

PART 7 OF THE SCHEDULE

This is Part 7 of the Schedule comprising the Licence referred to in the Project Agreement relating to the design, financing and construction of, and the provision of services at the Gartnavel Royal Hospital

between

Greater Glasgow Health Board

and

Robertson Health (Gartnavel) Limited

LICENCE between

(1) **THE SCOTTISH MINISTERS** (the "Licensor")

and

(2) **ROBERTSON HEALTH (GARTNAVEL) LIMITED**, a company registered in Scotland with registered number SC271565 and having its registered office at 10 Perimeter Road, Pinefield Industrial Estate, Elgin IV30 6AE ("**ProjectCo**")

WHEREAS

- (A) Project Co and Greater Glasgow Health Board (the "**Board**") have entered into an agreement dated on or around the date hereof (the "**Project Agreement**") for the financing, design, construction and provision of certain services in connection with a acute psychiatric unit (the "**Project**") at Gartnavel, Glasgow
- (B) Pursuant to Transfer of Heritable Property Order No G024/A dated 17 June 2004 all of the rights and interests in and to the Site were transferred to the Licensor
- (C) Pursuant to the Project Agreement, the Board has agreed to procure the grant of certain rights of access and occupation in favour of Project Co for the purposes of carrying out the Project upon the terms of this Licence.

IT IS AGREED as follows:-

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Licence unless the context requires otherwise words and expressions defined in the Project Agreement shall have the same meaning when used in this Licence and further:-

"**Authorised Purpose**" means the carrying out of Project Operations;

"**Commencement Date**" means the date of issue of the Certificate of Commencement;

"**Period of this Licence**" means the Project Term;

"**Plan**" means the plan annexed and executed as relative hereto;

"**Site**" means the land made available to Project Co for the Project and outlined in blue on the Plan

1.2 Interpretation

Save to the extent that the context or the express provisions of this Licence requires or require otherwise, in this Licence:-

1.2.1 words importing any gender shall include all other genders;

1.2.2 words importing the singular number only shall include the plural number and vice versa;

1.2.3 where at any one time there are two or more persons included in the expression "Project Co" obligations contained in this Licence which are expressed to be made by Project Co shall be binding jointly and severally

on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;

- 1.2.4 in the case where Project Co is a firm or partnership the obligations of Project Co hereunder shall be binding jointly and severally on all persons who are or become partners of the firm at any time during the Period of this Licence and their respective executors and representatives whomsoever as well as on the firm and its whole stock, funds, assets and estate without the necessity of discussing them in their order and such obligations shall subsist and remain in full force and effect notwithstanding the dissolution of the firm or partnership or any change or changes which may take place in the firm or partnership whether by the assumption of a new partner or partners or by the retiral, bankruptcy or death of any individual partner or by a change in the firm name;
- 1.2.5 words importing persons include corporations and vice versa;
- 1.2.6 references to this Licence or to any other document shall be construed as reference to this Licence or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;
- 1.2.7 reference to the parties shall be construed as reference to the parties to this Licence at that time;
- 1.2.8 unless expressly stated to the contrary in this Licence, reference to any statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall include any orders, legislation, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.2.9 any phrase introduced by the words "including", "include", "in particular" or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words; and
- 1.2.10 any obligation on, or right granted or reserved to, the Licensor under this Licence may be fulfilled or exercised by an agent for the Licensor in place of or in addition to the Licensor.

1.3 Headings

The table of contents and the headings in this Licence are included for convenience only and shall be ignored in construing this Licence.

2 GRANT OF LICENCE

IN CONSIDERATION of the Board entering into the Project Agreement with Project Co and the due observance by Project Co of the obligations contained herein and in the Project Agreement, the Licensor shall permit and licence Project Co (which expression shall for the purposes of exercise of the rights granted pursuant to this Clause 2 include the Project Co Parties and any other party to whom Project Co's interest in the Board Project Documents (as defined in the Funder Direct Agreement) is transferred or novated from time to time in accordance with the terms of the Project Agreement and/or the Funder Direct Agreement):-

- 2.1 From the date of issue of the Certificate of Commencement until the Actual Completion Date (or if earlier the Termination Date) to:

2.1.1 exercise the Ancillary Rights set out in Part 1 of Part 30 of the Schedule to the Project Agreement; and

2.1.2 enter upon, occupy and use the Site

in each case for the purposes of implementing the Works and carrying out Project Co's Pre-Completion Commissioning.

2.2 After the occurrence of the Actual Completion Date until the Expiry Date (or if earlier the Termination Date) to:

2.2.1 enter upon the Site solely for the purposes of:

2.2.1.1 the carrying out of Project Operations (other than those Project Operations which Project Co is licensed to carry out pursuant to Clause 2.1 above); and

2.2.1.2 remedying defects and the carrying out of Snagging Matters; and

2.2.2 exercise the Ancillary Rights set out in Part 2 of Part 30 of the Schedule to the Project Agreement.

2.3 The Scottish Ministers undertake that from the Commencement Date until the Expiry Date (or if earlier the Termination Date), the Scottish Ministers as heritable proprietors of the Site and the areas over which the Ancillary Rights are to be exercised shall not take and shall use all reasonable endeavours not to permit any action on or affecting the Site or the exercise of the Ancillary Rights granted hereunder which would interfere with the Project Operations or prevent or restrict the use of the Site for the Authorised Purpose.

3 CONDITIONS ON GRANT OF LICENCE

3.1 Period of the Licence

Subject to the provisions of the Project Agreement, the Licensor and Project Co confirm that notwithstanding the provisions of Clause 2, this Licence shall endure until the Expiry Date (or if earlier the Termination Date).

3.2 Authorised Purpose

Project Co shall use the Site for the Authorised Purpose and for no other purpose whatsoever which has not received the prior written consent of the Licensor. No warranty shall be implied by or against the Licensor that:-

3.2.1 the Site or the Facilities are suitable for the Authorised Purpose; and

3.2.2 the Authorised Purpose is or will remain a permitted use of the Site of the Facilities within the provisions of the Town and Country Planning (Scotland) Act 1997.

3.3 Title Deeds

The rights granted to Project Co pursuant to Clause 2 above are granted only insofar as such rights are capable of being granted by the Licensor whether as a result of any restrictions in the Title Deeds or otherwise.

3.4 Project Co Obligations

Project Co shall procure that:-

- 3.4.1 all Project Operations carried out at the Site by or on behalf of Project Co (whether before, during or after completion of the Works) shall be carried out in a manner which does not breach the conditions contained in the Title Deeds; and
- 3.4.2 there shall be no action or omission to act by Project Co or any Project Co Party which shall give rise to a right for any person to obtain title to the Site or any part of it.

3.5 Project Agreement

The Licensor (1) acknowledges that this Licence is entered into pursuant to and in order to procure performance of obligations and undertakings contained in the Project Agreement and (2) undertakes to liaise with and consult the Board in respect of any matters arising under this Licence and/or relating to exercise of the rights granted to Project Co hereunder.

4 TRANSMISSIONS

4.1 Project Co

This Licence is personal to Project Co and the rights and obligations conferred and imposed by this Licence shall not be capable of assignation or other transmission by Project Co either wholly or partially provided that Project Co shall be entitled to transfer or assign this Licence in whole to any party to whom Project Co has assigned the interest of the Project Agreement in accordance with Clause 50 of the Project Agreement.

4.2 Licensor

The Licensor undertakes to make any party to whom it sells, transfers, leases or otherwise disposes of or grants any interest in the whole or any part of the Site bound by this Licence.

5 FUNDERS DIRECT AGREEMENT

On the issue of the Step-In Notice pursuant to the Funders Direct Agreement, the Appointed Representative (as defined in the Funders Direct Agreement) shall assume jointly with Project Co the rights of Project Co under this Licence and thereafter, until the end of the Step-In Period the Licensor shall deal with the Appointed Representative and not Project Co.

6 NO TENANCY RIGHTS

The parties agree that this Licence shall not be construed as a Lease or as conferring any tenancy rights upon Project Co and Project Co shall not have or be entitled to have exclusive possession or any estate right title interest in and to the Site or the Facilities.

7 NOTICES

Any notice (which expression shall include a demand, request, consent or approval) under this Licence shall be in writing. Any notice to Project Co shall be sufficiently served if sent by recorded delivery post or delivered by hand to the address specified in the Project Agreement. Any notice to the Licensor shall be sufficiently served if sent by recorded delivery post or delivered by hand to the address specified in Clause 57 of the Project Agreement for delivery of notices to the Board. Any notice sent by recorded delivery post shall be deemed to have been duly served at the expiry of three days after the date of posting. In proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to Project Co or the Licensor (as the case may be) in accordance with this clause and posted or hand delivered to the address to which it was addressed.

8 REMEDIES

The parties agree that notwithstanding any provision of this Licence to the contrary:

- 8.1 Pursuant to Clause 14.8 of the Project Agreement, a breach of this Licence by the Licensor is deemed to constitute a breach by the Board of the Project Agreement and, in respect of such a breach, Project Co shall be entitled to exercise rights and remedies against the Board available to Project Co in respect of a breach or deemed breach of the Project Agreement by the Board and Project Co in respect thereof hereby waives its remedies hereunder against the Licensor.
- 8.2 the Licensor hereby waives all remedies against Project Co hereunder and acknowledge that this Licence is to be construed as part of the Project Agreement and the Board shall be entitled to exercise the remedies available to the Board in respect of a breach of the Project Agreement by Project Co in respect of a breach by Project Co of this Licence.

9 LAW OF SCOTLAND TO APPLY

This Licence shall be interpreted in accordance with the Law of Scotland and any dispute, difference or question of any kind which may arise between the parties shall be determined in accordance with the Law of Scotland and the procedure set out in Part 26 of the Schedule to the Project Agreement as if the same were set out in this Licence, with references to the Board therein being treated as references to the Licensor.

10

The parties consent to the registration of this Licence for preservation and execution: IN WITNESS WHEREOF these presents on this and the preceding pages together with the Plan annexed as relative hereto are executed as follows:-

Executed for and on behalf of
The Scottish Ministers at
on the day of 2005
by its duly authorised signatory:

Authorised Signatory

Signatory Full Name

in the presence of this witness

Witness

Witness Full Name

Witness Address

EXECUTED for and on behalf of Project Co
at
on the day of 2005

Director/Secretary

in the presence of this witness

Witness

Witness Full Name

Witness Address

