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## **LOAN AGREEMENT**

among

**THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND**  
as a Bank, the Agent, the Account Bank and the Security Trustee

and

**ROBERTSON HEALTH (GARTNAVEL) LIMITED**  
as the Borrower

and

**ROBERTSON HEALTH (GARTNAVEL) HOLDINGS LIMITED**  
as Holdings

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## LOAN AGREEMENT

among

- (1) **THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND**, acting through its office at New Uberior House, 11 Earl Grey Street, Edinburgh EH3 9BN in its own right and as agent, account bank and security trustee (which in its own right and as such agent for the Banks, account bank and security trustee for the Finance Parties, and whose successors and assignees in its own right and/or as such agent and security trustee is/are hereinafter referred to as **the Bank, the Agent, the Account Bank and the Security Trustee** respectively);
- (2) **ROBERTSON HEALTH (GARTNAVEL) LIMITED**, a company incorporated under the Companies Acts with registered number SC271565 and having its registered office at 10 Perimeter Road, Pinefield Industrial Estate, Elgin, Morayshire, IV30 6AE (**the Borrower**); and
- (3) **ROBERTSON HEALTH (GARTNAVEL) HOLDINGS LIMITED**, a company incorporated under the Companies Acts with registered number SC275430 and having its registered office at 10 Perimeter Road, Pinefield Industrial Estate, Elgin, Morayshire, IV30 6AE (**Holdings**).

WHEREAS:

- (A) The Board has entered into the Project Agreement with the Borrower pursuant to which the Borrower has undertaken to design, build, finance and then operate the Facilities for an initial period of 30 years.
- (B) The Banks have agreed to make the Loan available to the Borrower on the terms and conditions set out in this Agreement.
- (C) Holdings (as the holding company of the Borrower) has agreed to guarantee the obligations of the Borrower under the Financing Documents.

## PART 1

### INTERPRETATION

NOW THEREFORE IT IS AGREED AS FOLLOWS:

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Agreement, unless the context requires otherwise:

**Account Bank** means the Governor and Company of the Bank of Scotland or any other person with whom the Project Accounts are maintained under Clause 15;

**Advance** shall mean the principal amount of each borrowing by the Borrower under this Agreement or the principal amount thereof for the time being outstanding or, as the context may require, each part of such principal amount having a separate Interest Period;

**Affiliate** means any person's holding company or Subsidiary (or other Subsidiary of a holding company);

**Agreed Form** means documents either (i) in a form previously agreed in writing by or on behalf of the Agent and the Borrower, or (ii) in a form substantially as set out in any schedule to any Financing Document, or (iii) if not falling into either of these categories, in form and substance satisfactory to the Agent acting reasonably;

**Annual Operating Budget** means the operating budget dated on or around the Execution Date and approved by the Agent, detailing Operating Costs to be incurred for each six month period following the Completion Date as such budget may be amended from time to time pursuant to the procedure set out at Clause 16 (*Project Forecasts*);

**Applicable Margin** means, in the case of the Facility:

- (a) 1.05% per annum for the period from the Effective Date to the Actual Completion Date; and
- (b) 1% per annum thereafter,

and, in the case of the DSR Facility, 1.5% per annum;

**Application for Interim Payment** means an application issued by the Contractor pursuant to and in terms of Clause 30.3 of the Construction Contract;

**Architect** means MacMon Limited (Company number SC273163) of 113 St. George's Road, Glasgow, G3 6JA or such other architect as may be appointed by the Borrower with the consent of the Agent pursuant to Clause 11.4.20 (*Project Personnel*);

**Assumptions** means the Economic Assumptions, the Technical Assumptions and/or such other assumptions as may be agreed between the Borrower and the Agent or as the Independent Expert shall determine in accordance with Clause 16.3 (*Procedures for Determining Assumptions for Project Forecasts*) should be taken into account in the production of the Project Forecasts;

**Auditors** means KPMG or such other firm of independent auditors as may be appointed as auditors of the Borrower with the consent of the Agent pursuant to Clause 11.4.20 (*Project Personnel*);

**Available Commitment** means, at any time, the Commitment less the principal amount of the Loan at such time;

**Bank Compensation Sum** means any amount of compensation calculated by the Board to be payable in terms of Part K and/or Part 23 of the Schedule

to the Project Agreement in respect of the Senior Debt as a result of the occurrence of the Termination Date;

**Banks** means The Governor and Company of the Bank of Scotland as initial Bank and any assignee or transferee lender becoming a Bank pursuant to Clause 24.3 (*Assignment and Transfer by the Finance Parties*);

**Banks Consultants** means the Banks Technical Adviser, the Banks Insurance Adviser and the Banks Model Auditors and such other consultants as the Banks may appoint in connection with the Project and/or the Project Documents;

**Banks Insurance Adviser** means Marsh or such other person as the Agent may at any time appoint to perform such role;

**Banks Model Auditors** means KPMG or such other person as the Agent may at any time appoint to perform such role;

**Banks Technical Adviser** means Davis Langdon LLP or such other person as the Agent may at any time appoint to perform such role;

**Borrowings** means, in respect of any person, all indebtedness and liabilities, whether present or future, actual or contingent incurred in respect of:

- (i) money borrowed or raised from any source;
- (ii) any bonds, notes, loan stock, debenture or similar instruments;
- (iii) acceptance credits, note purchase facilities, discounting facilities, bills of exchange or documentary credits;
- (iv) the capital element of obligations under or in respect of finance leases;
- (v) guarantees, indemnities or other assurances against financial loss; and
- (vi) amounts raised or obligations incurred in respect of any other transaction which has the commercial effect of borrowing (including, without limitation, forward sale or purchase agreements, leases, hire purchase and conditional sale agreements);

**Business Day** means any day (other than a Saturday or a Sunday) on which clearing banks are open for normal business in London and Edinburgh and on which Sterling deposits may be dealt in on the London interbank market;

**Cash Available for Debt Service** means in respect of any period, (i) Project Revenues and Liquidated Damages for such period *less* (ii) amounts required or shown in the most recent Project Forecast as being required for the purposes of working capital during such period and (iii) Operating Costs (but excluding the items referred to in (iv) paragraph (iii) of the definition of Operating Costs, (v) any amount required or shown in the most recent Project Forecast as required to be paid pursuant to the Construction Contract, (vi) capital expenditure funded by insurance proceeds applied on rectification or replacement of any asset and (vii) capital expenditure which the Borrower has incurred in implementing a Variation if the additional finance required for such

capital expenditure was obtained by the Borrower and the Service Payments adjusted accordingly under the provisions of Part 22 of the Schedule to the Project Agreement to reflect the costs of that additional finance);

**Cash Lock-Up Period** means the period from (and including):

- (i) any Reference Date as at which it is determined that the Debt Service Cover Ratio does not or will not exceed 1.10:1 as at that and/or any of the next successive four Reference Dates and/or the Loan Life Cover Ratio does not exceed 1.15 as at that and/or any of the next successive six Reference Dates, until
- (ii) any Reference Date as at which it is determined that the conditions specified in paragraph (i) above no longer apply,

all as determined by reference to a Project Forecast and assuming that any proposed distribution in those periods will be made;

**Cash Sweep Amount** means, as at each Reference Date during a Cash Sweep Period, the remaining balance of the Proceeds Account (after transfer or payment of all amounts referred to in Clause 15.7.3.1 to 15.7.3.4 inclusive);

**Cash Sweep Period** means the period from (and including):

- (i) the third Reference Date to occur during a Cash Lock-Up Period; until
- (ii) the end of that Cash Lock-Up Period;

**Civil and Structural Engineers** means URS Corporation Limited of 243 West George Street, Glasgow, G1 4QE or such other civil and structural engineers as may be appointed by the Borrower with the consent of the Agent pursuant to Clause 11.4.20 (*Project Personnel*);

**Collateral Warranties** means the collateral warranties in favour of the Agent from the Architect, the Civil and Structural Engineers, the Planning Supervisor, the Mechanical and Electrical Engineers and the Independent Tester;

**Commitment** means the aggregate commitment of all the Banks of up to (i) eighteen million eight hundred thousand pounds Sterling (£18,800,000) in respect of the Facility and (ii) one million three hundred thousand pounds Sterling (£1,300,000) less the amount (if any) standing to the credit of the Debt Service Reserve Account in respect of the DSR Facility, or, as the context may require, the Commitment of an individual Bank, during the Commitment Availability Period;

**Commitment Availability Period** means the period from the Effective Date to (in the case of the Facility) the earlier of (i) the date falling 2 months after the Actual Completion Date and (ii) the Longstop Date and (in the case of the DSR Facility) the date falling 6 months before the Maturity Date;

**Compensation Account** means the bank account so designated and operated pursuant to Clause 15 (*Project Accounts*);

**Compensatory Payments** means:

- (i) any sum paid to or for the account of the Borrower in respect of the partial or total nationalisation, expropriation, compulsory purchase or requisition of the Facilities or any interest in them;
- (ii) any sum paid to or for the account of the Borrower in respect of the release, inhibition, modification, suspension or extinguishment of any rights, easements, wayleaves or covenants enjoyed by or benefiting the Facilities, or the imposition of any restrictions affecting the Facilities, or the grant of any easement, wayleaves or rights over or affecting the Facilities; and
- (iii) any sum paid to or for the account of the Borrower in respect of the refusal, revocation, suspension or modification of any consent or other official permission, consent authorisation or exemption subject to conditions, or any other official order or notice restricting the construction or operation of the Facilities;

**Compliance Certificate** means a certificate of the Borrower substantially in the form of Part 12 of the Schedule duly completed;

**Consents** means any consent or authorisation required to be obtained for or in connection with:

- (i) the entry into and the performance of each of the Relevant Documents; or
- (ii) the construction and/or operation of the Project and any of the Works, Car Park Works and Final Works as contemplated by the Relevant Documents;

**Construction Bond** means the performance bond in the Agreed Form dated on or about the Execution Date granted in favour of the Borrower by a financial institution acceptable to the Agent;

**Construction Contract** means the contract dated on or about the Execution Date for the design and construction of the Works entered into or to be entered into between the Borrower and the Construction Contractor;

**Construction Contractor** means Robertson Construction Central Limited (Company No SC249933), or any permitted successor or assignee as the building contractor under the Construction Contract;

**Construction Costs** means in respect of the Project:

- (i) all costs, expenses and fees properly incurred by the Borrower in connection with the development, design, construction, testing and operation of the Works under the Construction Contract prior to or on the date of issue of the Notice of Completion of Making Good Defects in all respects in accordance with the Relevant Documents;
- (ii) all fees properly paid by the Borrower to secure the Consents in respect of the period prior to or on the Actual Completion Date;

- (iii) all fees properly paid by the Borrower to statutory undertakers and professional advisers prior to or on the Actual Completion Date;
- (iv) premiums paid by the Borrower in respect of the Insurances prior to or on the Actual Completion Date;
- (v) taxes paid by the Borrower prior to or on the Actual Completion Date;
- (vi) Financing Costs and Financing Principal paid by the Borrower prior to or on the Actual Completion Date or, in terms of this Agreement, Financing Costs accrued but unpaid prior to the first Repayment Date;
- (vii) fees and expenses paid in accordance with the Financing Documents prior to or on the Actual Completion Date, including by way of reimbursement of the fees of the Banks Consultants and the legal and other professional advisers of the Bank; and
- (viii) any other costs shown in the Original Financial Model as payable prior to or on the Actual Completion Date or otherwise agreed in writing by the Agent as Construction Costs for the purposes of this Agreement,

together in each case with VAT thereon;

**Controls Matrix** means the matrix of lender controls of discretions of the Borrower in respect of the Project Documents set out in Part 10 of the Schedule;

**Debt Service Cover Ratio** means as at any Reference Date and (in the case of current and future Reference Periods) determined by reference to the relevant Project Forecast, the ratio of:

- (i) the Net Cash Flow, or the Net Cash Flow and Projected Net Cash Flow (in the case of the current Reference Period where the relevant Reference Date is the most recent Reference Date), in respect of such Reference Period or the Projected Net Cash Flow alone (in the case of Reference Periods thereafter); to
- (ii) Debt Service Requirement and/or Projected Debt Service Requirement (as the case may be) for such Reference Period;

**Debt Service Requirement** means, in respect of any historic Reference Period, the aggregate of all amounts paid or payable by the Borrower in respect of (i) Financing Principal and (ii) Financing Costs (other than amounts referred to in paragraph (ii) in the definition of Financing Costs);

**Debt Service Reserve Account** means the bank account so designated and operated pursuant to Clause 15 (*Project Accounts*);

**Debt to Equity Ratio** means the ratio of the Loan to the aggregate issued amount of the Equity and the Loan Stock on any given date;

**Default Rate** means the rate of interest specified in Clause 5.5;

**Direct Agreements** means:

- (i) the Lenders Board Direct Agreement;
- (ii) the Lenders Construction Direct Agreement; and
- (iii) the Lenders FM Direct Agreement;

**Distribution** means any payment, repayment, redemption, dividend, discharge by way of set-off, counter-claim or otherwise or other distribution, whether in cash or in kind made by or on behalf of the Borrower to Holdings or any Shareholder or to any holder of the Loan Stock;

**Distribution Account** means the bank account so designated and operated pursuant to Clause 15 (*Project Accounts*);

**Drawdown** means the drawing of an Advance under this Agreement;

**Drawdown Date** means the date or proposed date of an Advance;

**Drawdown Notice** means a drawdown notice in substantially the form set out in Part 2 of the Schedule;

**DSR Advance** means an Advance under the DSR Facility;

**DSR Facility** means the debt service reserve facility made available pursuant to this Agreement;

**DSRA Required Level** means, as at any Reference Date, a credit balance of not less than the amount of all Projected Debt Service Requirement, but only for the period up to and including the date falling six (6) months after such Reference Date;

**Economic Assumptions** means those initial economic assumptions set out in Part 7A of the Schedule (*Initial Economic Assumptions*) and any other economic assumptions agreed or determined in accordance with Clause 16.3 (*Procedures for determining Assumptions for Project Forecasts*);

**Effective Date** means the date notified in writing by the Agent to the Borrower on which all the conditions precedent specified in Clause 3 (*Conditions Precedent*) and Part 1 of the Schedule (*Conditions Precedent*) have been satisfied or waived;

**Environmental Law** means any common, civil or criminal law, statute, regulation, rule, order, consent, decree, code of practice, circular, guidance notes and the like which relates to or otherwise imposes liability or standards of conduct concerning discharges or releases of any noises, odours, pollutants, contaminants or hazardous or toxic wastes, substances or materials into air, water or land, or otherwise relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, cleaning, transport or handling of pollutants, contaminants or hazardous or toxic wastes, substances or materials;

**Environmental Permits** means any consent, approval, ruling, authorisation, exemption, licence or permit required by or pursuant to any Environmental Law;

**Equity** means the nominal share capital of the Borrower (including any amount on share premium account) or any part thereof (including, without limitation, ordinary, preference, deferred or redeemable shares whether or not voting rights attach thereto);

**Event of Default** means any of the events described in Clause 13 (*Events of Default*);

**Execution Date** means the date of execution of this Agreement by all parties;

**Facility** means the term loan facility made available pursuant to this Agreement;

**Facility Period** means the period from the Execution Date until no actual or contingent obligations are owed or capable of being owed by the Borrower to any Finance Party under any Financing Document;

**Fee Letters** means each of the letters from the Agent to the Borrower and agreed and acknowledged by the Borrower dated on or about the Execution Date regarding the arrangement and underwriting, non-utilisation and management fees respectively;

**Finance Parties** means together the Agent, the Security Trustee, the Banks and the Hedging Counterparty;

**Financial Model** means the Original Financial Model as amended from time to time in accordance with this Agreement;

**Financial Year** means the accounting reference period (within the meaning of Part VII of the Companies Act 1985) of the Borrower and Holdings which shall be 1 April to 31 March;

**Financing Costs** means, in respect of any period, the aggregate of:

- (i) amounts of interest or in the nature of interest under this Agreement (including without limitation default interest and amounts payable under Clauses 8 (*Payments and Illegality*), 9 (*Increased Costs*) and 14 (*Indemnity, Breakage Costs and Mitigation*));
- (ii) all commitment, arrangement and other fees under this Agreement and the Fees Letter; and
- (iii) net payments made by the Borrower under any interest rate hedging agreements entered into by the Borrower with the consent of the Agent less any net payments received by the Borrower under such agreements;

in each case paid or payable (without double counting) during that period;

**Financing Documents** means:

- (i) this Agreement;
- (ii) the Security Documents;
- (iii) the Direct Agreements;
- (iv) the Subordination Agreement;
- (v) the Hedging Agreement; and
- (vi) the Fees Letter;

and any other agreement, deed, document or letter setting out the terms of or constituting any Indebtedness of the Borrower and/or Holdings to the Banks together with any documents ancillary or relating to all or any of them;

**Financing Principal** means amounts of principal or in the nature of principal paid or payable (but without double counting and ignoring for this purpose any prepayment or proposed prepayment) under this Agreement in the relevant period;

**FM Contract** means the contract entitled FM Agreement dated on or around the Execution Date between the Borrower and the FM Contractor in relation to the provision of the Services;

**FM Contractor** means Robertson Facilities Management Limited (Company No. SC185956) or any permitted successor or assignee as the provider of the Services pursuant to the FM Contract;

**Funding Shortfall** means a determination by the Agent (acting reasonably in consultation with the Banks Technical Adviser) that, at any time prior to the Actual Completion Date, the amount of all liabilities of the Borrower (projected and estimated by the Agent in consultation with the Banks Technical Adviser) to make future payments in order to ensure that the Actual Completion Date occurs on or before the Longstop Date, exceeds the aggregate at such time of:

- (i) the aggregate of the Available Commitments which are available for Project Costs in accordance with the purpose of the Facility pursuant to Clause 2.2 (*Facility Purpose*);
- (ii) any amount then standing to the credit of the Project Accounts which the Agent determines to be available for funding any such projected and estimated liabilities and which are not required in order to achieve or maintain a credit balance on any Project Account which is required pursuant to Clause 15 (*Project Accounts*); and
- (iii) any other Project Revenues receivable by the Borrower during the period to the Completion Date;

**GAAP** means, at any relevant time, generally accepted accounting principles and practices in the UK at that time;

**Hazardous Substances** means any noise, odour, pollutant or any flammable, combustible, explosive, infectious, corrosive, caustic, irritant, sensitising, carcinogenic or radioactive material or hazardous or toxic waste, substance or material which a reasonably prudent person would regard as being or being likely to be hazardous or dangerous or likely to cause harm;

**Hedging Agreement** means the interest rate hedging agreement (including the counter indemnity granted by the Borrower in favour of The Governor and Company of the Bank of Scotland in relation thereto) entered into by the Borrower in respect of the Loan;

**Hedging Counterparty** means a person in its capacity as hedging counterparty with whom the Borrower enters into a Hedging Agreement approved by the Agent, and includes the Governor and Company of the Bank of Scotland as guarantor of the obligations of the Borrower owed to HBOS Treasury Services plc and its successors and assigns in that capacity;

**Holdings Equity** means the nominal share capital of Holdings (including any amount on share premium account) or any part thereof (including, without limitation, ordinary, preference, deferred or redeemable shares whether or not voting rights attach thereto);

**Holdings Loan Stock** means the £1,419,000 15% Unsecured Subordinated Loan Stock 2035 of Holdings constituted by the Holdings Loan Stock Instrument;

**Holdings Loan Stock Instrument** means the instrument dated on or around the Execution Date by Holdings constituting the Holdings Loan Stock;

**Indebtedness** means any obligation for the payment or repayment of money, whether as principal or surety and whether present or future, actual or contingent;

**Independent Expert** has the meaning given in Clause 16.3 (*Procedures for Determining Assumptions for Project Forecasts*);

**Independent Tester** means Davis Langdon LLP or such other person as may be jointly appointed by the Borrower and the Board to perform such role with the consent of the Agent pursuant to Clause 11.4.20 (*Project Personnel*);

**Insurance Account** means the bank account so designated and operated pursuant to Clause 15 (*Project Accounts*);

**Insurance Programme** means the insurance programme detailed in Part 5 of the Schedule, Appendix 4, revised at any time and from time to time by the Agent in consultation with the Banks Insurance Adviser;

**Insurances** means the insurances effected or to be effected by the Borrower pursuant to and in accordance with the Insurance Programme and all additional or replacement insurances in respect of the Project or the Borrower and/or any Material Project Party in which the Borrower has an interest;

**Intellectual Property** means patents, trade marks, service marks, registered designs, applications for any of the foregoing, trade and business names, unregistered trade marks, and service marks, copyrights, designs, know-how and inventions and other intellectual property rights (including rights in computer software), rights under licences, consents, orders, statutes or otherwise in relation to any of the foregoing including, without limitation, the Borrower's rights in and to the Financial Model;

**Interest Payment Date** means the last day of each Interest Period;

**Interest Period** means any period determined in accordance with Clause 5 (*Interest*) by reference to which interest is to be calculated on each Advance;

**Interim Forecast** means a Project Forecast prepared by the Borrower pursuant to Clause 16.1 (*Forecasts*);

**Interim Reference Date** means a Reference Date specified by the Agent for the purposes of an Interim Forecast;

**Lenders Construction Direct Agreement** means the direct agreement in the Agreed Form among the Agent, the Borrower, the Construction Contractor and RGL dated on or around the Execution Date;

**Lenders FM Direct Agreement** means the direct agreement in the Agreed Form among the Agent, the Borrower, the FM Contractor and RGL dated on or around the Execution Date;

**Lenders Board Direct Agreement** means the direct agreement designated Funders Direct Agreement in the Agreed Form among the Board, the Agent and the Borrower dated on or around the Execution Date;

**LIBOR** means, in relation to any Interest Period, the rate of interest quoted by the Agent to leading banks in the London Inter-bank Market at or about 11.00 am (London time) on the first Business Day of that Interest Period in an amount comparable to the amount for which the rate is to be determined and for a period equal to that Interest Period, as determined by the Agent;

**Liquidated Damages** means any liquidated damages payable to the Borrower under any Relevant Document at any time;

**Loan** means the aggregate amount of all Advances (including capitalised interest) for the time being and from time to time outstanding under this Agreement;

**Loan Life Cover Ratio** means as at any Reference Date and determined by reference to the relevant Project Forecast, the ratio of:

- (i) the sum of (a) the Net Present Value of Projected Net Cash Flow for the remaining period of the Loan as shown in the Project Forecast, (b) the amount (if any) standing to the credit of the Proceeds Account to the extent projected to be available to pay the Financing Principal under Clause 15.7.3.3 and Financing Costs under Clause 15.7.3.2 and

(c) the amount (if any) standing to the credit of the Operating Account, to

(ii) the Loan;

**Loan Stock** means the £1,419,000 15% Unsecured Subordinated Loan Stock 2035 of the Borrower constituted by the Loan Stock Instrument;

**Loan Stock Instrument** means the instrument dated on or around the Execution Date by the Borrower constituting the Loan Stock;

**Longstop Date** means the date falling 12 months after the Completion Date;

**Maintenance Reserve Account** means the bank account so designated and operated pursuant to Clause 15 (*Project Account*);

**Majority Banks** means Banks to whom the amount of outstanding Advances attributable to such Banks exceeds 66 2/3% of the total outstanding Advances at that time;

**Management Accounts** means quarterly management accounts for the Borrower in Agreed Form;

**Material Adverse Effect** means any effect which, in the opinion of the Agent might be expected to (i) affect the ability of the Borrower to comply with any of its obligations under this Agreement or under any other Financing Document; (ii) affect the ability of any Material Project Party to any Financing Document to comply with any of its material obligations thereunder; or (iii) otherwise have a material adverse effect on the business, assets or financial condition of the Borrower;

**Material Project Party** means:

- (i) the Borrower;
- (ii) the Board;
- (iii) the Construction Contractor, for so long as it has any obligations to the Borrower under the Construction Contract;
- (iv) the FM Contractor;
- (v) Holdings;
- (vi) Euler Hermes Guarantee plc for so long as it has any obligations to the Borrower under the Construction Bond; and
- (vii) RGL, for so long as it has any obligations to the Security Trustee under the RGL Guarantee;

**Maturity Date** means the last Repayment Date specified in the Repayment Schedule;

**Mechanical and Electrical Engineers** means Wallace Whittle of 166 Great Western Road, Aberdeen, AB10 6QE or such other mechanical and electrical

engineers as may be appointed by the Borrower with the consent of the Agent pursuant to Clause 11.4.20 (*Project Personnel*);

**MLA Costs** means the cost to the Banks (including any fees payable by the Banks in respect thereof) of complying with the requirements of the Bank of England, the FSA or other regulatory authority affecting cash ratio deposits, special deposits or other requirements of whatever nature and attributable to an Advance to be computed on the first day of the relevant Interest Period in accordance with Part 6 of the Schedule (*Mandatory Costs*);

**Net Cash Flow** means, in respect of any period, Cash Available for Debt Service *less* payments made to the Maintenance Reserve Account (other than any such payments financed by the final Drawdown) *plus* payments made from the Maintenance Reserve Account;

**Net Present Value** means, in relation to any forecast amount falling due after a Reference Date, an amount equal to such forecast amount discounted back to such Reference Date on a mid-point basis using a discount rate which is the same rate as the fixed rate under the Hedging Agreement plus applicable MLA Costs and Applicable Margin at the time the relevant discounting is calculated;

**Notice of Completion of Making Good Defects** has the meaning given in Clause 22.16 of the Construction Contract;

**Operating Account** means the bank account so designated and operated pursuant to Clause 15 (*Project Accounts*);

**Operating Costs** means, in respect of any period following the Actual Completion Date, the amounts paid or forecast to be paid by the Borrower during such period in connection with the operation and maintenance of the Project and the Facilities (not being Construction Costs), including:

- (i) sums properly paid or payable pursuant to the Project Documents;
- (ii) taxes paid or payable;
- (iii) Financing Costs and Financing Principal and all other amounts paid or payable to the Finance Parties under or in connection with any Financing Document;
- (iv) premiums in respect of the Insurances paid or payable during such period;
- (v) all rates (or similar taxes) paid or payable in respect of the Site;
- (vi) capital expenditure incurred or forecast to be incurred in the normal course of operations; and
- (vii) all other fees and expenses paid or projected in the Project Forecast as payable following the Completion Date for the continued operation and maintenance of the Project and the Facilities,

together, in each case, with any VAT paid thereon;

**Original Financial Model** means the original Financial Model prepared by the Borrower, in a format and layout acceptable to the Agent and delivered to the Agent pursuant to Clause 3.1 (*Conditions Precedent*);

**Party** means a party to this Agreement, including successors and assignees;

**Permitted Borrowings** means (i) all Indebtedness of the Borrower to the Finance Parties from time to time, (ii) the Loan Stock, (iii) trade accounts arising in the ordinary course of business and amounts due and owing under the Relevant Documents and (iv) Indebtedness incurred with the prior written consent of the Agent;

**Permitted Security Interest** means (i) the Security Interests created pursuant to the Security Documents, (ii) Security Interests arising by operation of law, (iii) Security Interests arising under retention of title arrangements in respect of the purchase of goods in the ordinary course of business and (iv) Security Interests granted with the prior written consent of the Agent;

**Planning Supervisor** means MacKenzie Partnership of 20 North Claremont Street, Glasgow, G3 7LE or such other planning supervisor as may be appointed by the Borrower with the consent of the Agent pursuant to Clause 11.4.20 (*Project Personnel*);

**Potential Event of Default** means the occurrence of any event which, with the giving of notice and/or the lapse of time and/or the making of any determination, or the fulfilment of any condition, would constitute an Event of Default;

**Proceeds Account** means the bank account so designated and operated pursuant to Clause 15 (*Project Accounts*);

**Project** means the design, construction and financing of the Works and operation and financing of the Facilities and the provision of the Services pursuant to the Relevant Documents;

**Project Accounts** means the Distribution Account, the Proceeds Account, the Operating Account, the Debt Service Reserve Account, the Insurance Account, the Compensation Account, the Maintenance Reserve Account and the Tax Loss Sale Proceeds Account as specified in Clause 15 (*Project Accounts*) and any other bank account operated by the Borrower so designated with the consent of the Agent from time to time;

**Project Agreement** means the agreement so entitled dated on or around the Execution Date among the Borrower and the Board in relation to the Project;

**Project Costs** means the Construction Costs and the Operating Costs;

**Project Documents** means:

- (i) the Project Agreement;
- (ii) the Licence;
- (iii) the Construction Contract;

- (iv) the FM Contract;
- (v) the Interface Agreement;
- (vi) the Independent Tester Contract;
- (vii) the Insurance Proceeds Account Agreement;
- (viii) the Support Services Agreement;
- (ix) the RGL Guarantee;
- (x) the Construction Bond;
- (xi) the Memorandum and Articles of Association of the Borrower;
- (xii) the Memorandum and Articles of Association of Holdings;
- (xiii) the Loan Stock Instrument;
- (xiv) the Holdings Loan Stock Instrument; and
- (xv) the Shareholders Agreement;

**Project Forecast** means a project forecast prepared pursuant to Clause 16 (*Project Forecasts*) and includes an Interim Forecast and a reference to the Project Forecast shall be as deemed to be a reference to the most recent Project Forecast;

**Project Revenues** in respect of any period means the aggregate (without double counting) of:

- (i) the amounts received by the Borrower pursuant to the Relevant Documents in such period;
- (ii) all amounts received by the Borrower during such period by way of Equity or Loan Stock (including, without limitation, any amounts received under the Shareholders Agreement);
- (iii) all compensation or other consideration for lost revenue received by the Borrower during such period from the Board or any other entity on account of partial or total nationalisation, expropriation or requisition of the Project, the Facilities or termination of the Project Agreement;
- (iv) any and all proceeds of insurance which are received by the Borrower during such period in respect of loss of revenue or business interruption insurance but excluding the proceeds of any other insurance in respect of the whole or any part of the Project;
- (v) any amounts which are received by the Borrower during such period as a result of the permitted sale or other disposal by the Borrower of all or any part of its assets or revenues comprising all or part of the Project;
- (vi) any amounts which are received by the Borrower during such period by way of any damages or compensation;

- (vii) any amounts received by the Borrower by way of interest;
- (viii) any amount received in respect of any refund of tax and any amounts withdrawn from the Tax Loss Sale Proceeds Account under Clause 15.13 (*Tax Loss Sale Proceeds Account*);
- (ix) any other sums of a revenue nature not expressly excluded from paragraphs (i) to (viii) inclusive above and received by the Borrower during such period which are attributable to the Project;

**Projected Debt Service Requirement** means, in respect of any current or future Reference Period, the aggregate of all sums shown by the relevant Project Forecast to be payable by the Borrower in respect of Debt Service Requirement for such period;

**Projected Net Cash Flow** means, in respect of any period, Cash Available for Debt Service less payments required to fund the Maintenance Reserve Account, (other than any such payments financed by the final Drawdown) plus payments made from the Maintenance Reserve Account, all as such sums are shown by the relevant Project Forecast;

**Qualifying Bank** shall have the meaning given in paragraph 1 of Part 8A of the Schedule;

**RCP** means Robertson Capital Projects Limited, a company incorporated under the Companies Acts with registered number 227159 and having its registered office at 10 Perimeter Road, Pinefield Industrial Estate, Elgin, Morayshire, IV30 6AE;

**RCP Holder** means RCP or any other RCP Holder as defined in the Shareholders Agreement (save that any person becoming an RCP Holder pursuant to Clause 10.4.1(g) of the Shareholders Agreement shall be ignored for these purposes);

**Reference Date** means:

- (i) 31 March and 30 September (following the Actual Completion Date) in each year; and/or
- (ii) each Interim Reference Date; and/or
- (iii) without prejudice to Clause 16.1 (*Forecasts*), in relation to any proposed Distribution of the Borrower in terms of Clause 11.4.4.1 (*Restriction on Distributions*) proposed to be made after 30 September in each year, 30 September in that year (unless the Agent waives the requirement for such Interim Reference Date);

**Reference Period** means each period of one year commencing on a Reference Date;

**Relevant Documents** means the Project Documents and the Financing Documents and all other documents which the Borrower and the Agent agree to designate as a Relevant Document;

**Repayment Date** means each date specified in the Repayment Schedule;

**Repayment Schedule** means the repayment schedule set out in Part 4 of the Schedule;

**Reservations** means the principle that certain remedies available on enforcement such as specific implement or interdict are discretionary remedies which may be granted or refused at the discretion of the court, the limitation on enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, administration and other laws generally affecting the rights of creditors, the time barring of claims, the possibility that an undertaking to assume liability for or to indemnify against non payment of United Kingdom stamp duties may be void, defences of set-off or counter claim and similar principles and the defence that a contractual provision amounts to a penalty;

**RGL** means Robertson Group Limited, a company incorporated under the Companies Acts with registered number 60077 and having its registered office at 10 Perimeter Road, Pinefield Industrial Estate, Elgin, Morayshire, IV30 6AE;

**RGL Guarantee** means the guarantee by RGL dated on or about the Execution Date in favour of the Borrower in respect of *inter alia*, the obligations of the Construction Contractor under the Construction Contract and of the FM Contractor under the FM Contract;

**RGL Guarantor** means RGL as guarantor under the RGL Guarantee;

**RGL Holder** means RGL or any other RGL Holder as defined in the Shareholders Agreement;

**Security Documents** means (i) the security documents to be granted by the Borrower and others to the Security Trustee listed in Clause 12.1 (*Security*) which secure all monies due to and to become due to the Finance Parties and (ii) any other documents from time to time created in the Security Trustee's favour as security for the obligations of the Borrower or Holdings to the Finance Parties or any other obligations of any party in relation to the Project from time to time;

**Security Interest** means any standard security, mortgage, charge (whether fixed or floating), assignment or assignation by way of security, hypothecation, pledge, declaration of trust, lien, right of set off, compensation or combination of accounts, or any other security interest whatsoever, howsoever created or arising having or purporting to have the effect of priority over unsecured creditors' rights;

**Senior Debt Discharge Date** has the meaning given in the Subordination Agreement;

**Shareholders** means each of the RCP Holder and Uberior as providers of Holdings Equity, pursuant to the Shareholders Agreement;

**Shareholders Agreement** means the shareholders agreement dated on or around the Execution Date between the Shareholders, Holdings, the Borrower and the Agent relating to *inter alia* the Shareholders' and/or Stockholders' subscription of Holdings Equity and Holdings Loan Stock and to the subscription of Equity and Loan Stock and the sale of tax losses;

**Shares Charge** means the deed of pledge granted by Holdings in respect of the Borrower to the Security Trustee;

**Sterling** or **£** means the lawful currency for the time being of the United Kingdom;

**Stockholders** means each of the RCP Holder and The Governor and Company of the Bank of Scotland, pursuant to the Shareholders Agreement;

**Subordination Agreement** means the subordination agreement between the Borrower, the Senior Creditors (as defined therein), the Agent and the Subordinated Creditors (as defined therein) dated on or around the Execution Date;

**Subsidiary** shall have the meaning ascribed to it in Section 736 of the Companies Act 1985;

**Subsidiary Undertaking** shall have the meaning ascribed to it in Section 258 of the Companies Act 1985;

**Tax Loss Sale Proceeds** means the proceeds from the sale of tax losses sold by the Borrower pursuant to Clause 6.3 of the Shareholders Agreement;

**Tax Loss Sale Proceeds Account** means the bank account so designated and operated pursuant to Clause 15 (*Project Accounts*);

**Technical Assumptions** means those assumptions listed in Part 7B of the Schedule (*Technical Assumptions*) and any other technical assumptions agreed or determined in accordance with Clause 16.3 (*Procedures for determining Assumptions for Project Forecasts*);

**Transfer Certificate** means a transfer certificate in the form set out in Part 8B of the Schedule (*Transfer Certificate*), as such may be entered into from time to time between a Bank and any other bank or financial institution in relation to the transfer to any other bank or financial institution of any rights or obligations of a Bank under this Agreement;

**Transfer Provisions** means the provisions for transfer of or participation in part of the Loan as set out in Part 8A of the Schedule (*Transfer Provisions*);

**Uberior** means Uberior Infrastructure Investments Limited, a company incorporated under the Companies Acts with registered number SC186247 and having its registered office at Level 1, Citymark, 150 Fountainbridge, Edinburgh EH3 9PE;

**Verification Certificate** means a certificate by the Bank Technical Adviser substantially in the form of Part 11 of the Schedule duly completed; and

**Works** means all design and construction works (whether contemplated by the Construction Contract or otherwise) necessary for the implementation of the Project (and any other works which the Agent agrees should constitute part of the Works).

- 1.2 **Project Agreement Definitions.** In this Agreement unless defined otherwise herein or the context otherwise requires, words and phrases shall bear the meanings ascribed to them in the Project Agreement and, for ease of reference, without limitation, the following terms which are defined in the Project Agreement are used in this Agreement:-

Actual Completion Date;	Method Statements;
Board;	Planning Approval;
Additional Permitted Borrowings	
Board Event of Default;	Project Co Event of Default;
Board Service Variation;	Quality Plans;
Completion Date;	
Construction Quality Plan;	Service Payments;
Deductions;	Service(s);
Facilities;	Site;
	Sub Contractors;
Force Majeure;	Termination Date
	Uninsurable Risk;
Licence;	Variation;
Insurance Proceeds Account;	Variation Enquiry.

- 1.3 **Construction and Interpretation.** Save to the extent that the context or the express provisions of this Agreement require otherwise, in this Agreement:

- 1.3.1 words importing the singular shall include the plural and vice versa;
- 1.3.2 the word **tax** means all forms of taxation, duties, imposts and levies whatsoever in the nature of taxation whenever and wherever imposed, including (but without limitation) all stamp duties, import duties, capital and revenue taxes and value added tax, and **taxes** and **taxation** shall be construed accordingly;
- 1.3.3 a reference to any person is to be construed so as to include that person's successors in title (statutory or otherwise) and permitted transferees and assigns;
- 1.3.4 a reference to a **person** includes any individual, firm, company, corporation, body corporate, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- 1.3.5 a reference to **assets** includes properties and rights of every kind, present, future and contingent (including uncalled share capital), and every kind of interest in an asset;

- 1.3.6 all references to Clauses and Parts of the Schedule shall be construed as references to clauses of and parts of the schedule to this Agreement;
- 1.3.7 all references to statutes and other legislation include all re-enactments and amendments thereof;
- 1.3.8 all references to this Agreement or any other document shall be construed as references to this Agreement or that document as amended, varied, supplemented, assigned, novated or replaced (with the prior consent of the Agent pursuant to Clause 11.4.2 (*Amendment of Relevant Documents*) if applicable) from time to time;
- 1.3.9 all references to one person being **controlled** by another person means that other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or otherwise controls or has the power to control the affairs and policies of that person (and **control** shall be construed accordingly);
- 1.3.10 the word **guarantee** also includes an indemnity, and any other obligation (whatever called) of any person to pay, purchase, provide funds (whether by the advance of money, the purchase of assets or services, or otherwise) for the payment of, indemnify against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of any other person (and **guaranteed** shall be construed accordingly);
- 1.3.11 all references to persons acting in **concert** shall be as such term is defined in the City Code on Takeovers and Mergers;
- 1.3.12 all references to **connected persons** shall be construed in accordance with Section 839 of the Income and Corporation Taxes Act 1988; and
- 1.3.13 a reference to any document includes a reference to its schedules.
- 1.4 **Headings** Headings in this Agreement are inserted for convenience only and shall be ignored in construing this Agreement.

## PART 2

### THE FACILITY, CONDITIONS PRECEDENT, DRAWDOWN

#### 2. THE COMMITMENT

- 2.1 **Amount.** The Banks agree to make available to the Borrower a sterling term loan facility in the maximum principal amount of eighteen million eight hundred thousand pounds (£18,800,000), and a sterling debt service reserve revolving facility in the maximum principal amount of one million three hundred thousand pounds (£1,300,000), each to be drawn on the terms and subject to the conditions of this Agreement.
- 2.2 **Facility Purpose.** The Borrower shall, subject to the terms of this Agreement, use or procure the use of each Advance (other than a DSR Advance) to pay Project Costs incurred by the Borrower during the Commitment Availability Period and/or interest payable under Clause 5.3 (*Interest Payment/Capitalisation*) but, without prejudice to the Borrower's obligations under this Clause, the Banks shall not be obliged to concern themselves with the application of Advances by the Borrower.
- 2.3 **DSR Facility Purpose.** The Borrower shall, subject to the terms of this Agreement, use or procure the use of each DSR Advance to finance any Debt Service Requirement which cannot be met from funds standing to the credit of the Proceeds Accounts and/or the Operating Account and/or the Debt Service Reserve Account.

#### 3. CONDITIONS PRECEDENT

- 3.1 **Conditions Precedent.** The Commitment shall not be available (and no Drawdown Notice may be served on the Agent) until the Agent has received all the documents and other assurances specified in Part 1 of the Schedule (*Conditions Precedent*), all in form and substance satisfactory to it.
- 3.2 **Non-fulfilment of conditions precedent.** If the conditions precedent referred to in Clause 3.1 (*Conditions Precedent*) have not been satisfied or waived by the date occurring one month after the Execution Date then the Commitment shall be cancelled and the Banks shall have no obligation to make Advances to the Borrower pursuant to this Agreement but such cancellation shall be without prejudice to the rights of the Finance Parties under this Agreement (including, without limitation, under Clauses 14 (*Indemnity, Breakage Costs and Mitigation*) and 18 (*Fees and Expenses*)).

#### 4 DRAWDOWN AND WITHDRAWAL

- 4.1.1 **Conditions to Drawdown.** Subject to Clause 3 (*Conditions Precedent*) and without prejudice to any other provision of this Agreement, the Banks shall not be under any obligation to make any Advance available

unless the Agent has received a duly completed Drawdown Notice in respect thereof specifying the matters referred to in Clause 4.1.5.

- 4.1.2 **Drawdown.** Advances shall be made to the Borrower on a Business Day falling in the Commitment Availability Period.
- 4.1.3 The Borrower may not request more than one Advance in a calendar month.
- 4.1.4 Whenever the Borrower wishes an Advance to be made available to it, it shall send to the Agent a Drawdown Notice in writing duly completed, to be received by the Agent not later than 11 am three (3) Business Days prior to the proposed Drawdown Date, or a shorter period with the consent of the Agent.
- 4.1.5 The Drawdown Notices referred to in Clauses 4.1.1 and 4.1.4 shall specify:
  - 4.1.5.1 the proposed Drawdown Date;
  - 4.1.5.2 the purpose of such borrowing (which must be permitted by Clause 2.2. (*Facility Purpose*) or Clause 2.3 (*DSR Facility Purpose*)) and, if more than one, the relative amounts to be applied for each purpose; and
  - 4.1.5.3 the amount of such Advance, which (except for any DSR Advance and the final Advance) shall be a minimum of £50,000.
- 4.1.6 Subject to the terms of this Agreement, each Drawdown Notice shall be irrevocable.
- 4.1.7 No drawdown may be made if as a result thereof the total Advances would exceed the total Commitments.
- 4.1.8 The Agent will promptly notify each Bank of each Drawdown Notice.
- 4.1.9 Subject to the terms of this Agreement, on the Drawdown Date relating to an Advance each Bank shall make available to the Agent the amount of its participation in such Advance in an amount equal to the proportion thereof which its Commitment bears to the total Commitments at such time.

## 4.2 Drawdown

- 4.2.1 The Agent shall pay the proceeds of all Advances into the Proceeds Account. Amounts drawn on account of Project Costs which are not due and payable as at the Drawdown Date shall be retained in the Proceeds Account until such Project Costs are paid.
- 4.2.2 Without prejudice to any other provision of this Agreement, the Borrower shall not be entitled to make any Drawdown unless the following conditions are satisfied (save in respect of DSR Advances to the extent that Clauses 4.2.2.1 or 4.2.2.2 apply in respect of the

Borrower's inability to meet its obligations in respect of Financing Costs or Financing Principal):

4.2.2.1 **Representations and Warranties.** All representations and warranties in Clause 10 (*Representations and Warranties*) which are repeated in terms of Clause 10.2 (*Repetition*) on the Drawdown Date are being complied with and would be true and not misleading if repeated on the Drawdown Date by reference to all the facts and circumstances then existing;

4.2.2.2 **No Event of Default/Potential Event of Default.** No Event of Default or Potential Event of Default has occurred and is continuing on the Drawdown Date or will or would occur as a result of making the Drawdown;

4.2.2.3 **Application of Proceeds.** The Borrower has provided evidence satisfactory to the Agent as at the Drawdown Date that the proceeds of such Drawdown are:

- (i) required by the Borrower for application in or towards meeting any of the purposes specified in Clause 2.2 (*Facility Purpose*) and in accordance with the Financial Model in the period up to preparation of the first Project Forecast pursuant to Clause 16.1 (*Forecasts*) and thereafter in accordance with the Project Forecast (provided the Borrower is entitled to draw down an amount in respect of VAT on any sum advanced for any of the purposes so specified in Clause 2.2 (*Facility Purpose*) where such VAT is not financed by VAT refunds and notwithstanding that such VAT is not envisaged in the Financial Model or Project Forecast (as applicable) as being payable at that time); and
- (ii) to the extent that they are to meet sums under the Construction Contract (other than any retention amount which may be drawn at the Actual Completion Date), such sums have become due and payable or shall become due and payable under the Construction Contract within ten (10) Business Days of the Drawdown Date and an Application for Interim Payment with relevant supporting detail has been issued in respect thereof and such Application for Interim Payment has been verified by the Banks Technical Adviser;

or are (in the case of the DSR Advances) required to pay Financing Costs and Financing Principal which are due and would otherwise be unpaid;

4.2.2.4 **Banks Technical Adviser Confirmation:** The Bank's Technical Adviser has confirmed to the satisfaction of the Agent that the Bank's Technical Adviser:

- (i) has received all material information reasonably requested by it from the Borrower or any other Material Project Party; and
- (ii) is satisfied that all payments properly due to any sub-contractor have been made and are being made by the Construction Contractor; and
- (iii) delivered a Verification Certificate;

4.2.2.5 On the date on which the relevant Drawdown Notice is given and on the Drawdown Date, no Funding Shortfall is subsisting; and

4.2.2.6 the Longstop Date has not occurred.

#### 4.3 **Automatic Cancellation**

4.3.1 If the first Drawdown has not been made by the date occurring one month after the Execution Date the Commitment shall be cancelled, but such cancellation shall be without prejudice to the rights of the Finance Parties under this Agreement (including, without limitation, under Clauses 14 (*Indemnity, Breakage Costs and Mitigation*) and 18 (*Fees and Expenses*)).

4.3.2 The Available Commitment shall (if not earlier terminated or cancelled) automatically be cancelled with effect from 5.00pm on the last day of the Commitment Availability Period or the first Repayment Date, whichever is earlier.

## PART 3

### INTEREST, REPAYMENT, PREPAYMENT, PAYMENTS AND INCREASED COSTS

#### 5. INTEREST

##### 5.1 Interest Rate

5.1.1 The rate of interest applicable to each Advance for each Interest Period relative thereto shall be the rate per annum determined by the Agent to be the aggregate of:

- (i) the Applicable Margin;
- (ii) LIBOR; and
- (iii) MLA Costs.

5.1.2 The Borrower shall enter into an interest rate hedging programme in accordance with Clause 11.3.16 (*Hedging Agreements*) and the provisions of this Clause 5 (*Interest*) shall apply.

##### 5.2 Interest Periods

5.2.1 In the period commencing on the first Drawdown Date until the last day of the Interest Period current on the Actual Completion Date, Interest Periods for each Advance shall (subject to Clause 5.2.3) be successive periods of one month duration so that each Interest Period shall end on the fifteenth Business Day of each calendar month.

5.2.2 In the period commencing on the day following the last day of the Interest Period current on the commencement of the Service Period and ending on the Senior Debt Discharge Date, Interest Periods for each Advance shall (subject to Clause 5.2.3) be successive periods of 3 months duration so that each Interest Period shall end on 15 April, 15 July, 15 October or 15 January as the case may be.

5.2.3 The first Interest Period for any Advance will end on the next occurring fifteenth day of a calendar month. No Interest Period may extend beyond the Maturity Date.

5.2.4 Each Interest Period shall commence on the date of each Drawdown or (as the case may be) on the expiry of the previous Interest Period.

5.3 **Interest Payment/Capitalisation.** The Borrower will pay interest on the Loan to the Agent in arrears on each Interest Payment Date. In the period up to and including the Completion Date, unless the maximum amount of the Commitment would thereby be exceeded, the Agent shall on each day on which interest becomes due debit the account of the Borrower with the interest then payable and such interest when so debited will thereafter be regarded as an Advance and as part of the Loan and will bear interest accordingly.

- 5.4 **365 days.** Interest at the rate determined as aforesaid shall accrue from day to day and be computed on the basis of a year of 365 days and for the number of days elapsed.
- 5.5 **Default Interest** If any amount due to be paid hereunder or under any of the other Financing Documents is not paid by the Borrower on the due date for payment the Borrower shall pay interest on such amount from the due date until the date of actual payment at a rate per annum which is 2 per cent per annum above the rate payable on such amount. This interest shall be in addition to any other interest payable pursuant to this Agreement and applicable to such outstanding amount and shall be calculated on a day to day basis and a year of 365 days and compounded daily.
- 5.6 **Agent's Determination** Each determination of the rate of interest by the Agent hereunder shall, in the absence of manifest error, be conclusive.

## 6. REPAYMENT

- 6.1 **Repayment** The Borrower shall repay the Loan by paying on each Repayment Date:
- 6.1.1 firstly, the whole of the Loan drawn under the DSR Facility outstanding on that Repayment Date, and
- 6.1.2 secondly, that percentage of the Loan drawn under the Facility and outstanding on the expiry of the Commitment Availability Period which is set opposite that Repayment Date in Part 4 of the Schedule.
- 6.2 **Not Reborrow** The Borrower shall not be entitled to reborrow any amount repaid or prepaid except in the case of DSR Advances.

## 7. PREPAYMENT

- 7.1 **Prepayment.** Subject to Clause 7.3 (*Overriding Restriction*) and to payment of all sums due pursuant to Clause 7.2 (*Prepayment Sums*), provided no Event of Default or Potential Event of Default has occurred and is continuing or would result from such prepayment, the Borrower may prepay the Loan or any part of it which is £100,000 or more (in integral amounts of £25,000) if it gives the Agent not less than seven (7) Business Days written notice of the amount to be prepaid and the date of prepayment.
- 7.2 **Prepayment Sums** Any prepayment of principal in accordance with Clause 7.1 (*Prepayment*) shall be accompanied by:
- 7.2.1 in the case of the prepayment of all the Loan, all accrued interest on the amount prepaid; and
- 7.2.2 all other sums due under any other provision of this Agreement (including, without limitation, Clauses 14 (*Indemnity, Breakage Costs and Mitigation*) and 17 (*Set-Off*)).

- 7.3 **Overriding Restriction** Notwithstanding any other provision of this Agreement, the Borrower may only prepay the Facility prior to the Actual Completion Date if it is prepaid in full and any Available Commitment is cancelled.
- 7.4 **Application of Prepayments** Amounts prepaid shall be applied pro rata to the outstanding repayment instalments set out in the Repayment Schedule.
- 7.5 **Cancellation** The Borrower may cancel the whole or any part of the Available Commitment at any time after the Actual Completion Date without premium or penalty on giving not less than five (5) Business Days notice of cancellation to the Agent, provided that if the cancellation is of part only of the Available Commitment, no Event of Default or Potential Event of Default has occurred and is continuing or would result from such cancellation and that all outstanding fees and costs payable under the Financing Documents (including commitment fee accrued under Clause 18.4 (*Commitment Fee*) since the last quarterly commitment fee payment date) are paid in full by the cancellation date.

## 8. PAYMENTS AND ILLEGALITY

- 8.1 **Payments on due date.** All payments to be made by the Borrower to the Finance Parties under this Agreement shall be made on the due date from the Proceeds Account.
- 8.2 **Non-Business Day.** If any payment should become due on a day which is not a Business Day the due date for such payment shall be the following Business Day unless such following Business Day shall fall in the next calendar month in which case it shall be the preceding Business Day.
- 8.3 **No Set-Off/Counterclaim** All payments to be made by the Borrower hereunder shall be made in pounds sterling:
- 8.3.1 without set-off, deduction or counterclaim; and
- 8.3.2 free and clear of and without deduction for or on account of all taxes unless the Borrower is compelled by law to make payment subject to such taxes.
- 8.4 **Payment of taxes/withholding** All taxes in respect of this Agreement and any amounts paid or payable hereunder or under any other Financing Document shall be paid by the Borrower when due and in any event prior to the date on which penalties attach thereto. If any such taxes or amounts in respect thereof must by law be deducted from any monies payable or paid by the Borrower hereunder or under any other Financing Document, the Borrower shall pay such additional amounts as may be necessary to ensure that the Finance Parties receive after payment of such taxes an amount equal to the full amount which they would have received had payment not been made subject to such taxes or amounts. No additional amount shall be payable by the Borrower under this Clause to any Finance Party unless it is a Qualifying Bank.

- 8.5 **Tax receipts** As soon as practicable after each payment by the Borrower of tax or in respect of taxes, the Borrower shall deliver to the Agent evidence satisfactory to the Agent (including all relevant tax receipts) that such tax has been duly remitted to the appropriate authority.
- 8.6 **Tax credits.** If the Borrower makes a payment under Clause 8.4 (*Payment of taxes/ withholding*) for the account of a Finance Party and that Finance Party determines that it has received or been granted a credit against or relief from or remission for or repayment of any tax paid or payable by the Borrower in respect of or calculated by reference to the deduction or withholding giving rise to such payment, that Finance Party shall pay to the Borrower such amount as such Finance Party shall have determined to be attributable to such deduction or withholding provided always that that Finance Party shall be under no obligation to take any such step or to make any such payment if, in that Finance Party's opinion, it would or might have an adverse effect upon that Finance Party's business, operations or financial condition or the management of that Finance Party's tax affairs.
- 8.7 **Illegality** If, at any time, it is unlawful for any Bank to make, fund or allow to remain outstanding all or part of the Loan, then that Bank shall, promptly after becoming aware of the same, deliver to the Borrower a notice to that effect and:
- 8.7.1 that Bank shall not thereafter be obliged to make all or such part of its Commitment available; and/or
- 8.7.2 if that Bank so requires, the Borrower shall on such date as such Bank shall have specified repay the Loan attributable to that Bank together with accrued interest thereon and all other amounts owing to that Bank hereunder.

## 9. INCREASED COSTS

- 9.1 **Indemnity for Increased Costs.** If by reason of (i) the introduction of or any change in law or in its interpretation or administration in each case first taking effect after the date of this Agreement and/or (ii) compliance with any request or requirement of any central bank or other fiscal, monetary or other authority (including, without limitation, a request or requirement which affects the manner in which a Bank allocates capital resources to its obligations hereunder):
- 9.1.1 a Bank incurs a cost (being a cost which it would not otherwise have incurred) as a result of its entering into this Agreement, performing its obligations and/or assuming or maintaining its Commitment hereunder and/or making its Commitment available; or
- 9.1.2 a Bank is unable to obtain the rate of return on its overall capital which it would have been able to achieve but for its entering into this Agreement, performing its obligations and/or assuming or maintaining its Commitment hereunder and/or making its Commitment available; or

9.1.3 there is any increase in the cost to a Bank of funding or maintaining all or any of the Advances comprised in a class of Advances formed by or including the Commitment; or

9.1.4 a Bank incurs a cost (being a cost which it would not otherwise have incurred) as a result of its having made its Commitment available or a Bank becomes liable to make any payment on account of tax or otherwise on or calculated by reference to the amount of its Commitment and/or any sum received or receivable by it hereunder, or any liability in respect of any such payment is imposed, levied or assessed against a Bank,

(other than, in any such case, any cost or reduction in the rate of return attributable to tax on the overall net income of a Bank) then the Borrower shall, from time to time on demand by a Bank, pay to that Bank amounts sufficient to indemnify that Bank against, as the case may be:

- (i) such costs;
- (ii) such reduction in the rate of return (or such proportion of such reduction as is, in the opinion of that Bank, attributable to its obligations hereunder);
- (iii) such increased costs (or such proportion of such increased costs as is, in the opinion of that Bank, attributable to its funding of its proportion of the Commitment); or
- (iv) such cost or liability (or such proportion thereof as is, in the opinion of that Bank, attributable to making available its proportion of its proportion of the Commitment).

9.2 **Exceptions.** Clause 9.1 (*Indemnity for Increased Costs*) will not oblige the Borrower to compensate any Bank for any cost, reduction, payment or forgone interest or other return which:

9.2.1 is compensated for by the operation of any other provision of this Agreement; or

9.2.2 arises as a result of a breach by that Bank of any regulation, guidance or requirement of any central bank or other fiscal monetary or other authority (whether or not having the force of law).

9.3 **Notification by a Bank.** A Bank shall, when proposing to make a claim pursuant to Clause 9.1 (*Indemnity for Increased Costs*), notify the Borrower setting out in reasonable detail the calculation and cause of the amounts claimed.

## PART 4

### REPRESENTATIONS, WARRANTIES, COVENANTS, EVENTS OF DEFAULT

#### 10. REPRESENTATIONS AND WARRANTIES

10.1 **Representations and Warranties** To induce the Banks to make the Commitment available to the Borrower, the Borrower and Holdings each hereby represents and warrants to each of the Banks as follows:

10.1.1 **Status.** Each of the Borrower and Holdings is duly incorporated and validly existing under Scots law and has full power and authority to carry on its business or activities as presently conducted or anticipated to be conducted.

10.1.2 **Power.** Each of the Borrower and Holdings has the power to enter into, exercise its rights under and perform and comply with its obligations under the Relevant Documents to which it is a party, and to create the security and rights expressed to be created by the Security Documents to which it is a party.

10.1.3 **Authority.** In respect of each of the Borrower and Holdings, all actions, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary planning and other consents and the making of registrations) in order to:

10.1.3.1 enable it lawfully to enter into, exercise its rights and perform and comply with its obligations under the Relevant Documents to which it is a party;

10.1.3.2 ensure that those obligations are valid, legally binding and enforceable;

10.1.3.3 make the Relevant Documents to which it is a party admissible in evidence in the courts of Scotland;

10.1.3.4 create and perfect the Security Interests created under or pursuant to the Security Documents; and

10.1.3.5 enable the Project to be carried out in accordance with the Relevant Documents;

have been taken, fulfilled and done or shall be taken, fulfilled and done prior to the time when so legally required.

10.1.4 **Non-Contravention.** Neither the execution and delivery of this Agreement or the Security Documents or any of the Relevant Documents nor the utilisation of the Facility, nor the performance by the Borrower and Holdings of any of their obligations hereunder or thereunder will:

- 10.1.4.1      contravene any provision of law or regulation to which the Borrower or Holdings is subject or any judgment or order by which the Borrower or Holdings is bound;
- 10.1.4.2      conflict with, or result in any breach of any of the terms of or constitute a default under or result in the creation or imposition of any security interest on or over the whole or any part of the undertaking, property or assets of the Borrower or Holdings pursuant to any agreement or other instrument to which the Borrower or Holdings is a party or is subject or by which it is bound;
- 10.1.4.3      violate any provision of the Borrower's or Holdings' Memorandum and Articles of Association; or
- 10.1.4.4      cause any limitation on the powers of the Borrower or Holdings or of each Board of Directors (whether in respect of borrowings or otherwise) to be exceeded.
- 10.1.5      **Choice of Law.** In any proceedings taken in Scotland in relation to this Agreement, the choice of Scots law as the governing law of this Agreement and any decree obtained in Scotland will be recognised and enforced.
- 10.1.6      **Binding Effect.** The obligations expressed to be assumed by the Borrower and Holdings in each Relevant Document to which it is a party are its legal, valid and binding obligations enforceable in accordance with their terms, subject to the Reservations.
- 10.1.7      **No Default.** No Event of Default or Potential Event of Default has occurred, or will occur as a result of making any Advance, and each of the Borrower and Holdings is not in breach of or default under (i) any Relevant Document or (ii) any other agreement to an extent or in a manner which has or will have a Material Adverse Effect.
- 10.1.8      **Immunity from Suit.** In any proceedings taken in Scotland in relation to this Agreement, neither the Borrower nor Holdings will be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.
- 10.1.9      **No encumbrances.** No Security Interest other than a Permitted Security Interest exists in relation to any of the assets of the Borrower and Holdings.
- 10.1.10      **Accounts.** The most recent audited accounts (if any) of the Borrower and Holdings (including consolidated accounts in the case of Holdings) delivered to the Agent give a true and fair view of the financial position of the Borrower and Holdings for the

financial period to which they relate and the said accounts have been prepared and audited in accordance with GAAP.

- 10.1.11 **Trading and Liabilities.** Neither the Borrower nor Holdings has undertaken any trading or other activity other than as contemplated by the Relevant Documents and permitted under the Financing Documents nor does it have any actual or contingent liabilities except for actual or contingent liabilities which may arise pursuant to the Relevant Documents.
- 10.1.12 **Taxation Returns.** All necessary returns have been delivered by or on behalf of the Borrower and Holdings to the relevant taxation authorities and neither the Borrower nor Holdings is in default in the payment of any taxes, and no claim is being asserted with respect to tax which is not disclosed in the most recent audited accounts of the Borrower or Holdings.
- 10.1.13 **Information.** All information (other than statements of belief, opinions or projections) furnished by the Borrower and/or by Holdings and to the best of the knowledge, information and belief of the Borrower, any information (other than as aforesaid) furnished by the Shareholders (other than Uberior) to the Agent in connection with the Project, this Agreement and the other Financing Documents was and remains true, complete and accurate in all material respects and all statements of belief, opinion or projections contained in such information were made in good faith after proper investigation and consideration and based on reasonable assumptions and there is no other fact or circumstance relating to the affairs of the Borrower or (so far as they are aware) the Shareholders or the Project which has not been disclosed to the Agent the omission of which would make any such information misleading in any material respect or which, if disclosed, might reasonably be expected to affect adversely the decision of a prudent bank to provide facilities to the Borrower or the Project.
- 10.1.14 **Litigation.** No material litigation, arbitration or administrative proceeding before or of any court, tribunal or governmental authority is presently pending or, to the best of the knowledge, information and belief of the Borrower, threatened against the Borrower or Holdings or against any of its assets which has or will have a Material Adverse Effect.
- 10.1.15 **Winding-up and Insolvency.** In respect of the Borrower and Holdings:
- 10.1.15.1 no meeting has been convened for its winding-up, no such step is intended by it and, so far as it is aware, no petition, application or the like is outstanding for its winding-up, administration (whether out of court or otherwise) or dissolution;

- 10.1.15.2 it is not insolvent, nor unable to pay its debts and could not be deemed by a court to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 nor will it become so in consequence of entering into any of the Relevant Documents to which it is party or performing its obligations thereunder.
- 10.1.16 **Intellectual Property.** The Borrower and Holdings has or shall have available to it all Intellectual Property necessary for the implementation of the Project and its interest in the said Intellectual Property is free from all Security Interests other than Permitted Security Interests.
- 10.1.17 **The Site.** Except as provided pursuant to the Project Documents there are no leases, restrictions, covenants, wayleaves, servitudes or other rights affecting the Site which will or might prevent, hinder or delay, the carrying out of the Project.
- 10.1.18 **Environmental.**
- 10.1.18.1 Neither the Borrower, nor Holdings has failed to comply with any applicable Environmental Law or any condition relating to any applicable Environmental Permit which would in each case have a Material Adverse Effect;
- 10.1.18.2 So far as the Borrower is aware, no Hazardous Substances have been disposed of or released at, on, from or under the Site or the Facilities which are likely to cause harm.
- 10.1.19 **No Withholding.** Under the law of Scotland in force at the date of this Agreement, the Borrower and Holdings shall not be required to make any deduction or withholding from any payment it may make under all or any of the Financing Documents.
- 10.1.20 **Security Interests.** Subject to any mandatory provisions of general law and the Reservations, each Security Document creates (or, once entered into, will create) a Security Interest for the obligations expressed to be secured thereby, which is valid, legally binding and enforceable (subject to registration pursuant to the Companies Act 1985 and at the Land Register of Scotland and, where applicable, to notification of an assignation/assignment to the relevant debtor thereunder) over the assets referred to in that Security Document and ranking ahead of all (if any) Security Interests and rights of third parties.
- 10.1.21 **Relevant Documents.** The Borrower has provided to the Agent originals or true copies of all Relevant Documents and the computer disc in relation to the Financial Model and every

agreement and document relating to the Site and/or Project to which it is (or will be) a party or under which it has or may have any material liability and it has not entered into any other contracts relating to the Project, or any other material contract, other than the Relevant Documents.

10.1.22 **Insurances.** The Insurances have been placed and are in full force and effect as required pursuant to the terms of this Agreement and at the date hereof all insurances which have been effected by the Borrower and are presently in force have been disclosed to the Agent.

10.1.23 **Financial Model.** The financial, economic and technical assumptions in the Financial Model were made in good faith and arrived at after due and careful consideration and genuinely represent the Borrower's view as at the Execution Date.

10.1.24 **Subsidiaries.** The Borrower has no Subsidiaries or Subsidiary Undertakings. The Borrower is the Subsidiary of Holdings and Holdings has no other Subsidiaries or Subsidiary Undertakings.

10.2 **Repetition** The representations and warranties set out in Clause 10.1 (*Representations and Warranties*) shall survive the execution of this Agreement and the utilisation of the Facility and (other than the representations and warranties in 10.1.7 (*No Default*) (to the extent the repeated warranty concerns Potential Event of Default), 10.1.11 (*Trading and Liabilities*), 10.1.13 (*Information*), 10.1.14 (*Litigation*), 10.1.19 (*No Withholding*) and 10.1.23 (*Financial Model*) shall be deemed to be repeated on each Drawdown Date, Interest Payment Date and Repayment Date as any amount is or may be outstanding under the Loan, with reference to the facts and circumstances then subsisting, as if made at each such time.

## 11. UNDERTAKINGS AND COVENANTS

11.1 **Duration.** The undertakings and covenants in this Clause shall remain in force throughout the Facility Period.

11.2 **Provision of Information** The Borrower (and Holdings in the case of Clause 11.2.1 (*Accounts*), 11.2.4 (*Information to Shareholders/Creditors*) and 11.2.5 (*Other Information*)) hereby undertakes to the Agent that, throughout the Facility Period it shall:

11.2.1 **Accounts.** Deliver to the Agent at the same time as the same are published and in any event in the case of the Borrower and Holdings not later than the expiry of the period of four months from the end of each of its financial years, and in the case of RGL not later than the expiry of the period of six months from the end of each of its financial years

11.2.1.1 a copy of the Borrower's and Holdings' Director's Report, Balance Sheet, Profit and Loss Account and Cash Flow Statement (consolidated in the case of Holdings) and

11.2.1.2 a copy of the Director's Report, Consolidated Balance Sheet, Profit and Loss Account and Cash Flow Statement of RGL,

in each case made up to the end of such financial year and duly certified by the Auditors in accordance with the provisions of the Companies Act 1985.

11.2.2 **Quarterly Reporting.** Deliver to the Agent as soon as they become available and in any event within 20 Business Days after the end of each quarter after the Actual Completion Date, the Management Accounts for such quarter.

11.2.3 **Budget and Forecasts.** Deliver to the Agent as soon as available and in any event within one month prior to the end of each of the Borrower's Financial Years budgeted balance sheet, profit and loss and cash flow statements (including details of all Operating Costs) for the following financial year on a quarterly basis (coinciding with the quarters in respect of which Management Accounts for such period will be delivered to the Agent pursuant to Clause 11.2.2 (*Quarterly Reporting*)).

11.2.4 **Information to Shareholders/Creditors.** At the same time as sent to its shareholders or creditors generally or any class or classes thereof, it shall deliver to the Agent copies of any notice, circular, report, document or other written information sent to them.

11.2.5 **Other Information.** Promptly provide the Agent with any financial or other information relating to the business or financial condition of the Borrower or Holdings or the Project which the Agent may from time to time reasonably request.

11.2.6 **Agent Advisers.** If the Agent has reasonable grounds to believe that an Event of Default or Potential Event of Default has occurred and is continuing unremedied and unwaived, allow the Agent at any time and from time to time at the sole cost and expense of the Borrower to appoint reporting accountants, surveyors, architects, lawyers or such other professional advisers as the Agent may deem necessary to protect its interests under the Financing Documents, to investigate the affairs of the Borrower or Holdings, the Project, the Site or any matter relating thereto which the Agent requires.

11.2.7 **Reports before the Actual Completion Date.** Prior to the Actual Completion Date, the Borrower shall, within 15 Business Days after the end of each calendar month, starting with the first whole calendar month after the Execution Date, deliver to the Agent and the Banks Technical Adviser a report (in such form as the Agent may request):

11.2.7.1 detailing:

(A) the Works which have been completed in the relevant month;

- (B) whether or not construction on and of the Works is proceeding according to the Programme and that the Actual Completion Date will take place on or before the Longstop Date and, if not, the reasons for such delay;
- (C) the Borrower's estimate of the Construction Costs incurred but unpaid and of all Construction Costs to be incurred up to the estimated date for achieving the Completion Date, in each case, as at the end of that month and the reasons for any increase in the estimate contained in the report and the estimate of such Construction Costs provided in the last report delivered under this Clause 11.2.7;
- (D) any significant concerns or difficulties relating to the implementation of the Works which ought reasonably to be brought to the Agent's attention (including delays in progress and any material claims or proceedings made or brought by or against, or any disputes with, third parties and without prejudice to notice given in terms of Clause 41.4 of the Project Agreement);
- (E) progress in obtaining the Consents or (but without prejudice to Clause 11.2.7.1(D)) any anticipated difficulties or delays in obtaining or maintaining them;
- (F) any actual or anticipated claim, proceeding or dispute pursuant to or connected with any Relevant Document indicating in reasonable detail the nature of the same and the steps taken (or proposed to be taken) by the Borrower in relation thereto;
- (G) a breakdown in reasonable detail of all amounts paid and payable by way of Construction Costs and of other costs and expenses of the Borrower during the relevant calendar month;
- (H) the status of design development and the Board sign off;
- (I) the procurement process including appointment of the Sub Contractors;
- (J) the progress of the Services preparation including the appointment of Sub Contractors, development of decant (if any) and commissioning proposals, development of Method Statements, Quality Plans

and service delivery plans (if any), progress on TUPE transfers (if appropriate);

- (K) details of any Disputes referred to the Dispute Resolution Procedure under the Project Agreement (if appropriate); and
- (L) full details of any Variation proposed by the Borrower or the Board; and

11.2.7.2 containing a certificate in such form as the Agent may request, setting out:

- (A) full details of any claim made under any Insurances during that month;
- (B) whether or not, in the view of the Borrower, a Funding Shortfall exists or may exist, or, if no Funding Shortfall exists, a statement to that effect; and
- (C) whether or not any event of Force Majeure or any Relief Event has occurred under, or for the purposes of, any of the Relevant Documents since the last report delivered under this Clause 11.2.7 and, if any such event has occurred, the action being taken by the Borrower in relation to it, or, if no event of Force Majeure or Relief Event has occurred, a statement to that effect.

**11.2.8 Reports after the Actual Completion Date** After the Actual Completion Date, the Borrower shall, within 15 Business Days of each Reference Date, deliver to the Agent and the Banks Technical Adviser a report (provided that the Agent may request a report at any time or waive the requirement to produce a report for one semi annual period) (in such form as the Agent may request) setting out in respect of each such semi annual period ending on each such date:

11.2.8.1 full details of any claim made under any Insurances during that semi annual period;

11.2.8.2 a statement of Project Revenues for that semi annual period together with a comparison against budgeted Project Revenues for that semi annual period as assumed for the purposes of the then applicable Project Forecast and a comparison with the same semi annual period in the previous year and a commentary on any significant discrepancies between projected Project Revenues and Project Revenues actually received during that semi annual period;

11.2.8.3 a statement of Project Costs paid during that semi annual period together with a comparison against budgeted

- Project Costs for that semi annual period as assumed for the purposes of the then applicable Project Forecast;
- 11.2.8.4 a statement of Operating Costs paid during that semi annual period together with a comparison with the same semi annual period in the previous year and a commentary on any significant discrepancies between projected Operating Costs (as shown in the Annual Operating Budget) and Operating Costs actually incurred during that semi annual period;
  - 11.2.8.5 a statement of Deductions during that semi annual period and a commentary on the reasons for such Deductions;
  - 11.2.8.6 a summary description of the principal obligations required to be discharged by the Borrower during that semi annual period under the Relevant Documents, stating whether or not the same have been discharged and where they have not, the reasons for such failure;
  - 11.2.8.7 a description of the performance of the FM Contractor pursuant to the FM Contract during that semi annual period, indicating whether or not the Borrower is satisfied with such performance (and, if not, the reasons why not);
  - 11.2.8.8 any significant concerns or difficulties relating to the operation of the Project during that semi annual period which ought reasonably to be brought to the Agent's attention (including any material claims or proceedings made or brought by or against, or any disputes with, any third parties);
  - 11.2.8.9 any significant actual or anticipated claim, proceeding or dispute pursuant to or in connection with any Relevant Document, indicating in reasonable detail the nature of the same and the steps taken (or proposed to be taken) by the Borrower in relation thereto;
  - 11.2.8.10 a summary description of maintenance works carried out indicating whether or not the same accord with the anticipated levels of maintenance assumed by the Borrower and providing a brief explanation of any exceptional items;
  - 11.2.8.11 details of the Schedule of Programmed Maintenance (as defined in the Project Agreement);
  - 11.2.8.12 details of proposed and requested drawdown from the Maintenance Reserve Account including a description and expected cost of the Lifecycle Works to be financed by the drawdown; and

11.2.8.13 full details of any Variation proposed by the Borrower or the Board.

**11.2.9 Other Project Information.** Promptly (and in any event forthwith upon becoming aware of the same or the same being issued (as the case may be)) provide to the Agent:

11.2.9.1 any Variation Enquiry in terms of Part 22 of the Schedule to the Project Agreement and full details of any ongoing requests;

11.2.9.2 copies of any termination notice served by any party to a Relevant Document;

11.2.9.3 written details of the receipt of any notice or other communication alleging or maintaining that an Event of Force Majeure or Relief Event has occurred;

11.2.9.4 written details of any Uninsurable Risk;

11.2.9.5 copies of all notices, reports or documents prepared by the ProjectCo's Representative or any such notices, reports or documents delivered to the Borrower or ProjectCo's Representative by the Board's Representative which might have a Material Adverse Effect, and if so requested by the Agent, copies of all such items whether or not they would have a Material Adverse Effect;

11.2.9.6 copies of all notices of a Board Event of Default or a Project Co Event of Default;

11.2.9.7 copies of any proposed variation or variations to the Construction Quality Plan which might have a Material Adverse Effect, and if so requested by the Agent, copies of all such items;

11.2.9.8 full details of any failure by the Board to pay any sum under the Relevant Documents on the due date therefor;

11.2.9.9 a copy of all other notices or formal communications given by the Board, any of the Subcontractors or any other party thereto to the Borrower pursuant to or in relation to any of the Relevant Documents; and

11.2.9.10 a copy of all other notices or formal communications given by the Borrower to the Board, any of the Subcontractors or any other party thereto pursuant to or in relation to any of the Relevant Documents.

11.2.10 **Provision and Contents of Compliance Certificate:** The Borrower shall:

11.2.10.1 supply a Compliance Certificate to the Agent with each set of its audited annual financial statements delivered in accordance with Clause 11.2.1 and with each set of its quarterly management accounts delivered in accordance with Clause 11.2.2 as at 31 March and 30 September in each year,

11.2.10.2 which shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 11.4.4 (Restriction on Distributions), Clause 13.1.2 (Financial Covenants) and paragraph 13 of Part 1 of the Schedule,

11.2.10.3 and which shall be duly signed by two directors or one director and the company secretary of the Borrower.

11.3 **Positive Covenants** The Borrower hereby undertakes to each other party to this Agreement that, throughout the Facility Period it shall:

11.3.1 **Payment of Outgoings.** Pay all outgoings (including, without limitation, Project Costs, taxes and other duties) assessed on or otherwise payable by it prior to the time when any interest or penalties or material adverse consequences can result from non-payment except as agreed by the Agent and/or to the extent that the same are being contested in good faith and by appropriate proceedings which permit the deferral of payment and in respect of which adequate reserves have been made.

11.3.2 **Generally Perform Obligations** Duly and punctually perform in all respects material to the interests of the Finance Parties all obligations assumed or to be assumed by it under each Relevant Document, and under all leases, permissions, consents, approvals, licences, easements, rights of way and any other rights to which it is or shall be a party and, without limitation, use all reasonable endeavours to procure that the Actual Completion Date is achieved by the Longstop Date.

11.3.3 **Perform Duties.** In all respects material to the interests of the Finance Parties:

11.3.3.1 perform all of its duties and obligations under all applicable laws; and

11.3.3.2 obtain and maintain in full force and effect all governmental and other consents necessary for the performance of its obligations under the Relevant Documents and comply with all conditions and obligations to which such consents may be subject.

#### 11.3.4

##### **Relevant Documents.**

- 11.3.4.1 Promptly after becoming aware of the same, notify the Agent of any breach of a Project Document by it or by any other party thereto and of any event, matter or thing which with the giving of notice and/or the lapse of time and/or the making of any determination, or the fulfilment of any condition might or could constitute a breach of a Project Document;
- 11.3.4.2 Promptly provide to the Agent a copy of any instrument, agreement or document which is proposed to be made to amend, modify, waive or replace any of the terms of any of the Relevant Documents, and the Borrower shall forthwith upon execution thereof (having obtained the consent of the Agent pursuant to Clause 11.4.2 (*Amendment of Relevant Documents*)) deliver a copy of it to the Agent;
- 11.3.4.3 Immediately after receipt, deliver to the Agent a copy of any termination notice served under any Project Document;
- 11.3.4.4 Notify the Agent, promptly after becoming aware of the same, of any occurrence which might entitle it to terminate any Project Document and thereafter consult with the Agent as to any appropriate action which may be taken and take such action as may be required by the Agent acting reasonably; and
- 11.3.4.5 If its consent is required to any transfer by any person of that person's obligations under a Project Document, it shall give or withhold such consent in accordance with the directions of the Agent.

#### 11.3.5

**Exercise Rights.** Maintain in full force and effect and exercise all of its rights under the Relevant Documents and all applicable laws (i) to the extent necessary so as to ensure (a) the performance of its obligations and the obligations of each other party to the Financing Documents and (b) insofar as possible by such exercise in all respects reasonably likely to be material to the interest of the Finance Parties, the performance by the other parties thereto of their obligations under the Project Documents, and (ii) enforce its rights (and after consultation with the Agent, act upon any reasonable instructions given by the Agent in connection therewith) against the Board under the Project Agreement and against the Scottish Ministers under the Licence and in the event of any Board breach or default thereunder and, as far as possible by such exercise, ensure the performance by the Board of its obligations under the Project Agreement.

- 11.3.6      **Acquire Rights.** Acquire and preserve all such property, rights and interests as are necessary for the performance of its obligations under the Relevant Documents.
- 11.3.7      **Litigation.** Promptly deliver to the Agent details of any litigation, arbitration or administrative proceedings to which the Borrower or Holdings is a party which might render any representation and warranty in Clause 10 (*Representations and Warranties*) incorrect.
- 11.3.8      **Compensatory Payments etc.** Subject to the provisions of the Lenders Board Direct Agreement, transfer to the Compensation Account any Compensatory Payments for application in accordance with the instructions of the Agent, provided that the Borrower shall not be obliged to pay any such sums to the Agent in excess of the amount required fully to repay the Loan and irrevocably discharge all liabilities under the Financing Documents.
- 11.3.9      **Event of Default.** Promptly notify the Agent when the Borrower becomes aware that an Event of Default or a Potential Event of Default has occurred.
- 11.3.10     **Protection of Intellectual Property.** Take all reasonable action to safeguard and maintain its ownership and present and future rights in connection with all material Intellectual Property and licences and sub-licences thereof used in or necessary for its business including observing all covenants and stipulations relating thereto and obtaining all necessary registrations.
- 11.3.11     **Conduct of Business.** Conduct its business in a proper and efficient manner.
- 11.3.12     **Taxation.**
- 11.3.12.1    Duly file all taxation returns containing such information as is required to be contained therein and pay within any applicable time periods prescribed by law all taxes, stamp, registration or documentary taxes, duties or similar, charges due and payable under the laws of England and Scotland save where it is not responsible for the payment thereof or where it is contesting the same in good faith;
- 11.3.12.2    Continue to submit, within the periods and in the form required by law, returns in respect of VAT.
- 11.3.13     **Adverse Claims.** Promptly after receipt give notice to the Agent of every notice of default or adverse claim or adverse demand made by any person against the Borrower (or any Affiliate thereof) and of any legal or arbitral proceedings or similar dispute resolution procedures instituted with respect thereto and

which, in each case, exceed or are in respect of an amount exceeding £50,000 and diligently take all necessary and proper steps for the remedy of any such default and by way of defence and protection against any such adverse claim or demand, including (but not limited to) the employment of legal advisers for the protection or defence of litigation and the contest, release or discharge of any such claim or demand.

11.3.14 **Ranking of Obligations.** Ensure that the Borrower's payment obligations under the Financing Documents shall at all times rank in priority to, in all respects, all its other Indebtedness other than such Indebtedness as would be preferred by operation of law in the event of its winding-up.

11.3.15 **Environment.** Comply in all material respects with all Environmental Laws and all conditions attaching to any Environmental Permit, and shall disclose full details to the Agent of all inspections, investigations, studies, audits, tests, reviews and other analysis carried out by it or on its behalf in relation to any environmental matters (including, without limitation the possibility of the presence of any Hazardous Substances thereon), in relation to the Project and the Site or any adjoining property over which the Site enjoys any rights or amenities of which it is aware having made all due enquiries, which have or might reasonably be expected to have, a Material Adverse Effect.

11.3.16 **Hedging Agreements.** Enter into and maintain in full force and effect the Hedging Agreement for the management of the total interest rate exposure under this Agreement with HBoS Treasury Services plc for the period commencing on the Effective Date and ending on the Maturity Date and grant such Security Interests in favour of the Security Trustee over all instruments and agreements in relation thereto as the Agent may, from time to time, require.

11.3.17.1 **Controls Matrix.** Exercise all of its rights, benefits and obligations under the Relevant Documents (or any of them) in accordance with the Controls Matrix and otherwise comply with the Controls Matrix.

11.4 **Negative Covenants** The Borrower and Holdings (in the case of 11.4.1, 11.4.2, 11.4.6, 11.4.12, 11.4.16, 11.4.17, 11.4.18 and 11.4.19) hereby undertake to each other party to this Agreement that, throughout the Facility Period the Borrower and Holdings shall not:

11.4.1 **Nature of Business.** (i) In the case of the Borrower, carry on, or have any interest in, any business or activity other than the Project and (ii) in the case of Holdings, carry on, or have any interest in, any business or activity other than expressly permitted or contemplated by this Agreement.

- 11.4.2      **Amendment of Relevant Documents:** Amend or waive or modify or concur in the amendment or waiver or modification of or cancel, terminate, suspend or surrender any of the Relevant Documents without the prior written consent of the Agent. A deed of adherence to the Shareholders Agreement or a deed of accession to the Subordination Agreement entered into pursuant to transfers permitted in accordance with the Shareholders Agreement or Subordination Agreement shall not be considered an amendment to the Shareholders Agreement or Subordination Agreement (as the case may be).
- 11.4.3      **Abandonment.** Abandon or suspend the conduct of the Project or any part thereof.
- 11.4.4      **Restriction on Distributions.** Save as hereinafter provided, declare, pay or make any Distribution unless:
- 11.4.4.1      as at the most recent Reference Date (and, in the case of paragraph (A) below, the two immediately preceding Reference Dates) before the date of any such proposed Distribution as evidenced by the Compliance Certificate supplied in accordance with Clause 11.2.10.1:
- (A)      the Debt Service Cover Ratio was equal to or greater than 1.10:1; and
- (B)      the Loan Life Cover Ratio was equal to or greater than 1.15:1, and
- 11.4.4.2      (i) in the case of paragraph (A) below, as at the immediately succeeding Reference Date and (ii) in the case of paragraph (B) below, as at each Reference Date occurring after the date of the proposed Distribution (and assuming that such Distribution and any other Distribution proposed to be made prior to the next Reference Date have been made) as evidenced by the Compliance Certificate supplied in accordance with Clause 11.2.10.1:
- (A)      the Debt Service Cover Ratio will be equal to or greater than 1.10:1 and
- (B)      the Loan Life Cover Ratio will be equal to or greater than 1.15:1; and
- 11.4.4.3      no Event of Default or Potential Event of Default has occurred which is continuing unremedied and unwaived or would occur as a result of such Distribution; and

- 11.4.4.4 the Borrower has complied with Clause 15.9 (*Maintenance Reserve Account*) and 15.10 (*Debt Service Reserve Account*); and
- 11.4.4.5 the first repayment of the Loan has occurred; and
- 11.4.4.6 there are no outstanding Additional Permitted Borrowings.
- 11.4.5 **Negative Pledge.** Create or have outstanding any Security Interest on or over its assets (present or future), except for a Permitted Security Interest.
- 11.4.6 **Disposals.** Sell, lease, transfer or otherwise dispose of (whether by a single transaction or a number of related or unrelated transactions and whether at one time or over a period of time), or concur in any sale, lease, transfer or other disposal of, any of its assets except for:
  - 11.4.6.1 disposals at arm's length and on normal commercial terms of surplus assets or of other assets which are promptly replaced by items of equivalent or better quality;
  - 11.4.6.2 any assets having a value of less than £25,000, the disposal of which (either alone or when aggregated with any related disposal) in relation to the assets of the Borrower, taken as a whole, or the disposal of which either alone or when so aggregated would not have a Material Adverse Effect;
  - 11.4.6.3 any disposal which the Agent shall have agreed shall not be taken into account;
  - 11.4.6.4 any disposal expressly required or permitted by the Financing Documents; or
  - 11.4.6.5 (in the case of Holdings) the payment of any distribution, whether in cash or kind made by or on behalf of Holdings to any of its shareholders or to any holder of Holdings Loan Stock;
- 11.4.7 **Application of Proceeds.** Apply any net proceeds of:
  - 11.4.7.1 Equity in the Borrower for any purpose other than for the purposes permitted for use of the Facility set out in Clause 2.2 (*Purpose*); or
  - 11.4.7.2 the Advances for any purpose other than in accordance with Clause 2.2 (*Purpose*).
- 11.4.8 **Loans.** Make any loans to any person.

- 11.4.9      **Derivative Transactions etc.** Carry out any foreign exchange transactions or enter into any currency or interest swap agreement or other derivative or analogous transaction other than as expressly permitted by this Agreement.
  
- 11.4.10    **Restriction on Further Indebtedness.** Incur or agree to incur any Indebtedness in respect of Borrowings other than (i) Permitted Borrowings and (ii) further Borrowings of £25,000 outstanding at any one time.
  
- 11.4.11    **Guarantees.** Give or permit to exist any guarantee by it of any Indebtedness in respect of Borrowings otherwise than pursuant to the Financing Documents.
  
- 11.4.12    **Reduce Capital.** Reduce, cancel, repay, purchase or redeem any share capital.
  
- 11.4.13    **Assets.** Acquire, or agree to acquire, any asset other than in accordance with the Relevant Documents or for the purposes of the Project.
  
- 11.4.14    **Transactions.** Enter into any transaction other than on an arm's length basis.
  
- 11.4.15    **No Subsidiaries/Amalgamations, etc.** Without the prior consent of the Agent acquire any shares, stock or other securities or other interest in any other person or amalgamate, merge or consolidate with or into any other person or become the subject of any reconstruction.
  
- 11.4.16    **Taxation.** Surrender any tax losses or allowances to Holdings or the Shareholders otherwise than as permitted by the Shareholders Agreement.
  
- 11.4.17    **Other Agreements.** Enter into any material agreement other than the Relevant Documents and the Financing Documents except to the extent permitted by the Agent.
  
- 11.4.18    **Protection of Security.** Do, or consent to the doing of, anything which could prejudice the validity of any of the Security Interests created pursuant to the Security Documents.
  
- 11.4.19    **Memorandum and Articles.** Agree to any amendment to or variation of its Memorandum or Articles of Association or the Shareholders Agreement other than with the consent of the Agent (such consent not to be unreasonably withheld). A deed of adherence to the Shareholders Agreement entered into pursuant to transfers permitted in accordance with the Shareholders Agreement shall not be considered an amendment to the Shareholders Agreement.
  
- 11.4.20    **Project Personnel.** Dismiss, replace or make any material amendment to the terms of appointment of the Auditors, the

Architect, the Civil and Structural Engineers, the Mechanical and Electrical Engineers, the Planning Supervisor or the Independent Tester.

**11.5 Insurance** The Borrower hereby undertakes to each other party to this Agreement that, throughout the Facility Period it shall:

11.5.1 from time to time effect and maintain Insurances on and in relation to the Project and all operations of the Borrower in connection therewith against such risks, in such amounts and otherwise on such terms and with such underwriters or insurance companies all to the satisfaction of the Agent and at least in accordance with the terms set out in the Project Agreement and, in any event, at all times as required by any applicable law;

11.5.2 comply with the provisions in relation to the Insurances set out in Part 5 of the Schedule (*Insurances*);

11.5.3 notify the Agent upon becoming aware of any failure by the Board to maintain the Insurances for which it is responsible and act upon the instructions of the Agent in paying any premium in respect of such Insurances instead of the Board to ensure they remain in full force and effect;

11.5.4 provide evidence satisfactory to the Agent of payment of all premiums on such insurances (including without limitation the Brokers Letter of Undertaking referred to in Part 5 of the Schedule (*Insurances*));

11.5.5 pay all proceeds of Insurances forthwith to the Agent, by crediting the same to the Insurance Account or the Insurance Proceeds Account in accordance with Clause 15.11 (*Insurance Accounts*); and

11.5.6 on request by the Agent consent to the supply by the Borrower's insurance broker to the Agent and/or the Banks Insurance Adviser of copies of all placing slips, certificates, cover notes, renewal receipts and confirmations of renewal and payment of premiums and all policy documents in respect of the Insurances including, where required, the supply of the originals of all or any of such documents.

PROVIDED THAT the Borrower shall not agree to waive the requirement for any insurances to be effected by the Board pursuant to the terms of the Project Agreement or otherwise howsoever without the prior written consent of the Agent.

**11.6 Financial Undertakings.** The Borrower hereby undertakes to each other party to this Agreement that, throughout the Facility Period it shall:

11.6.1 **Capital Expenditure.** Ensure that capital expenditure for each calendar year does not exceed the levels specified in the Financial Model in the period up to the preparation of the first Project Forecast pursuant to Clause 16.1 (*Forecasts*) and thereafter, the levels specified in the Project Forecast or such higher level as the Agent may agree in writing, acting reasonably.

11.6.2 **Debt/Equity Ratio** Ensure that the Debt to Equity ratio shall be no greater than 9:1.

## 12. SECURITY

12.1 **Security Documents** The obligations of the Borrower to the Finance Parties under this Agreement shall be secured by the following (in favour of the Security Trustee):

12.1.1 a first ranking floating charge by the Borrower over all its assets and undertaking;

12.1.2 a first ranking floating charge by Holdings over all its assets and undertaking;

12.1.3 a guarantee by Holdings of the obligations of the Borrower under the Financing Documents;

12.1.4 an assignation in security over the Project Accounts (other than the Distribution Account) and contract rights and insurances by the Borrower;

12.1.5 an assignation in security over contract rights by Holdings;

12.1.6 the Collateral Warranties and other duty of care letters from the other parties to the Relevant Documents and the subcontractors of the Construction Contractor as required by the Agent; and

12.1.7 the Shares Charge

together with such other Security Interests which the Security Trustee may from time to time hold for the liabilities of the Borrower. Any security to be granted to the Security Trustee after the date of this Agreement shall be in the Agent's required form.

12.2 **Security for Financing Documents.** The Borrower acknowledges that all Security Interests held and to be held by the Security Trustee for the liabilities of the Borrower shall unless the security document expressly states otherwise secure all of its liabilities to the Finance Parties under the Financing Documents.

12.3 **Further Security** The Borrower shall, on demand and at its cost, grant such further Security Interests in favour of the Security Trustee in security of its obligations to the Finance Parties as the Security Trustee may specify and shall grant or procure the grant of such step-in rights in favour of the Agent and Security Trustee in respect of any contracts entered into by the Borrower after the date of this Agreement as the Agent or Security Trustee may require.

### 13. EVENTS OF DEFAULT

#### 13.1 Events of Default. The following are Events of Default:

- 13.1.1 **Non Payment.** The Borrower or Holdings fails to pay, in the manner provided in the Financing Documents, any principal or interest or other sum payable thereunder on demand, if so payable, or, in the case of any payments of principal and interest, on its due date or in the case only of any sum other than principal or interest under the Loan within five (5) Business Days of its due date save in each case where the Borrower satisfies the Agent (acting reasonably) that such non-payment was solely due to a technical problem affecting the method of transmission of funds and the amount is paid no later than 3 Business Days thereafter;
- 13.1.2 **Financial Covenants.** If, as at any Reference Date, the Loan Life Cover Ratio is less than 1.10:1, or the Debt Service Cover Ratio is less than 1.05:1;
- 13.1.3 **Breach of Representation or Warranty.** Any representation, warranty or statement by the Borrower or Holdings under a Relevant Document is not complied with or is or proves to have been incorrect when made or deemed repeated in accordance with such Relevant Document and if that default is capable of remedy it is not remedied within ten (10) Business Days of the Borrower or Holdings becoming aware of the relevant non-compliance or error and such non-compliance or breach would have a Material Adverse Effect;
- 13.1.4 **Breach of Covenant.** The Borrower or Holdings breaches or fails to comply with any undertaking, covenant or obligation (other than for the payment of money) in any Relevant Document (including without limitation, those specified in Clause 11 (*Undertakings and Covenants*)) and such breach or failure which can be rectified is not rectified within ten (10) Business Days or such other reasonable period as the Agent may agree;
- 13.1.5 **Non Compliance.** Any Material Project Party (other than the Borrower or Holdings) does not perform or comply with any one or more of its undertakings, covenants or obligations under any Relevant Document or any one or more of its obligations and, in the case of such Material Project Party, such non-performance or non-compliance has or will have a Material Adverse Effect and, if capable of remedy, is not so remedied within fifteen (15) Business Days after the first to occur of (i) the Borrower becoming aware of such non-performance or non-compliance or (ii) the Agent notifying the Borrower of such non-performance or non-compliance;
- 13.1.6 **Remedies against the Board.** The Borrower does not promptly enforce its rights against the Board under the Project Agreement

or any other Relevant Document after being instructed to do so by the Agent;

- 13.1.7 **Cross Default.** Any Indebtedness in respect of Borrowings of (i) the Borrower or Holdings (other than under the Financing Documents), or (ii) any other Material Project Party in excess of £100,000 (other than under the Loan Stock Instrument) is or is declared to be due and payable before its normal maturity by reason of any event of default or the like (however described) by (in each case) such party or is not paid when due or within any applicable grace period or, as a result of any event of default or the like (however described) any facility relating to any such Indebtedness is or is declared to be or is capable of being cancelled or terminated before its normal expiry date and (in the case of any Material Project Party other than the Borrower or Holdings) such event has or will have a Material Adverse Effect;
- 13.1.8 **Insolvency.** Any Material Project Party is (or is, or could be, deemed by law or a court to be) insolvent or unable to pay its debts, or stops, suspends or threatens to stop or suspend, payment of all or a material part of (or of a particular class of) its Indebtedness, or takes any steps with a view to the deferral, rescheduling or other readjustment of all or a substantial part of (or of a particular class of) its Indebtedness (or of any part which it will or might otherwise be unable to pay when due), proposes or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of (or of a particular type of) the Indebtedness of such party and (in the case of any such party other than the Borrower or Holdings and the Board) such event(s) have or will have a Material Adverse Effect;
- 13.1.9 **Enforcement Proceedings.** A distress, attachment, execution or other legal process is levied, enforced or sued out on or against the assets of any Material Project Party and is not discharged or stayed within fourteen (14) Business Days and (in the case of any such party other than the Borrower or Holdings and the Board) such event(s) have or will have a Material Adverse Effect;
- 13.1.10 **Enforcement of Security** Any Security Interest in or over the assets of the Borrower or Holdings becomes enforceable;
- 13.1.11 **Winding-up.** Any step (including any preliminary step) is taken (whether or not involving the giving of notice or the starting of proceedings) by any person with a view to the winding-up or administration (whether out of court or otherwise) or dissolution of any Material Project Party, or any of them ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction,

amalgamation, reorganisation, merger or consolidation on terms approved by the Agent before that step is taken or, as the case may be, before the relevant cessation or threat;

- 13.1.12     **Analogous Events.** Any event occurs which, under the law of any applicable jurisdiction, has an analogous or equivalent effect to any event mentioned in Clause 13.1.8 (*Insolvency*) to Clause 13.1.11 (*Winding-up*) (inclusive);
- 13.1.13     **Nationalisation.** Any step is taken by any person with a view to the seizure, compulsory acquisition, expropriation or nationalisation of the Facilities and/or all or a material part of the assets or shares of the Borrower or Holdings;
- 13.1.14     **Ownership of the Borrower and Holdings.**
- 13.1.14.1    Either RCP or Uberior or any Third Party Shareholder (as defined in the Project Agreement) ceases to own any of its Holdings Equity or Holdings Loan Stock prior to the first anniversary of the Actual Completion Date other than where transferred to RCP, Uberior or to any Third Party Shareholder (as defined in the Project Agreement);
- 13.1.14.2    At any time any step is taken, without the prior consent of the Agent, by any person which may result in any one person (or connected persons or persons acting in concert) other than any of the Shareholders (or their permitted transferees in accordance with the Shareholders Agreement) obtaining control of the Borrower or Holdings;
- 13.1.14.3    Any contract, agreement, deed, instrument or other arrangement is entered into by the Borrower or Holdings for the issue of, or it otherwise does issue, any Equity or Holdings Equity otherwise than in accordance with the Shareholders Agreement;
- 13.1.15     **Illegality.** It is or shall become unlawful for any Material Project Party to perform or comply with any one or more of its obligations under any Relevant Document (unless (i) the Agent determines that the unlawfulness of the relevant obligation(s) is immaterial, or (ii) in the Agent's opinion such unlawfulness is remediable and is remedied to the Agent's satisfaction within a period of fourteen (14) Business Days of becoming unlawful) or such obligations are not, or cease to be, legal, valid, binding and enforceable;
- 13.1.16     **Litigation.** Any litigation, arbitration or administrative proceeding (save where it is being contested by the relevant party in good faith) is current, pending or threatened (i) to

- restrain the entry into, exercise of any of the rights and/or the performance or enforcement of or compliance with any of the obligations of any Material Project Party under the Relevant Documents or (ii) which has or will have a Material Adverse Effect;
- 13.1.17 **Suspension.** The construction or operation of the Works is (for any reason other than by reason of, and for the period of, Force Majeure) suspended or any part of the Project is (for any reason other than by reason of, and for the period of, Force Majeure) suspended in a manner which has or could have a Material Adverse Effect and the Borrower has failed to rectify the impact of the suspension to the satisfaction of the Agent within ten (10) Business Days of the commencement of the suspension;
- 13.1.18 **Abandonment.** The Project is abandoned in whole or in part;
- 13.1.19 **Anticipated Events.** Any event occurs or circumstances arise which the Agent reasonably considers is likely to result in the occurrence of one or more of the events specified in Clause 13.1.17 (*Suspension*) or Clause 13.1.18 (*Abandonment*);
- 13.1.20 **Loss of Facilities/Force Majeure.** The Facilities are lost, damaged or destroyed in whole or in part material to the interests of the Finance Parties or any Event of Force Majeure occurs which entitles or might be expected to last for such a period as to entitle any person (other than the Borrower) to terminate any provision of any Project Document, the termination of which has or could have a Material Adverse Effect;
- 13.1.21 **Cancellation/Termination of Relevant Documents.** Any of the Relevant Documents is cancelled, revoked, forfeited, surrendered, terminated or repudiated (whether in whole or in a material part thereof) or otherwise ceases to be, or is claimed not to be, in full force and effect (other than by effluxion of time pursuant to the terms of the applicable Relevant Document) including without limitation notice being given by any party to any Relevant Document of its intention to terminate such Relevant Document without the Agent's prior written consent having been obtained;
- 13.1.22 **Insurances.** Any Insurances required to be effected under the Relevant Documents is not, or ceases to be, maintained in full force unless it is an Uninsurable Risk;
- 13.1.23 **The Board:**
- 13.1.23.1 The Board is or is likely to be, dissolved, deconstituted or abolished or otherwise ceases to exercise its powers or any steps taken for any person for the dissolution or reconstruction of the

Board or the closure of the Facilities or transfer of responsibility for the Facilities to another body and that step, if capable of being nullified is not nullified within 5 Business Days; or

- 13.1.23.2 The Board enters into a composition or arrangement with its creditors or proceeding or comments in relation to the Board under any law, regulation or procedure relating to reconstruction or readjustment of debt;

save in either case where a replacement party acceptable to the Agent accedes to the Relevant Documents;

- 13.1.24 **Funding Shortfall.** It appears to the Agent that a Funding Shortfall will occur;

- 13.1.25 **Shareholders Agreement.** Any Shareholder or Holdings fails to make any payment due (or otherwise satisfy its payment obligations) within 3 Business Days of the due date for payment or satisfaction thereof under the Shareholders Agreement (and such obligations are not satisfied from the proceeds of any security taken by the Agent in respect thereof) or any Shareholder or Holdings fails to comply with any of its other obligations under the Shareholders Agreement at the time and in the manner specified therein and, in relation to such payment or other obligations, that such failure has or would be likely to have a Material Adverse Effect;

- 13.1.26 **Delayed Services Commencement.**

- 13.1.26.1 The Banks Technical Adviser, acting reasonably, certifies at any time, that in its opinion, the Actual Completion Date is unlikely to occur on or before the Longstop Date; or

- 13.1.26.2 The Actual Completion Date has not occurred on or before the Longstop Date;

- 13.1.27 **Direct Agreements.** Any party to a Direct Agreement serves a Termination Notice under it. For the purposes of this Clause, a Termination Notice is a notice so called in any Direct Agreement; or

- 13.1.28 **Material Adverse Effect.** Any event(s) occur(s) or circumstances arise which has given rise to a Material Adverse Effect.

- 13.2 **Cure Plan and Consequences of Event of Default.** Following an Event of Default the Agent shall consider any cure plan proposed by the Borrower which is received by the Agent prior to the exercise of any of the default remedies in this Clause 13.2 (*Cure Plan and Consequences of Event of Default*) but the Agent shall have complete discretion to proceed to exercise

any or all of the default remedies after the Agent has considered the cure plan proposals with no obligation on the Agent to act reasonably.

If at any time and for any reason (and whether within or beyond the control of any party to this Agreement) any Event of Default has occurred then at any time thereafter (and for so long as the same is continuing), the Agent may by notice to the Borrower declare:

13.2.1 the Available Commitment to be cancelled, whereupon it shall be cancelled; and/or

13.2.2 all Advances, all unpaid accrued interest and fees and any other sum then payable under this Agreement to be immediately due and payable, whereupon they shall become so due and payable; or

13.2.3 all Advances, all unpaid accrued interest and any other sum then payable under this Agreement to be due and payable upon demand, whereupon they shall become so due and payable immediately upon demand;

and/or exercise its rights under any Direct Agreement, and the Security Trustee may, following any such declaration, enforce the Security Documents and in each case following the occurrence of any Event of Default and for so long as the same is continuing default interest shall be charged on the Loan in accordance with Clause 5 (*Interest*).

**13.3 Project Accounts.** At any time whilst an Event of Default is subsisting, and notwithstanding anything to the contrary in Clause 15 (*Project Accounts*):

13.3.1 the Agent shall be entitled to operate the Project Accounts as though it were the sole signatory in respect thereof;

13.3.2 no withdrawal may be made from any or all of the Project Accounts except with the prior consent of the Agent;

13.3.3 the Agent may apply all amounts in the Project Accounts in or towards payment of any amount outstanding under a Financing Document as the Agent shall determine; and

13.3.4 the Agent may appropriate the amounts to be applied under Clause 13.3.3 above against the obligations to which they are to be applied in such order as it thinks fit.

No amount shall be payable to the Borrower, or may be withdrawn by the Borrower, from or in respect of any Project Account at any time after the Agent gives a notice of the kind described in Clause 13.2 (*Cure Plan and Consequences of Event of Default*).

## **14. INDEMNITY, BREAKAGE COSTS AND MITIGATION**

**14.1 Indemnity.** The Borrower shall keep the Finance Parties indemnified from and against all actions, proceedings, claims, costs, expenses and damages against or incurred by the Finance Parties in connection with the Project and

the Commitment or occasioned by any Event of Default or the non-payment of any sums due by the Borrower including all legal and expert's fees incurred in connection with any of the foregoing.

**14.2 Breakage Costs** The Borrower shall indemnify the Finance Parties on demand against any loss or expense (including any loss of Applicable Margin or any other breakage costs in respect of or relating to any hedging arrangements or any other loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under this Agreement, any amount repaid or prepaid under this Agreement or any Advance) which any Finance Party has sustained or incurred as a consequence of:

14.2.1 an Advance not being made following the service of a Drawdown Notice (except as a result of the failure of that Finance Party to comply with its obligations under this Agreement);

14.2.2 the failure of the Borrower to make payment on the due date of any sum due under this Agreement;

14.2.3 the occurrence of any Events of Default or the operation of Clauses 13.2.2 and 13.2.3 (*Cure Plan and Consequences of Event of Default*); or

14.2.4 any prepayment or repayment of an Advance otherwise than on an Interest Payment Date relative to such Advance.

### **14.3 Currency Indemnity**

14.3.1 Any payment made to or for the account of or received by any Finance Party in respect of any moneys or liabilities due, arising or incurred by the Borrower to that Finance Party in a currency (**the Currency of Payment**) other than the currency in which the payment should have been made under this Agreement (**the Currency of Obligation**) in whatever circumstances (including as a result of a judgment against the Borrower) and for whatever reason shall constitute a discharge to the Borrower, only to the extent of the Currency of Obligation amount which that Finance Party is able on the date of receipt of such payment (or if such date of receipt is not a Business Day, on the next succeeding Business Day) to purchase with the Currency of Payment amount as its spot rate of exchange (as conclusively determined by that Finance Party) in the London foreign exchange market.

14.3.2 If the amount of the Currency of Obligation which a Finance Party is so able to purchase falls short of the amount originally due to that Finance Party under this Agreement, then the Borrower shall immediately on demand indemnify that Finance Party against any loss or damage arising as a result of that shortfall by paying to that Finance Party that amount in the Currency of Obligation certified by that Finance Party as necessary so to indemnify it.

14.3.3 The indemnity in this Clause 14.3 (*Currency Indemnity*) shall constitute a separate and independent obligation from the other obligations contained in this Agreement, shall give rise to a separate and

independent cause of action, shall apply irrespective of any indulgence granted from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum or sums in respect of amounts due under this Agreement or under any such judgment or order.

- 14.4 **Project Indemnities.** The Borrower shall indemnify the Finance Parties on demand against any loss, cost, expense or liability sustained or incurred by it as a result of:

14.4.1 its incurring any liability under or pursuant to any Environmental Law or Environmental Permit which liability would not have been incurred by it if it was not party to the arrangements established under or pursuant to the Relevant Documents or any failure on the part of the Borrower to comply with any Environmental Permit or Environmental Law; or

14.4.2 any acts or omissions of the Borrower or any Material Project Party arising out of or in connection with the obligations to be performed by or on behalf of the Borrower or any Material Project Party pursuant to the Relevant Documents.

- 14.5 **Mitigation** If any circumstances arise which result, or upon the giving of notice would result in the operation of Clauses 8.4 (*Payment of taxes/ withholding*), 9 (*Increased Costs*) or 14.2 (*Breakage Costs*) to the detriment of the Borrower then, without in any way limiting, reducing or otherwise qualifying any of the obligations of the Borrower under such clauses, the Agent shall:

14.5.1 promptly upon becoming aware of those circumstances and their results, notify the Borrower; and

14.5.2 in consultation with the Borrower, take all such steps as it determines are reasonably open to it to mitigate or remove the effect of those circumstances which will avoid or mitigate the circumstances in question including, if appropriate, changing the branch at which the Project Accounts are kept and/or transferring its rights and in each case on terms acceptable to the Borrower and the Agent;

provided that the Agent shall not be obliged to take any such steps which, in its opinion, would or might have an adverse effect on its business or financial condition or the management of its tax affairs or cause it to incur any material costs or expenses.

**PART 5**  
**PROJECT ACCOUNTS**

**15. PROJECT ACCOUNTS**

**15.1 Location of Accounts.** The Project Accounts shall be maintained by the Borrower from time to time with such branch of the Account Bank as the Agent may require. Initially such branch shall be at Corporate Banking, Client Banking, New Ueberior House, 11 Earl Grey Street, Edinburgh EH3 9BN, sort code 80-26-43.

**15.2 Project Accounts**

15.2.1 Subject to the provisions of this Clause with respect to the opening, maintaining and closure of Project Accounts, throughout the Facility Period the Borrower will maintain the following Project Accounts denominated in Sterling in its name at the relevant bank or branch of the Account Bank as referred to in Clause 15.1 (*Location of Accounts*):

- 15.2.1.1 the Proceeds Account;
- 15.2.1.2 the Operating Account;
- 15.2.1.3 the Maintenance Reserve Account;
- 15.2.1.4 the Debt Service Reserve Account;
- 15.2.1.5 the Insurance Account;
- 15.2.1.6 the Compensation Account; and
- 15.2.1.7 the Tax Loss Sale Proceeds Account; and
- 15.2.1.8 the Distribution Account.

15.2.2 Except with the prior written consent of the Agent, the Borrower will not open or maintain any bank, deposit, savings or other account except for the Project Accounts.

15.2.3 Each Project Account will be a separate account at the Account Bank.

15.2.4 The Borrower will promptly convert into Sterling any moneys received by it in a currency other than Sterling for crediting to the relevant Project Account on the day of conversion into Sterling.

15.2.5 None of the restrictions contained in this Clause 15 (*Project Accounts*) on the withdrawal of funds from Project Accounts will affect the obligations of the Borrower to make all payments required to be made to the Agent on the due date for payment thereof in accordance with the Financing Documents.

15.2.6 No withdrawal will be made from any Project Account if it would thereby become overdrawn save that, subject to Clause 11.4.10

(*Restriction on Further Indebtedness*), the Operating Account may be overdrawn.

15.2.7 The Account Bank will not be obliged to make available to the Borrower any sum which the Borrower is expecting to receive for the credit of any Project Account until the Account Bank has been able to establish that the Account Bank has received that sum.

### **15.3 Permitted Withdrawals.**

15.3.1 No payments to, or withdrawals from, any Project Account will be made except as expressly permitted by this Agreement.

15.3.2 All amounts withdrawn from any Project Account by the Borrower for application in or towards making a specific payment or meeting a specific liability will be applied in or towards making that payment or meeting that liability, and for no other purpose.

15.3.3 Clause 15.3.1 will not prevent the Account Bank from permitting or requiring transfers between, or withdrawals from, any Project Account after the occurrence of an Event of Default which is continuing.

### **15.4 No withdrawals in certain circumstances.**

15.4.1 Notwithstanding the foregoing provisions of this Clause 15 (*Project Accounts*), the Borrower may not withdraw any moneys from any Project Account:

15.4.1.1 if the withdrawal is not or would not be permitted under any Financing Document; or

15.4.1.2 so long as an Event of Default has occurred and is continuing.

15.4.2 Clause 15.4.1 shall not prevent the Agent, by notice to the Borrower, from requiring transfers between any Project Account after the occurrence of an Event of Default or a Potential Event of Default and before it is waived or remedied.

**15.5 Access and Records.** The Borrower irrevocably grants the Agent or any of its appointed representatives upon reasonable notice during normal business hours, access to review the books and records of the Project Accounts maintained by it and irrevocably waives any right of confidentiality that may exist in respect of such books and records.

**15.6 Saving of Security Documents.** Nothing in this Agreement will prejudice the rights, powers and discretions of the Finance Parties under the Security Documents.

### **15.7 Proceeds Account.**

15.7.1 The proceeds of all Advances (other than any DSR Advance, which shall be applied directly in satisfaction of the relevant Debt Service Requirement) shall be paid into the Proceeds Account.

15.7.2 The Borrower will procure the payment into the Proceeds Account of (except to the extent expressly provided otherwise in this Clause 15 (*Project Accounts*)) all Project Revenues and all interest on the other Project Accounts in accordance with the terms of this Clause 15 (*Project Accounts*).

15.7.3 The Borrower may only withdraw amounts from the Proceeds Account in the following order of priority to:

15.7.3.1 transfer amounts to the Operating Account in accordance with this Clause 15 (*Project Accounts*);

15.7.3.2 pay Financing Costs, with priority being given to amounts payable in respect of the DSR Facility;

15.7.3.3 pay Financing Principal, with priority being given to amounts payable in respect of the DSR Facility;

15.7.3.4 transfer amounts to the Maintenance Reserve Account in accordance with this Clause 15 (*Project Accounts*);

15.7.3.5 transfer amounts to the Debt Service Reserve Account in accordance with this Clause 15 (*Project Accounts*); and

15.7.3.6 transfer amounts to the Distribution Account in accordance with Clause 11.4.4 (*Restrictions on Distributions*).

## **15.8 Operating Account**

15.8.1 The Borrower may transfer such amounts from the Proceeds Account to the Operating Account as are necessary to meet Project Costs (other than Financing Costs and Financing Principal) from time to time in accordance with the Financial Model and which have become due for payment within 20 Business Days from the date of withdrawal.

15.8.2 The Borrower may only withdraw amounts standing to the credit of the Operating Account:

15.8.2.1 to meet Project Costs falling due at any time in accordance with the Financial Model or, if after the Actual Completion Date, in accordance with the Annual Operating Budget; and

15.8.2.2 to transfer amounts to the Proceeds Account in order to comply with its obligations under, or as expressly permitted by, the Financing Documents.

## **15.9 Maintenance Reserve Account.**

15.9.1 Each month the Borrower shall transfer from the Proceeds Account directly to the Maintenance Reserve Account one sixth of the half yearly sum shown in the Project Forecast for the half year in which the month falls.

15.9.2 The Borrower may only make a withdrawal from the Maintenance Reserve Account for the purposes of paying the FM Contractor for expenditure incurred in maintaining the Facilities and maintaining and renewing equipment and other purposes contemplated by the FM Contract, as agreed by the Banks Technical Adviser.

15.9.3 The Account Bank shall pay interest on the Maintenance Reserve Account at the Account Bank's prevailing interest rate for deposits of the balance thereon and such interest shall be credited to the Proceeds Account and the Borrower shall pay to the Maintenance Reserve Account an amount equal to the amount of such interest, less any applicable tax deducted or payable in respect thereof.

#### **15.10 Debt Service Reserve Account.**

15.10.1 On each Reference Date during a Cash Sweep Period, the Borrower shall transfer the Cash Sweep Amount to the Debt Service Reserve Account until the balance on the account is not less than the DSRA Required Level at the relevant time.

15.10.2 The Borrower may only make withdrawals from the Debt Service Reserve Account on any Repayment Date:

15.10.2.1 to the extent that the amount standing to the credit of the Debt Service Reserve Account at that date exceeds the DSRA Required Level at such Repayment Date and if the amount withdrawn is paid directly to the Proceeds Account or,

15.10.2.2 on the expiry of any Cash Sweep Period, to the extent of any Cash Sweep Amount transferred into the Debt Service Reserve Account during that Cash Sweep Period and if the amount withdrawn is paid directly to the Proceeds Account or,

15.10.2.3 if there are insufficient funds in the Proceeds Account to fund Financing Costs or Financing Principal in full that are due on an Interest Payment Date or a Repayment Date before any drawdown from the Debt Service Reserve Facility, such amount as may be necessary to cover such shortfall.

15.10.3 The Account Bank shall pay interest on the Debt Service Reserve Account at the Account Bank's prevailing interest rate for deposits of the balance thereon and such interest shall be credited to the Debt Service Reserve Account.

15.10.4 If interest added to the Debt Service Reserve Account pursuant to Clause 15.10.3 causes the balance to exceed the DSRA Required Level such excess may be transferred by the Borrower to the Proceeds Account.

## 15.11 Insurance Accounts.

- 15.11.1 The Borrower shall ensure that all proceeds of Insurances are paid directly into the Insurance Account or (in the case of insurance proceeds received under the physical damage insurances referred to in paragraph 1 of Part 1 and paragraph 1 of Part 2 of Part 21 of the Schedule to the Project Agreement) into the Insurance Proceeds Account (as required by Clause 36.18 of the Project Agreement) or, to the extent not paid directly, is/are paid into the Insurance Account or (as the case may be) the Insurance Proceeds Account immediately upon receipt by the Borrower.
- 15.11.2 The Agent may require any amount which has been, or is to be, paid into the Insurance Account to be paid into a separate sub-account as it considers appropriate to assist in monitoring and giving effect to Clause 15.11.3. The Borrower shall at the time of paying any moneys into the Insurance Account, notify the Agent of the source of those moneys and which of Clause 15.11.3.1, 15.11.3.2 or 15.11.3.3 applies to them. Notwithstanding any other provision of this Clause 15 (*Project Accounts*), the Borrower shall not withdraw any amount from the Insurance Account while it has failed to give any such notification.
- 15.11.3 The Borrower may only make withdrawals from the Insurance Account for the following purposes:
- 15.11.3.1 in the case of moneys representing the proceeds of claims under the third party liability policies, for application in discharge of any third party claim in respect of which those proceeds arose;
  - 15.11.3.2 in the case of moneys representing the proceeds of claims under business interruption or similar Insurances, for transfer to the Proceeds Account; and
  - 15.11.3.3 in the case of moneys representing the proceeds of claims under physical loss or damage policies for application towards reinstatement or, with the consent of the Agent, for transfer to the Proceeds Account.
- 15.11.4 The Account Bank shall pay interest on the Insurance Account at the Account Bank's prevailing interest rate for deposits of the balance thereon and such interest shall be credited to the Insurance Account.
- 15.11.5 If there is a credit balance on the Insurance Account following the determination by the Agent that the credit balance can be released, such balance (or such part thereof as the Agent shall determine) may be transferred to the Proceeds Account.

- 15.11.6 Any balance standing to the credit of the Insurance Proceeds Account shall be applied in accordance with the provisions of Clause 36.19 of the Project Agreement and Clause 2.6 of the Lenders Board Direct Agreement.

**15.12 Compensation Account.**

- 15.12.1 The Borrower shall ensure that all Compensatory Payments are paid directly into the Compensation Account or, to the extent not paid directly, are paid into the Compensation Account immediately upon receipt by the Borrower.
- 15.12.2 The Account Bank may require any amount which has been, or is to be, paid into the Compensation Account to be paid into a separate sub-account as it considers appropriate to assist in monitoring and giving effect to Clause 15.12.3. The Borrower shall at the time of paying any moneys into the Compensation Account, notify the Account Bank of the source of those moneys. Notwithstanding any other provision of this Agreement, the Borrower shall not withdraw any amount from the Compensation Account while it has failed to give any such notification.
- 15.12.3 The Borrower may only make withdrawals from the Compensation Account in or towards prepayment of the Loan in such manner as the Agent may specify.
- 15.12.4 The Account Bank shall pay interest on the Compensation Account at the Account Bank's prevailing interest rate for deposits of the balance thereon and such interest shall be credited to the Compensation Account.
- 15.12.5 The Borrower hereby irrevocably appoints the Agent by way of security as its mandatory and attorney to exercise all and any of its rights in relation to any Bank Compensation Sum. Such exercise may be effected by way of written notice from time to time from the Agent to the Board.

**15.13 Tax Loss Sale Proceeds Account.**

- 15.13.1 The Borrower shall ensure that all Tax Loss Sale Proceeds are paid directly into the Tax Loss Sale Proceeds Account or, to the extent not paid directly, are paid into the Tax Loss Sale Proceeds Account immediately upon receipt by the Borrower.
- 15.13.2 The Borrower may only make withdrawals from the Tax Loss Sale Proceeds Account to pay taxes which (i) would not be payable were it not for the sale of tax losses and (ii) become payable in an earlier Financial Year than would have been the case had there been no sale of tax losses.
- 15.13.3 The Account Bank shall pay interest on the Tax Loss Sale Proceeds Account at the Account Bank's prevailing interest rate

for deposits of the balance thereon. Interest periods for the Tax Loss Sale Proceeds Account may be selected by the Borrower failing which they shall coincide with the next Repayment Date and thereafter shall be three (3) months if no subsequent selection is made. At the end of such period such interest shall be credited to the Tax Loss Sale Proceeds Account.

#### **15.14 Distribution Account**

- 15.14.1 The Borrower shall pay into the Distribution Account the amount of any Distribution permitted in accordance with Clause 11.4.4 within 5 Business Days of making a declaration or determination in respect thereof.
- 15.14.2 The Borrower may transfer amounts standing to the credit of the Distribution Account at any time.

#### **15.15 The Project Accounts**

Each of the Project Accounts shall be operated in accordance with mandates in the Agreed Form in accordance with the following provisions:

- 15.15.1 the Account Bank may be changed to another bank or financial institution designated by the Agent if the Agent, so requests;
- 15.15.2 a change in the identity of the Account Bank shall only become effective upon the proposed new Account Bank agreeing with the Agent and the Borrower, in a manner satisfactory to the Agent, to fulfil the role of the Account Bank under this Agreement;
- 15.15.3 in the event of a change of Account Bank, the amount (if any) standing to the credit of the Project Accounts maintained with the former Account Bank shall be transferred to the corresponding Project Accounts maintained with the new Account Bank forthwith upon the appointment taking effect. The Borrower shall take any action which the Agent may require to facilitate a change of Account Bank and any transfer of any credit balances (including the execution of the appropriate bank mandate forms on terms not materially more onerous than those applicable in terms of the former Account Bank);
- 15.15.4 amounts may only be withdrawn or transferred from the Project Accounts in accordance with the provisions of this Agreement or on an enforcement of the Security Documents. Notwithstanding any provision of this Agreement or any Security Document to the contrary, no amounts may be withdrawn by or transferred to the Borrower whilst there is an Event of Default subsisting other than payments to the Banks or where the Banks otherwise consent to such withdrawal or transfer.

#### **15.16 Intimation of Assignment**

The Borrower intimates to the Account Bank the assignment in security by it of all its rights, title and interest in and to the Project Accounts (other than the Distribution Account), including the balances thereon, in favour of the Security Trustee pursuant to the assignment referred to in Clause 12.1.4. The Account Bank acknowledges such assignments and confirms that it has no notice of any other Encumbrances thereon.

## PART 6

### 16. PROJECT FORECASTS

#### 16.1 Forecasts

16.1.1 The Borrower shall, as of each Reference Date in March falling after the Actual Completion Date, prepare and deliver (by electronic copy) a Project Forecast in the manner set out in this Clause 16 (*Project Forecasts*). If required by the Agent, the Borrower shall also, as of each Reference Date in September falling after the Actual Completion Date, prepare a Project Forecast in the manner set out in this Clause 16 (*Project Forecasts*).

16.1.2 The Borrower shall also within 25 Business Days of a written request by the Agent to do so (which request may be made at any time if the Agent so requires, acting reasonably), prepare and deliver (by electronic copy) to the Agent an Interim Forecast in the manner set out in this Clause 16 (*Project Forecasts*). Any Interim Forecast shall be prepared as of the Interim Reference Date specified as such in a notification by the Agent.

#### 16.2 Contents of Project Forecast

Each Project Forecast shall set out:

16.2.1 in respect of the current Reference Period and each Reference Period thereafter, the Borrower's projection and estimate of:

- 16.2.1.1 projected Cash Available for Debt Service;
- 16.2.1.2 Financing Costs, Financing Principal and other Debt Service Requirement sums payable and the date of each such payment;
- 16.2.1.3 Project Costs; and
- 16.2.1.4 Project Revenues;

16.2.2 as at the most recent Reference Date and as at each Reference Date thereafter:

- 16.2.2.1 the Loan Life Cover Ratio;
- 16.2.2.2 the Debt Service Cover Ratio; and
- 16.2.2.3 (during a Cash Sweep Period) the DSRA Required Level.

### 16.3 Procedures for determining Assumptions for Project Forecasts

16.3.1 Not later than twenty five (25) Business Days before any Reference Date:

16.3.1.1 the Agent shall notify the Borrower of its proposals as to the Economic Assumptions, and all other Assumptions other than Technical Assumptions, giving reasonable details of the sources for the Assumptions and the values concerned for that Reference Date; and

16.3.1.2 the Borrower shall notify the Agent of its proposals as to the Technical Assumptions giving reasonable details of the sources for the Assumptions and the values concerned for that Reference Date.

The Borrower or, as the case may be, the Agent shall, by no later than fifteen (15) Business Days prior to that Reference Date, notify the Agent or the Borrower (as the case may be) whether or not it agrees to those proposals and, if it does not so agree, it shall deliver a report setting out the Assumptions with which it does not agree and its counterproposals for the Assumptions for that Reference Date.

16.3.2 If the Borrower or, as the case may be, the Agent does not agree with the Agent's or the Borrower's proposals (as the case may be) notified pursuant to Clause 16.3.1, the Borrower and the Agent shall negotiate in good faith in order to endeavour to agree the Assumptions which are to apply for that Reference Date.

16.3.3 If the Borrower and the Agent do not agree any Assumptions before the 5th Business Day before a Reference Date, the Agent shall instruct an independent expert (**the Independent Expert**) appointed pursuant to Clause 16.3.4 to determine the relevant Assumption and all costs and expenses incurred by the Independent Expert shall be borne by the Borrower.

16.3.4 The Independent Expert shall be appointed by agreement between the Agent and the Borrower and, in default of agreement within ten (10) Business Days, shall be appointed by the President for the time being of the Institute of Arbitrators.

16.3.5 The decision of the Independent Expert shall be final and binding on the parties (in the absence of manifest error) and in reaching his decision the Independent Expert shall:

16.3.5.1 act as an expert and not as an arbiter;

16.3.5.2 make a determination of the relevant matter within thirty (30) Business Days of the dispute being referred to him or such longer period as the Agent and the Borrower may agree;

- 16.3.5.3 take into account such Assumptions (as the case may be) as are used in the context of a projection of financial ratios prepared by lending banks to a limited recourse financing similar to the Project;
- 16.3.5.4 take into account to the extent which he considers relevant, the submissions of the Agent and the Borrower; and
- 16.3.5.5 take into account the Assumptions used in the then most recent Project Forecast.

If the Independent Expert fails to make his determination in accordance with this Clause 16.3.5, then the Agent's determination thereof shall apply.

#### **16.4 Production of Project Forecasts**

The Borrower shall produce the Project Forecast relating to each Reference Date using the Financial Model and on the basis of the Assumptions agreed or determined under Clause 16.3 (*Procedures for determining Assumptions for Project Forecasts*).

#### **16.5 The Financial Model**

16.5.1 The Borrower shall not make any revision to the Financial Model except in accordance with this Clause 16.5 (*The Financial Model*).

16.5.2 The Agent and the Borrower may at any time make such revisions to the Financial Model as may be required for the purpose of:

- 16.5.2.1 correcting any deficiency in the form or structure of the Financial Model; or
- 16.5.2.2 incorporating any additional Assumptions required to effect any changes in circumstances to the extent that such changes arise in circumstances which are not reasonably capable of being dealt with under Clause 16.3 (*Procedures for determining Assumptions for Project Forecasts*) or 16.4 (*Production of Project Forecasts*); or
- 16.5.2.3 reflecting a Board Service Variation.

In the absence of agreement between the Agent and the Borrower on any revision required to the Financial Model, the matter shall be referred to the Independent Expert appointed under Clause 16.3.4.

16.5.3 Where the manner of preparing any Project Forecast differs between the program on which the Financial Model operates and the provisions of this Agreement, this Agreement shall prevail. Any revision(s) made pursuant to this Clause 16.5 (*The Financial Model*) shall be recorded in writing in sufficient detail.

**PART 7**  
**SET OFF, FEES, MISCELLANEOUS**

**17. SET-OFF**

- 17.1 **Set-Off.** The Borrower authorises the Finance Parties to apply any credit balance to which the Borrower is entitled on any account of the Borrower with any Finance Party in satisfaction of any sum due and payable from the Borrower to the Finance Parties hereunder but unpaid; for this purpose, the Finance Parties are authorised to purchase with the moneys standing to the credit of any such account such other currencies as may be necessary to effect such application.
- 17.2 **Optional** The Finance Parties shall not be obliged to exercise any right given to them by Clause 17.1 (*Set-Off*).

**18. FEES AND EXPENSES**

- 18.1 **Fees and Expenses.** The Borrower shall (even if the Commitment or any part thereof is never drawn down or is cancelled) reimburse the Finance Parties on demand for the charges and expenses (in the case of the circumstances referred to at Clause 18.1.4 not exceeding £10,000 index linked to the annual increase in the Retail Prices Index) (together with value added tax or any similar tax thereon and including the fees and expenses of legal advisers) properly incurred by the Finance Parties in connection with:
- 18.1.1 the negotiation, preparation and execution of, and
  - 18.1.2 the negotiation, preparation and execution of all supplements, waivers and variations in relation to, and
  - 18.1.3 the enforcement of or the preservation of any rights under, and
  - 18.1.4 the syndication of the Facility under,
- the Financing Documents and the review, negotiation and preservation of any rights under or in respect of the Relevant Documents.
- 18.2 **Costs.** The Borrower shall reimburse the Finance Parties on demand for all disbursements, costs and charges properly incurred by the Finance Parties arising out of or by reason of the maintenance and/or administration of this Agreement.
- 18.3 **Arrangement and Underwriting Fee.** An arrangement and underwriting fee will be paid by the Borrower to the Agent in the manner set out in the relevant Fee Letter.
- 18.4 **Non-Utilisation Fee.** A non-utilisation fee will be payable in the manner set out in the relevant Fee Letter.

18.5 **Management Fee.** A management fee will be payable in the manner set out in the relevant Fee Letter.

18.6 **Other Expenses.** From time to time on demand of the Agent, reimburse it, at such reasonable hourly and/or daily rates as it shall from time to time reasonably determine and notify to the Borrower, in respect of management time and/or other resources used by it in connection with any amendment, supplement, waiver or consent, or complying with any instructions from the Majority Banks, or the protection or enforcement or attempted protection or enforcement of any right under this Agreement and/or any such amendment, supplement, waiver or consent, to the extent that the Agent, acting reasonably, considers such time or resources to be exceptional and outside the ordinary course of its activities as Agent under this Agreement.

## 19. CERTIFICATE

A certificate signed by an official of the Agent as to any amounts due, the rate of interest payable on any sum hereunder or determination of fact made hereunder or as to the amount of any loss or damage sustained or incurred by the Agent shall, save in the case of manifest error, be final and conclusive as to the amount owing, the rate of interest or fact, as the case may be, on the date stated in such certificate.

## 20. DISCLOSURE OF INFORMATION

The Finance Parties may disclose to any potential assignee, transferee, sub-participant or to any other person who may propose entering into or has entered into contractual relations with a Finance Party in relation to this Agreement (including any guarantor of the obligations of the Borrower to the Finance Party) such information about the Borrower and/or the Facility as that Finance Party thinks fit.

## 21. WAIVERS

21.1 No failure to exercise and no delay in exercising on the part of the Finance Parties, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any further exercise thereof, or the exercise of any other right, power or privilege.

21.2 No waiver by a Finance Party shall be effective unless it is in writing.

21.3 The rights and remedies of the Finance Parties herein provided are cumulative and not exclusive of any rights or remedies provided by law.

## **22. THE EURO**

### **22.1 European Economic and Monetary Union**

The occurrence or non-occurrence of an event associated with economic and monetary union in the European Community will not itself result in the discharge (whether by frustration or otherwise), cancellation, rescission or termination, in whole or in part, of, or giving the Borrower or Holdings the unilateral right to cancel, rescind, terminate or vary, in whole or in part, any Financing Document. An event associated with economic and monetary union in the European Community includes each (and any combination) of the following:

22.1.1 the introduction of, changeover to or operation of a single or unified European currency (whether known as the Euro or otherwise);

22.1.2 the fixing of conversion rates between a member state's currency and the new currency or between the currencies of member states;

22.1.3 the substitution of that new currency for the Euro as the unit of account of the European Community;

22.1.4 the introduction of that new currency as lawful currency in a member state (whether at the earliest possible date or subsequently and whether in parallel with, or as a replacement for, the currency which, before the introduction of the new currency, was lawful currency in that member state);

22.1.5 the withdrawal from legal tender of any currency that, before the introduction of the new currency, was lawful currency in one of the member states;

22.1.6 the disappearance or replacement of a relevant price source for the Euro or the national currency of any member state, or the failure of the agreed sponsor (or a successor sponsor) to publish or display a relevant rate, index, price, page or screen; or

22.1.7 any event in the furtherance of any of the foregoing.

22.2 If, as a result of the implementation of European economic and monetary union either (i) Sterling ceases to be the lawful currency of the United Kingdom and is replaced by the Euro or (ii) Sterling and the Euro are at the same time recognised as the lawful currency of the United Kingdom and the Agent so requires then:

22.2.1 each amount which would otherwise have been payable by any Obligor under this Agreement or any other Financing Document in Sterling shall be paid in the Euro and the amount so payable shall be such amount of the Euro as equals the amount of Sterling translated at the Exchange Rate;

22.2.2 all references to amounts in Sterling, will be translated into the Euro at the Exchange Rate;

22.2.3 the parties to this Agreement agree that this Agreement will be amended to the extent the Agent, after consultation with the Borrower, specifies to be necessary to reflect the re-denomination of the Facility; and

22.2.4 the Agent may notify the Borrower of any amendments to the RGL Guarantee which are necessary to reflect the re-denomination of the Facility and to put the RGL Guarantor and the Borrower in the same position, so far as possible, that they would have been in if no such re-denomination of the Facility had occurred.

For the purposes of this Clause 22 **Exchange Rate** means the rate of exchange recognised by the European Central Bank for the conversion of Sterling into the Euro for the purposes of implementation of European economic and monetary union.

## 23. NOTICES

23.1 Every notice or other communication made under this Agreement shall unless otherwise stated be in writing and shall be given:

23.1.1 in the case of the Borrower and Holdings:

For the attention of: the Company Secretary

Address: Robertson Capital Projects Limited  
Lomond Court  
Castle Business Park  
Stirling  
FK8 4JU

Fax: 01786 431650

23.1.2 in the case of the Agent, the Security Trustee, the Account Bank and the initial Bank:

For the attention of: Chris Solley

Address: Level 3  
New Uberior House  
11 Earl Grey Street  
Edinburgh  
EH3 9BN

Fax: 0131 659 0591

or to any address or telex or facsimile number as any party may from time to time notify to the others.

23.2 Every notice or other communication shall be deemed to have been received:

23.2.1 in the case of a letter when delivered personally or two Business Days after its posting by first class post;

23.2.2 in the case of a facsimile transmission when despatched.

## 25. LAW AND JURISDICTION

This Agreement shall be governed by, and shall be construed in accordance with, the laws of Scotland and insofar as not already subject thereto, the parties hereto submit to the non-exclusive jurisdiction of the Scottish Courts.

**IN WITNESS WHEREOF** these presents typewritten on this and the preceding 72 pages together with the schedule in 12 parts annexed hereto are executed as follows:

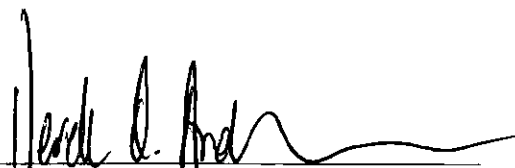
### THE BANK

SUBSCRIBED for and on behalf of  
the said THE GOVERNOR AND  
COMPANY OF THE BANK OF  
SCOTLAND

at 151 ST VINCENT ST, GLASGOW

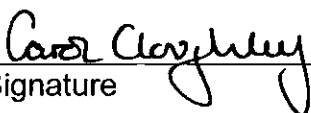
on 25 NOVEMBER 2005

by DEREK ORR ANDERSON.  
Print Full Name

  
\_\_\_\_\_  
Authorised Signatory

before this witness

CAROL CLOUGHLIN  
\_\_\_\_\_  
Print Full Name

  
\_\_\_\_\_  
Signature

SALTIRE COURT  
\_\_\_\_\_  
Address

20 CASTLE TERRACE  
\_\_\_\_\_

EDINBURGH.  
\_\_\_\_\_

## THE AGENT

SUBSCRIBED for and on behalf of  
the said THE GOVERNOR AND  
COMPANY OF THE BANK OF  
SCOTLAND

at 151 ST VINCENT ST, GLASGOW

on 25 NOVEMBER 2005

by DEREC ORR ANDERSON  
Print Full Name

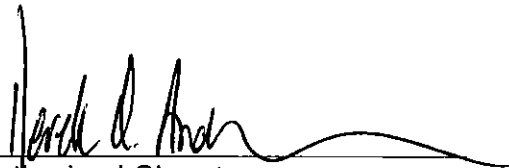
before this witness


CAROL CLOUGHIE  
Print Full Name

SALTIRE COURT,  
Address

20 CASTLE TERRACE

EDINBURGH

  
Authorised Signatory

  
Signature

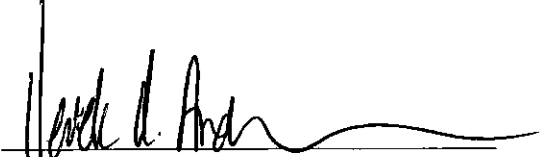
**THE ACCOUNT BANK**

SUBSCRIBED for and on behalf of  
the said THE GOVERNOR AND  
COMPANY OF THE BANK OF  
SCOTLAND

at 151 ST VINCENT ST, GLASGOW

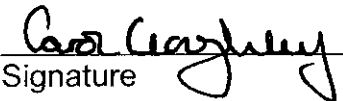
on 25 NOVEMBER 2005

by DEREK ORR ANDERSON  
Print Full Name

  
\_\_\_\_\_  
Authorised Signatory

before this witness

CAROL CLOUGHLEY  
Print Full Name

  
\_\_\_\_\_  
Signature

SALTIRE COURT  
Address

20 CASTLE TERRACE

EDINBURGH

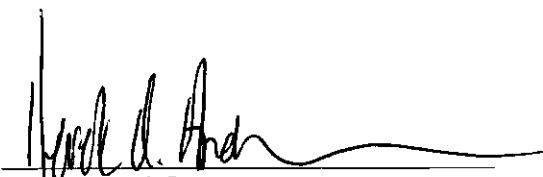
**THE SECURITY TRUSTEE**

SUBSCRIBED for and on behalf of  
the said THE GOVERNOR AND  
COMPANY OF THE BANK OF  
SCOTLAND

at 151 ST VINCENT ST, GLASGOW

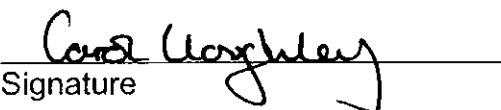
on 25 NOVEMBER 2005

by DEREK ORR ANDERSON  
Print Full Name

  
Authorised Signatory

before this witness

CAROL CLOUGHLEY  
Print Full Name

  
Signature

SALTIRE COURT  
Address

20 CASTLE TERRACE

EDINBURGH

## THE BORROWER

SUBSCRIBED for and on behalf of  
the said ROBERTSON HEALTH  
(GARTNAVEL) LIMITED

at 151 ST VINCENT ST, GLASGOW

on 25 NOVEMBER 2005

by ALAN FORDYCE  
Print Full Name

Alan Fordyce  
Director

before this witness

VICTORIA KATE SALMON  
Print Full Name

Victoria Kate Salmon  
Signature

SALTIRE COURT  
Address

20 CASTLE TERRACE

EDINBURGH

## HOLDINGS

SUBSCRIBED for and on behalf of  
the said ROBERTSON HEALTH  
(GARTNAVEL) HOLDINGS LIMITED

at 151 ST VINCENT ST, GLASGOW

on 25 NOVEMBER 2005

by ALAN FORDICE

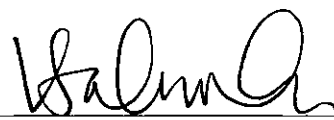
Print Full Name

  
Director

before this witness

VICTORIA KATE SALMON

Print Full Name

  
Signature

SALTIRE COURT

Address

20 CASTLE TERRACE

EDINBURGH

This is the schedule referred to in the preceding loan agreement among The Governor and Company of the Bank of Scotland, Robertson Health (Gartnavel) Limited and Robertson Health (Gartnavel) Holdings Limited dated 25 November 2005

## **Part 1**

### **Conditions Precedent**

The Banks shall be under no obligation to make the Commitment available until the Agent has received the following in form and substance satisfactory to it:

#### **1 The Borrower's Status**

- 1.1 A certified true copy of the Memorandum and Articles of Association of the Borrower and Holdings together with certificates of incorporation and change of name as annexed to a certificate from a Director of the Borrower and Holdings in the form set out in Part 3 of the Schedule (*Directors Certificate*).
- 1.2 Certified true copies of the resolutions of the Board of Directors of the Borrower and Holdings appointing its directors and officers and confirmation of the organisational structure of the Borrower and Holdings.

#### **2 Resolutions**

Certified true copies of the resolutions of the Board of Directors or other equivalent body of each of the parties thereto authorising the entry into and the performance of their respective obligations under and authorising persons to sign each Relevant Document and all other incidental documentation and take all other action required pursuant to or in connection with each Relevant Document together with a list of names and specimen signatures of persons authorised to sign each Relevant Document as annexed (in the case of a Shareholder (other than Uberior), the Construction Contractor and the FM Contractor) to a certificate from a Director of such party in the form set out in Part 3 of the Schedule (*Directors Certificate*).

#### **3 The Board and Scottish Ministers**

- 3.1 A certified copy of (i) the establishment order pursuant to which the Board was established and the Transfer Order transferring the functions of the Greater Glasgow Primary Care National Health Service Trust to the Board (ii) the resolution of the Board of Directors of the Board adopting and approving the project and the transaction documents to which it is or is to be a party (iii) confirmation from the NHS Management Executive in Scotland to the Board of approval of the final business case for the project including confirmation that no approval of the final business case is required from Scottish Ministers (iv) the Standing Orders and Standing Financial Instructions of the Board (v) the certificate of the relevant officer of the Board setting out the names and specimen signatures of the person or persons named in the Board Resolution of the Board, all in the required form.
- 3.2 An original copy of the Secretary of State's certificate under the National Health Service (Private Finance) Act 1997 confirming that the Relevant

Documents to which the Board is a party are certified contracts and authorising the Board to enter into them.

3.3 A letter from the Scottish Ministers authorising the Board to execute the Licence on its behalf.

3.4 A Certified true copy of Licence from Scottish Ministers to the Board and Project Co.

#### **4 Financing Documents**

4.1 Duly executed originals of each of the Financing Documents together with duly completed and executed Forms 410 in respect of the Security Documents and signed acknowledgements of notices of assignment in respect of the assignment referred to in Clause 12.1.5.

4.2 Evidence of the transfer of shares in favour of the Security Trustee pursuant to the Shares Pledge.

4.3 The Hedging Agreement duly executed and delivered.

#### **5 Relevant Documents**

5.1 Certified true copies of the Relevant Documents (other than the Financing Documents) duly executed by each party thereto (together with a computer disc of the Financial Model).

5.2 Evidence that all conditions precedent under the Relevant Documents (including, without limitation, those conditions precedent specified in Clause 2 of the Project Agreement) have been satisfied and not waived and that each Project Document is unconditional (save to the extent that it is conditional on the execution by any Finance Party of any Financing Document).

#### **6 Planning and other Consents**

Certified true copies of all planning consents required for completion of the Project and pursuant to the Relevant Documents including, without limitation, the Planning Approval.

#### **7 Equity**

7.1 Evidence that, in aggregate, not less than £202,000 has been subscribed by the Shareholders in Holdings Equity pursuant to the Shareholders Agreement and that such monies have been invested as Equity in the Borrower by Holdings and deposited in the Proceeds Account and are available to and have been applied to meet Project Costs.

7.2 A certified true copy of the Shareholders Agreement.

#### **8 Subordinated Loans**

8.1 Evidence that, in aggregate, not less than £1,419,000 has been subscribed by the Stockholders in Holdings Loan Stock and that such monies have been invested in subscription by Holdings for the Loan Stock and deposited in the

Proceeds Account and are available to and have been applied to meet Project Costs.

- 8.2 A certified true copy of the Loan Stock Instrument and Holdings Loan Stock Instrument.

## **9 Insurances**

- 9.1 Confirmation as to the level and scope of all insurances taken out by the Borrower, including without limitation all relevant insurances specified in Part 21 of the Schedule of the Project Agreement have been effected and are in place.
- 9.2 Certified true copies of signed cover notes in respect of all insurances referred to in paragraph 9.1 above.
- 9.3 The broker's letter of undertaking in the form set out in Part 5 of the Schedule (*Insurances*) in respect of the period to the Completion Date.
- 9.4 An insurance report to the Agent from the Banks Insurance Adviser.

## **10 Site and Licence**

- 10.1 Certificate of Title from MacLay Murray & Spens in respect of the Site.
- 10.2 Executed copies of the Licence.

## **11 Banks Technical Adviser's Report**

- 11.1 A report to the Agent on technical matters by the Banks Technical Adviser.

## **12 Banks Model Auditors Report**

- 12.1 A report to the Agent on audit matters by the Banks Model Auditor.

## **13 General**

The Initial Base Case for the Project demonstrating (i) a minimum Loan Life Cover Ratio of 1.225 as at each Reference Date immediately following the Completion Date until the Final Repayment Date and (ii) a minimum Debt Service Cover Ratio of 1.175:1 for each Reference Period following the Completion Date until the Final Repayment Date.

## **14 Miscellaneous**

The information and evidence in respect of the Borrower required by the Finance Parties to comply with their respective anti money laundering procedures.

## Part 2

### Drawdown Notice

From: •

To: •

Dear Sirs

1. We refer to the Agreement (**the Loan Agreement**) dated • between yourselves and ourselves in terms of which a loan facility has been provided to us. Terms defined in the Loan Agreement shall have the same respective meanings in this Notice.
2. We hereby give you notice in this Notice of Drawdown that pursuant to the Loan Agreement we wish to drawdown an Advance upon the terms and subject to the conditions contained in the Loan Agreement as follows:
  - 2.1 Drawdown Date:
  - 2.2 Purpose:
  - 2.3 Amount of Advance:
3. We hereby warrant and represent to the Agent that (i) all those representations and warranties set out in Clause 10 of the Loan Agreement which are repeated pursuant to Clause 10.2 would, if repeated at the date hereof, be true and accurate and not misleading and we know of no reason why (subject as aforesaid) such representations and warranties should not remain true and accurate and not misleading on each Drawdown Date; (ii) no Funding Shortfall subsists or will subsist as at the date of the proposed Advance; (iii) no Event of Default or Potential Event of Default has occurred and is continuing or will or would occur as a result of making the Advances; (iv) the Longstop Date has not occurred; (v) the Advance is to be applied for any purposes detailed in Clauses 2.2 or 2.3 of the Loan Agreement and (vi) all Equity has been drawdown and all Loan Stock has been subscribed for.

Yours faithfully

---

Director, for and on behalf of Robertson Health Gartnavel) Limited

## Part 3

### Directors Certificate

To: •

I refer to the Loan Agreement dated • between Robertson Health (Gartnavel) Limited (**the Borrower**), Robertson Health (Gartnavel) Holdings Limited (**Holdings**) and yourselves (**the Loan Agreement**). Terms defined and references construed in the Loan Agreement have the same meaning and construction in this Certificate.

I am a Director of • (**the Company**) and hereby certify as follows:

1. **Due authorisation of director**

I am duly authorised to give this Certificate on behalf of the Company.

2. **Powers**

2.1 Delivered with this certificate and signed or initialled by me for the purpose of identification is a true, complete and up-to-date copy of the Memorandum and Articles of Association of the Company as in effect (i) when it signed the Relevant Documents to which it is party and (ii) on the date of this Certificate.

2.2 The Company is carrying on a business authorised under its Memorandum of Association.

2.3 Neither the entry into by the Company of any of the Relevant Documents to which it is party, nor the exercise of its rights and/or performance or compliance with its obligations under any of those Relevant Documents, does or will violate or exceed any borrowing or other power or restriction granted or imposed by its Memorandum or Articles of Association.

3. **Due authorisation of documents**

3.1 Delivered with this Certificate and signed or initialled by me for the purpose of identification is a true and complete copy of the minutes of a duly convened meeting of the board of directors of the Company at which a duly constituted quorum of directors was present throughout and at which the resolutions set out in the minutes were duly passed.

3.2 Each of the resolutions referred to in paragraph 3.1 above remains in full force and effect without modification.

3.3 The resolutions referred to in paragraph 3.1 above constitute all corporate action necessary on the part of the Company to approve the Relevant Documents to which it is a party and to authorise the signing of those Relevant Documents and the giving of any communications and/or taking of any other action required under or in connection with any of the Relevant Documents on behalf of the Company.

4. **Due execution**

- 4.1 Each existing Relevant Document to which the Company is a party has been unconditionally signed and delivered by the Company. Each person who signed each such Relevant Document on behalf of the Company was a duly authorised signatory of the Company when the document in question was entered into.
- 4.2 Delivered with this Certificate and signed or initialled by me for the purpose of identification is a list of the names and titles, and specimens of the signatures, of the persons who (either individually or with others, as provided in the resolutions referred to in paragraph 3 above) signed the Relevant Documents and/or are authorised to give all communications and take any other action required under or in connection with the Relevant Documents on behalf of the Company.

5. **Conditions precedent**

*[The Borrower and Holdings only]* Each duly executed original and each copy document delivered to the Agent as specified in Part 1 of the Schedule (*Conditions Precedent*) of the Loan Agreement (each of which has been signed or initialled by a director of the Borrower for identification purposes) is correct, complete and (subject to any conditions precedent expressly specified as such in it) is in full force and effect as at the date of this Certificate.

6. **No breach**

*[The Borrower and Holdings only]* So far as I am aware, having made all reasonable enquiries but without incurring any personal liability, there has been no breach of the representations and warranties in Clause 10 (*Representations and Warranties*) of the Loan Agreement and no Event of Default or Potential Event of Default has occurred.

---

Director, for and on behalf of •

At All

[illegible]

AK

Repayment Date (period)	Repayment Date	Percentage Repayment Cumulative	Percentage Repayment (Rounded)
31-Dec-07	15-Jan-08	0.158%	0.158%
31-Mar-08	15-Apr-08	0.316%	0.158%
30-Jun-08	15-Jul-08	0.426%	0.110%
30-Sep-08	15-Oct-08	0.536%	0.110%
31-Dec-08	15-Jan-09	0.717%	0.181%
31-Mar-09	15-Apr-09	0.898%	0.181%
30-Jun-09	15-Jul-09	1.102%	0.204%
30-Sep-09	15-Oct-09	1.306%	0.204%
31-Dec-09	15-Jan-10	1.474%	0.168%
31-Mar-10	15-Apr-10	1.642%	0.168%
30-Jun-10	15-Jul-10	1.838%	0.196%
30-Sep-10	15-Oct-10	2.034%	0.196%
31-Dec-10	15-Jan-11	2.249%	0.215%
31-Mar-11	15-Apr-11	2.464%	0.215%
30-Jun-11	15-Jul-11	2.742%	0.278%
30-Sep-11	15-Oct-11	3.020%	0.278%
31-Dec-11	15-Jan-12	3.307%	0.287%
31-Mar-12	15-Apr-12	3.594%	0.287%
30-Jun-12	15-Jul-12	3.924%	0.330%
30-Sep-12	15-Oct-12	4.254%	0.330%
31-Dec-12	15-Jan-13	4.598%	0.344%
31-Mar-13	15-Apr-13	4.942%	0.344%
30-Jun-13	15-Jul-13	5.244%	0.302%
30-Sep-13	15-Oct-13	5.546%	0.302%
31-Dec-13	15-Jan-14	5.867%	0.321%
31-Mar-14	15-Apr-14	6.188%	0.321%
30-Jun-14	15-Jul-14	6.527%	0.339%
30-Sep-14	15-Oct-14	6.866%	0.339%
31-Dec-14	15-Jan-15	7.204%	0.338%
31-Mar-15	15-Apr-15	7.542%	0.338%
30-Jun-15	15-Jul-15	7.858%	0.316%
30-Sep-15	15-Oct-15	8.174%	0.316%
31-Dec-15	15-Jan-16	8.499%	0.325%
31-Mar-16	15-Apr-16	8.824%	0.325%
30-Jun-16	15-Jul-16	9.187%	0.363%
30-Sep-16	15-Oct-16	9.550%	0.363%
31-Dec-16	15-Jan-17	9.922%	0.372%
31-Mar-17	15-Apr-17	10.294%	0.372%
30-Jun-17	15-Jul-17	10.749%	0.455%
30-Sep-17	15-Oct-17	11.204%	0.455%
31-Dec-17	15-Jan-18	11.673%	0.469%
31-Mar-18	15-Apr-18	12.142%	0.469%
30-Jun-18	15-Jul-18	12.634%	0.492%
30-Sep-18	15-Oct-18	13.126%	0.492%
31-Dec-18	15-Jan-19	13.647%	0.521%
31-Mar-19	15-Apr-19	14.168%	0.521%
30-Jun-19	15-Jul-19	14.702%	0.534%
30-Sep-19	15-Oct-19	15.236%	0.534%
31-Dec-19	15-Jan-20	15.789%	0.553%
31-Mar-20	15-Apr-20	16.342%	0.553%
30-Jun-20	15-Jul-20	16.958%	0.616%
30-Sep-20	15-Oct-20	17.574%	0.616%
31-Dec-20	15-Jan-21	18.184%	0.610%
31-Mar-21	15-Apr-21	18.794%	0.610%
30-Jun-21	15-Jul-21	19.460%	0.666%
30-Sep-21	15-Oct-21	20.126%	0.666%
31-Dec-21	15-Jan-22	20.801%	0.675%

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31-Mar-22	15-Apr-22	21.476%	0.675%
30-Jun-22	15-Jul-22	22.245%	0.769%
30-Sep-22	15-Oct-22	23.014%	0.769%
31-Dec-22	15-Jan-23	23.796%	0.782%
31-Mar-23	15-Apr-23	24.578%	0.782%
30-Jun-23	15-Jul-23	25.407%	0.829%
30-Sep-23	15-Oct-23	26.236%	0.829%
31-Dec-23	15-Jan-24	27.104%	0.868%
31-Mar-24	15-Apr-24	27.972%	0.868%
30-Jun-24	15-Jul-24	28.885%	0.913%
30-Sep-24	15-Oct-24	29.798%	0.913%
31-Dec-24	15-Jan-25	30.733%	0.935%
31-Mar-25	15-Apr-25	31.668%	0.935%
30-Jun-25	15-Jul-25	32.599%	0.931%
30-Sep-25	15-Oct-25	33.530%	0.931%
31-Dec-25	15-Jan-26	34.512%	0.982%
31-Mar-26	15-Apr-26	35.494%	0.982%
30-Jun-26	15-Jul-26	36.442%	0.948%
30-Sep-26	15-Oct-26	37.390%	0.948%
31-Dec-26	15-Jan-27	38.378%	0.988%
31-Mar-27	15-Apr-27	39.366%	0.988%
30-Jun-27	15-Jul-27	40.378%	1.012%
30-Sep-27	15-Oct-27	41.390%	1.012%
31-Dec-27	15-Jan-28	42.425%	1.035%
31-Mar-28	15-Apr-28	43.460%	1.035%
30-Jun-28	15-Jul-28	44.521%	1.061%
30-Sep-28	15-Oct-28	45.582%	1.061%
31-Dec-28	15-Jan-29	46.665%	1.083%
31-Mar-29	15-Apr-29	47.748%	1.083%
30-Jun-29	15-Jul-29	48.791%	1.043%
30-Sep-29	15-Oct-29	49.834%	1.043%
31-Dec-29	15-Jan-30	50.912%	1.078%
31-Mar-30	15-Apr-30	51.990%	1.078%
30-Jun-30	15-Jul-30	53.329%	1.339%
30-Sep-30	15-Oct-30	54.668%	1.339%
31-Dec-30	15-Jan-31	56.053%	1.385%
31-Mar-31	15-Apr-31	57.438%	1.385%
30-Jun-31	15-Jul-31	59.471%	2.033%
30-Sep-31	15-Oct-31	61.504%	2.033%
31-Dec-31	15-Jan-32	63.606%	2.102%
31-Mar-32	15-Apr-32	65.708%	2.102%
30-Jun-32	15-Jul-32	67.928%	2.220%
30-Sep-32	15-Oct-32	70.148%	2.220%
31-Dec-32	15-Jan-33	72.553%	2.405%
31-Mar-33	15-Apr-33	74.958%	2.405%
30-Jun-33	15-Jul-33	77.547%	2.589%
30-Sep-33	15-Oct-33	80.136%	2.589%
31-Dec-33	15-Jan-34	82.797%	2.661%
31-Mar-34	15-Apr-34	85.458%	2.661%
30-Jun-34	15-Jul-34	88.319%	2.861%
30-Sep-34	15-Oct-34	91.180%	2.861%
31-Dec-34	15-Jan-35	94.077%	2.897%
31-Mar-35	15-Apr-35	96.974%	2.897%
30-Jun-35	15-Jul-35	100.000%	3.0260%

## **Part 5**

### **Insurances**

References in this Part 5 of the Schedule to paragraphs and Appendices shall be construed as references to the paragraphs and appendices of this Part of the Schedule, unless the context otherwise requires.

#### **1. Insurances to be effected**

##### **1.1 Failure to Comply**

- (a) If at any time and for whatever reason any of the minimum Insurances required to be taken out pursuant to this Schedule shall not be in full force and effect, then the Agent shall thereupon be entitled (but not obliged) at any time whilst such failure is continuing to procure such Insurance at the expense of the Borrower and (without prejudice to any other obligations of the Borrower under the Financing Documents) to take all such steps with respect to such Insurances as the Agent may consider expedient or necessary. Any amounts expended by the Agent in procuring any such Insurance or taking any such steps shall become immediately due and payable by the Borrower upon demand of the Agent.
- (b) Notwithstanding the foregoing provisions of this Part 5 of the Schedule, the Borrower shall not be in breach of its obligations under this Part 5 of the Schedule to the extent that Insurances or parts of such Insurances required to be taken out or maintained pursuant to this Schedule if the Agent is satisfied that such Insurances or parts of such Insurances:
  - (i) are not available in the prevailing worldwide insurance market;
  - (ii) the premiums in respect of such Insurances are unreasonable in the reasonable opinion of the Agent having regard to the risk being covered and the rights and obligations of the Agent under the Financing Documents; or
  - (iii) the Agent waives any such requirement.

##### **1.2 Construction and commissioning phase**

Clause 36 and Part 21 of the Schedule to the Project Agreement specifies the minimum Insurances which have been or are to be effected by the Borrower. The Borrower shall procure that all Insurances are maintained in full force and effect from the date of this Agreement for the periods specified in the Project Agreement and in the amounts specified in the Project Agreement (as varied from time to time or agreed or determined under paragraph 5).

##### **1.3 Operation phase**

Part 21 of the Schedule to the Project Agreement specifies the minimum Insurances which are to be effected by the Borrower. The Borrower shall

procure that the Insurances are maintained in full force and effect from the date and in the amounts specified in the Project Agreement (as varied from time to time or as agreed or determined under paragraph 5).

The Agent reserves the right to review all proposed Insurances detailed in the Project Agreement in light of sound commercial practice prevailing at the time and to detail any required alterations to the Borrower. The Borrower shall comply forthwith with any such required alterations.

## **2. Changes to cover**

### **2.1 Insurances required by law and other agreements**

Without prejudice to the other provisions of this Part of the Schedule, during the periods referred to in paragraphs 1.2 and 1.3, the Borrower shall:

- (a) effect and maintain in full force those Insurances which the Borrower is required to have by any applicable law; and
- (b) effect and maintain in full force those Insurances which the Borrower is required to have by the terms of any of the Relevant Documents or any other contract to which it is at any time a party.

### **2.2 The Borrower's Insurance**

- (a) For the avoidance of doubt, and subject to paragraph 2.2(b), the Borrower shall at any time be entitled to effect such other Insurances in addition to or supplementing those referred to elsewhere in this Schedule as it may think fit provided that the other Insurances do not adversely affect rights to recover under the Insurances referred to elsewhere in this Schedule.
- (b) The Borrower shall notify the Agent promptly of any Insurances effected by it under paragraph 2.2(a) which relate to the Project.

## **3. Further provisions common to Insurances referred to in paragraphs 1.2 and 1.3**

### **3.1 Policies**

The Borrower shall procure that each policy taken out pursuant to Clause 36 of, and Part 21 of the Schedule to, the Project Agreement shall:

- (a) be placed and maintained with one or more insurers in the prevailing insurance market on such basis as may be approved in writing from time to time by the Agent (including, but without limitation as to the generality of the foregoing, the rating of the insurers by Standard & Poors or an equivalent agency, as selected by the Agent);
- (b) be in such form and substance and be consistent with the obligations of the Borrower under this Schedule or such other terms as may be approved from time to time by the Agent pursuant to paragraphs 5 and 6;

- (c) contain endorsements substantially in the forms (where appropriate either in whole or in part) of Appendices 1 and 2 of this Schedule;
- (d) be fully effective no later than the due date therefor, as set out in Part 21 of the Schedule to the Project Agreement;
- (e) not include any provision for self-insurance or any self-insured retention, except to the extent of the deductibles as are specified in Part 21 of the Schedule to the Project Agreement or are agreed in writing by the Agent.

### **3.2 Premiums**

The Borrower shall procure the prompt payment of all premiums payable under each policy in accordance with its terms and/or the terms of payment agreed between the relevant insurers and the Borrower's agent or broker taken out pursuant to the Project Agreement and shall, upon request of the Agent, promptly confirm to the Agent that such payment has been made to the insurers. The Borrower shall indemnify the Agent against any premium or premiums paid or required to be paid by the Agent in respect of Insurances effected pursuant to this Part of the Schedule.

### **3.3 Broker's letter of undertaking**

The Borrower shall procure that the broker delivers to the Agent a letter substantially in the form of Appendix 3 of this Schedule, by the Effective Date (in case of the initial Insurances) and otherwise within 10 Business Days of the date upon which such Insurance as listed in Part 21 of the Schedule to the Project Agreement were due to become effective.

## **4. Information**

### **4.1 Information**

The Borrower shall give to the Agent:

- (a) such information (including, without limitation, evidence of the payment of the premiums) as to the insurances taken out pursuant Part 21 of the Schedule to the Project Agreement (or as to any matter which may be relevant to such insurance) as the Agent may, from time to time, reasonably request including, without limitation, a copy of and access to the original of any policy effected pursuant to this Part of the Schedule and such details of the insurance carriers as the Agent so requests;
- (b) within 25 Business Days of the date of any such policy renewal a copy of each renewal policy or document; and
- (c) notice of any event that may lead it to make an insurance claim in an amount exceeding £10,000 provided that the Borrower has made due and careful inquiry into the claim, it will not be in breach of any obligation if it subsequently informs the Agent that it has formed the view that any such claim will exceed such sum.

## 4.2 Alteration of coverage

The Borrower shall use reasonable endeavours to procure that no reductions in limits or coverage (including those resulting from extensions) or increases in deductibles exclusion or exceptions shall be made, otherwise than in accordance with the provisions of this Schedule or any other terms approved by the Agent to any insurance effected under the Project Agreement without the prior written consent of the Agent, which consent shall not be unreasonably withheld or delayed.

## 4.3 Settlement

The Borrower shall not without the prior consent of the Agent agree, settle or compromise any insurance claim of or above the amount referred to in paragraph 4.1(c) above.

## 5. Procedure for agreeing and determining insurance

### 5.1 Reviews of amounts and scope of insurances

The Borrower shall, not later than the date (each such date, in this Schedule, the **Borrower's Proposal Date**) falling 20 calendar days (or such other period as the Agent and the Borrower may agree) prior to:

- (a) the date on which any Insurance should under the terms of this Schedule be obtained; or
- (b) the renewal date or the expiry date in respect of each insurance effected pursuant to the Project Agreement (each such date in this Schedule a **Review Date**),

deliver to the Agent a notice stating, as far as known to or envisaged by the Borrower on the Borrower's Proposal Date, the Borrower's proposals as to:

- (i) the insurance cover to be effected or the changes (if any) to be made since the date of this Agreement or the previous the Borrower's Proposal Date (if later) with regard to any insurance specified in the Project Agreement which is to be renewed (in this Part 5 of the Schedule, **the Relevant Insurance**) and the risks or liabilities to be insured under the Relevant Insurance;
- (ii) the replacement value of all assets to be insured pursuant to the Relevant Insurance whereby the cover effected is in an amount sufficient to pay claims on a reinstatement as new basis in such detail as the Agent (after consultation with the Banks Insurance Adviser) may reasonably require;
- (iii) the insured amounts in respect of all other risks to be insured pursuant to the Relevant Insurance;
- (iv) the amount of the deductibles (or levels of co-insurance) applicable to the Relevant Insurance;

- (v) recommended commercial options available in the European Union insurance market;
- (vi) scope of cover; and

in each case, for the period of twelve months (or such other period as may be agreed between the Borrower and the Agent) following the Review Date (each such period, in this Part 5 of the Schedule an **Insurance Period**) together with information showing in reasonable detail how the same are envisaged or calculated and any other information relating thereto reasonably requested by the Agent.

## **5.2 Review by Banks Insurance Adviser**

The Agent shall promptly, upon receipt of any proposal under paragraph 5.1 instruct the Banks Insurance Adviser to consider the same and to promptly advise the Agent whether or not it agrees with such proposals or notices.

## **5.3 Agreement of proposals**

Within 10 Business Days of receiving such advice referred to in paragraph 5.2 from the Banks Insurance Adviser or of receiving any proposal if no insurance adviser is consulted, the Agent shall inform the Borrower whether or not the relevant proposal is agreed in whole or in part. If any proposal is not so agreed in whole, the Agent and the Borrower shall immediately negotiate in good faith with a view to resolving the matter in a manner acceptable to the Agent and the Borrower.

## **5.4 Determination by the Agent and Banks Insurance Adviser**

In relation to Insurances effected under the provisions of paragraph 1 of Part 5 of the Schedule to this Agreement, if the Banks Insurance Adviser and the Borrower are unable so to resolve any matter as set out in paragraph 5.3 within a period of 10 Business Days from the date for commencement of the good faith negotiations, the dispute shall be determined in good faith by the Agent within 10 Business Days of the expiry of such period.

## **5.5 Evaluation of Market Response**

The Borrower may, on the Borrower's Proposal Date, notify the Agent and the Banks Insurance Adviser in writing of any comments or feed back received from the proposed insurers in connection with any Relevant Insurance. The Agent and the Banks Insurance Adviser shall consider such comments or feed back and discuss them with the Borrower. The Agent and the Banks Insurance Adviser agree that feed back and comments of the proposed insurers and their discussions with the Borrower shall be one of the factors considered by them as part of their appraisal and review of the proposals for any Relevant Insurance delivered by the Borrower to them pursuant to paragraph 5.1.

## **5.6 Failure of notification to or by the Agent**

If the Borrower fails to deliver any notice referred to in paragraph 5.1 by the Borrower's Proposal Date, the Agent (after consulting the Banks Insurance Adviser) may specify and change that the Agent may reasonably consider appropriate and adequate whether of amount or otherwise, required under paragraph 5.1 such change to be included in a written notice thereunder with regard to the relevant insurance period delivered to the Borrower, and paragraph 5.7 shall apply (having made all necessary changes) to the matters specified in such notice as if they had been determined by the Agent under paragraph 5.4.

## **5.7 The Borrower to effect appropriate Insurances**

Promptly after receipt of notice from the Agent of any agreement or determination under paragraphs 5.3 or 5.4, the Borrower shall insure against the risks, in the amounts, and with the deductibles so agreed or determined with effect from the Review Date immediately following the relevant the Borrower's Proposal Date and throughout the Insurance Period. The Borrower shall confirm promptly in writing to the Agent that the Relevant Insurance has been effected and shall, within 30 Business Days of the Review Date, provide the Agent with evidence of the same.

## **6. Changes in circumstances**

### **6.1 Increases in amounts**

If, since the most recent Review Date (as defined in paragraph 5) the Agent, after consulting the Banks Insurance Adviser, reasonably considers that, as a result of any change in circumstances, any of the amounts and/or deductibles referred to in paragraph 5.1(b) is/are inadequate or inappropriate, as the case may be, and that it could materially prejudice the interests of the Agent under the Financing Documents to wait until the procedure provided for in paragraph 5 is concluded, the Agent may by written notice to the Borrower require that insurances be effected by the Borrower in the amounts and with the deductibles specified in such notice.

### **6.2 Borrower to effect increased Insurances**

The Borrower shall, as soon as practicable following receipt of such notice as stipulated in paragraph 6.1 from the Agent, procure Insurances in accordance with the terms of such notice such Insurance to be effected as from the earliest date reasonably possible after service of such notice.

### **6.3 Level of Insurance**

Notwithstanding the provisions of paragraphs 6.1 and 6.2 the Borrower shall ensure that the Insurances are increased, from time to time, to such amounts as would be effected in accordance with good operating practices by a developer or an operator or similar project company and which does not self-insure.

## **7. General**

### **7.1 The Borrower to facilitate work**

The Borrower on request from the Agent, shall facilitate and give reasonable assistance to the Banks Insurance Adviser in connection with all work to be undertaken by the Banks Insurance Adviser whilst acting in accordance with the terms of its appointment.

### **7.2 Contractors insurances**

The Borrower shall procure that all persons engaged in the Works and/or the operation of the Project and the Site take out adequate insurance in accordance with prudent industry practice in respect of all assets of or in the care, custody or control of such persons to the extent not falling within the insurances referred to in the Project Agreement and which are to be used in or for or incidental to the purposes of construction, installation or operation of the Project.

## **8. Non-avoidance of coverage**

8.1 The Borrower shall not at any time do (or omit to do) or knowingly or negligently permit any third party to do anything whereby any of the Insurances taken out under this Schedule could reasonably be expected to be rendered void or voidable or suspended, impaired or defeated in whole or in part. The Borrower undertakes to indemnify the Banks against all losses, costs, expenses, claims, demands, liabilities or proceedings which may be made or brought against or incurred by the Banks as a result of any such act or omission.

8.2 Without prejudice to the generality of paragraph 8.1. The Borrower shall procure that it is provided by the Construction Contractor with regular quarterly insurance reports in relation to the Works including all information which is or could reasonably be expected to be material or relevant to the continued availability and effectiveness of the Insurances specified in the Project Agreement (or the absence of which might result in such Insurances being rendered void or voidable or suspended, impaired or defeated in whole or part), including (without limitation) the then current status of the Construction Contract, descriptions of any delays or circumstances likely to give rise to any claims, any technical problems incurred and any changes to the construction methods adopted. The Borrower shall ensure that any such information is made available to the insurers effecting such Insurances as may be necessary to discharge their obligations under paragraph 8.1.

8.3 Without prejudice to the generality of paragraph 8.1, the Borrower shall establish and manage an operational risk group in respect of the Project, consisting of appropriate personnel from any and all relevant Material Project Parties and such other parties as are involved in the Project from time to time. The operational risk group shall address, identify, control, manage and monitor all risk issues, including, but without limitation, service continuity planning. The Borrower shall advise the Agent in writing, at least quarterly, of the status of matters addressed by the operational risk group and liaise with

the insurers to ensure that the Borrower is discharging all of its obligations in respect of Insurance under this Agreement and taking all appropriate risk control and mitigation steps.

**9. Application of proceeds**

The proceeds of any Insurances effected or procured by the Borrower pursuant to this Part 5 of the Schedule shall be paid and applied to the Insurance Account with the Agent (sort code, 80-26-43, account number 06200293) or (in the case of the insurances referred to in paragraph 1 of Part 1 and paragraph 1 of Part 2 of Part 21 of the Schedule to the Project Agreement) into the Insurance Proceeds Account with the Agent (sort code 80-26-43, account number 06200330) (as required by Clause 36.18 of the Project Agreement) or, to the extent not paid directly, is/are paid into the Insurance Account (or as the case may be) the Insurance Proceeds Account immediately upon receipt by the Borrower.

#### Appendix 1 of Part 5 of the Schedule - Notice of Security Interest

The Insurances shall contain the following additional endorsement:-

By an Assignment dated • **(the Assignment)** by Robertson Health (Gartnavel) Limited **(the Borrower)** in favour of The Governor and Company of the Bank of Scotland as security trustee for the banks referred to therein **(the Security Trustee)**, the Borrower assigned to the Security Trustee in security its whole right title and interest in this insurance and all benefits hereunder in security of payment of all Secured Liabilities.

Terms defined in the Assignment shall have the same meaning when used above.

## Appendix 2 of Part 5 of the Schedule

The endorsements required under paragraph 3.1(c) of Part 5 of the Schedule of the Loan Agreement are as follows:

### **Interpretation**

**Agent** means The Governor and Company of The Bank of Scotland in its capacity as Agent as defined in the Loan Agreement and includes its successors in that capacity.

**Borrower** means Robertson Health (Gartnavel) Limited.

**Finance Party** means the Agent, the Facility Trustee, the Banks and the Hedging Counterparty;

**Insurance Broker** means any reputable firm of insurance brokers who may be acting as such for the Borrower from time to time.

**Loan Agreement** means the loan agreement dated • between, amongst others, the Borrower and the Agent.

### **1. Waiver of Subrogation**

The Insurers and the underwriters hereby agree to waive all rights of subrogation or action which they may have or acquire against the Finance Party and any of the other parties comprised in the definition of **Insured** and their respective officers, directors, agents, servants and employees arising out of any occurrence in respect of which any claim is admitted hereunder.

### **2. Disclosure**

The Finance Party shall have no duty of disclosure except in relation to information made available to them by any other Insured relating to the Project.

### **3. Non contribution**

The Insurers agree that this insurance shall be primary to and not excess to or contributing with any other insurance maintained by any Insured and that, in the event of loss, damage or liability covered by this policy which is also covered in whole or in part under any other policy or policies of insurance maintained by or on behalf of any Insured, the Insurers will indemnify the Insured as if such other policy or policies of insurance were not in force. The Insurers waive all rights of contribution against any other insurance effected by the Finance Party.

#### 4. **The Insured**

Each of the parties comprising the Insured shall for the purpose of this policy be considered a separate entity, the words the Insured applying to each as if they were separately and individually insured for their respective rights and interests provided that the total liability of the Insurers under each section of the policy to the Insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy.

#### 5. **Additional Insureds**

- 5.1 The Finance Party are additional insureds under the policy for their interest in, amongst other things, the Project (to the extent owned or leased by the Borrower).
- 5.2 Accordingly the liability of the Insurers under this policy to any one of the Insured shall not be conditional upon the due observance and fulfilment by any other Insured of the terms of this policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance of fulfilment by such other Insured.

#### 6. **Non-vitiation**

- 6.1 If any claim or claims lodged with the Insurers by any Insured under this policy is or are, or would be but for the provisions of this paragraph 6, repudiated in whole or in part due to any breach of the provisions of this policy whether expressed or implied (including non-disclosure), such repudiation shall be limited to that part of the claim or claims to which the defaulting party (i.e. any other Insured perpetrating such breach (**the Defaulting Party**)) would, but for the breach, have been entitled to indemnification under this policy, but shall not affect the right of any other (non-defaulting) Insured in this policy to recover under any claim or claims lodged, provided always that the non-defaulting Insured had not knowingly in respect of the whole or part of the aforesaid breach of the provisions of this policy been a party to that breach, in which event they shall be in no better position in regard to such repudiated claims than the Defaulting Party (excluding fraud and deliberate misrepresentation).
- 6.2 The interest of the Finance Party shall not be prejudiced in the event of misrepresentation, misdescription or non-disclosure by any Insured or any employees of any Insured in any material particular or by any wilful act of any other Insured or any such employee or with the connivance of any other Insured hereunder (excluding fraud and deliberate misrepresentation).
- 6.3 If a claim or any part thereof made by or on behalf of any of the parties to any contract in connection with the Project is fraudulent in any respect then such part of such claim by such party shall not be recoverable by the party making the claim (excluding fraud and deliberate misrepresentation).

Provided always that the interests of the Finance Party remain subject to the terms, conditions, exclusions and limitations of this policy as supplemented by this endorsement.

**7. Notification of cancellation, reduction, suspension**

The Insurers shall advise the Insurance Broker:

- 7.1 at least 45 days (or 30 days, in the case of non-payment of premium, or such lesser period (if any) as may be specified from time to time by Insurers in the case of terrorism) before any cancellation is to take effect if any Insurer cancels or gives notice of such cancellation of any Insurance for any reason including non-payment of premium;
- 7.2 at least 45 days before any reduction in limits or coverage (including those resulting from extensions), any increase in deductibles, exclusions or exceptions or any termination or suspension before the original expiry date is to take effect;
- 7.3 of any act or omission or of any event of which the Insurer has knowledge and which might reasonably be foreseen as invalidating or rendering unenforceable or unworkable in whole or in part this Insurance.

The policy shall not be cancelled or the coverage so altered or affected before the expiry of the notice period referred to above.

**8. Notices**

- 8.1 Any notice or document to be served in relation to this policy may be delivered, or sent by prepaid first class recorded delivery post (if within the United Kingdom) or by prepaid airmail (if elsewhere), or facsimile process to the party to be served at its registered office or at such other address as it may have notified to the other parties in writing in accordance with this paragraph and, in the case of the Agent and the Security Trustee, shall be sent to it at the address specified in the Loan Agreement or such other address as shall have been so notified. Any such notice will be deemed to be given as follows:

- 8.1.1 if delivered, at the time of delivery;
- 8.1.2 if posted first class, at 10.00 a.m. on the second Business Day after it was put into the post; and
- 8.1.3 if by fax, when transmitted but only if, immediately after the transmission, the sender's fax machine records the correct answerback.

- 8.2 It is further agreed that a notice of claim given by the Banks or any other insured shall in the absence of any manifest error be accepted by the Insurer as a valid notification of a claim.

**9. Payment of Premium**

None of the Finance Parties shall be liable for the payment of any premium under this policy and there shall be no set-off for any unpaid premium in relation to the Finance Parties but this shall not relieve the Borrower from its obligations to pay any premium due under this policy.

Appendix 3 of Part 5 of the Schedule - Brokers Letter of Undertaking

To: The Governor and Company of the Bank of Scotland as Agent for the Finance Parties (as such terms are defined in the Loan Agreement as detailed below).

Dear Sirs,

We refer to the Loan Agreement (**the Loan Agreement**) dated • November 2005 between Robertson Health (Gartnavel) Limited (**the Borrower**), Robertson Health (Gartnavel) Holdings Limited (**Holdings**) and the Governor and Company of the Bank of Scotland Limited (as **Agent, Security Trustee** and **Bank**) and Clause 36 and Part 21 of the Schedule to the Project Agreement between the Borrower and the Board (as defined therein) dated • November 2005 as attached hereto.

**Definitions**

The following terms defined in the Loan Agreement have the same meaning in this letter:

'Insurance Account'	means the bank account so designated and operated pursuant to the Loan Agreement with account number 06200293 at bank sort code 80-26-43;
'Insurances'	is as referred to in Clause 11.5 (Insurance) of the Loan Agreement, as attached hereto;
'Project'	means the financing, design, construction and provision of certain services to an acute psychiatric care hospital at Gartnavel Hospital, Glasgow; and
'Project Agreement'	means the Agreement dated on or around the date hereof between the Board and the Borrower in connection with the Project.

We confirm that (a) the Insurances are in full force and effect on and in respect of the risks as set out in the attached cover notes and that all premiums due at the date hereof in respect of such Insurances have been paid in full; (b) the insurers have been sent and have been asked to acknowledge an assignment granted by the Borrower in favour of the Security Trustee dated • November 2005 and (c) the Security Trustee is named as additional insured in the Insurances for the periods stipulated therein.

We act as insurance brokers to the Borrower with respect to the Insurances and, as such, we have provided the Borrower with our professional assistance with regard to the identification of the insurances to be entered into by the Borrower in relation to the Project and the determination of the contents and the placing of the related insurance contracts.

We have arranged the Insurances on the basis of information and instructions given by the Borrower. We have not made any particular or special enquiries regarding the Insurances beyond those that we normally make in the ordinary course of arranging insurances on behalf of our insurance broking clients engaged in PFI projects. The confirmations set out in this letter are given by reference to our state of knowledge at the date hereof.

Pursuant to instructions received from the Borrower and in consideration of your approving our appointment and continuing appointment as brokers in connection with the Insurances, we hereby undertake:

1. to use all reasonable endeavours to have endorsed on each and every Insurance on or before the date 30 Business Days after the date of the Loan Agreement endorsements substantially in the form required by the Agent or set out in Part 5 of the Schedule of the Loan Agreement as attached hereto (except as may be otherwise agreed by the Agent in consultation with its insurance adviser) together with a copy of the said notice(s) of charges to the insurer signed by an authorised signatory of the Borrower and acknowledged by the insurers;
2. to pay to the Insurance Account with the Agent without any set-off or deduction of any kind for any reason any and all proceeds from the Insurances received by us from the insurers except as might be otherwise permitted in the relevant loss payable and notice of cancellation clauses as amended from time to time;
3. to advise the Agent:
  - 3.1 where practical (having used all reasonable endeavours to do so) at least 25 Business Days (or such lesser period, if any, as may be specified from time to time in the case of war risks) before (i) cancellation or suspension of any of the Insurances is to take effect, and (ii) any alteration, to, termination, lapse or expiry of any of the Insurances is to take effect;
  - 3.2 of any default in the payment of any premium for any of the Insurances as soon as reasonably practicable after the occurrence of such default; and
  - 3.3 at least 25 Business Days prior to the expiry of the Insurances or any of them if we have not received renewal instructions from the Borrower and/or any other insured party or the bank of any such party, and, if we receive instructions to renew, to advise the Agent as soon as reasonably possible of the details thereof;
  - 3.4 of:
    - (a) any act or omission on the part of the Borrower or any insured or of any event of which we have actual knowledge and which we reasonably foresee as possibly invalidating or rendering unenforceable in whole or in part any of the Insurances, as soon

as reasonably practicable after becoming aware of the same;  
and;

- (b) of any fact, change of circumstance or occurrence which we reasonably assess to be material to the risks insured against under the Insurances as soon as reasonably practical after we receive notice from the Borrower of such fact, change of circumstance or occurrence.
4. to disclose to the Agent as soon as reasonably practical, details of any fact, change of circumstances or occurrence notified to us by any of Robertson Health (Gartnavel) Limited, Robertson Group (Scotland) Limited and Euler Hermes Guarantee plc and any of their holding companies, subsidiaries and successors (or any employee, agent or officer of any of them) which we reasonably believe to be material to the Insurances;
  5. upon your request, subject to the Borrower's consent, to supply to you and/or your insurance advisers (or your or their authorised representatives) copies of all placing slips, certificates, cover notes, renewal receipts and confirmations of renewal and payment of premiums and all policy documents in respect of the Insurances, and subject to the Borrower's consent as soon as practicable after any reasonable request in writing by you/or your insurance advisers to make available to you or your insurance advisers (as the case may be) the originals of any or all such documents (save for placing slips) that are held by us and the originals of such documents that are held by us to your order.
  6. to notify the Agent at least 15 Business Days or such lesser period as shall be practicable prior to our ceasing to act as brokers to the Borrower or, if impracticable, promptly following our ceasing so to act.

The above undertakings are given:

- (a) subject to our lien, if any, on the Insurances referred to above for premiums due under the Insurances and subject to any insurer's right of cancellation (if any), but we undertake to use our reasonable endeavours to request that insurers give you a reasonable opportunity of paying such amounts of such premiums outstanding; and
- (b) subject to our continuing appointment for the time being as insurance brokers to the Borrower including where relevant the handling of claims in relation to the Insurances, and following termination of such appointment our immediate release from all our obligations set out in this letter to the extent those obligations arise on or after the termination.

Save insofar as we have given agreements or representations in this letter, it is to be understood by the Agent that they may not rely on any advice which we have given to the Borrower, and we do not represent that the Insurances are suitable or sufficient to meet the needs of the Agent who must take steps and advice of their own as they consider necessary in order to protect their own position.

This letter has been prepared exclusively for the use of the parties to whom it is addressed for the specific purpose of their relationship with the Borrower. No responsibility is accepted to any third party for any part of the contents of this letter and in the event that it is disclosed to a third party any and all liability howsoever arising to that third party is hereby expressly excluded. No person except the parties to this letter have any rights arising out of this letter under the Contracts (Rights of Third Parties) Act 1999.

Our aggregate liability to any persons, companies or organisations who act in reliance on this letter for any and all matters arising from it, shall in any and all events be limited to the sum of £3,000,000, even if we are negligent. We do not limit our liability for our fraud, or in respect of any liabilities which cannot lawfully be limited or excluded.

This letter shall be governed by and construed in accordance with English law.

It is understood and agreed that nothing in this letter shall override our duty (to the extent permitted by law) to place the interests of our client the Borrower before all other considerations, although we acknowledge that we owe duties to the Governor and Company of the Bank of Scotland pursuant to our separate appointment by them as insurance advisers in connection with the Project and that this letter is without prejudice to the duties owed in connection with that appointment. This letter is given by us on the instructions of the Borrower and with the Borrower's full knowledge and consent as to its terms.

Yours faithfully

For and on behalf of Marsh Limited

Dated:

## Attachments

[Clause 11.5 (Insurance) of the Loan Agreement]

[Part 5 of the Schedule of the Loan Agreement]

[Clause 36 and Part 21 of the Schedule to the Project Agreement]

**Section A - Construction Phase**

**1. Contractors All Risks**

**1.1 Insured (as co-insureds)**

- (a) The Borrower;
- (b) the Board;
- (c) the Construction Contractor;
- (d) the FM Contractor;
- (e) all sub-contractors and suppliers of any tier and consultants (for their activities on the Site only); and
- (f) the Finance Parties,

each for its respective rights and interests.

**1.2 Insured Property**

All works, temporary works, materials and all other property of whatsoever nature or description the property of the insured or for which they may be responsible including property for which the insured is responsible or which the insured has an obligation to insure under the Agreement.

**1.3 Indemnity**

All Risks of physical loss, destruction or damage to the Insured Property from any causes which are normally not otherwise excluded.

**1.4 Sum Insured**

The reinstatement value of the works.

**1.5 Geographical Limits**

The Sites and anywhere else in the United Kingdom in connection with the Project, including inland transit and offsite temporary storage.

**1.6 Period of Insurance**

The period from the date of the Agreement to the Actual Completion Date plus twelve months defects liability period.

**1.7 Allowable Exclusions**

- 1. War and Related Perils (market agreed wording)

2. Nuclear/Radioactive Risks (market agreed wording)
3. Pressure Waves caused by Aircraft and Other Aerial Devices travelling at sonic or supersonic speeds
4. Wear, Tear and Gradual Deterioration
5. Unexplained Shortages
6. Consequential Financial Losses
7. Faulty Design, Workmanship and Materials DE5

#### 1.8 **Required Extensions**

1. Professional Fees Clause
2. Debris Removal Clause
3. 72 hour Clause
4. Free Issue Materials Clause
5. 115% Increase Clause
6. Additional Costs of Completion Clause
7. European Union Local Authorities Clause
8. Automatic Reinstatement of Sum Insured Clause
9. Other Interests Clause
10. Testing/Commissioning Period Clause
11. Plans and Specifications Clause
12. Munitions of War Clause
13. Terrorism
14. Inflation Incomplete Works
15. Advance Payments
16. Temporary Repairs
17. Expediting Expenses
18. Theft
19. Offsite Temporary Storage
20. Inland Transit
21. Non Vitiating
22. Subrogation Waiver

**1.9 Maximum Deductible**

£150,000 each and every loss in respect of loss of damage caused by defect in design, plan, specification, materials or workmanship (DE5 wording) and £10,000 (maximum) in respect of each and every other loss.

**2. Loss of Anticipated Revenue**

**2.1 Insured (as co-insureds)**

- (a) the Borrower;
- (b) the Finance Parties

each for its respective rights and interests.

**2.2 Period of Insurance**

From the date of this Agreement until the Actual Completion Date.

**2.3 Indemnity**

In respect of:

- (a) loss of fixed costs and debt service costs of the Borrower anticipated during the Indemnity Period arising from a delay in Completion as a result of physical loss or damage covered under the Contractors All Risks Insurance effected in accordance with Item 1 of Section A of Appendix 4 of Part 5 of the Schedule including physical loss or damage which would have been indemnifiable but for the application of any Waiting Period,
- (b) the additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of fixed costs and debt service costs of the Project Co which without such expenditure would have taken place during the Indemnity Period.

**2.4 Sum Insured**

An amount sufficient to cover the sums the subject of the Indemnity for the Indemnity Period.

**2.5 Indemnity Period**

24 months

**2.6 Allowable Exclusions**

As per clause 1.8 hereunder (excluding consequential financial losses).

**2.7 Maximum Deductible**

45 days in the aggregate.

## 2.8 **Required Extensions**

Denial of Access

Constructional Plant and Equipment excluding sub-contractors

Utilities premises

Insurers not to deduct from any claims settlement any liquidated or non-liquidated damages provided by the Contractor to Project Co following insured loss or damage on the understanding that such liquidated or non-liquidated damages are to be reimbursed by Project Co to the Contractor upon receipt of the proceeds of this policy in proportion to any recovery under the policy

Auditors Fees

Automatic Reinstatement of Sum Insured

## 3. **Third Party Public Liability Insurance**

### 3.1 **Insureds (as co-insureds)**

- (a) The Borrower;
  - (b) the Board;
  - (c) the Construction Contractor;
  - (d) the FM Contractor;
  - (e) all sub-contractors and suppliers of any tier and consultants (for their activities on the Sites only); and
  - (f) the Finance Parties,
- each for its respective rights and interests.

### 3.2 **Period of Insurance**

The period from the date of the Agreement to the Actual Completion Date respectively plus twelve months defects liability period.

### 3.3 **Indemnity**

To indemnify the insured in respect of all sums that they become legally liable to pay (including claimant's costs and expenses) as damages in respect of:

- (a) death or bodily injury, illness or disease suffered by any person;
- (b) loss or damage to property; and
- (c) obstruction, interference, loss of amenities, nuisance, trespass, stoppage of traffic, infringement of light, easement or quasi easement, denial of access or any like cause arising from or in connection with the project.

### 3.5 **Limit of Indemnity**

Not less than £50,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of Pollution and Products Liability.

### 3.5 **Territorial Limits**

United Kingdom

### 3.6 **Jurisdiction**

United Kingdom

### 3.7 **Period of Insurance**

From the date of the Agreement or as otherwise specified in the Agreement including the provision of interim services until Actual Completion date plus 12 months defects liability period.

### 3.7 **Required Extensions**

1. Contractual Liability;
2. Completed Operations for Building Works covered by Public Liability section of the policy
3. Personal Injury to include False Imprisonment, Wrongful Arrest, Eviction or any like cause
4. Obstruction, Trespass, Nuisance, Loss of Amenities, Interference with Easements or any like cause
5. Liability of Sub-Contractors
6. CDM Regulations Legal Defence Costs
7. Health & Safety at Work Act(s) Defence Clause
8. Defective Premises Act Clause
9. Data Protection Act Clause
10. Cross Liability Clause
11. Contingent Motor Liability
12. Employees and Directors

### 3.8 **Allowable Exclusions**

1. Liability for death, illness, disease or bodily injury sustained by employees of the insured

2. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles
3. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured
4. Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Board which is in the care, custody and control of another Insured Party
5. Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property
6. Liability arising from the ownership, possession or use of any aircraft
7. Liability arising from seepage and pollution unless caused by a sudden unintended and unexpected occurrence
8. Nuclear/radioactive risks (market agreed wording)
9. War and related perils (market agreed wording)

### **3.10 Maximum Deductibles**

Not to exceed £2,5000 each occurrence in respect of loss or damage to third party.

### **4. Other Insurance**

Such other insurances as are required by law (Motor, Employers Liability, etc).

## **Section B - Operational Period**

### **1. Material Damage**

#### **1.1 Insureds (as co-insureds)**

- (a) the Borrower;
  - (b) the Board;
  - (c) the FM Contractor; and
  - (d) the Finance Parties,
- each for its respective rights and interests.

#### **1.2 Insured Property**

Any property of whatsoever nature or description which is the property of the insured or for which the insured may be responsible including property for which the insured has an obligation to insure under the Agreement.

### 1.3 **Indemnity**

All risks of physical loss of or damage to any part of the Insured Property from any cause not otherwise excluded.

### 1.4 **Sum Insured**

Full replacement or reinstatement value whichever shall be greater.

### 1.5 **Geographical Limits**

The Sites.

### 1.6 **Period of Insurance**

For the Hospital from the relevant Completion Date for a period of 12 months and annually renewable thereafter or as may be otherwise agreed.

### 1.7 **Required Extensions**

1. Theft Damage to Buildings
2. Automatic Reinstatement of Sum Insured
3. Including Pollution and Contamination to the Insured Property arising from an event which itself is not otherwise excluded. To include pollution or contamination resulting from accidental damage.
4. Capital Additions Clause
5. 72 hour Clause
6. European Union Local Authorities Clause
7. Day One Reinstatement – 15% uplift
8. Plans and Documents
9. Loss Minimisation
10. Munitions of War
11. Expediting Expenses
12. Terrorism
13. Subsidence

### 1.8 **Allowable Exclusions**

War and Related Perils (market agreed wording)

Nuclear/Radioactive Risks (market agreed wording)

Pressure Waves caused by Aircraft and other Aerial Devices travelling at sonic or supersonic speeds

Wear, Tear and Gradual Deterioration

Unexplained Shortages

Consequential Financial Losses

Date Recognition

**1.9 Maximum Deductible**

Not to exceed £10,000 each and every claim.

**2. Business Interruption**

**2.1 Insureds (as co-insureds)**

- (a) the Borrower; and
  - (b) the Finance Parties,
- each for its respective rights and interests.

**2.2 Period of Insurance**

Annually from the relevant Completion Date to the end of the Service Period or as may be otherwise agreed.

**2.3 Indemnity**

In respect of:

- (a) loss of Unavoidable Fixed Costs and Debt Service Costs of Project Co anticipated during the Indemnity Period arising from an interruption or interference in the operation of the Project as a result of loss or damage covered under Property Damage Insurance effected in accordance with Item 1 of Section B of Appendix 4 of Part 5 of the Schedule including physical loss or damage which would be indemnifiable but for the application of any deductible,
- (b) the additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of unavoidable fixed costs and debt service costs of Project Co which without such expenditure would have taken place during the Indemnity Period

Debt Service means interest and debt service costs incurred in respect of the Senior Financing Agreements less:

- (a) sums which are in arrears;
- (b) all sums reserved by the Contractor and which the Contractor is entitled to use to make such payments, without breaching the Senior Financing Agreements.

Unavoidable fixed costs means the fixed costs incurred by the Contractor which first fall due for payment by the Contractor during the period of indemnity but excluding:

- (a) costs which could have reasonably been mitigated or avoided by the Contractor;
- (b) payments to the Contractor's associated Companies;
- (c) payments which are not entirely at arm's length;
- (d) payments to holders of equity in the Contractor, subordinated debt holders and any other financing costs other than senior debt service;
- (e) indirect losses suffered or allegedly suffered by any person;
- (f) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations;
- (g) payments the Contractor can recover under contract or in respect of which the Contractor has a remedy against another person in respect of the same liability;
- (h) payments to the extent that the Contractor has available to it
  - i reserves which the Contractor can draw upon without breaching the Senior Financing Agreement;
  - ii. standby or contingent facilities or funds of senior debt or equity which the Contractor is entitled to have available;
- (i) payments representing any profits of the Project (to the extent not already excluded in (e) above);

#### **2.4 Waiting Period / Deductible**

£5,000 each and every claim

#### **2.5 Sum Insured**

An amount sufficient to cover the sums the subject of the Indemnity for the maximum Indemnity Period

#### **2.6 Indemnity Period**

24 months

#### **2.7 Required Extensions**

1. Denial of Access
2. Infectious Diseases

3. Utilities
4. Auditors Fees
5. Automatic Reinstatement of sum insured

### 3. **Third Party Liability Insurance**

#### 3.1 **Insureds (as co-insureds)**

- (a) The Borrower;
  - (b) The Board;
  - (c) FM Contractor;
  - (d) the Finance Parties;
- each for its respective rights and interests.

#### 3.2 **Period of Insurance**

From the Actual Completion Date or a period of 12 months and annually renewable thereafter or as may be otherwise agreed.

#### 3.3 **Indemnity**

To indemnify the insured in respect of all sums that they become legally liable to pay (including claimants costs and expenses) as damages in respect of:

- (a) death or bodily injury, illness or disease suffered by any person
- (b) loss or damage to property;
- (c) obstruction, interference, loss of amenities, nuisance, trespass, stoppage of traffic, infringement of light, easement or quasi-easement, denial of access or any like cause arising out of or in connection with the Facilities

#### 3.4 **Geographical Limits**

European Union

#### 3.5 **Minimum Limit of Indemnity**

Not less than £50,000,000 for each and every occurrence attributable to a single source or original cause and unlimited in aggregate except pollution and contamination where the limit shall be in the per annum.

#### 3.6 **Maximum Deductible**

Not to exceed £2,500 in respect of property damage only for each and every occurrence.

#### 3.7 **Required Extensions**

1. Contractual Liability

2. Personal injury to include false imprisonment, wrongful arrest, eviction or any like cause
3. Obstruction, trespass, nuisance, loss of amenities, interference with easements or any like cause
4. Liability of Sub-Contractors
5. Health & Safety at Work Act(s) Defence Clause
6. Defective Premises Act Clause
7. Data Protection Act Clause
8. Cross Liability Clause
9. Contingent Motor Liability
10. Directors and Employees

### 3.8 Allowable Exclusions

1. Liability for death, illness, disease or bodily injury sustained by employees of the insured
2. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles
3. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured
4. Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Board
5. Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property
6. Liability arising from the ownership, possession or use of any aircraft
7. Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence
8. Nuclear/radioactive risks (market agreed wording)
9. War and related perils (market agreed wording)
10. Date Recognition
11. Liability attaching to the Board other than arising from the activities of the other insureds

#### 4. **Other Insurance**

All insurance necessary to comply with statutory obligations including employers liability, motor and statutory inspection of plant and machinery.

## Part 6

### Mandatory Cost

The Mandatory Cost Rate is an addition to the interest rate on an Advance to compensate the Banks for the cost attributable to an Advance resulting from the imposition from time to time under or pursuant to the Bank of England Act 1998 (the Act) and/or by the Bank of England and/or the Financial Services Authority (FSA) (or other United Kingdom governmental authorities or agencies) of a requirement to place non-interest-bearing cash ratio deposits or Special Deposits (whether interest bearing or not) with the Bank of England and/or pay fees to the FSA calculated by reference to liabilities used to fund the Advance.

The Mandatory Cost Rate will be the rate determined by the Agent (and rounded upward if necessary to four decimal places) as the rate resulting from the application (as appropriate) of the following formulae:

In relation to Sterling Advances

$$XL + S(L-D) + F \times 0.01$$

---

$$1.00 - (X+S)$$

Where on the day of application of the formula:

- X Is the percentage of Eligible Liabilities (in excess of any stated minimum) by reference to which the Banks are required under or pursuant to the Act to maintain cash ratio deposits with the Bank of England;
- L Is the percentage rate per annum at which sterling deposits for the relevant period are offered by the Banks to leading banks in the London Interbank Market at or about 11.00 am (London time) on that day;
- F Is the rate of charge payable by the Banks to the FSA pursuant to paragraph 2.02 or 2.03 of the Fees Regulations (but where for this purpose, the figure at paragraph 2.02b or 2.03b shall be deemed to be zero) and expressed in pounds per £1 million of the Tariff Base of the Banks;
- S Is the level of interest-bearing Special Deposits expressed as a percentage of Eligible Liabilities, which the Bank is required to maintain by the Bank of England (or other United Kingdom governmental authorities or agencies); and
- D Is the percentage rate per annum payable by the Bank of England to the Agent on Special Deposits.

(X, L, S and D are to be expressed in the formula as numbers and not as percentages. A negative result obtained from subtracting D from L shall be counted as zero).

The Mandatory Cost Rate attributable to an Advance or other sum for any period shall be calculated at or about 11.00 am (London time) on the first day of such period for the duration of such period.

The determination of the Mandatory Cost Rate in relation to any period shall in the absence of manifest error be conclusive and binding on the parties hereto.

If there is any change in circumstance (including the imposition of alternative or additional requirements) which in the reasonable opinion of the Agent renders or will render either of the above formulae or any element thereof or any defined term used therein inappropriate or inapplicable, the Agent, following notice to the Borrower, shall be entitled to vary the same. Any such variation shall, in the absence of manifest error, be conclusive and binding on the parties and shall apply from the date specified in such notice.

For the purposes of this Schedule:

The terms **Eligible Liabilities** and **Special Deposits** shall bear the meanings ascribed to them under or pursuant to the Act or by the Bank of England (as may be appropriate) on the day of the application of the formula.

**Fees Regulations** means, as appropriate, either:

- (a) the then current rules on periodic fees in the supervision manual of the FSA Handbook; or
- (b) such regulations as from time to time may be in force, relating to the payment of fees for banking supervision in respect of periods subsequent to 31 March 1999.

**Tariff Base** has the meaning ascribed to it for the purposes of and shall be calculated in accordance with the Fees Regulations.

Any reference to a provision of any statute, directive, order or regulation herein is a reference to that provision as amended or re-enacted from time to time.

## Part 7

### Assumptions

#### **A Initial Economic Assumptions**

Swap rate (being the fixed interest rate payable by the Borrower under the Hedging Agreement referred to in Clause 11.3.16 (*Hedging Agreements*) inclusive of credit spread), the Applicable Margin and MLA Costs.

VAT of 17.5%

Corporation tax of 30%

Inflation of 2.5%

#### **B Technical Assumptions**

the amount of the Service Payments

the Actual Completion Date

actual and anticipated life cycle replacement costs

Borrower's costs

payments to the FM Contractor during the Service Period

standard or actual performance of the Services and availability of the Facilities

## Part 8

### Part A - Transfer Provisions

#### 1 Definitions

In this Part of the Schedule:

**Agent** means The Governor and Company of the Bank of Scotland in its role as Agent and Security Trustee for the Banks, or any successor in such role(s) from time to time;

**Bank** means The Governor and Company of the Bank of Scotland and its successors and assignees;

**Existing Bank** means the Bank and any other bank or financial institution that wishes to transfer all or any of its rights and/or obligations under this Agreement to a New Bank;

**New Bank** means any Qualifying Bank;

**Qualifying Bank** means a person which:

- (a) is a bank within the meaning of Section 840A of Income and Corporation Taxes Act 1988 (ICTA) which is beneficially entitled to any interest to be paid to it (as a Bank) under this Agreement, and is within the charge to United Kingdom corporation tax as respect such interest; or
- (b) is a building society within the meaning of the Building Societies Act 1986

except that, if Section 477A, Section 832 or Section 840A of ICTA is repealed, modified, extended or re-enacted, the Agent may at any time and from time to time (after consultation with the Borrower and the Banks amend this definition in such manner as it may determine to be appropriate by giving notice of the amended definition to the Borrower and the Banks.

#### 2 Sub-Participation

Each Bank may grant a sub-participation of all or any part of its rights and benefits hereunder to another bank or financial institution at any time at the discretion of the Bank, provided that the relevant Bank shall give to the Borrower a copy of any Participation Agreement entered into by the Bank in respect of such sub-participation.

#### 3 Transfers of Participations

##### 3.1 Novation by Transfer Certificate

If any Existing Bank wishes to novate or transfer all or any part of its rights, benefits and/or obligations under this Agreement to a New Bank then the Existing Bank may, after consultation with the Agent and, through the Agent, the Borrower, effect a substitution in respect thereof involving the New Bank

by the delivery to the Agent and acceptance by it of a duly completed Transfer Certificate executed by the Existing Bank and by the New Bank.

### **3.2 Effect of Transfer Certificate**

Upon delivery to the Agent of any Transfer Certificate pursuant to paragraph 3.1 and acceptance thereof by the Agent (which delivery and acceptance shall be evidenced exclusively and conclusively by the Agent's counter signature on such Transfer Certificate pursuant to paragraph 3.3, without which such Transfer Certificate shall be ineffective):

- (a) the respective rights of the Existing Bank and the Borrower against each other under this Agreement with respect to all or the relevant part of the Existing Bank's Commitment and/or participation in Advances (all as specified in the schedule to such Transfer Certificate) shall be terminated and each shall be released from all further obligations to the other(s) under this Agreement with respect thereto (all such rights and obligations to be so terminated or released being referred to in this Part of the Schedule as Discharged Rights and Obligations);
- (b) the Borrower and the New Bank shall each acquire rights against each other and assume obligations towards each other which (except as regards the identity of the parties thereto) are identical to the Discharged Rights and Obligations; and
- (c) the Agent, the New Bank and the other Banks (if any) shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had such New Bank been an original party to this agreement as a Bank with the Discharged Rights and Obligations acquired or assumed by it in consequence of such Transfer Certificate.

### **3.3 Signing of Transfer Certificate**

Each of the Borrower and the Banks appoints the Agent to receive and countersign each Transfer Certificate as agent on its behalf as required by this Part of the Schedule. The Agent shall be entitled (but not obliged) to decline to accept and/or countersign any proposed Transfer Certificate which is not in the form set out in Part 8B of the Schedule.

### **3.4 Administration Fee**

On or before the effective date of any Transfer Certificate, the New Bank which is party to it shall pay the Agent an administration fee of such amount as may be agreed with the Agent.

### **3.5 Protection of Agent**

The Agent shall be entitled to rely on any Transfer Certificate delivered to it pursuant to this Part of the Schedule which appears on its face to be complete and regular and appears to be signed on behalf of the Existing Bank and the New Bank named as party to it. The Agent shall have no liability or

responsibility to any party as a consequence of placing reliance on or acting in accordance with and countersigning any such Transfer Certificate.

### **3.6 Notification**

The Agent shall notify the Borrower promptly of the receipt and execution on its behalf by the Agent of any Transfer Certificate and shall deliver a copy of it to the Borrower.

### **3.7 No liability of Existing Bank**

Nothing in this Agreement or any Transfer Certificate shall oblige an Existing Bank to:

- (a) accept a re-transfer from a New Bank of any of the rights, benefits and/or obligations transferred or novated under this Part of the Schedule and/or a Transfer Certificate; or
- (b) be liable for or contribute to any losses incurred by the New Bank by reason of the non-performance by the Borrower of its obligations under this Agreement or otherwise.

### **3.8 Information**

Subject to Clause 20 (*Disclosure of Information*) a Bank may disclose on a confidential basis to any actual or potential New Bank or other assignee or transferee of any rights, benefits and/or obligations under this Agreement such information about the Borrower, Holdings and any Material Project Party and their respective businesses and financial conditions as such Bank shall reasonably consider appropriate and which information is lawfully in the possession of such Bank under such conditions as shall entitle such Bank to make such disclosure.

## Part B - Transfer Certificate

Date:

To: The Governor and Company of the Bank of Scotland in its own right and as Agent and Security Trustee for and on behalf of the Borrower and the Banks defined in the Loan Agreement referred to below.

For the Attention of: •

This Certificate (**Transfer Certificate**) relates to a Loan Agreement (**the Loan Agreement**) dated • and made between Robertson Health (Gartnavel) Limited (**the Borrower**) and Robertson Health (Gartnavel) Holdings Limited, The Governor and Company of the Bank of Scotland (**the Agent, Security Trustee and Bank**) and Holdings relating to a sterling loan facility of up to £•.

Terms defined in the Loan Agreement shall, unless otherwise defined herein, have the same meaning where used therein.

In this Certificate:

Relevant Percentage means • per cent.

Transfer Date means •.

Transferor means •.

Transferee means •.

- 1 The Transferor confirms the accuracy of the summary of its participation under the Loan Agreement appearing in the Schedule.
- 2 The Transferor assigns to the Transferee, with effect from the Transfer Date, absolutely all right, title and interest (present, future or contingent) which the transferor has as a Bank under or by virtue of the Loan Agreement and the Security Documents in relation to the Relevant Percentage of its participation in the Loan as indicated in the Schedule.
- 3 By virtue of this Transfer Certificate and Part 8 of the Schedule to the Loan Agreement, the Transferor is discharged [entirely from its Commitment] [from the Relevant Percentage of its Commitment].
- 4 The Transferee hereby undertakes with the Transferor and each of the other parties to the Loan Agreement and the Security Documents that, with effect from the Transfer Date:
  - (a) it will become a party to the Loan Agreement as a Bank with a participation in the Loan outstanding of £• and a Commitment of £•, of which £• remains undrawn, in each case at the Transfer Date; and
  - (b) it will perform in accordance with its terms all those obligations which by the terms of the Loan Agreement and the Security Documents will be assumed by it.

- 5 By execution of this Transfer Certificate and in reliance upon the representations and warranties of the Transferee, each of the Borrower, the Agent and Security Trustee and the Banks, with effect from the Transfer Date, accept the Transferee as a party to the Loan Agreement and the Security Documents with respect to all those rights and/or obligations which by the terms of the Loan Agreement and the Security Documents will be assumed by the Transferee.
- 6 The Transferee hereby requests the Borrower, the Agent and the Security Trustee and the Banks to accept the executed copies of this Transfer Certificate as being delivered pursuant to and for the purposes of Part 8A of the Schedule (*Transfer Provisions*) to the Loan Agreement so as to take effect in accordance with the terms thereof on the Transfer date.
- 7 The Transferee:
- 7.1 confirms that it has received a copy of the Loan Agreement and the Security Documents together with such other documents and information as it has required in connection with the transaction contemplated thereby;
  - 7.2 confirms that it has not relied and will not hereafter rely on the Transferor or the Agent and Security Trustee to check or enquire on its behalf into the legality, validity, enforceability, effectiveness, adequacy, accuracy or completeness of the Loan Agreement any of the Security Documents or any such documents or information;
  - 7.3 agrees that it has not relied and will not rely on the Transferor, the Agent and Security Trustee or the Bank to access or keep under review on its behalf the financial condition, credit worthiness, condition, affairs, status or nature of the Borrower, or any other party to the Loan Agreement or any of the Security Documents (save as otherwise expressly provided therein);
  - 7.4 warrants that it is a Qualifying Bank and that it has power and authority to become a party to the Loan Agreement and has taken all necessary action to authorise execution of this Transfer Certificate and that it has obtained all necessary approvals and consents to the assumption of its obligations under the Loan Agreement and the Security Documents; and
  - 7.5 if not already a Bank, appoints the Agent and Security Trustee to act as its agent and its trustee as provided in the Loan Agreement and Security Documents.
- 8 The Transferor:
- 8.1 warrants that it has taken all necessary action to authorise execution of this Transfer Certificate and that it has obtained all necessary approvals and consents for it to enter into and perform its obligations under this Transfer Certificate; and

- 8.2 agrees that it will, at the Transferee's expense, execute any documents which the Transferee reasonably requests for perfecting in any relevant jurisdiction the Transferee's title under this Transfer Certificate or for a similar purposes.
- 9 None of the Transferor, the Agent and Security Trustee or the Banks:
- 9.1 makes any representations or warranty nor assumes any responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of the Loan Agreement or any of the Security Documents or any document relating thereto;
- 9.2 owes any responsibility for the financial condition of the Borrower, or any other party to the Loan Agreement or any of the Security Documents or any such other document or for the performance and observance by the Borrower or any other party to the Loan Agreement or any of the Security Documents or any such other document (save as otherwise expressly provided therein) and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded (except as aforesaid).
- 10 The Transferor and the Transferee each undertake that it will on demand fully indemnify the Agent and Security Trustee in respect of any claim, proceeding, liability or expense which relates to or results from this Transfer Certificate or any matter connected with or arising out of it.
- 11 The Transferee hereby gives notice that nothing in this Transfer Certificate nor in the Loan Agreement or any of the Security Documents (or any document relating thereto) shall oblige the Transferee to:
- 11.1 accept a re-transfer from the Transferee of the whole or any part of its rights, benefits and/or obligations under the Loan Agreement and the Security Documents transferred pursuant hereto; or
- 11.2 support any losses directly or indirectly sustained or incurred by the Transferee for any reason whatsoever including, without limitation, the non-performance by the Borrower or any other party to the Loan Agreement or any Security Document (or any document relating thereto) of its obligations under any such document.
- The Transferee hereby acknowledges the absence of any such obligation as referred to in 11.1 or 11.2.
12. The agreement and undertakings of the Transferee in this Transfer Certificate are given to and for the benefit of and made with each of the other parties to the Agreement.
13. This Transfer Certificate shall be governed by, and construed in accordance with, the laws of Scotland.

Agreed in its own right and as Agent and Security Trustee for itself and on behalf of the other Parties to the Agreement.

By:

Dated:

### Schedule to Transfer Certificate

Undrawn Commitment	Outstanding Advances	Participation Transferred (per cent)
--------------------	----------------------	---

£

### Administrative Details of Transferee

Lending Office:•

Account for Payment: •

Telephone:•

Facsimile:•

Attention:•

## **Part 9**

### **Agency and Security Trustee Provisions**

#### **1. Responsibility of the Agent and Security Trustee**

- 1.1 The Agent and Security Trustee shall have those duties, obligations and responsibilities in relation to this Agreement as may be agreed between the Banks and which shall be notified to the Borrower on the appointment of the Agent and Security Trustee as agent of the Banks.
- 1.2 The Agent and Security Trustee shall not be responsible to any other party for:
- (a) the execution, authenticity, validity, enforceability or adequacy of this Agreement or any other document;
  - (b) the sufficiency or accuracy of any representations, warranties or statements made in or in connection with this agreement or any other document;
  - (c) whether or not amounts payable under this Agreement are actually paid (when due or without limitation otherwise); or
  - (d) any other failure of any other person to perform its respective obligations under this Agreement or any other document.
- 1.3 The Agent and Security Trustee may:
- (a) rely on any original or copy of any notice, document or signature believed by it to be authentic;
  - (b) rely on any statement made by any person regarding any matters which may reasonably be assumed to be within his knowledge; and
  - (c) select, engage, pay for (whether or not engaged by it) rely on lawyers, accountants, surveyors, or other professional advisers and shall not be liable to the Borrower for any consequences of such reliance.

#### **2. The Position of the Agent and Security Trustee**

The Agent and Security Trustee may:

- 2.1 carry on any banking or other business with the Borrower;
- 2.2 act as agent or trustee for or in relation to any financing involving the Borrower;
- 2.3 retain for its own account any fees, profits or other remuneration payable to it as Agent and Security Trustee under this Agreement or in relation to any of the above matters.

### 3. **Liability**

Neither the Agent and Security Trustee nor any director, officer, employee, attorney or agent of the Agent and Security Trustee shall be liable to any other person for any action taken or not taken by it or them under or in connection with this Agreement, unless caused by its or their negligence or wilful misconduct.

### 4. **Indemnities**

- 4.1 Each Bank shall forthwith on demand indemnify the Agent and Security Trustee for its proportion (rateably according to the Banks' respective participation in Advances or, if none, their respective Commitments or, if all Commitments have been cancelled, their most recent respective Commitments, each at the date of demand) of any liability, loss, cost or expense incurred by or imposed on or claimed from the Agent and Security Trustee in any way relating to or arising out of its acting as the Agent and Security Trustee except to the extent that the liability loss or expense arises from the Agent and Security Trustee's gross negligence or wilful misconduct on its part of its normal administrative costs and expenses.
- 4.2 The Borrower shall forthwith on demand reimburse each Bank (including the Agent and Security Trustee, in its capacity as a Bank) for any payment made by it under paragraph (1) above. The liability of the Borrower shall not be limited on affected by paragraph (1) above.

### 5. **Compliance**

The Agent and Security Trustee shall not be obliged to do anything which would or might, in its opinion, be contrary to any law, regulation or official directive or request of any jurisdiction or render it liable to any person and may do anything which, in its option, is necessary or desirable to comply with any such law, regulation, directive or request. Without limitation, the Agent and Security Trustee need not disclose any information relating to the Borrower if disclosure would or might, in the opinion of the Agent and Security Trustee, be contrary to any duty of secrecy or confidentiality or otherwise render it liable to any person.

### 6. **Changes of Agent and Security Trustee**

The Agent and Security Trustee may resign (without stating any reason) as agent and/or as security trustee by giving notice to the Banks and the Borrower in which case the Agent and Security Trustee may forthwith appoint as successor agent or (as the case may be) security trustee any Affiliate of the Agent and Security Trustee.

## Part 10

### Controls Matrix

#### Project Agreement

Clause/ Paragraph	Discretion	Not act without consent of the Agent	Act on instructions of the Agent	Notify and consult with Agent before acting
4.1	Ancillary Documents: take any action under Clauses 4.1.1 to 4.1.4 (inclusive)	X		
11.3	Change of Board Representative			X
11.8	Change of Project Co Representative			X
17.7	Reviewable Design Data			X
18.7	Right to Open Up –Refer to Dispute Resolution			X
19.4	Progress of the Works Programme			X
19.5	Notification of Early Completion			X
24.2	Fossils and Antiquities			X
29.4	Warning Notices – Rectification Plan			X
39.4	Change in Law			X
41.4	Delay Event			X
44.3.2	Project Co Event of Default - Project Co Remedy		X	

Clause/ Paragraph	Discretion	Not act without consent of the Agent	Act on instructions of the Agent	Notify and consult with Agent before acting
44.7	Replacement of a non-performing Sub Contactor	X		
45.2	Board Events of Default – Project Co's Options	X		
50.2	Assignment	X		
50.8	Seek prior written consent for Change in Control			X
<b>Schedule</b>				
Part 10				
6.2	Review Procedures – Variations		X	
Part 22				
Section 1, 3.2	Variations – Project Co Response	X		

Clause/ Paragraph	Discretion	Not act without consent of the Agent	Act on instructions of the Agent	Notify and consult with Agent before acting
<b>RGL Guarantee</b>				
9	Non Competition	X		

## FM Agreement

Clause	Discretion	Not exercise the discretion without consent of the Agent	Act on instructions of the Agent	Notify and consult with Agent before acting
4.3	Project Agreement Obligations			X
7.2.1	Pursuit of Project Co Entitlement under the Project Agreement (written request to Board)			X
7.2.3	Project Co shall not without the consent of the Contractor compromise/waive any entitlement under the Project Agreement	X		
7.3	Notice of Dispute Resolution			X
7.3.5	The Contractor shall not without the consent of Project Co waive/compromise any claim being pursued by it against the Board	X		
17.3	Amendments/substitution of Method Statements			X
28.11	Review of 5 year Maintenance Plan	X		
31.11	Indemnity Contractor as a result of loss suffered due to the Board's actions	X		
35.6	Payment – Disputed Amounts			X
35.6.2	Dispute Resolution re Disputed Amounts	X		

Clause	Discretion	Not exercise the discretion without consent of the Agent	Act on instructions of the Agent	Notify and consult with Agent before acting
35.6.3	Dispute Resolution re Disputed Amounts	X		
11.4	Project Co's Representative			X
50.3	Contractor Subcontracting Services			X
40.20	Project Co Variation	X		
42.9	Notice of Force Majeure	X		
42.10	Notice of Relief Event/Event of Force Majeure	X		
44.3	Notice by Project Co to Terminate Agreement	X		
54.2.1	Notice of Prohibited Act Termination Notice	X		
58	Amendment or Waiver to FM Contract	X		

Clause	Discretion	Not exercise the discretion without consent of the Agent	Act on instructions of the Agent	Notify and consult with Agent before acting
Appendix 5				
6	Review of the Lifecycle Maintenance Programme	X		
6.6.2	Pay out of the Lifecycle Account	X		
6.8	Review/account review on Termination – pay out	X		

## Construction Contract

Clause	Discretion	Not exercise the discretion without consent of the Agent	Act on instructions of the Agent	Notify and consult with Agent before acting
	<b>Appendix 1 to the Construction Contract</b>			
11.3	Employers Representative			X
17.4	Thermal Energy Efficiency			X
18.3	Right to Open Up			X
20.3	Independent Tester			X
24	Discovery – Fossils and Antiquities			X
26	Damages for Delay			X
30.3.4	Withholding Notice			X
36.5	Contractor Failure to Maintain Insurance			X
39.4	Relevant Change in Law			X
39.8	General Change in Law			
40	Variations – Compliance with Variation procedure. Part 22 of the Schedule	X		
41	Delay Events			X

Clause	Discretion	Not exercise the discretion without consent of the Agent	Act on instructions of the Agent	Notify and consult with Agent before acting
43	Force Majeure	X		
44.3	Options Re Contractor's Default		X	
46.1	Notice of Termination re Force Majeure	X		

## Part 11

### Form of Verification Certificate

To: The Governor and Company of the Bank of Scotland as Agent

Date:

Attention:

cc:

Attention:

Certification No •

Application No •

Borrower: Robertson Health (Gartnavel) Limited

Address for payment: •

Lender: Bank of Scotland

Consultant: Davis Langdon

Project: Gartnavel Hospital

Loan Agreement: [£ ]

Date of Receipt of Application: •

Date of Inspection of Works by Banks Technical Adviser for the purposes of this certificate:

This Verification Certificate is delivered to you in your capacity as Agent pursuant to the above Agreement between, amongst others, Robertson Health (Gartnavel) Limited as Borrower and you as Agent. Terms defined in that Agreement have the same meaning in this Certificate. Terms defined in the Construction Contract shall have the same meaning in this Certificate.

In accordance with the terms of the Construction Contract there has been forwarded to us a copy of an application for a Verification Certificate (**the Application**) for payment delivered to the Borrower pursuant to Clause [ ] of the Construction Contract.

We confirm that we are satisfied:

1. Compliance with Budget

The Cumulative Gross Construction Costs to this Period Ending •, including this Application No •:

- 1.1 do not exceed the maximum cumulative amount of the Gross Construction Costs for the Facilities to this Period Ending • as shown in Schedule [2] of the Construction Contract;
- 1.2 have been incurred in relation to items specified in relation to this Period Ending • in the Construction Programme; and
- 1.3 have been incurred in the following manner:

	£
A. Value of Works executed BUT NOT including the items mentioned at 2 below	
B. Value of other works:	
(i) Various	
(ii) [Maintenance Programme]	
(iii) [Other]	
C. Value of total Application	
D. Deduct Retention at [ ]%	
E. Deduct total amount previously verified for payment	
F. AMOUNT OF THIS CERTIFICATE £• (EXCLUDING VAT)	
G. We certify the sum of £• Pounds Sterling only	

In accordance with the terms of the Loan Agreement

Signed: .....

Date

For and on behalf of Davis Langdon

1. VALUE ADDED TAX £

£ at Standard Rate 17.5% =

at Zero Rate \_\_\_\_\_

Total VAT Payable \_\_\_\_\_

2.

FUNDING SHORTFALL	AMOUNT
NO/YES (Delete as applicable)	

3.

Reasonable Prospect that Completion Date achievable by Longstop Date
NO/YES (Delete as applicable)

4. Aggregate amount certified

The aggregate amount of Construction Costs certified in this and all previous certificates is £•.

The aggregate amount of Construction Costs to this Period Ending •, as shown in Part 2 of the Schedule of the Construction Contract [specify] is £•.

The amount by which the cumulative amount of certified Construction Costs is less/more than the aggregate amount of Construction Costs to this Period Ending •, as shown in Part 2 of the Schedule of the Construction Contract [specify] is £•.

This relates to the following construction Programme phases/  
events/activities schedule for Periods Ending:

Phase/Event/Activity	Period Ending	Reference in Bank Technical Adviser report

## Part 12

### Form of Compliance Certificate

To: BOS as Agent

From: Robertson Health (Gartnavel) Limited

Dated:

Dear Sirs

Robertson Health (Gartnavel) Limited - Loan Agreement among the Governor and Company of the Bank of Scotland as a Bank, the Agent, the Account Bank and the Security Trustee, Robertson Health (Gartnavel) Limited and Robertson Health (Gartnavel) Holdings Limited dated • 2005 (**the Loan Agreement**):

1. We refer to the Loan Agreement. This is a Compliance Certificate given under Clause 11.2.10 of the Loan Agreement. Terms defined in the Loan Agreement have the same meaning when used in this Compliance Certificate.
2. We confirm that:
  - 2.1 the Debt Service Cover Ratio as at the most recent Reference Date and as at the immediately preceding Reference Date is [ ], [ ] and [ ] respectively;
  - 2.2 the Loan Life Cover Ratio as at the most recent Reference Date is [ ];
  - 2.3 the forecast Debt Service Cover Ratio as at the immediately succeeding Reference Date is [ ]; and
  - 2.4 the forecast Loan Life Cover Ratio as at each future Reference Date until the Maturity Date is as set out in the attached schedule.
3. We confirm that no Event of Default or Potential Event of Default has occurred or is continuing.

..... Director  
For and on behalf of Robertson  
Health (Gartnavel) Limited

..... Director  
For and on behalf of Robertson  
Health (Gartnavel) Holdings Limited

**[Schedule]**