

DATED

22 MAY 2007

THE SECRETARY OF STATE FOR HEALTH

and

THE SKIPTON FUND LIMITED

**AGENCY AGREEMENT
for the fulfilment of
Services**

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PARTIES

- 1 *Department of Health* The Secretary of State for Health acting through The Department of Health, Health Protection Division, 5th Floor Wellington House, 133-155 Waterloo Road, London SE1 8UG
- 2 *SKIPTON* The Skipton Fund Limited (company number 5084964) whose registered office is at 35-37 Belmont Road, Uxbridge, Middlesex, UB8 1RH

BACKGROUND

- A On 29 August 2003, The Secretary of State for Health and Health Ministers of the Devolved Administrations simultaneously announced that a United Kingdom wide scheme ("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.
- B It was proposed that arrangements for administering the Scheme would be made with a new body associated with the trustees of the Macfarlane Trust. In considering the arrangements for administering the Scheme, the Secretary of State for Health liaised with Macfarlane Trust, a charity established to relieve the suffering of haemophiliacs who contracted HIV/AIDS from infected blood products in the UK and their dependants. Many of the beneficiaries of Macfarlane Trust ("registrants") qualify for payments under the Scheme. As the administration of the Scheme would fall outside the scope of the charitable objects of Macfarlane Trust, it was later proposed that arrangements for administering the Scheme would be made with a separate, non-charitable body established by the trustees of Macfarlane Trust with provision for the future appointment of directors by the Secretary of State and the Macfarlane Trust acting jointly.
- C The Secretary of State for Health and the Devolved Administrations have entered into a service level agreement by which the Department of Health (DH) acts on behalf of the Devolved Administrations in relation to Skipton and the parties contribute their proportionate shares to the funds distributed.

- D Skipton has been formed to provide services acting as the DH's agent on the basis set out in this agreement. Since the Commencement Date substantial funds have been distributed by Skipton on behalf of DH.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 The following terms shall have the following meanings:

<i>Accounting Date</i>	means 31 March;
<i>Accounts</i>	means audited financial statements of Skipton;
<i>Business</i>	means 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>Claimants</i>	persons who make a claim under the Scheme;
<i>Commencement Date</i>	the date of incorporation of Skipton
<i>Devolved Administrations</i>	are the Scottish Executive, the National Assembly for Wales, and the Department of Health, Social Services and Public Safety (Northern Ireland).
<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>	means 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>	means eligibility of a Qualifying Person to receive a payment under the Scheme;
<i>Funds</i>	means 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>Open Book Accounting</i>	means 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 pursuant to the procedures for administering the Services set out in schedule 1;
<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>	means persons who meet the criteria set out in schedule 2;
<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 payment</i>	a lump sum payment of £20,000 to any person who, on the balance of probabilities, has contracted the hepatitis C virus because of receiving blood, blood products or tissues from the NHS prior to September 1991 or, in certain circumstances (as defined in schedule 2), from a person who has received such treatment.
<i>Stage 2 payment</i>	an additional lump sum of £25,000 payable to a Qualifying Person who has an advanced stage of illness due to hepatitis C virus because of receiving blood, blood products or tissues from the NHS prior to September 1991. In this

context, persons with cirrhosis or primary liver cancer and those who have received, or are on the waiting list to receive, a liver transplant are eligible to apply for a stage 2 payment.

Term the period starting on the Commencement Date during which this agreement continues in force;

Termination the expiry or termination (for whatever reason) of this agreement or, where used in relation to Services, the expiry or termination of that Service;

Termination Assistance the assistance more particularly specified in schedule 3; and

The Scheme a scheme set up to make ex-gratia payments to eligible persons, alive on 29 August 2003, who had been infected with the hepatitis C virus following the receipt of blood, blood products or tissues from the National Health Service prior to September 1991;

VAT value added tax.

1.2 Any reference to:

1.2.1 a statute or statutory provision includes a reference to the statute or statutory provision as modified or re-enacted or both from time to time, and to any subordinate legislation made under it;

1.2.2 clauses, schedules and/or parties are to clauses of and schedules and/or parties to this agreement, respectively;

1.2.3 the singular includes the plural and vice versa and the masculine includes the feminine and the neuter genders and vice versa; and

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 Services in and throughout the United Kingdom.

2.2 DH appoints Skipton to be its agent in the United Kingdom for the delivery of the Services and 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 below.

2.4 DH warrants it is the authorised representative of Scottish Ministers, National Assembly for Wales and the Department of Health, Social Services and Public Safety (Northern Ireland), together being all the Devolved Administrations responsible for the provision of the National Health Service throughout the United Kingdom. In that role of authorised representative DH confirms it is entitled on behalf of all of the above Devolved Administrations to make binding commitments to this agreement and to give instructions to Skipton throughout the Term and the period if any, during which termination assistance is rendered.

2.5 Skipton acknowledges that:

2.5.1 as a Government Department, DH is directly accountable to the Secretary of State for Health;

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

2.5.3 DH has a duty to act in accordance with the policy of the Devolved Administrations

2.5.4 It may only alert DH to operational issues and may not make proposals to amend Government policy.

Consequently DH reserves the right to require 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, subject to the provisions of clause 14 and schedule 3.

2.6 Skipton acknowledges that the rights of DH detailed in clause 2.5 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 6.2.

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 80 years less one day from the date of this deed.

3.2 Notwithstanding clause 3.3, either party may terminate this agreement by giving the other 185 days prior written notice, subject to the provisions of clause 14 and schedule 3.

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 shall 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 the specifications set out in schedule 1;

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, or as required, 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 the 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.

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

- 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 develop medical or other data necessary to perform the Services and in particular:

6.1.2.1 keep Skipton informed about development in Hepatitis C and changes in underlying medical issues, prognoses, diagnostic or treatment procedures 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.

6.2 Indemnity

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

6.3 DH shall as soon as possible after the Commencement Date arrange for the provision of an independent appeals panel to adjudicate on claims rejected by Skipton.

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; 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, or where an enquiry relates solely to an individual Devolved Administration (DA), directly to that DA. DH will notify the relevant DAs of any request under that Act which relates to information in the possession, custody or control of that DA (including information which the DA has released to DH under obligations of confidence but which remains

in the ownership of the DA) in order to allow the DA to determine such request and DH shall notify Skipton of such determination. DH will, in consultation with any DAs concerned, respond to applicants on general enquires covering the UK; individual DAs will be responsible for responding to applicants where the request is for information relating solely to their Administration.

8 Payments and accounting

- 8.1 From time to time, Skipton shall deliver 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 a designated account.
- 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. Surplus funds at the end of each financial period of Skipton, shall be held by Skipton to make future payments and meet other liabilities. Surplus funds held by Skipton at the termination of the agreement shall be returned to DH in accordance with clause 14.5.
- 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 meet the reasonable expenses of its establishment administration and 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 the Macfarlane Trust, interest on loans made by Macfarlane Trust to Skipton, associated administrative costs and any other expenditure incurred by Macfarlane Trust as a result of the operation of the Services by Skipton from premises occupied by Macfarlane Trust. 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 prior written approval to the disclosure.

Nothing in this clause 9 shall prevent DH from disclosing any Confidential Information to Scottish Ministers, the National Assembly for Wales, the Department of Health, Social Services and Public Safety (Northern Ireland), any other department, office or agency of the Crown or to any person engaged in providing services to the DH for any purpose relating to or ancillary to the agreement provided also that such disclosure is not in breach of the Data Protection Act 1998.

- 9.4 No announcements or public statements shall be made about the Services by Skipton without prior written agreement from DH.
- 9.5 This clause 9 shall continue in force after and despite Termination.

10 **Limitations of liability**

Other than in the case of fraud or wilful default, Skipton shall not be liable to DH for any losses, damages, costs or expenses incurred by DH, howsoever caused including by reason of breach of this agreement. A board member of Skipton may be personally liable if he or she commits a fraudulent act or misuses information for his or her benefit or gain through his or her position. A person who has acted honestly and in good faith would not be personally liable.

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).
- 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 such amounts as Skipton consider prudent in the circumstances and will provide DH with evidence of such insurance on request.

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 or Skipton immediately by notice in writing if Skipton has a receiver or administrative receiver appointed, passes a resolution for winding up (otherwise than 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 convene or 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 (the 'Expert'). The Expert shall be 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;
- 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 or by first class prepaid letter or facsimile transmission using the numbers set out below 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, Health Protection Division
Address: 5th Floor, Wellington House, 133-155 Waterloo Road, London, SE1 8UG

Skipton

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

Delivered as a deed on the date of this agreement.

IN WITNESS whereof this agreement has been executed and delivered as a deed on the day
and year first above written.

SCHEDULE 1

Services

1. Skipton shall perform such Services, and no other, as are necessary to administer The Scheme.

2. Registration

- 2.1 A registration form will be made available, by post and on Skipton's website, to anybody who contacts Skipton, the DH, the equivalent DA Departments, a General Practitioner or a hospital, indicating the possibility of an application being made to Skipton for a Stage 1 Payment.
- 2.2 Skipton will maintain a register of all completed registration forms it receives, and will send to each Claimant an application form for a Stage 1 Payment. A unique application number will be allocated to each Claimant once their application form is received, whether or not accepted as a Qualifying Person.

3. Payments

- 3.1 On receipt of a completed application form for a Stage 1 Payment, Skipton will, having made appropriate checks of authenticity of both the Claimant and the clinician(s) supporting the claim, assess whether the Claimant's eligibility for such a payment has been established on the balance of probabilities and, if appropriate, make the payment to the bank account supplied by the Claimant on the completed registration form.
- 3.2 When making a Stage 1 Payment Skipton will tell the Claimant that an application form for a Stage 2 Payment will be available on request.
- 3.3 Where a claim for a Stage 1 Payment has been refused, Skipton will inform the applicant of the right of appeal.
- 3.4 The procedures for processing claims for Stage 2 Payments will be broadly similar. If a claim for a Stage 2 Payment is rejected, Skipton will inform the Claimant that a further claim can be in the future should their disease progress. Applicants whose Stage 2 Payment is rejected nevertheless have the right to appeal.

4 Appeals

- 4.1 An independent appeals panel having been provided in accordance with Clause 6.3, Skipton will provide the secretariat and organise all necessary meetings of the Panel, prepare cases to be considered, record the Panel's decisions, and communicate the decision to each appellant.
- 4.2 Skipton will pay Panel members' fees and expenses

5 Reporting

- 5.1 Skipton will provide to the DH monthly an analysis of numbers of claims received and paid, identifying Stage 1 and Stage 2 Payments separately and allocating all payments to the appropriate UK Health Department.
- 5.2 In accordance with Clause 4.5, Skipton will provide the DH when required with
- a statement of funds disbursed
 - an analysis of rejected claims for Stage 1 Payments
 - an analysis of deferred claims for Stage 2 Payments
 - details of complaints or claims made by claimants
 - such other reports as might reasonably be requested from time to time by any of the health authorities.
- 5.3 Skipton shall each year prepare a Directors' Report and Financial Statements in accordance with the Companies Act 1985 and applicable accounting standards.
- 5.4 SKipton will produce all relevant documentation (to include its website) in compliance with the Welsh Language Act 1993.

SCHEDULE 2

Qualifying Persons

1. A person is a Qualifying Person if:

(a). he or she is a person who was alive on 29 August 2003 and who, before September 1991, was treated with National Health Service blood, blood products or tissue and as a result of that treatment, on the balance of probabilities, became infected with the hepatitis C virus, and developed chronic infection. People who acquired hepatitis C but spontaneously cleared the virus in the acute stage and did not develop chronic hepatitis C infection are not eligible for payments under this scheme.

(b). he or she is a person

- who has haemophilia or other inherited or acquired bleeding disorders, whether or not also infected with HIV. This will include all those who have developed hepatitis C virus after being treated with Factor VIII or Factor IX blood clotting factor, together with all those who have developed hepatitis C virus after being treated with any of the following products:
 - cryoprecipitate or FEIBA;
 - plasma (including fresh, frozen plasma);
 - whole blood or any components thereof (provided that the treatment consisted of multiple doses);
- without any bleeding disorders who developed hepatitis C virus after being treated with any of the following products:
 - whole blood or any components thereof;
 - albumin;
 - bone marrow;
 - intravenous immunoglobulin;
 - plasma (including fresh, frozen plasma);
 - DEFIX;
- who, on the balance of probabilities, becomes infected by transmission of the virus from a qualifying person (in the categories above), if at the time of transmission that person was in one of the following relationships with the qualifying person from whom the virus was transmitted:-
 - Spouse or civil partner

- Other cohabitant (whether or not of the same sex as the person from whom the virus was transmitted)
- Mother, son or daughter of the mother

And, the infection occurred as a result of:-

- sexual transmission
- transmission from a mother to her baby
- accidental needlestick injury (but limited to the relationships described above and excluding the sharing of needles by injecting drug users)
- some other route, verified by a qualified medical practitioner (but limited to the relationships described above and excluding the sharing of needles by injecting drug users)

(c). In relation to claims emanating from Scotland, a person is a Qualifying Person for the purposes of subparagraph (a) above only where:

- the receipt of blood, tissue or a blood product was as a result of treatment anywhere in the UK under the National Health Service;
- at the time the claim is made or, in the case of a claim made in respect of a dead individual, when the individual died, their sole or main residence is or was in Scotland; or their sole or main residence is or was outside the United Kingdom but, immediately before acquiring such sole or main residence, the person's sole or main residence is or was in Scotland; and
- subparagraph (a) shall be otherwise applied to such claims, provided always that in the event of any conflict between this subparagraph and subparagraph (a) above in relation to such claims then this subparagraph shall take precedence.

2. Persons who are Qualifying Persons and are minors will be eligible for payment into a trust operated by their parents or legal guardians and held for them for their benefit until they reach their majority.

3. A claim may also be made in respect of a deceased person who died after 29 August 2003, and did not make an application before death; monies from successful claims will be paid to the estate of the deceased.

4. Persons who qualify for and receive a stage one payment will be eligible for the stage two payment if they develop cirrhosis or primary liver cancer or receive, or are on the waiting list to receive, a liver transplant.

5. No payments are made in respect of those who died before 29 August 2003.

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 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/closure notwithstanding termination of contract **for whatever reason** except where Skipton is liable to the Department pursuant to clause 10.

SCHEDULE 4

Skipton's Service Standards

Skipton shall adhere to Service Standards in respect of its delivery of the Services, in particular in terms of maximum time frames within which registration and payment services as defined in Schedule 1 shall be performed. Such time frames should be seen as desirable outcomes and should be interpreted with sufficient flexibility to recognise temporary surges or reductions of registration or application activity, such as occur during holiday season periods, when Skipton's resources could not economically or efficiently be scaled up or replaced to maintain absolute timings.

The most important standard is that Skipton should make a payment (whether a Stage 1 Payment or a Stage 2 Payment) within six weeks of receipt of a completed application form on the content of which there were no queries, provided that the Claimant had provided correct bank account details and that Skipton had sufficient funds.

All such standards, and Skipton's performance in meeting them, will be reviewed annually with the DOH.

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.

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 in accordance with clause 16 (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 the 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 neglect 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

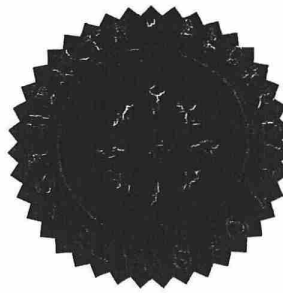
**THE OFFICIAL SEAL OF
THE SECRETARY OF STATE
FOR HEALTH** was hereunto
authenticated by

Signature

GRO-C

Assistant Secretary

Department of Health



Executed as a deed by
THE SKIPTON FUND LIMITED
acting by:

MARTIN HARVEY

Director

GRO-C

PETER STEVENS

Director/Secretary

GRO-C