

Independent Tester Contract

DATED 6 December 2004

(1) **NOTTINGHAMSHIRE HEALTHCARE NHS TRUST**

(2) **HIGHBURY HEALTHCARE LIMITED**

(3) **CURRIE & BROWN UK LIMITED**

(4) **THE ROYAL BANK OF SCOTLAND PLC**

INDEPENDENT TESTER CONTRACT

THIS DEED is made 6 December 2004

BETWEEN:

- (1) **NOTTINGHAMSHIRE HEALTHCARE NHS TRUST**, of Duncan Macmillan House, Porchester Road, Nottingham, NG3 6AA established in England by virtue of the Nottinghamshire Healthcare National Health Service Trust (Establishment) Order 2000 Number 2908 dated 6th November 2000 made by the Secretary of State for Health on 26th October 2000 pursuant to Section 5(1) of the National Health Service and Community Care Act 1990 as amended by virtue of Order 2000 Number 1041 made by the Secretary of State for health on 30th March 2000 pursuant to Section 67(1) and (2) of the Health Act 1999 and Order 1990 Number 2540 made by the Secretary of State for Health on 10 September 1999 pursuant to Section 67(1) and (2) of the Health Act 1999 (the "Trust");
- (2) **HIGHBURY HEALTHCARE LIMITED**, a company incorporated in Scotland under the Companies Acts (registered under number SC251424) whose registered office is Carriden Sawmills, Carriden Industrial Estate, Bo'ness, West Lothian, EH51 9SQ ("Project Co");
- (3) **CURRIE & BROWN UK LIMITED**, a company incorporated under the Companies Acts (Company Registration No. 1300409) and having its registered office at 140 London Wall, London, EC2Y 5DN (the "Independent Tester"); and
- (4) **THE ROYAL BANK OF SCOTLAND PLC** a company incorporated under the Companies Acts (Registered Number SC090312) and having its registered office at 36 St Andrew Square, Edinburgh, EH2 2YB (the "Funder" being one of the Funders);

WHEREAS:

- (A) Project Co and the Trust have entered into an agreement for the financing, design and construction of and the provision of certain services in connection with the redevelopment of Highbury Hospital at the Site (the "Project") pursuant to the PFI (the "Project Agreement") under the terms of which they have jointly agreed to appoint an independent tester.
- (B) Project Co has entered into the Construction Contract with the Contractor for inter alia the carrying out of the Works at the Site.
- (C) Project Co has entered into the Funding Agreements with the Funders.
- (D) The Independent Tester is an independent adviser willing to provide services to Project Co and the Trust and for the benefit of the Funders.
- (E) 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 the Construction Contract upon the terms of this Deed.

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 (including the recitals and the Appendices) 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 Appendices are references to Clauses of and Appendices to this Deed.

2. APPOINTMENT

2.1 Project Co and the Trust jointly engage the Independent Tester to perform the obligations and tasks in Appendix 1 (the "Scope of Services") and to carry out its obligations under this Deed upon the terms and conditions set out in this Deed. The Independent Tester warrants that it is suitably qualified and experienced to carry out its obligations under this Deed.

2.2 The Independent Tester shall provide the Scope of Services and any Varied Services pursuant to Clause 2.3.1 and carry out its obligations under this Deed 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 and the Construction Contract at such times and at such locations as are necessary to ensure compliance with the Programme. Whilst the Independent Tester shall take account of any written representations made by Project Co, the Trust, the Contractor, the Service Providers, the Funder and the Funder's Representative (as defined in the Construction Contract) the Independent Tester shall not be bound to comply with any written 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 variations to the Scope of Services (the "Varied Services") required for the continued performance of the Project reasonably required by the Trust and Project Co which are not included in, or which are omitted from, the Scope of Services, subject to prior written agreement by the Trust and Project Co acting jointly in accordance with Clause 2.5 to the written quotation provided by the Independent Tester pursuant to Clause 2.3.2 or such other fee arrangement as may be agreed among the parties. The written agreement by the Trust and Project Co pursuant to this Clause 2.3.1 shall state whether the Trust or Project Co or both will be responsible for the fee agreed for the Varied Services.

2.3.2 If the Independent Tester shall at any time be required to perform Varied Services, it shall as soon as reasonably practicable give to the Trust and Project Co based on the Schedule of Daily Rates set out as Part 2 of Appendix 2 a written quotation 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).

2.3.3 Where Varied Services are required by either the Trust on the one hand or the Project Co on the other hand then the party requiring the Varied Services shall be solely responsible for any additional fee agreed for the Varied Services. Where Varied Services are required by both the Trust and Project Co then the Trust and Project Co shall be jointly responsible for the fee agreed for the Varied Services.

2.4.1 The Independent Tester undertakes to each of the Trust, the Project Co and the Funders, to carry out the Services and the Varied Services (if any) and to carry out its obligations under this Deed:

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

2.4.1.2 in accordance with Good Industry Practice, all applicable Law and NHS Requirements.

2.4.2 The Independent Tester owes a duty of care to (a) the Trust as occupier of the Project, (b) Project Co as the party responsible to the Trust for the Project, and (c) to the Funders as the party funding Project Co, and the Independent Tester acknowledges that each of the Trust, the Funders and Project Co has relied and will rely on the advice of, and on the Scope of Services and duties performed by, the Independent Tester pursuant to this Deed.

2.5 All instructions to the Independent Tester must be in writing and given signed and given jointly by the Trust's Representative and the Project Co's Representative or such other person appointed pursuant to Clause 11 of the Project Agreement (*Representatives*). The Independent Tester shall not implement instructions given otherwise than as provided for in this Clause 2.5.

- 2.6 The Independent Tester shall comply with all reasonable instructions given to it by Project Co and the Trust except and to the extent that the Independent Tester reasonably considers that any such instructions vary or might vary the Scope of Services and the Varied Services (if any) 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. 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.
- 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. Project Co shall procure that the Contractor co-operates with and provides reasonable assistance to the Independent Tester to familiarise the Independent Tester with all necessary aspects of the Project. If reasonable assistance is not forthcoming, the Independent Tester shall inform all of the Funder, the Trust and Project Co of any deficiencies on their part or on the part of the Contractor and the possible consequences for the Project and the impact on the Scope of Service and any Varied Services. Project Co shall use reasonable endeavours to procure that the Contractor makes available to the Independent Tester at the Site the information referred to in paragraph 7 of Appendix 1.
- 2.8 The Independent Tester shall be deemed to have full knowledge of the provisions of the Project Agreement and the Construction Contract and the relevant provisions of the Funding Agreements for the purposes of the Scope of Services and any subsequent Varied Services and shall be deemed to be aware of and to have taken account of all the express undertakings and warranties on the part of Project Co, the Trust and the Funder which are set out in the Project Agreement and the Construction Contract and which are set out in the relevant provisions of the Funding Agreements.
- 2.9 The Independent Tester shall promptly and efficiently perform the Scope of Services, the Varied Services (if any) and carry out its obligations under this Deed as soon as reasonably practicable but consistent with the standards specified in Clauses 2.2 and 2.4 above.
- 2.9.1 Subject to Clause 2.9.2, the Independent Tester shall use the following directors or employees: Graeme Dewar in connection with the performance of the Scope of Services, the Varied Services (if any) and the carrying out of its obligations under this Deed and such persons' services shall be available when necessary and for so long as may be necessary to ensure the proper performance by the Independent Tester of the Scope of Services, the Varied Services (if any) and the carrying out of its obligations under this Deed. Such persons shall have full authority to act on behalf of the Independent Tester for all purposes in connection with this Deed.
- 2.9.2 None of the persons mentioned in Clause 2.9.1 shall be removed or replaced unless he/she ceases to work as an employee of the Independent Tester or he/she is unable to work because of death or ill-health or by mutual agreement between Project Co and the Trust. The Independent Tester shall notify (giving a minimum of ten (10) Business Days notice) Project Co and the Trust of any such circumstances resulting in a change to the listed directors or employees and shall be responsible for finding a replacement.
- 2.10 The Independent Tester acknowledges and confirms that:
- 2.10.1 It has conducted a review of the Disclosed Data and has before the execution of this Deed, satisfied itself as to the accuracy and completeness of Disclosed Data upon which it places reliance; and
- 2.10.2 It shall not be entitled to and shall not make any claim against the Trust or Project Co or the Funders whether in contract, tort, under this Deed or otherwise on the grounds:
- 2.10.2.1 of any misunderstanding or misapprehension in respect of the Disclosed Data; or
- 2.10.2.2 that incorrect or insufficient information relating to the Disclosed Data was given to it by any person,
- nor shall the Independent Tester be relieved of any obligation imposed on, or undertaken by, it under this Deed on any such ground.

- 2.11 The Independent Tester shall perform the role of Independent Tester as referred to in the Scope of Services, the Project Agreement and the Construction Contract including without limitation in Clause 20, 22 and 23 and the relevant Schedules of the Project Agreement and Clauses 20 and 22 and the relevant Schedules of the Construction Contract.
- 2.12 Without imposing any greater duty on the Independent Tester than is set out in clause 2.4, 2.11, the Scope of Service and without prejudice to the Independent Tester's rights in terms of clause 2.7, no approval, comment, instruction, inspection, consent, advice, action or inaction by the Trust and/or Project Co and/or the Contractor or any person appointed on behalf of any of them shall in any way release the Independent Tester from its obligations under this Deed and/or limit or discharge the Independent Tester's liability under or arising out of this Deed.
- 3. DURATION**
- 3.1 The Scope of Services shall commence on the date of this Deed.
- 4. FEE**
- 4.1 Project Co shall pay to the Independent Tester a fee of £199,740.00 (One hundred and ninety nine thousand seven hundred and forty pounds sterling) for the Scope of Services and the carrying out of its obligations under this Deed. The fee is exclusive of value added tax (VAT) and inclusive of all travel expenses and disbursements. The Independent Tester shall issue an invoice to Project Co with a copy to the Trust on a three monthly basis in accordance with Appendix 2 Part 1. The date on which the invoice is received by Project Co shall constitute the due date. The final date for payment by Project Co shall be twenty (20) Business Days after the due date. If Varied Services are provided then they shall be paid for in accordance with the agreement between the Independent Tester and the Trust and Project Co pursuant to Clause 2.3.
- 4.2 Not later than five (5) days after the due date (as ascertained in accordance with Clause 4.1), Project Co may give written notice to the Independent Tester stating the amount which Project Co proposes to pay and the basis on which the amount is calculated.
- 4.3 Where Project Co intends to withhold payment of any amount stated in any Independent Tester's fee invoice, Project Co shall give written notice to the Independent Tester not later than five (5) Business Days before the final date for payment pursuant to Clause 4.1. The notice shall state the amount to be withheld and the ground or grounds for withholding the payment and if there is more than one ground, the notice shall identify the amount attributable to each ground.
- 4.4 If Project Co fails to pay the Independent Tester any sum properly payable under this Deed by the final date for payment, Project Co shall pay the Independent Tester simple interest on that sum from the final date for payment until the actual date of payment at the Default Interest Rate.
- 4.5 If Project Co fails to pay the amounts properly due pursuant to these provisions and no notice to withhold the payment has been given pursuant to Clause 4.3, the Independent Tester may suspend performance of any or all of the Scope of Services. This right is subject to the Independent Tester first giving Project Co and the Trust not less than five (5) Business Days' notice in writing of such intention stating the grounds for suspension. The right to suspend performance shall cease when Project Co pays the amount properly due.
- 4.6 Neither the Trust nor Project Co shall issue or do anything which does or is reasonably likely to materially increase the fees payable to the Independent Tester without the prior approval of the other (such approval not to be unreasonably withheld or delayed) unless it is in accordance with Clause 2.3 (Varied Services).
- 4.7 The Trust undertakes to Project Co that it shall pay to Project Co one half of the Independent Tester's fee of £199,740.00 (one hundred and ninety nine thousand seven hundred and forty pounds sterling) as follows:-
- 4.7.1 Following the issue of each invoice by the Independent Tester pursuant to Clause 4.1 Project Co shall be entitled to invoice the Trust for one half of the amount which becomes due to the Independent Tester in accordance with this Clause 4;

- 4.7.2 The amount in Project Co's invoice pursuant to Clause 4.7.1 shall become due on the date of Project Co's invoice and the final date for payment shall be fifteen (15) Business Days after the due date.
- 4.7.3 If the Trust fails to pay Project Co any sum properly payable under this Deed by the final date for payment, the Trust shall pay Project Co simple interest on that sum from the final date for payment until the actual date of payment at the Default Interest Rate.

5. LIMITATIONS ON AUTHORITY

The 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 shall not express an opinion on and shall not interfere with or give any advice, opinion or make any representation in relation to any matters which are beyond its role and responsibilities under this Deed.

6. TERMINATION/SUSPENSION

- 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 twenty one (21) days of receipt by the Independent Tester of a Joint Notice specifying the breach and requiring its remedy;
- 6.1.2 is incompetent, guilty of gross misconduct and/or any material failure, negligence or delay in the provision of the Scope of Services and any Varied Services and/or its other duties under this Deed;
- 6.1.3 fails to comply with Clause 2.9;
- 6.1.4 fails or refuses after written warning to provide the Scope of Services and/or any Varied Services and/or its other duties under this Deed reasonably and as properly required of him; or
- 6.1.5 is subject to an event analogous to any of the events set out in Clause 44.1.1 (*Project Co Events of Default – Insolvency*) of the Project Agreement.
- 6.2 If the Project Agreement or the Construction Contract 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 Joint Notice 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 Scope of Services and any Varied Services carried out in accordance with this Deed prior to the date of termination. The Independent Tester shall not be entitled to any other payment or compensation whatsoever as a consequence of a termination of this Deed.

- 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 this Clause 6, Project Co and the Trust shall use reasonable endeavours to engage an alternative Independent Tester within thirty (30) days, subject to Law and public procurement rules. If within such period 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.
- 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*), 16 (*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.
- 6.7 In the event that the Works are suspended in terms of the Construction Contract, Project Co may suspend the performance of the Independent Tester's obligations in relation to the Construction Contract under this Deed with immediate effect. In the event that Project Co considers the Works are likely to be suspended in terms of the Construction Contract, Project Co will inform the Independent Tester of this.

7. CONFIDENTIAL INFORMATION AND COPYRIGHT

- 7.1 The Independent Tester shall treat as secret and confidential and shall not at any time for any reason 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 or the Contractor's (if appropriate) 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 or the Contractor (if appropriate) where the information was received prior to or during the period of this Deed. Upon termination of this Deed for whatever reasons the Independent Tester shall deliver up to Project Co or the Trust or the Contractor or the Funder (as appropriate) all working papers, computer disks and tapes or other material and copies provided to or prepared by him pursuant either to this Deed or to any previous obligation owed to Project Co or the Trust or the Contractor (if appropriate).
- 7.2 The copyright in all reports, calculations, drawings and other similar documents provided by or on behalf of 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 reports, calculations, 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.
- 7.3 The Trust shall be free to disclose the terms of this Deed to the Department of Health and/or HM Treasury and the parties agree that the Trust shall be free to use and disclose such information on such terms and in such manner as the Department of Health and/or HM Treasury see fit.

8. PROFESSIONAL INDEMNITY INSURANCE

- 8.1 Without prejudice to its obligations under this Deed, or otherwise at law, the Independent Tester shall maintain professional indemnity insurance with a limit of indemnity of not less than five million pounds (£5,000,000) for any one claim in performance of its obligations on the Independent Tester's part in the performance of its obligations under this Deed for the period commencing on the date of this Deed and expiring 12 years after:
- 8.1.1 the date of the final Phase Completion Date; or
- 8.1.2 the termination of this Deed,

whichever is the earlier, provided that such insurance is available in the market place at commercially reasonable rates.

- 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. If requested by the Project Co and the Trust, the Independent Tester shall effect such insurance at a reduced level of insurance such as is available at commercially reasonable rates.
- 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 Scope of Services and no less than fifteen (15) Business Days prior to renewal dates, produce for inspection by Project Co and the Trust documentary evidence that such insurance is being properly maintained at their request.
- 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. 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 following addresses or facsimile numbers or to such other address or facsimile number as a party to this Deed may notify to another party to this Deed in writing:

Trust

Address: Capital Planning Unit, Forest House, Southwell Road, Mansfield NG18 4HH

Fax: 01623 634126

Project Co

Address: Carriden Sawmills, Carriden Industrial Estate, Bo'ness, West Lothian EH51 9SQ

Fax: 01506 822 590

Funders

Address: East of Scotland Corporate Office, 6-8 George Street, Edinburgh

Fax: 0131 523 5153

Independent Tester

Address: Osborne House, 1 Osborne Terrace, Edinburgh, EH12 5HG

Fax: 0131 313 7021

10. ASSIGNMENT

- 10.1 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 Scope of Services or the Varied Services (if any).
- 10.2 The Trust shall not be entitled to assign or transfer any of its 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. The Project Co shall be entitled to assign or transfer any of its rights or obligations under this Deed to any party to whom it assigns its interest in the Project Agreement and shall be entitled to assign its interest in this Deed by way of security to any party providing finance in relation to the Project. The Project Co shall also on the service of a notice of termination in accordance with the Project Agreement for any reason be entitled to assign or novate its interest in this Deed to the Trust. 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.
- 10.3 The Independent Tester shall not be entitled to contend that any person to whom this Deed is assigned or transferred in accordance with Clause 10.2 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 or transferee and not a named promisee under this Deed.

11. CUMULATIVE RIGHTS AND ENFORCEMENT

- 11.1 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.
- 11.2 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.
- 11.3 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 entitlements of the other without the other's prior written consent, such consent not to be unreasonably withheld or delayed.

12. WAIVER

- 12.1 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.

13. 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.

14. COUNTERPARTS

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

15. VARIATION

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

16. DISPUTE RESOLUTION PROCEDURE

16.1 Any dispute arising out of or in connection with this Agreement shall be resolved in accordance with the procedure set out in Appendix 3.

16.2 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.

17. GOVERNING LAW AND JURISDICTION

17.1 Subject to Clause 16 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.

17.2 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 date of completion of the Services or the termination of this Deed, whichever is the earlier.

17.3 The Trust, the Funders and Project Co confirm that they have entered into this Deed solely in respect of the specific responsibilities attributed to them hereunder and none of them shall be responsible for discharging any obligations of the other under any other documents relating to the Project.

18. DELIVERY

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

19. THIRD PARTY RIGHTS

Nothing in this Deed is intended to or does confer on any third party any benefit or right to enforce any term of this Deed pursuant to The Contracts (Rights of Third Parties) Act 1999.

20. LIMITATION ON LIABILITY

20.1 The Independent Tester's liability under this Deed shall be limited to £5,000,000.00 (five million pounds) in respect of each and every claim. The limitation in this Clause 20 shall not apply in the aggregate.

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

Appendix 1

Scope of Services – Independent Tester Contract

The Independent Tester shall perform the following scope of services:

1. MONTHLY REPORT AND 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, as necessary, in accordance with the Project Agreement and Construction Contract. Report on the completion status of the Project, identifying any work that is not complete or is non-compliant with the Project Agreement or the Construction Contract.
- 1.2 Determine whether any relevant Stage and/or Phase is finished or complete in accordance with the Project Agreement 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 Stage and/or Phase is finished or complete.
- 1.3 Certify the date that completion of a Stage and/or Phase has occurred and issue a Certificate of Practical Completion in accordance with the Project Agreement.
- 1.4 Issue in accordance with the Project Agreement all other certificates to be issued in terms of the Project Agreement.
- 1.5 Determine whether any relevant Stage and/or Phase (as defined in the Construction Contract) is finished or complete in accordance with the Construction Contract and advise Project Co of the need for any additional surveys and investigations which may be necessary to demonstrate whether a relevant Stage and/or Phase (as defined in the Construction Contract) is finished or complete.
- 1.6 Certify the date that completion of a Stage and/or Phase (as defined in the Construction Contract) has occurred and issue a Certificate of Practical Completion (as defined in the Construction Contract) in accordance with the Construction Contract.
- 1.7 Issue in accordance with the Construction Contract all certificates to be issued in terms of the Construction Contract.
- 1.8 Review the programme for the rectification of all Snagging Matters to be carried out and advise Project Co and the Trust as appropriate.

2. GENERAL

The Independent Tester shall:

- 2.1 Familiarise itself with the Project Agreement (including without limitation the Design Data, the Quality Assessment Information (as defined in paragraph 7 below) and any Variations issued from time to time and any other relevant documentation or information referred to in the Project Agreement) and the Construction Contract and the Services Contracts to the extent necessary to be in a position to carry out the Services in accordance with the terms of the Project Agreement, the Construction Contract and this Deed.
- 2.2 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 (including complying with any time limits specified) and as referred to in Clauses 20, 22, 23A and 23 and the relevant Schedules of the Construction Contract (including complying with any time limits specified).
- 2.3 Following notification by Project Co pursuant to Clauses 22.8 and 22.10 of the Project Agreement inspect and comment as required on the Works for each relevant Phase as required by the Completion Process.

3. DESIGN COMPLIANCE CHECK

The Independent Tester shall:

- 3.1 Monitor the construction, structural and services design for the Project to establish that the design is generally in accordance with the Project Agreement and the Construction Contract.
- 3.2 Monitor the detailed working drawings and specifications for a sample number and type of rooms which in his professional judgment is appropriate to be selected by the Independent Tester to verify that they comply with the approved outline design as described in the Project Agreement and the Construction Contract. At least twenty five percent (25%) of rooms shall be sampled. If in the professional judgment of the Independent Tester, because of the results of its sample or other circumstances a different sampling percentage is appropriate, he shall provide a detailed report in respect of that and, if so agreed (or determined as between Project Co and the Trust by the Dispute Resolution Procedure) any change in the percentage sampling resulting in a change in fees will be borne by Project Co and the Trust as they shall agree or as determined by the Dispute Resolution Procedure.
- 3.3 If requested and subject to agreement of additional fees pursuant to clause 2.3 review the detailed design information for any approved design or specification variations for compliance with the performance and quality standards of the Project Agreement and the Construction Contract, and quality standards as set out in the Quality Assessment Information.

4. PROCEDURE REVIEW

The Independent Tester shall:

- 4.1 Review the quality assurance procedures proposed by the Contractor before such work begins on Site and review the operation of the procedures at regular intervals at the commencement of each of the three Phases during the execution of the Works.
- 4.2 Review the proposed procedures and programmes for the testing, commissioning and Trust's occupation.
- 4.3 If requested and subject to agreement of additional fees pursuant to clause 2.3, monitor the procedures for the identification, approval and recording of agreed Variations to the Works in accordance with the Project Agreement and the Construction Contract.
- 4.4 Regularly check to see whether the procedures employed by the Contractor are generally in accordance with the terms of the Construction Contract

5. CONSTRUCTION REVIEW

The Independent Tester shall:

- 5.1 Visit the Site and monitor the Works for their compliance with the Project Agreement and the Construction Contract. The frequency and timing of the Independent Tester's visits are dependent on the progress of construction on Site. All visits are included in the fee. The Contractor shall agree a programme with the Independent Tester for the inspection of key construction processes and the completed Project and shall give the Independent Tester advance notice of these Works being carried out on Site. 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 Quality Assessment Information without the need for opening up.
- 5.2 Randomly check that the Works are being undertaken in accordance with the health and safety plan prepared for the purpose of the CDM Regulations and in a workmanlike manner.
- 5.3 Review any samples as required by the Project Agreement and the Construction Contract and check that they have been approved in accordance with the relevant agreement.

- 5.4 Review any extensions to the time for completion of the Works granted or to be granted in accordance with the Project Agreement or the Construction Contract (review of one extension of time only is included within the fee and review of any further extension of time shall be subject to additional fees pursuant to clause 2.3).
- 5.5 Witness a sample proportion of the testing and commissioning procedures at random. These proportions 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 resulting in a change of fees will be borne by Project Co and the Trust as they shall agree, failing such agreement, as determined by the Dispute Resolution Procedure.
- 5.6 Inspect rectification works which have previously prevented the Independent Tester from certifying the Project as complete.
- 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 for the purposes of both the Project Agreement and the Construction Contract.

6. PARTICIPATION IN DISPUTE RESOLUTION

- 6.1 As and when required by the Trust or Project Co and subject to agreement of additional fees pursuant to clause 2.3, 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 or as otherwise agreed pursuant to this Deed.
- 6.2 As and when required by Project Co and subject to agreement of additional fees pursuant to clause 2.3, the Independent Tester shall participate in the Dispute Resolution Procedure of the Construction Contract (as such term is defined in the Construction Contract) to the extent that issues under the Construction Contract 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 or as otherwise agreed pursuant to this Deed.

7. QUALITY ASSESSMENT INFORMATION

- 7.1 The quality assessment information ("Quality Assessment Information") means the following:-
- 7.1.1 Construction Issue Drawings
 - 7.1.2 1:50 Room Layout Sheets
 - 7.1.3 Specifications approved by the Trust
 - 7.1.4 (Room Data Sheets) Packages plus revisions
 - 7.1.5 Approved RDD items plus revisions
 - 7.1.6 Method Statements for executions of works
 - 7.1.7 Method Statements for cleaning and flushing of pipelines etc as may be required
 - 7.1.8 Testing & Commissioning programmes
 - 7.1.9 Testing & Commissioning methodologies
 - 7.1.10 Statutory Approvals

7.1.11 Witness Testing programmes

7.1.12 Any other reasonable Project related information required by the Independent Tester to enable the Independent Tester to effectively undertake its obligations under this Deed.

Appendix 2

Part 1

Schedule of Drawdown of Fees

The Independent Tester may issue an invoice on the last day of each third month following the commencement of the Works in the sum of £12,000.00 (Twelve thousand pounds sterling) and may issue up to a maximum of 15 such three monthly invoices and 2 months after the last of such 3 monthly invoices the Independent Tester may issue a further invoice in the sum of £8,000.00 (eight thousand pounds sterling).

Following the issue of the Finishing Works Completion Certificate under the Project Agreement the Independent Tester may issue one further invoice in the sum of £11,740.

Appendix 2

Part 2

Schedule of Daily Rates

The Independent Tester's quotation for Varied Services shall be based on an hourly rate of £80.00 provided always that the Independent Tester shall be entitled to a maximum of £600.00 for any day where more than 7 ½ hours are charged. For Varied Services the Independent Tester may charge for time travelling to and from the site and any such charge would be subject to the £600 daily limit.

Appendix 3

Dispute Resolution Procedure

1. The procedure set out in this Appendix (the "Dispute Resolution Procedure") shall apply to any dispute, claim or difference arising out of or relating to this Deed ("Dispute") except where it has been excluded from this procedure by an express term of this Deed.
2. This Dispute Resolution Procedure shall not impose any pre-condition on any party or otherwise prevent or delay any party from commencing proceedings in any court of competent jurisdiction in relation to any Dispute in which that party requires either:
 - 2.1 an order (whether interlocutory or final) restraining the other party from doing any act or compelling the other party to do any act; or
 - 2.2 a judgement for a liquidated sum to which there is no arguable defence.

Mediation

3. Subject to paragraph 4 of this Appendix the parties may refer any Dispute to mediation on such conditions as may be agreed between the parties. Any mediation shall be completed within 90 days of such referral and any agreement arising therefrom (if any agreement can be reached) shall be final and binding if agreed by the parties.

Adjudication

- 4.1 Any Dispute may notwithstanding that other dispute resolution proceedings are running concurrently be referred to an Adjudicator for adjudication and shall be adjudicated in accordance with this paragraph 4.
- 4.2 This paragraph 4 meets the requirements of adjudication procedure as set out in Section 108 of the Housing Grants, Construction and Regeneration Act 1996; Part I of the Scheme for Construction Contracts (England and Wales) Regulations 1998 shall thus not apply.

Commencement

- 4.3.1 This paragraph 4 shall apply upon either party to the Deed giving written notice ("Notice of Adjudication") to the other party identifying in sufficiently full terms the Dispute in respect of which adjudication is required ("Adjudication"). The Notice of Adjudication shall be served in accordance with the provisions of Clause 9.
- 4.3.2 The party giving Notice of Adjudication shall within 7 days of the date of service of the Notice of Adjudication refer the Dispute to the Adjudicator (appointed pursuant to paragraph 4.6 or paragraph 4.7) by serving a referral notice ("Referral Notice") which shall set out each element of the referring party's claim in sufficient detail so as to enable the responding party to understand and where appropriate respond to the claim. The Referral Notice shall be served so as to be received by the Adjudicator within 7 days of the date of the Notice of Adjudication. The date of the referral of the Dispute shall be the date when the Adjudicator receives the Referral Notice. The Adjudicator shall notify the parties immediately of the date he receives the Referral Notice. The Referral Notice shall be accompanied by copies of, or relevant extracts from, this Deed

and such other documents as the referring party intends to rely upon. The referring party shall simultaneously send copies of the Referral Notice and such documents to every other party to the Dispute.

4.4 Notice of Adjudication may be given at any time and notwithstanding that legal proceedings have been commenced in respect of such Dispute.

4.5 More than one Notice of Adjudication may be given arising out of this Deed.

Appointment

4.6. The parties shall use reasonable endeavours to agree the identity of an adjudicator from a discipline appropriate to the Dispute. Where the parties have agreed upon the identity of an adjudicator (including an adjudicator agreed pursuant to paragraph 4.34.2) who confirms his acceptance of the appointment to both parties within 2 days of receiving a request to act as Adjudicator and not later than 7 days from the date of the Notice of Adjudication, then that person shall be the Adjudicator.

4.7 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 shall use its reasonable endeavours to obtain the nomination of an adjudicator from a discipline appropriate to the Dispute and may apply to the Chairman, Vice-Chairman, President or Vice President of either the Institute of Chartered Accountants of England and Wales, the Royal Institute of British Architects, the Law Society of England and Wales, the Royal Institute of Chartered Surveyors, the Technology and Construction Solicitors Association (TeCSA), the Chartered Institute of Arbitrators or the British Institute of Facilities Management (“Nominator”) for a nomination and the selection of the Nominator shall be made by the said party no earlier than the time any Dispute arises. The following procedure shall apply:

4.7.1 The application shall be in writing, accompanied by a copy of this Deed or other evidence of the agreement of the parties that this paragraph 4 should apply and a copy of the Notice of Adjudication.

4.7.2 The Nominator shall nominate an adjudicator within 5 days of receiving the application to do so (or within 5 days from the date of the Notice of Adjudication, whichever is earlier).

4.7.3 Where the adjudicator nominated under paragraph 4.7.2 confirms his acceptance of the appointment to both parties within 2 days of the nomination, then that person shall be the Adjudicator.

4.8 Not used

4.9 Where an Adjudicator has already been appointed in relation to another dispute arising out of this Deed, the Nominator may appoint either the same or a different person as Adjudicator.

Agreement

4.10 An agreement to adjudicate in accordance with this paragraph 4 shall be treated as an offer made by each of the parties to the Nominator and to any Adjudicator to abide by this paragraph 4, which offer may be accepted by conduct by appointing an Adjudicator or embarking upon the Adjudication as the case may be. Without prejudice to the generality of the preceding sentence, it shall be a condition of any appointment of

an Adjudicator that if he is so required the Adjudicator will act as adjudicator in any adjudication under a Related Contract (but always subject to the provisions of paragraph 4.22.4).

Scope of the Adjudication

- 4.11 The scope of the Adjudication shall be the matters identified in the Notice of Adjudication, together with any further matters which both parties agree in writing should be within the scope of the Adjudication; and
- 4.12 The Adjudicator may rule upon his own substantive jurisdiction.

The purpose of the Adjudication and the Role of the Adjudicator

- 4.13 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.
- 4.14 The decisions of the Adjudicator shall be binding until the Dispute is finally determined by legal proceedings, or by agreement between the parties.
- 4.15 The decision of the Adjudicator shall reflect the legal entitlements and obligations of the parties.
- 4.16 The Adjudicator shall have the like power to open up and review any certificates, or other things issued or made pursuant to this Deed as would a Court or Arbitrator given such powers and shall have the power to award damages.
- 4.17 The Adjudicator shall act fairly and impartially, but shall not be obliged or empowered to act as though he were an arbitrator.

Conduct of the Adjudication

- 4.18 The Adjudicator shall establish the procedure and timetable for the Adjudication.
- 4.19 Without prejudice to the generality of paragraph 4.18 the Adjudicator may if he thinks fit:
 - 4.19.1 require the delivery of written statements relating to matters in issue in the Dispute;
 - 4.19.2 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;
 - 4.19.3 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;
 - 4.19.4 limit the length of any written or oral submission;
 - 4.19.5 require the attendance before him for questioning of either party or employee or agent of either party;
 - 4.19.6 make site visits;
 - 4.19.7 make use of his own specialist knowledge;

- 4.19.8 obtain advice from specialist consultants, provided that at least one of the parties so requests or consents;
- 4.19.9 subject to paragraph 4.22.2, meet and otherwise communicate with either party;
- 4.19.10 review and revise any of his own previous directions; and
- 4.19.11 conduct the Adjudication in an inquisitorial manner, and take the initiative in ascertaining the facts and the law.
- 4.20 The Adjudicator may reach his decision with or without the holding of an oral hearing.
- 4.21 The Adjudicator shall exercise such powers fairly and impartially, giving each party a reasonable opportunity, in light of the timetable, of putting his case and dealing with that of his opponent.
- 4.22 The Adjudicator may not:
 - 4.22.1 require any advance payment of or security for his fees;
 - 4.22.2 receive any written submissions from one party that are not also made available to the other;
 - 4.22.3 refuse any party the right at any hearing or meeting to be represented by a representative of that party's choosing who is present; and / or
 - 4.22.4 act or continue to act in the face of a conflict of interest.
- 4.23.1 The Adjudicator shall reach a decision within 28 days of the date of referral of the Dispute 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.
- 4.23.2 Upon becoming aware that the Dispute is the same or substantially the same as a Dispute which has previously been referred to Adjudication under this Deed and a decision has been issued in that Adjudication, the Adjudicator shall immediately resign.

Adjudicator's Fees and Expenses

- 4.24 The parties shall be jointly responsible for the Adjudicator's fees and expenses (including those of any specialist consultant appointed by the Adjudicator of which notice has been given to the parties at the time of such appointment). ("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.
- 4.25 The Adjudicator's fees shall not exceed the rate of £1,250 Indexed per day, plus expenses and VAT.

Decisions

- 4.26 The Adjudicator may in any decision direct the payment of such compound or simple interest as may be permitted in accordance with this Deed.

- 4.27 All decisions shall be in writing. Not later than 7 days from the date of delivery his decision to both parties, the Adjudicator shall provide reasons for that decision.

Enforcement

- 4.28 Every decision of the Adjudicator shall be implemented without delay. The parties shall be entitled to such relief and remedies as are set out in the decision, and shall be entitled to enforcement thereof.

Immunity, Confidentiality and Non-Compellability

- 4.29 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.
- 4.30 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, save in all cases so far as required by law.
- 4.31 In the event that either party seeks to challenge or review any decision of the Adjudicator in any subsequent legal proceedings, the Adjudicator shall not be joined as a party to, nor shall be cited or otherwise required to give evidence or provide his notes in such legal proceedings except where required by law.
- 4.32 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.
- 4.33 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) or as is necessary to allow either party to instruct legal or technical advisers.

Consolidation of Disputes

- 4.34 If any Dispute raises issues which in the opinion of Project Co relates to a dispute or difference (“the Related Dispute”) between Project Co and any third party (such other party being referred to as “the Related Party”) arising under, out of, or in connection with any other contract between Project Co and a third party (such other contract being referred to as the “the Related Contract”) which Related Contract contains a dispute resolution procedure (“the Related Procedure”) then Project Co shall if it so decides adopt the procedures laid out in paragraphs 4.34.1 and/or 4.34.2:

- 4.34.1 if (a) an Adjudicator has been appointed under this Deed in relation to a Dispute, and (b) no adjudicator has been appointed in relation to a Related Dispute under the Related Contract or any such adjudicator (“the Related Adjudicator”) has resigned pursuant to the Related Procedure, then Project Co may appoint that Adjudicator as Related Adjudicator under the Related Procedure, so that the same person shall act as Adjudicator and shall determine the Dispute and shall separately act as the Related Adjudicator and shall determine the Related Dispute under the Related Contract (and whether or not that the Dispute has been determined by the Adjudicator before commencement of the adjudication to determine the Related Dispute).

4.34.2 if (a) an Adjudicator has not been appointed under this Deed in relation to a Dispute, and (b) a Related Adjudicator has been appointed in respect of a Related Dispute under the Related Contract (and whether or not the Related Dispute has been determined before commencement of the Adjudication to determine the Dispute), then if Project Co intimates in writing to the Trust the name, address, telephone and fax numbers and professional qualifications of the Related Adjudicator at the same time it gives a Notice of Adjudication to the Trust the parties hereby agree to appoint that Related Adjudicator to act as Adjudicator to determine the Dispute under this Deed. The Related Adjudicator shall separately act as the Adjudicator and shall separately determine the Dispute under this Deed.

4.35 If any Dispute arising under this Deed raises issues which relate to:

4.35.1 Any dispute between Project Co and the Contractor arising under the Construction Contract or otherwise affects the relationship or rights of Project Co and/or the Contractor under the Construction Contract (the “Construction Contract Dispute”); or

4.35.2 any dispute between Project Co and either of the Service Providers arising under the relevant Service Contract or otherwise affects the relationship or rights of Project Co and/or either of the Service Providers under a Service Contract (the “Service Contract Dispute”);

then Project Co may include as part of its submissions made to the Adjudicator submissions made by the Construction Contractor or the relevant Service Providers as appropriate.

4.36 Any submissions made by the Construction Contractor or either of the Service Providers shall:

4.36.1 be made within the time limits applicable to the delivery of submissions by Project Co; and

4.36.2 concern only those matters which relate to the Dispute between the Trust and Project Co arising out of this Deed or in connection therewith.

Court Proceedings

5.1 Save where the parties have agreed in writing that an agreement reached following mediation pursuant to Paragraph 3 or a decision of an Adjudicator is to be final and binding, either party may, issue Court proceedings in relation to a Dispute. The parties agree that where the nature of the dispute so allows, the Dispute shall be tried by a Judge of the Technology and Construction Court. This Paragraph 5 shall not preclude either of the parties from commencing Court proceedings to enforce an agreement reached following mediation pursuant to Paragraph 3 or a decision of an Adjudicator agreed to be final and binding.

THE CORPORATE COMMON SEAL of the **NOTTINGHAMSHIRE HEALTHCARE NHS TRUST** was here to affixed in the presence of

..... Director

Jacolyn Fergusson

..... Full Name

..... Board Secretary

John Ord

..... Full Name

EXECUTED AND DELIVERED as a Deed by
HIGHBURY HEALTHCARE LIMITED acting by

...John Charles Campbell..... Director

...John Charles Campbell..... Full Name

...David Andrew Fairfoull..... Director/Secretary

...David Andrew Fairfoull..... Full Name

EXECUTED AND DELIVERED as a Deed by
CURRIE & BROWN UK LIMITED acting by Andrew MacGregor, appointed under a Power of Attorney dated 1st April 2004

...Andrew MacGregor..... Attorney

...Andrew MacGregor..... Full Name

...Andrew A Loudon..... Witness

...Andrew A Loudon..... Full Name

6 Strathdon Place, Hairmyres, East Kilbride

EXECUTED AND DELIVERED as a Deed by
THE ROYAL BANK OF SCOTLAND PLC acting by its Attorney

...Anne Gray..... Attorney

...Anne Gray..... Full Name

and in the presence of

...Wendy Nicolson..... Witness

...Wendy Nicolson..... Full Name

...Princess Exchange..... Address

...Edinburgh.....

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