Television – 14” – 1no

• Bed Store (Equipment Per Room):

No equipment required

• Dining Rooms (Equipment Per Room):

Dining Tables – Rectangular Dining Table DTR – 8no
Dining Chairs – With Arms – Ladwa Ladder Back – 30no
Sideboard – Welsh Dresser SBWD – 1no
Movable Screen – 1no

• Quiet Room (Equipment Per Room):

Occasional / Coffee Table – Rectangular Coffee Table CTR – 1no
Easy Chair High Back – Chatsworth C307 – 2no
Easy Chair High Back With Wings – Chatsworth C303 – 1no
Easy Chair Low Back – Chatsworth C105 – 1no
Standard Lamp – 1no
Sofa 3 Seater – Taunton T003 – 1no

• Lounge (Original spec) (Equipment Per Room):

Occasional / Coffee Table – Rectangular Coffee Table CTR – 2no
Sofa 3 Seater – Taunton T003 – 1no
Easy Chair High Back – Chatsworth C307 – 3no
Stacking Chair – Finland F834 With Arms – 2no
Table Lamp – 4no
Music Centre – 1no
Television – 28” Colour – 1no
VCR – VHR 288E Video – 1no
TV Trolley – Heavy Duty Mobile Table – 1no
Music Centre Unit – 1no

• Lounge (Revised spec for 6 people) (Equipment Per Room):

Occasional / Coffee Table – Rectangular Coffee Table CTR – 2no
Sofa 3 Seater – Taunton T003 – 1no
Easy Chair High Back – Chatsworth C307 – 3no
Stacking Chair – Finland F834 With Arms – 2no
Table Lamp – 2no
Music Centre – 1no
Television – 28” Colour – 1no
TV Trolley – Heavy Duty Mobile Table – 1no
Music Centre Unit – 1no
• Disposal / Dirty Linen Store (Equipment Per Room):
  No equipment required

• Entrance Reception Area (Equipment Per Room):
  Wheelchairs – Standard Self Propelled Type 108 – 4no
  Chairs At Corridor Intersections – Churchill CHU – 2no
  Sofas At Corridor Intersections – Churchill 2 Seater CHU2S – 2no
  Table Occasional With Shelf – 2no

• Seminar Room (Equipment Per Room):
  Clock – 10” Wall Clock – 1no
  Stacking Chair – Finland F834 With Arms – 15no
  Meeting Table – Rectangular Table – 4no
  Side Table – Semi Circular Table – 1no
  Flipchart – Flipchart Easel – 1no
  Television – 28” Colour – 1no
  VCR – VHR 288E Video – 1no
  Overhead Projector – 1no
  Projector Stand – 1no
  Screen – 1.5 x 1.5mt Screen – 1no
  Storage Unit – Two Door Cupboard – 1no
  Coat Stand – 1no
  Display Board – Whiteboard Magnetic – 1no

• Multi Purpose Room (Equipment Per Room):
  White Graphdex Board – Graph Planner – 1no
  Notice Board – Aluminium 4 x 2 – 1no
  Meeting Table – Rectangular Table – 1no
  Occasional / Coffee Table – Rectangular Coffee Table CTR – 1no
  Stacking Chair – Finland F833 – 15no
  Chairs Easy – Chatsworth Type C307 – 5no
  Bookcase 6 Shelf – Derby Bookcase – 2no

• Charge Nurse Office (Equipment Per Room):
  Panel Display Board – Aluminium 4 x 2 – 1no
  Pinboard Wall Mounted – 1000 x 1000mm – 1no
  Bookcase With Doors – Derby Bookcase – 1no
  4 Drawer Filing Cabinet – 2no
  Desk Type Chair – Operator Chair GP90 – 1no
  Visitor Chair Upholstered – Finland Stacking Chair F833 – 2no
  Stacking Chair – Finland Stacking Chair With Arms F834 – 2no
  L-Shaped Single Pedestal Desk – Derby Desk & Return – 1no
  Clock – 10” Wall Clock – 1no
  Handbag Locker – Four Tier Locker – 6no
  Safe – Fire Safe – 1no
  Occasional / Coffee Table – Rectangular Coffee Table CTR – 1no
• Nursing Office (Equipment Per Room):

  Clock – 10” Wall Clock – 1no
  Panel Display Board – Aluminium 4 x 2 – 1no
  Bookcase 3 Shelf / 2 Glazed Doors – Derby Bookcase – 1no
  4 Drawer Filing Cabinet – 2no
  Desk Type Chair – Operator Chair GP90 – 1no
  Stacking Chair – Finland Stacking Chair With Arms F834 – 2no
  L-Shaped Single Pedestal Desk – Derby Desk & Return – 1no

• General Office (Equipment Per Room):

  Clock – 10” Wall Clock – 1no
  Display Unit – Wall Display Unit – 1no
  4 Drawer Filing Cabinet – 1no
  Lateral Filing Cabinet – 1no
  Adjustable Swivel Chair – Typist Chair GP30 – 1no
  Visitor Chair Upholstered – Finland Stacking Chair F833 – 1no
  Single Pedestal Desk – Derby Desk – 1no
  Desk Lamp – 1no
  Small Requisites – 1no
  Wastepaper Bin – Economy 15lt Tub – 1no
  Fax Machine – F01460 Plain Paper Fax – 1no
  Personal Computer – Windows Compatible – 1no
  Printer – Laser Printer – 1no
  Software – 1no
  Photocopier – NI 6116 – 1no
  Lockable Metal Cupboard – ST78 – 1no
  Drawer Units – Mobile Pedestal – 2no
  Desk Return Unit – 1no
  Table – 1600mm Desk – 1no
  Table Occasional With Shelf – 2no

• Aromatherapy / Snoozlem Room (Equipment Per Room):

  Treatment Chair – G/7/TB – 1no
  Visitor Chair – Finland Stacking Chair With Arms F834 – 1no
  Refrigerator – 113lt – 1no
  Dispenser – Paper Towel – 1no
  Holder – Paper Roll – 1no
  Dispenser – Soap – 1no
  Physioacoustic Therapeutic Chair & Accessories – 1no
  Chairs – Churchill Chair CHU – 2no
  Sofa 3 Seater – Taunton T003 – 1no
  Footstool (not a surgeon stool)

• Reminiscence Room (Equipment Per Room)

  Old Artifacts – Allowance – 1no
  Fireplace – 1no
  Easy Chairs – Allowance – 1no
• Staff Changing Male (Equipment Per Room)

Clock – 10” Wall Clock – 1no
Bench Seating Unit – Wooden Seating Unit – 1no
Clothes Locker – Half Height Lockers – 10no
Toilet Brush / Holder – 1no

• Staff Changing Female (Equipment Per Room)

Clock – 10” Wall Clock – 1no
Bench Seating Unit – Wooden Seating Unit – 2no
Wastepaper Bin – Economy 15lt – 1no
Clothes Locker – Half Height Lockers – 30no
Toilet Brush / Holder – 1no
Stacking Chair – Finland Stacking With Arms F834 – 1no

• WC Day / Visitors (Equipment Per Room)

Toilet Brush Holder – 1no
Sanitary Towel Dispenser – 1no only provided
Bin Waste Pedal Operated – 1no only provided

• Assisted Bathroom (Equipment Per Room)

Patient Hoist – Bath Hoist – 1no
Toiletries Cupboard – Alliance 115 – 1no
Bathroom / Shower Chair – 1no
Towel Storage Unit – Alliance 245 – 1no
Holder And Brush Lavatory – 1no
Bath Thermometer – Alliance 115 – 1no

• Treatment Room (Equipment Per Room)

Drug Refrigerator Wall Mounted – 28lt Capacity – 1no
Controlled Medicines Cupboard – 6 Frame Cabinet PC/639 – 1no
Clock – 10” Wall Clock – 1no
Treatment Chair – Treatment / Examination Chair G/7/TB – 1no
Operators Chair – Operator Chair GP90 – 1no
Footstool – Adjustable Foot Rest – 1no
Drugs Trolley – Wood Finish Single Medium MT12 – 1no
Open Top Cabinet / Lateral Filing – Medicine Case Note Trolley C/N/4 – 1no
Dispenser – Paper Towel – 1no
Dispenser – Soap – 1no
Dispenser – Scrub Solution – 1no
Surgeon Stool – Mobile – 1no

• Sluice (Equipment Per Room):

Bedpan Holder – Mild Steel Holder 6 Capacity UB/6 – 1no
Macerator – Allowance- 1no
Mobile Shower Chair – Shower Stool CS/12 – 1no
Dispenser – Paper Towel – 1no
Holder – Paper Towel – 1no
Dispenser – Soap – 1no
Disposal Unit – Bedpan Liners – 1no

• Social Space Within Corridors

Chairs At Corridor Intersections – Churchill CHU Chair – 6no
Sofas At Corridor Intersections – Churchill 2 Seater CHU2S – 2no

• General House Items

Set Of Outdoor Furniture – Allowance – 4no
Set Gardening Tools For Patients Use – Allowance – 1no
Bed Sides – Winchester Cot Sides For Adults – 6no
Bed Side Pads – Bed Pads CSWP – 6no
Overbed Tables Non Articulated – Overbed Table BT12 – 12no
Sack Holders – 16no
Commode Chairs – Finland Commode Chair F800 – 2no
Wastepaper Bins – 15lt Tub – 90no
Decorative Items – Allowance – 1no
Fabric Curtains To Windows – 102no
Net Screens To Windows – 55no
Window Blinds – 8no

PART B

The following items are the agreed list of equipment to be supplied, fitted and maintained by the Operator as at the Operational Date and over the Services Term, and are items which will predominately be used by persons carrying out the Hotel Services within the following areas :-

• Kitchen
• Kitchen Office
• Coldroom Store
• Dry Goods Store
• Servery No. 1
• Servery No. 2
• Staff Room
• Hairdresser
• Sewing Repair Room
• Domestic Services Room
• Laundry Room

Whilst the majority of equipment is detailed as being provided and installed by named manufacturers and suppliers, it should be noted that the final supplier choice and specification can be changed at the discretion of the Operator should it wish to pursue alternative suppliers / manufacturers as long as such equipment is of the same or better quality as that indicated in this list and the Trust has given its prior agreement (not to be unreasonably withheld or delayed) to such alternative suppliers/manufacturers.
Kitchen Equipment Specification:-

The following equipment is based on the agreed layout provided by Lockhart Design Services drawing reference EDI 01/871.

1 no. Refuse Sack Holder Reference F3351
Manufacturer: Lockhart Catering Equipment
Size: 430 x 380 x 860mm
Refuse sack holder for holding standard black refuse sacks.

1 no. Freestanding Waste Disposal Unit Reference HE2450
Manufacturer: Imperial Machine Company Limited
Waste disposal unit up to 150kg capacity per hour. 15mm water connection.

1 no. Stainless Steel Fully Welded Sink with Pair Bird Lever Style High Neck Taps
Manufacturer: Catering Equipment Direct Limited
Size: 1800 x 650 x 850mm
304 grade stainless steel top sink, ribbed drainer, left hand drainer, standpipe strainer, under sink shelf, protective fixing feet, raised edges with upstand to rear.

1 no. Autofill Water Boiler Type Lockhart Biscay / HE2256
Manufacturer: Instanta Limited
Size: 230 x 335 x 516mm
23 litres per hour (12 litres initial draw off)

1 no. 4 Tier Storage Shelving System
Manufacturer: Bedford & Soar Limited
Size: 1220 x 610 x 1830mm
4 tier module shelving system on adjustable feet, zinc plated finish. Formed with four rigid posts providing adjustable shelving positions. Wire grid shelving.

1 no. Wash Hand Basin
Manufacturer: Vantage
Size: 385 x 330mm
304 grade stainless steel top sink, complete with basin taps and waste on chain.

1 no. Stainless Steel Fully Welded Wall Table
Manufacturer: Catering Equipment Direct Limited
Size: 600 x 650 x 850mm
304 grade stainless steel table with boxed upstand to rear, and 304 grade fully welded undershelf. Complete with adjustable flanged protective fixing feet.

1 no. Professional Food Processor
Manufacturer: Robot Coupe (UK) Limited
Size: 535 x 350 x 300mm
3.5 litre stainless steel bowl with sabatier cutting blade. See through lid for easy control, and pulse button for maximum control. Vegetable preparation attachment. 4 discs for slicing, grating and shredding.
1 no. 10 qu. Counter Top Mixer
10 qu. Counter top mixer as per the Trust’s Soft FM Team requirements detailed in their letter dated 28th February 2001.

1 no. Stainless Steel Fully Welded Sink with Pair Bird Lever Style High Neck Taps
Manufacturer: Catering Equipment Direct Limited
Size: 1200 x 650 x 850mm
304 grade stainless steel top sink, ribbed drainer, left hand drainer, standpipe strainer, under sink shelf, protective fixing feet, raised edges with upstand to rear.

1 no. Counter Chiller
Manufacturer: Caravell UK Limited
Size: 1355 x 700 x 850mm
Two and half doors. 304 grade stainless steel construction throughout.
Suitable for operating in ambients of 43 deg C. Half door section above compressor housing is refrigerated. –2 to +8 deg C temperature range.
Digital temperature display and controller.
Fan assisted cooling. Fitted with castors.

1 no. Slicing Machine
Manufacturer: Catering Equipment Direct Limited
Size: 480 x 570 x 420 (with 300mm blade)
Durochrome blade with removable sharpening device. Integral safety release switch.
Slice adjustment from 0 to 14mm

2 no. Stainless Steel Fully Welded Wall Table
Manufacturer: Catering Equipment Direct Limited
Size: 1200 x 650 x 850mm
304 grade stainless steel table with boxed upstand to rear, and 304 grade fully welded undershelf.
Complete with adjustable flanged protective fixing feet.

1 no. Drawer With Gastronorm Container
Manufacturer: Catering Equipment Direct Limited

2 no. Plated Meals Hotcupboard Type BF3BR
Manufacturer: Moffat
Size: 1575 x 710 x 980mm
Moffat mobile plated meals trolley, which combines both hot and cold holding compartments, together with two full sized Bain Marie openings to accept a combination of containers. The chill unit compartment is controlled by way of a blown air refrigeration plant with built in compressor. These units are mounted on heavy duty castors.

1 no. Counter Blast Chiller
Manufacturer: Caravell UK Limited
Size: 966 x 700 x 850mm
Electronically controlled blast chiller, in a stainless steel finish. A high quality blast chiller capable of reducing a 50mm layer of food from +70 degrees C to +3 degrees in 90 minutes. Fitted with a temperature probe and complete with castors.
1 no. Stainless Steel Fully Welded Wall Table  
Manufacturer: Catering Equipment Direct Limited  
Size: 1500 x 500 x 850mm  
304 grade stainless steel table with boxed upstand to rear, and 304 grade fully welded undershelf. Complete with adjustable flanged protective fixing feet.

1 no. Combination Oven Type HE1092  
Manufacturer: Dawson / Lainox  
Combination oven 10 grid 1/1 GN featuring convection, steam, combination, clima step (humidified convection) and regeneration 1/1 GN cooking grid includes auto reverse fan.

1 no. 10 Grid Stand Type SR110/OE1508  
Manufacturer: Dawson / Lainox  
10 grid stand with no runners.

1 no. Stainless Steel Fully Welded Wall Table  
Manufacturer: Catering Equipment Direct Limited  
Size: 900 x 770 x 850mm  
304 grade stainless steel table with boxed upstand to rear, and 304 grade fully welded undershelf. Complete with adjustable flanged protective fixing feet.

1 no. Gas Salamander Grill Type HE1107 / G1518  
Manufacturer: Falcon Catering Equipment  
Gas salamander grill heated by surface combustion plaques, controlled by safety type gas cocks. Stainless steel external panels with contrasting dark brown fascia panels. Body double cased and insulated. Enamelled cast iron internal with 5 sets of runners. Supplied with cast aluminium brander, wire shelf and drip tray.

1 no. Bench Legs  
Manufacturer: Falcon Catering Equipment  
Stainless steel construction bench legs.

1 no. Open Top Range Type G110 / HE1002  
Manufacturer: Falcon Catering Equipment  
Size: 900 x 770 x 870mm  
6 burner hob, 2 anti tilt shelves, 5 shelf positions, side opening doors, cast iron pan supports. Stainless steel finish with black acrylic side panels. Mounted on castors.

1 no. Small Tilting Kettle  
Small tilting kettle  
Groen table top tilting kettle  
10 litre capacity  
Stainless steel finish.

2 no. Single Basket Gas Fryer Type G1830 / HE1005  
Manufacturer: Falcon Catering Equipment  
Size: 300 x 770 x 870mm  
Output of 2.5kg of chips per hour. Single pan basket, mild steel pan, piezo ignition. Stainless steel finish with dust cover and cool zone.
1 no. Side Screen For G1830 Fryer  
Manufacturer: Falcon Catering Equipment

1 no. Stainless Steel Extract Canopy  
Manufacturer: Vision Sheetmetalwork  
Stainless steel extract canopy measuring 3600 x 1000 x 600mm deep containing 500 x 500mm baffle type grease filter cells, plenum and drip tray. 3 no bulkhead lights are also provided.

1 no. Fly Killer Type Economy / HE5254  
Manufacturer: P&L Systems Limited  
Size: 270 x 145 x 260mm  
30 sq meter coverage. Multi purpose unit wall mounted.

**Kitchen Office Equipment Specification:**

1 no. Pinboard  
Manufacturer: Ostaline  
Size: 1000 x 500mm  
Aluminium notice board

1 no. Wall Clock  
Manufacturer: Manager  
Size: 10”  
10” Wall Clock

1 no. 4 Drawer Filing Cabinet  
Manufacturer: Connect  
4 Drawer filing cabinet

1 no. High Back Adjustable Swivel Chair  
Manufacturer: Connect  
High back adjustable swivel chair

1 no. Upholstered Visitor Chair Type F833  
Manufacturer: David Baker  
Finland stacking upholstered visitor chair

1 no. Single Pedestal Desk With Lock  
Manufacturer: Coplan  
Size: 1600mm  
1600mm Single Pedestal Desk With Lock

1 no First Aid Cabinet  
High risk first aid cabinet

**Coldroom Equipment Specification:**

2 no. Four Tier Storage Shelving System Connecta / HE1019  
Manufacturer: Tournus  
Size: 1462 x 500 x 1760mm
4 tier storage shelving modules. Strong aluminium frame on adjustable feet. Polypropylene removable shelves. Shelves up to 150kg per level.

2 no. Four Tier Storage Shelving System Connecta / HE1018
Manufacturer:- Tournus
Size:- 1189 x 500 x 1760mm
4 tier storage shelving modules. Strong aluminium frame on adjustable feet. Polypropylene removable shelves. Shelves up to 150kg per level.

1 no. Four Tier Storage Shelving System Connecta / HE1017
Manufacturer:- Tournus
Size:- 1002 x 500 x 1760mm
4 tier storage shelving modules. Strong aluminium frame on adjustable feet. Polypropylene removable shelves. Shelves up to 150kg per level.

1 no. Walk In Chiller
Manufacturer:- Storer Refrigeration & Catering Manufacturers
Size:- 2200 x 3000mm
Walk in chiller with remote compressor and weatherproof housing.

Dry Goods Store Equipment Specification:-

3 no. Storage Shelving 4 Tier Module Type HE1024
Manufacturer:- Bedford & Sour Limited
Size:- 1070 x 610 x 1830mm
4 Tier module shelving on adjustable feet. Formed with four rigid posts, zinc finished. Adjustable shelving positions and wire grid shelving.

1 no. 45 cu/ft Capacity Gastronorm Freezer Cabinet Type Artica HE3342
Manufacturer:- Caravell UK Limited
Size:- 720 x 790 x 2000mm
Single door, 304 grade stainless steel construction. Suitable for operating in ambients of 43 deg C. Digital temperature display and controller. Fan assisted cooling. 2 x GN 1/1 capacity. Heavy duty castors. Situated within the corridor area adjacent to the kitchen.

Servery No 1 Equipment Specification:-

1 no. Stainless Steel Fully Welded Wall Table
Manufacturer:- Catering Equipment Direct Limited
Size:- 2300 x 650 x 850mm
304 grade stainless steel table with boxed upstand to rear, and 304 grade fully welded undershelf. Complete with adjustable flanged protective fixing feet.

1 no. Autofill Water Boiler Type Lockhart Biscay / HE2256
Manufacturer:- Instanta Limited
Size:- 230 x 335 x 516mm
23 litres per hour (12 litres initial draw off)
1 no. 4 Slot Toaster Type HE5350  
Manufacturer: Lockhart Catering Equipment  
Stainless steel hammer finished. Timer and energy efficient slot selection. Variable timer.

1 no. Induction Hob Type HE1176  
Manufacturer: Bradshaw Microwave Limited  
Portable 1500w power mini hob with 5 heat settings, touch pad control.

4 no. Stainless Steel Fully Welded Wall Cupboard  
Manufacturer: Catering Equipment Direct Limited  
Size: 900 x 300mm  
Stainless steel fully welded wall cupboard with side hinged stainless steel.

1 no. 6.1 Cubic Feet Capacity Undercounter Refrigerator  
Manufacturer: Cooling Systems Limited  
Size: 595 x 636 x 830mm  
White foodsafe finish, digital thermometer with automatic defrost.

1 no. Stainless Steel Fully Welded Wall Table  
Manufacturer: Catering Equipment Direct Limited  
Size: 1200 x 650 x 850mm  
304 grade stainless steel table with boxed upstand to rear, and 304 grade fully welded undershelv. Complete with adjustable flanged protective fixing feet.

1 no. Wash Hand Basin Type Prepara Standard Duty / HE4001  
Manufacturer: Vantage  
Size: 385 x 330mm  
304 grade stainless steel top, complete with basin taps and waste plug on chain.

1 no. Refuse Sack Holder Reference F3351  
Manufacturer: Lockhart Catering Equipment  
Size: 430 x 380 x 860mm  
Refuse sack holder for holding standard black refuse sacks.

1 no. Stainless Steel Fully Welded Dishwasher Table  
Manufacturer: Catering Equipment Direct Limited  
Size: 1200 x 650 x 850mm  
304 grade stainless steel table with boxed upstand to rear, and 304 grade fully welded undershelv. Complete with adjustable flanged protective fixing feet.

1 no. Undercounter Dishwasher Type Atlantic Premier / HE2286  
Manufacturer: Meiko Uk Limited  
Size: 600 x 600 x 850mm  
Dishwasher to take up to 40 racks per hour. Drain pump and rinse booster pump is included. Class A WRC approved airgap. Factory fitted integral detergent dosing pump. Factory fitted integral rinse-aid dosing pump.

1 no. Stainless Steel Fully Welded Plinth  
Manufacturer: Catering Equipment Direct Limited  
Size: 600 x 600 x 300mm  
Stainless steel fully welded plinth to accommodate the dishwasher.
1 no. Dishwash Tabling  
Manufacturer: Catering Equipment Direct Limited  
Size: 900 x 650 x 900mm  
900mm Long module, stainless steel topped. Formed with anti-drip edging to three sides and shaped to couple with pass through dishwasher.

1 no. Stainless Steel Fully Welded Wall Cupboard  
Manufacturer: Catering Equipment Direct Limited  
Size: 900 x 300mm  
Stainless steel fully welded wall cupboard with side hinged stainless steel.

1 no. Stainless Steel Fully Welded Wall Table  
Manufacturer: Catering Equipment Direct Limited  
Size: 1200 x 650 x 850mm  
304 grade stainless steel table with boxed upstand to rear, and 304 grade fully welded undershelf. Complete with adjustable flanged protective fixing feet.

1 no. Fly Killer Type Economy / HE5254  
Manufacturer: P&L Systems Limited  
Size: 270 x 145 x 260mm  
30 sq meter coverage. Multi purpose unit wall mounted.

Servery No 2 Equipment Specification:  

1 no. Fly Killer Type Economy / HE5254  
Manufacturer: P&L Systems Limited  
Size: 270 x 145 x 260mm  
30 sq meter coverage. Multi purpose unit wall mounted.

1 no. Stainless Steel Fully Welded Wall Table  
Manufacturer: Catering Equipment Direct Limited  
Size: 1200 x 650 x 850mm  
304 grade stainless steel table with boxed upstand to rear, and 304 grade fully welded undershelf. Complete with adjustable flanged protective fixing feet.

1 no. Stainless Steel Fully Welded Wall Cupboard  
Manufacturer: Catering Equipment Direct Limited  
Size: 900 x 300mm  
Stainless steel fully welded wall cupboard with side hinged stainless steel doors.

1 no. Dishwash Tabling  
Manufacturer: Catering Equipment Direct Limited  
Size: 900 x 650 x 900mm  
900mm Long module, stainless steel topped. Formed with anti-drip edging to three sides and shaped to couple with pass through dishwasher.

1 no. Undercounter Dishwasher Type Atlantic Premier / HE2286  
Manufacturer: Meiko Uk Limited  
Size: 600 x 600 x 850mm
Dishwasher to take up to 40 racks per hour. Drain pump and rinse booster pump is included. Class A WRC approved airgap. Factory fitted integral detergent dosing pump. Factory fitted integral rinse-aid dosing pump.

1 no. Stainless Steel Fully Welded Plinth
Manufacturer: Catering Equipment Direct Limited
Size: 600 x 600 x 300mm
Stainless steel fully welded plinth to accommodate the dishwasher.

1 no. Dishwash Tabling
Manufacturer: Catering Equipment Direct Limited
Size: 1200 x 650 x 850mm
1200mm Long module, stainless steel topped. Formed with anti-drip edging to three sides and shaped to couple with pass through dishwasher.

1 no. Refuse Sack Holder Reference F3351
Manufacturer: Lockhart Catering Equipment
Size: 430 x 380 x 860mm
Refuse sack holder for holding standard black refuse sacks.

Servery No 2 Equipment Specification (Cont):

1 no. Wash Hand Basin Type Prepara Standard Duty / HE4001
Manufacturer: Vantage
Size: 385 x 330mm
304 grade stainless steel top, complete with basin taps and waste plug on chain.

1 no. Stainless Steel Fully Welded Wall Table
Manufacturer: Catering Equipment Direct Limited
Size: 1200 x 650 x 850mm
304 grade stainless steel table with boxed upstand to rear, and 304 grade fully welded undershelf. Complete with adjustable flanged protective fixing feet.

4 no. Stainless Steel Fully Welded Wall Cupboard
Manufacturer: Catering Equipment Direct Limited
Size: 900 x 300mm
Stainless steel fully welded wall cupboard with side hinged stainless steel doors.

1 no. Undercounter Refrigerator
Manufacturer: Cooling Systems Limited
Size: 595 x 636 x 830mm
6.1 Cubic feet capacity +2 to + 12 deg C
White food safe finish with digital thermometer.
Automatic defrost

1 no. Induction Hob Type HE1176
Manufacturer: Bradshaw Microwave Limited
Portable 1500w power mini hob with 5 heat settings, touch pad control.

1 no. 4 Slot Toaster Type HE5350
Manufacturer: Lockhart Catering Equipment
Stainless steel hammer finished. Timer and energy efficient slot selection. Variable timer.
1 no. Autofill Water Boiler Lockhart Biscay / HE2256
Manufacturer:- Instanta Limited
Size:- 230 x 335 x 516mm
23 litres per hour with a 12 litre initial draw off.
Stainless steel construction throughout.

1 no. Stainless Steel Fully Welded Wall Table
Manufacturer:- Catering Equipment Direct Limited
Size:- 2300 x 650 x 850mm
304 grade stainless steel table with boxed upstand to rear, and 304 grade fully welded undershelf. Complete with adjustable flanged protective fixing feet.

Staff Room Equipment Specification:-

1 no. Stainless Steel Sink with Lever Style High Neck Taps
Size:- 1200 x 650mm
304 grade stainless steel top sink, ribbed drainer, left hand drainer, standpipe strainer.

1 no 10” Wall Clock

1 no. Occasional / Coffee Table Type CTR
Rectangular coffee table

1 no. Circular Table Type DTC
Circular table

4 no. Upholstered Easy Chair Type C302

6 no. Stacking Chairs Type F834

1 no. Wastepaper Bin

1 no. Domestic Microwave Oven

1 no. General Purpose Trolley

1 no. Wall Mounted Pinboard
Size 1000 x 1000mm

1 no. Binsac Fire Retardant Medium

1 no. Dispenser For Paper Towels

1 no. Hand Operated Dispenser For Soap

1 no. Dispenser For Paper Rolls

1 no. Automatic Electric Kettle

1 no. Automatic 2 Slice Toaster
1 no. Autofill Water Boiler Lockhart Biscay / HE2256
Manufacturer:- Instanta Limited
Size:- 230 x 335 x 516mm
23 litres per hour with a 12 litre initial draw off.
Stainless steel construction throughout.

1 no. Undercounter Refrigerator
Manufacturer:- Cooling Systems Limited
Size:- 595 x 636 x 830mm
6.1 Cubic feet capacity +2 to +12 deg C
White food safe finish with digital thermometer.
Automatic defrost

1 no. Victor Caribbean Hot Topper Type CTB1 With Style 1 Gantry
Manufacturer:- Victor Manufacturing Company Limited
Size:- 1200 x 650 x 620mm
Stainless steel base and top, stainless steel gantry / shelf with two quartz heat lamps complete with sneeze guard to customer side.

1 no. Victor Caribbean Cold Topper Type CTS With Style 1 Gantry
Manufacturer:- Victor Manufacturing Company Limited
Size:- 1200 x 650 x 620mm
Stainless steel base with rolled edges and gantry / shelf of stainless steel with fluorescent light.

1 no. Fly Killer Type Economy / HE5254
Manufacturer:- P&L Systems Limited
Size:- 270 x 145 x 260mm
30 sq meter coverage. Multi purpose unit wall mounted.

Hairdresser Equipment Specification:-
2 no. Wall Mounted Hair Dryers

2 no. Handheld Hair Dryers

1 no. Hairdressers Trolley

2 no. Back Wash Chair Units

2 no. Visitor Chairs With Arms Type F834
Manufacturer:- David Baker
Finland Stacking Chair With Arms

Sewing Repair Room Equipment Specification:-

1 no. High Back Adjustable Swivel Chair
Manufacturer:- Connect
High back adjustable swivel chair

1 no. Sewing Machine

1 no. Heat Seal Labelling Machine
1 no Table for linen sort/fold.

**Domestic Services Room Equipment Specification:**

1 no. Lockable Metal Cupboard Type ST 78  
Manufacturer: Bisley  
Lockable cupboard for the provision of cleaning materials.

2 no. Vacuum Cleaners Type GD 1010  
Manufacturer: Nilfisk

2 no. Vacuum Cleaners Type GU 350A Upright  
Manufacturer: Nilfisk

2 no. Rotary Scrubber Polisher Type SD2 230/50  
Manufacturer: Nilfisk

1 no. Semi Deep Clean Carpet Cleaner Type R3 As + Transporter

1 no. Shampooer Type Extra 16  
Manufacturer: Nilfisk

1 no. Wet / Dry Pick Up Type WD225  
Manufacturer: Nilfisk

**DSR**

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<tr>
<th>Equipment</th>
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<tr>
<td>Lockable Metal Cupboards</td>
<td>ST 78 Metal Cupboard</td>
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<td>Kickstep</td>
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<tr>
<td>Holder Binsac fire retardent large</td>
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<tr>
<td>Dispenser paper towels</td>
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</tr>
<tr>
<td>Dispenser soap hand operated</td>
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**Laundry Room Equipment Specification:**

The following is the agreed laundry equipment to be supplied, fitted and maintained by the Operator over the Services Term. Whilst the Equipment is detailed as being JLA Laundry supplied, it should be noted that the final supplier choice and specification maybe based on equipment from an equivalent manufacturer or supplier. In that event, the Operator must obtain the Trust's prior agreement (not to be unreasonably withheld or delayed if the specifications are the same or better).

It should also be noted that within the laundry storage shelving will be provided for linen awaiting transfer to the store room. A wash hand basin will also be provided for the exclusive use of the laundry staff. Details of the laundry layout are provided on JLA Laundry drawing reference J.R.H dated 13/11/00 revision A.
2 no. JLA – Ipso HW131 30 lb ‘A Type’ Washing Machines

These washing machines are constructed in high quality stainless steel cabinets, offering a high build quality and increased life. The washing machines will be bolted to the floor ensuring a reduction in vibration results.

The washing machines use the latest microprocessors, and are single button programme controlled making for simple operation.

The units use a high extraction speed of 1000rpm, giving maximum water extraction for heavy cotton items. This will ultimately reduce drying times.

The units provide thermal disinfection through the optional boil wash programme, which complies with HSG (95) 18 and results in minimizing cross infection.

The machines also meet with the requirements of the Water Regulatory Advisory Service.

2 no. JLA – ADG 50 lb Gas Tumble Dryers

These tumble dryers are matched to take the load from the washers, saving labour time and energy.

Highest build quality and reliability minimizing breakdowns. The tumble dryers will be bolted to plinths ensuring a solid base is provided. Exhaust ducting will also be provided to meet with current Health and Safety regulations.

They have a crease guard facility to minimize the need for hand finishing. The tumble dryers have a simple microprocessor control, which provide automatic drying cycles and cool down to save time and energy.

1 no. Domestic style clothes spinner with a 9 lb capacity.

1 no. Silc S/AAR Ironing Table (Including Blow Down Vessel)

This ironing table has a built in boiler giving a powerful stream jet giving excellent finishing results in a short space of time. The ironing table will have exhaust ducting to meet with current Health and Safety regulations.

This unit has a built in vacuum to hold garments to table fixing pleats

This machine will be connected to a central water supply ensuring the unit automatically fills as and when required.

1 no. Mobile Clothes Racking
1800mm long on heavy duty castors.

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<th>Garment Rails</th>
<th>Garment Rail PE/12</th>
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<td>Patient Laundry Bags</td>
<td>Trolley Type WT/9 With Bags</td>
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<td>Hangers Set</td>
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<td>Garment Rail PE/12 (Included)</td>
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Plan of Property
PART K

SERVICES REQUIREMENTS

Introduction

Subject to the terms and conditions of this Agreement, the Operator shall be responsible for the management and performance of all aspects of the Services. The Operator shall execute the following functions in accordance with Part H of the Schedule:

- Monitoring and review of all Services.
- Provision of management information, monitoring reports, statistics and data relating to the Facilities.
- Scheduling of maintenance and its completion.
- Monitoring adherence to all quality assurance, health and safety plans and policies.
- Ensuring that all Services are carried out so that disruption is kept to a reasonable minimum.

Explanatory Notes

The first column of the Services Table set out below details each of the Services that must be provided and the Performance Requirements in the second column specify the requirements of the Trust in respect of each Service. The Period for Remedy as defined in Part H of the Schedule for plant, system and other failures causing loss or depletion of a Service is shown in the third and fourth columns of the Services Table. In the fifth column (“Failure Type”), items marked “A” attract deductions relating to Availability Failure in respect of the Weighted Spaces affected and items marked “NSS” attract deductions relating to Non Space-related Service Shortfall. The sixth column shows the level of deduction which falls to be made in terms of Part B of the Schedule (Payment Mechanism) in relation to Non Space-related Service Shortfalls. The consequences of shortfalls in respect of the Services are set out in Part B of the Schedule.

It is possible for one incident to fall into more than one entry of the Services Table.

Resolution

Resolution shall be considered to have been achieved when the relevant Performance Requirement has been met.

Subject to the provisions of Part H of the Schedule, in the event that the Operator has used temporary measures or repairs in order to meet the relevant Performance Requirements, the Operator shall replace such temporary measures or repairs with permanent ones as soon as reasonably practicable. The Operator shall upon being requested to do so by the Trust, forthwith demonstrate to the Trust which steps it has taken to achieve such permanent measures (including replacement if required) or repairs.
**Immediate**

Where a Period for Remedy is stated as being “Immediate” such Period for Remedy shall be 5 minutes from Intimation of a Failure in terms of Part H of the Schedule or where the Charge Nurse (acting reasonably) has determined that there is a material threat to the health, safety and/or security of the patients and has Intimated the Failure.

**Operation of the Services**

The Operator shall procure that all parties involved in the Services shall operate the Services so as not to interfere unnecessarily with the convenience of the Trust or any of the patients or any other person lawfully present in or using the House.

**BUILDING MAINTENANCE SERVICES SPECIFICATION**

**Health and Safety of Individuals**

The Operator shall consult with the relevant Authorities (i.e. Police, Fire Brigade and the Health and Safety Executive) and shall implement all mandatory recommendations made by the relevant Authorities within the time scale agreed between the Operator and the Trust.

The Operator shall maintain an up to date fire certificate at all times.

The Operator shall provide all fire fighting equipment, fire escapes and access to them all in accordance with Applicable Laws.

The Operator, in consultation with the Trust, shall ensure that there is appointed a Fire Precautions Officer.

The Operator shall carry out fire prevention audits at intervals specified by the Trust Manager.

**Security of the Site**

The Operator shall maintain a secure environment throughout the House and the gardens to ensure compliance with the Design Specification. In particular, the Operator shall ensure that all systems are put in place to stop any unauthorised persons gaining access to the House and that such systems are fully functioning at all times. The Operator shall also ensure that all systems are put in place to stop residents suffering from dementia “wandering” are fully functioning.

The Operator shall be responsible for the provision of CCTVs in accordance with the Design Specification and shall ensure that such CCTVs function properly at all times. Pictures shall be relayed back to a monitor via a sequencer. The CCTV cameras shall be in continuous operation. The Operator shall ensure that the recordings taken by the CCTV cameras and displayed on the relevant monitors are checked frequently by the Receptionist during Working Hours for any incidents which ought to be reported to the Police or any other emergency service. The monitors shall be placed in positions such that they can easily be viewed by the Receptionist. If such incident occurs the Operator shall ensure that the relevant emergency service is contacted.
forthwith. The Operator shall keep all recordings made by the CCTVs for at least 1 month and shall deliver such recordings to the Trust upon demand.

Suitable external lighting shall be required to ensure CCTV surveillance systems are not compromised during periods of reduced daylight and as such the external lighting shall be designed to deliver the required level of illuminance, this lighting to be automatically initiated by a photocell control.

The Operator shall ensure that all secure garden areas shall have electronically operated locking systems with vandal proof push button combination locks and isolating switches; these will be integrated into the fire alarm system such that they open in the event of an alarm.

The Operator shall ensure that all physical and mechanical aspects relating to security of the Site conform to the requirements of this Agreement.

**Helpdesk**

The Operator shall ensure that a manned Helpdesk facility is continuously available twenty four hours a day. The Helpdesk contact number shall be prominently displayed within the House.

The Operator shall ensure that all calls to the Helpdesk are answered within thirty seconds by a Helpdesk operator in person and not by means of a pre-recorded message, voicemail or other means of automatic telephone answering service. All Failures require to be reported to the Helpdesk in accordance with Part H of the Schedule.

The Operator shall ensure that all Intimations (as “Intimations” is defined in Part H of the Schedule (Performance Monitoring)) shall be logged by the Helpdesk in accordance with the provisions of Part H of the Schedule.

**Building Fabric Maintenance**

The Operator shall be responsible for maintaining, repairing, replacing and/or renewing all internal building elements including fabric, fixtures and all finishes, fittings and carpets to at least the same standard as that prescribed by the Design Specification.

All repairs whether or not they are of a temporary nature must be of a high standard.

**M & E Services**

The Operator shall carry out periodic testing of the electrical distribution system, fire alarms and associated equipment (the fire alarm being tested to BS5839 standard or such equivalent, standard as may apply from time to time) temperature limiting valves, and water supplies both from mains bourne and tank supplies, at intervals and at times agreed with the Trust in advance and in any event when necessary to ensure compliance with Applicable Laws, HTM Guidelines and Industry Standards.
Grounds Maintenance

The Operator shall be responsible for the provision of the Ground Maintenance Services to ensure compliance with the Design Specification.

All ground maintenance operations shall be executed in a tidy and workmanlike manner and in accordance with good horticultural practice and all relevant regulations and codes of practice. In particular, the Operator shall ensure that the operatives adopt an approach to the delivery of the Ground Maintenance Services which is not only “environmentally conscious” but also takes into account the physical and mental state of the residents. The Operator shall therefore make minimum use of pesticides and herbicides and use alternatives to peat.

Staff Safety

The Operator shall ensure that the operatives wear, where appropriate, safety clothing and footwear.

The Operator shall be responsible for implementing measures necessary for the protection of persons on the site, in accordance with Good Industry Practice.

The Operator shall ensure that operatives take all reasonable precautions when handling materials and chemicals and shall ensure full compliance with Health and Safety and COSHH Regulations. All chemicals used shall be approved under the Agricultural Chemical Approved Scheme. The Operator will give the Trust due notice prior to commencing spraying operations.

Grassed Areas

The Operator shall be responsible for keeping the average length of grass below 50 millimetres. The Operator shall ensure that all reasonable endeavours are used to keep the grass free from broad leafed weeds and moss. The Operator shall be responsible for the removal of all clippings falling on roads and paths as quickly as possible. The Operator shall ensure that all litter, leaves and debris, irrespective of source, will be collected and removed prior to mowing.

Trees, Hedges and Plants

The Operator shall be responsible for establishing and keeping the landscaped areas in a neat and tidy condition free from litter, weeds and leaves. Borders shall be forked over as necessary and all trees, hedges and plants will be pruned to prevent encroachment over windows, footpaths, roads, signs, and fire hydrants. All fertilisers, pesticides and bark or woodchip mulch shall be applied when appropriate. Hedges shall be trimmed and cleaned out as necessary. The Operator shall be responsible for the disposal of all arisings.

Litter Collection

The Operator shall be responsible for the collection and removal from Site of all extraneous rubbish and litter detrimental to the appearance of the House including bricks, paper, confectionery and other wrappings, bottles, cans and other debris. Emptying of litter bins and removal of litter shall be carried out on a regular basis throughout the whole of the Site.
**Pest Control**

The Operator shall maintain a pest free environment throughout the House in a manner which causes minimum disruption to residents, visitors, Trust staff and all other users. All works shall be conducted in a manner appropriate to the use of the House.

The Operator must provide a pest control service which maintains a pest free environment throughout the Facilities and removes problems associated with birds and foxes. Pest control measures including appropriate treatment must commence whenever intrusion and infestation which breaches Applicable Laws or has a negative affect on the provision of the Services are identified. A pest control programme and time scale shall be agreed with the Trust Representative acting reasonably in relation to any pest control related incident. The Operator shall be responsible for destroying rodents at the Facilities and exterminating infestations of ants, stored product insects, biting/stinging insects and fly breeding insects (hereinafter, collectively, referred to as “Pests”) in accordance with a programme and within the timescale agreed between the Operator and the Trust, both Parties acting reasonably. Where the presence of Pests has reached a level so as to affect the health and safety of the residents, visitors, Trust staff and all other users of the Facilities the Period for Remedy shall be 2 hours; in any other instance the Period for Remedy shall be one day. Pest control work must be undertaken in a manner and at a time to avoid disruption or interference to the patients and to the Services at the Facilities.

The Operator shall supply all materials and equipment necessary to carry out the work. The Operator shall use only pesticidal products and pest control techniques which have been approved for their intended use under applicable regulations.

The Operator shall be responsible for establishing a programme setting out the preventative measures taken by the Operator in order to ensure that the House is kept pest free. The Operator shall ensure that such programme is maintained, amended and kept up to date at all times.

**External Cleaning**

The Operator shall clean the external elements (other than windows and glazing, stonework and brickwork) (“the External Elements”) of the House once every calendar year (on a date determined by the Trust acting reasonably) to the satisfaction of the Trust (acting reasonably).

In the event that non routine cleaning operations are necessary, the Operator shall ensure that where such non routine cleaning operations are liable to generate levels of noise which interfere with the operations of the Trust or requires windows to be kept closed or otherwise are potentially disruptive to the operations of the Trust such cleaning operations are to be carried out at the times determined by the Charge Nurse.

The Operator shall ensure that all external graffiti is removed quickly with rapid initial clean to obscure or remove offensive items. Following such initial clean the Operator shall, if reasonably necessary, submit an action plan to the Trust within one day of the initial clean having been completed. Within one day of such plan having been submitted to the Trust, the Trust and the Operator (both Parties acting reasonably) shall agree on the timescale within which the Operator
shall remove the graffiti completely and return the area affected by the graffiti to a condition which complies with the relevant Design Specification.

**Equipment**

The Operator shall ensure that the Equipment is fully Functional at all times and complies with the Design Specification. The Operator shall be responsible for replacing and/or renewing the Equipment to at least the same standard as that prescribed by the Design Specification.

All repairs relating to the Equipment, whether or not they are of a temporary nature, must be of a high standard.

The Operator shall carry out periodic testing of portable electrical equipment, fixed electrical equipment, insurable plant e.g., at intervals and at times agreed with the Trust in advance and in any event, when necessary, to ensure compliance with Applicable Laws, HTM, Guidelines, and any other Industry Standards and to ensure that Equipment is fully Functional at all times.

**Receptionist and Administrative Services**

The Operator shall ensure that reception is manned at all times during Office Hours (9am to 5pm weekdays and 12 noon to 4pm at weekends) and that visitors are welcomed to the House.

All telephone calls will be received and directed and enquiries answered during Office Hours.

The Operator will ensure that clerical/secretarial support is provided to the Charge Nurse together with general secretarial and clerical support for other clinical staff.

The Operator shall ensure that the medical records are correctly filed.

The Operator shall also be responsible for managing deliveries and collections during Office Hours.
## SERVICES TABLE

<table>
<thead>
<tr>
<th>BUILDING MAINTENANCE SERVICES</th>
<th>Performance Requirements</th>
<th>Period for Remedy</th>
<th>Period for Remedy</th>
<th>Failure Type</th>
<th>Trust’s Deduction Grade</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Provision in accordance with Applicable Laws to allow occupation of a Space</td>
<td>Immediately</td>
<td>Immediately</td>
<td>A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Implementing all recommendations in accordance with the Services Requirements</td>
<td>2 days</td>
<td>2 days</td>
<td>A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Carrying out fire prevention audit in accordance with the Services Requirements</td>
<td>2 days</td>
<td>2 days</td>
<td>NSS E</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Maintaining up-to-date fire certificate</td>
<td>Immediate</td>
<td>Immediate</td>
<td>A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Provision and maintenance of a secure environment within the House and the landscaped areas in accordance with the Services Requirements</td>
<td>Immediate</td>
<td>Immediate</td>
<td>NSS E</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Provision of fully functioning patient/nurse call system in accordance with the Design Spec</td>
<td>1 hr</td>
<td>4 hrs</td>
<td>A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Provision to ensure compliance with the Design Specification and the Services Requirements.</td>
<td>1 hr</td>
<td>4 hrs</td>
<td>NSS E</td>
<td></td>
</tr>
<tr>
<td></td>
<td>To be monitored frequently by the Receptionist</td>
<td>1 hour during Receptionist working hours</td>
<td>N/A</td>
<td>NSS A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Provision of each Space to allow occupation of such Space in accordance with all Applicable Laws</td>
<td>1 hr</td>
<td>4 hrs</td>
<td>A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Helpdesk to be manned and continuously available in accordance with the Services Requirements</td>
<td>Immediate</td>
<td>Immediate</td>
<td>NSS E</td>
<td></td>
</tr>
</tbody>
</table>

EDIN 306956 v 16
<table>
<thead>
<tr>
<th>Service Type</th>
<th>Description</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Building Fabric Maintenance</strong></td>
<td>Commencing the carrying out of maintenance in accordance with the Detailed Maintenance Schedule</td>
<td>1 hour N/A A</td>
</tr>
<tr>
<td><strong>Building Fabric</strong></td>
<td>Wind and watertight at all times</td>
<td>1 hr 2 hrs A</td>
</tr>
<tr>
<td></td>
<td>Provision in accordance with the Design Specification</td>
<td>2 weeks 2 weeks A</td>
</tr>
<tr>
<td><strong>External Aesthetic</strong></td>
<td>No visible disfigurement</td>
<td>3 months 3 months A</td>
</tr>
<tr>
<td><strong>Building Interior</strong></td>
<td>Provision of fittings and fixtures provided by the Operator in terms of the Design Specification which perform properly the tasks for which they were designed. Replacing and/or renewing of all internal building elements, fabric, finishings, fixtures and fittings provided by the Operator in accordance with the Services Requirements. Replacing and/or renewing of floor finishes and carpets in accordance with the Services Requirements. Provision of wall finishes, decoration and the painted surfaces of fixtures free from defects, disfigurements and discolouration in accordance with the Services Requirements. A) Failure requiring urgent resolution. B) Failure NOT requiring urgent resolution. A) A failure requiring urgent resolution occurs when the Charge Nurse, acting reasonably, determines that the health and safety and well being and/or security of the patients is at risk; B) A failure NOT requiring urgent resolution occurs when the Charge Nurse determines that the health and safety and well being of the patients is NOT at risk.</td>
<td>4 hrs 1 month A</td>
</tr>
<tr>
<td><strong>Mechanical and Electrical Systems</strong></td>
<td>Mechanical and Electrical Systems</td>
<td>1 hr 4 hrs A</td>
</tr>
<tr>
<td><strong>Heating System</strong></td>
<td>Provision to allow occupation of a Space in accordance with relevant Industry Standard.</td>
<td>1 hr 4 hrs A</td>
</tr>
<tr>
<td></td>
<td>Provision of heating system to ensure compliance with Design Specification (Room Data Sheets)</td>
<td>1 hr 4 hrs A</td>
</tr>
<tr>
<td><strong>Mechanical ventilation (other than space cooling)</strong></td>
<td>Provision to ensure compliance with the Design Specification</td>
<td>24 hrs 24 hrs A</td>
</tr>
<tr>
<td><strong>Fire Alarm</strong></td>
<td>Provision to ensure compliance with the Design Specification or provision of a mobile fire patrol during the period of reprovision of permanent system.</td>
<td>30 mins 2 hrs A</td>
</tr>
<tr>
<td></td>
<td>Reprovision of permanent fire alarm system</td>
<td>24 hours 24 hours A</td>
</tr>
<tr>
<td><strong>Hearing Induction Loop</strong></td>
<td>Provision to ensure compliance with Design Specification</td>
<td>3 days 3 days N53 C</td>
</tr>
<tr>
<td>Service</td>
<td>Provision to ensure compliance with Design Specification</td>
<td>1 hr</td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>--------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Electrical Distribution System</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cabling (voice)</td>
<td>Provision to ensure compliance with Design Specification</td>
<td>4 hrs</td>
</tr>
<tr>
<td>Generator</td>
<td>Provision to ensure compliance with Design Specification</td>
<td>Immediate</td>
</tr>
<tr>
<td>Drainage</td>
<td>Provision to allow occupation of a Space in accordance with Applicable Laws.</td>
<td>2 hrs</td>
</tr>
<tr>
<td>Hot and Cold Water Supplies</td>
<td>Provision of constant and safe supply to allow occupation of a Space in accordance with Applicable Laws.</td>
<td>2 hrs</td>
</tr>
<tr>
<td>Lighting</td>
<td>Provision of emergency lighting to allow occupation of a Space in accordance with Applicable Laws.</td>
<td>1 hr</td>
</tr>
<tr>
<td>Lighting</td>
<td>Provision of lighting levels in accordance with CIBSE.</td>
<td>2 hrs</td>
</tr>
<tr>
<td>Lighting</td>
<td>Provision of lighting levels as set out in the Design Specification</td>
<td>12 hrs</td>
</tr>
<tr>
<td>Any other failure</td>
<td></td>
<td>24 hours</td>
</tr>
<tr>
<td>External Access</td>
<td>Provision of pedestrian and vehicular access in accordance with the Design Specification to, and egress from, (a) the main entrance of the House, (b) the access road, and (c) the car parks.</td>
<td>15 mins</td>
</tr>
<tr>
<td>Grounds Maintenance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grounds Maintenance</td>
<td>Completion of maintenance in accordance with the Detailed Maintenance Schedule.</td>
<td>4 hrs</td>
</tr>
</tbody>
</table>

(i) use best endeavours to keep free from snow and ice at changes of shift i.e. 6am, 2pm and 10pm. 15 mins 15 mins N33 E

(ii) use best endeavours to keep free from snow and ice at other times 1 hr 2 hrs N33 D

(iii) provision of temporary repairs 1 day 1 day N33 D

(iv) provision of permanent repair 2 weeks 2 weeks A
<table>
<thead>
<tr>
<th><strong>Landscaped Areas</strong></th>
<th>Performance of services to ensure compliance with the Services Requirements.</th>
<th>1 day</th>
<th>1 day</th>
<th>N33</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Prevention of pests</strong></td>
<td>Provision in accordance with the Services Requirements (health &amp; safety)</td>
<td>2 hours</td>
<td>2 hours</td>
<td>A</td>
<td></td>
</tr>
<tr>
<td><strong>Elimination of Pests</strong></td>
<td>Provision in accordance with the Services Requirements (health &amp; safety)</td>
<td>2 weeks</td>
<td>2 weeks</td>
<td>A</td>
<td></td>
</tr>
<tr>
<td><strong>External Cleaning</strong></td>
<td>Cleaning of the exterior of Findlay House in accordance with the Services Requirements</td>
<td>2 days</td>
<td>2 days</td>
<td>N33</td>
<td>B</td>
</tr>
<tr>
<td>Graffiti removal - external, initial clean in accordance with the Services Requirements</td>
<td>2 days</td>
<td>2 days</td>
<td>N33</td>
<td>B</td>
<td></td>
</tr>
<tr>
<td>Graffiti removal - external, final clean in accordance with the Services Requirements</td>
<td>2 days</td>
<td>2 days</td>
<td>N33</td>
<td>B</td>
<td></td>
</tr>
<tr>
<td><strong>Fences/walls</strong></td>
<td>Provision of fences/walls in accordance with the Design Specification</td>
<td>3 days</td>
<td>3 days</td>
<td>A</td>
<td>D</td>
</tr>
<tr>
<td><strong>Hard Surfaces</strong></td>
<td>Provision of all hard surfaces (including hard surfaces in the landscaped areas, access road (including any pavements) and the car park) in accordance with the Design Specification</td>
<td>4 days</td>
<td>4 days</td>
<td>N33</td>
<td>D</td>
</tr>
</tbody>
</table>

**EQUIPMENT**

| | Provision of Equipment that complies with Applicable Laws and Good Indemnity Practice. | 1 day | 1 day | A |
| | Provision of fully Functioning Equipment in accordance with the Services Requirements | 2 days | 2 days | N33 | D |

**RECEPTION AND ADMINISTRATION**

<p>| <strong>Reception duties</strong> | Man reception to ensure relatives and visitors are welcomed to the House during Office Hours (9am to 5pm weekdays and 12 noon to 4pm at weekends). | 10 minutes | N33 | A |
| <strong>Telephone duties</strong> | Receive and direct telephone calls and enquiries during Office Hours (9am to 5pm weekdays and 12 noon to 4pm at weekends). | 10 minutes | N33 | A |
| <strong>Clerical duties</strong> | Provide clerical/secretarial support during Office Hours (9am to 5pm weekdays and 12 noon to 4pm at weekends) to the Charge Nurse together with general secretarial and clerical support for other clinical staff. | 1 hour | N33 | A |
| <strong>Medical records</strong> | Responsible for filing of medical records; this work to be carried out during Office Hours (9am to 5pm weekdays and 12 noon to 4pm at weekends). | 1 hour | N33 | A |</p>
<table>
<thead>
<tr>
<th>Deliveries and collections</th>
<th>Responsible for managing deliveries and collections during Office Hours (9am to 5pm weekdays and 12 noon to 4pm at weekends).</th>
<th>10 minutes</th>
<th>N53</th>
<th>A</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PEST CONTROL</strong></td>
<td>Maintain a pest free environment throughout the Facilities</td>
<td>1 day</td>
<td>N53</td>
<td>C</td>
</tr>
<tr>
<td></td>
<td>Destroy rodents and exterminate infestations of insects and remove the problems associated with birds</td>
<td>2 hours</td>
<td>N53</td>
<td>C</td>
</tr>
<tr>
<td></td>
<td>Commence pest control measures including appropriate investigation and treatment whenever intrusion and infestation which breaches Applicable Law or has a negative affect on the provision of the Services are identified.</td>
<td>2 hours</td>
<td>N53</td>
<td>C</td>
</tr>
</tbody>
</table>

**Deduction Grades**

<table>
<thead>
<tr>
<th>Grade</th>
<th>Amount (Indexed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>£20</td>
</tr>
<tr>
<td>B</td>
<td>£40</td>
</tr>
<tr>
<td>C</td>
<td>£60</td>
</tr>
<tr>
<td>D</td>
<td>£100</td>
</tr>
<tr>
<td>E</td>
<td>£200</td>
</tr>
</tbody>
</table>
PART L

FINDLAY HOUSE TITLE DEEDS

1. Feu charter by Sydney Richardson Christie Miller of Craigentinny to the Parish Council of the Parish of Leith recorded GRS (Edinburgh) 4 November 1901.

2. Minute of agreement between The Secretary of State for Scotland and the South East Scotland Electricity Board dated 7 and 23 February, both 1953.

3. Wayleave agreement between South East Scotland Electricity Board and The Secretary of State for Scotland dated 7 May 1954.

4. Minute of agreement between The Secretary of State for Scotland and W.R.V.S. Trustees Limited dated 18 May and 2 June, both 1967.

5. Minute of agreement between The Secretary of State for Scotland and Siddal & Hilton Limited dated 7 and 21 May, both 1973.


7. Notarial instrument in favour of the Parish Council of the City Parish of Edinburgh recorded GRS (Edinburgh) 11 April 1921.

8. Notice of title on behalf of The Secretary of State for Scotland recorded GRS (Midlothian) 6 September 1948.

9. Memorandum of agreement for commutation of casualties between Lieutenant Colonel George Dalrymple and the Parish Council of the Parish of Leith recorded GRS (Edinburgh) 27 July 1915.

10. Dean of Guild Court of Edinburgh act and warrant in favour of The Secretary of State for Scotland dated 22 February 1952.

11. Dean of Guild Court of Edinburgh act and warrant in favour of The Secretary of State for Scotland dated 16 May 1952.

12. Dean of Guild Court of Edinburgh act and warrant in favour of The Secretary of State for Scotland dated 26 December 1952.

13. Dean of Guild Court of Edinburgh act and warrant in favour of The Secretary of State for Scotland dated 8 January 1954.


15. Dean of Guild Court of Edinburgh act and warrant in favour of The Secretary of State for Scotland dated 7 October 1955.
16. Building warrant reference number 93/3651 and relative completion certificate.

17. Structural design certificate for alterations and/or extensions dated 14 October 1993.


24. Disposition by The Secretary of State for Scotland in favour of the East and Midlothian Health Service Trust recorded CRS (Midlothian) 20 May 1996.


27. Disposition by John G M Nisbett to Trustees under Deed of Trust by said granter recorded GRS (Midlothian) 20 December 1965.


29. Notice of Title by Lothian Primary Care National Health Service Trust recorded GRS (Midlothian) 19 September 2001.

30. Letter from Turcan Connell dated 11 December 2001 (Superior’s consent).

31. Registers of Scotland P16 Report dated 12/12/01.

32. Form 11A brought down to 2 June 2002

Drawing Numbers A 99 071/P.02rev C2 and A99.071 L (90) 002 revA
PART M

HTM LIST

The following Health Technical Memoranda:-

Engineering HTMS

SHTM 2007  Electrical services supply and distribution
SHTM 2010  Sterilization
SHTM 2011  Emergency electrical services
SHTM 2014  Abatement of electrical interference
SHTM 2015  Bedhead Services
SHTM 2020  Electrical safety code for low voltage systems (Escode – LV)
SHTM 2021  Electrical safety code for high voltage systems (Escode – HV)
SHTM 2023  Access and accommodation for engineering services
SHTM 2025  Ventilation in healthcare premises
SHTM 2027  Hot and cold water supply, storage and mains services
SHTM 2035  Mains signalling
SHTM 2040  The control of legionellae in healthcare premises – a code of practice
SHTM 2045  Acoustics
SHTM 2050  Risk management in the NHS estates
SHTM 2055  Telecommunications (Telephone exchanges)
SHGN  Structured Cabling for IT systems
SHTM 2065  Healthcare waste management – segregation of waste streams in clinical areas
SHTN5  The Operation and Management of Emergency Electrical Generators in Scottish Healthcare Premises
SHGN  Safe, hot water and surface temperatures
SHTN6  The Safe Operation and Maintenance of Temperature Mixing Valves
SHTn2  Domestic hot and cold water systems for Scottish Healthcare
Building HTMS

HTMS 54  User Manual
HTMS 55  Windows
HTMS 57  Internal Glazing
HTMS 58  Internal doorsets
HTMS 59  Ironmongery
HTMS 60  Ceilings
HTMS 61  Flooring
HTMS 63  Fitted storage systems (in treatment rooms only)
HTMS 64  Sanitary assemblies (Sanitary assemblies in common toilet areas and assisted bathroom/shower areas. Ensuites to be of domestic type)
HTMS 66  Cubicle curtain track
HTMS 68  Duct and panel assemblies (duct and panel assemblies should apply where IPS systems have been used – i.e. bathroom areas)
HTMS 69  Protection (Complied with where applicable – i.e. corridor and toilet areas)
HTMS 70  Fixings
HTMS 71  Materials management modular storage (Relevant parts applicable)

Health Building Notes (HBN)

1  Buildings for the Health Services
10  Catering Department
18  Office accommodation in health buildings
25  Laundry
29  Accommodation for pharmaceutical services
35  Accommodation for people with mental illness
36  Sup 1 (Not applicable HBN 40 applies)
37  Hospital accommodation for elderly people
40  Common activities spaces
41  Accommodation for staff changing
45  External works for health buildings
48  Telephone services
## General Documents

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>SHGNs</td>
<td>Pressure Systems and Transportable Gas Containers</td>
</tr>
<tr>
<td>SHGN</td>
<td>Safe Hot Water and Surface Temperature</td>
</tr>
<tr>
<td>SHTN 2</td>
<td>Domestic Hot and Cold Water</td>
</tr>
<tr>
<td>SHTN 4</td>
<td>General purpose Estates and Facilities Permit to Work Systems</td>
</tr>
<tr>
<td>HGN</td>
<td>Safe disposal of Clinical Waste</td>
</tr>
<tr>
<td>HTMs</td>
<td>Fire Precautions</td>
</tr>
<tr>
<td></td>
<td>plus Fire Practice Notes 4, 6, 81, 82, 83, 84, 87 and 88</td>
</tr>
<tr>
<td>HGN</td>
<td>Static Discharges</td>
</tr>
</tbody>
</table>
PART N

Services Fee