

DATED 3 MARCH 2004

(1) SALISBURY HEALTH CARE NATIONAL HEALTH SERVICE TRUST

(2) SALISBURY HEALTHCARE FACILITIES LIMITED.

(3) CAPITA PROPERTY CONSULTANCY LIMITED (trading as
CAPITA PROJECT MANAGEMENT)

INDEPENDENT TESTER CONTRACT

THIS DEED is made 2004

BETWEEN:

1 THE SALISBURY HEALTH CARE NHS TRUST having its principal premises at Salisbury District Hospital, Odstock, Salisbury SP2 8BJ ("the Trust" which expression shall include its successors in title and permitted assignees);

2 SALISBURY HEALTHCARE FACILITIES LIMITED a private company limited by shares incorporated under English law with a registration number 4906349 and having its registered office at 5⁰⁷ Floor, Northwest Wing, Bush House, Aldwych, London WC2B 4EZ ("Project Co" which expression shall include its successors in title and permitted assignees); and;

3 CAPITA PROPERTY CONSULTANCY LIMITED trading as CAPITA PROJECT MANAGEMENT, a private company incorporated under the laws of England and Wales under registration number 02018542 and who registered office is at 61-71 Victoria Street, Westminster, London SW1H 0XA (the "Independent Tester" which expression shall include its successors in title and permitted assignees); and;

WHEREAS:

- 1 Project Co and the Trust have entered into an agreement for the design construction operation and financing of an extension to the Salisbury District Hospital (the "Project") pursuant to the Government's private finance initiative (the "Project Agreement") under the terms of which they have jointly agreed to appoint an independent tester.
- 2 Project Co has entered into the construction contract for the development of the extension aforesaid (the "Construction Contract") with the Contractor.
- 3 The Independent Tester is an independent adviser willing to provide services to Project Co and the Trust and for the benefit of the Funders.
- 4 Project Co and the Trust have jointly agreed to engage the Independent Tester to carry out the duties and obligations ascribed to the Independent Tester in the Project Agreement and Project Co has engaged the Independent Tester to carry out the duties and obligations ascribed to the Independent Tester in the Construction Contract upon the terms of this

IT IS AGREED as follows:

1 INTERPRETATION

1.1 Unless the context otherwise requires, words and expressions defined in the Project Agreement have the same meanings in this Deed as in the Project Agreement.

1.2 The headings in this Deed do not affect its interpretation.

1.3 Unless the context otherwise requires, all references to Clauses and Schedules are references to clauses of and schedules to this Deed.

2 APPOINTMENT

2.1 Project Co and the Trust jointly engage the Independent Tester and the Independent Tester agrees to perform the obligations and tasks which are ascribed to the Independent Tester are set out in Appendix 1 hereto (the "Services") upon the terms and conditions set out below.

2.2 The Independent Tester shall provide the Services independently, fairly and impartially to and as between Project Co and the Trust and in having regard to the interest of the Funders in relation to the Project Agreement. Whilst the Independent Tester may take account of any representations made by Project Co and the Trust (as appropriate) the Independent Tester shall not be bound to comply with any representations made by any of them in connection with any matter on which the Independent Tester is required to exercise his professional judgement.

2.3 Varied Services

2.3.1 The Independent Tester shall carry out and perform any varied services (the "Varied Services") required for the implementation of the Project reasonably required by the Trust and Project Co which are not included in, or which are

omitted from, those Services which are set out in Appendix 1, subject to prior agreement by the Trust and Project Co to the costs thereof.

2.3.2 If the Independent Tester shall at any time be required to perform Varied Services, it shall give to the Trust and Project Co a written estimate of the cost thereof (taking into account any reduction in work or other expense which might also occur as a result of the circumstances giving rise to the Varied Services).

2.4 The Independent Tester shall provide the Services and the Varied Services:

2.4.1 with the reasonable care and skill to be expected of a properly qualified and competent professional adviser who has held itself out as competent and experienced in rendering such services for projects of a similar size, nature, scope and complexity to the Project; and

2.4.2 in accordance with Good Industry Practice and in compliance with all applicable Law.

2.5 All instructions to the Independent Tester must be given signed by the Trust's Representative or the Project Co's Representative or such other person appointed pursuant to Clause 11 of the Project Agreement (Representatives) save that the Trust shall not give any instruction which shall vary the Services, duties or obligations of the Independent Tester under this Deed, nor increase or by reasonably likely to increase fees, nor be likely to delay completion of the Services or the Works, without first obtaining the written consent of the Project Co.

2.6 The Independent Tester shall comply with all reasonable instructions given to it by Project Co and/or the Trust except and to the extent that the Independent Tester reasonably considers that any such instructions vary or might vary the Services or its authority or responsibilities under this Deed or prejudices or might prejudice the exercise by the Independent Tester of its professional judgement in accordance with Clauses 2.2 and 2.4 above or, where issued by the Trust, increase or are reasonably likely to increase the fees and the consent of Project Co to such increase has not been obtained pursuant to Clause 4.4 hereof or otherwise (the Services as varied by any of the foregoing being referred to as "Varied Services"). The Independent Tester shall promptly confirm in writing to

Project Co and the Trust whether or not it shall comply with any such instruction setting out the grounds upon which the decision is made. The Trust and the Project Co will copy to the other any instructions which they give or purport to give to the Independent Tester.

2.7 The Trust and Project Co agree to co-operate with and provide reasonable assistance to the Independent Tester to familiarise the Independent Tester with all necessary aspects of the Project to enable the Independent Tester to carry out its obligations under this Deed.

2.8 The Independent Tester acknowledges that it has been provided with and has read copies of the relevant provisions of the Project Agreement and the Construction Contract and shall be deemed to be aware of and to have taken full account of all

the undertakings and warranties on the part of Project Co and the Trust relating to the Services and to the construction and completion of the Works which are set out in the Project Agreement and in the Construction Contract.

2.9 The Independent Tester shall on the execution of this Deed execute a deed of warranty in the form set out in Appendix 3 in favour of the Agent (as defined in the Facility Agreement which forms part of the Funding Agreements) ("the Agent").

2-10 The Independent Tester shall be entitled in performing its duties to place reasonable reliance on as-built data, quality assurance reports and procedures, commissioning reports, design team snagging lists, regular inspection reports and construction related manuals (except to the extent that, in performing the Services, the Independent Tester has formed the view that any such documents are incorrect or unreliable in any respect), all of which shall be delivered by Project Co to the Independent Tester not later than 5 Business Days prior to receipt by the Independent Tester of notice from Project Co that, in Project Co's opinion, the Works are complete. The obligations of the Independent Tester to carry out any direct inspection, reinspection, testing or witnessing which is required as part of the Services or any Varied Services shall not be reduced by this Clause.

3 DURATION

3.1 Not used.

3.2 The Parties shall hereby agree that this Deed governs all of the Services provided by the Independent Tester in relation to the Project whether before or after the date hereof.

4 FEE (Removed as commercially sensitive)

5 LIMITATIONS ON AUTHORITY

The Independent Tester in his role as Independent Tester shall not:

5.1 make or purport to make any alteration or addition to or omission from the design of the Facilities (including, without limitation, the setting of performance standards) or issue any instruction or direction to any contractor or professional consultant employed or engaged in connection with the Project; or

5.2 (unless both Project Co and the Trust consent in writing) consent or agree to any waiver or release of any obligation of Project Co or the Trust under the Project Agreement or of any contractor or professional consultant employed or engaged in connection with the Project.

For the avoidance of doubt, the Independent Tester in his role as Independent Tester shall not interfere with or give any advice or make any representation in relation to any matters which are beyond its role and responsibilities under this Deed.

6 TERMINATION

- 6.1 Project Co and the Trust may by joint notice in writing (a "Joint Notice") immediately terminate this Deed if the Independent Tester:
- 6.1.1 is in breach of any of the terms of this Deed which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Tester within 21 days of receipt by the Independent Tester of a Joint Notice specifying the breach and requiring its remedy (a "Remedy Notice");
 - 6.1.2 is guilty of any material negligence or delay in the provision of the Services or other material breach of this Deed which shall not have been remedied by the Independent Tester within 21 days of receipt by the Independent Tester of a Remedy Notice;
 - 6.1.3 not used;
 - 6.1.4 not used;
 - 6.1.5 is subject to an event analogous to any of the events set out in . Clause 44.1 (a) (Project Co Events of Default — Insolvency) of the Project Agreement.
- 6.2 If the Project Agreement is rescinded, terminated or repudiated for any reason and, notwithstanding that the validity of such rescission, termination or repudiation may be disputed, this Deed may be terminated by either Project Co or the Trust and with immediate effect.
- 6.3 Following any termination of this Deed, but subject to any set-off or deductions which Project Co or the Trust may be entitled properly to make as a result of any breach of this Deed by the Independent Tester, the Independent Tester shall be entitled to be paid in full and final settlement of any valid claim which the

Independent Tester may have in consequence thereof, any fees due under Clause 4 above in respect of the Services carried out in accordance with this Deed prior to the date of termination but not any loss of profit.

6.4 Termination of this Deed shall be without prejudice to any accrued rights and obligations under this Deed as at the date of termination (including the right of Project Co and the Trust to recover damages from the Independent Tester).

6.5 If this Deed is terminated in accordance with Clause 6.1, Project Co and the Trust shall use reasonable endeavours to engage an alternative Independent Tester within 30 days, subject to Law and public procurement rules. If within such period (or such longer period as Project Co and the Trust may agree) Project Co and the Trust are unable to procure the appointment of an alternative Independent Tester on reasonable commercial terms, the Independent Tester shall pay to Project Co and/or the Trust, as the case may be, any reasonable incremental loss, damage or extra costs suffered by each of them, such costs in the event of dispute to be determined in accordance with Clause 17.

6.6 Termination of this Deed shall not affect the continuing rights and obligations of Project Co, the Trust and the Independent Tester under Clauses 7 (Confidential Information and Copyright), 8 (Professional Indemnity Insurance), 5 (Limitations on Authority), 17 (Dispute Resolution Procedure) and this Clause or under any other Clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

7 CONFIDENTIAL INFORMATION AND COPYRIGHT

7.1 Subject to Clause 52.3 of the Project Agreement, the Independent Tester shall treat as secret and confidential and (other than to its professional advisers where reasonably necessary) shall not at any time disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to Project Co's or the Trust's technology or other know-how business plans or finances or any such information relating to a subsidiary, supplier, customer or client of Project Co or the Trust where the information was received during the period of this Deed. Upon termination of this Deed for whatever reasons the Independent Tester shall deliver up to Project Co and/or the Trust (as appropriate) all working papers, computer disks and tapes or other material and copies provided to him and copies of working papers, computer disks and tapes or other material prepared by him pursuant to this Deed.

7.2 The copyright in all reports, calculations and other similar documents provided by the Independent Tester in connection with the Project shall remain vested in the Independent Tester but the Independent Tester grants to Project Co and Trust and their nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties. The Independent Tester shall not be liable for any use by the Trust or Project Co or their appointee of any of such drawings and documents for any

purpose other than that for which the same were prepared by or on behalf of the Independent Tester.

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8 PROFESSIONAL INDEMNITY INSURANCE

8.1 (Removed as commercially sensitive)

8.2 The Independent Tester shall maintain such insurance with reputable insurers carrying on business in the United Kingdom who are acceptable to Project Co and the Trust, such acceptance not to be unreasonably withheld or delayed.

8.3 Any increased or additional premium required by insurers by reason of the Independent Tester's own claims record or other acts, omissions, matters or things particular to the Independent Tester shall be deemed to be within commercially reasonable rates.

8.4 The Independent Tester shall immediately inform Project Co and the Trust if such insurance ceases to be available at commercially reasonable rates in order that the Independent Tester and Project Co and the Trust can discuss means of best protecting the respective positions of Project Co and the Trust and the Independent Tester in respect of the Project in the absence of such insurance.

8.5 The Independent Tester shall fully co-operate with any measures reasonably required by Project Co and the Trust including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if Project Co and the Trust undertake in writing to reimburse the Independent Tester in respect of the net cost of such insurance to the Independent Tester above commercially reasonable rates or, if Project Co and the Trust effect such insurance at rates at or above commercially reasonable rates, reimbursing Project Co and the Trust in respect of what the net cost of such insurance to Project Co and the Trust would have been at commercially reasonable rates.

8.6 The Independent Tester shall, prior to commencing the provision of the Services and no less than thirty (30) days prior to renewal dates, produce for inspection by Project Co and the Trust documentary evidence that such insurance is being properly maintained.

8.7 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Deed for any reason whatsoever, including (without limitation) breach by Project Co and the Trust.

9 LIMITATION OF LIABILITY (Removed as commercially sensitive)

10 NOTICES

All notices or other communications required in connection with this Deed shall be in writing and sent by hand, by first class pre-paid post or by facsimile transmission to the Trust and

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the Project Co to the relevant address or facsimile number set out in the Project Agreement and to the Independent Tester as follows:-

Address: Eastgate House, 35-42 Newport Road, Cardiff, CF24
OSB

For the attention of: Roger Causer

Facsimile number: 02920 333778

or to such other address or facsimile number as a party to this Deed may notify to another party to this Deed in writing.

11 ASSIGNMENT

11.1 The Independent Tester shall not assign or transfer any of its rights or obligations under this Deed or sub-contract the whole or any part of the Services without the prior written consent of Project Co and the Trust, such consent not to be unreasonably withheld or delayed.

11.2 Neither Project Co nor the Trust shall be entitled to assign or transfer any of their respective rights or obligations under this Deed save that the parties hereby consent to any such assignment or transfer which is contemporaneous to the assignment or transfer of the Project Agreement and is made to the same assignee or transferee. In the event that the Project Agreement is novated to a third party, the term "Project Agreement" shall include any replacement contract arising from such novation.

11.3 The Independent Tester shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 11.2 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

12 CUMULATIVE RIGHTS AND ENFORCEMENT

12.1 Any rights and remedies provided for in this Deed whether in favour of Project Co or the Trust or the Independent Tester are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.

12.2 Subject to Clause 9 above, the duties and obligations of the Independent Tester arising under or in connection with this Deed are owed to Project Co and the Trust both jointly and severally and Project Co and the Trust may accordingly enforce the provisions hereof and pursue their respective rights hereunder in their own name, whether separately or with each other.

12.3 Project Co and the Trust covenant with each other that they shall not waive any rights, remedies or entitlements or take any other action under this Deed which would or might reasonably be expected to adversely affect the rights, remedies or

13 WAIVER

The failure of any party at any one time to enforce any provision of this Deed shall in no way affect its right thereafter to require complete performance by any other party, nor shall the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

14 SEVERABILITY

In the event that any term, condition or provision contained in this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall, to that extent, be omitted from this Deed and the rest of this Deed shall stand, without affecting the remaining clauses.

15 COUNTERPARTS

This Deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

16 VARIATION

A variation of this Deed is valid only if it is in writing and signed by or on behalf of each party.

17 DISPUTE RESOLUTION PROCEDURE

17.1 All disputes shall be resolved in accordance with terms equivalent (*mutatis mutandis*) to the Dispute Resolution Procedure as set out in the Project Agreement (excluding for the avoidance of doubt the Liaison Committee and the Related Project Disputes in paragraph 8).

17.2 Project Co, the Trust and the Independent Tester shall co-operate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this Deed.

18 GOVERNING LAW AND JURISDICTION

18.1 Subject to Clause 17 above, this Deed shall be governed by and construed in accordance with the laws of England, and (subject as aforesaid) the parties hereby submit to the non-exclusive jurisdiction of the courts of England and Wales.

18.2 No action or proceedings may be commenced against the Independent Tester for any breach of this Deed after the expiry of 12 years following the Phase 2 Actual Completion Date or the termination of this Deed, whichever is the earlier.

19 DELIVERY

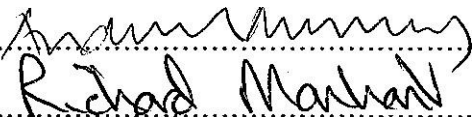
This Deed is delivered on the date written at the start of this Deed.

20 THIRD PARTY RIGHTS.

Save as expressly set out herein, no provision of this Deed is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party against any party to this Deed.

IN WITNESS WHEREOF the Parties have executed and delivered this Deed on the date first written above.

Subscribed by
Capita Property Consultancy Limited
trading as CAPITA PROJECT
MANAGEMENT at on by


.....
Richard Marshall

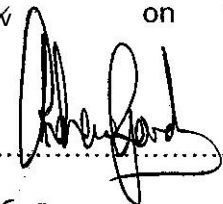
.. -Director

.....Director/Secretary

Subscribed by

at ~~10:00 AM~~ on 3 MARCH 2004
acting by

Salisbury Healthcare Facilities Limited


.....AI

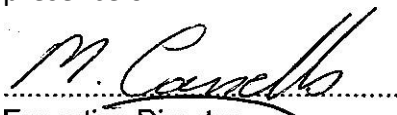
.Authorised Signatory

Tindi Capps
TRUDI CAPPS
SALTIRE COURT, 20 CASTLE TERRACE
.....VI

.. -Witness

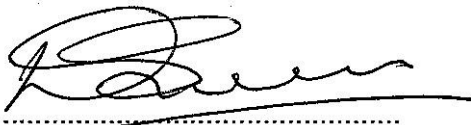
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The Corporate Common Seal of
SALISBURY HEALTH CARE NHS TRUST was hereunto affixed in the
presence of:


.....

Executive Director

MALCOLM CASSELLS
.....
Signatory Full Name


.....

Non-Executive Director

DAVID NOBLE
.....
Signatory Full Name
Signatory Full Name

Appendix 1

Scope of Services - Independent Tester Contract

The Independent Tester shall perform the role of Independent Tester as referred to in Clauses 20, 22 and 23 and the relevant Schedules of the Project Agreement and Clauses 16A, 17 and 25B of the Construction Contract (including complying with any time limits specified in such Clauses), including but not limited to the following scope of Services:

1 MONTHLY REPORT AND COMPLETION CERTIFICATION

The Independent Tester shall:

- 1.1 During the construction period, provide the Trust and Project Co with a monthly report on the activities carried out by the Independent Tester. Undertake inspections and reinspections, as necessary, in accordance with the Project Agreement. Report on the completion status of the Project, identifying any work that is not complete or is non-compliant with the Project Agreement/Construction Contract.
- 1.2 Determine whether any relevant Phase is complete in accordance with the Project Agreement/Construction Contract and advise Project Co and the Trust of the need for any additional surveys and investigations which may be necessary to demonstrate whether a relevant Phase of the Project is complete.
- 1.3 Certify the date that completion of a Phase has occurred and issue a Certificate of Practical Completion in accordance with the Project Agreement/Construction Contract.
- 1.4 Within five (5) Business Days of issue of the relevant Certificate of Practical Completion, issue a Snagging Notice specifying any Snagging Matters and an estimate of the cost of their rectification. Monitor and review rectification of such Snagging Matters in accordance with the Project Agreement/Construction Contract.
- 1.5 Review the programme for the rectification of all Snagging Matters to be carried out and advise Project Co and the Trust as appropriate.

And in order to enable the Independent Tester to discharge these primary functions which are to be performed independently, fairly and impartially to and as between Project Co and the Trust and having regard to the interests of Funders, the Independent Tester shall discharge at least the further duties described below.

2 General

The Independent Tester shall:

- 2.1 Familiarise itself with the Project Agreement (including the Project Data, the Design Quality Plan, the Construction Quality Plan and any Variations issued from time to time and any other relevant documentation or information referred to in the Project Agreement, relevant Service Level Specifications and Method Statements) and the Construction Contract to the extent necessary to be in a position to carry
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out the Services in accordance with the terms of the Project . Agreement, the Construction Contract and this Deed.

- 2.2 Following notification by Project Co, pursuant to Clauses 22.8 and 22.10 of the Project Agreement and Clause 25B of the Construction Contract, inspect and comment as required on the Works each relevant Phase.

3 Not Used.

4 PROCEDURE REVIEW

The Independent Tester shall:

- 4.1 Monitor the operation of the quality assurance procedures of the Contractor at regular intervals (maximum three (3) months) during the execution of the Works.

- 4.2 Review the proposed procedures and programmes for the testing, commissioning and Trust's occupation.

- 4.3 Monitor the procedures for the identification, approval and recording of agreed Variations to the Works in accordance with the Project Agreement.

5 CONSTRUCTION REVIEW

The Independent Tester shall:

- 5.1 Visit the Site and monitor the Works for their compliance with the Project Agreement/Construction Contract. The frequency and timing of the Independent Tester's visits are dependent on the progress of construction on Site. The Independent Tester shall agree a programme with the Contractor for the inspection of key construction processes and the completed Project. The Independent Tester shall identify any aspect of the Works which need to be inspected before being covered over by subsequent activity so that he may satisfy himself that these have been constructed in accordance with the Contractor's Quality Plan without the need for opening up.

- 5.2 Not used.

- 5.3 Not used.

- 5.4 Review any extensions to the time for completion of the Works granted or to be granted in accordance with the Project Agreement/Construction Contract.

- 5.5 Witness a sample proportion of the testing and commissioning procedures at random. The Independent Tester has indicated that these proportions should amount to approximately fifty percent (50%). The Independent Tester shall review one hundred percent (100%) of all test results. If in the professional judgment of the Independent Tester, because of the results of witnessing (or because of other circumstances) a different sampling percentage is appropriate he shall provide a detailed report in respect of that and any change in the percentage sampling
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resulting in a change of fees will be borne by Project Co, the Trust as they shall agree, failing such agreement, as determined by the Dispute Resolution Procedure.

5.6 Following the issue of the Certificate of Practical Completion, agree -a list of Snagging Matters with Project Co together with its programme for implementation.

5.7 Check the production of the relevant operating manuals, relevant approvals, test results, inspection records and as built drawings and monitor the timely handover of this documentation.

5.8 Prior to the issue of the Certificate of Practical Completion for the Phase 2 Works, examine the Trust Facilities and Trust Facilities Group 1 Equipment so that he may satisfy himself that the internal décor of the Trust Facilities and Trust Facilities Group 1 Equipment are to Estate Code Condition B.

Where the Trust Facilities and Trust Facilities Group 1 Equipment do not meet Estate Code Condition B standard due to an act, omission or due to the negligence of Project Co, this will be added to the Project Co Snagging Matters list. Where the failure to maintain the internal décor of the Trust Facilities and the Trust Facilities Group 1 Equipment to Estate Code Condition B is due to the Trust, the Independent Tester must issue a Trust Snagging Notice specifying the Trust Snagging Matters.

5.9 The Independent Tester shall co-operate with and advise Project Co in relation to Defects which appear in each Phase after the issue of the Certificate of Practical Completion and during and prior to the expiry of Defects Liability Period set out within the Construction Contract. Where defects appear in the Works and have been specified in a schedule of defects delivered to the Contractor with instructions requiring them to be made good under the Construction Contract the Independent Tester shall inspect the defects, following making good and at a date specified by Project Co, to ascertain and confirm that the scheduled defects have been made good generally in accordance with the requirements of the Project Agreement and Construction Contract.

6 PARTICIPATION IN DISPUTE RESOLUTION

As and when required by the Trust or Project Co, the Independent Tester shall participate in the Dispute Resolution Procedure of the Project Agreement (as such term is defined in the Project Agreement) to the extent that issues under the Project Agreement which have been referred to the said Dispute Resolution Procedure relate to the Independent Tester's other obligations and tasks as set out in this Appendix 1 and this Deed.

Appendix 2

Schedule of Drawdown of Fees

(Removed as commercially sensitive)

Appendix

2

Part 2

Schedule of Daily Rates

(Removed as commercially sensitive)

Appendix

3

CAPITA PROPERTY CONSULTANCY LIMITED trading as CAPITA
PROJECT

MANAGEMENT

and

THE SALISBURY HEALTH CARE NHS TRUST

and

THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND (as Agent
and

Security Trustee)

and

SALISBURY HEALTHCARE FACILITIES LIMITED

Collateral Warranty in favour of the Agent from the Independent Tester in
connection with the Salisbury District Hospital

Agreement between

CAPITA PROPERTY CONSULTANCY LIMITED trading as CAPITA PROJECT MANAGEMENT, a company registered in England under number 02018542 whose registered office is at 61—71 Victoria Street, Westminster, London, SW1H 0XA (the "Independent Tester"); and

SALISBURY HEALTHCARE FACILITIES LIMITED a private company limited by shares incorporated under English Laws with a registration number 4906349 and having its registered office at 5th Floor, Northwest Wing, Bush House, Aldwych, London WC2B 4EZ ("Project Co" which expression shall include its successors in title and permitted assignees);

and

THE SALISBURY HEALTH CARE NHS TRUST having its principal premises at Salisbury District Hospital, Odstock, Salisbury SP2 8BJ ("the Trust" which expression shall include its successors in title and permitted assignees); and

THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND (registered number C-1) whose registered office is at Lower Baggot Street, Dublin 2, Ireland and a place of business in the United Kingdom at 36 Queen Street, London EC4R 1HJ in its capacity as agent and security trustee on behalf of the Finance Parties (as that term is defined in the aftermentioned Facility Agreement) (the "Bank" which term shall include all permitted assignees under this Agreement).

WHEREAS

- A. The Bank has entered or are about to enter into an agreement (the "Facility Agreement") with inter alios Project Co for the provision of certain finance in connection with the design, construction, fitting out, completion and commissioning of new hospital facilities and related and other works at Salisbury District Hospital ("the Development") all as more particularly described in the Employer's Requirements referred to in the Construction Contract referred to below.
- B It is a condition precedent of the Facility Agreement that the Independent Tester, the Bank, the Trust and Project Co enter into this Agreement.
- c By an Agreement ("the Appointment") entered into or to be entered into among the Trust, Project Co and the Independent Tester, Project Co and the Trust ("the Appointors") have appointed the Independent Tester as independent tester (as defined in the Project Agreement referred to below) in connection with the Works to carry out the services and functions as set out in the Appointment.
- D Project Co has entered into or is about to enter into a project agreement (the "Project Agreement") with the Trust whereby Project Co undertakes inter alia to design and build the Development.
- E Project Co has entered into or is about to enter into a contract ("the Building Contract") with M J Gleeson Group plc ("the Building Contractor") whereby the Building Contractor undertakes inter alia to design and build the Development.

F The parties hereto intend this Agreement to and it shall have effect as a Deed.

NOW THIS AGREEMENT WITNESSETH as follows:-

- 1 The Independent Tester warrants to the Bank that it has exercised and will continue to exercise the reasonable skill, care and diligence of an experienced technical consultant in the performance of its services to the Appointers required by the Appointment. The Independent Tester shall owe no greater obligations to the Bank under this Deed than it owes to the Trust and the Project Co under the Appointment and shall be entitled in any proceedings under this Deed to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability (but excluding set offs or counterclaims) as it would have had if the Bank had been named as joint client with the Trust and Project Co under the Appointment, provided that the Independent Tester shall not be entitled to argue that the Bank has suffered no loss or to disclaim liability on the basis that the Trust and Project Co have suffered no loss or that the Bank has suffered a loss which is or may be different from loss (if any) suffered by the Trust and Project Co.
- 2 The Bank has no authority to issue any direction or instruction to the Independent Tester under the Appointment in relation to the Building Contract unless and until the Bank has given notice under clauses 3 or 4. The Bank has no liability to the Independent Tester in relation to fees and expenses under the Appointment unless and until the Bank has given notice under clause 3 or 4.
- 3 The Independent Tester agrees that its duties, obligations and liabilities as defined in the Appointment shall apply for the benefit of the Appointers, to the extent that they so apply, unless and until (i) the occurrence of an Event of Default (as defined in the Facility Agreement), (ii) the Bank exercises any "step-in" rights in relation to Project Co or the Development; or (iii) the Bank in any other circumstances exercises any rights available to it to seek to complete the Works in lieu of Project Co whereupon the Independent Tester will, if so required by notice in writing given by the Bank (and subject to Clause 5) accept the instructions of the Bank or its appointee to the exclusion of Project Co (in relation only to Project Co's rights and obligations under the Appointment) upon the terms and conditions of the Appointment. Project Co and the Trust acknowledge that the Independent Tester shall be entitled to rely on a notice given to the Independent Tester by the Bank under this Clause 3 (and copied to the Trust and Project Co) as conclusive evidence for the purposes of this Agreement of the occurrence of an Event of Default under the Facility Agreement or any other event listed in paragraphs (ii) and/or (iii) above.
- 4 The Independent Tester further agrees that it will not without first giving the Bank not less than 30 days notice in writing exercise any right it may have to terminate or suspend the Appointment or to treat the same as having been repudiated by Project Co or the Trust or to discontinue the performance of any services to be performed by the Independent Tester pursuant thereto. Such right to terminate or suspend the Appointment with Project Co and the Trust or treat the same as having been repudiated or discontinue performance shall cease if, within such period of notice and subject to Clause 5, the Bank shall give notice in writing to the Independent Tester requiring the Independent Tester to accept the instructions of the Bank or its appointee (in relation only to Project Co's rights and obligations under the Appointment) to the exclusion of Project Co upon the terms and conditions of the Appointment. Such notice period shall not operate as a waiver by the Independent Tester of any breach of the terms of the Appointment by the Trust or Project Co.

- 5 It shall be a condition of any notice given by the Bank under Clauses 3 or 4 that the Bank or its appointee accepts Project Co's liability for payment of the fees and expenses payable by Project Co to the Independent Tester under the Appointment and for performance of Project Co's obligations including payment of any fees and expenses outstanding at the date of

such notice. Upon the issue of any notice by the Bank under Clauses 3 or 4, the Appointment shall continue in full force and effect as if no right of termination on the part of the Independent Tester had arisen and the Independent Tester shall be liable to the Bank and its appointee under the Appointment as if it was Project Co under the Appointment. If any notice given by the Bank under Clauses 3 or 4 requires the Independent Tester to accept the instructions of the Bank's appointee, the Bank shall be liable to the Independent Tester as guarantors for the payment of all sums from time to time due to the Independent Tester from the Bank's appointee.

- 5.1 The Independent Tester hereby grants to the Bank a perpetual, transferable, royalty-free, non-terminable, non-exclusive licence (carrying the right to grant sub-licences) to copy and use such of the Project Data (as defined in the Building Contract) and any computer programmes, Intellectual Property Rights (as defined in the Building Contract) and data relating to the Works as is the property of the Independent Tester (the "Documents") for any purpose whatsoever connected with the Development and to reproduce the designs and content of them for any purposes in connection with the Development relating to the design construction, completion, commissioning or testing of the Development, the management and provision of the Services (as defined in the Project Agreement), the management, maintenance or improvement of the Facilities (as defined in the Project Agreement) or the carrying out by the Trust of any statutory duties in respect of the Development and to make any alteration, adaptations or additions to the Project Data. Such licence shall enable the Bank and its appointee to copy and use the Project Data for the extension of the Development but such use shall not include a licence to reproduce the designs contained in them for any extension of the Development. The Independent Tester shall not be liable for any use by the Bank or its appointee of any of the Documents for any purpose other than that for which the same were prepared by or on behalf of the Independent Tester.

- 5.2 Upon payment of the Independent Tester's reasonable copying charges (such charges to be paid by Project Co), the Independent Tester shall make available to the Bank all Project Data which are reasonably required by the Bank for the purposes of exercising its rights under this Agreement or the Facility Agreement.

- 6 The Independent Tester shall, provided always that such professional indemnity insurance is available in the market at commercially reasonable rates, maintain professional indemnity insurance for a period commencing on the [date of execution of this Agreement] and expiring on a date 12 years from the Phase 2 Actual Completion Date (as defined in the Project Agreement) to be completed for the sum of E 10 million in respect of each and every claim against the Independent Tester such cover to be without unusual exclusions or excesses and to be arranged with a reputable insurer carrying on insurance business in the UK and the Independent Tester agrees to produce to the Bank evidence of the payment of the first premium and renewal premiums and that such insurance is being maintained upon request. The Independent Tester shall immediately inform the Bank if such insurance is not or ceases to be available at commercially reasonable rates in order that the Independent Tester and the Bank can discuss the means of best protecting the respective positions of the

Independent Tester and the Bank in the absence of such insurance. As and when it is reasonably requested to do so by the Bank or its appointee, the Independent Tester shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

- 7 Project Co and the Trust have agreed to be parties to this Agreement for the purposes of acknowledging that the Independent Tester shall not be in breach of the Appointment by complying with the obligations imposed on it by clauses 3 and 4.

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- 8 The Bank shall be entitled, a maximum of two times, to assign (including an assignment in security) or transfer its rights under this Agreement without the consent of Project Co or the Trust or the Independent Tester being required subject to written notice of such assignment being given to Project Co, the Trust and the Independent Tester in accordance with clause 9 hereof.

- 9 Any notice to be given hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the relevant party at its registered office (save for the Bank, where such notice shall be given at 36 Queen Street, London EC4R 1 HJ, for the attention of the Senior Manager, Public-private finance group (or to such other address as the Bank may specify by written notice to the Independent Tester the Trust and Project Co)); and in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed (subject to proof to the contrary) to have been received 2 days after being posted.
- 10 No action or proceedings for any breach of this Agreement shall be commenced against the Independent Tester after the expiry of 12 years from the Phase 2 Actual Completion Date (as defined in the Project Agreement).
- 11 This Agreement shall be construed and the rights of the parties and all matters arising hereunder shall be determined in all respects according to the Law of England. The parties submit to the exclusive jurisdiction of the courts of England as regards any matter or claim arising out of this Agreement.
- 12 Save as expressly set out herein, no provision of this Deed is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party against any party to this Deed.

IN WITNESS WHEREOF these presents are executed as a Deed on the date first written above

THE SEAL of the TRUST hereunto affixed is authenticated
by:

Executive Director

Signatory Full Name

Non-Executive Director

Signatory Full Name

EXECUTED AND DELIVERED as a Deed by)
SALISBURY HEALTHCARE FACILITIES
LIMITED acting by Authorised signatory

Authorised Signatory

Witness

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EXECUTED AND DELIVERED as a Deed by)
Name.....

As Attorney of

THE GOVERNOR AND COMPANY OF
THE BANK OF IRELAND in the presence of:

Name.....
of

EXECUTED AND DELIVERED as a Deed by)
CAPITA PROPERTY CONSULTANCY)
LIMITED (trading as CAPITA PROJECT)
MANAGEMENT) acting by two of its directors or a)
director and its secretary:)

Director

Director/Secretary

THE SEAL of the TRUST hereunto affixed is authenticated
by:

Executive Director

Signatory Full Name

Non-Executive Director

Signatory Full Name

EXECUTED AND DELIVERED as a Deed by)
SALISBURY HEALTHCARE FACILITIES)
LIMITED acting by Authorised signatory:

Witness

EXECUTED AND DELIVERED as a Deed by)
CAPITA PROPERTY CONSULTANCY)
LIMITED (trading as CAPITA PROJECT)
MANAGEMENT) acting by two of its directors or a)
director and its secretary:)

Director

Director/Secretary

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