

THE SECRETARY OF STATE FOR HEALTH

and

THE SKIPTON FUND LIMITED

AGENCY AND SERVICES AGREEMENT

(as amended 11 November 2016)

DATED

CONTENTS

1	Definitions and interpretation.....	4
2	Appointment and authority.....	8
3	Term.....	8
4	Skipton's obligations.....	9
5	Warranties and obligations.....	10
6	DH's obligations.....	10
7	Data and freedom of information.....	11
8	Payments and accounting.....	11
9	Confidentiality publicity and supervision.....	12
10	Limitations of liability.....	13
11	Change control and Inspection.....	13
12	Step in rights.....	14
13	Insurance.....	15
14	Termination.....	15
15	Termination assistance.....	16
16	Dispute resolution.....	17
17	Assignment.....	17
18	Waiver, forbearance and variation.....	18
19	Third Parties.....	18
20	General.....	18
	SCHEDULE 1 Services.....	20
	SCHEDULE 2 England: Payments & Qualifying Persons.....	24
	SCHEDULE 2A Scotland: Payments & Qualifying Persons.....	29
	SCHEDULE 2B Wales: Payments & Qualifying Persons.....	34
	SCHEDULE 2C Northern Ireland: Payments & Qualifying Persons.....	39
	SCHEDULE 3 Termination assistance.....	44
	SCHEDULE 4 Skipton's Service Standards.....	46
	SCHEDULE 5 Change Control.....	47
	SCHEDULE 6 Right of Audit.....	49
	SCHEDULE 7 Indemnity.....	50

PARTIES

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| 1 | <i>Department of Health ("DH")</i> | The Secretary of State for Health acting through The Department of Health, Health Protection Division, 5 th Floor Wellington House, 133-155 Waterloo Road, London SE1 8UG |
| 2 | <i>Skipton</i> | The Skipton Fund Limited (company number 5084964) whose registered office is at Bay Lodge, 36 Harefield Road, Uxbridge, Middlesex, UB8 1PH |

BACKGROUND

- A. On 29 August 2003, the Secretary of State for Health and the Ministers of the Devolved Administrations announced that a United Kingdom wide scheme (the "Scheme") would be set up to make ex gratia payments to certain persons who were treated in the United Kingdom under the National Health Service by way of the receipt of blood, tissue or a blood product and as a result of that treatment became infected with the hepatitis C virus (the "virus").
- B. In considering the arrangements for administering the Scheme, the Secretary of State for Health liaised with the Macfarlane Trust (a charity established to relieve the suffering of haemophiliacs who contracted HIV/AIDS from infected blood products and their dependants), in so far as some of those infected with HIV were also infected with the hepatitis C virus. It was decided that arrangements for administering the Scheme would be made with a separate, non-charitable body established by the trustees of the Macfarlane Trust and that there would be provision for the future appointment of directors of that body by the Secretary of State and the Macfarlane Trust acting jointly.
- C. On 10 January 2011 The Secretary of State for Health announced that further ex gratia payments would be made to certain persons who were treated in England under the NHS by way of the receipt of blood, tissue or a blood product and as a result of that treatment became infected with the virus.
- D. Skipton has been chosen to provide services acting as agent for the Department of Health ("DH") on the basis set out in this agreement as amended from time to time.
- E. The Secretary of State for Health and the Ministers of the Devolved Administrations have entered into a service level agreement by which the DH acts on behalf of the Devolved Administrations in relation to Skipton and the parties contribute their proportionate share to the funds distributed by Skipton pursuant to this agreement.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 The following terms shall have the following meanings:

<i>Term</i>	<i>Meaning</i>
<i>2007 Agency Agreement</i>	an agreement between the parties dated 28 May 2007 (as amended) for the purposes of establishing and administering a scheme for the making of ex gratia payments to Qualifying Persons as defined in that agreement;
<i>Accounting Date</i>	31 March in any year;
<i>Accounts</i>	audited financial statements of Skipton;
<i>Acute Stage</i>	the 6 month period after the virus has first entered the body.
<i>Annual Payment</i>	<p>A payment of such amount as the Secretary of State may from time to time direct and which is paid annually to an eligible person who has received–</p> <p>(i) Stage 1 or a Stage 1 top-up payment, or</p> <p>(ii) a Stage 2 payment or a Stage 2 top up payment or both,</p> <p>(iii) a Stage 2 payment Scotland (HIV).</p> <p>Such directions will stipulate the total amount (pro-rated as appropriate), to be paid in any year and the intervals at which it may be made and may give more precise details of to whom it is to be paid;</p>
<i>Bereavement Payment</i>	A lump sum payment of £10,000 to a person within Part III of Schedule 2 or, as the case may be, Part III of Schedule 2B as the Secretary of State may from time to time direct;
<i>Business</i>	the business and activities of Skipton;
<i>Business Day</i>	a day (other than a Saturday or Sunday) on which banks are open for business in London;
<i>Business Hours</i>	from 09.00 hrs to 17.00 hrs on a Business Day;
<i>Caxton</i>	The Caxton Foundation, being a charitable trust established under a Trust Deed dated 28 March 2011

	by DH and the first trustees;
<i>Claimants</i>	persons who make a claim under the Scheme;
<i>Commencement Date</i>	the day on which this Agreement was signed by both parties;
<i>DH</i>	Department of Health (England);
<i>Disbursements</i>	all reasonable expenses incurred properly and wholly in the performance of the Services;
<i>Documents</i>	this agreement, together with its schedules;
<i>Drawdown Notice</i>	a written notice from Skipton notifying DH of the amount of money which is needed to perform the Services during the next 90-120 day period;
<i>Eligibility</i>	eligibility of a Qualifying Person to receive a payment under the Scheme;
<i>Funds</i>	the funds provided from time to time by the DH to Skipton to operate the Scheme so as to enable the Payments to be made to Qualifying Persons and to the extent necessary to meet expenses of such operation;
<i>NHS</i>	National Health Service;
<i>Open Book Accounting</i>	the disclosure by Skipton of the composition of its costs incurred and income earned in providing or procuring the Services;
<i>Payment Services</i>	the Services, including verification, carried out by Skipton in making the Payments;
<i>Payments</i>	the payments to Qualifying Persons set out in Schedules 2 to 2C pursuant to the procedures for administering the Services set out in Schedule 1;

<i>Prescription payments</i>	payment to be made to the NHS Business Services Authority (unless otherwise directed) on behalf of such Qualifying Persons who were treated in England under the NHS by way of the receipt of blood, tissue or a blood product and as a result of that treatment became infected with the virus, as the Secretary of State may from time to time direct, to be of such amount and paid as the Secretary of State may from time to time direct; or to reimburse the Qualifying Person if so directed and in the manner so directed;
<i>Principal Scheme</i>	the scheme which is established by and is the subject of the 2007 Agency Agreement;
<i>Processing Period</i>	a week (Monday to Friday inclusive) or any multiple thereof during which Skipton performs the Payment Services to a number of Qualifying Persons;
<i>Qualifying Persons</i>	persons who meet the criteria set out in Schedules 2 to 2C;
<i>Scheme</i>	a scheme set up in 2016 to make ex gratia payments to eligible persons (see Schedules 2 to 2C)
<i>Services</i>	any of the Services described in Schedule 1;
<i>Service Levels</i>	levels of service specified in schedule 4;
<i>Stage 1 (pre 03) Payment</i>	a lump sum payment of £20,000 to a Qualifying Person;
<i>Stage 1 payment</i>	a lump sum payment of £20,000 to a Qualifying Person;
<i>Stage 1 (top up) payment Scotland</i>	a lump sum payment of £30,000 payable to a Qualifying Person;
<i>Stage 2 payment</i>	an additional lump sum payment of £25,000 payable to a Qualifying Person;
<i>Stage 2 (pre 03) payment</i>	a lump sum payment of £50,000 payable in respect of a Qualifying Person;

<i>Stage 2 payment Scotland (HIV)</i>	a lump sum payment of £50,000 payable to a Qualifying Person;
<i>Stage 2 (top up) payment</i>	a lump sum payable to a Qualifying Person, as the case may be, of - (a) £25,000; (b) £50,000; or (c) £20,000;
<i>Term</i>	the period starting on the Commencement Date during which this agreement continues in force;
<i>Termination</i>	the expiry or termination (for whatever reason) of this agreement or, where used in relation to Services, the expiry or termination of that Service;
<i>Termination Assistance</i>	the assistance more particularly specified in schedule 3;
<i>United Kingdom</i>	England, Scotland, Wales, Northern Ireland and the crown dependencies of Jersey, Guernsey and the Isle of Man;
<i>VAT</i>	value added tax.
<i>virus</i>	the hepatitis C virus
<i>Year</i>	each period of one year commencing on 1 April, beginning with 1 April 2011

- 1.2 The Interpretation Act shall apply to this Agreement as though it were an enactment
- 1.3 The contents page and headings used in this agreement are inserted for convenience and reference only and shall not affect the interpretation of this agreement.

2 Appointment and authority

2.1 In furtherance of a policy initiative DH has resolved to appoint Skipton as its agent to implement and administer the Scheme and the Services.

2.2 DH appoints Skipton to be its agent for the delivery of the Services and the carrying out of the Services subject to the terms and conditions set out in this agreement. Skipton accepts that appointment.

2.3 Skipton may only enter into contracts for the delivery and fulfilment of the Services on behalf of the DH in accordance with clause 4.7 below.

2.4 Skipton acknowledges that:

2.4.1 as a Department of the Crown DH is directly accountable to the Secretary of State for Health;

2.4.2 Government policy is subject to amendment from time to time;

2.4.3 it may only alert DH to operational issues and may not make proposals to amend Government policy.

Consequently DH reserves the right to direct Skipton to suspend, vary or terminate its performance of the Services upon the delivery of as much notice as is reasonably possible in the circumstances and Skipton agrees to comply with such directions.

2.5 Skipton acknowledges that the rights of DH detailed in clause 2.4 above shall be an overriding principle in the construction and performance of this Agreement and shall take precedence over all other terms and conditions detailed herein save that such rights shall not negate nor diminish the indemnity set out in clause 6.1.3.

3 Term

3.1 This agreement shall commence on the *Commencement Date* and shall (except as expressly provided otherwise in this agreement) continue in force operating as follows:

3.1.1 Skipton shall supply the Services until the earliest of:

3.1.1.1 the last Qualifying Person having received all payments which a Qualifying Person can receive under the Scheme; or

3.1.1.2 the last Qualifying Person having died; or

3.1.1.3 100 years less one day from the date of this agreement.

3.2 Notwithstanding clause 3.3, either party may terminate this agreement by giving the other 185 days prior written notice.

3.3 Either party may terminate this agreement in accordance with the provisions set out in clause 14.

3.4 If either party gives notice to terminate this agreement or if the Term expires, the parties shall no later than 28 days before expiry of such notice or the Term agree a plan for orderly transition/termination to ensure minimum interruption or inconvenience in the provision/wind down of the Services and each provide such assistance as may reasonably be required (at DH's cost) to terminate the Services in an orderly and businesslike manner or (as applicable) assist with the transfer of the provision of the Services to DH or its nominee.

4 Skipton's obligations

4.1 Skipton will provide the Services in accordance with this agreement, including its Schedules, and make the payments set out in paragraph 1 of Schedule 2, 2A, 2B, 2C (as appropriate) to such Qualifying Persons as meet the requirements for the making of such payments.

4.2 Skipton shall be responsible for providing the Services and shall within the scope of Skipton's resources meet the Service Levels.

4.3 If Service Levels are not specified for an element of the Services, Skipton shall provide that element of the Services with such care, skill and diligence as may reasonably be expected of a properly skilled and competent person experienced and skilled in the provision of services of a similar nature to the Services.

4.4 Subject to paragraph 2 of schedule 5, Skipton shall not unreasonably refuse to provide any additional services in connection with the Scheme requested by the DH which are similar to the Services subject to suitable payment in respect thereof.

4.5 DH and Skipton shall meet every six months specifically to review operational issues arising from the Scheme. Additionally both parties shall make themselves available for additional meetings on reasonable written notice from the other.

4.6 Any change to the Services and/or Service Levels shall be subject to the change control procedures set out in Clause 11.

4.7 Skipton shall only sub-contract the performance of all or any part of the Services to competitive contractors with the prior written consent of the DH.

4.8 Skipton will employ suitably qualified personnel to ensure the proper fulfilment of its obligations under this Agreement.

4.9 Skipton undertakes to act towards DH conscientiously and in good faith and not allow its interests to conflict with the duties it owes to the DH under this Agreement and the general law.

4.10 Subject to clause 10, Skipton shall indemnify DH against any loss, damage, costs and expenses arising from DH entering this agreement.

5 Warranties and obligations

5.1 DH hereby warrants and represents to Skipton that DH has full power and authority to enter into this agreement and that it has taken all steps and actions necessary to bind itself to fulfil the obligations set out in this agreement.

5.2 Skipton hereby warrants and represents to DH that Skipton has full power and authority to enter into this agreement and that it has taken all steps and actions necessary to bind itself to fulfil the obligations set out in this agreement.

6 DH's obligations and appeals

6.1 DH shall during the term of this agreement act dutifully and in good faith and in particular shall:

6.1.1 *Payments*

make all such payment that it thinks fit promptly within 30 calendar days of receipt of a Drawdown Notice;

6.1.2 *Reporting*

obtain for Skipton all information necessary relative to the Services and developing medical or other data necessary to perform the Services and in particular:

6.1.2.1 keep Skipton informed about developments in Hepatitis C and changes in underlying medical issues, prognoses, diagnostic or treatment procedures known to DH which may have an impact on the administration of the Services; and

6.1.2.2 (except in exceptional circumstances) give Skipton at least 28 days' notice of any proposed announcement relevant to the Services

6.1.3 *Indemnity*

indemnify Skipton in the terms and subject to the conditions set out in schedule 7.

Appeals

- 6.2 The independent appeals panel constituted under the Principal Scheme to adjudicate on claims rejected by Skipton shall also adjudicate on claims rejected by Skipton under the Scheme (see Schedule 1).

7 Data and freedom of information

- 7.1 None of the parties shall do anything which may cause the others to infringe the Data Protection Act 1998 and in particular each party shall comply with the provisions of the Data Protection Act 1998 in relation to the use of personal data concerning the others or any employees or other individuals related in any way to the others.

- 7.2 Each party shall make sure that it is correctly and appropriately registered under the Data Protection Act 1998 and complies with notification procedures under the Data Protection Act 1998 so that it may:

7.2.1 receive and give data to appropriate parties, including any charity established to provide discretionary relief to persons affected by the virus; and

7.2.2 disclose information to the others as required under this agreement.

- 7.3 Skipton shall immediately refer any request for the release of information relating to the Services under the Freedom of Information Act 2000 to DH. DH will respond to applicants on general enquires.

- 7.4 In so far as is compatible with 7.1, Skipton shall notify the Trustees of the Caxton Foundation upon receipt of a request from them, of the identity of any Qualifying Person who has received either a Stage 1 (pre 03) payment or a Stage 1 payment.

8 Payments and accounting

- 8.1 From time to time, Skipton shall request payment from DH by delivering to DH a Drawdown Notice.

- 8.2 Payments due under clause 8.1, shall be made within 30 calendar days of the end of the relevant Processing Period into such bank account as Skipton may from time to time direct, however all funds received from DH are to be deposited into an identifiable bank account separate from all other trust funds.

- 8.3 Funds are held by Skipton and Payments are made by Skipton as agent for the DH in accordance with the authority granted to Skipton under this agreement and Skipton may not in any circumstances make a profit and shall promptly return any underspend to the DH.

- 8.4 Funds held by Skipton shall be placed on deposit for periods appropriate to the level of anticipated spend; such deposits to be chosen and monitored on a prudent basis. Skipton

accepts that it is under an obligation to seek best value in the management of its financial affairs.

8.5 Skipton may, with the prior written agreement of DH, meet the reasonable expenses of its establishment, administration and the operational requirements of its performance of the Services including where appropriate Termination Assistance pursuant to schedule 3 and termination expenditure as well as the costs of administering the Services and VAT thereon, as applicable, from the Fund. For the avoidance of doubt, these expenses shall include any irrecoverable VAT and loss of rate relief incurred by Caxton, interest on loans made by Caxton to Skipton, associated administrative costs and any other expenditure incurred by Caxton as a result of the operation of the Services by Skipton from premises occupied by Caxton. Skipton acknowledges that all expenses paid by DH pursuant to this clause 8.5 are subject to DH's auditing requirements as set out in schedule 6.

8.6 Skipton shall keep and produce records in respect of all expenditure for its own audit purposes and for production to DH as required generally by DH and not more frequently than once per calendar year, but subject to the overriding requirements of DH set out in schedule 6.

9 Confidentiality publicity and supervision

9.1 *Confidential Information* includes:

9.1.1 all information relating to the Claimants as well as to the plans, intentions, affairs and/or business of Skipton; and

9.1.2 the negotiations relating to this agreement.

9.2 Each party shall, subject to the overriding obligation of the DH to comply with Freedom of Information Act 2000 and Governmental policy from time to time concerning that Act, both during the Term and thereafter:

9.2.1 keep all Confidential Information strictly confidential;

9.2.2 not disclose any Confidential Information to a third party, other than to such of its employees and/or officers as will of necessity acquire it as a consequence of the performance of that party's obligations under this agreement, and only then provided that the relevant party shall ensure that each such employee and/or officer shall keep such Confidential Information confidential and shall not use any of it for any purpose or disclose it to any person, firm or company other than those for which or to whom that party may lawfully use or disclose it under this agreement; and

9.2.3 use Confidential Information only in connection with the proper performance of this agreement.

9.3 Clause 9.2 shall not apply to any Confidential Information to the extent that it:

9.3.1 comes within the public domain, other than through breach of clause 9.2;

9.3.2 is required or requested to be divulged by any court, tribunal, dispute resolution procedure under clause 16 or governmental authority with competent jurisdiction to which either party is subject, wherever situated;

9.3.3 is disclosed on a confidential basis for the purposes of obtaining professional advice;

9.3.4 is known to the receiving party before disclosure to it by the disclosing party;

9.3.5 is disclosed by a Claimant to a third party on a non-confidential basis; or

9.3.6 is disclosed with the other party's express approval to the disclosure.

This clause is subject to the Data Protection Act 1998.

9.4 No announcements or public statements shall be made about the Services except with prior written agreement between DH and Skipton, not to be unreasonably withheld or delayed and provided nothing herein shall place a fetter upon statements made by or on behalf of the Secretary of State for Health.

9.5 This clause 9 shall continue in force after and despite Termination.

10 Limitations of liability

Subject to its compliance with the terms of this agreement in all material respects and other than in the case of fraud, wilful default, negligence by way of performance or omission or breach of law or the regulation of any regulatory or supervisory authority on the part of Skipton, Skipton shall not be liable to DH for any indirect or consequential loss, damage, costs or expenses incurred by DH, howsoever caused.

11 Change control and Inspection

11.1 Any changes to this agreement or the schedules shall be agreed by the parties in accordance with schedule 5 (Change Control) and clause 18.2 below.

11.2 No change of this agreement shall be binding on either party unless made in writing and signed by duly authorised representatives of both parties.

- 11.3 Each party shall nominate at least one individual with responsibility to monitor the delivery and performance of the Services who shall act as the prime point of contact between the parties and through whom all communications shall be made (respectively the *Skipton's Representative* and the *DH's Representative*)
- 11.4 Skipton shall provide DH with access on an Open Book Accounting basis to any information and documents which may be required to substantiate the charges for changes proposed by either party under this clause 11 provided the information and documents relate to the provisions of the Services
- 11.5 Costs incurred by Skipton on assessing the implications of implementing the Change Control procedure and actually implementing shall be borne in accordance with the reimbursement procedures set out in clause 8.

12 Step in rights

- 12.1 If Skipton fails to provide part or all of the Services and having been given written notice of such failure by DH, Skipton will remedy such failure in accordance with this agreement within a reasonable period of the notice (not to be less than 20 Business Days). DH may itself provide or may employ and pay a third party supplier to provide the Services or any part of the Services. DH's reasonable costs in doing this may, at DH's option, be deducted from any sums due to Skipton or shall be recoverable from Skipton by DH as a debt, but not in such manner as would prevent Skipton from meeting commitments incurred in providing the Services or meeting its operating costs deriving from undertaking the provision of the Services.
- 12.2 To the extent to which the Services are being provided by DH or a third party supplier under clause 12.1, Skipton will be relieved of its obligations to provide the Services.
- 12.3 Skipton will not be liable for the acts or omissions of DH or the third party supplier in providing the Services.
- 12.4 DH shall permit Skipton to resume delivery of the Services once it is satisfied on reasonable grounds that Skipton will be able to resume delivery of the Services in accordance with this agreement.
- 12.5 Skipton shall co-operate in all reasonable respects with DH and any third party supplier engaged by DH under this clause.
- 12.6 The step in rights set out in clause 12 shall not operate so as to prejudice DH's right to terminate this agreement pursuant to clause 14 and to recover all sums properly due to DH.

13 Insurance

Skipton shall maintain in force at all times during the Term (as an expense to be re-charged to operating costs) insurance with a reputable insurance company covering directors and officers liability cover and employer's liability insurance for a minimum amount of £5 million and public liability insurance for a minimum amount of £2 million and will provide DH with evidence of such insurance on request. Where possible (but without obligation on Skipton to take excessive steps or incur significant costs to implement) such insurance cover is to be purchased to cover DH's liability pursuant to the indemnity granted at clause 6.1.3 for the risks that may be covered by such insurance. The fact of such cover being obtained or not shall not diminish the indemnity described in schedule 7 which shall continue in full force and effect. To the extent the indemnity is called by Skipton, DH shall be entitled to any rights of subrogation that might be available on recovery from insurers.

14 Termination

14.1 Either party (the "Terminating Party") may terminate this agreement with immediate effect by giving written notice to the other party if any of the following events have occurred in respect of the other party (the "Defaulting Party"):

14.1.1 subject to the following provisions of this clause 14, the Defaulting Party has committed:

14.1.1.1 a material breach of this agreement which is incapable of remedy or which, if capable of remedy, has not been remedied by the Defaulting Party (or where appropriate, agreed remedial action in respect thereof has not been initiated or pursued in accordance with a relevant disaster plan) within 20 Business Days of receipt of written notice from the Terminating Party specifying the breach and requiring the same to be remedied; or

14.1.1.2 if there are a series of unremedied breaches of this agreement which:

- (a) are of a substantially similar nature;
- (b) occur within a rolling period of 30 Business Days; and
- (c) taken together amount to a material breach which is incapable of remedy or which, in the case of a series of breaches capable of remedy, are not remedied by the Defaulting Party (or where appropriate, agreed remedial action in respect thereof has not been initiated or pursued

in accordance with a relevant disaster plan) within 20 Business Days of receipt of written notice from the Terminating Party specifying the breaches and requiring the same to be remedied.

14.2 This agreement may be terminated by the DH immediately by notice in writing if Skipton has a receiver or administrative receiver, passes a resolution for winding up (otherwise that for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, becomes subject to an administration order or enters into any voluntary arrangement with its creditors.

14.3 For the purposes of clause 14.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question to the reasonable satisfaction of the Terminating Party other than as to the time of performance.

14.4 Termination of this agreement shall not affect any accrued rights or liabilities of any party or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.

14.5 Upon termination and completion of the Termination assistance, Skipton shall refund all Fund money to DH or as DH shall direct in writing.

14.6 The expiry or termination of this agreement for any reason shall not affect:

14.6.1 any rights and/or obligations accrued before the date of termination or expiry; or

14.6.2 any rights and/or obligations expressed to continue in force after and despite expiry or termination.

15 Termination assistance

Upon termination Skipton shall perform the obligations specified in schedule 3 (Termination Assistance).

16 Dispute resolution

16.1 DH and Skipton shall negotiate in good faith with a view to resolving any question or difference which may arise concerning the construction, meaning or effect of this agreement and any dispute arising under, out of, or in connection with this agreement. If any such matter cannot be resolved amicably through negotiations between the parties within 20 Business Days of the matter having first been considered in negotiations between DH and Skipton, then the matter may be referred by DH or Skipton to a meeting to be convened between a senior executive with due authority of DH to enter into such negotiations and a director of Skipton. If any such meeting fails to result in a settlement within 10 Business

Days of such referral to it (or it is not possible to complete such a meeting within this period) then:

- 16.1.1 a dispute in relation to any amount payable under this agreement, shall be referred for final settlement to an independent chartered accountant qualified in England and Wales jointly nominated by DH and Skipton or failing such joint nomination within 10 Business Days after any one of DH's written request to Skipton or Skipton's written request to DH, nominated at the written request of any party by the President of the Institute of Chartered Accountants in England and Wales or any successor body to that Institute or (if he or she is unavailable) by his or her deputy or designate (the *Expert*);
- 16.1.2 any other dispute may be referred to the Courts of England under clause 20.7.
- 16.2 Each of the parties shall supply the Expert with the assistance, documents and information the Expert requires for the purpose of determination of the dispute. Each of the parties shall have a reasonable opportunity to present its case to the Expert.
- 16.3 In all cases the terms of appointment of the Expert shall include a requirement on the Expert:
 - 16.3.1 to give his determination within 15 Business Days of his appointment or such other period as may be agreed;
 - 16.3.2 to establish his own reasonable procedures to enable him to give his determination; and
 - 16.3.3 to provide a written statement of his decision to the parties.
- 16.4 Any decision by the Expert shall be final and binding on the parties in the absence of manifest error. The Expert shall act as an expert and not an arbitrator; the reaching of any decision by the Expert shall not be a quasi-judicial procedure. The costs of the Expert shall be borne equally between DH and Skipton, unless the Expert determines otherwise.
- 16.5 Subject to the terms of this agreement, while the above dispute resolution procedure is being followed, the parties shall each be obliged to fulfil in full their respective obligations under this agreement.
- 17 Assignment**
 - 17.1 No party shall assign, transfer, charge, or otherwise deal in its rights and/or obligations under this agreement (or purport to do so) without Skipton's prior written consent in the case of any of DH, or DH's consent in the case of Skipton which shall not be unreasonably withheld or delayed.

18 Waiver, forbearance and variation

- 18.1 None of the rights of any party shall be prejudiced or restricted by any indulgence or forbearance extended to any of the other parties and no waiver by any party in respect of any breach shall operate as a waiver in respect of any subsequent breach.
- 18.2 This agreement shall not be varied or cancelled, unless the variation or cancellation is expressly accepted in writing by a duly authorised person or director of each of the parties.

19 Third Parties

- 19.1 None of the parties intends that any term of this agreement shall be by virtue of the Contracts (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to this agreement or a permitted assignee of such a party.

20 General

- 20.1 No party shall be liable for any delay or failure to perform any obligations under this agreement (other than an obligation to make payment) insofar as the performance of the obligation is directly or indirectly prevented by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or by any circumstances beyond its reasonable control (*force majeure event*). Each party shall use all reasonable endeavours to continue to perform its obligations under this agreement for the duration of the force majeure event.
- 20.2 Each party shall do, execute and perform (and shall use reasonable endeavours to ensure that any necessary third parties do) such further acts, things, deeds and documents as may from time to time be required to give full legal and practical effect to this agreement.
- 20.3 The Documents contain the whole agreement between the parties in respect of their subject matter and supersede all prior arrangements, agreements and understandings between them relating to their subject matter.
- 20.4 If any provision of this agreement is declared by any judicial or other competent authority to be void, illegal or otherwise unenforceable, the invalidity or unenforceability shall not affect the other provisions of this agreement and all provisions not affected by the invalidity or unenforceability shall remain in full force and effect. The parties shall attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial obligations of the invalid or unenforceable provision.
- 20.5 Nothing in this agreement shall constitute or be deemed to constitute a partnership or joint venture between the parties or (other than as expressly provided in this agreement) as

constituting any party as the agent of any other party or as constituting the relationship of employer and employee between any of the parties.

- 20.6 This agreement may be executed in any number of the counterparts, each of which when executed shall be an original, but all the counterparts together shall constitute one document.
- 20.7 This agreement shall be governed by, and construed in accordance with, English law and, subject to clause 16, the parties submit to the exclusive jurisdiction of the English courts.
- 20.8 All notices which are required to be given under this agreement shall be in writing and shall be sent to the addresses of the parties set out below or such other address as any party may designate by notice given in accordance with the provisions of this clause. Notice may be delivered personally, by first class prepaid letter, or by facsimile transmission using the numbers set out below or by e-mail and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and, if by facsimile transmission, when despatched.

Addresses for service of notices are:

DH

For the attention of: The Department of Health, Emergency Preparedness and Health Protection Policy Directorate

Address: Room 164, Richmond House, 79 Whitehall, London SW1A 2NS

Skipton

For the attention of: The Company Secretary
Address: P.O. Box 50107, London SW1H 0YF
Fax no: 020 7808 1169

SCHEDULE 1
Services

Skipton Fund Limited

Operating procedures for handling claims

1. Skipton shall perform such Services as are necessary to assess eligibility to participate in, and administer the Scheme to, or in respect of, those **Qualifying Persons** (see Schedules 2 to 2C).
2. Skipton has prepared a registration form that invites people to register their interest in the FAS2. This form will be sent to anybody who telephones asking about entitlement.
3. There is a difference between registration and application forms. Registration forms are used to register somebody's interest.
4. The application form will be available for inspection (but not downloading) on the Skipton website.
5. The DH will implement such advertising as they think necessary to bring the scheme to the attention of potential Claimants.
- 5A. Skipton will telephone (or have telephoned) all previous recipients of a Stage 2 payment and of a lump sum payment on scheme entry (at their last known address) who received NHS blood products to advise them of the terms of the Scheme.
6. At the same time the DH will supply potential Claimants with details of FAS2 and procedures to apply to Skipton for assistance.
7. Skipton will compile its own database of those who record their interest.
8. Skipton will use its database, inter alia, to check all applications against duplication and fraud:

by comparing the database with the lists by internal comparisons, using address and other contact details;

by checking origin of clinician's certificate; and

by checking NHS and/or NI numbers.
- 8A. In the course of assessing the eligibility of a Claimant, Skipton shall, applying paragraphs 8B, to 8G as appropriate, determine and record the "relevant country" (England, Wales, Scotland or Northern Ireland) in relation to that Claimant.

8B. In the case of a Claimant who was treated with NHS blood, blood products or tissue and as a result of which the Claimant became, on a balance of probabilities, infected with the virus, the relevant country is presumed to be that in which -

- (i) that Claimant was treated; or
- (ii) that Claimant first presented for treatment for the virus where there is insufficient evidence to identify the country referred to in (i) above.

8C. In the case of a Claimant who, on a balance of probabilities, became infected by transmission of the virus from a person referred to in paragraph 8B and that Claimant satisfies Condition D of Schedule 2, the relevant country is presumed to be that of that person as determined in accordance with that paragraph.

8D. In the case of a Claimant who, on a balance of probabilities, became infected by transmission of the virus from a person referred to in paragraph 8B who has subsequently died and that Claimant satisfies Condition D of Schedule 2, the relevant country is presumed to be that of that which would have been that person's relevant country as determined in accordance with that paragraph had that person survived.

8E. In the case of a Claimant who is a dependant of a person referred to in paragraph 8B and who does not fall into paragraph 8D, the relevant country is presumed to be that country which would have been that person's relevant country as identified in accordance with paragraph 8B.

8F. In the case of a Claimant who was treated with NHS blood, blood products or tissue whilst a member of Her Majesty's Armed Forces or with NHS blood, blood products or tissue in a country outside England, Wales, Scotland or Northern Ireland and as a result of which the Claimant became, on a balance of probabilities, infected with the virus, Skipton shall determine the relevant country as England.

8G. In the case of a Claimant who, on a balance of probabilities, became infected by transmission of the virus from a person referred to in paragraph 8F, and that Claimant satisfies Condition D of Schedule 2, Skipton shall determine the relevant country as England: this applies whether or not the person referred to in paragraph 8F has subsequently died.

8H. Skipton shall ascertain, in the course of assessing the eligibility of each Claimant;

where a Claimant is alive at the time the claim is made, in which country within the United Kingdom the Claimant has his sole or main residence at the time the claim is made or, if his sole or main residence is abroad at the time the claim is made, in which country within the United Kingdom he had his sole or main residence immediately prior to acquiring that residence abroad;

where a Claimant has died and a claim is being made in respect of that person, in which country within the United Kingdom that Claimant had his sole or main residence at the time of death, or if his sole or main residence at the time of death was located outside the United Kingdom, in which country within the United Kingdom he had his sole or main residence immediately before acquiring that residence abroad;

where a country within the United Kingdom cannot be ascertained in accordance with either paragraph (i) or (ii);

and shall pass on this information to DH, as stated in paragraph 12 below.

9. Where a claim has been refused, Skipton will, inform the applicant of his right of appeal.
10. Skipton will inform DH of its policies for assessing eligibility for participation in the Scheme, particularly in cases where medical and other records have been destroyed as a matter of routine procedure, are otherwise missing or incomplete. However, all claims are to be assessed on the balance of probabilities.

Appeals Panel

11. With regard to Appeals, Skipton will:

- provide the secretariat for the Appeals Panel
- organise all necessary meetings of the Panel
- prepare cases to be considered by the Panel
- record the Panel's decisions, and prepare its response to the appellant
- pay members fees and expenses.

Reports to DH.

12. Reporting to DH as required on Skipton's activities; such reports to include (when applicable):

- statement of funds disbursed broken down by relevant country;
- analysis of numbers of claims received and paid, broken down by reference to both the type of payment (Stage 1, Stage 2, top-up, Scotland etc.) and to relevant country;
- analysis of number of appeals received, upheld and refused broken down by relevant country;
- analysis of level 2 claims deferred broken down by relevant country;
- details of complaints or claims made by Claimants broken down by relevant country;
- report on results of investment activities;

- report on Skipton's operating costs;
- estimate of time when Fund will need replenishment;
- such other reports as might reasonably be requested from time to time by any of the health authorities;
- Skipton shall each year deliver an annual review and accounts to DH. DH will provide a letter of instruction to Skipton, specifying the content and format of the review and accounts;
- Determinations made by Skipton pursuant to paragraphs 8A to 8G above broken down by relevant country;
- the information required under paragraph 8H above.

SCHEDULE 2
England: Payments & Qualifying Persons

Part I

Payments

1. The Scheme makes-
 - (a) lump sum payments of:
 - (i) £20,000 (Stage 1 (pre 03) payments),
 - (ii) £20,000 (Stage 1 payments),
 - (iii) £50,000 (Stage 2 (pre 03) payments),
 - (iv) £25,000 (Stage 2 payments), and
 - (v) £25,000 or, as the case may be, £50,000 (Stage 2 (top up) payments),
 - (b) Prescription payments; and
 - (c) annual payments of such amount as the Secretary of State may from time to time determine,
- to Qualifying Persons for whom the relevant country is England.

Part II

Qualifying Persons

2. A Qualifying Person is a person who satisfies-
 - (a) Condition A and either Condition B or Condition C, or
 - (b) Condition D.
3. Condition A is that the person was treated before September 1991 with NHS blood, blood products or tissue in England (or overseas whilst a member of Her Majesty's armed forces) and as a result of that treatment, on the balance of probabilities, became infected with the virus and developed chronic hepatitis C infection.

4. Condition B is that the person was, at the time of treatment, a person with haemophilia or other inherited or acquired bleeding disorder, whether or not they are also infected with HIV. This includes a person who developed chronic hepatitis C infection after being treated in England with any of the following-
- (a) Factor VIII or Factor IX blood clotting factor,
 - (b) cryoprecipitate or FEIBA,
 - (c) plasma (including fresh, frozen plasma),
 - (d) whole blood or any components thereof.
5. Condition C is that the person-
- (a) at the time of treatment was not a person with the type of bleeding disorder referred to in Condition B, and
 - (b) developed chronic hepatitis C infection after being treated in England with any of the following products-
 - (i) whole blood or any components thereof;
 - (ii) albumin;
 - (iii) bone marrow;
 - (iv) intravenous immunoglobulin;
 - (v) plasma (including fresh, frozen plasma);
 - (vi) DEFIX.
6. Condition D is that the person, on the balance of probabilities, became infected by transmission of the virus from a person who satisfies Condition A and either Condition B, or as the case may be, Condition C ("the transmitter")-
- (a) if at the time of transmission that person was in one of the following relationships with the transmitter-
 - (i) spouse or civil partner
 - (ii) cohabiting partners of either sex
 - (iii) parent/guardian, son or daughter of the parent/guardian, and
 - (b) the infection occurred as a result of any of the following-
 - (i) sexual transmission,
 - (ii) transmission from a mother to her baby,
 - (iii) accidental needlestick injury (but limited to the relationships referred to in sub-paragraph (a) and excluding the sharing of needles by injecting drug users),

- (iv) some other route, verified by a qualified medical practitioner (but limited to the relationships referred to in sub-paragraph (a) and excluding the sharing of needles by injecting drug users).

7. No payment under this scheme is payable to, or in respect of, a person who was infected with the virus but spontaneously cleared it in the Acute Stage.
8. A Stage 1 pre 03 payment of £20,000 is payable in respect of a Qualifying Person who died before 29 August 2003 if they are assessed as having satisfied paragraph 2(a) or 2(b): any payment under this paragraph will be made to that person's estate.
9. A Stage 1 payment of £20,000 is payable to a Qualifying Person who satisfies paragraph 2(a) or (b) and was alive on 29 August 2003: where the Qualifying Person dies before receiving the payment, it will be made to that person's estate.
10. A person who has received a Stage 1 payment as Qualifying Person and-
 - (a) who spontaneously clears the virus during the chronic phase of infection but before becoming eligible for a Stage 2 payment, and
 - (b) who subsequently re-qualifies as a Qualifying Person with a new virus in accordance with paragraph 2(a) and does not spontaneously clear the new virus in the Acute Stage,is eligible for a further Stage 1 payment pursuant to paragraph 9.
11. A Stage 2 pre 03 payment of £50,000 is payable in respect of a Qualifying Person who satisfies paragraph 8 if at the date of their death they-
 - (a) are assessed as having developed cirrhosis or primary liver cancer or B cell non-Hodgkin's Lymphoma, or
 - (b) have received, or were on the waiting list to receive, a liver transplant.Any payment under this paragraph will be made to the Qualifying Person's estate.
12. A Stage 2 payment of £25,000 is payable to a Qualifying Person who-
 - (a) satisfies paragraph 9 and received a Stage 1 payment and was alive on 29 August 2003,
 - (b) has developed cirrhosis or primary liver cancer or B cell non-Hodgkin's Lymphoma or has received, or are on the waiting list to receive, a liver transplant.

Where the Qualifying Person dies before receiving the payment, it will be made to that person's estate.

13. A Stage 2 (top-up) payment is payable to a Qualifying Person-
- (a) of £25,000 who was-
 - (i) alive on 29 August 2003, and
 - (ii) eligible for, and received, a Stage 2 payment (see paragraph 12);
 - (b) of £50,000, who-
 - (i) satisfies Condition A and either Condition B or Condition C,
 - (ii) was alive on 29 August 2003, and
 - (iii) has not received a Stage 2 payment of any sort; and
 - (iv) is eligible for a Stage 2 payment (see paragraph 12).
 - (c) of £50,000, who-
 - (i) satisfies Condition D,
 - (ii) was alive on 29 August 2003,
 - (iii) has not received a Stage 2 payment of any sort, and
 - (iv) as a result of being infected by a person who satisfies Condition A and either Condition B or Condition C, developed cirrhosis or primary liver cancer or B cell non-Hodgkin's Lymphoma or has received, or is on the waiting list to receive, a liver transplant.

Part III

Bereavement Payment

14. Subject to paragraph 16, below, payments by Skipton may also include a one-off bereavement payment of £10,000 to a living person ("P") who was the spouse or partner of a Qualifying Person at the date of the Qualifying Person's death, and who was cohabiting with that Qualifying Person at the time of the Qualifying Person's death, where-
- (a) that Qualifying Person died before 31 March 2017,
 - (b) that Qualifying Person, whether or not they were also identified as having been infected with HIV, was identified as infected with the virus in England and had, before death,

been a recipient of a payment referred to in Part I of this Schedule (or their estate has received such payment); and

(c) a contributory factor to that Qualifying Person's death was, on a balance of probabilities:

(i) the virus; or

(ii) in the case of a Qualifying Person also infected with HIV, either the virus or HIV.

15. For the purposes of paragraph 14:

(a) a "spouse" means a person married to, or in a formal legal union (such as civil partnership) with, a Qualifying Person at the time of the Qualifying Person's death;

(b) a "partner" means a person, other than a person falling under the definition at paragraph 15(a) above, who was living together with a Qualifying Person at the time of the Qualifying Person's death in a relationship akin to that between two people who are married or are in a formal legal union (such as a civil partnership).

16. Where P (as defined in paragraph 14, above) has received a bereavement payment in accordance with directions issued to MFET Limited by the Secretary of State pursuant to article 4 of the Articles of Association of MFET Limited (company number 7121661), no payment under paragraph 14 is to be made.

Part IV

Miscellaneous

17. Skipton will not make lump sum payments totalling more than £70,000 with respect to any individual unless they satisfy the conditions for multiple stage 1 payments (see para 10, Part II above).

18. Skipton will not make multiple annual payments to any individual.

19. Skipton will make backdated payments only where there is evidence, on the balance of probabilities, of administrative error or other failure on the part of Skipton, which resulted in the Qualifying Person not making a claim in the past.

SCHEDULE 2A
Scotland: Payments & Qualifying Persons

Part 1

Payments

1. The Scheme makes-
 - (a) lump sum payments of:
 - (i) £20,000 (Stage 1 (pre 03) payments),
 - (ii) £20,000 (Stage 1 payments),
 - (iii) £30,000 (Stage 1 (top up) payments Scotland),
 - (iv) £50,000 (Stage 2 (pre 03) payments),
 - (iv) £25,000 (Stage 2 payments), and
 - (v) £20,000, £25,000 or, as the case may be, £50,000 (Stage 2 (top up) payments),
 - (vi) £50,000 (Stage 2 payments Scotland (HIV)),
 - (b) annual payments of such amount as the Secretary of State may from time to time determine.

to Qualifying Persons for whom Scotland is the relevant country.

Part II

Qualifying Persons

2. A Qualifying Person is a person who satisfies-
 - (a) Condition A and either Condition B or Condition C, or
 - (b) Condition D.
3. Condition A is that the person was treated before September 1991 with NHS blood, blood products or tissue in Scotland and as a result of that treatment, on the balance of probabilities, became infected with the virus and developed chronic hepatitis C infection.

4. Condition B is that the person was, at the time of treatment, a person with haemophilia or other inherited or acquired bleeding disorder, whether or not they are also infected with HIV. This includes a person who developed chronic hepatitis C infection after being treated in Scotland with any of the following-
- (a) Factor VIII or Factor IX blood clotting factor,
 - (b) cryoprecipitate or FEIBA,
 - (c) plasma (including fresh, frozen plasma),
 - (d) whole blood or any components thereof.
5. Condition C is that the person-
- (a) at the time of treatment was not a person with the type of bleeding disorder referred to in Condition B, and
 - (b) who developed chronic hepatitis C infection after being treated in Scotland with any of the following products-
 - (i) whole blood or any components thereof;
 - (ii) albumin;
 - (iii) bone marrow;
 - (iv) intravenous immunoglobulin;
 - (v) plasma (including fresh, frozen plasma);
 - (vi) DEFIX.
6. Condition D is that the person, on the balance of probabilities, became infected by transmission of the virus from a person who satisfies Condition A and Condition B, or as the case may be, Condition C ("the transmitter")-
- (a) if at the time of transmission that person was in one of the following relationships with the transmitter-
 - (i) spouse or civil partner
 - (ii) cohabiting partners of either sex
 - (iii) parent/guardian, son or daughter of the parent/guardian, and
 - (b) the infection occurred as a result of any of the following-
 - (i) sexual transmission,
 - (ii) transmission from a mother to her baby,
 - (iii) accidental needlestick injury (but limited to the relationships referred to in subparagraph (a) and excluding the sharing of needles by injecting drug users),

- (iv) some other route, verified by a qualified medical practitioner (but limited to the relationships referred to in sub-paragraph (a) and excluding the sharing of needles by injecting drug users).
- 7. No payment under this scheme is payable to, or in respect of, a person who was infected with the virus but spontaneously cleared it in the Acute Stage.
- 8. A Stage 1 pre 03 payment of £20,000 is payable in respect of a Qualifying Person who died before 29 August 2003 if they are assessed as having satisfied paragraph 2(a) or 2(b): any payment under this paragraph will be made to that person's estate.
- 9. A Stage 1 payment of £20,000 is payable to a Qualifying Person who satisfies paragraph 2(a) or (b) and was alive on 29 August 2003: where the Qualifying Person dies before receiving the payment, it will be made to that person's estate.
- 10. A Stage 1 (top-up) payment Scotland of £30,000 is payable to a Qualifying Person who was alive on 1 April 2016 and who-
 - (a) satisfies paragraph 9,
 - (b) is not eligible for a Stage 2 payment of any sort,
 - (c) has not received a Stage 2 payment of any sort.

Where the Qualifying Person dies after 1 April 2016 but before receiving the payment, it will be made to that person's estate.

- 11. A person who has received a Stage 1 payment as a Qualifying Person and-
 - (a) who spontaneously clears the virus during the chronic phase of infection but before becoming eligible for a Stage 2 payment, and
 - (b) who subsequently re-qualifies as a Qualifying Person with a new virus in accordance with paragraph 2(a) and does not spontaneously clear the new virus in the Acute Stage,is eligible for a further Stage 1 payment pursuant to paragraph 9.
- 12. A Stage 2 pre 03 payment of £50,000 is payable in respect of a Qualifying Person who satisfies paragraph 8 if at the date of their death they-
 - (a) are assessed as having developed cirrhosis or primary liver cancer or B cell non-Hodgkin's Lymphoma, or
 - (b) have received, or were on the waiting list to receive, a liver transplant.

Any payment under this paragraph will be made to the Qualifying Person's estate.

13. A Stage 2 payment is of £25,000 payable to a Qualifying Person who-

- (a) satisfies paragraph 9 and received a Stage 1 payment and was alive on 29 August 2003,
- (b) has developed cirrhosis or primary liver cancer or B cell non-Hodgkin's Lymphoma or has received, or are on the waiting list to receive, a liver transplant, and
- (c) has not received a Stage 1 (top up) payment Scotland, and
- (d) has not received a Stage 2 payment Scotland (HIV).

Where the Qualifying Person dies before receiving the payment, it will be made to that person's estate.

14. A Stage 2 (top-up) payment is payable to a Qualifying Person-

- (a) of £25,000 who was-
 - (i) alive on 29 August 2003, and
 - (ii) eligible for, and received, a Stage 2 payment of £25,000 (see paragraph 13);
- (b) of £50,000, who-
 - (i) satisfies Condition A and either Condition B or Condition C,
 - (ii) was alive on 29 August 2003, and
 - (iii) has not received a Stage 1 (top-up) payment Scotland or a Stage 2 payment or a Stage 2 payment Scotland (HIV); and
 - (iv) is eligible for a Stage 2 payment (see paragraph 13).
- (c) of £50,000, who-
 - (i) satisfies Condition D,
 - (ii) was alive on 29 August 2003, and
 - (iii) has not received a Stage 1 (top-up) payment Scotland or a Stage 2 payment or a Stage 2 payment Scotland (HIV), and
 - (iv) as a result of being infected by a person who satisfies Condition A and either Condition B or Condition C, developed cirrhosis or primary liver cancer or B cell non-Hodgkin's Lymphoma or has received, or is on the waiting list to receive, a liver transplant;

(d) of £20,000, who-

- (i) was alive on 29 August 2003,
- (ii) was eligible for, and received a Stage 1 payment and a Stage 1 (top-up) payment Scotland, and
- (iii) has not received a Stage 2 Payment Scotland (HIV), but
- (iv) is eligible for, but has not received, a Stage 2 or a Stage 2 Scotland payment (see paragraph 13).

Where the Qualifying Person dies before receiving the payment, it will be made to that person's estate.

15. A Stage 2 payment Scotland (HIV) of £50,000 is payable to a Qualifying Person who-

- (a) was alive on 1 April 2016,
- (b) is also infected with the human immunodeficiency virus as a result of receiving, before September 1991, NHS blood, blood products or tissue,
- (c) is in receipt of an annual payment from MFET Ltd (company number 7121661)(†), and
- (d) has not already received any other Stage 2 payment.

Where the Qualifying Person dies after 1 April 2016 but before receiving the payment, it will be made to that person's estate(‡).

Part III

Miscellaneous

- 16. Skipton will not make lump sum payments totalling more than £70,000 with respect to any individual unless they satisfy the conditions for multiple stage 1 payments (see para 11 of Part II above).
- 17. Skipton will not make multiple annual payments to any individual.

(†) MFET Limited is a company limited by guarantee, incorporated and registered in England and Wales with company number 7121661 whose registered office is at Alliance House, 12 Caxton Street, London SW1.

(‡) Nothing in paragraph 15 of Schedule 2A seeks to prevent a Qualifying Person from being eligible for support and/or payment under the Eileen Trust as appropriate.

18. Skipton will make backdated payments only where there is evidence, on the balance of probabilities, of administrative error or other failure on the part of Skipton, which resulted in the Qualifying Person not making a claim in the past.

SCHEDULE 2B
Wales: Payments & Qualifying Persons

Part I

Payments

1. The Scheme makes-
 - (a) lump sum payments of:
 - (i) £20,000 (Stage 1 (pre 03) payments),
 - (ii) £20,000 (Stage 1 payments),
 - (iii) £50,000 (Stage 2 (pre 03) payments),
 - (iv) £25,000 (Stage 2 payments), and
 - (v) £25,000 or, as the case may be, £50,000 (Stage 2 (top up) payments), and
 - (b) annual payments of such amount as the Secretary of State may from time to time determine,
- to Qualifying Persons for whom the relevant country is Wales.

Part II

Qualifying Persons

2. A Qualifying Person is a person who satisfies-
 - (a) Condition A and either Condition B or Condition C, or
 - (b) Condition D.
3. Condition A is that the person was treated before September 1991 with NHS blood, blood products or tissue in Wales and as a result of that treatment, on the balance of probabilities, became infected with the virus and developed chronic hepatitis C infection.
4. Condition B is that the person was, at the time of treatment, a person with haemophilia or other inherited or acquired bleeding disorder, whether or not they are also infected with HIV. This

includes a person who developed chronic hepatitis C infection after being treated in Wales with any of the following-

- (a) Factor VIII or Factor IX blood clotting factor,
- (b) cryoprecipitate or FEIBA,
- (c) plasma (including fresh, frozen plasma),
- (d) whole blood or any components thereof.

5. Condition C is that the person-

- (a) at the time of treatment was not a person with the type of bleeding disorder referred to in Condition B, and
- (b) who developed chronic hepatitis C infection after being treated in Wales with any of the following products-
 - (i) whole blood or any components thereof;
 - (ii) albumin;
 - (iii) bone marrow;
 - (iv) intravenous immunoglobulin;
 - (v) plasma (including fresh, frozen plasma);
 - (vi) DEFIX.

6. Condition D is that the person, on the balance of probabilities, became infected by transmission of the virus from a person referred to in paragraph 4 or 5 above-

- (a) if at the time of transmission that person was in one of the following relationships with the transmitter-
 - (i) spouse or civil partner
 - (ii) cohabiting partners of either sex
 - (iii) parent/guardian, son or daughter of the parent/guardian, and
- (b) the infection occurred as a result of any of the following-
 - (i) sexual transmission,
 - (ii) transmission from a mother to her baby.
 - (iii) accidental needlestick injury (but limited to the relationships referred to in sub-paragraph (a) and excluding the sharing of needles by injecting drug users),
 - (iv) some other route, verified by a qualified medical practitioner (but limited to the relationships referred to in sub-paragraph (a) and excluding the sharing of needles by injecting drug users).

7. No payment under this scheme is payable to, or in respect of, a person who was infected with the virus but spontaneously cleared it in the Acute Stage.
8. A Stage 1 pre 03 payment of £20,000 is payable in respect of Qualifying Person who died before 29 August 2003 if they are assessed as having satisfied paragraph 2(a) or 2(b): any payment under this paragraph will be made to that person's estate.
9. A Stage 1 payment of £20,000 is payable to a Qualifying Person who satisfies paragraph 2(a) or (b) and was alive on 29 August 2003: where the Qualifying Person dies before receiving the payment, it will be made to that person's estate.
10. A person who has received a Stage 1 payment as Qualifying Person and-
 - (a) who spontaneously clears the virus during the chronic phase of infection but before becoming eligible for a Stage 2 payment, and
 - (b) who subsequently re-qualifies as a Qualifying Person with a new virus in accordance with paragraph 2(a) and does not spontaneously clear the new virus in the Acute Stage,is eligible for a further Stage 1 payment pursuant to paragraph 9.
11. A Stage 2 pre 03 payment of £50,000 is payable in respect of a Qualifying Person who satisfies paragraph 8 if at the date of their death they-
 - (a) are assessed as having developed cirrhosis or primary liver cancer or B cell non-Hodgkin's Lymphoma, or
 - (b) have received, or were on the waiting list to receive, a liver transplant.Any payment under this paragraph will be made to the Qualifying Person's estate.
12. A Stage 2 payment of £25,000 is payable to a Qualifying Person who-
 - (a) satisfies paragraph 9 and received a Stage 1 payment and was alive on 29 August 2003,
 - (b) has developed cirrhosis or primary liver cancer or B cell non-Hodgkin's Lymphoma or has received, or are on the waiting list to receive, a liver transplant.Where the Qualifying Person dies before receiving the payment, it will be made to that person's estate.
13. A Stage 2 (top-up) payment is payable to a Qualifying Person-
 - (a) of £25,000 who was-
 - (i) alive on 29 August 2003, and

- (ii) eligible for, and received, a Stage 2 payment (see paragraph 12);
- (b) of £50,000, who-
 - (i) satisfies Condition A and either Condition B or Condition C,
 - (ii) was alive on 29 August 2003, and
 - (iii) has not received a Stage 2 payment of any sort; and
 - (iv) is eligible for a Stage 2 payment (see paragraph 12).
- (c) of £50,000, who-
 - (i) satisfies Condition D,
 - (ii) was alive on 29 August 2003, and
 - (iii) as a result of being infected by a person who satisfies Condition A and either Condition B or Condition C, developed cirrhosis or primary liver cancer or B cell non-Hodgkin's Lymphoma or has received, or are on the waiting list to receive, a liver transplant.

Where the Qualifying Person dies before receiving the payment, it will be made to that person's estate.

Part III

Bereavement Payment

14. Subject to paragraph 16, below, payments by Skipton may also include a one-off bereavement payment of £10,000 to a living person ("P") who was the spouse or partner of a Qualifying Person at the date of the Qualifying Person's death, and who was cohabiting with that Qualifying Person at the time of the Qualifying Person's death, where-
- (a) that Qualifying Person died before 31 March 2017,
 - (b) that Qualifying Person, whether or not they were also identified as having been infected with HIV, was identified as infected with the virus in Wales and had, before death, been a recipient of a payment referred to in Part I of this Schedule (or their estate has received such payment); and
 - (c) a contributory factor to that Qualifying Person's death was, on a balance of probabilities:
 - (i) the virus; or

(ii) in the case of a Qualifying Person also infected with HIV, either the virus or HIV.

15. For the purposes of paragraph 14:

- (a) a "spouse" means a person married to, or in a formal legal union (such as civil partnership) with, a Qualifying Person at the time of the Qualifying Person's death;
- (b) a "partner" means a person, other than a person falling under the definition at paragraph 15(a) above, who was living together with a Qualifying Person at the time of the Qualifying Person's death in a relationship akin to that between two people who are married or are in a formal legal union (such as a civil partnership).

16. Where P (as defined in paragraph 14, above) has received a bereavement payment in accordance with directions issued to MFET Limited by the Secretary of State pursuant to article 4 of the Articles of Association of MFET Limited (company number 7121661), no payment under paragraph 14 is to be made.

Part IV

Miscellaneous

- 17. Skipton will not make lump sum payments totalling more than £70,000 with respect to any individual unless they satisfy the conditions for multiple stage 1 payments (see para 10, Part II above).
- 18. Skipton will not make multiple annual payments to any individual.
- 19. Skipton will make backdated payments only where there is evidence, on the balance of probabilities, of administrative error or other failure on the part of Skipton, which resulted in the Qualifying Person not making a claim in the past.

SCHEDULE 2C
Northern Ireland: Payments & Qualifying Persons

Part I

Payments

1. The Scheme makes-
 - (a) lump sum payments of:
 - (i) £20,000 (Stage 1 (pre 03) payments),
 - (ii) £20,000 (Stage 1 payments),
 - (iii) £50,000 (Stage 2 (pre 03) payments),
 - (iv) £25,000 (Stage 2 payments), and
 - (v) £25,000 or, as the case may be, £50,000 (Stage 2 (top up) payments),
 - (b) annual payments of such amount as the Secretary of State may from time to time determine,
- to Qualifying Persons for whom the relevant country is Northern Ireland.

Part II

Qualifying Persons

2. A Qualifying Person is a person who satisfies-
 - (a) Condition A and either Condition B or Condition C, or
 - (b) Condition D.
3. Condition A is that the person was treated before September 1991 with NHS blood, blood products or tissue in Northern Ireland and as a result of that treatment, on the balance of probabilities, became infected with the virus and developed chronic hepatitis C infection.
4. Condition B is that the person was, at the time of treatment, a person with haemophilia or other inherited or acquired bleeding disorder, whether or not they are also infected with HIV. This includes a person who developed chronic hepatitis C infection after being treated in Northern Ireland with any of the following-

- (a) Factor VIII or Factor IX blood clotting factor,
 - (b) cryoprecipitate or FEIBA,
 - (c) plasma (including fresh, frozen plasma),
 - (d) whole blood or any components thereof.
5. Condition C is that the person-
- (a) at the time of treatment was not a person with the type of bleeding disorder referred to in Condition B, and
 - (b) who developed chronic hepatitis C infection after being treated in Northern Ireland with any of the following products-
 - (i) whole blood or any components thereof;
 - (ii) albumin;
 - (iii) bone marrow;
 - (iv) intravenous immunoglobulin;
 - (v) plasma (including fresh, frozen plasma);
 - (vi) DEFIX.
6. Condition D is that the person, on the balance of probabilities, became infected by transmission of the virus from a person who satisfies Condition A and Condition B, or as the case may be, Condition C (the "transmitter")-
- (a) if at the time of transmission that person was in one of the following relationships with the transmitter-
 - (i) spouse or civil partner
 - (ii) cohabiting partners of either sex
 - (iii) parent/guardian, son or daughter of the parent/guardian, and
 - (b) the infection occurred as a result of any of the following-
 - (i) sexual transmission,
 - (ii) transmission from a mother to her baby,
 - (iii) accidental needlestick injury (but limited to the relationships referred to in sub-paragraph (a) and excluding the sharing of needles by injecting drug users),
 - (iv) some other route, verified by a qualified medical practitioner (but limited to the relationships referred to in sub-paragraph (a) and excluding the sharing of needles by injecting drug users).
7. No payment under this scheme is payable to, or in respect of, a person who was infected with the virus but spontaneously cleared it in the Acute Stage.

8. A Stage 1 pre 03 payment of £20,000 is payable in respect of Qualifying Person who died before 29 August 2003 if they are assessed as having satisfied paragraph 2(a) or 2(b): any payment under this paragraph will be made to that person's estate.
9. A Stage 1 payment of £20,000 is payable to a Qualifying Person who satisfies paragraph 2(a) or (b) and was alive on 29 August 2003: where the Qualifying Person dies before receiving the payment, it will be made to that person's estate.
10. A person who has received a Stage 1 payment as Qualifying Person and-
- (a) who spontaneously clears the virus during the chronic phase of infection but before becoming eligible for a Stage 2 payment, and
 - (b) who subsequently re-qualifies as a Qualifying Person with a new virus in accordance with paragraph 2(a) and does not spontaneously clear the new virus in the Acute Stage,
- is eligible for a further Stage 1 payment pursuant to paragraph 9.
11. A Stage 2 pre 03 payment of £50,000 is payable in respect of a Qualifying Person who satisfies paragraph 8 if at the date of their death they-
- (a) are assessed as having developed cirrhosis or primary liver cancer or B cell non-Hodgkin's Lymphoma, or
 - (b) have received, or were on the waiting list to receive, a liver transplant.
- Any payment under this paragraph will be made to the Qualifying Person's estate.
12. A Stage 2 payment of £25,000 is payable to a Qualifying Person who-
- (a) satisfies paragraph 9 and received a Stage 1 payment and was alive on 29 August 2003,
 - (b) has developed cirrhosis or primary liver cancer or B cell non-Hodgkin's Lymphoma or has received, or are on the waiting list to receive, a liver transplant.
- Where the Qualifying Person dies before receiving the payment, it will be made to that person's estate.
13. A Stage 2 (top-up) payment is payable to a Qualifying Person-
- (a) of £25,000 who was-
 - (i) alive on 29 August 2003, and
 - (ii) eligible for, and received, a Stage 2 payment (see paragraph 12);

(b) of £50,000, who-

- (i) satisfies Condition A and either Condition B or Condition C,
- (ii) was alive on 29 August 2003, and
- (iii) has not received a Stage 2 payment of any sort; and
- (iv) is eligible for a Stage 2 payment (see paragraph 12).

(c) of £50,000, who-

- (i) satisfies Condition D,
- (ii) was alive on 29 August 2003, and
- (iii) as a result of being infected by a person who satisfies Condition A and either Condition B or Condition C, developed cirrhosis or primary liver cancer or B cell non-Hodgkin's Lymphoma or has received, or are on the waiting list to receive, a liver transplant.

Where the Qualifying Person dies before receiving the payment, it will be made to that person's estate.

Part III

Miscellaneous

- 14. Skipton will not make lump sum payments totalling more than £70,000 with respect to any individual unless they satisfy the conditions for multiple stage 1 payments (see para 10 of Part II above).
- 15. Skipton will not make multiple annual payments to any individual.
- 16. Skipton will make backdated payments only where there is evidence, on the balance of probabilities, of administrative error or other failure on the part of Skipton, which resulted in the Qualifying Person not making a claim in the past.

SCHEDULE 3

Termination assistance

1 General obligation

- 1.1 Except where something different is specified, Skipton shall comply with this schedule at its prevailing charges at the time of Termination.
- 1.2 In addition to complying with this schedule, Skipton shall, both before and for twelve months after Termination, provide any other advice, assistance, information and co-operation reasonably required by DH for the provision of the Services.

2 Termination Manager

- 2.1 Skipton shall, twelve months prior to expiry of this agreement (or, if earlier, within 7 days of notice being given of Termination):
 - 2.1.1 appoint a person to act as Termination Manager; and
 - 2.1.2 notify DH of the name of the person proposed, with details of his relevant qualifications and experience.
- 2.2 Skipton shall obtain DH's approval in writing for the appointment of the Termination Manager. DH's approval shall not be unreasonably withheld or delayed.
- 2.3 DH may require Skipton to replace the Termination Manager if it reasonably believes the person is unsuitable for the post. DH shall not act unreasonably in this respect and shall be responsible for any claims for unfair dismissal or other liability arising from such termination.
- 2.4 Skipton shall not remove the Termination Manager during the Termination Period without DH's consent.
- 2.5 The Termination Manager shall be responsible for ensuring that Skipton complies with this schedule and any other obligations of Skipton which relate to the transfer of the Services on Termination.

3 Termination in part

This schedule shall, at DH's option, apply to the termination of the agreement in part. In this case the schedule will apply to the documentation, commissioned software, contractor's software, key third party agreements, key hardware and relevant employees relevant to the terminated/cancelled service.

4 Documentation

- 4.1 Skipton shall provide DH on request with information and documentation necessary to ensure a transfer of the Services back to DH or to an incoming contractor, including any documentation required to support an invitation to tender for the provision of the relevant Services. This includes full details of:
- 4.1.1 the Services and Service Levels achieved by Skipton;
 - 4.1.2 the information relating to the projects specified in schedule 1 (Services);
 - 4.1.3 Skipton's employees and other employees;
 - 4.1.4 any employees used by Skipton to provide the Services who are essential for the provision of the Services.
- 4.2 DH may make the documentation available to suppliers who wish to tender for the provision of the Services. Skipton shall respond in full to any reasonable questions by DH or the suppliers and shall co-operate with any reasonable due diligence activities carried out by suppliers.

5 Extension of contract

DH may, by giving Skipton written notice prior to Termination, extend the agreement in whole or in part for periods of up to 4 months so as to phase the transfer of the Services back to DH or to an incoming contractor. The charges for the provision of the Services even if only part during the extension of the agreement shall be the sums prevailing at the point of termination plus 15% to cover administration and likely extra costs arising from disruption caused by the pending termination.

6 Return of other party's equipment

On Termination each party shall, subject to the terms of the Data Protection Act 1998, return to the other party any data, equipment, documentation, information or other materials belonging to the other party or which it has no legal right to retain.

7 Reimbursement of costs

DH shall meet Skipton's reasonable and properly incurred costs and expenses by reason of scale down/close down notwithstanding termination of contract **for whatever reason** save in the event of the fraud, wilful neglect, negligence by way of performance or omission or breach of law or the regulation of any regulatory or supervisory authority by Skipton.

SCHEDULE 4

Skipton's Service Standards

The following are the service standards to which Skipton shall adhere. However time frames are desirable outcomes and are flexible to recognise temporary surges of application activity and/or process slow-down in holiday season periods where resources could not economically or efficiently be scaled up or replaced to maintain absolute timings.

- Confidentiality – see clause 9 of the agreement
- Service delivery to claimants (applicable with effect from the Commencement Date)

responding to requests for applications: time frames: within two weeks

responding to general enquiries: time frames telephone: within three days writing: within two weeks

processing fully completed application forms where there are no queries: time frame: four weeks of receipt of forms

making Payments: time frames: (assuming bank details are correct): six weeks of receipt of forms

Record keeping: See agreement: after sign off 10 years subject to availability of funds.

SCHEDULE 5

Change Control

1 General principles

No change of this agreement will be binding on either party unless made in writing and signed by duly authorised representatives of both parties, except where the Secretary of State has a power to direct under this Agreement and has done so.

2 Procedure

2.1 At any time, the Department of Health or Skipton may in writing request changes to any part or parts of the agreement or the schedules, including additions, deletions or other amendments.

2.2 The request may be given verbally and confirmed in writing.

2.3 Skipton shall submit to the Department of Health as soon as reasonably practicable after receipt of a proposed change to this agreement (and in any event within 60 days) a written estimate for the change specifying:

2.3.1 the impact of implementing the proposed change on the Services;

2.3.2 a timetable for implementing the proposed change;

2.3.3 material changes which will be required to the agreement; and

2.3.4 its reasonable additional costs required to implement the proposed change; and

2.3.5 the cost savings or cost reductions resulting from the change

2.3.6 if the change involves the procurement or sale of goods, the terms which will apply to the sale.

2.4 Skipton shall investigate the impact of implementing the proposed change and prepare the written estimate.

2.5 After receipt of the estimate the proposed change will be considered by DH which shall decide in its absolute discretion whether:

2.5.1 to accept Skipton's estimate in which case the agreement and the costings and payments will be amended in accordance with Skipton's estimate;

2.5.2 to withdraw the proposed change and instruct a third party supplier to implement the change;

- 2.5.3 to benchmark the proposed change (including the estimated cost of the change);
 - 2.5.4 to query the estimate and escalate the matter in accordance with clause 16.1 (Dispute resolution procedure);
 - 2.5.5 to refer the estimate for determination by an arbitrator in accordance with clause 16.1.1 -16.5 (Dispute resolution procedure) but only in respect of cost not any other aspect of change which must be by agreement failing which paragraph 2.7 below will apply.
- 2.6 Until a change is formally agreed in writing between the parties in accordance with this schedule, Skipton shall continue to perform its obligations under the agreement as if the change had not been proposed. If Skipton implements changes to the Services before they have been agreed under this schedule, then it shall do so at its own expense.
- 2.7 Where changes requested are not agreed within six months of written request then the party making the request may within six months of the request being made, give six months written notice to the other party to terminate this agreement. The provisions of clauses 14 and 15 shall apply to any such termination including as to termination costs.

3 Legislation

If a change in legislation or other applicable legal requirement affects the provision of the Services or the carrying out by Skipton of its obligations under this agreement, Skipton shall perform the Services in accordance with the change. The parties shall, however, document any change to the Services and annex the agreed details duly initialled to engrossments of the agreement in accordance with the Change Control Procedure.

4 Goods

- 4.1 Where the change involves the procurement for or the promotion of Services or goods to the DH, the following terms will apply to the sale, in the absence of express warranties as to quality being agreed between the parties:
- 4.1.1 all prices will be exclusive of any applicable value added tax;
 - 4.1.2 Skipton shall invoice DH for the price of the Services or goods on delivery and acceptance;
 - 4.1.3 title to the goods will pass to the DH on payment.

SCHEDULE 6

Right of Audit

1 Skipton shall keep secure and maintain until five years after the final payment of all sums due under the agreement or such longer period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by DH and all payments made by DH.

2 Skipton shall grant to DH or its authorised agents, such access to those records as they may reasonably require in order to check Skipton's compliance with the agreement.

3 For the purpose of:

3.1 the examination and certification of Skipton's accounts; or

3.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy efficiency and effectiveness with which Skipton has used its resources;

the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of Skipton and may require Skipton to provide such oral and/or written explanations as he considers necessary. This condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of Skipton under Section 6(3)(d) and (5) of the National Audit Act 1983.

SCHEDULE 7

Indemnity

1 Whenever DH ("the Indemnifier") is required to indemnify Skipton ("the Indemnified") under this agreement:

1.1 the Indemnified shall:

- (a) notify the Indemnifier promptly upon becoming aware of any matter or claim to which the indemnity relates;
- (b) not make any decision or settlement in respect of such matter or claim without the prior consent of the Indemnifier (such consent not be to unreasonably withheld or delayed)
- (c) allow the Indemnifier where appropriate to appoint legal advisers of its choice and to conduct and/or settle negotiations and/or proceedings relating to such matter or claim or (where it is not appropriate for the indemnifier to have conduct of such negotiations and/or proceedings) the Indemnified shall comply with the Indemnifier's reasonable requests in the conduct of any such negotiations and/or proceedings; and
- (d) be entitled to deal (without prejudice to the Indemnification from the Indemnifier) with all matters and actions referred to at (c) above if the Indemnifier fails to act promptly and/or the Indemnified perceives it may suffer prejudice

1.2 all payments to be made under the indemnity shall be made by the Indemnifier promptly on first written demand without any set-off counterclaim or other deduction whatsoever and on an after-tax basis; and

1.3 an "after-tax basis" means the amount payable shall (where tax is deductible from the payment by the Indemnifier as a result of the Indemnifier making the payment or tax is payable by the Indemnified on the payment being received under the indemnity) be grossed up by such an amount as will ensure that after deduction from the payment of any tax payable by the Indemnifier (or any tax suffered by the Indemnified) in respect of the payment there shall be left in the hands of the Indemnified a sum equal to the amount which would otherwise have been payable but for the tax.

- 2 The indemnity in clause 1 shall not apply if and to the extent that the relevant losses, costs, damages, liabilities and/or expenses are wholly and directly due to fraud or wilful or careless neglect or any breach of this agreement on the part of the Indemnified.
- 3 The conduct by the Indemnifier of any negotiations settlements or litigation arising from a claim made or a prosecution brought against the Indemnified as provided in clause 2 shall be conditional upon the Indemnifier:
- 3.1 giving to the Indemnified such reasonable security as may from time to time be required by the Indemnified to cover the amount ascertained or agreed or estimated (as the case may be) of any compensation damages expenses and/or costs for which the Indemnified may become liable:
- 3.2 consulting with the Indemnified and taking account of all reasonable requirements of the Indemnified
- (a) before settling any claim; and/or
- (b) in conducting any litigation; and
- 3.3 taking over such conduct as soon as practicable after being notified of the claim in question
4. The Indemnifier shall not be entitled to avoid its indemnity obligations by reason of:
- 4.1 any failure by the indemnified in respect of the performance of its obligations in the absence of fraud or wilful neglect; or
- 4.2 any variation amendment or change to the agreement; or
- 4.3 any waiver or forbearance by the Indemnified in enforcing its rights above or generally under the agreement

Signed by a member of the Senior Civil Service

GRO-C

for the Secretary of State for HEALTH

Date 11/11/2016

GRO-C

Signed by Director

GRO-C

Director/Secretary

for THE SKIPTON FUND LIMITED

Date 11/11/2016