

THE SCHEDULE

This is the Schedule referred to in the Project Agreement relating to the design, financing, and construction of, and the provision of services at

the Stobhill Local Forensic Psychiatric Unit

between

Greater Glasgow Health Board

and

Stobhill Healthcare Facilities Limited

THE SCHEDULE PART 1

Definitions and Interpretation

Part 1: Definitions

In this Agreement unless the context otherwise requires:

- "5 Year Maintenance Plan" means the plan, to be prepared by or on behalf of Project Co, for any works for the maintenance or repair of the Facilities, including the renewal or replacement of plant or equipment as necessary, during each five year period for the duration of the Project Term, which shall be updated not later than twenty (20) Business Days prior to the commencement of each Contract Year;
- "Access Protocol" means the protocol in respect of Project Co and any Project Co Parties access to the Facilities as set out in Part 4 of Part 14 of the Schedule;
- "Access Times" means such times as are agreed between the Board and Project Co that Project Co shall be permitted access to particular Functional Areas or Functional Units to carry out the Estate Service pursuant to paragraph 4 of Appendix B of Part 10 to the Schedule;
- "Accessibility Condition" means a state or condition of the relevant Functional Part or the means of access to it which allows all persons who are entitled to enter, occupy or use the relevant Functional Part safely to enter and leave the Functional Part in a manner that is reasonable having regard to the Prescribed Health Function, the Prescribed Operational Function and/or the use of such Functional Part (as the case may be);
- "Accidental Damage" means any damage to the Facilities which if such damage occurred in a facility which was not occupied by patients similar to the patients intended to be accommodated within the Facilities, would reasonably be regarded as having been caused accidentally;
- "Actual Completion Date" means the date on which the Works have been completed in accordance with this Agreement, as such date shall be stated in the Certificate of Practical Completion or, in the event of dispute, as such date may be determined in accordance with the Schedule Part 26 (*Dispute Resolution Procedure*);
- "Actual Liability" has the meaning given in Clause 48.7.3.1 (*Compensation on Termination*);

"Additional De Minimis Amount" has the meaning given in Clause 39.6.1 (*Changes in Law*);

"Additional Permitted Borrowing" means on any date, the amount equal to any amount of principal outstanding under the Senior Funders' Agreements in excess of the amount of principal scheduled under the Senior Funders' Agreements at Financial Close to be outstanding at that date, but only to the extent that:

- (a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and
- (b) in respect of any Additional Permitted Borrowing the Agent is not in material breach of its obligations under Clause 10.4.3 of the Funders Direct Agreement as it applies to such Additional Permitted Borrowing;

and provided further that any such excess amount of principal which is invested as part of any Qualifying Variation shall not be counted as Additional Permitted Borrowing;

"Additional Permitted Borrowing Limit" means an amount equal to:

- (a) 10% of the Original Senior Commitment for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Financing Agreement is reduced to 50% or less of the Original Senior Commitment, and thereafter;
- (b) the higher of:
 - (i) 5% of the Original Senior Commitment; and
 - (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in (a);

"Adjusted Estimated Fair Value of the Agreement" means the Estimated Fair Value of the Agreement adjusted as follows:

- (a) where in respect of any month or part of a month from the Termination Date to the Compensation Date the Post Termination Service Amount is a negative number, the aggregate of all such negative Post Termination Service Amounts shall be set against and shall reduce the Estimated Fair Value of the Agreement (whether or not such amounts have been set off by the Board pursuant to paragraph 3.8 of Part B of the Schedule Part 23);

the aggregate of the following shall be deducted from the Estimated Fair Value of the Agreement;

- (b) the Post Termination Service Amounts actually paid by the Board to Project Co prior to the Completion Date;
- (c) the Tender Costs; and
- (d) amounts that the Board is entitled to set off or deduct,

the aggregate of the following amounts shall be added to the Estimated Fair Value of the Agreement:

- (e) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value of the Agreement is calculated; and
- (f) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in (e);

to the extent that:

- (i) (e) and (f) have not been directly taken into account in calculating the Estimated Fair Value of the Agreement; and
- (ii) the Board has received such amounts in accordance with this Agreement or such amounts are standing to the credit of the Insurance Proceeds Account;

"Adjusted Highest Compliant Tender Price"

means the price offered by the Compliant Tenderer (if any) with the highest tender price, and if no Compliant Tenders are received, zero, adjusted as follows:

- (a) where in respect of any month or part of a month from the Termination Date to the Compensation Date the Post Termination Service Amount is a negative number, the aggregate of all such negative Post Termination Service Amounts shall be set against and shall reduce such highest tender price (whether or not such amounts have been set-off by the Board pursuant to paragraph 3.8 of Part B of the Schedule Part 23);

the aggregate of the following amounts shall be deducted from such highest tender price:

- (b) the Post Termination Service Amounts actually paid by the Board to Project Co prior to the Compensation Date;
- (c) the Tender Costs; and
- (d) amounts that the Board is entitled to set off or deduct,

the aggregate of the following amounts shall be added to such highest tender price:

- (e) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the highest priced Compliant Tender is received; and
- (f) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in (d);

to the extent that:

- (i) (e) and (f) have not been directly taken into account in that Compliant Tender; and
- (ii) the Board has received such amounts in accordance with this Agreement.

"Adverse Law"

means any Change in Law which would if passed into Law have the following effects, and any administrative act of the Government, the Scottish Ministers or any minister of the Crown, department, agency, regulator or other public body or official not amounting to a Change in Law but which has (or would, if made, have) the following effects:

- (a) remove, transfer to another party or otherwise have a material adverse effect upon the Board's legal capacity (or obligation) to perform any of its material obligations in relation to the Project which are material to the interests of Project Co and/or its Funders; or
- (b) amend or repeal (without re-enactment, consolidation or replacement by Law having an equivalent effect) the National Health Service (Residual Liabilities) Act 1996 or the National Health Service (Private Finance) Act 1997;

provided that, in the circumstances referred to in paragraph (a), where a Change in Law would have the effect of transferring the legal capacity or obligation of the Board in relation to such material obligations to a new entity (a "Board Substitute"), the relevant Law shall not be an Adverse Law if:

aa. either:

- (i) the provisions of the Protective Legislation apply to such Board Substitute in full (as applied to the Board as at the date of this Agreement); or

- (ii) the relevant Law has the same effect in relation to the Board Substitute as the Protective Legislation; and

bb. the relevant Law does not otherwise have any adverse material effect on the legal capacity or obligation of the Board Substitute which affects (or could reasonably be expected to affect) the Board Substitute's ability to perform any material obligations owed to Project Co and/or the Funders in relation to the Project which are material to the interests of Project Co and/or its Funders, when compared to the material obligations of the Board under this Agreement;

"Affected Sessions"

means the number of Sessions to be taken into account for the purposes of calculating deductions to be made to the Service Payment in respect of Failure Events as established pursuant to paragraph 2.3 of Part B of Part 2 of the Schedule Part 18;

"Agreed Form"

means the form of that document approved by the parties and signed or initialled for and on behalf of each party for the purposes of identification;

"Agreement"

means this Project Agreement;

"Allowable Expenses"

has the meaning given in Clause 39.7 (*Changes in Law*);

"Ancillary Documents"

means the Construction Contract, the Service Contract and the Performance Guarantees, all as the same may be amended or replaced from time to time;

"Ancillary Rights"

means

- (a) during the period between the Commencement Date and the Actual Completion Date, such rights of passage over, access to and egress from the Site set out in Part 1 to Schedule Part 30; and
- (b) during the Operational Term, such rights of passage over, access to and egress from the Site set out in Part 2 to Schedule Part 30; and

as the same may be varied with the approval of the Board such approval not to be unreasonably withheld (but only insofar as these rights are vested in the Board and are capable of being assigned or granted by the Board to Project Co, whether as a result of any restriction in the Title Deeds or otherwise);

"Annual Service Payment"

means the sum in pounds sterling calculated in accordance with the provisions set out in paragraph 2 of Part 1 of the Schedule Part 18;

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| "APB Distribution" | means for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during the period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period; |
| "Approved List of Contractors" | means a list of Contractors maintained by Project Co with proven skills, qualifications, financial management and operational experience and approved by the Board; |
| "Approved RDD Item" | means an item of Reviewable Design Data which has been returned or has been deemed to have been returned endorsed either "Level A - no comment" or "Level B - proceed subject to amendment as noted" by the Board's Representative pursuant to the provisions of Clause 17.7 (<i>Design, Construction and Commissioning Process</i>) and the Schedule Part 10 (<i>Review Procedure</i>) (provided that in the case of any item of Reviewable Design Data which has been returned or has been deemed to have been returned endorsed "Level B - proceed subject to amendment as noted" Project Co has taken account of the Board's Representative's comments), as such item of Reviewable Design Data may be varied or amended from time to time in accordance with the Schedule Part 22 (<i>Variation Procedure</i>); |
| "Area Weighting Percentage" | means the percentage weighting ascribed to the relevant Functional Area for the purpose of calculating deductions to the Service Payments for Failure Events as set out in Appendix D to the Schedule Part 18; |
| "As Built Drawings" | means the final issue or final revision of each drawing issued by the professional team appointed by the Contractor and/or the Contractor and/or any Sub-Contractor for the purpose of construction as adjusted by the Contractor and/or any Sub-Contractor or any other party carrying out the Works to reflect the practicalities and realities of the construction and the design development processes and the actual construction of the Works; |
| "Associated Companies" | means, in respect of a relevant company, a company which is a Subsidiary, a Holding Company or a company that is a Subsidiary of the ultimate Holding Company of that relevant company, and in the case of Project Co shall include HoldCo and each of the Shareholders, and the term "Associate" shall be interpreted accordingly; |
| "Authorised Person" | has the meaning ascribed to "Authorised Person" in relevant legislation and authorised guidance including but not limited to HTM Guidance Notes. |
| "Available" | means, in respect of the Facilities, or any part of them, compliance with the Availability Conditions and "Availability" shall be construed accordingly; |

"Availability Condition"

means any of the Accessibility Condition, the Safety Condition, the Use Condition, the Prescribed Health Function Condition and the Prescribed Operational Condition;

"Base Case IRR"

means fourteen per cent (14%)

"Base Date"

means 30 June 2005;

"Base Senior Debt Amount"

means:

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from Project Co to the Senior Funders under the Senior Funders' Agreements and in respect of Permitted Borrowing; and
- (b) all amounts including costs of early termination of any interest rate or RPI hedging arrangements and other breakage costs, payable by Project Co to the Senior Funders as a result of a prepayment under the Senior Funders' Agreements and in respect of Permitted Borrowings subject to Project Co and the Senior Funders mitigating all such costs to the extent reasonably possible;

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Amount or the amounts below):

- (i) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (ii) all amounts including costs of early termination of any interest rate or RPI hedging arrangements and other breakage costs, payable by the Senior Funders to Project Co as a result of prepayment of amounts outstanding under the Senior Funders' Agreements and in respect of Permitted Borrowings;
- (iii) any Additional Permitted Borrowing and any interest and Default Interest on such Additional Permitted Borrowing; and
- (iv) all other amounts received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the Board to Project Co as a result of enforcing any other rights they may have;

"Beneficiary"

has the meaning given in Clause 8.3 (*Conduct of Claims*);

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| "Board Additional Works Confirmation" | means the Variation Confirmation issued by the Board's Representative pursuant to paragraph 4.5 of part 1 of the Schedule Part 22 (<i>Variation Procedure</i>) in respect of a Board Additional Works Variation; |
| "Board Additional Works Enquiry" | means a Variation Enquiry issued by the Board's Representative pursuant to paragraph 2.1(c)(ii) of part 1 of the Schedule Part 22 (<i>Variation Procedure</i>); |
| "Board Additional Works Item" | <p>means an item of works affecting the Facilities (being any work of alteration, addition, demolition or extension or any variation in the quality or function of the Facilities) which :</p> <p>(a) is not Maintenance Works or Small Works or work otherwise required to ensure that Project Co complies with its duties under this Agreement; and</p> <p>(b) is to be carried out after the Actual Completion Date,</p> <p>and which is required to comply with a Board Additional Works Variation;</p> |
| "Board Additional Works Variation" | means additional Works initiated by the Board in accordance with the Schedule Part 22 (<i>Variation Procedure</i>) |
| "Board Assets" | means any assets and equipment or other property used by, or on behalf of, the Board or any Board Party; |
| "Board Default Termination Sum" | has the meaning given in paragraph 1.2 of Part A of Schedule 23 (Compensation on Termination); |
| "Board Events of Default" | has the meaning given in clause 45.1 (<i>Board Events of Default</i>); |
| "Board Equipment" | means Group 2 Equipment, Group 3 Equipment and Group 4 Equipment; |
| "Board Non-Clinical Services" | means cleaning, portering, catering and general Board administration; |
| "Board Party" | means any of the Scottish Ministers, the Board's agents, contractors and sub-contractors of any tier and its or their directors, officers and employees and/or other healthcare providers or the Facilities with the authority of the Board but excluding Project Co, any Project Co Party and statutory undertakers and utilities and "Board Parties" shall be construed accordingly; |
| "Board Policies" | means, subject to Clause 32.7 (<i>Exclusion of Board Policies</i>), the policies of the Board contained on the disk annexed to this Agreement as Attachment 1 as amended from time to time; |

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| "Board Service Variation" | means a Service Variation initiated by the Board in accordance with the Schedule Part 22 (<i>Variation Procedure</i>); |
| "Board Service Variation Enquiry" | has the meaning given in paragraph 2.1(c)(iii) of Part 1 of the Schedule Part 22 (<i>Variation Procedure</i>) |
| "Board Works Variation" | means a variation to the Works initiated by the Board in accordance with the Schedule Part 22 (<i>Variation Procedure</i>); |
| "Board Works Variation Confirmation" | means a Variation Confirmation pursuant to paragraph 4.3 of part 1 of the Schedule Part 22 (<i>Variation Procedure</i>) in respect of a Board Works Variation; |
| "Board's Construction Requirements" | means the requirements of the Board set out or identified in Part 3 of the Schedule Part 8 (<i>Construction Matters</i>) as amended from time to time in accordance with the terms of this Agreement; |
| "Board's Cost Share" | has the meaning given in Clause 39.7 (<i>Changes in Law</i>); |
| "Board's Post Completion Commissioning" | means the Board's post-completion commissioning activities to be carried out by the Board in accordance with Clause 23.1 (<i>Post Completion Commissioning</i>); |
| "Board's Representative" | means the person so appointed by the Board pursuant to Clause 11 (<i>Representatives</i>); |
| "Business Day" | means a day other than a Saturday, Sunday or a bank holiday in Scotland; |
| "Capital Cost of the Facilities" | has the meaning given in Clause 39.7 (<i>Changes in Law</i>); |
| "Capital Expenditure" | means capital expenditure (as such term is interpreted in accordance with generally accepted accounting principles in the United Kingdom from time to time); |
| "Category A Failure Event" | means any Failure Event which has been specified as a Category A Failure Event in the Service Level Specifications or a Repeated Rectification Failure Event as defined in Paragraph 4.1 of the Schedule Part 18; |
| "Category B Failure Event" | means any Failure Event which has been specified as a Category B Failure Event in the Service Level Specifications; |
| "Category C Failure Event" | means any Failure Event which has been specified as a Category C Failure Event in the Service Level Specifications; |
| "Category D Failure Event" | means any Failure Event which has either been specified as a Category D Failure Event in the Service Level Specifications or which is specified as a Category E Failure Event but where the Board continues to use the Unavailable Functional Part; |

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| "Category E Failure Event" | means any Failure Event which has been specified as a Category E Failure Event in the Service Level Specifications where the Board does not continue to use the Unavailable Functional Part; |
| "CDM Regulations" | has the meaning given in Part 2 of the Schedule Part 8 (<i>Construction Matters</i>); |
| "Certificate of Commencement" | means the certificate to be issued and delivered by the Board in accordance with Clause 2.2 (<i>Execution and Delivery of Documents</i>); |
| "Certificate of Practical Completion" | means the certificate to be issued by the Independent Tester in accordance with Clause 22.12 (<i>Pre-Completion Commissioning and Completion</i>) in the form set out in the Schedule Part 28 (<i>Certificates</i>); |
| "Change in Control" | means any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (including the control over the exercise of voting rights conferred on that equity share capital or the control over the right to appoint or remove directors); |
| "Change in Law" | means the coming into effect or repeal (without re-enactment or consolidation) in Scotland of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in Scotland in each case after the date of this Agreement; |
| "Clinical Functionality" | <p>means the Unit's capacity for use by the Board or its staff for carrying out the Board's clinical functions. The Board's sign off of the design information listed under items (a) to (j) signifies the Board's agreement that Project Co's Proposals achieve clinical functionality in respect of:</p> <ul style="list-style-type: none"> (a) the following matter as shown on the 1:500 scale site plan AL(00)G02 Revision 'D' in Project Co's Proposals; <ul style="list-style-type: none"> (i) the points of access to and the positioning of roads, footpaths and car parks within the development site and the Facilities; (b) the following matters as shown on the 1:200 scale plans AL(2-)G02 Revision 'T' in Project Co's Proposals; <ul style="list-style-type: none"> (i) the points of access to and within the development site and the building; (ii) the adjacencies and relationships between different wards and administration areas; |

- (iii) the adjacencies and relationships between rooms within the wards, administration areas and recreation block within the Facilities;
- (c) the quality and description of those rooms and spaces shown on the Room Data Sheets and the areas (in square metres) in Project Co's accommodation schedules (reference "SoA - June 2005");
- (d) the location and relationship of equipment, furniture, fittings and user terminals as shown on the 1:50 scale loaded room plans, internal elevations and actual ceiling layouts in respect of:
 - (i) all bed positions;
 - (ii) layouts of rooms to recognise the operational and ergonomic requirements of clinical and non-clinical operations be carried out within the room;
- (e) the location of and inter-relationships between rooms within wards, administration areas and the recreation block as shown on the 1:50 scale drawings;
- (f) the height and arrangement of the eaves and roofline of the building as shown on 1:200 or 1:50 scale elevations and sections AL(00)GO3 Revision 'C', AL(00)GO4 Revision 'C', AL(00)GO6 Revision 'J', AL(00)GO7 Revision 'K', AL(00)GO8 Revision 'E', AL(00)GO9 Revision 'G', AL(00)G15 and AL(00)G16. Revision 'A', AL(00)G10revF, AL(00)G11Rev"D"
- (g) the location and relationships of the security systems within the Facilities as shown on the 1:200scale drawing number PD-DSSR.L(60)-01-xx-01.revC;
- (h) the Roof Access Plan identified in drawing AL(00)G13 Revision 'A' showing the linkage between security of the Facility and access to and from the roof space for maintenance purposes;
- (i) the fire strategy layout as identified in drawing AL(2)GO3 revE;
- (j) the security offered by the louvered window design as shown on drawing LW-1.

but only insofar as each of the matters listed in (a) to (j) above relate to or affect Clinical Use;

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| "Clinical Services" | means management, responsibility, administration and carrying out of the clinical, medical and other care services provided at the Facilities by the Board from time to time and which are not services to be provided by Project Co to the Board under this Agreement; |
| "Clinical Use" | means the use of a room or space to the extent that it is used by the Board or its employees, tenants, agents and/or contractors (but not, to avoid doubt, Project Co staff for carrying out the Clinical Services); |
| "Clinical Waste" | means any waste which consists wholly or partly of: a) human or animal tissue; b) blood or other body fluids; c) excretions; d) drugs or other pharmaceutical products; e) swabs or dressings; f) syringes, needles or other sharp instruments; which unless rendered safe may prove hazardous to any person coming into contact with it and any other waste arising from medical, nursing, dental, pharmaceutical or similar practice, investigation, treatment, care, teaching or research, or the collection of blood for transfusion, being waste which may cause infection to any person coming into contact with it; |
| "Collateral Agreements" | means the Contractor's Collateral Agreement, the Service Providers' Collateral Agreement and the Independent Tester's Collateral Agreement; |
| "Collection Points" | means the points designated by the Board for the collection of Medical Waste for off-site disposal situated on the neighbouring Stobhill General Hospital site.; |
| "Commencement Date" | means the date set out in the Certificate of Commencement; |
| "Commission" or "Commissioning" | means the bringing into use of a piece of Equipment (using all due skill and attention and having due regard to the suppliers' or manufacturers' instructions) such that it will satisfy the Tests on Completion or the Replacement Equipment Commissioning Tests as applicable; |
| "Commissioners" | has the meaning given in Clause 53.3 (VAT); |
| "Commissioning End Date" | means the date by which the parties' commissioning activities are to be completed in accordance with the Final Commissioning Programme; |
| "Compensation Date" | means either: <ul style="list-style-type: none"> (a) if paragraph 3 of Part B of the Schedule Part 23 (<i>Retendering Procedure</i>) applies, the earlier of: <ul style="list-style-type: none"> (i) the date that the New Agreement is entered into; and |

- (ii) the date on which the Board pay the Adjusted Highest Compliant Tender Price to Project Co, or
- (b) if paragraph 4 of Part B of the Schedule Part 23 (*No Rendering Procedure*) applies, the date that the Adjusted Estimated Fair Value of the Agreement has been agreed or determined;

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| "Compensation Event" | has the meaning given in Clause 41 (<i>Delay Events</i>); |
| "Compensation Payment" | has the meaning given in Clause 48.6 (<i>Compensation on Termination</i>); |
| "Competent Person" | has the meaning ascribed to "Competent Person" in relevant legislation and authorised guidance, including but not limited to HTM Guidance Notes; |
| "Completion Date" | means 12 February 2007 or such other date as may be permitted in terms of this Agreement; |
| "Compliant Tender" | means a tender that meets all of the Qualification Criteria; |
| "Compliant Tenderer" | means a tenderer who submits a Compliant Tender; |
| "Consents" | means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorisations required by Law, and all necessary consents and agreements from any third parties (including, without limitation, any Planning Permission), needed to carry out the Project Operations in accordance with this Agreement; |
| "Construction Contract" | means the design and build contract dated the same date as this Agreement between Project Co and the Contractor as amended from time to time in accordance with this Agreement; |
| "Construction Quality Plan" | means the document at Part 8 of the Schedule Part 8 (<i>Construction Matters</i>); |
| "Containers" | means bags and/or containers provided by or for the Board at the Collection Points for the disposal of Medical Waste from the Site for off-site disposal; |
| "Contamination" | means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, water or residue (whether in solid, semi-solid or liquid form or a gas or vapour) and including without limitation genetically modified organisms; |
| "Contingent Funding Liabilities" | means any contingent liabilities of the Shareholders in respect of financial obligations owed to and/or Funders under the Funding Agreements which are triggered as a result of or in relation to the termination of the Agreement; |

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| "Contracting Associate" | means the Contractor, any Service Provider and any other entity which performs on behalf of Project Co any material function in connection with this Agreement or the Project Operations; |
| "Contract Day" | means a period commencing at the start of the first Session of the relevant day and ending at the end of the last Session of the relevant day; |
| "Contract Month" | means a calendar month; |
| "Contract Year" | means the period from the Payment Commencement Date to the following 31 March and subsequently each period of 12 calendar months commencing on 1 April, until the final Contract Year which is the period from 1 April prior to expiry or termination of this Agreement to the Expiry Date or Termination Date; |
| "Contractor" | means Balfour Beatty Construction Limited, registered number SC106247, registered at Dean House, 24 Ravelston Terrace, Edinburgh EH4 3TP engaged by Project Co to carry out the Works and any substitute design and/or building contractor engaged by Project Co as may be permitted by this Agreement; |
| "Contractor's Collateral Agreement" | means the collateral agreement between the Board, Project Co and the Contractor in the form set out in Part 1 of the Schedule Part 11 (<i>Collateral Agreements</i>); |
| "Contractor's Site Manager" | means the manager to be appointed by the Contractor for purposes of supervision of all day-to-day activities on Site; |
| "Contractor's Site Rules" | means the Contractor's rules, applicable on Site to the Board, Project Co, the Contractor and their respective sub-contractors and suppliers of every tier during the construction of the Facilities; |
| "Convictions" | means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) and the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2001 (SI 2001/1192) or any replacement or amendment to those Orders); |
| "Corrupt Gifts Termination Sum" | has the meaning given in paragraph 1.2 of Part D of Schedule Part 23 (<i>Compensation on Termination</i>); |
| "Cumulative Allowable Expenses" | has the meaning given in Clause 39.7 (<i>Changes in Law</i>); |
| "Deemed Liability" | has the meaning given in Clause 48.7.3.2 (<i>Compensation on Termination</i>); |

"Deemed New Agreement"

means an agreement on the same terms and conditions as this Agreement, as at the Termination Date, but with the following adjustments:

- (a) if this Agreement is terminated prior to the Actual Completion Date, then the Long Stop Date shall be extended by a period to allow a New Project Co (had one been appointed) to achieve the Actual Completion Date prior to the Long Stop Date;
- (b) any accrued Service Failure Points and Warning Notices shall be cancelled; and
- (c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date;

"Default Interest"

means any increased margin that is payable to the Senior Funders or which accrues as a result of any payment due to the Senior Funders not being made on the date on which it is due;

"Default Interest Rate"

means 2% over LIBOR;

"Defects"

means any defect or fault in the Works and/or the Facilities (not being a Snagging Matter) which occurs due to a failure by Project Co to meet the Board's Construction Requirements and/or Project Co's Proposals or otherwise to comply with its obligations under this Agreement;

"Delay Event"

has the meaning given in Clause 41.3 (*Delay Events*);

"De Minimis Amount"

has the meaning given in Clause 39.6.1 (*Changes in Law*);

"Design Data"

means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing and/or operation of the Facilities;

"Design Quality Plan"

means the document at Part 8 of the Schedule Part 8 (*Construction Matters*);

"Directive"

means the Acquired Rights Directive EC 77/187;

"Direct Losses"

means, subject to the provisions of Clause 9.1 (*Limits on Liability*), all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;

"Disaster Plan"

means the plan set out in Clause 13.3 (*Disaster Plan*);

"Disclosed Data"

means any Design Data and any other written information, data and documents (including, to avoid doubt, data and documents concerning the Title Deeds and any rights of any person in respect of the Site) made available or issued to Project Co or any Project Co Party in connection with the Project by or on behalf of the Board (or any Board Party) whether before or after the execution of this Agreement;

"Discount Rate"

means a discount rate expressed as $(1 + \text{real base case Project IRR} + \text{Gilt B} - \text{Gilt A}) * (1 + i) - 1$ where:

"real base case project IRR" is the real pre-tax Project IRR as set out in the Base Case at Financial Close;

"i" is the agreed assumed forecast rate of increase in RPI which for the avoidance of doubt is equal to the Bank of England's prevailing long term inflation target;

"Gilt A" is the real yield to maturity on a benchmark government gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Financial Model at Financial Close; and

"Gilt B" is the real yield to maturity on a benchmark government gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Financial Model as on the date of Termination;

"Discriminatory Change in Law"

means any Change in Law the effect of which is to discriminate directly against:

- (a) hospitals whose design, construction, financing and operation are procured by a contract under the PFI (or any similar successor programme) in relation to other similar hospital projects; or
- (b) companies undertaking projects procured by contracts under the PFI (or any similar successor programme) in relation to other companies undertaking similar projects; or
- (c) the Unit in relation to other hospitals; or
- (d) Project Co in relation to other companies,

save that:

- (i) such action shall not be a Discriminatory Change in Law where it is in response to any act or omission on the part of Project Co which is illegal (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);

(ii) such action shall not be deemed to be discriminatory solely on the basis that its effect on Project Co is greater than its effect on other companies; and

(iii) a change in taxes or the introduction of a tax affecting companies generally or a change in VAT shall be deemed not to be discriminatory in any circumstances (to avoid doubt, such changes being given effect in accordance with Clause 23 (*Taxation*);

"Dispute" has the meaning given in paragraph 1 of the Schedule Part 26 (*Dispute Resolution Procedure*);

"Dispute Resolution Procedure" means the procedure set out in the Schedule Part 26 (*Dispute Resolution Procedure*);

"Distribution" means:

(a) whether in cash or in kind, any:

(i) dividend or other distribution in respect of share capital;

(ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;

(iii) payments under the Subordinated Funding Agreements (whether of principal, interest, breakage costs or otherwise);

(iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after the date of this Agreement and was neither in the ordinary course of business nor on reasonable commercial terms; or

(v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms, or

(b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

"Economic Reinstatement Test" means the test carried out pursuant to paragraph 5 of the Funders' Direct Agreement;

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| "EEA" | means from time to time the European Economic Area as created by the Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both of the functions and/or responsibilities of the European Economic Area; |
| "Employee Transfer" | means a relevant transfer of an undertaking in accordance with the Transfer Regulations; |
| "Encumbrance" | means any option, right of pre-emption, pledge, security, interest, lien, charge, mortgage, lease, licence, claim, condition, retention or other encumbrance or restriction whether imposed by agreement, by law or otherwise; |
| "Energy" | means gas, electricity, water and any other form of utility, energy or fuel to be used from time to time at the Facilities; |
| "Equipment" | means Project Co Equipment; |
| "Equipment Schedule" | means the schedule of Equipment for the Facilities set out in Part 13 of the Schedule; |
| "Equity IRR" | means the projected blended rate of return to the Relevant Persons over the Project Term, having regard to Distributions made and projected to be made; |
| "Estate Services" | means the services to be carried out pursuant to the Service Level Specification; |
| "Estimated Fair Value of the Agreement" | means the amount determined in accordance with paragraph 4 of Part B of the Schedule Part 23 (<i>No Retendering Procedure</i>) that a third party would pay to the Board as the market value of the Deemed New Agreement; |
| "Estimated Increased Maintenance Costs" | has the meaning given in Clause 28.7 (<i>Maintenance</i>); |
| "Event" | means an incident or state of affairs which does not meet or comply with the Service Level Specifications but which has not become a Failure Event; |
| "Exclusive Area" | means an area of the Facilities occupied and/or used by patients; |
| "Executive" | has the meaning given to it in the Construction (Design and Management) Regulations 1994 as referred to in Part 2 of the Schedule Part 8 (<i>Construction Matters</i>); |

"Excluded Snagging Matters"

means

- a) Snagging Matters in relation to soft landscaping works which cannot be remedied within 40 Business Days of the issue of the Snagging Notice due to horticultural grounds; and/or
- b) Snagging Matters which require for their completion products of a proprietary nature which are specific to certain suppliers and such suppliers are unable to provide the required products within the requisite 40 day period (subject always to Project Co demonstrating to the Board that it has requested the requisite supplier to provide the required product as soon as reasonably practicable and in any event within five (5) Business Days of the relevant Snagging Matter being identified);

"Exempt Refinancing"

means:

- (a) any Refinancing that was fully taken into account in the calculation of the Service Payments;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters and which are in respect of:
 - (i) breaches of representations and warranties or undertakings;
 - (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Funders' Agreements as at Financial Close;
 - (iii) late or non-provision of information, consents or licences;
 - (iv) amendments to Sub-contracts;
 - (v) approval of revised technical and economic assumptions for financial model runs to the extent required for forecasts under the Funding Agreements);

- (vi) restrictions imposed by the Senior Funders on the dates at which the Senior Debt can be advanced to Project Co under the Senior Funders' Agreements and/or amounts released from the Operating Account during the Drawdown Period each as defined in the Senior Funders' Agreements and which are given as a result of any failure by Project Co to ensure that the construction work is performed in accordance with the agreed construction programme and which is notified in writing by the Senior Funders to the Board prior to being given;
 - (vii) changes to milestones for drawdown and/or amounts released from the ~~Proceeds~~-Operating Account during the Drawdown Period set out in the Senior Funders' Agreements and which are given as a result of any failure by Project Co to ensure that construction work is performed in accordance with the agreed construction programme and which is notified in writing by the Senior Funders to the Board prior to being given;
 - (viii) failure by Project Co to obtain any consent by statutory bodies required by the Senior Funders' Agreements; or
 - (ix) voting by the Senior Funders and the voting arrangements between the Senior Funders in respect of the levels of approval required by them under the Senior Funders' Agreements;
- (d) any amendment, variation or supplement of any agreement (other than any Subordinated Funding Agreement) approved by the Board as part of any Qualifying Variation under this Agreement;
 - (e) any sale of shares in Project Co by the Shareholders or securitisation of the rights and/or interests attaching to shares in Project Co;
 - (f) any sale or transfer of the Subordinated Funders' existing rights and/or interests under the Subordinated Funding Agreements, or securitisation of the Subordinated Funders existing rights and/or interests under the Subordinated Funding Agreements; or
 - (g) any Qualifying Bank Transaction;

"Excusing Cause"

has the meaning given in Clause 8.7 (*Excusing Causes*);

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| "Expert" | means the individual(s) appointed in accordance with the Schedule Part 26 (<i>Dispute Resolution Procedure</i>); |
| "Expiry Date" | means the date on which this Agreement will terminate in accordance with Clause 46.3 (<i>Non-Default Termination</i>); |
| "Extended Snagging Period" | means: <ul style="list-style-type: none"> (a) in relation to soft landscaping works referred to in paragraph (a) of Excluded Snagging Matters, a period commencing on the Actual Completion Date and ending no later than such date as shall be as soon as reasonably practicable in the next planting season; and (b) in relation to matters referred to in paragraph (b) of Excluding Snagging Matters, a period commencing on the Actual Completion Date and ending as soon as reasonably practicable and in any event no later than the date falling 10 Business Days after the date on which such items have been delivered to Project Co; |
| "Facilities" | means the Unit, buildings and other facilities, together with all supporting infrastructure (including the Plant and the Equipment) and amenities located on the Site as required to enable Project Co to comply with its obligations under this Agreement, all as the same may be varied, amended or supplemented from time to time in accordance with this Agreement; |
| "Failure Event" | means <ul style="list-style-type: none"> (a) the failure to rectify an Event within the specified Rectification Time; (b) where in accordance with the Service Level Specifications Project Co is required to take action prior to Rectification (including but not limited to ensuring compliance with the Safety Condition) the failure to take the required action within the period specified in the Service Level Specifications; or (c) a failure to respond to a Service Request within the required Service Response Time or in accordance with any other criteria specified in the Service Level Specifications; |
| "Failure Event Deduction" | means a deduction from a Service Payment made pursuant to paragraph 1.3 and part B of part 2 of the Schedule Part 18 |
| "Failure Event Deduction Percentage" | means the percentage figure attributable to the relevant category of Failure Event as set out in column 4 of the table at Appendix C to the Schedule Part 18; |

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| "Fair Value" | means the amount at which an asset or liability could be exchanged in an arms length transaction between informed and willing parties, other than in a forced or liquidated sale; |
| "Fast Track Dispute Resolution Procedure" | means the procedure referred to in paragraph 6 of the Schedule Part 26 (<i>Dispute Resolution Procedure</i>); |
| "Final Commissioning Programme" | means the programme to be jointly developed and agreed by the Board and Project Co in accordance with the provisions of Clause 22.2 (<i>Pre-Completion Commissioning and Completion</i>); |
| "Financial Close" | means the last date of execution of this Agreement. |
| "Financial Model" | means the computer spreadsheet model for the Project incorporating statements of Project Co's cashflows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model, as amended from time to time in accordance with the terms of Clause 37 (<i>Custody of Financial Model</i>), the output from which at the date of this Agreement is shown at the Schedule Part 19 (<i>Financial Model</i>) and a copy of which is attached to this Agreement on disk as Attachment 2; |
| "Finishes" | means those finishes listed at Table A of the Schedule Part 10; |
| "Force Majeure" | has the meaning given in Clause 43 (<i>Force Majeure</i>); |
| "Force Majeure Termination Sum" | has the meaning given in paragraph 1.2 of Part C of Schedule Part 23 (<i>Compensation on Termination</i>); |
| "Functional Area" | means an area of the Facility specified as such in the Payment Mechanism comprising two or more Functional Units; |
| "Functional Part" | means a Functional Unit or a Functional Area according to the context in which it is used; |
| "Functional Unit" | means a room or space within a Functional Area which is specified as such in the Payment Mechanism; |
| "Funders" | means all or any of the persons who provide financing or funding in respect of the Project Operations under the Funding Agreements including the Senior Funders and, where the context so permits, prospective financiers or funders; |
| "Funders' Direct Agreement" | means the agreement to be entered into between the Board, the Senior Funders and Project Co in the form set out in the Schedule Part 6 (<i>Funders' Direct Agreement</i>); |

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| "Funding Agreements" | means all or any of the agreements or instruments to be entered into by Project Co or any of its Associated Companies relating to the financing of the Project Operations (including the Senior Funders' Agreement, Initial Funding Agreements and any agreements or instruments to be entered into by Project Co or any of its Associated Companies relating to the rescheduling of their indebtedness or any Refinancing); |
| "Funding Shortfall" | has the meaning given in paragraph 2.1 of Part 2 of the Schedule Part 22 (<i>Variation Procedure</i>); |
| "General Procedure" | has the meaning given in paragraph 1 of Part 3 of the Schedule Part 22 (<i>Variation Procedure</i>); |
| "Good Industry Practice" | means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances; |
| "Government" | means the government of the United Kingdom; |
| "Ground Physical and Geophysical Investigation" | means the investigation of all the conditions of and surrounding the Site and of any extraneous materials in, on or under the Site (including its surface and subsoil) to enable the Facilities to be designed and constructed and the Works to be carried out with due regard for those conditions and the seismic activity (if any) in the region of the Site; |
| "Group 1 Equipment" | means the equipment detailed in Part 1 of Part 13 of the Schedule. |
| "Group 2 Equipment" | means the equipment detailed in Part 2 of Part 13 of the Schedule; |
| "Group 3 Equipment" | means the equipment detailed in Part 3 of Part 13 of the Schedule; |
| "Group 4 Equipment" | means the equipment detailed in Part 4 of Part 13 of the Schedule; |
| "H&S Conviction" | has the meaning given in Clause 44.1.6 (<i>Project Co Events of Default</i>); |
| "Handback" | means the return of the Facilities by Project Co to the Board on the Expiry Date in accordance with this Agreement; |
| "Handback Amount" | has the meaning given in the Schedule Part 24 (<i>Handback Procedure</i>); |

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| "Handback Bond" | has the meaning given in the Schedule Part 24 (<i>Handback Procedure</i>); |
| "Handback Certificate" | means the certificate of confirmation that the Facilities comply with the Handback Requirements to be issued by the Board in accordance with the Schedule Part 24 (<i>Handback Procedure</i>); |
| "Handback Procedure" | means the procedure for Handback described in the Schedule Part 24 (<i>Handback Procedure</i>); |
| "Handback Programme" | has the meaning given in the Schedule Part 24 (<i>Handback Procedure</i>); |
| "Handback Requirements" | has the meaning given in the Schedule Part 24 (<i>Handback Procedure</i>); |
| "Handback Retention" | has the meaning given in the Schedule Part 24 (<i>Handback Procedure</i>); |
| "Handback Works" | has the meaning given in the Schedule Part 24 (<i>Handback Procedure</i>); |
| "Health and Safety Regime" | means the Food Safety Act 1990 (and associated regulations), the Health & Safety at work etc Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act 1990, and any similar or analogous health, safety or environmental legislation in force from time to time; |
| "Helpdesk" | means a point of contact by which the Performance Monitoring System as described in the Schedule Part 14, Part 1 Sub-Part E, is operated, carrying out the functions listed in paragraphs 5 to 7 of the Schedule Part 14, Part 1 Sub-Part E; |
| "High Priority Quality Failure" | means a Quality Failure which has been designated a High Priority Failure in the Performance Monitoring System or, if no designation has been made in respect of it, a Quality Failure which constitutes a failure to comply with Law; |
| "HoldCo" | means Stobhill Healthcare Facilities (Holdings) Limited, Registered Number SC275419 and having its Registered Office at Saltire Court, 20 Castle Terrace, Edinburgh EH1 2EN; |
| "Holding Company" | has the meaning given to it in Section 736 of the Company Act 1985, as amended by Section 144 of the Companies Act 1989; |
| "HBN" | means Health Building Notes |
| "HFN" | means Health Facility Notes |
| "HGN" | means Health Guidance Works |

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| "HTM" | means Health Technical Memoranda and each reference to HTM shall be deemed to include a reference to SHTMs as detailed in the Board's Construction Requirements; |
| "HTM Guidance Notes" | means the guidance notes, which form part of the HTM as detailed in the Board's Construction Requirements; |
| "Indemnifier" | has the meaning given in Clause 8.3 (<i>Conduct of Claims</i>); |
| "Indemnity Period" | means the periods specified in paragraph 2.4 of Part 1 of Part 21 of the Schedule and paragraph 2.5 of Part 2 of Part 21 of the Schedule; |
| "Independent Tester" | means the Capita Symonds Limited or such substitute independent tester as may be permitted pursuant to this Agreement; |
| "Independent Tester Contract" | means the contract dated on or about the same date as this Agreement in the form set out in the Schedule Part 15 (<i>Independent Tester Contract</i>) between Project Co, the Board and the Independent Tester, the Contractor and the Senior Funders; |
| "Independent Tester's Collateral Agreement" | means the collateral agreement between the Board, Project Co and the Independent Tester in the form set out in the Schedule Part 11 (<i>Collateral Agreements</i>); |
| "Indirect Losses" | has the meaning given in Clause 9.1 (<i>Limits on Liability</i>); |
| "Initial Funding Agreements" | means those agreements or instruments entered into on or around the date of this Agreement by Project Co or any of its Associated Companies relating to the financing of the Project Operations and in the form that they are in on or around the date of this Agreement in connection with the financing of the Project and as listed in Part 3 of this Part 1 of the Schedule; |
| "Install" or "Installation" | means the placing or fixing in place of a piece of equipment in accordance with Good Industry Practice and having due regard to the suppliers' or manufacturers' instructions and Installation Information; |
| "Installation Information" | means the specific manufacturers' installation information required in connection with an item of equipment; |
| "Insurance Proceeds Account" | means the account numbered 11108620___ in the joint names of Project Co and the Board with the Royal Bank of Scotland plc; |
| "Insurance Proceeds Account Agreement" | means the agreement in the form set out in Part 34 of the Schedule; |
| "Insurance Undertaking" | has the meaning given in the rules from time to time of the Financial Services Authority; |

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| "Insurances" | means, as the context requires, all or any of the insurances required to be maintained by Project Co pursuant to this Agreement; |
| "Intellectual Property" | means all registered or unregistered trade marks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered designs, the <i>sui generis</i> rights of extraction relating to databases, trade secrets and other confidential information or know-how; |
| "Intellectual Property Rights" | means the Intellectual Property which (or the subject matter of which) is created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for the use by or on behalf of or for the benefit of Project Co) for the purposes of the design or construction of the Facilities, the operation, maintenance, improvement and/or testing of the Facilities or the conduct of any other Project Operation or otherwise for the purposes of this Agreement; |
| "Invoice Date" | means, in respect of the Board Default Termination Sum, the Force Majeure Termination Sum or the Corrupt Gifts Termination Sum (as appropriate), the date that is the later of: <ul style="list-style-type: none"> (a) the date which the Board receives an invoice from Project Co for the relevant termination sum; and (b) the date on which the Board receives the supporting evidence required pursuant to paragraph 1.1 of Part E of the Schedule Part 23; |
| "IRR" | means the real internal rate of return on Shareholders' equity and subordinated debt which shall be that rate of return calculated in accordance with the Financial Model at the Commencement Date; |
| "IT" | means information technology systems, hardware and software; |
| "Junior Debt" | means all of the debt as the context requires, to the extent properly incurred by Project Co pursuant to the Subordinated Funding Agreements and which is subordinated to the Senior Debt Amount; |
| "Key Performance Indicator" or "KPI" | means a target indicator by which the Board can measure Project Co performance against in the medium to long term. If performance deviates from the specified performance band Project Co shall provide the Board with an action plan to reverse this performance trend; |
| "Law" | means: |

- (a) any applicable statute or proclamation or any delegated or subordinate legislation;
- (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (c) any applicable guidance, direction or determination with which the Board and/or Project Co is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to Project Co by the Board; and
- (d) any applicable judgement of a relevant court of law which is a binding precedent in Scotland,

in each case in force in Scotland;

"Liaison Committee"

means the committee referred to in Clause 12 (*Liaison*);

"Liaison Procedure"

means the procedure referred to in Clause 12 (*Liaison*);

"LIBOR"

means the rate per annum determined by The Governor and Company of the Bank of Scotland to be the offered rate for six-month sterling deposits in the London interbank market which appears on Telerate Page 3750 (or such other page as may replace that page on the Dow Jones Telerate service);

"Licences"

means the licences granted by the Scottish Ministers Board pursuant to Clause 14.1 and 14.2;

"Liquid Market"

means that there are sufficient willing parties (being at least two parties each of whom is capable of being a Suitable Substitute Contractor) in the market for PFI contracts or similar contracts for the provision of services (in each case the same as or similar to this Agreement) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value providing always that any vehicle that is controlled and established by the Senior Funders specifically for the purposes of this Project and to which this Agreement may be novated shall be discounted in assessing whether there are sufficient willing bidders in the market for such purposes;

"Long Stop Date"

means the date falling 18 months after the Completion Date;

"Low Priority Quality Failure"

means a Quality Failure which has been designated a Low Priority Quality Failure in the Performance Monitoring System or if no designation has been made in respect of it a Quality Failure that may be considered to be routine in nature and which has little affect (taken by itself) on the operation and use of the Hospital and any other Quality Failure which is not a Medium Priority Quality Failure or a High Priority Quality Failure;

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| "Maintenance Works" | means any works for maintenance or repair of the Facilities that are necessary to ensure that the Facilities are maintained in accordance with Service Level Specifications and Method Statements for the Estate Services and that the Facilities comply with the Board's Construction Requirements and Project Co's Proposals (including, without limitation, the renewal or replacement of any Plant or Equipment) throughout the Project Term; |
| "Market Value Availability Deduction Amount" | means for any month or part of a month, an amount equal to the Deduction that applies to the Service Payment under the Schedule Part 18 in the month immediately preceding the Termination Date, less an amount equal to any Deduction that was made for a Functional Unit which was unavailable at the Termination Date but which has subsequently become available whether as a result of the Board incurring Rectification Costs or otherwise; |
| "Market Value of the Agreement" | means the value of the consideration payable by the New Project Co to the Board in consideration for the entering into the New Agreement; |
| "Maximum Service Payment" | means the Service Payments payable at any time before any deductions under paragraph 1.1 of part 1 of the Schedule Part 18 but allowing for indexation under paragraph 2 of part 1 of the Schedule Part 18; |
| "Mechanical and Electrical Services" | means the services (including related Plant) listed in Appendix E of the Schedule Part 14; |
| "Medical Contamination" | <p>means a disease carrying agent which cleaning and prevention of infection or contamination techniques in use in accordance with Good Industry Practice and this Agreement cannot substantially prevent or cannot substantially remove with the result that:</p> <ul style="list-style-type: none"> (a) it is unsafe to admit patients or staff to the relevant area or to use the area for the purpose for which it is intended; and (b) the area cannot be made safe for the admission of patients or staff; |
| "Medical Waste" | means Clinical Waste arising from the carrying out of Clinical Services by the NHS; |
| "Medium Priority Quality Failure" | means a Quality Failure which has been designated a Medium Priority Quality Failure in the Performance Monitoring System or, if no designation has been made in respect of it, a Quality Failure that may be considered to be important to the Board's ability to deliver the Clinical Services but which is not a failure to comply with Law; |

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| "Method Statements" | means the method of providing a Service as set out or identified in Part 2 of the Schedule Part 14 (<i>Service Requirements</i>) as amended from time to time in accordance with Clause 40 (<i>Variation Procedure</i>) and Clause 27 (<i>The Services</i>); |
| "Minimum Agreed Availability Conditions" | means the Accessibility Condition, the Safety Condition, the Use Condition and either the Prescribed Health Function Condition or Prescribed Operational Condition (as the case may be); |
| "Minimum Deduction" | means the sum of £8 per Functional Unit affected per Session which figure shall be index linked; |
| Monitoring Method | means the methodology used by the Board to measure compliance with the Service Level Specification; |
| "Monthly Service Payment" | has the meaning given in the Schedule Part 18 (<i>Payment Mechanism</i>); |
| "National Health Service Board" or "NHS Board" | means a body established pursuant to Section 12A of the National Health Service (Scotland) Act 1978; |
| "Net Present Value" | means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR; |
| "New Agreement" | means an agreement on the same terms and conditions as this Agreement at the Termination Date, but with the following amendments: <ul style="list-style-type: none"> (a) if this Agreement is terminated prior to the Actual Completion Date, then the Long Stop Date shall be extended by a period to allow a New Project Co to achieve the Actual Completion Date prior to the Long Stop Date; (b) any accrued Service Failure Points and Warning Notices shall be cancelled; (c) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and (d) any other amendments which do not adversely affect Project Co; |
| "New Project Co" | means the person who has entered or who will enter into the New Agreement with the Board; |

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| "New Service Provider Start Date" | means (as the case may be) the Payment Commencement Date or, where a Service Provider is replaced by a new Service Provider, the date on which the Services commence to be provided by the replacement Service Provider or, if earlier, the date on which they were first due to be provided; |
| "New Supplier" | means any successor to Project Co (including the Board) in the provision of services which are equivalent or identifiably similar to the Services upon the expiry or earlier termination of this Agreement; |
| "NCC" | means the National Computing Centre Limited (or any body that may supersede or replace it from time to time); |
| "NHS" | means the National Health Service; |
| "NHS Estatecode" | means the NHS publication of the same name published in 2001; |
| "NHS Scotland" | means the National Health Service Scotland, or such body that may supersede or replace the National Health Service Scotland from time to time; |
| "NHS Requirement" | <p>(a) in relation to the Works has the meaning ascribed to it in paragraph 3.1 of the Board Construction Requirements; and</p> <p>(b) in relation to the Project Operations (other than the Works), means HBN, HTM, all Executive Letters, Health Service Guidelines, Health Service Circulars of the NHS, the requirements of NHS Estatecode Condition B and any similar official requests, requirements and guidance having similar status for the time being in force, but only to the extent the same are published and publicly available or the existence and contents of them have been notified to Project Co by the Board;</p> |
| "NHS Specific Change in Law" | means any Change in Law which principally affects or principally relates only to the provision or operation of healthcare premises and any change in a NHS Requirement (other than any NHS Requirement which merely gives effect to Law generally and does not principally affect or principally relate to the provision or operation of the Unit or healthcare premises); |
| "No Default Interest Rate" | means has the meaning given to it in Clause 12.1 of the Facility Agreement forming one of the Senior Funders' Agreements; |
| "Non-Clinical Waste" | means all waste not classified as Clinical Waste; |

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| "Operational Term" | means the period from the Actual Completion Date until the end of the Project Term; |
| "Original Senior Commitment" | means the amount under the Senior Funders' Agreements as at Financial Close (as adjusted to take into account any Qualifying Variation); |
| "Outline Commissioning Programme" | means the programme setting out the standards, specifications, procedures and other requirements for the carrying out and completion of the commissioning activities of the parties set out in outline in the Schedule Part 12 (<i>Outline Commissioning Programme</i>); |
| "Patient Damage" | means any physical damage to any part of the Exclusive Areas caused by reason of an act of a patient of the Facilities save to the extent (i) such damage has been caused or contributed to by an act, omission or breach by Project Co or any Project Co Party and/or (ii) such damage is Accidental Damage; |
| "Patients' Rights and Responsibilities" | means the document entitled Patients' Rights and Responsibilities published by the Scottish Executive Health Department (as amended from time to time); |
| "Payment Commencement Date" | means the later of the Completion Date (or such earlier date as may be agreed by the parties in their absolute discretion) and the Actual Completion Date; |
| "Payment Mechanism" | means the payment mechanism set out in the Schedule Part 18 (<i>Payment Mechanism</i>); |
| "Performance Guarantees" | means the guarantees to Project Co in respect of the Construction Contract and the Service Contract; |
| "Performance Monitoring System" | means the performance monitoring system set out in the Schedule Part 14; |
| "Performance Monitoring Period" | means a period of time specified in the Performance Monitoring System in respect of a Service or a part of a Service and in respect of which Project Co has an obligation to prepare a report for the Board of its performance of that Service or the relevant part of it during that period; |
| "Performance Monitoring Report" | means the report specified in the Performance Monitoring System in respect of a Service or a part of a Service which Project Co has an obligation to prepare a report for the Board of its performance of that Service or the relevant part of it during a specified period; |

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| "Permanent Drainage Solution" | means any works and operational arrangement to be undertaken and/or adopted to the extent relating to the water, drainage and sewerage infrastructure relating to the Unit as shall be required by Scottish Water (or any successor body); |
| "Permanent Repair" | means Rectification following the agreement of a Temporary Repair; |
| "Permitted Borrowing" | means, without double counting, any: <ul style="list-style-type: none"> (a) advance to Project Co under the Senior Funders' Agreements,; (b) Additional Permitted Borrowing; (c) interest and in respect of the Initial Funding Agreements only (prior to any subsequent amendment) other amounts accrued or payable with the terms of the Senior Funders' Agreements <p>except where the amount referred to in paragraphs (a) and (c) above is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing;</p> |
| "PFI" | has the meaning given in Recital F; |
| "Planned Preventative Maintenance Programme" | the programme prepared by Project Co and agreed by the Board, to carry out planned preventative maintenance requirements on all relevant equipment in accordance with the provision of sections 11 to 15 (Planned Maintenance) of the Schedule Part 14; |
| "Planning Approval" | means detailed planning consent for the Project dated 1 October 2002 and annexed as Schedule Part 8 Part 1; |
| "Planning Permission" | means any planning permission, approval of reserved matters, listed building consent, conservation areas consent and/or other consent or approval reasonably required from time to time for construction and/or operation of the Facilities (including without limitation for any Board Additional Works Item or Works Changes and the Planning Approval); |
| "Plant" | means the plant and equipment to be provided and/or maintained by Project Co pursuant to this Agreement; |
| "Post Completion Commission" | means as appropriate, Project Co's Post Completion Commission and/or the Board's Post Completion Commission; |

"Post Termination Service Amount"

means for the purposes of paragraph 3 of Part B of the Schedule Part 23 (*Retendering Process*), for the whole or any part of a month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Service Payment which would have been payable under this Agreement had this Agreement not been terminated, less an amount equal to the aggregate of:

- (a) the reasonable and proper cost to the Board of procuring the Services;
- (b) the Market Value Availability Deduction Amount for that month; and
- (c) the Rectification Costs incurred by the Board in that month;

"Pre-Refinancing Equity IRR"

means the normal post-tax Equity IRR calculated immediately prior to the Refinancing;

"Prescribed Health Functions"

means the clinical use or purpose of the relevant Functional Part (if any);

"Prescribed Health Function Condition"

means a state or condition of the relevant Functional Part which allows the Prescribed Health Function for that Functional Part to be carried on and performed in accordance with any Law for such Prescribed Health Function and having regard to the practicalities of carrying on and performing such Prescribed Health Function;

"Prescribed Operational Function"

means the use or purpose of the relevant Functional Part other than a Prescribed Health Function;

"Prescribed Operational Condition"

means a state or condition of the relevant Functional Part which allows the Prescribed Operational Function for that Functional Part to be carried on and performed in accordance with any Law for such Prescribed Operational Function and having regard to the practicalities of carrying on and performing such Prescribed Operational Function;

"Procurement Legislation"

means the Public Works Contracts Regulations 1991 (SI 1991/2680), the Public Supply Contracts Regulations 1995 (SI 1995/201), the Public Services Contracts Regulations 1993 (SI 1993/3228) and any other legislation or rules which may from time to time regulate the procurement activities of the Board;

"Programme"

means the programme set out in the Schedule Part 9 (*The Programme*) as revised and issued by Project Co (or on its behalf) from time to time pursuant to Clause 19 (*Programme and Dates for Completion*);

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| "Programmed Maintenance" | means the maintenance work (including lifecycle work to be carried out in accordance with the terms of the Schedule Part 14) which Project Co is to carry out in accordance with the Schedule of Programmed Maintenance; |
| "Programmed Maintenance Information" | has the meaning given in Clause 28.3 (<i>Maintenance</i>); |
| "Prohibited Act" | has the meaning given in Clause 54 (<i>Corrupt Gifts</i>); |
| "Project" | has the meaning given in Recital B; |
| "Project Co Equipment" | means Group 1 Equipment; |
| "Project Co Event of Default" | has the meaning given in Clause 44 (<i>Project Co Events of Default</i>); |
| "Project Co Party" | means Project Co's agents and contractors (including without limitation the Contractor and the Service Provider) and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and "Project Co Parties" shall be construed accordingly; |
| "Project Co's Post-Completion Commissioning" | means Project Co's commissioning activities carried out in accordance with Clause 23.1 (<i>Post-Completion Commissioning</i>); |
| "Project Co's Pre-Completion Commissioning" | means Project Co's commissioning activities to be carried out in accordance with Clause 22.2 (<i>Pre-Completion Commissioning and Completion</i>); |
| "Project Co's Proposals" | means the document at Part 4 of the Schedule Part 8 (<i>Construction Matters</i>) as amended from time to time in accordance with Clause 40 (<i>Variation Procedure</i>); |
| "Project Co's Representative" | means Adams Consulting Group Limited registered in Scotland (registered no. SC243639) and having its registered office at The Beacon, 176 St Vincent Street, Glasgow G2 5SG and, for the avoidance of doubt, David A. M. Adams, Chief Executive and his nominated delegate(s) as intimated to the Board from time to time, who shall have full authority to act on behalf of Adams Consulting Group Limited in its capacity as Project Co's Representative or such other person as may be appointed as Project Co's Representative pursuant to Clause 11.8; |
| "Project Data" | means: <ul style="list-style-type: none"> (i) all Design Data; (ii) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Services; and |

- (iii) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Operations or this Agreement;

"Project Documents"

means the Ancillary Documents and the Funding Agreements;

"Project Operations"

means the carrying out of the Works, the carrying out of Project Co's Pre-Completion Commissioning and Project Co's Post-Completion Commissioning, the maintenance of the Facilities (including the renewal or replacement of Plant), the management and provision of the Services and the performance of all other obligations of Project Co under this Agreement from time to time;

"Project Term"

means the period commencing at midnight on the date of this Agreement and expiring at midnight on 12 February 2042 ~~[date]~~ or on such other date as may be determined in accordance with this Agreement;

"Proposal"

means:

- (a) in the case of a bill, the bill being introduced by the Government or receiving the support of the Government at its second reading in the first House of Parliament into which it is introduced or the bill passing a second reading in the first House of Parliament into which it is introduced;
- (b) in the case of a bill passing through the Scottish Parliament, the bill being introduced by the Scottish Executive or receiving the support of the Scottish Executive at Stage 2 in the Scottish Parliament or the bill passing Stage 2 in the Scottish Parliament;
- (c) in the case of subordinate legislation, the proposed statutory instrument or order being laid before Parliament in draft;
- (d) in the case of a directive, regulation or decision of the European Union, its adoption; or

(e) in the case of an administrative act as referred to in the definition of Adverse Law, any of the following prior or preparatory to the making of such an act;

(i) the taking by the Board, the Government, a minister of the Crown, or a department, agency, regulator or other public body or official of any step in a process defined by Law for the making of such administrative acts, other than any early stages of such process (such as, without limitation, consultation or information gathering) following the completion of which further substantive steps remain in such process before the making of such an administrative act can occur; or

(ii) any communication from the Government, a minister of the Crown, or the department, agency, regulator or other public body or official responsible for making such administrative acts, to the effect that such an administrative act will be made;

"Protective Legislation"

means each of the National Health Service (Residual Liabilities) Act 1996 and the National Health Service (Private Finance) Act 1997;

"Qualification Criteria"

means the criteria that the Board requires tenderers to meet as part of the Tender process, which (subject to compliance with procurement regulations) shall be:

- (a) the New Agreement terms;
- (b) tenderers should have the financial ability to pay the capital sum tendered for the New Agreement and the financial ability to deliver the Works and/or the Services (as appropriate) for the price tendered;
- (c) the tenderers may only bid on the basis of a single capital payment to be made on the date of the New Agreement; and
- (d) the tenderer is experienced in providing the Services or similar services;
- (e) the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Services; and
- (f) any other tender criteria agreed by the Board and the Project Co;

"Qualifying Bank"

means a bank that is authorised by the Bank of England to accept deposits in the United Kingdom;

"Qualifying Bank Transaction"

means:

- (a) the syndication by a Senior Funder, in the ordinary course of its business, of any of its rights or interests in the Senior Funders' Agreements;
- (b) the grant by a Senior Funder of any rights of participation, or the disposition by a Senior Funder of any of its rights or interests (other than as specified in paragraph (a) above), in respect of the Senior Funders' Agreements in favour of: (i) any other Senior Funder; (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2001/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state; (iii) a local authority or public authority; (iv) a trustee of a charitable Board which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time); (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the Board has (or has had at any time during the previous two years) at least 50 members and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time); (vi) an EEA or Swiss Insurance Undertaking; (vii) a Regulated Collective Investment Scheme; or (viii) any other institution in respect of which the prior written consent of the Board has been given;
- (c) the grant by a Senior Funder of any other form of benefit or interest in either the Senior Funders' Agreements or the revenues or assets of Project Co, whether by way of security or otherwise, in favour of: (i) any other Senior Funder; (ii) any institution specified in paragraphs (b)(ii) to (vii) above or (iii) any other institution in respect of which the prior written consent of the Board has been given;

"Qualifying Refinancing"

means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

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| "Qualifying Variation" | means a Variation (other than any revision to or substitution for the Method Statements pursuant to Clause 27.3 (<i>Services</i>)) for which a Variation Confirmation has been issued and the supplementary agreement referred to in paragraph 4.5 of Part 1 of the Schedule Part 22 (<i>Variation Procedure</i>) has become unconditional in all respects; |
| "Quality Failure" | means a Service Failure which has specifically been designated as a Quality Failure in the Performance Monitoring System or if no specific designation has been ascribed to such Service Failure, any such Service Failure which is not a Failure Event; |
| "Quality Failure Category" | means a Low Priority Quality Failure, a Medium Priority Quality Failure, or a High Priority Quality Failure; |
| "Quality Failure Category Percentage" | means the percentage figure attributable to the relevant Quality Failure Category for the purposes of calculating deductions to the Service Payments for Quality Failures as identified by paragraph 1.1.6 of Part A of Part 2 of the Schedule Part 18; |
| "Quality Manager" | means the quality manager appointed pursuant to Clause 25 (<i>Quality Assurance</i>); |
| "Quality Plans" | means the Design Quality Plan and Construction Quality Plan, prepared in accordance with Part 8 of the Schedule Part 8 (<i>Construction Matters</i>), and the Services Quality Plan, prepared in accordance with Part 3 of the Schedule Part 14 (<i>Service Requirements</i>), as required to be implemented by Project Co in accordance with Clause 25 (<i>Quality Assurance</i>); |
| "Range of Finishes" | has the meaning given in paragraph 1.2.3.1 of the Schedule Part 10; |
| "Re-Commissioning Period" | means the period which the Board shall agree with Project Co pursuant to paragraph 6.9 of Part B of Part 2 of the Schedule Part 18 for recommissioning a Functional Unit or Functional Area that shall have been Unavailable; |
| "Rectification" | means making good a Service Failure so that the subject matter of such Service Failure complies with the levels of service required pursuant to this Agreement and shall without prejudice to the generality of the foregoing include (a) restoring all functional capability (b) ensuring that any Functional Part which has been affected by the relevant Service Failure complies with the Availability Conditions (c) complying with and making good in accordance with Good Industry Practice, the Health and Safety Regime and Board Policies and "Rectify" shall be construed accordingly; |

"Rectification Confirmation Notice"

means a notice from Project Co to the Board Representative in accordance with SP09 of the service specification for the helpdesk service forming part of Part 14 of the Schedule (Service Level Specifications) confirming the date and time that a Service Response or Rectification has been completed with respect to the Relevant Event or Service Request;

"Rectification Costs"

means, for the purposes of any Termination Date that occurs after the Actual Completion Date, an amount equal to the reasonable and proper costs incurred by the Board in a particular month or part of a month ensuring that the Services are available;

"Rectification Time"

means the time in which Project Co is required to undertake the following tasks in response to a reported Service Failure; a) make good any Service Failure in such a way as to restore all functional capability and to meet all Availability Conditions using methods acceptable as Good Industry Practice and meeting all applicable health and safety standards and operational policies; b) carry out any testing work that may be required; c) ensure that the Board Representative is, where necessary, informed of progress and any likely delays; d) minimise, where at all practical, the disruption to other Functional Parts and Services; e) inform the Board Representative if any work undertaken during the Rectification Time is likely to impact on any other Functional Parts or Services especially where such effect may interrupt the provision of Clinical Services.

This may or not run consecutively after a Service Response Time has elapsed. Where a Service Response Time has been applied the Rectification Time shall be deemed to commence once the Service Response Time has elapsed.

"Redundancy Payments"

means redundancy payments and other termination payments which are required under Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of terminating this Agreement (provided that Project Co shall use all reasonable endeavours to mitigate its loss) and provided that in calculating such amount no account should be taken of any liabilities and obligations of Project Co arising out of:

- (a) contracts of employment or other agreements or arrangements entered into by Project Co to the extent that such contracts of employment agreements or arrangements were not entered into in connection with the Project; and/or

- (b) contracts of employment or other agreements or arrangements entered into by Project Co to the extent that such contracts of employment agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms;

"Refinancing"

means:

- (a) any amendment, variation, novation, supplement or replacement of any Funding Agreement (other than any Subordinated Funding Agreement);
- (b) the exercise of any right, or grant of any waiver or consent, under any Funding Agreement (other than any Subordinated Funding Agreement);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Funding Agreements (other than the Subordinated Funding Agreement) or the creation or granting of any other form of benefit or interest in either the Funding Agreements (other than the Subordinated Funding Agreement) or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
- (d) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of (a)-(c) above or which has the effect of limiting Project Co's ability to carry out any of (a) - (c) above.

"Refinancing Gain"

means the amount calculated in accordance with the formula:

(A - B) - C, where:

A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Financial Model, as updated, (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing;

B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Financial Model, as updated, (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR;

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| "Regulated Collective Investment Scheme" | has the meaning given in the rules from time to time of the Financial Services Authority; |
| "Relevant Assumptions" | means the assumptions that the sale of Project Co is on the basis that there is no default by the Board, that the sale is on a going concern basis, that no restrictions exist on the transfer of share capital, that no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded but that otherwise the actual state of affairs of Project Co and the Project is taken into account; |
| "Relevant Change in Law" | has the meaning given in Clause 39 (<i>Change in Law</i>); |
| "Relevant Person" | means a Shareholder and any of its Associated Companies; |
| "Relevant Tax Liability" | has the meaning given in Clause 48.7.3 (<i>Compensation on Termination</i>); |
| "Relevant Works Change in Law" | has the meaning given in Clause 39.6 (<i>Change in Law</i>); |
| "Relief" | has the meaning given in Clause 48.7.1 (<i>Compensation on Termination</i>); |
| "Relief Events" | has the meaning given to it in Clause 42 (<i>Relief Events</i>); |
| "Replacement Equipment Commissioning Tests" | means any tests required to demonstrate that any replacement item of Equipment has been Commissioned, such tests to be in accordance with Good Industry Practice and all applicable Law; |
| "Restricted Person" | means either: <ul style="list-style-type: none"> (a) a person providing or proposing to provide healthcare services of a similar nature to those provided or contemplated by the Board at the time in question; or (b) any person who has a material interest in the production of tobacco products and/or alcoholic beverages (excluding for the avoidance of doubt, passive minority investments); |
| "Return Date" | means for the purpose of Temporary Alternative Accommodation the date agreed for the return to the original Functional Part in accordance with paragraph 6.3.4 of Part B of Part 2 of the Schedule Part 18; |
| "Review Procedure" | means the procedure set out in the Schedule Part 10 (<i>Review Procedure</i>); |

"Reviewable Design Data" means the Design Data listed at Part 5 of the Schedule Part 8 (*Construction Matters*);

"Revised Senior Debt Termination Amount" means subject to Clause 4.2 (*Changes to Funding Agreement*):

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at the date, from Project Co to the Senior Funders' under the Senior Funders' Agreements including in respect of Permitting Borrowing other than any such amounts that are in respect of Additional Permitted Borrowing; and
- (b) all amounts of Additional Permitted Borrowing including interest but excluding Default Interest outstanding at the Termination Date, including such Additional Permitted Borrowings;
- (c) all amounts including costs of early termination of any interest rate or RPI hedging arrangements and other breakages costs, payable by Project Co to the Senior Funders as a result of a prepayment under the Senior Funders' Agreements including in respect of the Permitted Borrowings, subject to Project Co and the Senior Funders mitigating all such costs to the extent reasonably possible,
less
 - (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account held by or on behalf of Project Co) on the Termination Date;
 - (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
 - (iii) all amounts, including costs of early termination of any interest rate or RPI hedging arrangements and other breakage costs, payable by the Senior Funders to Project Co as a result of prepayment of any awards outstanding under the Senior Funders' Agreements including in respect of the Permitted Borrowings;
 - (iv) all other amounts received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the Board to Project Co as a result of enforcing any other rights they may have; and

(iv) all APB Distributions;

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| "Risk Management" | includes but is not limited to Health & Safety; Prevention & Control of Infection; Fire Safety; Moving & Handling & Waste Management; |
| "Room Data Sheets" | has the meaning described in Part 6 of the Schedule Part 8 (<i>Construction Matters</i>); |
| "RPI" | means the Retail Prices Index (All Items) as published by the Office for National Statistics from time to time (the "Index"), or failing such publication or in the event of a fundamental change to the Index, such other index as the parties may agree, or such adjustments to the Index as the parties may agree (in each case with the intention of putting the parties in no better or worse a position than they would have been in had the Index not ceased to be published or the relevant fundamental change not made) or, in the event that no such agreement is reached, as may be determined in accordance with the Schedule Part 26 (<i>Fast Track Dispute Resolution Procedure</i>); |
| "Safety Condition" | means a state or condition of the relevant Functional Part which allows those persons so entitled to enter, leave, occupy and use such Functional Part without a higher risk to their health safety and welfare than should be expected for premises of the type of the relevant Functional Part and in particular which might arise due to any failure to comply with any Law or NHS Requirement relating to fire safety or health and safety at work including but not limited to the Health and Safety Regime; |
| "Schedule of Programmed Maintenance" | means the programme of Programmed Maintenance referred to in Clause 28.1 (<i>Maintenance</i>) to be submitted to the Board's Representative by Project Co in accordance with the Schedule Part 10 (<i>Review Procedure</i>); |
| "Schedule of Small Works Rates" | means the schedule of labour rates for Small Works, referred to in paragraph 1 of Part 4 of the Schedule Part 22 (<i>Variation Procedure</i>), to be agreed or determined annually in accordance with paragraph 2 of that Part of the Schedule Part 22; |
| "Secretary of State" | means the Scottish Ministers as such term is defined in Section 44 of Scotland Act 1998; |
| "Security" | means all matters related to the provision of secure and safe environment including both the personal security systems and the security of the Facilities and the assets therein; |
| "Security Trustee" | means Dexia Management Services Limited, Registered Number 01935154 and having its Registered Office at Shackleton House, 4 Battle Bridge Lane, London SE1 2RB; |

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| "Selection Period" | has the meaning given in paragraph 1.2.3 (a) of the Schedule Part 10 (<i>Review Procedure</i>); |
| "Self-Proving" | means in relation to every deed or document, execution of that deed or document so as to permit the presumption contained in Section 3 and/or 7, or Schedule 2, to the Requirements of Writing (Scotland) Act 1995 to apply; |
| "Senior Debt" | means the financing provided by the Senior Funders under the Senior Funders' Agreements; |
| "Senior Debt Amount" | means the Revised Senior Debt Termination Amount or the Base Senior Debt Amount as relevant; |
| "Senior Funders" | means Dexia Credit Local and Dexia Management Services Limited (registered number 01935154), both of Shackleton House, 4 Battle Bridge Lane, London SE1 2RB as agent for the Banks and as Bank, Security Trustee and Hedging Counterparty (as such terms are defined in the Senior Funders' Agreements) and any other person providing senior debt finance to Project Co from time to time and whether in addition to or as the successor, assignee or permitted transferee of Dexia Credit Local or Dexia Management Services Limited in any capacity ; |
| "Senior Funders' Agent" | means the person appoint as agent for the Senior Funders under the Senior Funders' Agreement and authorised to act on behalf of the Senior Funders; |
| "Senior Funders' Agreements" | means the Funders Agreement listed in Part 3 of this Schedule Part 1 or as amended as permitted under this Agreement or otherwise with the prior written approval of the Board; |
| "Sensitive Information" | has the meaning given in Clause 52.6 (<i>Confidentiality</i>); |
| "Service Commencement" | means Project Co or the Service Provider beginning to provide any of the Services pursuant to this Agreement; |
| "Service Commencement Date" | means the date on which Project Co or the Service Provider begins to provide any of the Services pursuant to this Agreement; |
| "Service Contract" | means the contracts dated the same date as this Agreement between Project Co and the Service Provider, by which Project Co will procure the performance of the Services (as amended or replaced from time to time in accordance with this Agreement); |
| "Service Failure" or "SF" | means any breach by Project Co of its obligations to provide the Services in accordance with this Agreement and in particular in accordance with the Service Level Specifications set out in the Schedule Part 14; |

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| "Service Failure Points" | means points awarded in accordance with the provisions of the Performance Monitoring System; |
| "Service Level Specification" | means the requirements of the Board set out in Part 1 of the Schedule Part 14 (<i>Service Requirements</i>) as amended from time to time in accordance with Clause 40 (<i>Variation Procedure</i>); |
| "Service Payment" | means the sum in pounds sterling payable by the Board to Project Co for the provision of the Services in accordance with this Agreement; |
| "Service Payment Before Deductions" | means the amount that would be calculated for the relevant Contract Month in accordance with the formula set out in paragraph 1.1 of Part 1 of the Schedule Part 18 without deducting the sums represented by the symbols $\Sigma D(FE)$ and $\Sigma D(QF)$; |
| "Service Provider" | means each of Parsons Brinckerhoff Limited (Registered Number 02554514) and having its Registered Office at Amber Court, William Armstrong Drive, Newcastle Business Park, Newcastle Upon Tyne NE4 7YQ or any other person engaged by Project Co from time to time as may be permitted by this Agreement to procure the provision of the Services (or any of them); |
| "Service Providers' Collateral Agreements" | means the collateral agreements between the Board, Project Co and each Service Provider in the form set out in the Schedule Part 11 (<i>Collateral Agreements</i>); |
| "Service Request" | means a request by the Board to Project Co by notification to the Helpdesk for the provision of a Service which the Board is entitled to request in accordance with the Service Level Specification; |
| "Service Response" | means completing the relevant Service Request in accordance with the requirements of that Service Request as set out in the Service Level Specification and "Respond" shall be construed accordingly; |
| "Service Response Time" | means the time in which Project Co is required undertake the following tasks in response to a reported Service Failure; assess the information provided and contact the relevant or appropriate person to carry out the repair; |
| "Service Weighting Percentage" | means the percentage figure attributable to the relevant Service for the purpose of calculating deductions to the Service Payment for Quality Failures as identified by paragraph 1.1.5 of Part A of Part 2 of the Schedule Part 18; |

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| "Services" | means the services to be provided, managed and/or procured by Project Co for the Board in accordance with the Schedule Part 14 (<i>Service Requirements</i>) as subsequently amended or adjusted in accordance with this Agreement; |
| "Services Quality Plan" | means the document set out in Part 3 of the Schedule Part 14 (<i>Service Requirements</i>); |
| "Service Variation" | means a variation to a Service in accordance with the Schedule Part 22 (<i>Variation Procedure</i>); |
| "Session" | means each of the periods midnight to 8 am, 8 am to 4 pm, 4 pm to midnight for each day; |
| "Shareholder" | means a party listed as such in the Schedule Part 27 (Project Co Information) as changed from time to time in accordance with this Agreement; |
| "Shareholders Agreements" | means the agreement or agreements between the Shareholders relating to Project Co, including any agreement relating to the subscription of equity (or other shareholder funding) by the Shareholders in Project Co or HoldCo; |
| "SHTM" | means Scottish Health Technical Memoranda as detailed in the Board's Construction Requirements; |
| "SHTM Guidance Notes" | means the guidance notes which form part of the SHTM as detailed in the Boards Construction Requirements; |
| "Site" | means the land made available to Project Co for the Project and outlined in red on the plan attached as Appendix 1 to Part 7 of the Schedule; |
| "Site Conditions" | means the condition of the Site including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions; |
| "Site Fire Procedures" | means local fire procedures; |
| "Small Works" | means works of a minor nature that are requested by the Board to be carried out having an individual cost not exceeding £5,000 (index linked), or as otherwise agreed from time to time, but excluding any operation or work which will increase the likelihood of a the Facilities not complying with the requirements described in the Schedule Part 18 (<i>Payment Mechanism</i>), will increase the cost to Project Co of performing the Project Operations or will materially hinder Project Co in the performance of the Services; |

"Snagging Matters"

means minor items of outstanding work (including in relation to landscaping) which would not materially impair the Board's use and enjoyment of the Facilities or the carrying out by the Board of the Clinical Services or the performance of the Services by Project Co;

"Snagging Notice"

means the notice to be issued by the Independent Tester in accordance with Clause 22.13 (*Completion Certificate*);

"Staff"

those persons engaged or employed by Project Co or any Project Co Party to carry out the Services including those if any who are independent contractors and/or individuals seconded to Project Co or any Project Co Party for that purpose;

"Specialist Services"

means those services (including related plant) set out in Appendix D of the Schedule Part 14;

"Sub-Contracts"

means the contracts entered into by or between Project Co, the Contractor and/or a Service Provider and other third parties in relation to any aspect of the Project Operations;

"Sub-Contractors"

means any third party (including the Contractor and a Services Provider) who enters into any Sub-Contract;

"Sub-Contractor Losses"

means

- (a) the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Construction Contract as a direct result of this Agreement provided that such amount shall be reduced to the extent that Project Co fails to use all reasonable endeavours to mitigate such amount; and
- (b) the amount reasonably and properly payable by Project Co to the Service Providers under their respective contracts with Project Co (as the case may be) as a direct result of the termination of this Agreement provided that such amount shall be reduced to the extent that Project Co fails to use all reasonable endeavours to mitigate such amount;

provided that in both cases no account should be taken of any liabilities and obligation of Project Co to the Sub-Contractors arising out of:

- (i) agreements or arrangements entered into by Project Co and/or the sub-Contractors to the extent that such agreements or arrangements were not entered into in connection with those parties obligations in relation to the Project; and/or

- (ii) agreements or arrangements entered into by Project Co and/or the sub-Contractors to the extent that such agreements or arrangements were not entered into the course of business and on commercial arm's length terms;

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| "Subordinated Funders" | means the Funders providing finance under the Subordinated Funding Agreements; |
| "Subordinated Funding Agreements" | means the loan note instruments entered into by Project Co and Holdco and the Shareholders Agreement entered into on or about the date hereof or as amended as permitted under this Agreement or otherwise with the prior written approval of the Board; |
| "Subsidiary" | has the meaning given to it in Section 736 of the Companies Act 1985, as amended by Section 144 of the Companies Act 1989; |
| "Suitable Substitute Contractor" | has the meaning given in the Funders' Direct Agreement; |
| "Suitably Qualified Person" | has the meaning described to "Suitably Qualified Person" in relevant legislation and authorised guidance including but not limited to SHTM Guidance Notes; |
| "Supply" | means the purchase and delivery to the Facilities of a piece of equipment; |
| "Temporary Alternative Accommodation" | means accommodation offered to the Board by Project Co as a substitute for any Unavailable Functional Part pursuant to paragraph 6.2 of Part B of Part 2 of the Schedule Part 18; |
| "Temporary Drainage Solution" | means the works and operational arrangement relating to the water, drainage and sewage infrastructure on and around the Site which is required to be undertaken and/or adopted in connection with the Project as agreed between the Board and Scottish Water pursuant to the correspondence between the Board and Scottish Water dated 31 August, 8, 10 and 17 September and 8 October 2004; |
| "Temporary Repair" | means, in respect of the occurrence of an Event, works of a temporary nature that do not constitute Rectification but satisfy the Minimum Agreed Availability Conditions and substantially make good the relevant Service Failure for the period until a Permanent Repair can be undertaken; |
| "Tender Costs" | means the reasonable and proper costs of the Board incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Agreement; |

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| "Tender Process" | means the process by which the Board request tenders from any parties interested in entering into a New Agreement, evaluate the responses from those interested parties and enters into a New Agreement with the new service provider, in accordance with paragraph 3 of Part B of the Schedule Part 23 (<i>Retendering Procedure</i>); |
| "Tender Process Monitor" | means the person appointed under paragraph 3.6 of Part B of the Schedule Part 23; |
| "Tests on Completion" | means the procedures, activities, tests and pre-commissioning obligations which will be carried out in respect of each item of Equipment and/or Group 2 Equipment before the relevant item of Equipment and/or Group 2 Equipment is accepted by the Independent Tester; |
| "Termination Date" | means the date on which termination of this Agreement takes effect in accordance with its terms; |
| "Threshold Equity IRR" | means fourteen per cent (14%); |
| "Third Party Shareholder" | means Canmore Partnership Limited, (Registered Number SC216290) having its Registered Office at 50 Lothian Road, Festival Square Edinburgh EH3 9WJ, UME Investment Co. Limited, (Registered Number 03290470) having its Registered Office at Garden Court Wing, Tavistock House South, Tavistock Square, London and PFI Infrastructure Finance Limited, (Registered Number 05092397) having its Registered Office at 7 Bishops Court, London EC2N 3AR; |
| "Title Deeds" | means the certified copies of the title deeds to the Site which have been supplied to (and examined by) Project Co and with which Project Co is deemed by its execution of this Agreement to be satisfied with regard to their content, validity and completeness; |
| "Transfer Date" | means the date on which an Employee Transfer occurs; |
| "Transfer Regulations" | means the Transfer of Undertaking (Protection of Employment) Regulations 1981 (SI No. 1794); |
| "Transferring Staff" | has the meaning given in Clause 30.2; |
| "Unavailable" | means in relation to a Functional Part that such Functional Part is in a state or condition which does not comply with any one or more of the Availability Conditions; |
| "Uninsurable PL Risk" | means an Uninsurable Risk under a public liability policy; |

"Uninsurable Risk"

means a risk against which Project Co is required to insure by Clause 36.1 or 36.2 (*Insurance*) (other than any risks insured under any professional indemnity insurances) and for which, after the date of this Agreement:

- (a) insurance is not available within the worldwide insurance market with reputable insurers of good standing in respect of that risk; or
- (b) the insurance premium payable for insuring such risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom;

to the extent that Project Co has demonstrated to the Board that Project Co and a prudent board of directors of a company operating the same or substantially similar PFI businesses in the United Kingdom to that operated by Project Co would in similar circumstances (in the absence of the type of relief envisaged by Clause 36) be acting reasonably and in the best interests of the Company if they resolve to cease to operate such business as a result of that risk becoming uninsured taking into account, inter alia, (and without limitation) the likelihood of the risk occurring (if it has not already occurred), the financial consequences for such company if such risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company;

"Unit"

means the Stobhill Local Forensic Psychiatric Unit to be built pursuant to this Agreement;

"Unit Manager"

means Project Co's duty manager who shall be present at the Facilities in accordance with the Service Level Specifications;

"Unit Weighting Percentage"

means the percentage weighting ascribed to each Functional Unit for the purpose of calculating deductions to the Service Payments for Failure Events as set out in Appendix E to the Schedule Part 18;

"Unprogrammed Maintenance Works"

has the meaning given in Clause 28.8 (*Maintenance*);

"Unreasonable Act"

means any act or omission which is contrary to any reasonable instruction, guidance or rules for the operation or management of the Facilities;

"Use Condition"

means a state or condition of the relevant Functional Part which satisfies the Use Parameters for that Functional Part;

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| "Use Parameters" | means the range of functional requirements for the proper use and enjoyment of a Functional Part for its particular purpose relating to (i) temperature; (ii) humidity; (iii) air-flow; (iv) lighting; (v) power (essential and non-essential); (vi) safe water (relating to availability, temperature, quality and safe sewerage system); (vii) nurse call system; (viii) equipment; as the same are specified on the Room Data Sheets for the relevant Functional Part as set out in the Schedule Part 8 and/or as the same are specified in Appendix G to Part 18 of the Schedule. |
| "Utilities" | has the meaning given in paragraph 1.1 of Part 3 of Schedule Part 18; |
| "Variation" | means a Board Works Variation, a Board Additional Works Item and/or a Board Service Variation (as the case may be); |
| "Variation Confirmation" | has the meaning given in paragraph 4.5 of Part 1 of the Schedule Part 22 (<i>Variation Procedure</i>); |
| "Variation Enquiry" | has the meaning given in paragraph 2.1 of Part 1 of the Schedule Part 22 (<i>Variation Procedure</i>); |
| "VAT" | means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994; |
| "VAT Sum" | has the meaning given in Clause 53.5 (VAT); |
| "Viability Statement" | means a case made by the Board and accepted in writing by the relevant Health Board (or any other commissioner from time to time of the Board's healthcare services) and NHS Scotland that the Facilities (or substantially all of them) are no longer needed on the grounds of the healthcare needs of the Board's geographical area; |
| "Warning Notice" | has the meaning given in Clause 29.4 (<i>Monitoring of Performance</i>); |
| "Waste" | means confidential waste, non-clinical waste, domestic negotiable waste, Clinical Waste and spread hazardous waste each as defined in the Waste Management Specification; |
| "Works" | means the design (including the preparation of all Design Data), construction, testing, commissioning and completion of the Facilities (including any temporary works) and the installation of Group 1 Equipment to be performed by Project Co in accordance with this Agreement (as varied, amended or supplemented from time to time in accordance with this Agreement); |
| "Works Variation Capital Limit" | means 5% of the capital value of the Works; |

"Works Variation Delay Limit" means a period of three (3) months.

SCHEDULE PART 1**Part 2: Interpretation**

This Agreement (the "Agreement") shall be interpreted according to the following provisions, unless the context requires a different meaning:

- 1 The headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement.
- 2 Except where the context expressly requires otherwise, references to Clauses, Sub-clauses, paragraphs, sub-paragraphs, parts and the Schedule are references to Clauses, Sub-clauses, paragraphs, sub-paragraphs and parts of and the Schedule to this Agreement and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Agreement.
- 3 The Schedule to this Agreement is an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedule.
- 4 Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, boards, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.
- 5 Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
- 6 The language of this Agreement is English. All correspondence, notices, drawings, Design Data, test reports, certificates, specifications and information shall be in English. All operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Agreement shall be in English.
- 7 References to any agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments to agreements or documents) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned.
- 8 References to any Law are to be construed as references to that Law as from time to time amended or to any Law from time to time replacing, extending, consolidating or amending the same provided that the provisions of this paragraph shall be without prejudice to the operation of Clause 39 (*Changes in Law*) and the Schedule Part 22 (*Variation Procedure*) which shall operate in relation to a Change in Law on the basis set out in this Agreement.
- 9 References to a public organisation (other than the Board) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Board) shall include their successors and assignees.

- 10 References to a deliberate act or omission of the Board or any Board Party shall be construed having regard to the interactive nature of the activities of the Board and of Project Co and the expression shall exclude acts or omissions carried out in the ordinary course of the Board's activities or which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
- 11 The words in this Agreement shall bear their natural meaning. The parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed *contra proferentem*.
- 12 Reference to "parties" means the parties to this Agreement and references to "a party" mean one of the parties to this Agreement.
- 13 In construing this Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 14 All of Project Co's obligations, duties and responsibilities shall be construed as separate obligations, duties and responsibilities owed to the Board and to be performed at Project Co's own cost and expense.
- 15 References to amounts or sums expressed to be "index linked" are references to amounts or sums in 30 June 2005 (*the "Base Date"*) prices which require to be adjusted whenever the provision containing the amount or sum is given effect in accordance with this Agreement to reflect the effects of inflation after that date. The adjustment shall be measured by changes in the relevant index published for that Contract Year as calculated in accordance with the following formula:

Amount or sum in June 2005 prices: $\frac{RPI_d}{RPI_0}$

Where RPI_d is the value of the Retail Prices Index published or determined with respect to the month of March most recently preceding the date when the provision in question is to be given effect and RPI_0 is the value of the Retail Prices Index in respect of 30 June 2005.
- 16 Reference to a document being in the Agreed Form is a reference to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf.
- 17 Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of Business Days after a stipulated date or event the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.
- 18 Where this Agreement states that an obligation shall be performed "no later than" or "by" a prescribed number of Business Days before a base date or "by" a date which is a prescribed number of Business Days before a base date, the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.

The operation of the Act (referred to in Recital F of the Agreement) upon any Project Document shall not affect the rights or obligations of the parties under this Agreement.

Part 3: List of Initial Funding Agreements

1. Facility Agreement
2. Security Documents
 - 2.1 Debenture
 - 2.2 Security Trust Deed
 - 2.3 Borrower Security Agreement
 - 2.4 Parent Security Agreement
3. Original Hedging Agreement
4. Account Bank Agreement
5. Loan Stock Documents
 - 5.1 Borrower Loan Stock Instrument
 - 5.2 Parent Loan Stock Instrument
6. Direct Agreements
 - 6.1 Lenders Direct Agreement
 - 6.2 Constructor's Direct Agreement
 - 6.3 Hard Service Provider's Direct Agreement

Terms used in this part of the schedule shall have the same meaning given to them in the Senior Funders' Agreements.