

**PART 11 OF THE SCHEDULE**

This is Part 11 of the Schedule comprising the Collateral Agreements referred to in the Project Agreement relating to the design, financing and construction of, and the provision of services at Gartnavel Royal Hospital

between

**Greater Glasgow Health Board**

and

**Robertson Health (Gartnavel) Limited**

THIS AGREEMENT is made

AMONG:

- (1) **GREATER GLASGOW HEALTH BOARD** of Gartnavel Royal Hospital, 1055 Great Western Road, Glasgow (the "**Board**")
- (2) **THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND** acting through its office at New Ueberior House, 11 Earl Grey Street, Edinburgh EH3 9BN in its capacity as Agent and Security Trustee for and on behalf of the Senior Funders (the "**Senior Funders**")
- (3) **ROBERTSON CONSTRUCTION CENTRAL LIMITED**, a company incorporated under the laws of Scotland with registered number SC249933, whose registered office is at 10 Perimeter Road, Pinefield Industrial Estate, Elgin, Moray IV30 6AE (the "**Contractor**"); and
- (4) **ROBERTSON HEALTH (GARTNAVEL) LIMITED**, a company incorporated under the laws of Scotland with registered number SC271565, whose registered office is at 10 Perimeter Road, Pinefield Industrial Estate, Elgin, Moray IV30 6AE ("**Project Co**").

WHEREAS:

- (A) The Board and Project Co have agreed the terms on which Project Co will design, develop and construct and operate the Facilities and, accordingly, have entered into the Project Agreement and the Project Documents.
- (B) By the Funding Agreements, the Funders have agreed to make available certain credit facilities to Project Co, for the purpose of financing the performance of Project Co's obligations under the Project Agreement and the Project Documents.
- (C) The Contractor has entered into the Construction Contract with Project Co.
- (D) This Agreement is the "**Contractor's Collateral Agreement**" contemplated by the Project Agreement.

NOW IT IS AGREED as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, the following terms shall, unless the context otherwise requires, have the following meanings:-

"Ancillary Documents"	means the documents defined as such in the Project Agreement
"Business Day"	means a day other than a Saturday, Sunday or a bank holiday in Scotland
"Construction Contract"	has the meaning given in the Project Agreement

"Event of ProjectCo Default"	has the meaning given to "Employer Event of Default" in the Construction Contract
"Funders Construction Direct Agreement"	means the agreement dated on or around the date hereof among Project Co, the Contractor and the Senior Funders
"Novation Effective Date"	means the date of performance of the obligations by the Proposed Substitute set out in Clause 4.5.2
"Parent Company Guarantee"	has the meaning given in the Construction Contract
"Project Agreement"	means the Project Agreement dated on or around the date hereof between (1) the Board and (2) Project Co
"Proposed Novation Date"	has the meaning given in Clause 4.1
"Proposed Novation Notice"	has the meaning given in Clause 4.1
"Proposed Step-in Date"	has the meaning given in Clause 3.1
"Proposed Substitute"	has the meaning given in Clause 4.1
"Security Documents"	has the meaning given to it in the loan agreement forming one of the Senior Funders Agreements
"Step-in Date"	means the date of issue of the Step-in Undertaking
"Step-in Notice"	has the meaning given in Clause 3.1
"Step-in Period"	<p>means the period commencing on the Step-in Date and ending on the earliest of:-</p> <p>(a) the date of the first anniversary of the Step-in Date (but subject always to Clause 4.7);</p> <p>(b) the Step-out Date;</p> <p>(c) the Novation Effective Date; and</p> <p>(d) termination of the Construction Contract under Clause 3.3</p>
"Step-in Undertaking"	has the meaning given in Clause 3.2.4
"Step-out Date"	has the meaning given in Clause 3.4.1
"Termination Notice"	has the meaning given in Clause 2.3.1

## 1.2 Interpretation

Save to the extent that the context or the express provisions of this Agreement otherwise require:-

- 1.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.2 all references to Clauses are references to Clauses of this Agreement;
- 1.2.3 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.2.4 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.2.5 any reference to time of day shall be a reference to Edinburgh time;
- 1.2.6 the words "herein", "hereto" and "hereunder" refer to this Agreement as a whole and not to the particular Clause in which such word may be used;
- 1.2.7 words importing the singular include the plural and vice versa;
- 1.2.8 words importing a particular gender include all genders;
- 1.2.9 "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;
- 1.2.10 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- 1.2.11 references to "Party" means a party to this Agreement and references to "Parties" shall be construed accordingly;
- 1.2.12 all monetary amounts are expressed in pounds sterling;
- 1.2.13 references to the word "includes" or "including" are to be construed without limitation;
- 1.2.14 the obligations of any Party under this Agreement are to be performed at that Party's own cost and expense.

- 1.3 terms used in this Agreement that are defined in the Project Agreement or the Ancillary Documents shall have the meanings given to them in the Project Agreement or the Ancillary Documents, as appropriate.

## 2 WARRANTIES, TERMINATION NOTICE AND BOARD TERMINATION

### 2.1 Contractor's Warranties and Undertakings

The Contractor warrants and undertakes to the Board that it has complied with and fulfilled and shall continue to comply with and fulfil its duties and obligations arising under or by virtue of the Construction Contract, provided that the Board shall only be entitled to make a claim against the Contractor under this Clause 2.1 if the Project Agreement has terminated and shall not be entitled to do so during the Step-in Period or after the Construction Contract has been novated under Clause 4.

### 2.2 Liability of Contractor

Any liability arising from any claim for breach of the warranty under or pursuant to Clause 2.1 shall be in addition to and without prejudice to any other present or future liability of the Contractor to the Board (including, without prejudice to the generality of the foregoing, any liability in negligence) and shall not be released, diminished or in any other way be affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Board by any person nor by any action or omission of any person whether or not such action or omission might give rise to an independent liability of such person to the Board provided always that the Contractor shall owe no greater duties or obligations to the Board under this Agreement than it owes or would have owed to Project Co under the Construction Contract.

### 2.3 Termination Notice

2.3.1 The Contractor undertakes not to terminate the Construction Contract on account of an Event of Project Co Default without first giving the Board not less than 25 Business Days prior written notice specifying the ground for that termination. Subject to Clause 2.3.2 below any such notice, other than one given in circumstances where there is no default under the Construction Contract by Project Co or the Contractor, shall be a "Termination Notice".

2.3.2 Where the Contractor's right to terminate is subject to the terms of the Funders' Construction Direct Agreement then the Contractor shall notify the Board of the same as soon as reasonably practicable upon becoming aware of the provisions of the Funders' Construction Direct Agreement applying. Thereafter as soon as the Contractor becomes entitled to terminate the Construction Contract free from the constraints contained in the Funders' Construction Direct Agreement, whether upon the expiry of the Step-in Period (as such term is defined in the Funders' Construction Direct Agreement) or otherwise, then the Contractor undertakes to the Board not to terminate the Construction Contract on account of an Event of Project Co Default (whether occurring before or after the Contractor's right to

terminate the Construction Contract was free from the constraints of the Funders' Construction Direct Agreement) without first giving the Board not less than fifteen (15) Business Days' prior notice specifying the grounds for that termination and noting that the Contractor's right of termination is not subject to the Funders' Construction Direct Agreement. Any such notice, other than one given in circumstances where there is no default under the Construction Contract by Project Co or the Contractor, shall for the purposes of this Agreement also be a Termination Notice and the provisions of this Agreement shall apply accordingly.

2.3.3 Notwithstanding any provision of the Construction Contract to the contrary, on termination of the Project Agreement by the Board, the Parties agree that the Construction Contract shall not come to an end except in accordance with the terms of this Agreement.

2.3.4 the Board acknowledges that it shall not be entitled to exercise its rights under Clauses 3 (*Step-in and Step-out*) and 4 (*Novation*):

2.3.4.1 until the Agent has consented in writing; or

2.3.4.2 until the Senior Funders have released their security over the Construction Contract; or

2.3.4.3 until the Senior Funders have confirmed to the Board in writing that they have no further claims or interest in the claims of Project Co or any Substitute Entity (as such term is defined in the Funders' Construction Direct Agreement) against the Contractor whether pursuant to the Security Documents, the Construction Contract or the enforcement of any rights under the Security Documents or the Funders' Construction Direct Agreement.

### 3 STEP-IN AND STEP-OUT

#### 3.1 Step-in Notice

3.1.1 If the Board has terminated the Project Agreement in accordance with the terms of the Project Agreement or if the Board has received a Termination Notice, then subject to the provisions of this Agreement, the Board may give written notice to the Contractor (a "**Step-in Notice**") of the intention of the Board to issue a Step-in Undertaking on a specified date (the "**Proposed Step-in Date**") provided that such Proposed Step-In Date shall be:

3.1.1.1 no later than five (5) Business Days after termination of the Project Agreement where this has been terminated by the Board; and

3.1.1.2 no earlier than the date falling 5 days prior to the date of expiry of the Termination Notice and no later than the date of expiry of the Termination Notice where a Termination Notice has been given by the Contractor.

The Board shall provide a copy of any Step-in Notice to the Senior Funders at the same time as the Step-in Notice is given to the Contractor.

- 3.1.2 Unless the Contractor otherwise consents, only one Step-in Notice may be given during the period of this Agreement. Subject to Clause 5.1 below, the Contractor shall not be entitled to terminate the Construction Contract until after the Proposed Step-in Date.

### 3.2 Notice of Obligations and Step-in Undertaking

- 3.2.1 Within 3 Business Days of receipt of any Step-in Notice, the Contractor shall give written notice to the Board of any sums of which the Contractor has actual knowledge which are due and payable but unpaid by Project Co and of any other material obligations or liabilities, of which the Contractor has actual knowledge, which should have been performed or discharged by Project Co under the Construction Contract, in each case, as at the date of the Step-in Notice.

- 3.2.2 The Contractor shall inform the Board in writing as soon as reasonably practicable of:-

- 3.2.2.1 any change in such sums, obligations or liabilities referred to in Clause 3.2.1; and

- 3.2.2.2 any further sums, obligations or liabilities thereafter falling due and payable but unpaid or falling due for performance or discharge and unperformed or undischarged (as the case may be);

in each case of which the Contractor has actual knowledge, before the Step-in Date.

- 3.2.3 The Contractor shall give the Board the information referred to in Clauses 3.2.1 and 3.2.2 in good faith and may not give any further notifications pursuant to Clause 3.2.2 less than 2 Business Days prior to the Proposed Step in Date. The Board shall not be required to assume any liability under a Step-in-Undertaking for any outstanding obligations and/or liabilities of Project Co to the Contractor which are not notified to the Board pursuant to Clauses 3.2.1 or 3.2.2.

- 3.2.4 Not later than the Proposed Step-in Date the Board shall decide if it is prepared to issue a Step-in Undertaking. If it does so decide, the Board shall promptly give the Contractor written notification of such decision and, at the same time, provide a copy of such notification to the Senior Funders. Subject to the prior performance by the Senior Funders of their obligations under Clause 3.2.5, the Board shall deliver to the Contractor on the Proposed Step-in Date, a written undertaking in form and substance agreed with the Contractor (both the Board and the Contractor acting reasonably) (the "Step-in Undertaking"), incorporating a Clause in terms similar to Clause 11 but only to the extent that there will not be double counting of default interest accruing under the Construction Contract and this Agreement) and undertaking to the Contractor:-

3.2.4.1 to pay or procure the payment to the Contractor, within 15 Business Days of demand by the Contractor, of any sum due and payable but unpaid by Project Co to the Contractor under the Construction Contract before the Step-in Date and which has been notified by the Contractor to the Board in accordance with Clause 3.2.1 or 3.2.2;

3.2.4.2 to perform or discharge or procure the performance or discharge of, any unperformed or undischarged obligations of Project Co under the Construction Contract which shall have fallen due for performance or discharge before the Step-in Date and which have been notified by the Contractor to the Board in accordance with Clause 3.2.1 and 3.2.2 within such period as the Contractor may reasonably require;

3.2.4.3 to pay or procure the payment of any sum due and payable by Project Co under the Construction Contract which arises during the Step-In Period or arises as a result of any act or omission occurring during the Step-in-Period (but subject to Clauses 3.4 and 4.5.2.2) but not, to avoid doubt, any sum due in respect of any Services provided before the Step-in-Date; and

3.2.4.4 to perform or discharge or procure the performance or discharge of any obligations of Project Co under the Construction Contract which arise during the Step-In Period or arise as a result of any act or omission occurring during the Step-in-Period (but subject to Clauses 3.4 and 4.5.2.2) but not, to avoid doubt, to perform discharge or to procure the performance or discharge of any obligations in respect of any services provided before the Step-in-Date.

3.2.5 Following notification of the Board's decision pursuant to Clause 3.2.4, the Senior Funders shall, on or before the Proposed Step-in Date, take whatever action is necessary unconditionally and irrevocably to release the Construction Contract and the Parent Company Guarantee from the security constituted by the Security Documents.

3.2.6 Upon release of the Parent Company Guarantee in accordance with Clause 3.2.5, Project Co shall immediately assign all its rights and powers under the Parent Company Guarantee to the Board in accordance with Clause 7 of the same.

3.2.7 If the Board shall not have issued a Step-in Undertaking on or before the Proposed Step-in Date the Step-in Notice shall be deemed to have been withdrawn and the rights and obligations of the Parties shall be construed as if the Step-in Notice had not been given.

### **3.3 Restriction of Right of Termination**

During or in respect of the Step-in Period, the Contractor confirms to the Board that it shall continue to observe and perform its duties and obligations under the



Construction Contract and shall, without prejudice to Clause 5.1, only be entitled to exercise its rights of termination under the Construction Contract:-

- 3.3.1 by reference to an Event of Project Co Default arising during the Step-in Period, provided that no event of default by Project Co under the Project Agreement (whether resulting in termination of the Project Agreement or otherwise, and notwithstanding that it has occurred during the Step-in Period) shall entitle the Contractor to exercise such rights of termination during the Step-in Period; or
- 3.3.2 if the Board fails to pay when due any amount owed to the Contractor or to perform or discharge when falling due for performance or discharge any obligation under the Step-in Undertaking or fails to procure such payment or performance or discharge; or
- 3.3.3 if such rights of termination arise in circumstances where there is no default under the Construction Contract by the Board or the Contractor.

#### 3.4 Step-Out

- 3.4.1 The Board may, at any time, give the Contractor at least 30 days prior written notice to terminate the Step-in Period on a date specified in the notice (the "Step-out Date").
- 3.4.2 The Board shall give the Contractor at least 60 days prior written notice that subject to Clause 4.4.1 the Step-in Period will end due to the occurrence (subject to Clause 4.7) of the first anniversary of the Step-in Date;

provided that:-

3.4.2.1 The Board has performed and discharged in full or procured the performance or discharge in full of any obligations of Project Co under the Construction Contract in relation to the maintenance of records and the provision of reports during the Step-in Period so as to permit the Contractor to monitor the performance of Project Co's other obligations under the Construction Contract; and

3.4.2.2 all liability under the Step-in Undertaking pursuant to any claims made up to the date specified in either Clause 3.4.1 or Clause 3.4.2 (as the case may be) shall have been fully and unconditionally discharged;

the Board shall be released from the Step-in Undertaking on the expiry of the Step-in-Period in accordance with Clause 3.4.1 or 3.4.2. Such release shall not affect the continuation of Project Co's obligations towards the Contractor under the Construction Contract.

### 3.5 Senior Funders

The Senior Funders are a party to this Agreement solely for the purposes of taking the benefit of their rights under Clause 2.3.4 and Clause 3 and Clause 4, subject to Clauses 3.2.5, 4.5.1, 7.2.1 and 12.1 shall have no rights or obligations or liabilities hereunder.

## 4 NOVATION

### 4.1 Proposed Substitute

At any time that the Board is entitled to give a Step-in Notice pursuant to Clause 3.1 or at any time during the Step-in Period the Board may give notice (a "Proposed Novation Notice") to the Contractor that it wishes itself or another person (a "Proposed Substitute") to assume, by way of sale, transfer or other disposal, the rights and obligations of Project Co under the Construction Contract and specifying a date (the "Proposed Novation Date")

4.1.1 falling not later than 15 Business Days after termination of the Project Agreement until this has been terminated by the Board;

4.1.2 falling not later than the expiry of the Termination Notice where a Proposed Novation Notice is given by the Board at a time when it is entitled to give a Step-in Notice pursuant to Clause 3.1; and

4.1.3 falling not later than 28 days after the date of the Proposed Novation Notice, where a Proposed Novation Notice is given during the Step-in Period

The Board shall provide a copy of any Proposed Novation Notice to the Senior Funders at the same time as the Proposed Novation Notice is given to the Contractor. Save as provided for in Clause 4.4, only one Proposed Novation Notice may be given during the period of this Agreement. Without prejudice to Clauses 3.3 and 5, the Contractor shall not be entitled to terminate the Construction Contract during the notice period specified in a Proposed Novation Notice.

### 4.2 Information for Consent to Novation

If the Proposed Novation Notice specifies the Board as the Proposed Substitute, the Contractor's consent to the novation shall be deemed to have been given automatically. Where the Proposed Substitute is not the Board, a novation in accordance with a Proposed Novation Notice shall only be effective if the Contractor consents to that novation in writing in accordance with Clause 4.3 and the Board shall (as soon as practicable) supply the Contractor with the following information:-

4.2.1 the name and registered address of the Proposed Substitute;

4.2.2 the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;

4.2.3 the names of the directors and the secretary of the Proposed Substitute;

- 4.2.4 details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- 4.2.5 the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Construction Contract.

#### 4.3 Grant of Consent

The Contractor may only withhold or delay consent to a novation where the Proposed Substitute is not the Board and the Board has failed to show to the Contractor's satisfaction (acting reasonably) that:-

- 4.3.1 the Proposed Substitute has the legal capacity, power and authorisation to become a party to and perform the obligations of Project Co under the Construction Contract; and
- 4.3.2 the technical competence and financial standing of and the technical and financial resources available to, the Proposed Substitute are sufficient to perform the obligations of Project Co under the Construction Contract;

The Contractor shall notify the Board in writing, within 5 days of the later of receipt of a Proposed Novation Notice and all information required under Clause 4.2, as to whether or not it has decided to grant such consent (together with an explanation of its reasons if it has decided to withhold its consent) and, at the same time, provide a copy of the same to the Senior Funders.

#### 4.4 Consent withheld

If, in accordance with Clause 4.3, the Contractor withholds its consent to a Proposed Novation Notice the Board shall be entitled to give one or more subsequent Proposed Novation Notices, pursuant to the provisions of Clause 4.1, containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which (where the replacement Proposed Substitute is not the Board) the Board has good cause to believe would fulfil the requirements of Clauses 4.3.1 and 4.3.2, provided that only one Proposed Novation Notice may be outstanding at any one time; and provided further that

- 4.4.1 where a Step-in-Notice has not been issued, any revised Proposed Novation Date shall be a date falling no later than the date specified in Clauses 4.1.1 and 4.1.2 as appropriate; and
- 4.4.2 if the Proposed Novation Notice was served during the Step-in Period any Revised Proposed Novation Date shall be a date falling not later than 28 Business Days after the date of the Revised Proposed Novation Notice.

## 4.5 Implementation of Novation

4.5.1 If the Contractor consents to a novation pursuant to a Proposed Novation Notice (whether automatically or otherwise) then on the Proposed Novation Date and without prejudice to Clause 5:-

4.5.1.1 following such notification and in the absence of any prior release in accordance with Clause 3.2.5, the Senior Funders shall, on or before the Proposed Novation Date, take whatever action is necessary unconditionally and irrevocably to release the Construction Contract and the Parent Company Guarantee from the security constituted by the Security Documents; and

4.5.1.2 upon release of the Parent Company Guarantee in accordance with Clause 4.5.1.1, Project Co shall immediately assign all its rights and powers under the Parent Company Guarantee to the Board;

and on the Proposed Novation Date and without prejudice to Clause 5.1:-

4.5.1.3 subject to the prior performance by the Senior Funders and Project Co of their respective obligations under Clause 4.5.1.1 and 4.5.1.2 the Proposed Substitute shall become a party to the Construction Contract in place of Project Co and, thereafter, shall be treated as if it was and had always been named as a party to the Construction Contract in place of Project Co; and

4.5.1.4 the Contractor and Project Co and the Proposed Substitute shall enter into a novation agreement (the "**Novation Agreement**") and any other requisite agreements, in form and substance satisfactory to the Contractor (acting reasonably), pursuant to which

- (i) the Proposed Substitute shall be granted all of the rights of Project Co under the Construction Contract (including those arising prior to the end of the Step-in Period);
- (ii) subject to the Contractor giving to the Proposed Substitute within five (5) Business Days of receipt of the Proposed Novation Notice such notice as is referred to in Clause 3.2.1 and to the provisions of Clauses 3.2.2 and 3.2.3, *mutatis mutandis*, the Proposed Substitute shall assume all of the obligations and liabilities of Project Co under the Construction Contract (including those arising prior to the end of any Step-in Period and those arising during the period of the Proposed Novation Notice);

provided that the Contractor will not be in breach of any of its obligations under this Agreement if the Proposed Substitute does not enter into one or other of such agreements.

4.5.2 On and after the Novation Effective Date:-

4.5.2.1 the Contractor shall owe its obligations under the Construction Contract (whether arising before, on or after such date) to the Proposed Substitute and the receipt, acknowledgement or acquiescence of the Proposed Substitute shall be a good discharge; and

4.5.2.2 if the Board shall have entered into a Step-in Undertaking, the Board shall be released from the Step-in Undertaking, provided that:-

4.5.2.2.1 all obligations of the Board under the Step-in Undertaking which have accrued up to the Novation Effective Date and are identifiable as at that date shall have been fully and unconditionally discharged; and

4.5.2.2.2 the Board has performed and discharged in full or procured to perform and discharge in full the obligations of Project Co under the Construction Contract in relation to the maintenance of records and the provision of reports during the Step-In-Period up to the Novation Effective Date so as to permit the Contractor to monitor the performance of Project Co's other obligations under the Construction Contract.

4.5.3 The Board and the Contractor shall use all reasonable endeavours to agree and the Board shall use reasonable endeavours to procure that the Proposed Substitute agrees any amendments to the Construction Contract necessary to reflect the fact that the Project Agreement may have terminated at the time of the Novation Effective Date.

#### **4.6 Termination After Novation**

After the Novation Effective Date the Contractor shall only be entitled to exercise its rights of termination under the Construction Contract:

4.6.1 in respect of any Event of Project Co Default arising after that date in accordance with the Construction Contract; or

4.6.2 if the Proposed Substitute does not discharge the obligations and liabilities assumed by it under Clause 4.5.2.2 which relate to matters arising prior to the end of the Step-in Period, within 15 Business Days of following the Novation Effective Date.

#### **4.7 Expiry of Step-In Period**

As at the date of the first anniversary of the Step-in Date if the Step-in-Period has not previously ended and:-

4.7.1 the Board shall be in the course of conducting discussions in good faith with a Proposed Substitute (the novation to whom has been approved by the Contractor whether automatically or otherwise in accordance with Clause

4.3) the Step-in Period shall be extended and shall continue until such date as is proposed by the Board and agreed by the Contractor; or

- 4.7.2 a contract has been entered into between the Board and a Proposed Substitute (which has been approved by the Contractor in accordance with Clause 4.3) as at such date.

The Step-in Period shall not expire but shall continue until the date such contracts are completed, provided that such date shall not be later than 30 days after exchange.

## **5 RIGHTS AND OBLIGATIONS UNDER THE CONSTRUCTION CONTRACT**

### **5.1 Rights of Termination**

If:-

- 5.1.1 no Step-in Notice or Proposed Novation Notice is given before a Termination Notice expires; or
- 5.1.2 a Step-in Undertaking is not issued on the Proposed Step-in Date; or
- 5.1.3 the Step-in Notice is withdrawn or, pursuant to Clause 3.2.7, deemed to have been withdrawn; or
- 5.1.4 the Step-in Period ends other than on the occurrence of the Novation Effective Date; or
- 5.1.5 in the absence of a Step-in Undertaking, the Contractor withholds its consent to a novation pursuant to a Proposed Novation Notice, in accordance with Clause 4.3 and does not subsequently grant consent to a novation in accordance with Clause 4.4 on or before the Proposed Novation Date; or
- 5.1.6 in the absence of a Step-in Undertaking, the obligations of the Proposed Substitute set out in Clauses 4.5.1.2 and 4.5.1.3 are not performed on the date required by Clause 4.5.1; or
- 5.1.7 the Contractor is entitled to terminate the Construction Contract under Clause 4.6; or
- 5.1.8 the Board exercises its right to step-out under Clause 3.4.1,

the Contractor shall be entitled to:-

- 5.1.9 exercise all of its rights under the Construction Contract and act upon any and all grounds for termination available to it in relation to the Construction Contract whenever occurring; and/or
- 5.1.10 pursue any and all claims and exercise any and all rights and remedies against Project Co.

## **5.2 Project Co's Obligations to Continue**

Until completion of a Novation pursuant to Clause 4.5 (unless the terms of such Novation expressly preserves any obligation or liability of Project Co), Project Co shall continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Construction Contract notwithstanding:-

- 5.2.1 the service of a Step-in Notice or the issue of a Step-in Undertaking or the expiry of the Step-in Period or the release of a Step-in Undertaking; or
- 5.2.2 the service of a Proposed Novation Notice; or
- 5.2.3 any other provision of this Agreement.

## **6 REVOCATION OF NOTICES**

A Termination Notice and a Step-in Notice may each be revoked (in writing to the recipient) by the Party giving them before the expiry of their respective notice periods. Upon any such revocation, the rights and obligations of the Parties shall be construed as if the relevant notice had not been given.

## **7 ASSIGNATION**

### **7.1 Binding on Successors and Assignees**

This Agreement shall be binding on and shall enure to the benefit of the Parties and their respective successors and permitted assignees. In the case of the Board, its successors shall include any person to which the Scottish Ministers, in exercising their statutory powers to transfer property, rights and liabilities of the Board upon the Board ceasing to exist, transfers the rights and obligations of the Board under this Agreement.

### **7.2 Restriction on Assignment**

No Party shall assign or transfer any part of its respective rights or obligations under this Agreement without the prior consent of the others (such consent not to be unreasonably withheld or delayed), provided that:-

- 7.2.1 The Senior Funders may assign or transfer their rights and obligations to a successor trustee of the Senior Funders under the Senior Funders Agreements without the consent of any other Party and this Clause 7.2 shall not prevent any Senior Funder (as defined in the Project Agreement) assigning or transferring its rights under the Senior Funders Agreements and the Security Documents in accordance with the terms of the Senior Funders Agreements; and
- 7.2.2 (Other than in respect of any grant or enforcement of any of the Security Documents to or by Senior Funders) Project Co shall not assign this Agreement to any party other than a party to whom ProjectCo's interest in the Project Agreement is assigned in accordance with the terms of the Project Agreement;

- 7.2.3 the Board shall be entitled, without the consent of any other Party, to transfer all its rights and obligations hereunder, to any person to whom it assigns or otherwise disposes of the benefit of the Project Agreement in accordance with Clause 50 of the Project Agreement, and otherwise with Project Co and the Contractor's consent (not to be unreasonably withheld or delayed)
- 7.2.4 nothing in this sub-clause shall restrict the rights of the Scottish Ministers to effect a statutory transfer;
- 7.2.5 the Contractor shall assign this Agreement to any party to whom it assigns the Construction Contract (in accordance with the terms of that agreement).

## 8 CONFIDENTIALITY

- 8.1 The Parties shall be bound to observe, *mutatis mutandis*, the terms of Clause 52 of the Construction Contract with respect to any information or document referred to in Clause 52 of the Construction Contract which shall come into its possession pursuant to this Agreement.
- 8.2 The Contractor agrees that the Board shall be entitled to disclose the terms of this Agreement to the Scottish Ministers and HM Treasury and that the Board shall be free to use and disclose such information on such terms and in such manner as the Scottish Ministers and/or HM Treasury see fit.

## 9 NOTICES

### 9.1 Address

Except as otherwise stated, all notices or other communications required in connection with this Agreement shall be in writing and sent by hand, by first class prepaid post or by facsimile transmission to the relevant address or facsimile number set out below or to such other address or facsimile number as a Party may notify to the others in writing by not less than five Business Days' prior notice.

### 9.2 Effective receipt

Subject to Clause 9.3:-

- 9.2.1 a letter delivered by hand shall be effective when it is delivered to the addressee;
- 9.2.2 a letter sent by first class prepaid post shall be deemed received on the second Business Day after it is put in the post; and
- 9.2.3 a facsimile transmission shall be effective upon completion of transmission.



### 9.3 Timing

No notice or other communications received on a day which is not a Business Day or after 5pm on any Business Day in the place of receipt shall be deemed to be received until the next following Business Day.

If to the Board:                   NHS Greater Glasgow Primary Care Division  
Division Headquarters  
Gartnavel Royal Hospital  
1055 Great Western Road  
Glasgow  
G12 0XH  
For Attention of Head of Estates Property Management  
Fax: 0141 211 3790

If to the Senior Funders   The Governor and Company of the Bank of Scotland  
New Usher House  
11 Earl Grey Street  
Edinburgh  
EH3 9BN  
For Attention of Chris Solley  
Fax: 0131 659 0591

If to the ProjectCo           Robertson Capital Projects Limited  
Lomond Court  
Castle Business Park  
Stirling  
FK9 4TU  
For Attention of Finance Director  
Fax: 01786 431 650

If to the Contractor       Robertson Construction Central Limited  
10 Perimeter Road  
Pinfield Industrial Estate  
Elgin  
IV30 6AE  
For the attention of Company Secretary  
Fax: 01786 431650

## 10 PAYMENTS AND TAXES

### 10.1 Payments

All payments under this Agreement to any Party shall be made in pounds sterling by electronic transfer of funds for value on the day in question to the bank account of the recipient (located in the United Kingdom) specified to the other Parties from time to time.

## **10.2 VAT**

10.2.1 All amounts stated to be payable by any Party under this Agreement shall be exclusive of any VAT properly payable in respect of the supplies to which they relate.

10.2.2 Each Party shall pay any VAT properly payable hereunder in respect of any supply made to it under this Agreement, provided that it shall first have received a valid tax invoice in respect of that supply which complies with the requirements of Part III VAT (General) Regulations 1985.

## **10.3 Deductions from payments**

All sums payable by a Party to any other Party under this Agreement shall be paid free and clear of all deductions or withholdings whatsoever in respect of taxation, save as may be required by Law.

## **11 DEFAULT INTEREST**

Each Party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not made on the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment.

## **12 AUTHORITY**

12.1 The Senior Funders represent and warrant to and undertake to each of the Board, the Contractor and Project Co that the Senior Funders are duly authorised by each of the Senior Funders (as defined in the Project Agreement) to assume the obligations expressed to be assumed by it under this Agreement and to undertake on behalf of each Senior Funder (as defined in the Project Agreement) in the terms of this Agreement so as to bind each Senior Funder (as defined in the Project Agreement) as if it were a Party.

12.2 The Board shall not be obliged to make any enquiry as to the authority of the Senior Funders in doing any act or entering into any document or making any agreement under or in connection with this Agreement.

## **13 EXPIRY**

The rights of the Senior Funders under this Agreement shall be extinguished upon the repayment by Project Co of all sums due and owing to the Senior Funders by Project Co under the Senior Funders Agreements or where the Construction Contract is terminated.

## **14 AGGREGATE LIABILITY**

Notwithstanding any other provision of this Agreement, the Contractor's aggregate liability from time to time under this Agreement and the Construction Contract shall not at any time exceed its maximum liability as stated in the Construction Contract (as amended or varied).

## **15 AGENCY**

### **15.1 No Delegation**

No provision of this Agreement shall be construed as a delegation by the Board of any of its statutory authority to any other Party.

### **15.2 No Agency**

Save as otherwise provided in this Agreement, no other Party shall be or be deemed to be an agent of any other Party nor shall any Party hold itself out as having authority or power to bind other Parties in anyway.

### **15.3 Independent Contractor**

The Parties shall, at all times, be independent contractors and nothing in this Agreement shall be construed as creating any partnership between the Parties or any relationship of employer and employee between the Parties.

## **16 WHOLE AGREEMENT**

16.1 This Agreement (when read together with the Project Agreement, the Construction Contract, the Parent Company Guarantee and the Funders' Construction Direct Agreement and the Funders Direct Agreement) contains or expressly refers to the entire agreement between the Parties with respect to the specific subject matter of this Agreement and expressly excludes any warranty, condition or other undertaking implied at Law or by custom and supersedes all previous agreements and understandings between the Parties with respect thereto and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this Agreement.

16.2 Nothing in this Agreement is intended to or shall operate so as to exclude or limit any liability for fraud or fraudulent misrepresentation.

## **17 WAIVER**

Failure by any Party at any time to enforce any provision of this Agreement or to require performance by the other Parties of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part of it or the right of the relevant Party to enforce any provision in accordance with its terms.

**18 SEVERABILITY**

If any condition, Clause or provision of this Agreement not being of a fundamental nature, is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected thereby.

**19 COSTS AND EXPENSES**

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

**20 AMENDMENTS**

No amendment to this Agreement shall be binding unless in writing and signed by the duly authorised representatives of the Parties.

**21 GOVERNING LAW AND JURISDICTION**

**21.1 Law**

This Agreement shall be governed by and construed in all respects in accordance with the laws of Scotland.

21.2 Jurisdiction

The Parties each submit to the jurisdiction of the Scottish courts as regards any claim or matter arising in relation to this Agreement.

IN WITNESS WHEREOF this Agreement consisting of this page and the preceding        pages is executed as follows:

EXECUTED for and on behalf of  
GREATER GLASGOW HEALTH BOARD

at  
on the                      day of                      2005  
by

.....  
Authorised Signatory  
and

.....  
Authorised Signatory Name

.....  
Authorised Signatory

.....  
Authorised Signatory Name

EXECUTED for and on behalf of  
THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND

at  
on the                      day of                      2005  
by

.....  
Authorised Signatory

.....  
Authorised Signatory Name

in the presence of this witness

.....  
Witness

.....  
Witness Name

.....

.....

.....

Witness Address

EXECUTED for and on behalf of  
ROBERTSON HEALTH (GARTNAVEL) LIMITED

at  
on the                      day of                      2005  
by

.....  
Director  
in the presence of this witness

.....  
Witness

.....  
Witness Name

.....

.....

.....  
Witness Address

EXECUTED for and on behalf of  
ROBERTSON CONSTRUCTION CENTRAL LIMITED

at  
on the                      day of                      2005  
by

.....  
Director  
in the presence of this witness

.....  
Witness

.....  
Witness Name

.....

.....

.....  
Witness Address