

PART 34 OF THE SCHEDULE
INSURANCE PROCEEDS ACCOUNT AGREEMENT

This is Part 34 of the Schedule comprising the Insurance Proceeds Account Agreement referred to in the Project Agreement for the design, financing, construction of, and the provision of services at Gartnavel Royal Hospital

between

Greater Glasgow Health Board

and

Robertson Health (Gartnavel) Limited

DATED _____

(1) Greater Glasgow Health Board

(2) Robertson Health (Gartnavel) Limited

(3) The Governor & Company of the Bank of Scotland as Account Bank

(4) The Governor & Company of the Bank of Scotland as Security Trustee

JOINT INSURANCE PROCEEDS ACCOUNT AGREEMENT

CONTENTS

Clause		Page
1	Definitions and Interpretation	2
2	Insurance Proceeds Account	3
3	Receipts and Payments	4
4	General Provisions for the Insurance Proceeds Account	4
5	Qualifying Bank	5
6	Charges	6
7	Mandates	6
8	The Account Bank	6
9	Acknowledgements by the Account Bank	8
10	Assignment	8
11	Security Trustee	9
12	Further Assurance	9
13	Amendments	9
14	Notices	9
15	Miscellaneous	10
16	Governing Law and Jurisdiction	10
17	Third Party Rights	11

THIS AGREEMENT is made

AMONG:

- (1) **ROBERTSON HEALTH (GARTNAVEL) LIMITED** a company incorporated under the laws of Scotland (registered number SC271565) and having its registered office at 10 Perimeter Road, Pinefield Industrial Estate, Elgin, Moray IV30 6AE (the "**Issuer**");
- (2) **GREATER GLASGOW HEALTH BOARD** of Gartnavel Royal Hospital, 1055 Great Western Road, Glasgow (the "**Board**");
- (3) **THE GOVERNOR & COMPANY OF THE BANK OF SCOTLAND**, acting through its office at New Uberior House, 11 Earl Grey Street, Edinburgh EH3 9BN, as account bank pursuant to the Loan Agreement forming one of the Senior Finance Documents (the "**Account Bank**"); and
- (4) **THE GOVERNOR & COMPANY OF THE BANK OF SCOTLAND**, acting through its office at New Uberior House, 11 Earl Grey Street, Edinburgh EH3 9BN, as security trustee for the Finance Parties as defined in the Loan Agreement forming one of the Senior Finance Documents (the "**Security Trustee**").

WHEREAS

- (A) The Issuer and the Board have agreed to open an insurance proceeds account in their joint names pursuant to an agreement for the construction and operation of an acute psychiatric care hospital at Gartnavel Hospital (the "**Project Agreement**").
- (B) The parties hereto have agreed to set out the terms on which payments may be made to or from that account in this Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

In this agreement unless the context otherwise requires:

"Account Holders"	has the meaning given in Clause 2.1;
"Credit Provider"	means the Senior Funders;
"Event of Default"	means an Event of Default and an Enforcement Event (each as defined in the Funders' Direct Agreement);
"Insurance Account"	means a bank account opened by the Issuer with the Security Trustee, the details of which are more particularly described in the Senior Finance Documents;
"Senior Finance Documents"	means the Senior Funders Agreements;
"Security Documents"	means as defined in the Senior Funders Agreements.

1.1 Capitalised terms defined in the Project Agreement shall have the same meaning in this Agreement.

1.2 **European Economic and Monetary Union**

In the event that the United Kingdom joins EMU any figures expressed in "£" and "sterling" under this Agreement shall be converted into Euro at the rate for conversion of sterling into Euro established by the Council of the European Union pursuant to the Treaty (including compliance with rules relating to rounding in accordance with European Community regulations) and any reference to a figure in "£" or "Sterling" shall mean that figure adjusted into Euro.

2 **INSURANCE PROCEEDS ACCOUNT**

2.1 Each of the Issuer and the Board (together the "Account Holders") hereby appoint The Governor and Company of the Bank of Scotland as the Account Bank.

2.2 The Account Bank has opened on its books, at its office at New Uberior House, 11 Earl Grey Street, Edinburgh, an account in the joint names of the Account Holders designated the Board Insurance Proceeds Account (the "Insurance Proceeds Account").

2.3 The Account Bank shall, save as otherwise provided herein, maintain the Insurance Proceeds Account in accordance with its usual practices, provided that, in the event of any conflict between the provisions of this Agreement and any applicable mandate, the provisions of this Agreement shall prevail.

2.4 Notwithstanding anything else in this Agreement, no person shall request or require that any withdrawal be made from the Insurance Proceeds Account if it would cause the Insurance Proceeds Account to become overdrawn.

2.5 Where any withdrawal required under this Agreement cannot be made in its entirety, the Account Bank shall promptly notify both of the Account Holders of that fact and provide details of the payment not made, the date on which it should have been made and enquire whether there is to be an alternative request for payment.

2.6 Each amount from time to time standing to the credit of the Insurance Proceeds Account shall bear interest at the rate agreed between the Account Bank and the Account Holders from time to time, such interest to be credited to the Insurance Proceeds Account in respect of which such interest has accrued in accordance with the relevant mandate.

2.7 Subject to and in accordance with the provisions of this Agreement, including without limitation Clause 4 (General Provisions for the Insurance Proceeds Account), the Account Bank agrees that it shall make such payments out of the amount standing to the credit of the Insurance Proceeds Account as may from time to time be requested by the Account Holders jointly subject to the restrictions as contained in this Agreement. Save as otherwise provided in this Agreement, no party shall be entitled to require the Account Bank to make, and the Account Bank shall not make, any payment out of the amount standing to the credit of the Insurance Proceeds Account.

- 2.8 Subject to Clause 8.6, the Account Holders shall maintain the Insurance Proceeds Account with the Account Bank until the termination of the Project Agreement. If so instructed after the termination of the Project Agreement, the Account Bank shall, at the sole cost and expense of the Issuer, terminate the Insurance Proceeds Account in accordance with the relevant instructions and pay any amount standing to the credit of such accounts as the Account Holders may elect in accordance with Clause 4.1.

3 RECEIPTS AND PAYMENTS

- 3.1 The Insurance Proceeds Account may only be used in accordance with the terms of and for the purposes set out in this Clause 3.
- 3.2 The Insurance Proceeds Account shall be used for receiving, to the extent required by Clause 36 of the Project Agreement, the proceeds of all Insurances (as defined in the Project Agreement).
- 3.3 Subject to restrictions set out in this Agreement, the Insurance Proceeds Account shall only be used for applying the proceeds of the Board Insurances in accordance with Clause 36 of the Project Agreement either directly or indirectly by way of the reimbursement to the Issuer of costs or expenses incurred or monies paid by it (or on its behalf) in or towards satisfaction of the reinstatement restoration or replacement requirements of that Clause. In the event that any amount standing to the credit of the Insurance Proceeds Account is not so required to be applied, such amount shall (subject to Clause 4.3 and 4.5 below) be paid by the Account Bank to the Insurance Account, or as otherwise instructed by the Security Trustee pursuant to Clause 4.5 below.

4 GENERAL PROVISIONS FOR THE INSURANCE PROCEEDS ACCOUNT

- 4.1 Subject to Clauses 4.3 and 4.5 below, and provided that:
- 4.1.1 the Account Bank has received notice in writing from two signatories, one of which shall be an authorised signatory of the Issuer and the other an authorised signatory of the Board, as listed under the applicable mandate that such payment is authorised under this Agreement; and
- 4.1.2 no notice has been given to the Account Bank by the Credit Provider prior to the making of such payment or transfer of an Event of Default which is subsisting and the Account Bank has no actual notice that an Event of Default will occur as a result of the making of any such payment or transfer,

the Account Bank agrees that it shall only make payments or transfers from the Insurance Proceeds Account on the request of the Account Holders.

4.2

4.2.1 The Board undertakes to provide notice to the Account Bank as prescribed in Clause 4.1.1 for the purposes of applying any part of the balance standing to the credit of the Insurance Proceeds Account in accordance with Clause 3.3.

4.2.2 Each of the Account Bank and the Issuer shall be entitled to treat any act of the authorised signatory of the Board as being expressly authorised by the Board and neither the Account Bank nor the Issuer shall be required to determine whether an express authority has in fact been given.

4.3 No payments or transfers from the Insurance Proceeds Account shall be made after an Event of Default which is continuing until the Credit Provider has confirmed to the Account Bank that such payment or transfer may be made except as expressly permitted under this Agreement. The Account Bank shall not be under any obligation to investigate the compliance of any payment with this Agreement.

4.4 All amounts withdrawn from the Insurance Proceeds Account for transfer to another account or for application in or towards making a specific payment or meeting a specific liability shall be transferred to that other account or applied in or towards making that payment or meeting that liability, and for no other purpose.

4.5 Notwithstanding any other provision of this Agreement, at any time following the occurrence of any Event of Default which is continuing and has not been waived or remedied, the Security Trustee may at any time give notice to the Account Bank instructing it to act on its instructions or at its request in place of the Issuer in relation to any sums at any such time standing to the credit of the Insurance Proceeds Account. Without prejudice to the foregoing, the Account Bank agrees that it shall pay any amount standing to the credit of the Insurance Proceeds Account and payable to the Issuer in accordance with Clause 3.3 to such a bank account as the Security Trustee shall direct following the occurrence of any Event of Default. The Account Bank agrees that it shall not so act and shall act on the instructions of the Security Trustee in place of the Issuer.

4.6 In establishing the balance standing to the credit of the Insurance Proceeds Account at any time, the Account Bank may take into account credits to and withdrawals from such Insurance Proceeds Account which are to be made on such day.

5

QUALIFYING BANK

If at any time the Account Bank ceases to be a Qualifying Bank, the Account Holders shall promptly open or cause to be opened a new account with a Qualifying Bank on the same terms as the Insurance Proceeds Account and the Account Holders shall take all such action as may be required to open the new account.

6 CHARGES

The charges of the Account Bank (if any) for the operation of the Insurance Proceeds Account shall be for the account of the Account Holders jointly and severally and may be debited from the balance standing to the credit of the Insurance Proceeds Account as from time to time agreed between the Account Bank, the Board and the Issuer.

7 MANDATES

Each of the Account Holders will deliver to the Account Bank on or prior to the date hereof the applicable mandate together with authorised signature lists for both the Issuer and the Board.

8 THE ACCOUNT BANK

8.1 The Account Bank may:

- 8.1.1 engage and pay reasonable fees for the advice or services of any lawyers, accountants or other experts whose advice or services may to it seem necessary, expedient or desirable and rely upon any advice so obtained;
- 8.1.2 rely upon any communication or document believed by it to be genuine and, in particular, rely upon any notice, request or other communication of the Account Holders for the purposes of this Agreement if such notice, request or other communication purports to be signed or sent by or on behalf of each of an authorised signatory of the Account Holders;
- 8.1.3 assume that no Event of Default has occurred unless it has actual notice to the contrary; and
- 8.1.4 assume that all conditions for the making of any payment out of the amount standing to the credit of the Insurance Proceeds Account which is specified in the Project Agreement or any of the Senior Finance Documents has been satisfied, unless it has actual notice to the contrary.

8.2 Notwithstanding anything to the contrary expressed or implied herein and subject to Clause 2 (Insurance Proceeds Account), the Account Bank shall not:

- 8.2.1 be bound to enquire as to the occurrence or otherwise of an Event of Default be affected by notice of any of the same except by reason of and to the extent expressly provided in this Agreement;
- 8.2.2 be bound to account to any other party hereto for any sum or the profit element of any sum received by it for its own account;
- 8.2.3 save as provided in this Agreement, be bound to disclose to any other person any information relating to any other party hereto;

- 8.2.4 be under any fiduciary duty towards any other party hereto or under any obligations other than those for which express provision is made in this Agreement;
 - 8.2.5 have any responsibility to ensure that the information set out in any instructions received by it hereunder are correct or to check or enquire as to or otherwise be affected by whether any condition has been or will be met or fulfilled or any instruction is properly given on behalf of the person from whom it purports to be given or any instruction is given properly other than to exercise the bankers duty of care; or
 - 8.2.6 have any responsibility to any party if any instruction which should be given by the Account Holders to the Account Bank under or in connection with this Agreement is for any reason not received by the Account Bank or is not made at the time it should be made.
- 8.3 The Account Bank does not have and does not accept any responsibility for the accuracy and/or completeness of any information (other than statements provided in accordance with Clause 9.2) and the Account Bank shall not be under any liability as a result of taking or omitting to take any action in relation to the Insurance Proceeds Account, save in the case of negligence or wilful misconduct or breach of its obligations under this Agreement.
- 8.4 Each of the other parties hereto agrees that it will not assert or seek to assert against any director, officer or employee of the Account Bank any claim it might have against the Account Bank in respect of the matters referred to in Clause 8.3.
- 8.5 The Account Bank may accept deposits from, lend money to, invest in and generally engage in any kind of banking or other business with the Account Holder, the Shareholders and any other party to any of the Project Documents.
- 8.6 The Account Bank may, at any time, (without assigning any reason therefor) notify the Account Holders in writing that it wishes to cease to be a party hereto as Account Bank (a "cessation notice"). Upon receipt of a cessation notice the Account Holders may nominate a Qualifying Bank as a successor to the Account Bank (a "successor Account Bank"). If no such nomination is made before the date specified in the cessation notice as being the date on which the Account Bank wishes to cease to be a party hereto (the "cessation date") (which date shall be a Business Day falling not less than thirty days after the date of delivery of the cessation notice to the Account Holders) then the Account Bank may nominate a Qualifying Bank as successor Account Bank itself.
- 8.7 If a successor Account Bank is nominated under the provisions of Clause 8.6, then on the cessation date, provided the successor Account Bank has executed and delivered to the Account Holders a deed of novation in such form as the Account Holders may require undertaking to become a party to and bound by the terms and conditions of this Agreement and to become a party to such other documents as may be required by the Security Trustee in order to perfect the security created by the Senior Finance Documents:

- 8.7.1 the successor Account Bank shall open on its books at its principal office an account equivalent to that described in Clause 2 and any amounts standing to the credit of the Insurance Proceeds Account shall be transferred to the corresponding one of such account;
- 8.7.2 any reference in the Project Agreement or any Senior Finance Document to the Insurance Proceeds Account shall be deemed to refer to the corresponding account opened pursuant to Clause 8.7.1;
- 8.7.3 the Account Bank shall cease to be a party hereto as Account Bank and shall cease to have any obligation hereunder in such capacity (but without prejudice to any accrued liabilities under this Agreement and its obligations under Clause 8) (but shall remain entitled to the benefit of the provisions of this Clause 8); and
- 8.7.4 the successor Account Bank and each of the other parties hereto shall have the same rights and obligations amongst themselves as they would have had if such successor Account Bank had been an original party hereto as Account Bank.

9 ACKNOWLEDGEMENTS BY THE ACCOUNT BANK

- 9.1 Notwithstanding anything to the contrary in any applicable mandate, the Account Bank hereby waives so far as it may validly and lawfully do so any right it has or may hereafter acquire to combine, consolidate or merge the Insurance Proceeds Account with any other account of the Account Bank, Account Holders or the Security Trustee or any other person or with any liabilities of Account Holders or the Security Trustee or any other person to the Account Bank. In addition, the Account Bank agrees so far as it may validly and lawfully do so that it may not set off, combine, withhold or transfer any sum standing to the credit of the Insurance Proceeds Account in or towards satisfaction of any liabilities to the Account Bank of the Account Holders, the Security Trustee or any other person.
- 9.2 After the date hereof and until the Account Bank has been notified by the Account Holders of the termination of the Project Agreement or until the Account Bank ceases to be a party to this Agreement pursuant to the provisions of Clause 8.7, the Account Bank shall provide each of the Account Holders and the Security Trustee with statements in respect of the Insurance Proceeds Account, such statement to be supplied in accordance with any reasonable request therefor by the Account Holders.

10 ASSIGNATION

The Account Holders may not assign any of their rights under this Agreement or in relation to the Insurance Proceeds Account otherwise than pursuant to the Security Documents or as permitted under the Project Agreement. The Security Trustee may assign its rights under this Agreement to a successor Security Trustee appointed in accordance with Part 9 of the Schedule to the Loan Agreement and shall promptly give notice of any such assignation to the Account Bank. The Account Bank shall not be entitled to novate (except in accordance with Clause 8.7) or assign all or any part of its rights under this Agreement.

11 **SECURITY TRUSTEE**

The Security Trustee is party hereto solely for the purpose of receiving the benefits and exercising the rights specifically allocated to it under the terms of this Agreement.

12 **FURTHER ASSURANCE**

The parties hereto agree that they will co-operate fully to do all such further acts and things and execute any further documents as may be necessary or reasonably desirable to give full effect to the arrangements contemplated by this Agreement, subject to any such party being reimbursed to its satisfaction for any costs, expenses (including VAT) liabilities or fees reasonably incurred by it in the negotiation, preparation or execution of any such further documents.

13 **AMENDMENTS**

The provisions of this Agreement may not be amended (otherwise than in accordance with the terms hereof) except by written agreement between all the parties hereto.

14 **NOTICES**

14.1 Each communication to be made hereunder shall be made in writing and, unless otherwise stated, may be made by facsimile or letter delivered by registered post or courier.

14.2 Any communication or document to be made or delivered by one person to another pursuant to or in connection with this Agreement shall (unless that other person has by ten days' written notice to the other specified another address) be made or delivered to that other person at the address set out below and shall be deemed to have been made or delivered:

14.2.1 (in the case of any communication made by letter) when delivered to that address; or

14.2.2 (in the case of any communication by facsimile) when transmission of such facsimile communication has been received in legible form and receipt has been confirmed,

14.2.3 *provided that* (a) if such communication or document would otherwise be deemed to have been received on a day which is not a Business Day it shall be deemed to have been received on the next subsequent Business Day, (b) if any communication is made or document is delivered to the Security Trustee, such communication or document shall be effective only if the same is expressly marked for the attention of the officer identified as the Security Trustee, as the case may be, below (or such other officer as the Credit Provider or the Security Trustee, as the case may be, shall from time to time specify for this purpose) and (c) if any communication or document is made or delivered to the Account Bank or the Security Trustee, such communication or document shall be effective only when received by the Account Bank, or the Security Trustee.

- 14.3 Notice to the Account Bank at any other office than the address set out below or such substitute address notified in accordance with Clause 14.2 shall not constitute notice to the Account Bank unless agreed in writing by the Account Bank by reference to this Agreement,

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

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 Account Bank The Governor and Company of the Bank of Scotland
New Uberior House
11 Earl Grey Street
Edinburgh
EH3 9BN
For Attention of Chris Solley
Fax: 0131 359 0591

If to the Security Trustee The Governor and Company of the Bank of Scotland
New Uberior House
11 Earl Grey Street
Edinburgh
EH3 9BN
For Attention of Chris Solley
Fax: 0131 359 0591

15 MISCELLANEOUS

- 15.1 Not Used

- 15.2 The obligations of the parties who have executed this Agreement shall not be affected by the fact that not all of the parties hereto have validly executed this Agreement and such obligations shall be binding inter se,

- 15.3 The parties hereto each acknowledge that the Security Trustee when acting hereunder shall be acting in accordance with and subject to the terms of the Subordination Agreement (as defined in the Senior Finance Agreements).

16 GOVERNING LAW AND JURISDICTION

Save to the extent expressly provided in this Agreement, it is expressly declared that no rights shall be conferred under and arising out of this Agreement upon any person who is not a party to this Agreement and, without prejudice to the foregoing generality, there shall not be created by this Agreement a *jus quaesitum tertio* in favour of any person whatsoever.

at _____
on the _____ day of _____ 2005
by _____

Signatory Full Name

Signatory Full Name

at _____
on the _____ day of _____, 2005
by _____

Full Name

Witness Full Name

Witness Address

Executed for an on behalf of
**THE GOVERNOR & COMPANY OF THE BANK OF
SCOTLAND**
as Account Bank
at

on the day of 2005
by

.....
Authorised Signatory
In the presence of this witness

.....
Full Name

.....
Witness

.....
Witness Full Name

.....
Witness Address

Executed for an on behalf of
**THE GOVERNOR & COMPANY OF THE BANK OF
SCOTLAND**
as Security Trustee
at

on the day of 2005
by

.....
Authorised Signatory
In the presence of this witness

.....
Full Name

.....
Witness

.....
Witness Full Name

.....
Witness Address

