



PROJECT AGREEMENT

BETWEEN

GREATER GLASGOW HEALTH BOARD

AND

IMPREGILO PARKING (GLASGOW) LIMITED

**RE: CAR PARKING OPERATION AT GLASGOW
ROYAL INFIRMARY**

File Ref: GT5/45 LT/PS

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AGREEMENT

between

Greater Glasgow Health Board constituted pursuant to the National Health Service (Scotland) Act 1978 and its statutory successors having its headquarters at Dalian House PO Box 15329 350 St. Vincent Street Glasgow G3 8YZ (“ NHS Greater Glasgow”)

and

IMPREGILO PARKING (GLASGOW) LIMITED
(Company Number 04531874) whose registered office is at Second Floor, 1 Raleigh Walk, Brigantine Place, Cardiff, CF10 4LN (“IPL”)

WHEREAS

- A. NHS Greater Glasgow wish to introduce a scheme of managed car parking at NHS Greater Glasgow’s Estate.
- B. Accordingly NHS Greater Glasgow’s statutory predecessor (North Glasgow University Hospitals National Health Service Trust) selected IPL to finance, construct and operate a multi-storey car park upon the site of the Glasgow Royal Infirmary and to assume responsibility for operation, management and upkeep of certain existing car parks upon the Glasgow Royal Infirmary Site (the “Project”).
- C. North Glasgow University Hospitals National Health Service Trust was dissolved by virtue of the National Health Service Trusts (Dissolution) Order Scottish Statutory Instrument 2004 (107) made by the Scottish Ministers pursuant to Sections 12A and 105(6) and paragraph 251(1) of Schedule 7A to

the National Health Service (Scotland) Act 1978 and the rights and liabilities of North Glasgow University Hospitals National Health Service Trust were transferred to NHS Greater Glasgow by virtue of Order made by the Scottish Ministers in exercise of the powers conferred by paragraph 26 of Schedule 7A of the said 1978 Act dated 25 March 2004

- D. NHS Greater Glasgow was constituted pursuant to The National Health Service (Scotland) Act 1972 and Statutory Instrument 1974 (267) which followed on from Statutory Instrument 1973 (691).
- E. The Project has been approved by the Scottish Ministers.
- F. The land and buildings comprising the entity known as Glasgow Royal Infirmary are vested in the Scottish Ministers by virtue of Heritable Property Transfer Orders (Numbers G011/A and G015/A made by the Scottish Ministers in exercise of the foregoing powers dated 30 April 2004
- G. The management of NHS Greater Glasgow's Estate and the ability to enter into contracts is vested in NHS Greater Glasgow by virtue of the National Health Service (Scotland) Act 1972, the said Statutory Instruments and the Functions of Health Boards (Scotland) Order 1991.
- H. IPL is prepared to construct the Works at its own expense in return for being granted:-
 - (a) the right to operate the Car Parking Spaces under the Car Parking Management Policy for the Concession Period under this Agreement;
 - (b) the Lease granted by the Scottish Ministers;
 - (c) the right to occupy the Site and all Surface Car Parks in accordance with the provisions of this Agreement;

- (d) a right of access over the Non-Parking Zones for the purpose of performance of this Agreement.

- I. The Lease shall come in to effect as provided for in this Agreement.

- J. NHS Greater Glasgow and IPL have agreed to enter into this Agreement.

- K. This Agreement is excluded from the application of Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of the Construction Contracts (Scotland) Exclusion Order 1998 Statutory Instrument 1998 No. 686(S33).

- L. This Agreement is entered into under the Government's Private Finance Initiative.

NOW THEREFORE THE PARTIES AGREE AND HAVE AGREED AS FOLLOWS:-

1. DEFINITIONS AND INTERPRETATIONS

This Agreement shall be interpreted according to the provisions of Schedule 1.

2. EXECUTION AND DELIVERY OF DOCUMENTS

On or prior to execution of this Agreement:-

- (a) IPL shall deliver to NHS Greater Glasgow the documents referred to in Section A of Schedule 2 (Completion Documents) unless the requirement to deliver any such documents is waived by NHS Greater Glasgow by written notice to IPL; and

- (b) NHS Greater Glasgow shall deliver to IPL the documents referred to in Section B of Schedule 2 (Completion Documents)

unless the requirement to deliver any such documents is waived by IPL by written notice to NHS Greater Glasgow.

3. COMMENCEMENT AND DURATION

3.1 This Agreement shall come into effect on the date of execution hereof and IPL shall undertake the Project Operations on the date falling six weeks from the Commencement Date.

3.2 IPL's right and obligation to carry out the Project Operations shall terminate automatically on the expiry of the Concession Period unless previously terminated in accordance with the provisions of this Agreement.

4. PROJECT DOCUMENTS

Ancillary Documents

4.1 IPL shall perform its obligations under, and observe all of the provisions of, the Project Documents to which it is a party and shall not:

- (a) terminate or agree to the termination of all or part of any Ancillary Document;
- (b) make or agree to any material variation of any Ancillary Document;
- (c) in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or

procure that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Ancillary Document; or

- (d) enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Ancillary Document,

unless the proposed course of action (and any relevant documentation) has been submitted to NHS Greater Glasgow's Representative for review and there has been no written objection from NHS Greater Glasgow within twenty (20) Working Days of receipt by NHS Greater Glasgow's Representative of the submission of the proposed course of action (and any relevant documentation), or such shorter period as may be agreed by the parties.

Changes to Funding Agreements and Refinancing

- 4.2 Subject to Clauses 4.3 and 4.4 in relation to any Funding Agreement only, IPL shall be free, at any time during the Concession Period, to enter into, terminate, amend, waive its rights and generally deal with its Funding Agreements on such terms and conditions as it sees fit provided that (at the time such action is contemplated and effected) the same will not materially and adversely affect the ability of IPL to perform its obligations under the Project Documents or this Agreement.

- 4.3 No amendment, waiver or exercise of a right under any Funding Agreement shall have the effect of increasing NHS Greater Glasgow's liabilities on early termination of this Agreement unless:
- (a) IPL has obtained the prior written consent of NHS Greater Glasgow; or
 - (b) such amendment, waiver or exercise of a right under any Funding Agreement is a Permitted Increase.
- 4.4 Any amendment or variation of any Funding Agreement which constitutes a Refinancing shall be carried out in accordance with the provisions of Schedule 12 (Refinancing).
- 4.5 Without prejudice to Clause 4.2 (Funding Agreements and Refinancing), IPL shall liaise with NHS Greater Glasgow, and shall use all reasonable endeavours to provide NHS Greater Glasgow with a copy of the relevant agreement in settled draft form, not less than ten (10) Working Days before it enters into any Funding Agreement (other than the Initial Funding Agreements).

Delivery

- 4.6 Without prejudice to the provisions of this Clause 4, if at any time an amendment is made to any Project Document, or IPL enters into a new Project Document (or any agreement which affects the interpretation or application of any Project Document), IPL shall deliver to NHS Greater Glasgow a conformed copy of each such amendment or agreement within ten (10) Working Days of the date of its execution or creation, certified as a true copy by an officer of IPL.

5. THE PROJECT OPERATIONS

Scope

5.1 Subject to, and in accordance with, the provisions of this Agreement, IPL shall have the right and the obligation to perform its duties under this Agreement at its own cost and risk without recourse to NHS Greater Glasgow except as otherwise expressly provided in this Agreement.

General standards

5.2 Without prejudice to Clause 5.1 and Clause 63 (Change in Law), IPL shall at its own cost be solely responsible for procuring that the Project Operations are at all times performed:

- (a) in so far as not in conflict with an express obligation of IPL under this Agreement, or where in relation to a matter there is no express obligation or standard imposed on IPL under this Agreement, in accordance with Good Industry Practice;
- (b) in a manner that is not likely to be injurious to health or to cause damage to property;
- (c) in a manner consistent with NHS Greater Glasgow discharging its statutory duties and/or other functions undertaken by it as the same may be notified to IPL from time to time; and
- (d) in compliance with all Law and Consents (including without limitation the giving of notices and the obtaining of any such Consents) and so as not to prejudice the renewal of any such Consents.

NHS Greater Glasgow's Undertaking

- 5.3 NHS Greater Glasgow undertakes to IPL that it shall:
- (a) subject to the provisions of this Agreement, comply with all Laws, NHS Requirements and Consents applicable to it which relate to the Project Operations; and
 - (b) not wilfully impede IPL in the performance of its obligations under this Agreement (having regard always to the interactive nature of the activities of NHS Greater Glasgow and of IPL and any other operations or activities carried out by NHS Greater Glasgow on or at NHS Greater Glasgow's Estate for the purposes contemplated by this Agreement or any other of NHS Greater Glasgow's statutory functions).

Co-operation

- 5.4 Each party agrees to co-operate, at its own expense, with the other in the fulfilment of the purposes and intent of this Agreement. To avoid doubt, neither party shall be under any obligation to perform any of the other party's obligations under this Agreement. The parties will take all reasonable steps to disseminate information to Qualifying Persons relating to payment methods and the level of the Staff Tariff from time to time. NHS Greater Glasgow shall upon reasonable request assist IPL in establishing whether or not a person is a Qualifying Person or is otherwise entitled to purchase an Access Card.

6. DISPOSAL OF NHS GREATER GLASGOW'S ESTATE

Nothing in this Agreement shall affect Scottish Minister's absolute right to dispose of any part of NHS Greater Glasgow's Estate (with the exception of the Site and the Surface Car Parks) which are surplus to the requirements of NHS Greater Glasgow and this Agreement shall cease to have effect in respect of any such area sold, disposed or transferred by the Scottish Ministers. If the Scottish Ministers make any sale, disposition or transfer under this Clause 6 NHS Greater Glasgow shall procure that the rights of IPL to use any such areas for the Project Operations are fully and validly protected including without limit any access or service rights.

7. TRANSFER OF NHS GREATER GLASGOW EQUIPMENT

On the Commencement Date absolute ownership of all existing car parking management equipment (including all kiosks and cabins belonging to NHS Greater Glasgow) identified in the Annex to Schedule 15 shall for the avoidance of doubt pass from NHS Greater Glasgow to IPL upon the conditions set out in Schedule 15.

8. REPRESENTATIVES

8.1 NHS Greater Glasgow's Representative shall be NHS Greater Glasgow's General Manager for NHS Greater Glasgow's Estate or such other person appointed pursuant to this Clause. NHS Greater Glasgow's Representative shall exercise the functions and powers of NHS Greater Glasgow in relation to the Project Operations which are identified in this Agreement as functions or powers to be carried out by NHS Greater Glasgow's Representative. NHS Greater Glasgow's Representative shall also exercise such other functions and powers of

NHS Greater Glasgow under this Agreement as NHS Greater Glasgow may notify to IPL from time to time.

8.2 NHS Greater Glasgow's Representative shall be entitled at any time, by notice to IPL, to authorise any other person to exercise the functions and powers of NHS Greater Glasgow delegated to him pursuant to this Clause, either generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of NHS Greater Glasgow's Representative and all references to "NHS Greater Glasgow's Representative" in this Agreement (apart from this Clause) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.

8.3 NHS Greater Glasgow may by notice to IPL change NHS Greater Glasgow's Representative. NHS Greater Glasgow shall (as far as practicable) consult with IPL prior to the appointment of any replacement for NHS Greater Glasgow's Representative, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to IPL in the execution of its obligations under this Agreement).

8.4 During any period when no NHS Greater Glasgow's Representative has been appointed (or when NHS Greater Glasgow's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Agreement) NHS Greater Glasgow shall carry out the functions which would otherwise be performed by NHS Greater Glasgow's Representative.

8.5 No act or omission of NHS Greater Glasgow, NHS Greater Glasgow's Representative or any officer, employee or other person engaged by NHS Greater Glasgow shall, except as otherwise expressly provided in this Agreement:

(a) in any way relieve or absolve IPL from, modify, or act as a waiver or personal bar of, any liability, responsibility, obligation or duty under this Agreement; or

(b) in the absence of an express order or authorisation, constitute or authorise a variation.

8.6 Except as previously notified in writing before such act by NHS Greater Glasgow to IPL, IPL and IPL's Representative shall be entitled to treat any act of NHS Greater Glasgow's Representative which is authorised by this Agreement as being expressly authorised by NHS Greater Glasgow and IPL and IPL's Representative shall not be required to determine whether an express authority has in fact been given.

8.7 IPL's Representative shall be Gianfranco Catrini (Senior Project Manager) or such other person appointed pursuant to this Clause. IPL's Representative shall have full authority to act on behalf of IPL for all purposes of this Agreement. Except as previously notified in writing before such act by IPL to NHS Greater Glasgow, NHS Greater Glasgow and NHS Greater Glasgow's Representative shall be entitled to treat any act of IPL's Representative in connection with this Agreement as being expressly authorised by IPL and NHS Greater Glasgow and NHS Greater Glasgow's Representative shall not be required to determine whether any express authority has in fact been

given. IPL may by notice to NHS Greater Glasgow change IPL's Representative. Where IPL wishes to do so it shall by written notice to NHS Greater Glasgow propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of NHS Greater Glasgow (not to be unreasonably withheld or delayed).

9. HIGHWAYS WORKS

- 9.1 If not concluded sooner and subject always to Clause 9.3 NHS Greater Glasgow shall use all reasonable endeavours to conclude the Highways Works Contract as soon as possible after the Commencement Date.
- 9.2 NHS Greater Glasgow shall use all reasonable endeavours to procure performance by the Highways Works Contractor of its obligations under the Highways Works Contract.
- 9.3 NHS Greater Glasgow shall timeously implement any obligations incumbent upon it in terms of the Highways Works Contract so as to meet any programme for the Highways Works as set out therein and shall procure completion of the Highways Works by no later than the Estimated Completion Date.
- 9.4 IPL shall be entitled, acting reasonably, to approve the Highways Works Contract. If the Highways Works Contract is concluded by NHS Greater Glasgow prior to the Commencement Date by its execution hereof IPL confirms its approval thereof in terms of this Clause 9.4.

9.5 If NHS Greater Glasgow becomes aware that the Highways Works are to be delayed as a consequence of a Highways Works Delay Event or for any other cause it shall advise IPL accordingly giving details of the particular event, the action being taken and an estimate of the period of time required to overcome it and/or its effects. NHS Greater Glasgow shall subsequently keep IPL advised of progress and provide further information as soon as reasonably possible.

9.6 In the event that NHS Greater Glasgow fails to procure completion of the Highways Works by the Estimated Completion Date and as a result IPL is unable to make Car Parking Spaces available for use by Invitees such circumstances shall:-

(a) where caused by a Highways Works Delay Event until the Highways Works Longstop Date constitute a Relief Event in which event the provisions of Clause 46 shall apply;

(b) (from whatever cause) after the Highways Works Longstop Date constitute a Delay Event for the purposes of Clause 24.3(b); and

(c) if caused by other than a Highways Works Delay Event constitute a Delay Event for the purposes of Clause 24.3(b),

except where such failure by NHS Greater Glasgow occurs as a result of an event of Force Majeure in which event Clause 47 shall apply.

9.7 If any delay by NHS Greater Glasgow in completing the Highways Works by the Estimated Completion Date constitutes a Relief Event in terms of Clause 46:-

- (a) NHS Greater Glasgow shall pay to IPL any liquidated and ascertained damages paid by the Highways Works Contractor to NHS Greater Glasgow under the terms of the Highways Works Contract; and
- (b) the Concession Period shall be extended in agreement between the parties for such period as would place IPL in no worse or better position than it would have been in had the Relief Event not occurred taking due account of any amounts paid to IPL by NHS Greater Glasgow in terms of Clause 9.7 (a) and any amount which IPL will recover under any insurance policy (or would have recovered had it complied with the requirements of this Agreement and any policy of insurance required under this Agreement (excluding any excess or deductibles); and
- (c) IPL shall provide to NHS Greater Glasgow all such information as NHS Greater Glasgow may reasonably require to agree the period of extension of the Concession Period in terms aforesaid.

9.8 Following completion of the Highways Works until such time as the Council shall assume responsibility therefor NHS Greater Glasgow shall maintain the Highways Works to a good and proper standard including making good any defects and if IPL incurs loss and/or expense as a direct result of default by NHS Greater Glasgow of the foregoing obligations IPL shall be entitled to such compensation as would place IPL in no better or worse position than it would have been had such failure not occurred. IPL shall promptly provide NHS

Greater Glasgow with any such information as it may require to determine the amount of such compensation and the provisions of Clause 24.13 shall apply.

9.9 NHS Greater Glasgow shall comply with all relevant provisions of the Planning Permission at its own cost in relation to the Highways Works.

10. LEASE

Grant of Lease

10.1 On the Commencement Date NHS Greater Glasgow shall procure that the Scottish Ministers grant to IPL, and IPL shall accept, the Lease in accordance (including as to timing) with this Clause.

Access for IPL during Operational Period

10.2 IPL shall sign and NHS Greater Glasgow shall procure that the Scottish Ministers sign the Lease on or around the date(s) hereof, the date of entry being the Commencement Date.

10.3 The provisions of Section B Schedule 5 shall apply in relation to the grant of the Lease.

Early termination

10.4 If this Agreement is terminated for any reason prior to the end of the Concession Period, the Lease shall automatically cease and determine with effect from the date of termination of this Agreement (or, if not granted at the time, the obligation to do so shall automatically cease to apply). IPL shall forthwith deliver to NHS Greater Glasgow the Lease together with any Land or Charge

Certificates and releases from any charge and a direction to the Keeper of the Land Register of Scotland to cancel the registered titles relating to the Lease. IPL shall take all steps as may be proper and reasonable to cancel or assist in the cancellation of all entries at the Land Register of Scotland in relation to the Lease.

Expiry of Agreement

10.5 Prior to the end of the Concession Period NHS Greater Glasgow may, by written notice to IPL, require IPL forthwith on receipt, at NHS Greater Glasgow's option, either:

- (a) to assign, with effect from the end of the Concession Period, its unencumbered interest in the Lease (and consent to any variation in the terms of the Lease if required (such consent not to be unreasonably withheld or delayed)), to such assignee as shall be notified by NHS Greater Glasgow to IPL in the notice by delivering to NHS Greater Glasgow, within ten (10) Working Days of receipt of the notice, a duly executed assignation in such form as NHS Greater Glasgow and IPL shall agree (each acting reasonably) together with all relevant title deeds, releases or discharges; or
- (b) to surrender its interest, with effect from the end of the Concession Period, in the Lease in respect of the Site by delivering to NHS Greater Glasgow, within ten (10) Working Days of receipt of the notice, a duly executed deed of surrender in such form as NHS Greater Glasgow and IPL shall agree (each acting reasonably) together with all relevant title deeds, release or discharges.

10.6 To avoid doubt, IPL shall not be entitled to any compensation in respect of any variation of the terms of the Lease or the unexpired part of its interest as tenant under the Lease on assignment or surrender or automatic determination in accordance with this Clause.

Compliance with the Title Deeds

10.7 IPL shall procure that:

- (a) all Project Operations carried out at the Site by or on behalf of IPL (whether before, during or after the completion of the Works) shall be carried out in a manner which does not breach any provisions of the Title Deeds; and
- (b) there shall be no action, or omission to act, by or on behalf of IPL which shall give rise to a right for any person to obtain title to the Site or any part of it (save in accordance with the terms of this Agreement).

Notices

10.8 IPL shall forthwith:-

- (a) transmit to NHS Greater Glasgow the original or a full and accurate copy of any notice concerning the Site which it, or any other person authorised in terms of this Agreement to occupy the Site, may receive as tenant under the Lease (other than from NHS Greater Glasgow) or which shall come to the knowledge of IPL or other person authorised to occupy the Site; and

- (b) give notice to NHS Greater Glasgow upon becoming aware of the same of any defect or need of repair or renewal arising to the Site which might result in NHS Greater Glasgow becoming liable to third parties.

10.9 NHS Greater Glasgow shall forthwith transmit to IPL the original or a full and accurate copy of any notice concerning the Site which it may receive as landlord under the Lease (other than from IPL) or which shall come to the knowledge of NHS Greater Glasgow.

11. RIGHTS GRANTED

11.1 Subject to the terms of the Lease, NHS Greater Glasgow grants to IPL:-

- (a) the exclusive rights to operate, manage and control at IPL's own expense and risk the Site and the Surface Car Parks and the Non-Parking Zones and to use the Car Parking Spaces for the Concession Period in accordance with the terms and conditions as set out in this Agreement and for no other purpose provided always that such rights shall terminate with effect from six (6) years and six weeks after the Commencement Date (without compensation of any kind being payable by NHS Greater Glasgow) in respect of Car Park 4 (St Mungo) on the Plan; and
- (b) a right of way for IPL, IPL Parties and Invitees for the purpose of access to and egress from the Car Parking Spaces in the Surface Car Parks and in common with all other similarly entitled over the Accessways.

11.2 The parties acknowledge that the construction and operation of the Multi-Story Car Park will necessitate the construction and operation of an electricity sub-station. The final position of the sub-station is subject to agreement between the parties (both acting reasonably) and NHS Greater Glasgow shall procure that the Scottish Ministers grant all reasonably necessary easement, servitudes or other rights (including leasehold rights) as may be required by any utility provider.

12. THE SITE

12.1 The condition of the Site shall be the sole responsibility of IPL. Accordingly (without prejudice to any other obligation of IPL under this Agreement and without prejudice to the provisions of Schedule 13 relating to Abnormal Costs), IPL shall be deemed to have:

- (a) carried out all necessary site investigations and to have inspected and examined the Site and its surroundings and (where applicable) any existing structures or works on, over or under the Site;
- (b) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Site, the load-bearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution of the Works;
- (c) satisfied itself as to the adequacy of the rights of access to and through the Site and any accommodation it may require for the

purposes of fulfilling its obligations under this Agreement (such as additional land or buildings outside the Site);

- (d) satisfied itself as to the possibility of interference by persons of any description whatsoever (other than NHS Greater Glasgow), with access to or use of, or rights in respect of, the Site, with particular regard to the owners of any land adjacent to the Site; and
- (e) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance save as may be reasonably caused by the Works or interference, whether public or private, being caused to any third parties.

12.2 To avoid doubt, IPL accepts full responsibility for all matters referred to in Clause 12.1 and IPL shall:

- (a) not be entitled to make any claim against NHS Greater Glasgow of any nature whatsoever save, if applicable, as expressly provided in Clauses 44 or 45 or in paragraph 4 of Schedule 13, on any grounds including (without limitation) the fact that incorrect or insufficient information on any matter relating to the Site was given to it by any person, whether or not NHS Greater Glasgow or any person for whom NHS Greater Glasgow is responsible; and
- (b) be responsible for, and hold NHS Greater Glasgow harmless from, cleaning up and otherwise dealing with any contamination at the Site so that it shall at all times comply with its obligations under this Agreement including (without

limitation) complying with, at its own cost, any applicable Laws and any Consents, orders, notices or directions of any regulatory body (whether made against NHS Greater Glasgow or IPL).

13. CONSENTS AND PLANNING APPROVAL

13.1 IPL shall be responsible for obtaining all Consents which may be required for the performance of the Project Operations provided that with regard to the fire certificate required for the Facilities (and any other Consents unavoidably required by IPL to enable it to carry out the Project Operations which can only be obtained by NHS Greater Glasgow ("NHS Greater Glasgow Consent")) NHS Greater Glasgow shall so long as IPL is complying with the terms of this Agreement in so far as it applies to the obtaining of Consents provide such reasonable assistance as is required by IPL, which shall include applying for the fire certificate or NHS Greater Glasgow Consent, as the case may be, in NHS Greater Glasgow's name but at IPL's cost (such cost shall include any loss, expense, claim, demand or other liability that NHS Greater Glasgow may incur as a result of its compliance with this Clause and the holding of the fire certificate and/or other NHS Greater Glasgow Consent in its name, save to the extent that such loss, expense, claim, demand or other liability arises or has arisen as a result of the breach of the fire certificate and/or other NHS Greater Glasgow Consent by NHS Greater Glasgow not caused by IPL's act, omission or default or breach of this Agreement and, where possible, such cost shall be paid by IPL to NHS Greater Glasgow in advance of such cost being incurred or, where not possible, paid by IPL to NHS Greater Glasgow within Twenty (20)

Working Days of receipt by IPL of a request by NHS Greater Glasgow for payment supported by appropriate evidence of the costs incurred by NHS Greater Glasgow).

14. SITE DAMAGE ETC

Subject to the provisions of Clause 24, no damage to or destruction of the Site or the Surface Car Parks or the Non-Parking Zones or any part thereof howsoever occasioned shall in any way affect the obligations relating to the Works of IPL, NHS Greater Glasgow under this Agreement or any guarantor of IPL's obligations hereunder.

15. CAR PARKING MANAGEMENT POLICY

15.1 Subject to, but without prejudice to the generality of this Agreement, the Car Parking Management Policy to be operated by IPL at NHS Greater Glasgow's Estate shall be as set out in Schedule 17. The Car Parking Management Policy may be changed from time to time as agreed between the parties provided always that NHS Greater Glasgow shall not be entitled to object to any change proposed by IPL where IPL can demonstrate that such change is required for proper operational reasons for the purpose of performing this Agreement.

15.2 NHS Greater Glasgow hereby confers on IPL the right to regulate vehicular entry to and from the Surface Car Parks, Non-Parking Zones and the Site on such terms and conditions as IPL shall determine (acting reasonably) ("the Parking Regulations") provided always that nothing in this Agreement (or the Car Parking Management Policy) shall permit IPL to restrict or prohibit access for emergency vehicles to, from and within NHS Greater Glasgow's Estate. The Parking

Regulations shall include the right to refuse entry to any persons that shall be unwilling to accept the Parking Regulations.

15.3 NHS Greater Glasgow consents to the erection of signage by IPL in reasonable positions within NHS Greater Glasgow's Estate, such signage shall be subject to prior approval by NHS Greater Glasgow (such approval not to be unreasonably withheld or delayed) provided that the contents of such signage detail the terms of access to the Surface Car Parks and/or the Site. The cost of erecting and maintaining such signage shall be borne by IPL.

15.4 IPL shall be entitled to operate a system of fines as set out in the Car Parking Management Policy to be levied on persons parking vehicles in contravention of any Parking Regulations as may from time to time be in force.

15.5 Any fines may (without limit) be imposed in relation to overstay parking or a failure to display any relevant voucher of permit or failure to make any payment. IPL shall be entitled to retain all sums received by way of penalties imposed on persons failing to adhere to the terms of the contract to be entered into between IPL and the persons using the Surface Car Parks, Non Parking Zones and/or the Site.

15.6 Subject to the terms of Clause 62 (Limits on Liability) IPL shall and does hereby indemnify NHS Greater Glasgow against any loss, cost, expense or claim incurred by NHS Greater Glasgow arising from any claim made against NHS Greater Glasgow arising from the Parking Regulations.

16. REPRESENTATIONS ETC

16.1 Save as provided in Clause 16.2 no agent, adviser or other person acting for NHS Greater Glasgow has at any time prior to the Commencement Date been authorised by NHS Greater Glasgow to make to IPL or any agent, adviser or other person acting for IPL any representation whatever (whether written, oral or implied) in relation to the subject matter of this Agreement or to any matter contained or referred to in the tender documents or in this Agreement.

16.2 Any statement made in writing by NHS Greater Glasgow's Solicitors to IPL's Solicitors prior to the making of this Agreement in reply to an enquiry made in writing by IPL's Solicitors or any information supplied by NHS Greater Glasgow's Solicitors in writing was made or supplied with the authority of NHS Greater Glasgow.

17. PROGRAMME OF WORKS AND DATES FOR COMPLETION

Dates for Completion

17.1 IPL shall carry out and complete the Works in accordance with the Building Documents and the provisions of this Agreement by the Estimated Completion Date.

The Programme of Works

17.2 IPL shall throughout the progress of the Works and the conduct of the other Project Operations have full regard for the safety of all persons on the Site (whether lawfully or not) and shall keep the Site, the Works and the Facilities in an orderly state appropriate in accordance with Good Industry Practice to avoid danger to such persons. IPL shall

take such measures, including fencing of the Site where appropriate, as are reasonable in accordance with Good Industry Practice to prevent access to the Site by any person or creature not entitled to be there.

17.3 Any Programme submitted in accordance with the provisions set out below shall be prepared in accordance with Good Industry Practice and shall be in sufficient detail so as to enable NHS Greater Glasgow's Representative to monitor the progress including all commissioning activities and likely future progress of the Works. IPL shall be entitled with NHS Greater Glasgow's consent (not to be unreasonably withheld or delayed) to make reasonable amendments from time to time to the Programme. If NHS Greater Glasgow fails to consent or reject any such amendments within five (5) Working Days of notice of the same, NHS Greater Glasgow's consent shall be deemed to have been given.

17.4 Any change to the Programme shall only be made in accordance with this Clause or Clause 24. IPL shall promptly submit to NHS Greater Glasgow's Representative a copy of any version of the Programme varied in accordance with this Clause 17.

Notification of early completion

17.5 IPL shall notify NHS Greater Glasgow's Representative if at any time the actual progress of the Works is significantly ahead of the Programme so that IPL anticipates that the Completion Date is capable of occurring earlier than the Estimated Completion Date. NHS Greater Glasgow's Representative shall be entitled to require IPL to produce and submit to NHS Greater Glasgow's Representative, a

revised Programme showing the manner and the periods in which the Works will be carried out and what the revised date for completion would be to enable the parties to consider (at their absolute discretion):

- (a) whether to agree a date for completion earlier than the Estimated Completion Date; and
- (b) what modifications (if any) will be required to this Agreement in order to accommodate such earlier date for completion.

18. CONDITIONS FOR UNDERTAKING THE WORKS

Area for Site Huts Etc

18.1 IPL shall be entitled to exclusively occupy that area shown outlined in blue on the Plan during the Construction Period and for a reasonable period thereafter for the purposes of carrying out the Works and locating temporary site accommodation and working space only. Within a reasonable period following completion of the Works, IPL shall remove all temporary site accommodation including hoardings and any rubbish and other materials and make good any damage thereby caused to the reasonable satisfaction of NHS Greater Glasgow. IPL and NHS Greater Glasgow acknowledge that the extent of the area shown outlined in blue on the Plan may be varied from time to time by agreement (both parties acting reasonably).

Installation of Cranes

18.2 NHS Greater Glasgow shall (as from the Commencement Date) allow IPL to install cranes and other equipment on the necessary parts of

the Site and other working space agreed with NHS Greater Glasgow as are necessary for carrying out of the Works and grant all rights as are required by IPL from NHS Greater Glasgow for jibs of the cranes to occupy the air space above so much of NHS Greater Glasgow's Estate as may reasonably be necessary for in so far as such rights shall not block any access roadways or interrupt or disturb (including causing undue noise) the operation of NHS Greater Glasgow's Estate as a hospital.

Access during the Construction Period

18.3 During the Construction Period, IPL shall exercise access to and egress from the Site for the purposes of undertaking the Works only in accordance with the provisions of the Access Protocol. In relation to the area shown hatched in blue on the Plan IPL shall erect and maintain appropriate pedestrian barriers during the Construction Period provided that IPL shall at all times permit NHS Greater Glasgow emergency access to that area.

Works Consents

18.4 IPL shall:-

- (a) use all reasonable endeavours to obtain all Consents which are from time to time necessary for the Works and shall supply to NHS Greater Glasgow a copy of every application for any such Consent (with a copy of all accompanying drawings and other documents) and a copy of every Consent obtained;

- (b) use all reasonable endeavours to procure that such Consents are not revoked and that all such Consents continue in full force and effect; and
- (c) reimburse NHS Greater Glasgow for all reasonable fees, costs and expenses of and incidental to the matters referred to in this Clause 18.4 which may be reasonably and properly incurred by NHS Greater Glasgow after the Commencement Date.

18.5 IPL shall not (and shall procure that no other person shall) without the prior consent in writing of NHS Greater Glasgow such consent not to be unreasonably withheld or delayed apply for or agree to any variation, relaxation or waiver of any Consent referred to in Clause 18.4 (whether obtained before or after the Commencement Date) or of any condition attached to any such Consent but subject to compliance by IPL with its obligations under Clause 18.4 and "Consents" shall be construed as referred to such Consents as from time to time varied, relaxed or waived.

18.6 NHS Greater Glasgow shall co-operate with IPL in relation to any necessary agreements with the provider of any utility supply and shall grant all reasonable necessary rights or leases for pipes, cables, conduits or equipment or enter into any necessary agreements relating thereto on reasonable terms.

19. CONSENTS OF ADJOINING OWNERS AND INDEMNITY

19.1 If the Works cannot be carried out without interfering with any Apparatus, IPL shall promptly and at its own expense use all reasonable endeavours to obtain all necessary Apparatus Consents

and shall pay such reasonable sums by way of compensation as may be required for the giving of any such Apparatus Consent and if it shall become necessary for IPL to divert any Apparatus to another location on NHS Greater Glasgow's Estate then NHS Greater Glasgow shall grant its consent to such diversions PROVIDED THAT:

- (a) such diversion shall be at IPL's sole expense AND PROVIDED FURTHER THAT proviso (a) of this Clause 19.1 shall not apply where NHS Greater Glasgow's warranty (hereby given) that to the best of its knowledge and belief all information provided by NHS Greater Glasgow to IPL in relation to the Apparatus is correct and has not been breached; and
- (b) the route of any diverted Apparatus shall be agreed with NHS Greater Glasgow such agreement not to be unreasonably withheld or delayed having regard to the need to minimise the cost of and time to be spent in carrying out such diversions.

19.2 IPL shall not do or permit or suffer to be done on the Site anything which might:

- (a) be or become a danger or nuisance (save as may reasonably be caused by the Works) to the Adjoining Owners or to the members of the public generally or visitors to NHS Greater Glasgow's Estate;
- (b) cause any damage to the Adjoining Property or to any Apparatus; or

(c) (unless permitted by an Apparatus Consent and then only in accordance with the terms of such Apparatus Consent) interfere with the Apparatus.

and IPL shall at its own expense in carrying out the Works take all necessary measures and precautions to avoid any such danger, nuisance, damage or interference.

20. MATERIALS

If any of the materials referred to in the Building Documents shall not be procurable within a reasonable time and cost then IPL may with the prior consent in writing to NHS Greater Glasgow, such consent not to be unreasonably withheld or delayed, in carrying out the Works substitute for them alternative materials of no lesser quality or as nearly as may be of the same quality.

21. VARIATIONS

IPL shall promptly notify NHS Greater Glasgow's Representative of any Variation required by any local or other competent authority either as a condition of the grant or continuance in force of any Consent or in consequence of any variation, relaxation or waiver of any Consent.

22. CARRYING OUT OF THE WORKS

22.1 Subject to all Consents from time to time necessary being obtained and continuing in force IPL shall use all reasonable endeavours to commence the Works as soon as reasonably practicable after the Commencement Date.

22.2 Subject to all Consents from time to time necessary being obtained and continuing in force IPL shall at its own expense use all reasonable endeavours to diligently carry out and complete the Works:

- (a) in a good and workmanlike manner and with sound materials of their respective kinds;
- (b) in accordance with the terms of all Consents;
- (c) in compliance with the terms of the Lease;
- (d) in accordance with the Building Documents;
- (e) in accordance with the Programme of Works;
- (f) in accordance with the Method Statement;
- (g) otherwise in accordance with the provisions of this Agreement;
- (h) paying for all services consumed by IPL not supplied by NHS Greater Glasgow; and
- (i) acting in a reasonable manner liaise with any other contractors or service providers present and working at NHS Greater Glasgow's Estate.

22.3 During the progress of the Works, IPL shall at its own expense maintain the Works in good order and condition and take all necessary measures and precautions:

- (a) to protect the Works from damage by fire; and

- (b) to keep that part of the Site and the Surface Car Parks on which the Works are being carried out secure against unauthorised visitors.

22.4 IPL shall:

- (a) reimburse NHS Greater Glasgow for all fees, charges and other payments whatever which may at any time after the Commencement Date be payable to any local or other competent authority necessarily incurred in respect of the Works on production by NHS Greater Glasgow of appropriate evidence that such fee or charge or payment has been properly made;
- (b) use all reasonable endeavours to ensure that NHS Greater Glasgow can carry on running NHS Greater Glasgow's Estate as a hospital without undue interference from the execution of the Works on the Site and to provide NHS Greater Glasgow whenever possible with at least five (5) clear Working Days' notice of any part of the execution of the Works which may cause undue interference to the running of the hospital and to consult with NHS Greater Glasgow's Representative in the carrying out of such Works of interference so as to minimise any disruption or interference as far as reasonably practicable.

22.5 IPL shall:

- (a) not use or occupy the Site or permit or suffer the Site to be used or occupied for any purpose other than the carrying out of the Works during the Construction Period;

- (b) not deposit or permit to suffer to be deposited on the Site any materials which are not required for the carrying out of the Works;
- (c) not sell or dispose of any earth clay and gravel or other material from the Site or permit or suffer the same to be removed except so far as shall be necessary for the carrying out of the Works;
- (d) notify NHS Greater Glasgow immediately if any articles of value of historic or prehistoric interest are discovered in the course of carrying out the Works and so that (subject to the rights of the Crown) NHS Greater Glasgow shall have the sole property in any such articles and they shall be dealt with as NHS Greater Glasgow shall reasonably direct, which event shall constitute a Relief Event; and
- (e) not undertake the Works outside the Permitted Hours except with the consent of NHS Greater Glasgow's Representative which shall not be unreasonably withheld or delayed.

22.6 IPL shall:-

- (a) be entitled to amend the Building Documents to the extent required consequent upon a Permitted Variation; and
- (b) shall use all means available at law and pursuant to the Building Contract to enforce compliance by the Builder of its obligations under the Building Contract.

23. REVIEW OF THE WORKS

23.1 IPL shall procure:-

- (a) that NHS Greater Glasgow's Representative is afforded an opportunity to attend all site meetings relating to the Works but NHS Greater Glasgow's Representative shall not be entitled to give any instruction to any of IPL's contractors;
- (b) that (whether or not NHS Greater Glasgow's Representative has attended) a copy of the minutes of every such site meeting including (where reasonably requested) a copy of any formal notice referred to is promptly supplied to NHS Greater Glasgow's Representative; and
- (c) that written information (which may include without limitation copies of instructions, variations, orders, certificates and other instruments issued relating to the Works) is promptly supplied to NHS Greater Glasgow's Representative when reasonably required so as to monitor the quality and progress of the Works and of IPL's performance under this Agreement.

23.2 NHS Greater Glasgow's Representative:

- (a) may at any reasonable time on giving IPL reasonable prior notice of their intention to do so enter upon the Site and the Works in order to view the state and progress of the Works; and
- (b) may perform such tests and inspections as they may reasonably require in order to determine whether the Works

have been and are being carried out in accordance with this Agreement,

but NHS Greater Glasgow's Representative shall not in the exercise of their rights under this paragraph unnecessarily or unreasonably interfere with the carrying out of the Works nor shall NHS Greater Glasgow's Representative be entitled to enter upon the Site or the Works unless accompanied by a representative of IPL who shall make himself available for such purpose at all reasonable times and on receipt of reasonable notice and if no defect is revealed by the exercise by NHS Greater Glasgow's Representative of their rights under this Clause, then such exercise of these rights shall be a Delay Event.

23.3 If any Works have not been or are not being carried out in accordance with the terms of this Agreement NHS Greater Glasgow's Representative may at any time serve on IPL and IPL's Representative a notice ("Defects Notice") specifying the relevant defects in the Works.

23.4 Within five (5) Working Days of the service of a Defects Notice IPL shall notify NHS Greater Glasgow's Representative:

- (a) that they accept that the defects specified in the Defects Notice exist and that they will take all such reasonable measures as shall be required to remedy such defects ("Remedial Measures"); or
- (b) that they do not accept that the defects specified in the Defects Notice exist and they will not take such measures.

- 23.5 If IPL notifies NHS Greater Glasgow's Representative pursuant to Clause 23.4(a) within the prescribed period IPL shall as soon as reasonably practicable commence the Remedial Measures and carry out and complete the same to the reasonable satisfaction of NHS Greater Glasgow's Representative.
- 23.6 In all other cases if IPL does not accept the existence of the defects referred to in the Defects Notice this shall be deemed to be the subject of a dispute or difference which shall be referred for a decision in accordance with the provisions of Clause 49 (Dispute Resolution).
- 23.7 If the person to whom the dispute or difference has been referred decides:-
- (a) that the defects specified in the Defects Notice exist and that Remedial Measures are necessary IPL shall commence the Remedial Measures as soon as reasonably practicable after such decision; or
 - (b) that the defects specified in the Defects Notice do not exist and that Remedial Measures are not required NHS Greater Glasgow's Representative shall immediately withdraw the Defects Notice which shall be of no further effect.
- 23.8 If despite being notified by such person of a decision in accordance with Clause 23.7(a) IPL shall fail diligently to commence carry out and complete the Remedial Measures NHS Greater Glasgow may (but without prejudice to any other right or remedy of NHS Greater Glasgow in respect of such failure) itself carry out and complete the Remedial Measures or cause the same to be carried out and

completed and all reasonable costs and expenses reasonably incurred by NHS Greater Glasgow in so doing shall be repaid by IPL to NHS Greater Glasgow within ten (10) Working Days of written demand with interest at the Prescribed Rate from the date of payment by NHS Greater Glasgow (or of demand if later) until the date of repayment by IPL.

23.9 Save only as provided in Clause 23.10 no test or inspection of the Works by NHS Greater Glasgow's Representative and (if any Works have not been or are not being carried out in accordance with this Agreement) no failure or omission by NHS Greater Glasgow's Representative to serve a Defects Notices and no approval by NHS Greater Glasgow or NHS Greater Glasgow's Representative of the Building Documents or of any Variation or of any other matter or thing referred to in this Clause 23 shall in any way affect or lessen the obligation of IPL under this Agreement.

23.10 If at any time any Works are carried out otherwise than in accordance with the Building Documents and this fact might reasonably have been expected to be apparent on visual inspection to NHS Greater Glasgow's Representative on the first occasion following the carrying out of the relevant Works on which they ought reasonably to have inspected the same pursuant to this Clause 23 ("Relevant Inspection") then unless within five (5) Working Days after the date of the Relevant Inspection (time being of the essence) NHS Greater Glasgow's Representative has served on IPL a Defects Notice in respect of such non-compliance the relevant Works shall be treated for all purposes of this Agreement as having been carried out in accordance with the Building Documents but this Clause 23.10 shall not apply to any non-

compliance with the Building Documents which would amount to an Unacceptable Variation nor shall this Clause 23.10 affect in any way the right of NHS Greater Glasgow's Representative to serve a Defects Notice following any subsequent inspection of the Works in respect of any non-compliance with the Building Documents occurring after the Relevant Inspection.

24. TIME FOR COMPLETION OF THE WORKS

24.1 If, at any time, IPL becomes aware that the Works will not be (or are unlikely to be) completed by the Estimated Completion Date, IPL shall forthwith give notice to NHS Greater Glasgow to that effect specifying the relevant delay or impediment. In relation to any such delay or impediment if NHS Greater Glasgow is satisfied, or it is determined in accordance with the Dispute Resolution Procedure, that such delay or impediment has arisen as a result of the occurrence of a Delay Event, then, subject to Clause 24.2 NHS Greater Glasgow shall allow IPL an extension of time equal to the delay or impediment caused by such Delay Event (taking into account reasonably foreseeable consequences of the Delay Event) and shall fix a new Estimated Completion Date which shall replace the existing Estimated Completion Date but to avoid doubt, there shall be no extension to the period of the Lease as a result of any such delay or impediment.

24.2 If IPL is (or claims to be) affected by a Delay Event:

- (a) it shall (and shall procure that the IPL Parties shall) take and continue to take all reasonable steps to eliminate or mitigate the consequences of such an event upon the performance of its obligations under this Agreement and, where relevant,

resume performance of its obligations affected by the Delay Event as soon as practicable; and

- (b) it shall neither be relieved from liability under this Agreement, nor entitled to any extension of time for the purpose of Clause 24.1, to the extent that it is delayed or impeded due to its failure (if any) to comply with its obligations under paragraph (a) above.

24.3 For the purposes of this Agreement, Delay Events means any of the following to the extent in each case that it has a material and adverse effect on IPL's ability to complete the Works by the Estimated Completion Date:

- (a) a Variation to the Works required by NHS Greater Glasgow;
- (b) any breach by NHS Greater Glasgow and/or any NHS Greater Glasgow Party and/or (in the case of the Lease only) the landlords from time to time under the Lease of any of NHS Greater Glasgow's express obligations under this Agreement or express obligations of the landlord from time to time under the Lease (including any delay in NHS Greater Glasgow and/or the landlords from time to time under the Lease giving access to NHS Greater Glasgow's Estate or any obstruction of the ancillary rights afforded to IPL by NHS Greater Glasgow or any NHS Greater Glasgow Party or any landlord from time to time under the Lease) to the extent in each case that any such breach is not caused, or contributed to, by IPL or any IPL Party;

- (c) the execution of works on NHS Greater Glasgow's Estate not forming part of this Agreement by NHS Greater Glasgow or any contractors employed by NHS Greater Glasgow;
- (d) Force Majeure;
- (e) a Relief Event; or
- (f) a Relevant Change in Law.

24.4 Without prejudice to the generality of Clause 24.1, IPL shall give notice in writing to NHS Greater Glasgow as soon as it (or the Builder) can reasonably foresee a Delay Event occurring which is likely to cause a delay to, or will prevent, the Certificate Date occurring by the Estimated Completion Date or, if the same is not reasonably foreseeable, as soon as it (or the Builder) shall become aware of a Delay Event. IPL shall within ten (10) Working Days after such notification, give further written details to NHS Greater Glasgow which shall include:

- (a) a statement of which Delay Event the claim is based upon;
- (b) details of the circumstances from which the Delay Event arises;
- (c) details of the contemporary records which IPL will maintain to substantiate its claim for extra time;
- (d) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon completion of the Works; and

(e) details of any measures which IPL proposes to adopt to mitigate the consequences of such Delay Event.

24.5 As soon as possible but in any event within five (5) Working Days of IPL (or the Building Contractor) receiving, or becoming aware of, any supplemental information which may further substantiate or support IPL's claim then IPL shall submit further particulars based on such information to NHS Greater Glasgow.

24.6 NHS Greater Glasgow shall, after receipt of written details under Clause 24.4, or of further particulars under Clause 24.5, be entitled by notice in writing to require IPL to provide such further supporting particulars as he may reasonably consider necessary. IPL shall afford NHS Greater Glasgow reasonable facilities for investigating the validity of IPL's claim including, without limitation, on-site inspection.

24.7 Subject to the provisions of this Clause, NHS Greater Glasgow shall fix a revised Estimated Completion Date in accordance with Clause 24.1 as soon as reasonably practicable and in any event within twenty (20) Working Days of the later of:

(a) the date of receipt by NHS Greater Glasgow of IPL's notice given in accordance with Clause 24.4 and the date of receipt of any further particulars (if such are required under Clause 24.6), whichever is the later; and

(b) the date of receipt by NHS Greater Glasgow of any supplemental information supplied by IPL in accordance with Clause 24.5 and the date of receipt of any further particulars (if such are required under Clause 24.6), whichever is the later.

24.8 If IPL has failed to comply with the requirements as to the giving of notice under Clause 24.6, or has failed to maintain records or afford facilities for inspection to NHS Greater Glasgow, then the following provisions shall apply:

- (a) NHS Greater Glasgow may require IPL to submit details of the reasons for such failure. If NHS Greater Glasgow has not stated that it is satisfied with the reasons given within twenty (20) Working Days of their receipt, IPL may refer the matter for resolution in accordance with the Dispute Resolution Procedure;
- (b) if either NHS Greater Glasgow is satisfied with the reasons given or the decision of the Dispute Resolution Procedure is that the failure is excusable, then NHS Greater Glasgow's Representative shall proceed to the evaluation of the request for an extension of time in accordance with Clause 24.7; or
- (c) if the decision of NHS Greater Glasgow (or in the event that the decision is disputed, if the determination in accordance with the Dispute Resolution Procedure) is that the failure is not excusable, then IPL shall not be entitled to a revised Estimated Completion Date in respect of the relevant Delay Event to the extent that NHS Greater Glasgow has, as a result of such failures, been prevented from assessing the consequences of the Delay Event.

24.9 If:

- (a) NHS Greater Glasgow declines to fix a revised Estimated Completion Date;
- (b) IPL considers that a different Estimated Completion Date should be fixed; or
- (c) there is a disagreement as to whether a Delay Event has occurred,

then IPL shall be entitled to refer the matter for determination in accordance with the Dispute Resolution Procedure.

Compensation

24.10 If the Delay Event is a Delay Event referred to in Clause 24.11 (a "Compensation Event"), IPL's sole right to compensation shall be as provided for in this Clause 24. To avoid doubt, no other Delay Event shall entitle IPL to receive any compensation save as otherwise expressly provided in or through this Agreement.

24.11 For the purpose of Clause 24.10, a Compensation Event means any Delay Event referred to in Clause 23.2, 24.3(a) or 24.3(b) or Clause 24.3(c) for which, in each case, it has been agreed or determined pursuant to this Clause that IPL is entitled to an extension of time.

24.12 Subject to Clause 24.13, if it is agreed, or determined, that there has been a Compensation Event, and IPL has incurred loss and/or expense as a direct result of such Compensation Event, IPL shall be entitled to such compensation as would place IPL in no better or no worse position than it would have been in had the relevant

Compensation Event not occurred. IPL shall promptly provide NHS Greater Glasgow with any additional information it may require in order to determine the amount of such compensation.

24.13 IPL shall take all reasonable steps so as to minimise the amount of compensation due in accordance with this Clause 24 in relation to any Compensation Event and any compensation payable shall:

- (a) exclude any amounts incurred or to be incurred as a result of any failure of IPL (or any IPL Party) to comply with this paragraph; and
- (b) be reduced by any amount which IPL will recover under any insurance policy (or would have recovered if it had complied with the requirements of this Agreement or of any policy of insurance required under this Agreement) which amount, to avoid doubt, shall not include any excess or deductibles or any amount over the maximum amount insured applicable to any such insurance policy.

24.14 The amount of any compensation due to IPL under this Clause 24 shall be agreed between the parties or, failing agreement, determined pursuant to the Dispute Resolution Procedure.

25. PRACTICAL COMPLETION

25.1 IPL shall not issue or procure to be issued a Certificate of Practical Completion unless IPL has given to NHS Greater Glasgow's Representative not less than five (5) Working Days' notice that IPL's Representative proposes on a date specified in such notice to carry

out an inspection (“Inspection”) of the Works with a view to issuing a Certificate of Practical Completion.

25.2 If the Inspection does not take place or if following the Inspection the Certificate of Practical Completion is not issued IPL shall procure that the same is not subsequently issued unless notice has again been given to NHS Greater Glasgow’s Representative in accordance with Clause 25.1 (which procedure shall be repeated as often as necessary until the Certificate of Practical Completion is issued).

25.3 NHS Greater Glasgow’s Representative shall be entitled to attend every Inspection and IPL shall have regard to any written representations made by NHS Greater Glasgow’s Representative to IPL’s Representative within ten (10) Working Days after the date of the Inspection concerning the issue of the Certificate of Practical Completion.

25.4 IPL’s Representative shall procure that a copy of every Certificate of Practical Completion issued by IPL’s Representative shall be supplied to NHS Greater Glasgow’s Representative immediately.

25.5 Any Certificate of Practical Completion issued by IPL’s Representative otherwise than in accordance with the provisions of this Clause 25 shall be of no effect for the purposes of this Agreement.

25.6 Subject to Clauses 25.3, 25.4 and 25.5 IPL shall procure the issue of a Certificate of Practical Completion as soon as in the reasonable opinion of IPL’s Representative a Certificate of Practical Completion may properly be issued. Provided always that, if IPL has failed to complete that part of the Works comprising landscaping of the area

hatched blue on the Inset Plan as a result of failure by NHS Greater Glasgow to allow IPL sufficient and reasonable access to complete such landscaping, issue of a Certificate of Practical Completion shall not as a result be delayed but shall be issued subject to completion of such landscaping being identified on the Defects Notice issued in accordance with Clause 23.3. If NHS Greater Glasgow fails to allow IPL sufficient and reasonable access to complete such landscaping within six months of the date of issue of the Defects Notice, then IPL shall be deemed to be released from the obligation to complete such landscaping.

25.7 The issue of the Certificate of Practical Completion shall in no way lessen or affect the obligations of IPL under this Agreement in relation to the Works and IPL shall at its own expense:-

- (a) as soon as practicable after the Certificate Date carry out and complete in accordance with the provisions of this Agreement such (if any) of the Works as have not been so completed on the Certificate Date; and
- (b) on completion of the Works IPL shall procure the removal from the Site of all rubbish and all building and other materials and equipment.

25.8 Within twenty (20) Working Days after the Certificate Date IPL shall at its own expense supply to NHS Greater Glasgow a complete set of "as built" plans and drawings and in autocad format in relation to the Works together with a copy of the safety file (including the health and safety file) and the operating and maintenance manuals.

26. IPL'S OBLIGATIONS

26.1 In the Multi Storey Car Park, the Surface Car Parks and the Non-Parking Zones IPL shall operate or procure the operation of the Car Parking Management Policy during the Concession Period and shall without limitation:-

- (a) maintain and repair the Multi Storey Car Park and the Surface Car Parks (excluding always those Car Parks identified on the Plan as Car Park 1 (Quadrangle), Car Park 2 (the Cathedral Ground), Car Park 3 (Mortuary Lane) and Car Park 7 (Ambulance Undercroft) maintenance of which shall be the responsibility of NHS Greater Glasgow in accordance with Clause 27.3) in accordance with the provisions of and the standards set out in Schedule 18 (Car Park Services Specification). To avoid doubt responsibility for repair and maintenance of the boundary walls and fences at the Car Park identified on the Plan as Car Park 9 (Bank) shall remain the responsibility of NHS Greater Glasgow;
- (b) maintain in good and proper working order and when necessary renew equipment installed pursuant to undertaking the Works (including CCTV to be provided by IPL in the Multi Storey Car Park as set out in the Building Documents) and any equipment transferred to IPL under Clause 7 (to the extent used by IPL) for the proper performance of its rights and obligations under this Agreement;
- (c) (save where NHS Greater Glasgow is responsible under this Agreement) as and when necessary supply and install and

maintain the appropriate signage which shall be of a type and located as approved in writing by NHS Greater Glasgow such approval not to be unreasonably withheld or delayed;

- (d) make provision for a maximum of thirty two (32) Free Spaces in such locations (being Car Parking Spaces) as are identified from time to time in the Car Parking Management Policy for disabled drivers any such direction being made in writing and on fourteen days' notice provided that NHS Greater Glasgow shall reimburse to IPL the proper and reasonable costs of signage or re-lining or other alteration incurred by IPL in giving effect to any such direction other than any such re-lining or other alteration incorporated in the Building Documents;
- (e) make provision for Staff Spaces in such locations as are shown on the Plan;
- (f) observe and perform the provisions of Schedule 13 in relation to charges for the use of Car Parking Spaces;
- (g) agree with NHS Greater Glasgow and operate a system to monitor and discourage non-display of receipts or permits, overrun of time or for illegal or dangerous parking making proper arrangements for emergency and unintended overstay visitors, which system shall be a detailed in the Car Parking Management Policy;
- (h) undertake reasonable endeavours to ensure use of Car Parking Spaces by Qualifying Persons and Invitees only and in the event of unauthorised use of Car Parking Spaces by other

persons to agree with NHS Greater Glasgow (both parties acting reasonably) such measures as may be taken by both parties to prevent such unauthorised use;

- (i) operate the Multi Storey Car Park, the Surface Car Parks and the Non-Parking Zones so that the Car Parking Spaces are used or are available for use twenty four hours per day each day of the year pursuant to the provisions of this Agreement;
- (j) impose, collect and keep all parking fees and other charges levied in respect of each Car Parking Space in accordance with this Agreement and Schedule 13 and ensure that Qualifying Persons are able to purchase tickets, Access Cards or permits to cover parking over not shorter than monthly periods. IPL shall establish a system for payment by Qualifying Persons which shall require payment by direct employees of NHS Greater Glasgow not less than monthly in advance by direct debit and for any persons who are not direct employees of NHS Greater Glasgow not less than quarterly in advance by cleared funds or cash or as otherwise may be agreed with the Qualifying Person. Any system shall require any Qualifying Person to pay one month's Tariff in advance as a deposit and such deposit shall be refunded provided the Qualifying Person gives one month's notice of termination of his holding of the Access Card. IPL warrants that the level of parking fee and other charges specified in Schedule 13 satisfy any conditions pursuant to which the Council granted the Consents and have, to the extent required by the Consents, been approved by the Council;

- (k) notify NHS Greater Glasgow in writing without delay of any accident which occurs within the Site, the Surface Car Parks or the Non-Parking Zones which IPL or its employees, servants or agents witnesses or which is reported to IPL in order that NHS Greater Glasgow may in their sole discretion investigate the same and take any appropriate action and IPL shall maintain a register of such accidents and report to NHS Greater Glasgow at least monthly in respect of such register provided that NHS Greater Glasgow shall be given access to the register of accidents maintained by IPL hereunder at all times;

- (l) maintain a written register of:-
 - (i) complaints received from users of any Car Parking Spaces or other parties in respect of the operation of the Car Parking Management Policy and to report all complaints received to NHS Greater Glasgow on a monthly basis provided that NHS Greater Glasgow shall be given access to the register of complaints maintained by IPL under this Clause at all reasonable times;

 - (ii) damage to or theft from vehicles;

- (m) ensure that a suitable person of IPL attends regular liaison meetings with officers for NHS Greater Glasgow appointed for that purpose for the purpose of reviewing the operation of this Agreement but not more frequently than once in every month;

- (n) provide NHS Greater Glasgow with written quarterly management information reports relating to the use of Car Parking Spaces including information relating to peak periods of demand for the use of a Car Parking Space;
- (o) observe such reasonable rules and regulations which are of general application as NHS Greater Glasgow may make from time to time to govern the general management use and occupation of NHS Greater Glasgow's Estate;
- (p) not at any time obstruct or permit the obstruction of any part of any access or exit serving the Surface Car Parks or the Non-Parking Zones and not park or permit to be parked any motor vehicle under the control of IPL, its agents or employees in such a position as to prevent the free movement of motor vehicles and pedestrians in, out of or through the Surface Car Parks or the Non-Parking Zones and/or Accessways and/or NHS Greater Glasgow's Estate;
- (q) provide management for the Surface Car Parks as provided in the Car Parking Management Policy;
- (r) allow those areas shown coloured purple on the Plan to be used without charge for drop off by patients and anyone attending with them at Car Park 1 (Quadrangle), Car Park 7 (Ambulance Undercroft) the A & E and Car Park 13 (Maternity) ("Drop Off Zones") PROVIDED THAT the maximum permitted period for parking shall be no more than thirty (30) minutes and PROVIDED FURTHER that such areas shall be subject to the Car Parking Management Policy;

- (s) subject to Clause 26.3 allocate such number of Car Parking Spaces for the exclusive use of members of NHS Greater Glasgow's staff as are identified on the Plan and only change such allocation (a) with the consent of NHS Greater Glasgow (which consent shall not be unreasonably withheld or delayed) or (b) as otherwise provided in this Agreement;
- (t) allow those areas coloured brown on the Plan to be used as ambulance parking areas by NHS Greater Glasgow in respect of which there shall be no charge in relation to use by ambulances.
- (u) subject always to Clause 27.3 allow NHS Greater Glasgow and those authorised by NHS Greater Glasgow to enter upon the Multi-Storey Car Park and the Surface Car Parks for the purpose of maintaining NHS Greater Glasgow's Estate;
- (v) keep the Multi Storey Car Park and the Surface Car Parks free from litter and provide receptacles for the deposit of litter and shall empty the same as often as required; and
- (w) maintain the lighting within and external to the Multi Storey Car Park but excluding to avoid doubt lighting in the Surface Car Parks which shall be the responsibility of NHS Greater Glasgow.

26.2 Subject always to Clause 26.3(a) and (b) IPL shall issue not more than one point four (1.4) Access Cards per Staff Space to Qualifying Persons to enable such persons to use a Staff Space, and:-

- (a) prior to the Certificate Date not less than two hundred and ninety four (294) Car Parking Spaces and after the Certificate Date not less than six hundred and seventy two (672) Car Parking Spaces shall be allocated exclusively as Staff Spaces and Access Cards shall be issued to NHS Greater Glasgow employees upon the terms of this Agreement and under such arrangements as are set out in the Car Parking Management Policy and in the absence of such provision in the Car Parking Management Policy on such basis as IPL shall determine;
- (b) provided always that notwithstanding the terms of this Agreement IPL may with the consent of and, subject to agreement with NHS Greater Glasgow as to location and numbers, and any other conditions imposed by NHS Greater Glasgow create additional Car Parking Spaces in the event that demand for Car Parking Spaces for use by Qualifying Persons exceeds the numbers stated in this Agreement provided always that additional Car Parking Spaces shall be permitted at the absolute discretion of NHS Greater Glasgow;
- (c) the parties may by mutual written agreement vary the number or allocation of Access Cards or Staff Spaces but any such agreement shall be in the parties' sole discretion.

26.3 Subject always to Clause 26.2 at any time during the Concession Period NHS Greater Glasgow may require IPL to issue to NHS Greater Glasgow such number of Access Cards as NHS Greater Glasgow may determine provided that:

- (a) such number of Access Cards shall be available for sale by IPL having due regard to the number of Access Cards as may from time to time be purchased by Qualifying Persons; and
- (b) NHS Greater Glasgow makes payment to IPL of the appropriate Tariff for such Access Cards set out in paragraph 3.1 of Schedule 13.

27. NHS GREATER GLASGOW'S OBLIGATIONS

27.1 NHS Greater Glasgow shall not

- (a) provide or procure nor shall NHS Greater Glasgow assist in providing or procuring the provision of car parking spaces which are capable of being used as a Car Parking Space within NHS Greater Glasgow's Estate and NHS Greater Glasgow shall use all reasonable endeavours to ensure that any areas which are either owned by NHS Greater Glasgow or in which NHS Greater Glasgow has an interest in the immediate vicinity of NHS Greater Glasgow's Estate are not used by Qualifying Persons or visitors to NHS Greater Glasgow's Estate for car parking purposes as a means solely of avoiding payment of Car Parking Charges; and
- (b) at any time after the Certificate Date provide or procure nor shall NHS Greater Glasgow assist in providing or procuring the provision of free or subsidised transportation for staff or visitors to NHS Greater Glasgow's Estate which will have or is likely to have a material adverse effect on Tariff income reasonably expected by IPL,

provided always that there shall be excluded from this Clause 27.1 (b) any transport arranged or provided by NHS Greater Glasgow between NHS Greater Glasgow's Estate and any other site upon which NHS Greater Glasgow performs Clinical Services.

27.2 In the event of disposal or transfer of any part of NHS Greater Glasgow's Estate NHS Greater Glasgow shall procure that each and every such disposal or transfer subject to:-

- (a) the donee or transferee being prohibited from operating any commercial car park operation in competition with the business operated by IPL on NHS Greater Glasgow's Estate; and
- (b) the donee or transferee covenanting directly with IPL that it shall use all reasonable endeavours and undertake reasonable and practical steps to prevent parking of Qualifying Vehicles by staff of NHS Greater Glasgow or visitors to NHS Greater Glasgow's Estate on any areas disposed or transferred for the sole purpose of avoidance by such staff or visitors of payment of Car Parking Charges,

provided that nothing contained in Clauses 27.1(a) or (b) shall oblige NHS Greater Glasgow to procure any disposal or transfer which is not competent at law.

27.3 NHS Greater Glasgow shall:

- (a) maintain the Accessways and those Car Parks identified on the Plan as Car Park 1 (Quadrangle), Car Park 3 (Mortuary Lane) and Car Park 7 (Ambulance Undercroft) in accordance with the provisions of Schedule 16;

(b) in carrying out maintenance to NHS Greater Glasgow's Estate cause as little disturbance as possible to the Project Operations and (except in the case of emergency) give one month's notice to IPL where access is required to the Multi Storey Car Parks or the Surface Car Parks for the purposes of carrying out such maintenance. If, as a result of NHS Greater Glasgow carrying out maintenance to NHS Greater Glasgow's Estate:-

- (i) Car Parking Spaces are unavailable for use; and
- (ii) IPL suffers Maintenance Income Loss in excess of the Threshold,
- (iii) NHS Greater Glasgow shall reimburse such excess to IPL within thirty (30) days of demand subject to issue of invoices by IPL;

(c) erect and maintain signage (agreed with IPL acting reasonably) in relation to the areas identified in Clauses 26.1 (r);

(d) by no later than the fourth anniversary of the Commencement Date, remove the accommodation which occupies up to ten (10) Car Parking Spaces within the Surface Car Park numbered 6 on the Plan making good any damage thereby caused and make the said ten (10) Car Parking Spaces available for use by Invitees failing which NHS Greater Glasgow shall be deemed to have taken possession of such Car Parking Spaces in accordance with Clause 30.1 and Clauses 30.2 and 30.3 shall apply;

- (e) use all reasonable endeavours to clear snow from and grit from the Accessways and the Surface Car Parks such as to allow safe and unrestricted access and egress;

- (f) supply electricity to the Surface Car Parks for operation of the car parking equipment within the same at no charge to IPL and supply electricity to the Multi Storey Car Park subject to IPL installing a meter for such supply as part of the Works and IPL making payment to NHS Greater Glasgow for such supply in accordance with paragraphs 7 and 8 of Schedule 13 provided always that:-
 - (i) failures in any such supply of electricity to NHS Greater Glasgow shall, for the purposes of NHS Greater Glasgow's responsibility in respect of such supply, constitute a Relief Event for the purposes of Clause 46; and
 - (ii) the emergency supply of electricity at NHS Greater Glasgow's Estate shall not be used for supply to the Surface Car Parks or the Multi Storey Car Park; and

- (h) in consultation with IPL use reasonable endeavours to enforce due performance by the Council of its obligations to maintain the Burial Ground Car Park as contained in Deed of Servitude by the City of Glasgow Council in favour of the Secretary of State for Scotland dated Ninth November Nineteen hundred and eighty eight and recorded in the General Register of Sasines for the Barony and Regality of Glasgow Third April Nineteen hundred and eighty nine.

28. PARKING FOR CONTRACTORS

28.1 All commercial vehicles belonging to contractors working at NHS Greater Glasgow's Estate will be subject to payment of the appropriate Car Parking Charges in respect of the number of Car Parking Spaces occupied by such vehicles except where NHS Greater Glasgow has issued an Access Card purchased by NHS Greater Glasgow pursuant to Clause 26.3.

28.2 IPL shall require the drivers of such commercial vehicles who fail to adhere to any parking instructions given by NHS Greater Glasgow or by IPL to move their vehicle forthwith.

29. STAFFING

29.1 IPL shall ensure that at all times adequate and readily available competent staff shall be located at NHS Greater Glasgow's Estate and within the Multi Storey Car Park, the Surface Car Parks and Non-Parking Zones to ensure the adequate and efficient administration of the Car Parking Management Policy and to deal with all complaints and comments from the users of the Car Parking Spaces and handle all such matters in a sympathetic and polite but business like manner, compatible with projecting a good public image of NHS Greater Glasgow and securing the goodwill of the public and staff.

29.2 IPL's staff shall be easily identifiable at all times by wearing a distinctive uniform.

30. CLAWBACK OF CAR PARKING SPACES

30.1 NHS Greater Glasgow may on giving seven days' notice to IPL take exclusive possession of the number of Staff Spaces in the Multi Storey Car Park or the Surface Car Parks specified in such notice and for the period specified ("Possession Period") provided always that the terms of the Consents shall not be breached by so doing.

30.2 NHS Greater Glasgow shall pay to IPL an amount equivalent to the income which would have been received by IPL for the Car Parking Spaces affected as calculated by reference to the Financial Model.

30.3 NHS Greater Glasgow shall pay to IPL the amounts under this Clause 30 monthly in advance.

31. CONFIDENTIALITY

Names and addresses of the users of a Car Parking Space which may accrue to IPL shall remain confidential and must not be divulged to any third party (not including the Car Park Operator) or used by IPL otherwise than for the purpose of this Agreement or its operation of the Car Parking Management Policy and in respect of all data held both parties shall comply with the provisions of the Data Protection Act 1998.

32. NHS GREATER GLASGOW'S FACILITIES

32.1 The employees and contractors of IPL may at the reasonable discretion of NHS Greater Glasgow use the communal facilities at NHS Greater Glasgow's Estate.

32.2 IPL shall provide its own telephone facilities at the Multi Storey Car Park as part of the administration of the Car Parking Management Policy.

33. OWNERSHIP OF EQUIPMENT

33.1 Absolute ownership of all and any signage supplied by IPL pursuant to this Agreement and provided for the administration of the Car Parking Management Policy shall pass to NHS Greater Glasgow on the termination of this Agreement howsoever occasioned and ownership of any car parking equipment shall transfer to NHS Greater Glasgow subject to the terms of Schedule 15.

34. PROHIBITIONS

34.1 IPL shall not:-

- (a) do or permit anything to be done which may at any time become an annoyance or nuisance to NHS Greater Glasgow or the lessees, tenants or occupiers of adjoining or neighbouring property (save as may reasonably be caused by the Works) PROVIDED THAT the operation of the Car Parking Management Policy shall not of itself constitute a breach of this Agreement;
- (b) exhibit or permit to be exhibited any notice or advertisement of any description at NHS Greater Glasgow's Estate other than required by law, by the Car Parking Management Policy or those previously approved in writing by NHS Greater Glasgow or required pursuant to the provisions of the Lease or this

Agreement other than for IPL's own business for which approval shall not be unreasonably withheld;

- (c) remove any equipment from the Site or the Surface Car Parks (other than that damaged or disused or equipment used for the Works) used in conjunction with this Agreement or the Car Parking Management Policy;
- (d) levy or increase any Car Parking Charges other than in accordance with the provisions of Schedule 13.

35. ASSIGNATION, SUB-CONTRACTING AND CHANGES IN CONTROL

Assigation

35.1 This Agreement and any Project Documents to which both NHS Greater Glasgow and IPL are a party shall be binding on, and shall enure to the benefit of, IPL and NHS Greater Glasgow and their respective successors and permitted transferees and assignees. In the case of NHS Greater Glasgow, its successors shall include any public body (as defined in Schedule 2A of the Insolvency Act 1986) to whom the Scottish Ministers, in exercising their statutory powers to transfer property, rights or liabilities of NHS Greater Glasgow upon NHS Greater Glasgow ceasing to exist, transfers the property, rights or obligations of NHS Greater Glasgow under this Agreement and/or such other Project Documents to which NHS Greater Glasgow and IPL are both a party.

35.2 Subject to Clause 35.3, IPL shall not, without the prior written consent of NHS Greater Glasgow, assign, transfer, sub-contract or otherwise dispose of any interest in this Agreement, the Lease, the Building

Contract or the Car Park Operator Contract entered into by IPL for the purposes of performing its obligations under this Agreement.

35.3 The provisions of Clause 35.2 do not apply to the grant of any security, in a form approved by NHS Greater Glasgow prior to its grant (such approval not to be unreasonably withheld or delayed) for any loan made to IPL under the Initial Funding Agreements provided that any assignee shall enter into the Funders' Direct Agreement in relation to the exercise of its rights, if NHS Greater Glasgow so requires.

35.4 NHS Greater Glasgow shall not and shall procure in respect of the Lease that the Scottish Ministers do not assign or otherwise dispose of the benefit of the whole or part of this Agreement or the Lease or any agreement in connection with this Agreement to which IPL and NHS Greater Glasgow are a party to any person, save:

(a) to the Scottish Ministers, a National Health Service Trust, a Health Board, a Special Health Board, a Primary Care Trust or any other person or body replacing any of the foregoing (or to whom the Scottish Ministers exercising their statutory rights would be entitled to transfer such benefits) covered by the National Health Service (Residual Liabilities) Act 1996, provided that, where the National Health Service (Private Finance) Act 1997 or legislation with similar effect does not apply to such assignee or transferee, a letter of comfort in Agreed Form shall have first been provided to IPL and the Senior Funders by the Scottish Ministers; or, in all other instances,

- (b) with the prior written consent of IPL (such approval not to be unreasonably withheld or delayed),

provided that in each case, such assignee or transferee is a public body (as defined by Schedule 2A of the Insolvency Act 1986) and that nothing in this Sub-clause shall restrict the rights of the Scottish Ministers to effect a statutory transfer.

35.5 NHS Greater Glasgow shall procure that if the Scottish Ministers' heritable interest in the Site is conveyed or transferred to a party other than NHS Greater Glasgow or a party to whom NHS Greater Glasgow's whole interest in and rights and obligations under this Agreement are assigned or transferred, any obligation on NHS Greater Glasgow to procure performance by the Scottish Ministers in their capacity as heritable proprietor of the Site or landlord under the Lease shall be deemed to include an obligation to procure performance of the obligations by the heritable proprietor or landlord under the Lease (as the case may be).

35.6 IPL shall:

- (a) not terminate or agree to the termination of the engagement and/or employment of (or the replacement of) the Builder or the Car Park Operator under the Sub-Contracts; and
- (b) without prejudice to Clause 35.1 (Assignment), procure that none of the persons listed below shall sub-contract all (or substantially all) of their obligations under or in the agreement set out next to its name:

Person

Contract

Builder Building Contract

Car Park Operator Car Park Operator
Contract

without, in each case, the prior written consent of NHS Greater Glasgow which consent shall not be unreasonably withheld or delayed and in any case shall only be withheld if the proposed replacement sub-contractor:

- (i) lacks the legal capacity, power and authorisation to perform the relevant obligations; or
- (ii) lacks the technical competence and technical resources to perform the relevant obligations; or
- (iii) does not provide the benefit of a security of covenant in accordance with the requirements of Clause 35.8; or
- (iv) is known to have a history of poor contractual performance or has acted in bad faith in its dealings with the NHS or other public bodies,

and which consent shall, without prejudice to the other provisions of Clause 35.6, not be required in respect of the appointment of any party approved by NHS Greater Glasgow as at the Commencement Date as a suitable replacement.

35.7 If the contract set out next to the name of any person referred to in Clause 35.6 shall at any time lapse, terminate or otherwise cease to be in full force and effect (whether by reason of expiry or otherwise), with the effect that such person shall cease to act in relation to the

Project, IPL shall forthwith appoint a replacement (subject to compliance with Clause 35.6).

35.8 IPL shall procure that any replacement for any person referred to in Clause 35.6 shall enter into a contract upon the same or substantially similar terms as the person so replaced and shall also enter into a collateral agreement on the same or substantially the same terms as the Direct Agreement entered into by the person so replaced. It shall be the aim of the parties that, in the event of any such replacement pursuant to Clause 35.6, NHS Greater Glasgow shall have the benefit of security of covenant no better or worse than that provided by the original Builder or Car Park Operator taken together with that party's original guarantor.

Changes in Control

35.9 Subject to Clause 35.10, prior to the expiry of a period of twelve (12) months commencing on the Completion Date, no Change in Control in any or all of the shares in IPL (or any company (other than a public quoted company whose equity securities are listed on a recognised investment exchange as defined in section 285 (1) of the Financial Services and Markets Act 2000) of which IPL is a subsidiary) shall be permitted without the prior written approval of NHS Greater Glasgow.

35.10 Subject to Clause 35.11, the conditions and restrictions in Clause 35.9 shall not apply to a Change in Control in any shares in IPL held by any Third Party Shareholder.

35.11 No Change in Control (at any time) during the Concession Period in any or all of the shares in IPL (or any company (other than a public

quoted company whose equity securities are listed on a recognised investment exchange as defined in section 285 (1) of the Financial Services and Markets Act 2000) of which IPL is a subsidiary) shall be permitted without the prior written approval of NHS Greater Glasgow where the person acquiring control is a Restricted Person.

36. NOTICES

36.1 In this clause:-

- (a) “NHS Greater Glasgow’s Address” means the address of NHS Greater Glasgow shown on the first page of this agreement or such other address as NHS Greater Glasgow may from time to time notify to IPL as being its address for service for the purposes of this Agreement; and
- (b) “IPL’s Address” means the address of IPL shown on the first page of this Agreement or such other address as IPL may from time to time notify to NHS Greater Glasgow as being its address for service for the purpose of this Agreement.

36.2 Any notice or other communication given or made in accordance with this Agreement shall be in writing, and:

- (a) may (in addition to any other effective mode of service) be sent by registered or recorded delivery post; and
- (b) shall (in the case of a notice or other communication to NHS Greater Glasgow but subject to Clause 36.3(a)) be served on NHS Greater Glasgow at NHS Greater Glasgow’s Address; and

- (c) shall (in the case of a notice or other communication to IPL but subject to Clause 36.3(b)) be served on IPL at IPL's Address.

36.3 Any notice or other communication given or made in accordance with this Agreement:

- (a) by or to NHS Greater Glasgow may be given or made by or to NHS Greater Glasgow's Solicitors on behalf of NHS Greater Glasgow;
- (b) by or to IPL may be given or made by or to IPL's Solicitors on behalf of IPL.

37. IPL EVENTS OF DEFAULT

37.1 For the purposes of this Agreement, IPL Events of Default means any of the following events or circumstances:

Insolvency

- (a) the occurrence of any of the following events in respect of IPL, namely:
 - (i) any arrangement or composition with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into by or in relation to IPL;
 - (ii) a receiver, administrator, administrative receiver or other heritable creditor taking possession of or being appointed over, or any distress, execution or other process being levied or enforced (and not being

discharged within thirty (30) Working Days) upon, the whole or any material part of the assets of IPL;

- (iii) IPL ceasing to carry on business;
- (iv) any application being made or any petition being presented (and not being discharged within twenty (20) Working Days), or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of IPL; or

Long stop

- (b) IPL failing to achieve the Certificate Date within a period of twelve (12) months after the Estimated Completion Date;

Default

- (c) IPL committing a material breach of its obligations under this Agreement which has a material and adverse effect on the delivery of Clinical Services or any other services at the hospital on NHS Greater Glasgow's Estate for which IPL is not responsible (other than as a consequence of a breach by NHS Greater Glasgow of its obligations under this Agreement);
- (d) IPL abandoning the Works (other than as a consequence of a breach by NHS Greater Glasgow of its obligations under this Agreement);
- (e) IPL ceasing to provide a substantial part of the Car Park Services or materially failing in provision of the Car Park Services in accordance with this Agreement (other than as a

consequence of breach by NHS Greater Glasgow of its obligations under this Agreement);

Assignment

- (f) IPL failing to comply with the assignment provisions of Clause 34;

Payment

- (g) IPL failing to pay any sum or sums due to NHS Greater Glasgow under this Agreement (which sums are not in dispute) which, either singly or in aggregate, exceed(s) £50,000 (index linked) and such failure continues for sixty (60) Working Days from receipt by IPL of a notice of non payment from NHS Greater Glasgow;

Health and Safety

- (h) At any time after the Completion Date IPL committing a material breach of its obligations under this Agreement (other than as a consequence of a breach by NHS Greater Glasgow of its obligations under this Agreement or the occurrence of Force Majeure which results in the criminal investigation, prosecution and conviction of IPL or any IPL Party or NHS Greater Glasgow under the Health and Safety Regime (an "H&S Conviction") provided that an H&S Conviction of a IPL Party or NHS Greater Glasgow shall not constitute an IPL Event of Default if, within ninety (90) Working Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the

involvement in the Project Operations of each relevant IPL Party (which in the case of an individual director, officer or employee shall be deemed to include the IPL Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by IPL in accordance with Clause 35.6 (Sub-contractors). In determining whether to exercise any right of termination or right to require the termination of the engagement of an IPL Party pursuant to this Clause 37.1 (h) NHS Greater Glasgow shall:-

- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
- (ii) give all due consideration where appropriate to action other than termination of this Agreement;

Change in Control

- (i) the occurrence of any Change in Control which is prohibited by Clause 35 (Assignment, sub-contracting and Changes in Control); or

Refinancing

- (j) there being a wilful breach by IPL of the terms of Schedule 12 (Refinancing).

Lease

- (k) a material breach of the Lease by IPL or an IPL party.

Notification

37.2 IPL shall notify NHS Greater Glasgow of the occurrence, and details, of any IPL Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to an IPL Event of Default, in either case promptly on IPL becoming aware of its occurrence.

NHS Greater Glasgow's Options

37.3 On the occurrence of an IPL Event of Default, or within a reasonable time after NHS Greater Glasgow becomes aware of the same, and while the same is subsisting, NHS Greater Glasgow may:

- (a) in the case of the IPL Events of Default referred to in Clauses 37.1 (a), (b), (f), (g) (h) and (j) terminate this Agreement in its entirety by notice in writing having immediate effect;
- (b) in the case of any IPL Events of Default referred to in Clauses 37.1 (c), (d), (e) and (i) serve notice of default on IPL requiring IPL at IPL's option either:
 - (i) to remedy the IPL Event of Default referred to in such notice of default (if the same is continuing) within twenty (20) Working Days of such notice of default; or
 - (ii) to put forward within twenty (20) Working Days of such notice of default a reasonable programme (set out, if appropriate, in stages) for remedying the IPL Event of Default. The programme shall specify in reasonable detail the manner in, and the latest date by, which such

IPL Event of Default is proposed to be remedied (IPL shall only have the option of putting forward a programme in accordance with this paragraph if it first notifies NHS Greater Glasgow within ten (10) Working Days of such notice of default that it proposes to do so).

Remedy provisions

37.4 Where IPL puts forward a programme in accordance with Clause 37.3(b)(ii), NHS Greater Glasgow shall have twenty (20) Working Days from receipt of the same within which to notify IPL (acting reasonably) that it does not accept the programme, failing which NHS Greater Glasgow shall be deemed to have accepted the programme. Where NHS Greater Glasgow notifies IPL that it does not accept the programme as being reasonable, the parties shall endeavour within the following five (5) Working Days to agree any necessary amendments to the programme put forward. In the absence of agreement within five (5) Working Days, the question of whether the programme (as the same may have been amended by agreement) will remedy the IPL Event of Default in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable programme) may be referred by either party for resolution in accordance with the Dispute Resolution Procedure.

37.5 If:

- (a) the IPL Event of Default notified in a notice of default served under Clause 37.3(b) is not remedied before the expiry of the period referred to in Clause 37.3(b)(i); or

- (b) where IPL puts forward a programme pursuant to Clause 37.3(b)(ii) which has been accepted by NHS Greater Glasgow or has been determined to be reasonable and IPL fails to achieve any element of the programme or the end date for the programme (as the case may be); or
- (c) any programme put forward by IPL pursuant to Clause 37.3(b)(ii) is rejected by NHS Greater Glasgow as not being reasonable, and the Dispute Resolution Procedure does not find against that rejection,

then NHS Greater Glasgow may terminate this Agreement in its entirety by written notice to IPL with immediate effect. Provided that for the purposes of Clause 37.5 (b) if IPL's performance of the programme is adversely affected by the occurrence of Force Majeure, a Relief Event or an Excusing Cause then, subject to IPL complying with the mitigation and other requirements in this Agreement concerning Force Majeure, a Relief Event or an Excusing Cause (as the case may be), the time for performance of the programme or any relevant element of it shall be deemed to be extended by a period equal to the delay caused by Force Majeure, the Relief Event or the Excusing Cause (as the case may be) which is agreed by the parties or determined in accordance with the Dispute Resolution Procedure.

NHS Greater Glasgow's costs

37.6 IPL shall reimburse NHS Greater Glasgow for all reasonable costs incurred by NHS Greater Glasgow in exercising any of its rights in terms of this Clause 37 (including, without limitation, any relevant

increased administrative expenses). NHS Greater Glasgow shall take reasonable steps to mitigate such costs.

37.7 NHS Greater Glasgow shall not exercise, or purport to exercise, any right to terminate this Agreement except as expressly set out in this Agreement. The rights of NHS Greater Glasgow (to terminate or otherwise) under this Clause are in addition (and without prejudice) to any other right which NHS Greater Glasgow may have to claim the amount of loss or damage suffered by NHS Greater Glasgow on account of the acts or omissions of IPL (or to take any action other than termination of this Agreement). NHS Greater Glasgow shall not exercise, or purport to exercise, any right to terminate this Agreement except as expressly set out in this Agreement. The rights of NHS Greater Glasgow (to terminate or otherwise) under this Clause are in addition (and without prejudice) to any other right which NHS Greater Glasgow may have to claim the amount of loss or damage suffered by NHS Greater Glasgow on account of the acts or omissions of IPL (or to take any action other than termination of this Agreement).

38. NHS GREATER GLASGOW EVENTS OF DEFAULT

38.1 For the purposes of this Agreement, NHS Greater Glasgow Events of Default means any of the following events or circumstances:

- (a) the failure of NHS Greater Glasgow to pay any sum or sums due to IPL under this Agreement (which sums are not in dispute) which, either singly or in aggregate, exceed(s) £50,000 (index linked) and such failure continues for sixty (60) Working Days from receipt by NHS Greater Glasgow of a notice of non-payment from IPL; or

- (b) an Adverse Law or a Proposal for an Adverse Law being made;
or
- (c) failure by NHS Greater Glasgow to complete the Highways Works (excluding any defects liability period in respect of the same) by the date occurring 18 months after the Completion Date; or
- (d) subject always to Clause 42.2 the occurrence of a Hospital Change; or
- (e) failure by NHS Greater Glasgow to acquire rights of access for IPL and Invitees to use the Access Road in accordance with the provisions of Clause 45; or
- (f) a material breach of the Lease by the landlord from time to time of the Lease.

IPL's options

38.2 On the occurrence of an NHS Greater Glasgow Event of Default, or within a reasonable time after IPL becomes aware of the same, and while the same is still subsisting, IPL may, at its option:

- (a) in respect of execution of the Works prior to the Certificate Date, suspend performance by it of its obligations under this Agreement until such time as NHS Greater Glasgow shall have demonstrated to the reasonable satisfaction of IPL that it will perform and is capable of performing its obligations under this Agreement; or

(b) serve notice on NHS Greater Glasgow of the occurrence (and specifying details) of such NHS Greater Glasgow Event of Default. If the relevant matter or circumstance has not been rectified or remedied by NHS Greater Glasgow (or otherwise) in respect of Clause 38.1 (b), (d) or (e) within sixty (60) Working Days of such notice, and in respect of Clause 38.1 (a) or (c) within thirty (30) Working Days of such notice, IPL may serve a further notice on NHS Greater Glasgow terminating this Agreement with immediate effect.

38.3 IPL shall not exercise or purport to exercise any right to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly set out in this Agreement.

39. NON-DEFAULT TERMINATION

Force Majeure

39.1 If the parties have failed to reach agreement on any modification to this Agreement as may be required as a result of the operation of Clause 47 of this Agreement within six (6) calendar months of the date on which the party affected serves notice on the other party as may be required as a result of the operation of Clause 47 of this Agreement either party may at any time afterwards terminate this Agreement by written notice to the other party having immediate effect provided always that the effects of the relevant event of Force Majeure continues to prevent either party from performing any material obligation under this Agreement.

Voluntary termination

39.2 NHS Greater Glasgow shall be entitled to terminate this Agreement at any time on 12 months' written notice to IPL. In the event of notice being given by NHS Greater Glasgow in accordance with this sub-clause, NHS Greater Glasgow shall, at any time before the expiration of such notice, be entitled to direct IPL, where the Works (or any part or parts of the Works) have not been commenced, to refrain from commencing any such Works (or to procure the same).

40. EFFECT OF TERMINATION

Termination

40.1 Notwithstanding any provision of this Agreement, on service of a notice of termination, this Agreement shall only terminate in accordance with the provisions of this Clause 40.

Continued effect - no waiver

40.2 Notwithstanding any breach of this Agreement by either party, and without prejudice to any other rights which the other party may have in relation to it, the other party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of either party to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

Continued performance

40.3 Subject to any exercise by NHS Greater Glasgow of its rights to perform, or to procure a third party to perform, the obligations of IPL, the parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or notice of termination, until the termination of the Agreement becomes effective in accordance with the provisions of this Agreement.

40.4 Subject to Schedule 19 [Compensation on Termination] which shall be the parties' entire financial liability arising on termination of this Agreement termination of this Agreement (or any Project Document) shall not affect any accrued rights or obligations under this Agreement (or any other Project Document) including (without limitation) any right to damages or other relief and shall not affect any of the provisions of the Project Documents expressed or intended to have effect following termination which shall remain in full force and effect.

41. COMPENSATION ON TERMINATION

41.1 If this Agreement is terminated pursuant to Clause 47 [Force Majeure], then NHS Greater Glasgow shall pay compensation to IPL in accordance with Section C of Schedule 19.

41.2 If this Agreement is terminated pursuant to Clause 37.3 [IPL Event of Default], then NHS Greater Glasgow shall pay compensation to IPL in accordance with Section B of Schedule 19.

41.3 If this Agreement is terminated pursuant to Clause 38.2 [NHS Greater Glasgow Event of Default], then NHS Greater Glasgow shall pay compensation to IPL in accordance with Section A of Schedule 19.

41.4 If this Agreement is terminated pursuant to Clause 39.2 [Voluntary Termination], then NHS Greater Glasgow shall pay compensation to IPL in accordance with Section A of Schedule 19.

41.5 If this Agreement is terminated pursuant to Clause 66 (Corrupt Gifts) then NHS Greater Glasgow shall pay Compensation to IPL in accordance with Section D of Schedule 19.

Tax equalisation

41.6 Where a payment is to be made to IPL pursuant to Clauses 41.1 to 41.4 inclusive (a "Compensation Payment") and IPL has a Relevant Tax Liability in respect of such payment, then the amount of the Compensation Payment to be made by NHS Greater Glasgow to IPL shall be increased so as to ensure that IPL is in the same position (after account is taken of the Relevant Tax Liability) as it would have been in had it not been for such Relevant Tax Liability.

41.7 For the purposes of this Clause 41:

(a) "Relief" shall mean any relief, allowance or deduction in computing profits or tax or a credit against, or right to repayment of, tax granted by or pursuant to any legislation for tax purposes;

(b) a "Relief derived from the Project" is a Relief which arises in connection with the Project and includes any Relief arising as a

consequence of the distribution of any amount obtained in respect of the Project (other than a Compensation Payment) by IPL (whether by way of interest, dividend or other distribution, repayment, reduction or redemption of capital or indebtedness or return of assets or otherwise); and

- (c) IPL shall be regarded as having a "Relevant Tax Liability" in respect of a Compensation Payment to the extent that:
- (i) it has a liability for tax in consequence of or in respect of a Compensation Payment ("Actual Liability"); or
 - (ii) it would have had a liability for tax within paragraph (i) above but for the utilisation of a Relief other than a Relief derived from the Project ("Deemed Liability").

41.8 In determining whether IPL has a Relevant Tax Liability by reason of a Compensation Payment, it should be assumed that any Reliefs derived from the Project which are available to IPL (or would have been so available but for a surrender by IPL of such Reliefs by way of group or consortium relief) for offset against the Compensation Payment, or against tax in relation to the same, have been so offset to the maximum extent possible.

41.9 IPL shall keep NHS Greater Glasgow fully informed of all negotiations with the Inland Revenue in relation to any Relevant Tax Liability in respect of a Compensation Payment. IPL shall not agree, accept or compromise any claim, issue or dispute relating to such Relevant Tax Liability without the prior written consent of NHS Greater Glasgow, which shall not be unreasonably withheld or delayed. NHS Greater

Glasgow may, if it considers in good faith that such action is justified having regard to the likely costs and benefits, direct IPL to resist, appeal, defend or otherwise dispute the Relevant Tax Liability in respect of the Compensation Payment, provided that the cost of any such dispute (including any interest or penalties incurred) shall be at NHS Greater Glasgow's expense. However, if IPL obtains professional advice from an independent person with relevant expertise that any resistance, appeal, defence or other mode of dispute is not likely to result in any more beneficial position in relation to the Relevant Tax Liability, IPL shall be entitled not to continue with such resistance, appeal, defence or other mode of dispute. Where any resistance, appeal, defence or other mode of dispute results in a more beneficial position in relation to the Relevant Tax Liability, an adjustment will be made to the amount payable under Clause 41.6 to reflect such outcome.

41.10 Any increase in the amount of a Compensation Payment which is payable under Clause 41.6 shall be paid on the later of five (5) Working Days after a demand therefor (together with evidence in sufficient detail for NHS Greater Glasgow to satisfy itself of the Relevant Tax Liability and its calculation) is made by IPL and:

- (a) in the case of an Actual Liability, five (5) Working Days before the date on which the relevant tax must be paid to the tax authority in order to avoid incurring interest and penalties; and
- (b) in the case of a Deemed Liability, five (5) Working Days before the date on which tax which would not have been payable but for the utilisation of the relevant Relief must be paid in order to

avoid incurring interest or penalties (whether by IPL or otherwise) and, for the purposes of determining when the Relief would otherwise have been utilised, Reliefs shall be regarded as utilised in the order in which they arise.

41.11 NHS Greater Glasgow shall have the right to pay the amount payable under Clause 41.9 direct to the Inland Revenue in satisfaction of the relevant tax due by IPL.

Rights of Set-Off

41.12 To avoid doubt, NHS Greater Glasgow's obligations to make any payment of compensation to IPL pursuant to this Agreement are subject to NHS Greater Glasgow's rights of set off, save that NHS Greater Glasgow agrees not to set-off any amount agreed or determined as due and payable by IPL to NHS Greater Glasgow against any payment of termination compensation under Clauses 41.1 to 41.4 inclusive, except to the extent that such termination payment exceeds the Senior Debt Amount.

Full and final settlement

41.13 Subject to the provisions of paragraph 2.1 of Section E of Schedule 19:

- (a) any compensation paid pursuant to this Agreement shall be in full and final settlement of any claim, demand and/or proceedings of IPL and NHS Greater Glasgow in relation to any termination of this Agreement, the Lease and/or any related document (and the circumstances leading to such

termination) and IPL shall be excluded from all other rights and remedies in respect of any such termination; and

- (b) the compensation payable (if any) pursuant to any of Clauses 41.1 to 41.4 inclusive above shall be the sole remedy of IPL and IPL shall not have any other right or remedy in respect of such termination.

42. HOSPITAL CHANGE

42.1 In the event a Hospital Change occurs, IPL shall use all reasonable endeavours, with the assistance of NHS Greater Glasgow, to secure arrangements with other parties for use by them of the Car Parking Spaces at such charge as may be required, as a means of minimising and mitigating any loss of income which may be suffered by IPL as a result of the Hospital Change.

42.2 Subject always to Clause 42.1 and subject to IPL being able to demonstrate that there has been a material loss of its income and that such reduction in its income is attributable in whole or in part to a Hospital Change within twelve months of the Relevant Day, such Hospital Change shall constitute an NHS Greater Glasgow Event of Default for the purposes of Clause 38.1 (d).

43. STATUTORY CHANGE

43.1 In the event of Statutory Change occurring, IPL shall be entitled to terminate this Agreement by giving to NHS Greater Glasgow six months' written notice to that effect in which event IPL shall use all reasonable endeavours with the assistance of NHS Greater Glasgow

to secure the payment by the relevant statutory authority of compensation in terms of the Order.

43.2 If the amount of Statutory Compensation paid to IPL together with any insurance proceeds which may be payable is less than the total of the Senior Debt Amount then no later than sixty days after the Termination Date NHS Greater Glasgow shall pay IPL the amount of the difference between the Senior Debt Amount and the Statutory Compensation.

44. LOSS OF SPACES IN BURIAL GROUND AND CAR PARK 6

44.1 In the event that NHS Greater Glasgow's right and in terms of this Agreement IPL's rights to occupy and use the Burial Ground Car Park and/or Car Park 6 or any part thereof is terminated or denied for any reason and, as a result, the number of Car Parking Spaces is reduced, NHS Greater Glasgow shall pay compensation to IPL to put IPL in no better or worse a position than it would have been in had such loss of Car Parking Spaces not occurred and IPL shall promptly provide NHS Greater Glasgow with all information as NHS Greater Glasgow may reasonably require in order to determine the amount of such compensation.

44.2 IPL shall take all reasonable steps to minimise the amount of compensation in accordance with Clause 44.1 and any compensation payable shall:-

- (a) exclude any amounts incurred or to be incurred as a result of any failure of IPL (or any IPL Party) to comply with this clause;
- and

(b) be reduced by any amount which IPL will recover under any insurance policy (or would have recovered if it complied with the requirements of this Agreement or of any policy of insured under this Agreement) which amount to avoid doubt shall not include any excess or deductibles or any amount over the maximum amount insured applicable to any such insurance policy.

45. ACCESS ROAD

45.1 It is understood and acknowledged by both parties that as at the time of execution of this Agreement neither NHS Greater Glasgow nor the Scottish Ministers are the heritable proprietor of the whole area of the Access Road and NHS Greater Glasgow believe that the Council is the heritable proprietor of part of the Access Road.

45.2 In the event of a Council or Third Party Claim NHS Greater Glasgow hereby undertake and obliges itself to use all reasonable endeavours to acquire from the Council or other heritable proprietor heritable title or appropriate rights of servitude access (in the name of the Scottish Ministers) over that part of the Access Road owned by the Council or other heritable proprietor as are reasonably necessary to ensure that the Access Road remains available for use by IPL and Invitees. Failure by NHS Greater Glasgow to acquire such reasonably necessary rights within twenty four months of loss of use of the Access Road shall comprise an NHS Greater Glasgow Event of Default for the purposes of Clause 38.1 (e).

45.3 NHS Greater Glasgow shall advise IPL if either NHS Greater Glasgow or the Scottish Ministers become aware a Council or Third

Party Claim is likely to be made and if any Council or Third Party Claim is made shall keep IPL regularly informed of progress in resolving any Council or Third Party Claim.

45.4 In the event that access over the Access Road is denied or suspended for any period as a result of a Council or Third Party Claim NHS Greater Glasgow shall compensate IPL for any loss suffered by IPL as a consequence such as to put IPL in no worse or better a position than it would have been in had rights of access over the Access Road not been denied or suspended and IPL shall promptly provide NHS Greater Glasgow with all information as NHS Greater Glasgow may reasonably require in order to determine the amount of such compensation.

45.5 IPL shall take all reasonable steps to minimise the amount of compensation in accordance with Clause 45.4 and any compensation payable shall:-

- (a) exclude any amounts incurred or to be incurred as a result of any failure of IPL (or any IPL Party) to comply with this Clause; and
- (b) be reduced by any amount which IPL will recover under any insurance policy (or would have recovered if it complied with the requirements of this Agreement or of any policy of insured under this Agreement) which amount to avoid doubt shall not include any excess or deductibles or any amount over the maximum amount insured applicable to any such insurance policy.

45.6 Compensation calculated in accordance with this Clause 45 shall be paid by NHS Greater Glasgow on a monthly basis in arrears.

45.7 IPL shall provide all such information as NHS Greater Glasgow may reasonably require for the purpose of calculating any compensation payable in terms of this Clause 45.

46. RELIEF EVENTS

46.1 For the purposes of this Agreement Relief Events mean any of the following events:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;
- (b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;
- (c) accidental loss or damage to the Works and/or Facilities or any roads servicing the same;
- (d) failure or shortage of power, fuel or transport;
- (e) blockade or embargo falling short of Force Majeure;
- (f) the discovery of fossils, antiquities and human remains requiring action; or
- (g) official or unofficial strike, lockout, go slow or other dispute in each case generally affecting the construction, building

maintenance or facilities management industry (or a significant sector of that industry), provided in each case that such event does not arise (directly or indirectly) as a result of any wilful act or default of the party claiming relief and/or (i) in the case of IPL claiming relief, any IPL Party and (ii) in the case of NHS Greater Glasgow claiming relief, any NHS Greater Glasgow Party.

46.2 Subject to Clauses 46.3 and 46.4, no right of termination shall arise under this Agreement by reason of any failure by a party to perform any of its obligations under this Agreement to the extent that such failure to perform occurs because of the occurrence of a Relief Event (and, to avoid doubt without prejudice to Clause 46.8 unless expressly stated to the contrary in this Agreement it is acknowledged that all other rights and obligations of the parties under this Agreement remain unaffected by the occurrence of a Relief Event).

Mitigation

46.3 Where a party is (or claims to be) affected by a Relief Event:

- (a) it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement resume performance of its obligations affected by the Relief Event as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and
- (b) it shall not be entitled to rely upon the relief afforded to it pursuant to Clause 46.2 of this Agreement to the extent that it is not able to perform, or has not in fact performed, its

obligations under this Agreement due to its failure (if any) to comply with its obligations under paragraph (a) above.

- 46.4 The party claiming relief shall serve written notice on the other party within five (5) Working Days of it becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- 46.5 A subsequent written notice shall be served by the party claiming relief on the other party within a further five (5) Working Days of the notice referred to in Clause 46.4 which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the Relief Event on the ability of the party to perform, the action being taken in accordance with Clause 46.3 the date of the occurrence of the Relief Event and an estimate of the period of time required to overcome it (and/or its effects).
- 46.6 The party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- 46.7 If, following the issue of any notice referred to in Clause 46.5, the party claiming relief receives or becomes aware of any further information relating to the Relief Event (and/or any failure to perform), it shall submit such further information to the other party as soon as reasonably possible.
- 46.8 To avoid doubt, the occurrence of a Relief Event shall not entitle IPL to any compensation unless expressly provided for in this Agreement.

47. FORCE MAJEURE

47.1 For the purposes of this Agreement Force Majeure means any of the following events or circumstances:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear contamination unless in any case IPL and/or any IPL Party is the source or cause of the contamination;
- (c) chemical or biological contamination of the Works and/or the Facilities and/or the Site and/or the Surface Car Parks and/or the Non-Parking Zones and/or the remaining parts of NHS Greater Glasgow's Estate from any of the events referred to in paragraph (a) above; or
- (d) pressure waves caused by devices travelling at supersonic speeds,

which directly causes either party to be unable to comply with all or a material part of its obligations under this Agreement.

47.2 Subject to Clauses 47.3 and 47.4 the party claiming relief shall be relieved from liability under this Agreement to the extent that by reason of the Force Majeure it is not able to perform its obligations under this Agreement.

47.3 Where a party is (or claims to be) affected by an event of Force Majeure:

- (a) it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations

under this Agreement, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and

- (b) it shall not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure (if any) to comply with its obligations under paragraph (a).

47.4 The party claiming relief shall serve written notice on the other party within five (5) Working Days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.

47.5 A subsequent written notice shall be served by the party claiming relief on the other party within a further five (5) Working Days which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the party to perform, the action being taken in accordance with Clause 47.3, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it (and/or its effects).

47.6 The party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.

47.7 If, following the issue of any notice referred to in Clause 47.5, the party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other party as soon as reasonably possible.

Compensation

47.8 If an event of Force Majeure occurs before, on or after the Certificate Date, IPL shall be entitled to collect and retain such Car Parking Charges as it is legally entitled to until this Agreement terminates.

47.9 Subject to Clause 39.1, IPL's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in Clause 41.1 and Section C of Schedule 19.

Modifications

47.10 The parties shall endeavour to agree any modifications to this Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. The Dispute Resolution Procedure shall not apply to a failure of NHS Greater Glasgow and IPL to reach agreement pursuant to this Sub-clause.

47.11 The provisions of Schedule 21 shall apply to the handback of the Facilities to NHS Greater Glasgow on the expiry of this Agreement.

48. NHS GREATER GLASGOW'S REMEDIAL RIGHTS

48.1 The provisions of Clauses 48.2 to 48.7 (inclusive) shall apply if NHS Greater Glasgow, acting reasonably, considers that a breach by IPL of any obligation under this Agreement which:

- (a) may create an immediate and serious threat to the health or safety of any user of the Facilities; or
- (b) may result in a material interruption in the provision of the Car Parking Spaces; or
- (c) is prejudicial to the ability of NHS Greater Glasgow to provide Clinical Services to a material degree; or
- (d) IPL is not in breach of its obligations as described in Clause 48.1 (a) to (c) but NHS Greater Glasgow considers the circumstances constitute an emergency.

48.2 In any of the circumstances set out in Clause 48.1, NHS Greater Glasgow, acting reasonably, may (without prejudice to its rights under Clause 48.1 or any other express rights under this Agreement) either:

- (a) if it considers that there is sufficient time and that it is likely that IPL will be willing and able to provide assistance, require IPL by written notice to take such steps as NHS Greater Glasgow considers necessary or expedient to mitigate or rectify such state of affairs and IPL shall use its best endeavours to comply with NHS Greater Glasgow's requirements as soon as reasonably practicable; or
- (b) if it considers there is not sufficient time, or that IPL is not likely to be willing and able to take the necessary steps, take such steps as it considers to be appropriate (either itself or by engaging others to take any such steps) to ensure provision of the Car Parking Spaces to the standards required by this Agreement or as close as possible to those standards as the

circumstances permit and, in any event, in accordance with Good Industry Practice).

48.3 If:

- (a) IPL does not confirm, within ten (10) Working Days of a notice served pursuant to Clause 48.2 (a) (or such shorter period as is appropriate in the case of an emergency), that it is willing to take such steps as are referred to in Clause 48.2 (a); or
- (b) IPL fails to take the steps notified to it by NHS Greater Glasgow pursuant to Clause 48.2 (a) within such time as NHS Greater Glasgow, acting reasonably, shall think fit, then (without prejudice to Clause 48.2 (b)) NHS Greater Glasgow, acting reasonably, may itself take or engage others to take such steps as it considers appropriate.

48.4 Where NHS Greater Glasgow considers it to be necessary or expedient to do so, the steps which NHS Greater Glasgow may take pursuant to this Clause shall include the partial or total suspension of the right and obligation of IPL to provide the Car Parking Spaces but only for so long as the circumstances referred to in Clause 48.2 (a) or 48.2 (b) subsist.

48.5 If NHS Greater Glasgow either takes steps itself or requires IPL to take steps in accordance with this Clause as a result of the circumstance referred to in Clause 48.1 (d):

- (a) NHS Greater Glasgow shall indemnify and keep indemnified IPL at all times from and against all additional direct

reasonable costs, losses, expenses or damages suffered or incurred in relation to undertaking such steps over and above those that would otherwise have been incurred in the proper performance of IPL's obligations under this Agreement; and

- (b) any costs incurred by NHS Greater Glasgow in taking such steps or requiring IPL to take such steps shall be borne by NHS Greater Glasgow.

48.6 To the extent that the parties shall agree, or it shall be determined in accordance with the Dispute Resolution Procedure, that NHS Greater Glasgow was not reasonable in requiring IPL to take such steps (or in taking such steps itself) as are referred to in this Clause 48, then NHS Greater Glasgow shall indemnify and keep indemnified IPL at all times from and against any costs, losses, expenses or damages (over and above those that would otherwise have been incurred by IPL in the proper performance of its obligations under this Agreement) that are directly and reasonably incurred by IPL in complying with those requirements of NHS Greater Glasgow as are agreed or determined not to be reasonable. To avoid doubt, it is acknowledged that IPL has no right to require determination before taking any such action that NHS Greater Glasgow may specify; only subsequently may it refer any dispute for resolution to determine if NHS Greater Glasgow was reasonable in requiring IPL to take such steps.

48.7 Subject to Clauses 48.5 and 48.6:

- (a) any costs or expenses incurred by IPL in taking such steps as are required by NHS Greater Glasgow pursuant to Clause 48.2 (a) shall be borne by IPL;

- (b) IPL shall reimburse NHS Greater Glasgow for all reasonable costs, losses, expenses or damages incurred by it in relation to taking the steps, or engaging others to take the steps, referred to in Clauses 48.2 (b) and 48.3; and
- (c) NHS Greater Glasgow shall be entitled to deduct any such amount from any amount payable to IPL under the provisions of this Agreement.

49. DISPUTE RESOLUTION

Adjudication

- 49.1 Either Party to this Agreement may give notice (“a Dispute Notice”) at any time of its intention to refer any dispute or difference (a “Dispute”) arising under this Agreement for a decision by an adjudicator (the “Adjudicator”).
- 49.2 The Adjudicator to decide the Dispute will be an individual agreed between the Parties or, on the application of either Party, an individual nominated as the Adjudicator by the Institution of Civil Engineers (“the Nominator”), with the object of securing the appointment of the Adjudicator and the referral of the Dispute to him within 7 days of the Dispute Notice.
- 49.3 The Adjudication will be conducted in accordance with the procedure set out in this Clause 49.3 (“the Adjudication Procedure”):
 - (a) The Party who has served a Dispute Notice (“the Referring Party”) shall, not later than seven (7) days after service of a Dispute Notice or the appointment of the Adjudicator,

whichever is the later, refer the Dispute to the Adjudicator (“the Referral Notice”).

- (b) The Referral Notice shall:
 - (i) refer to this Clause 49.3(b);
 - (ii) include a statement of the Referring Party’s case including a summary of the nature, background and extent of the Dispute and the issues arising not to exceed twenty (20) sides of A4 paper;
 - (iii) include copies of documents which the Referring Party considers have an important and direct bearing on the Dispute and which are referred to in the Referring Party’s statement of case and are necessary by way of supplementation of such statement (subject to there being a maximum limit of three (3) lever arch files); and
 - (iv) set out the relief, remedy or recourse the Referring Party seeks; and
 - (v) be copied simultaneously to the other Party (“the Recipient Party”).

- (c) The Recipient Party may submit to the Adjudicator a response to the Referral Notice (“the Response”), no later than Twenty one (21) days from the date of service of the Referral Notice on the Adjudicator.

- (d) The Response shall:

- (i) refer to this Clause 49.3(d);
 - (ii) include a statement of the Recipient Party's case not to exceed twenty (20) sides of A4 paper;
 - (iii) include copies of documents which the Recipient Party considers have an important and direct bearing on the Dispute and which are referred to in the Recipient Party's statement of case and are necessary by way of supplementation of such statement (subject to there being a maximum limit of three (3) lever arch files); and
 - (iv) be copied simultaneously to the Referring Party.
- (e) The adjudication shall continue notwithstanding any failure by any Party to take part. If the Adjudicator dies or becomes ill or is unavailable for some other cause and is thus unable to adjudicate on the Dispute referred to him, the Parties may either agree upon an individual to replace the Adjudicator or either Party may apply to the Nominator for the nomination of a replacement Adjudicator to adjudicate the Dispute.
- (f) The Adjudicator shall deliver a written reasoned decision (the "Adjudicator's Decision") on the Dispute and any Connected Dispute to be dealt with under Clauses 49.4 – 49.7:
- (i) within twenty eight (28) days of the date of service of the Referral Notice on the Adjudicator; or

- (ii) up to forty two (42) days after the date of service of the Referral to Notice on the Adjudicator, if the Referring Party so consents; or
 - (iii) within such period exceeding twenty eight (28) days after the date of service of the Referral Notice on the Adjudicator as the Parties may, after such date, agree.
- (g) The Adjudicator's Decision shall be binding in that it shall be acted upon by the Parties and shall be enforceable as between them for the purposes of this Agreement until and save to the extent that the Dispute is finally determined by legal proceedings or by agreement of the Parties.
- (h) Unless either Party commences legal proceedings relating to the Dispute which forms the subject matter of an Adjudicator's Decision in accordance with Clause 49.3 (i) the Adjudicator's Decision shall be conclusive of the respective rights and obligations of the Parties and shall not be challenged further by either Party.
- (i) Either Party may commence legal proceedings relating to the Dispute which forms the subject matter of the Adjudicator's Decision within fifty-six (56) Working Days of the date of the Adjudicator's Decision.

Connected Disputes

49.4 A "Connected Dispute" for the purposes of this Agreement, is a dispute between either of the Parties and any third party under a

Agreement relating to the Project Operations, which relates to the same or to similar subject matter as is raised by a Dispute.

49.5 Where a Connected Dispute has already been referred to adjudication, the Parties shall endeavour to appoint the same person as the Adjudicator as is appointed to adjudicate on the Connected Dispute.

49.6 The Adjudicator (where he has also been appointed as adjudicator in relation to the Connected Dispute) shall adjudicate on or determine the Dispute at the same time as the Connected Dispute provided that the Adjudicator is satisfied that a decision in relation to the Dispute can be made within the time periods required by the Adjudication Procedure and that a decision in relation to the Connected Dispute can be made within the time periods required by the adjudication in relation to the Connected Dispute. Where the Adjudicator is so satisfied, then the Adjudicator shall be entitled to make directions as to the referral of the Dispute and the making of written submissions as he sees fit.

49.7 Without fettering or restricting the Adjudicator's power and authority in any way, it is the intention of the Parties that the Adjudicator shall, insofar as is relevant, practicable and appropriate, come to the same conclusion as to the common facts in reaching a decision in relation to the Dispute as in reaching a decision in relation to the Connected Dispute.

Legal Proceedings

49.8 Without prejudice to Clause 49.1 above, any dispute or difference shall be determined by legal proceedings.

50. ENTIRE AGREEMENT

50.1 This Agreement embodies the entire understanding of NHS Greater Glasgow and IPL and there are no other arrangements between the parties relating to the subject matter of this Agreement.

50.2 No amendment or modification of this Agreement shall be valid or binding on any party unless the same:

- (a) is made in writing;
- (b) refers expressly to this Clause 50; and
- (c) is signed by the parties or their duly authorised representative.

50.3 In the event of conflict between this Agreement and the Building Documents the provisions of this Agreement shall prevail.

51. VALUE ADDED TAX

51.1 Every party to this Agreement shall in addition to all other sums payable under this Agreement pay any Value Added Tax (or any tax of a similar nature that may be substituted for it or levied in addition to it) chargeable in respect of any taxable supply made to it under the provisions of this Agreement whether by any other party or by any other person following the production of the appropriate Value Added Tax invoices addressed and delivered to the party obliged to make payment in accordance with the above provisions of this clause.

51.2 NHS Greater Glasgow reserves the right to make an election to waive the exemption from Value Added Tax in relation to the Site or the

Surface Car Parks whether before or after the Certificate Date but before the grant of the Lease.

52. CHANGES IN RECOVERABILITY OF VAT

52.1 Unless specifically stated otherwise, all payments and other considerations to be rendered or received by any party to this Agreement (other than the Car Parking Charges or any amount payable by NHS Greater Glasgow pursuant to Clause 30) expressed herein are exclusive of any Value Added Tax payable in respect thereof and each party to this Agreement shall in addition to all of the sums payable under this Agreement pay any Value Added Tax (or any tax of a similar nature that may be substituted for it or levied in addition to it) chargeable in respect of any taxable supply made to under the provisions of this Agreement whether by any other party or by any other person following the production of the appropriate Value Added Tax invoices addressed and delivered to the party obliged to make payment in accordance with the provisions of this clause.

52.2 IPL and NHS Greater Glasgow acknowledge that supplies for Value Added Tax purposes shall take place by reason of the provisions of this Agreement and the party which shall be the recipient of the supply agrees to account and to pay the other party any such Value Added Tax payable on receipt of a VAT invoice addressed and delivered to the recipient of the supply and IPL and NHS Greater Glasgow shall agree by their respective tax advisers the amounts on which VAT may be payable and the appropriate timing for issue of VAT invoices in respect of such supplies which may arise under this Agreement.

- 52.3 IPL shall be responsible for collection of Value Added Tax and for making all necessary returns to HM Customs and Excise in respect of the Car Parking Management Policy and which are liable to Value Added Tax. IPL shall also be responsible for making all returns to HM Customs and Excise which it is lawfully required to make.
- 52.4 NHS Greater Glasgow reserves the right to make an election to waive the exemption from Value Added Tax in relation to NHS Greater Glasgow's Estate at any time.
- 52.5 Subject to Clause 52.6, if, following a Change in Law, IPL becomes unable to recover VAT attributable to supplies to be made to NHS Greater Glasgow by IPL pursuant to this Agreement NHS Greater Glasgow shall ensure that IPL is left in no better and no worse position than it would have been had such Change in Law not occurred (including but not limited to making such amendments to the Agreement as IPL and NHS Greater Glasgow shall agree acting reasonably) provided that IPL shall use all reasonable endeavours to mitigate the adverse effects of any such Change in Law.
- 52.6 The provisions of Clause 52.5 shall apply only if (and to the extent that) the Change in Law was not reasonably foreseeable at the date of this Agreement by an experienced contractor performing operations similar to the relevant Project Operations on the basis of draft bills published in Government green or white papers or other Government departmental consultation papers, bills, draft statutory instruments or draft instruments or proposals published in the Official Journal of the European Communities, in each case published:
- (a) prior to the date of this Agreement; and

(b) in substantially the same form as the Change in Law.

53. CONSENT OF NHS GREATER GLASGOW

Any consent or approval or directive which may be required from or to be given by NHS Greater Glasgow under the terms of this Agreement shall be sufficient if given in writing under the hand of either the Chief Executive or the Director of Operations of NHS Greater Glasgow or NHS Greater Glasgow Representative.

54. WAIVER

Any express or implied waiver by any of the Parties of any of the terms of this Agreement or any breach, default, omission or non-observance thereof by any party shall be without prejudice to the other rights of such party and shall not operate as a continuing waiver nor be deemed as a waiver of any subsequent breach, default, omission or non-observance.

55. NO PARTNERSHIP OR BENEFICIAL RIGHTS

Save as expressly mentioned this Agreement shall not operate to appoint any Party as partner or agent or representative of any other Party and no Party shall represent itself as another Party's agent or representative or represent itself or hold itself out as having any power or authority to incur any obligations of any nature expressed or implied on behalf of any other Party and nothing contained in this Agreement shall create a partnership between or among any of the Parties.

56. NO CONTINUING LIABILITY

The obligations of IPL under this Agreement shall (save in respect of any prior breach) be limited to the person for the time being having the benefit of the Lease or any chargee for the time being in possession of the Site leased by the Lease.

57. CONFLICT

In the event that any of the terms of this Agreement shall conflict with the terms of the Lease, the Lease shall prevail.

58. TUPE

58.1 IPL shall accept the Employees as employees of the relevant operator or manager of the Car Parking Spaces immediately prior to the date occurring six weeks after the Commencement Date (being the date from which IPL assumes responsibility for performance of its obligations under Clause 26 of this Agreement), and agree that the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) shall apply to the Employees:

58.2 IPL shall not by act, omission or claim prevent the application of TUPE to the Employees.

58.3 In the event that TUPE applies at termination of this Agreement (howsoever occasioned) the provisions of Schedule 14 shall apply.

59. GOVERNING LAW

Whatever the nationality, residence or domicile of any party this Agreement shall be governed and construed in accordance with Scots Law and each

party hereby agrees to submit to the non-exclusive jurisdiction of the Scottish Courts as regards any claim or matter arising under the Agreement.

60. EXECUTION

This Agreement shall come into effect on the date of this Agreement.

61. INDEMNITY PROVISIONS

IPL indemnities to NHS Greater Glasgow

61.1 IPL shall indemnify and keep NHS Greater Glasgow indemnified at all times from and against all Direct Losses sustained by NHS Greater Glasgow in consequence of:

- (a) any claim for, or in respect of, the death and/or personal injury of any employee of, or person engaged by, IPL or any IPL Party notwithstanding any act or omission of NHS Greater Glasgow (or any NHS Greater Glasgow Party);
- (b) any claim for, or in respect of, the death and/or personal injury of any third party (other than a person referred to in Clause 61.2 (a)) arising out of, or in the course of, the Project Operations, save to the extent caused (or contributed to) by any Unreasonable Act by NHS Greater Glasgow (or any NHS Greater Glasgow Party), breach of any express provision of this Agreement by NHS Greater Glasgow (or any NHS Greater Glasgow Party) or any deliberate act or omission of NHS Greater Glasgow (or any NHS Greater Glasgow Party);
- (c) any physical loss of or damage to NHS Greater Glasgow assets arising by reason of any act or omission of IPL or any

IPL Party, save to the extent that such loss or damage arises out of the breach of any express provision of this Agreement by NHS Greater Glasgow (or any NHS Greater Glasgow Party) or any deliberate act or omission of NHS Greater Glasgow or any NHS Greater Glasgow Party; and

- (d) any loss of or damage to property or assets of any third party arising by reason of any act or omission of IPL or any IPL Party, save to the extent that such loss or damage arises out of the breach of any express provision of this Agreement by NHS Greater Glasgow or any NHS Greater Glasgow Party or any deliberate act or omission of NHS Greater Glasgow or any NHS Greater Glasgow Party.

61.2 NHS Greater Glasgow shall indemnify and keep IPL indemnified at all times from and against all Direct Losses sustained by IPL in consequence of:

- (a) any claim for, or in respect of, the death and/or personal injury of any employee of, or person engaged by, NHS Greater Glasgow or any NHS Greater Glasgow Party notwithstanding any act or omission of IPL or any IPL Party;
- (b) any claim for, or in respect of, the death and/or personal injury of any third party (other than a person referred to in Clause 61.1(a)) arising by reason of any act or omission of NHS Greater Glasgow or any NHS Greater Glasgow Party in the course of the provision of the Clinical Services, any Unreasonable Act by NHS Greater Glasgow or any NHS Greater Glasgow Party, breach of any express provision of this

Agreement by NHS Greater Glasgow or any NHS Greater Glasgow Party or any deliberate act or omission of NHS Greater Glasgow or any NHS Greater Glasgow Party, save to the extent caused (or contributed to) by any act or omission of IPL or any IPL Party;

(c) any physical damage to any part of the Facilities or any assets or other property of IPL or any IPL Party arising by reason of any breach of any express provision of this Agreement by NHS Greater Glasgow or any NHS Greater Glasgow Party or any deliberate act or omission of NHS Greater Glasgow or any NHS Greater Glasgow Party, save to the extent caused (or contributed to) by any act or omission of IPL or any IPL Party; and

(d) any loss of or damage to property or assets of any third party arising by reason of any breach of any express provision of this Agreement by NHS Greater Glasgow or any NHS Greater Glasgow Party or any deliberate act or omission of NHS Greater Glasgow or any NHS Greater Glasgow Party, save to the extent caused (or contributed to) by any act or omission of IPL or any IPL Party.

Provided that in the case of Clause 61.2 (c) and (d) there shall be excluded from the indemnity given by NHS Greater Glasgow any liability for the occurrence of risks against which IPL is bound to insure under this Agreement.

Conduct of claims

61.3 This Sub-clause shall apply to the conduct, by a party from whom an indemnity is sought under this Agreement, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. The party having, or claiming to have, the benefit of the indemnity is referred to as the "Beneficiary" and the party giving the indemnity is referred to as the "Indemnifier". Accordingly:

- (a) if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Agreement, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within twenty (20) Working Days of receipt of the same;
- (b) subject to paragraphs (c), (d) and (e) below, on the giving of a notice by the Beneficiary pursuant to paragraph (a) above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the

Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;

(c) with respect to any claim conducted by the Indemnifier pursuant to paragraph (b) above:

(i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;

(ii) the Indemnifier shall not bring the name of the Beneficiary into disrepute; and

(iii) the Indemnifier shall not pay or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

(d) the Beneficiary shall be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:

(i) the Indemnifier is not entitled to take conduct of the claim in accordance with paragraph (b) above;

(ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within twenty (20) Working Days of the notice from the Beneficiary under paragraph (a) above or notifies the Beneficiary that it does not intend to take conduct of the claim; or

- (iii) the Indemnifier fails to comply in any material respect with the provisions of paragraph (c) above;

- (e) the Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which paragraph (b) above applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this paragraph, then the Indemnifier shall be released from any liability under its indemnity under Clause 61.1 or Clause 61.2 (as the case may be) and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to paragraph (b) in respect of such claim;

- (f) if the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
 - (i) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket

costs and expenses properly incurred by the Beneficiary in recovering the same; and

- (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including for this purpose indirect or consequential losses or claims for loss of profits which are excluded by this Agreement from being recovered from the Indemnifier); and

- (g) any person taking any of the steps contemplated by paragraphs (a) to (e) of Clause 61.3 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.

Mitigation – indemnity claims

61.4 To avoid doubt each of NHS Greater Glasgow and IPL shall at all times take all reasonable steps to minimise and mitigate any loss and any indemnity shall not extend to Direct Losses which could have

61.5 been reduced or avoided by the Beneficiary so complying.

Taxation

61.6 If any payment by one party under an indemnity in this Agreement is subject to income tax or corporation tax (or any tax replacing them) in the hands of the recipient, the recipient may demand in writing to the party making the payment that the payment shall be increased by such amount as would ensure that, after taking into account any such tax payable in respect of such additional amount, the recipient receives and retains a net sum equal to the amount it would have otherwise received had the payment not been subject to such tax. In relation to any such additional amount payable to IPL, IPL and NHS Greater Glasgow shall have the same right and obligations as would apply to a Relevant Tax Liability under Clause 61.9 and Clauses 61.5 to 61.10 (inclusive) shall apply mutatis mutandis to the payment of the additional amount. The party making the payment shall pay such additional amount within ten (10) Working Days of receipt of such demand.

Excusing Causes

61.7 If an Excusing Cause interferes adversely with, or causes a failure of, the performance of the Project Operations and provided that the effect of such Excusing Cause is claimed within ten (10) Working Days of the date on which IPL became aware (or ought reasonably to have become so aware) of the occurrence of the Excusing Cause, then (subject to Clauses 61.8 and 61.9) to the extent such failure or interference arises as a result of such Excusing Cause such failure by

IPL to perform and any poor performance of, any obligation under this Agreement shall not constitute a breach of the provisions of this Agreement by IPL.

61.8 For the purpose of Clause 61.6, an Excusing Cause means:

- (a) any breach of any express provision of this Agreement by NHS Greater Glasgow or any NHS Greater Glasgow Party or of the Lease by the landlords from time to time under the Lease (unless, and to the extent, caused or contributed to by IPL or any IPL Party);
- (b) any deliberate act or omission of NHS Greater Glasgow or of any NHS Greater Glasgow Party or any failure by NHS Greater Glasgow or a NHS Greater Glasgow Party (having regard always to the interactive nature of the activities of NHS Greater Glasgow and of IPL) to take reasonable steps to carry out its activities in a manner which minimises undue interference with IPL's performance of the Project Operations, save where:
 - (i) (and to the extent) caused or contributed to by IPL or any IPL Party;
 - (ii) NHS Greater Glasgow or NHS Greater Glasgow Party is acting in accordance with a recommendation or instruction of IPL or any IPL Party;
 - (iii) any such act or omission giving rise to such failure was within the contemplation of the parties or was otherwise provided for in this Agreement; or

- (iv) the consequences of any such deliberate act or omission or other acts or omissions giving rise to such failure would have been prevented by the proper performance of IPL's obligations under this Agreement;
- (c) the outbreak of any medical contamination unless and to the extent that such outbreak, or the effects of such outbreak, are caused (or contributed to) by IPL or any IPL Party including, without limitation, any failure to comply with procedures (or NHS Greater Glasgow instructions) relating to control of infection or to take all reasonable steps to mitigate the effect of such medical contamination;
- (d) the carrying out of planned preventative maintenance in accordance with Schedule 16 (NHS Greater Glasgow Maintenance of Accessways and Surface Car Parks).

Insured exposure

61.9 IPL shall not be entitled to any payment which would not have been due under this Agreement but for Clause 61.6 to the extent that IPL is or should be able to recover under any policy of insurance required to be maintained in accordance with this Agreement (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of IPL (or any IPL Party), including but not limited to non-disclosure or under-insurance) or any other policy of insurance which IPL has taken out and maintained.

Mitigation of Excusing Cause

61.10 IPL shall take all reasonable steps to mitigate the consequences of an Excusing Cause on IPL's ability to perform its obligations under this Agreement. To the extent that IPL does not take such steps, IPL shall not be entitled to, and shall not receive, the relief specified in Clause 61.6.

61.11 To avoid doubt, Clause 61.7(b) shall not impose a general obligation on NHS Greater Glasgow to take (or to procure that any NHS Greater Glasgow Party takes) such steps and shall apply (and be construed) solely for the purpose of establishing whether an Excusing Cause has occurred.

62. LIMITS ON LIABILITY

Exclusions

62.1 Subject to Clauses 62.2 and 62.3 the indemnities under this Agreement shall not apply and there shall (other than as expressly provided in this Agreement in regard to IPL's entitlement to claim compensation) be no right to claim damages for breach of this Agreement, in delict or on any other basis whatsoever to the extent that any loss claimed by either party is for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or is a claim for consequential loss or for indirect loss of any nature ("Indirect Losses") suffered or allegedly suffered by either party. NHS Greater Glasgow agrees that, notwithstanding the foregoing, any losses of IPL arising under the Sub-Contracts which are not Indirect Losses shall not be excluded from such a claim solely by reason of this Sub-clause.

62.2 NHS Greater Glasgow shall not be liable in delict to IPL or any IPL Party in respect of any negligent act or omission of NHS Greater Glasgow or any NHS Greater Glasgow Party relating to or in connection with this Agreement and IPL shall procure that no IPL Party shall bring such a claim against NHS Greater Glasgow. IPL has accepted this on the basis that it and each IPL Party will cover the risk of negligent acts or omissions by insurance or in such other manner as it (or they) may think fit provided always that if damage to the Facilities and/or the car parking equipment is caused by any member of NHS Greater Glasgow Staff or a contractor engaged by NHS Greater

Glasgow to carry out work on NHS Greater Glasgow's Estate, NHS Greater Glasgow shall:-

- (a) in the case of members of NHS Greater Glasgow staff take such disciplinary action against such members of NHS Greater Glasgow staff as NHS Greater Glasgow is able in terms of their contracts of employment in respect of such inappropriate conduct; and
- (b) in the case of any contractors employed by NHS Greater Glasgow terminate their contracts as soon as NHS Greater Glasgow is able in terms of the same provided that a replacement contractor is reasonably available and nothing in this Agreement shall operate to limit or prevent IPL from exercising such remedies as are available to it at law in respect of the acts or omissions of such contractors.

62.3 Clause 61.1 is without prejudice to any compensation payable pursuant to Schedule 19.

63. CHANGE IN LAW

63.1 If a Relevant Change in Law occurs or is to occur, then either party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

- (a) any necessary change in the Works or Car Park Services or Project Operations;
- (b) whether any changes are required to the terms of this Agreement to deal with the Relevant Change in Law;

- (c) whether relief from compliance with obligations is required, including the obligation of IPL to achieve the Estimated Completion Date and/or meet the requirements of this Agreement during the implementation of any Relevant Change in Law;
- (d) any loss of revenue that will result from the Relevant Change in Law;
- (e) any estimated change in the cost of Project Operations that directly result from the Relevant Change in Law; and
- (f) any Capital Expenditure that is required or no longer required as a result of a Relevant Change in Law taking effect after the Certificate Date,

in each case giving in full detail the procedure for implementing any change. Responsibility for the costs of implementation (and any resulting variation to the Tariff) shall be dealt with in accordance with Clause 63.2.

63.2 As soon as practicable after receipt of any notice from either party under Clause 63.1, the parties shall discuss and agree the issues referred to in Clause 63.1 and any ways in which IPL can mitigate the effect of the Relevant Change of Law, including:

- (a) providing evidence that IPL has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;

- (b) demonstrating how any Capital Expenditure or operational expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, and how foreseeable Changes in Law at that time have been taken into account by IPL;
- (c) giving evidence as to how the Relevant Change in Law has affected prices charged by any similar businesses to the Project, including similar businesses in which the shareholders or their affiliates carry on business;
- (d) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Relevant Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clauses 63.8 (b) and/or (c) above; and
- (e) increasing the Tariffs in anticipation of the Relevant Change in Law so as:-
 - (i) to minimise the need to obtain funding for Capital Expenditure when the Relevant Change in Law takes effect as works are otherwise required; or
 - (ii) to allow for recovery of any increase in the cost of Project Operations over a longer period such as to avoid any one of substantial increase in Tariffs.

Provided always that the parties agree that any such increase in the Tariff may occur prior to the Relevant Change in Law and if an IPL's estimate of the change in the cost of Project Operations or Capital Expenditure are demonstrated to be incorrect then Tariff shall be further adjusted accordingly to ensure IPL is in no worse and no better a position than it would have been had such increase in the Tariff not been applied.

- 63.3 If the parties agree or it is determined under the Dispute Resolution Procedure that IPL is required to incur additional Capital Expenditure due to a Relevant Change in Law, then IPL shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it and the Senior Funders.
- 63.4 If IPL has used reasonable endeavours to obtain funding for Capital Expenditure referred to in Clause 63.3, but has been unable to do so within 30 Working Days of the date that the agreement or determination in Clause 63.3 occurred, then NHS Greater Glasgow shall pay to IPL an amount equal to that Capital Expenditure on or before the date falling 30 days after the Capital Expenditure has been incurred.
- 63.5 Any Capital Expenditure incurred by IPL pursuant to Clause 63.4 or by NHS Greater Glasgow pursuant to Clause 63.4 shall be recoverable from the Tariff and the parties shall agree an appropriate increase in the Tariff to cover the Capital Expenditure and in the absence of agreement the matter shall be referred to the Dispute Resolution Procedure.

Discriminatory and NHS Specific

63.6 In relation to a Relevant Change in Law which is a Discriminatory Change in Law or an NHS Specific Change in Law any compensation payable, or reduction to the Tariffs, pursuant to this paragraph shall be calculated on the basis that IPL shall be placed in no better or worse position than it would have been in had the Relevant Change in Law not occurred, and any assessment of whether IPL is in a better or worse position shall take account (inter alia):

- (a) the extent to which IPL has been (or will be) compensated as a result of any indexation of the Tariffs under this Agreement;
- (b) any decrease in its costs resulting from such Relevant Change in Law; and
- (c) any amount which IPL will recover under any insurance policy (or would have recovered if it had complied with the requirements of this Agreement or of any policy of insurance required under this Agreement) which amount, to avoid doubt, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to such insurance policy.

63.7 IPL shall be entitled to receive compensation from NHS Greater Glasgow of an amount equal to any demonstrated increase in the costs of the Project Operations or any reduction in the Tariff. IPL shall not be entitled to receive any other payment, compensation or (save as expressly provided otherwise in this Agreement) any other relief in respect of any such Relevant Change in Law.

64. INSURANCE

IPL Insurances

64.1 IPL shall, at its own cost, procure that the Insurances, details of which are set out in Schedule 20, are taken out prior to the commencement of the Works and are maintained for the periods specified in Schedule 20.

64.2 IPL shall, at its own cost, procure that the Insurances, details of which are set out in Schedule 20 are taken out prior to the Certificate Date and are maintained for the periods specified in Schedule 20.

64.3 Without prejudice to the other provisions of this Clause, IPL shall, at all relevant times, at its own cost, effect and maintain in full force those Insurances which it is required to effect by any applicable Law. Subject to Clause 64.4, any such insurance shall be a composite policy of insurance and shall contain a provision that NHS Greater Glasgow is named as a co-insured.

64.4 All Insurances shall:

- (a) be maintained in the names of the parties specified in Schedule 20 and shall be composite policies of insurance (and not joint) unless stated otherwise in any case in Schedule 20;
- (b) be placed with insurers who are acceptable to NHS Greater Glasgow (such acceptance not to be unreasonably withheld or delayed);
- (c) provide that they shall continue in effect and unaltered for the benefit of the insured parties for at least 30 Working Days after

written notice by registered mail or fax of any cancellation, adverse change or lapse by reason of non-payment of premiums or instalment or otherwise has been received by the insured parties;

(d) where NHS Greater Glasgow is not named as an insured party, contain a provision for 30 Working Days' written notice to be given to NHS Greater Glasgow before any cancellation, adverse change, lapse or non-renewal of any such policy is to take effect;

(e) contain a provision that:

(i) no claim of any of the insured under the policy shall be defeated, prejudiced or otherwise affected by any act or omission on the part of any other insured and shall insure the interests of each insured regardless of any act or omission on the part of any other insured party; and

(ii) each policy of insurance which insures the rights and interests of more than one party operates, save for limits of liability and/or amount, in the same manner as if there were a separate policy with and covering each insured and be without right of contribution from any other insurance which is carried by an insured;

(f) in so far as they relate to damage to assets (including the Facilities), cover the same for the full reinstatement value; and

(g) comply with the relevant provisions of Schedule 20.

Subrogation and Vitiation

64.5 IPL shall:

- (a) use reasonable endeavours to procure that to the extent reasonably available in the commercial insurance market all policies of insurance to be effected by it pursuant to this Clause shall contain a provision to the effect that the insurers have agreed to waive all rights of subrogation against NHS Greater Glasgow; and
- (b) where IPL is obliged to effect insurance under this Clause, not bring any claim or action against NHS Greater Glasgow in respect of any loss or damage in circumstances where IPL could recover such loss or damage under such insurance (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of IPL (or any IPL Party), including but not limited to non-disclosure or under-insurance),

provided that, to avoid doubt, this Sub-clause shall not by itself prevent IPL from claiming against NHS Greater Glasgow (or any NHS Greater Glasgow Party) for any loss or damage not covered because of the level of deductibles under such insurance permitted by this Agreement or to the extent such loss or damage exceeds the maximum of such insurance required by this Agreement.

64.6 Neither party shall take any action or fail to take any reasonable action or (in so far as it is reasonably within its power) permit or allow others to take or fail to take any action (including failure to disclose any fact)

as a result of which any of the Insurances maintained pursuant to this Clause may be rendered void, voidable, unenforceable or suspended or impaired in whole or in part or which may otherwise render any sum paid out under any relevant policy repayable in whole or in part.

Evidence of IPL Insurance

64.7 Not less than 20 Working Days prior to the expiry or amendment of any relevant insurance policy, IPL shall submit to NHS Greater Glasgow a request for approval from NHS Greater Glasgow of the insurer and the principal terms and conditions of such insurance policy (and any revision to such terms and conditions or change in identity of such insurer), such approval not to be unreasonably withheld or delayed.

64.8 IPL shall supply NHS Greater Glasgow with copies of every policy of Insurance (or such other evidence of Insurances as may be reasonably required) as soon as it is available, together with evidence of payment of the premiums. If IPL defaults in insuring or continuing to maintain the Insurances, NHS Greater Glasgow may insure against any risk (and notify IPL accordingly) in respect of which such default has occurred and recover any premiums from IPL as a debt.

Acceptance and compliance

64.9 The supply to NHS Greater Glasgow of any draft insurance policy or certificate of insurance or other evidence of compliance with this Clause shall not imply acceptance by NHS Greater Glasgow (or NHS Greater Glasgow's Representative) that:

- (a) the extent of insurance cover is sufficient and its terms are satisfactory; or
- (b) in respect of any risks not insured against, an acceptance by NHS Greater Glasgow that the same were Uninsurable Risks.

64.10 Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall relieve IPL of its liabilities and obligations under this Agreement.

Uninsurable Risks

64.11

- (a) IPL shall notify NHS Greater Glasgow of any risk becoming an Uninsurable Risk within 5 Working Days of becoming aware of the same and, in any event, at least 5 Working Days before the expiry of any existing insurance in respect of such risk.
- (b) Notwithstanding Clause 64.11 (a) if IPL is unable to comply with its obligations under this Clause 64 in respect of a public liability policy which is to expire, because it has been unable to obtain a quotation, IPL shall promptly inform NHS Greater Glasgow and shall provide NHS Greater Glasgow such information as NHS Greater Glasgow may reasonably require as to why it has been unable to obtain such quotation and what steps IPL proposes to take to address the situation and IPL shall keep NHS Greater Glasgow fully informed of relevant developments

- (c) Without prejudice to the generality of Clause 64.12 (a) (i) IPL shall promptly notify NHS Greater Glasgow if it has reasonable grounds for belief that an Uninsurable PL Risk (as defined in Clause 64.12 (a) (i)) is likely to occur on expiry of the current insurance policy

64.12 Where there is an Uninsurable Risk:

- (a)
 - (i) Where the Uninsurable Risk relates to a risk under a public liability policy, (“an Uninsurable PL Risk”) the Agreement shall continue or NHS Greater Glasgow may, at its option, elect to terminate the Agreement. If NHS Greater Glasgow elects to terminate the Agreement in accordance with this Clause 64.12(a)(i), NHS Greater Glasgow shall make this decision (which shall have immediate effect) before the expiry of the existing insurance in respect of such risk that has become an Uninsurable Risk and notify this decision to IPL immediately thereafter whereupon the Agreement shall terminate and the provisions of Clause 39.1 shall apply as though the period of six (6) months referred to therein had expired;
 - (ii) in respect of all other Uninsurable Risks, this Agreement shall continue.
- (b) Where pursuant to Clause 64.12(a) the Agreement continues then:

- (i) upon the existing cover lapsing IPL shall be relieved of its obligation to maintain insurance in respect of the Uninsurable Risk; and

- (ii) on the occurrence of a relevant Uninsurable Risk then if the risk is an Uninsurable PL Risk NHS Greater Glasgow shall pay to the injured party an amount equal to the payment that would have been payable in respect of the claim had the relevant insurance continued to be available or, in the case of other Uninsurable Risks NHS Greater Glasgow may (at its option) either:
 - (1) pay to IPL within six (6) calendar months of the date on which the risk occurs an amount equal to the insurance proceeds that would have been payable (save in the case of the insurances referred to at Section 2 of Part 1 of Schedule 20 [*Advance Loss of Profits*] and Section 2 of Part 2 of Schedule 20 [*Business Interruption*] where (in either case) the amount payable shall equal proceeds for any Unavoidable Costs only) had the relevant insurance continued to be available and:

 - (2) (in respect of insurance proceeds to be dealt with pursuant to Clause 64.18 [*Application of Proceeds*] payment shall be made to the Insurance Proceeds Account;

- (iii) in respect of Insurances not dealt with pursuant to Clause 64.18 [*Application of Proceeds*] payment shall be made as directed by IPL; or
 - (iv) terminate this Agreement.
- (c) Where the Agreement terminates, the provisions of Clause 39.1 [*Non-Default Termination - Force Majeure*] shall apply as though the period of six (6) months referred to therein had expired.
- (d) For the purposes of this Clause 64.14 "Unavoidable Costs" shall be the loss sustained by IPL being:
 - (i) any amount in respect of principal or interest under the Senior Funding Agreements during the Indemnity Period; and
 - (ii) fixed costs for which IPL is legally liable (including, to avoid doubt, pursuant to the Car Park Operator Contract) excluding payments:
 - (1) to the extent that the same do not reflect normal commercial market terms;
 - (2) which are due to the Shareholders and holders of Junior Debt / Subordinated Debt in that capacity;
 - (3) which represent Indirect Losses suffered or allegedly suffered by any person (excluding, to avoid doubt, accrued profits); and

- (iii) the additional expenditure necessarily and reasonably incurred in avoiding or diminishing (i) and (ii) above which but for the additional expenditure would have taken place during the Indemnity Period but not exceeding the amount of the reduction in fixed costs thereby avoided. To avoid doubt, NHS Greater Glasgow will not be liable under Clause 64 for any loss which would not have been indemnified under the business interruption insurance which was effective prior to the risk becoming Uninsurable.

64.13 Where there is an Uninsurable Risk and / or PL Unavailability, IPL shall approach the insurance market on a regular basis and in any event at intervals of not more than six (6) months to establish whether the relevant risk remains an Uninsurable Risk or whether PL Unavailability continues.

64.14 Where a risk which was previously an Uninsurable Risk ceases to be so or where the PL Unavailability ceases and IPL has become aware that this is the case, IPL shall forthwith take out and maintain insurance in accordance with the requirements of this Agreement in respect of the risk and the provisions of Clause 64.11 and 64.13 [*Uninsurable Risks*] shall not longer apply to the risk or in respect of PL Unavailability IPL shall procure that it shall forthwith take out insurances in accordance with Clause 64, or any statutory replacement thereof.

64.15 Where a risk which was previously an Uninsurable Risk ceases to be so, and IPL has become aware that this is the case, IPL shall forthwith

take out and maintain insurance in accordance with the requirements of this Agreement in respect of the risk and the provisions of Clause 64.12 and 64.13 shall no longer apply to the risk.

64.16 Nothing in this Agreement shall oblige IPL to take out insurance in respect of a risk for which after the date of this Agreement:

- (a) insurance is not available in European insurance market with Reputable Insurers in respect of that risk; or
- (b) the terms and/or conditions offered in respect of the risk are such that that risk is not generally being insured against in the European insurance market with Reputable Insurers Provided that nothing in this Clause 64.16 will relieve IPL of any of its other obligations in respect of such risk in this Agreement.

64.17 Without prejudice to the provisions of Clause 64.16, the parties shall notify one another, and in IPL's case the relevant insurer, of any circumstances which may give rise to a claim of a value equal to or in excess of two hundred and fifty thousand pounds (£250,000) (index-linked) under the Insurances within 10 Working Days of becoming aware of the same (or earlier, if so requested by the terms of the relevant insurance policy). If any insurer disputes any such claim, IPL shall provide NHS Greater Glasgow with full details of any disputed claim and the parties shall liaise with one another to ensure that the relevant claim is preserved or pursued.

Application of Proceeds

64.18 All insurance proceeds received by IPL under the insurances referred to in Schedule 20 shall be paid into the Insurance Proceeds Account

and shall be held on trust for the purposes of, and to be applied in accordance with, this Agreement.

64.19 Subject to the provisions of the Funders' Direct Agreement and Clause 64.20 IPL shall apply any proceeds of any policies of Insurance:

- (a) in the case of third party legal liability or employers' liability insurance, in satisfaction of the claim, demand, proceeding or liability in respect of which such proceeds are payable; and
- (b) in the case of advance loss of profit insurance and/or business interruption insurance for the purpose of paying:
 - (i) debt and debt servicing costs;
 - (ii) fixed costs;
 - (iii) increased costs of working.
- (c) in the case of any other insurance, so as to ensure the performance by IPL of its obligations under this Agreement, including where necessary the reinstatement, restoration or replacement of the Facilities or any other assets, materials or goods.

64.20 If the proceeds of any insurance claim are insufficient to cover the

64.21 settlement of such claims, IPL will make good any deficiency forthwith.

NHS Greater Glasgow election not to reinstate

64.22 In the event of damage to, or destruction of, all or a material part of the Facilities, NHS Greater Glasgow may, at its option, serve a viability statement on IPL within 20 Working Days of:

- (a) completion of the Economic Reinstatement Test; or
- (b) if the Funders' Direct Agreement has ceased to apply, agreement or determination of the extent of the damage.

64.23 If NHS Greater Glasgow exercises this right, this Agreement shall automatically terminate and NHS Greater Glasgow shall pay compensation to IPL in accordance with Clause 38. Any insurance proceeds shall first be applied towards such compensation payment and any balance shall be paid to NHS Greater Glasgow.

64.24 IPL shall take all reasonable steps to mitigate the effects of any risks or claims covered by this Clause (including without limitation minimising the amount of any costs and expenses which might result).

65. CUSTODY OF FINANCIAL MODEL

65.1 The Financial Model shall be held by the parties in accordance with Schedule 4 (Custody Agreement).

65.2 Either party shall have the right to inspect and audit the Financial Model at all reasonable times.

65.3 Unless otherwise agreed between the parties, any amendments to the Financial Model shall reflect, be consistent with and be made only in accordance with the provisions of this Agreement, and shall in all

cases be subject to the prior written approval of NHS Greater Glasgow (such approval not to be unreasonably withheld or delayed). In the event that the parties fail to agree any proposed amendments to the Financial Model, the matter shall be referred for resolution in accordance with Clause 49 (Dispute Resolution Procedure).

65.4 Following the approval of any amendment of the Financial Model by NHS Greater Glasgow, IPL shall promptly deliver a copy of the revised Financial Model to NHS Greater Glasgow in the same form as the original form (or such other form as may be agreed by the parties from time to time).

66. CORRUPT GIFTS AND PAYMENTS

Prohibition on corruption

66.1 The term "Prohibited Act" means:

- (a) offering, giving or agreeing to give to NHS Greater Glasgow or any other public body or to any person employed by or on behalf of NHS Greater Glasgow or any other public body any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with NHS Greater Glasgow or any other public body; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other

agreement with NHS Greater Glasgow or any other public body;

- (b) entering into this Agreement or any other agreement with NHS Greater Glasgow or any other public body in connection with which commission has been paid or has been agreed to be paid by IPL or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to NHS Greater Glasgow;
- (c) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916;
 - (ii) under any Law creating offences in respect of fraudulent acts; or
 - (iii) at common law, in respect of fraudulent acts in relation to this Agreement or any other agreement with NHS Greater Glasgow or any other public body; or
- (d) defrauding or attempting to defraud or conspiring to defraud NHS Greater Glasgow or any other public body.

Warranty

66.2 IPL warrants that in entering into this Agreement it has not committed any Prohibited Act.

Remedies

66.3 If IPL or any IPL Party (or anyone employed by or acting on behalf of them) commits any Prohibited Act, then NHS Greater Glasgow shall be entitled to act in accordance with paragraphs (a) to (f) below:

- (a) if a Prohibited Act is committed by IPL or by an employee not acting independently of IPL (here meaning that the employee acts under the authority of or with the knowledge of any one or more directors of IPL), then NHS Greater Glasgow may terminate the Agreement with immediate effect by giving written notice to IPL;
- (b) if the Prohibited Act is committed by an employee of IPL acting independently of IPL, then NHS Greater Glasgow may give written notice to IPL of termination and the Agreement will terminate, unless within twenty (20) Working Days of receipt of such notice IPL terminates the employee's employment and (if necessary) procures the performance of the relevant part of this Agreement by another person;
- (c) if the Prohibited Act is committed by a Contracting Associate or by an employee of that Contracting Associate not acting independently of that Contracting Associate (here meaning that the employee acts under the authority of or with the knowledge of any one or more directors of the Contracting Associate) then NHS Greater Glasgow may give written notice to IPL of termination and the Agreement will terminate, unless within twenty (20) Working Days of receipt of such notice IPL

terminates the relevant Sub-Contract and procures the performance of the relevant part of the services provided under the relevant sub-contract by another person, where relevant, in accordance with Clause 35 (*Assignment, sub-contracting and Change in Control*);

- (d) if the Prohibited Act is committed by an employee of a Contracting Associate acting independently of that Contracting Associate, then NHS Greater Glasgow may give notice to IPL of termination and the Agreement will terminate, unless within twenty (20) Working Days of receipt of such notice IPL procures the termination of the employee's employment and (if necessary) procures the performance of the relevant part of this Agreement by another person;
- (e) if the Prohibited Act is committed by any other person not specified in paragraphs (a) to (d) above, then NHS Greater Glasgow may give notice to IPL of termination and the Agreement will terminate unless within twenty (20) Working Days IPL procures the termination of such person's employment and of the appointment of their employer (where such person is not employed by IPL or the Contracting Associate) and (if necessary) procures the performance of the relevant part of this Agreement by another person; and
- (f) any notice of termination under this Sub-clause shall specify:
 - (i) the nature of the Prohibited Act;

- (ii) the identity of the party who NHS Greater Glasgow believes has committed the Prohibited Act; and
- (iii) the date on which the Agreement will terminate in accordance with the applicable provisions of this Sub-clause.

66.4 Without prejudice to its other rights or remedies under this Clause, NHS Greater Glasgow shall be entitled to recover from IPL:

- (a) the amount or value of any such gift, consideration or commission; and
- (b) any other loss sustained in consequence of any breach of this Clause.

Permitted payments

66.5 Nothing contained in this Clause shall prevent IPL from paying any proper commission or bonus to its employees within the agreed terms of their employment.

Notification

66.6 IPL shall notify NHS Greater Glasgow of the occurrence (and details) of any Prohibited Act promptly on IPL becoming aware of its occurrence.

Interim management

66.7 Where IPL is required to replace any Sub-Contractor pursuant to this Clause, the provisions of Clause 37.7 (IPL Events of Default) shall apply and be construed accordingly: IN WITNESS WHEREOF these presents typewritten on this and the preceding 139 pages together with the 26 Schedules are executed as follows:-

For and on behalf of Greater Glasgow Health Board

Place: Glasgow

Place: Glasgow

Date

Date

Signed by

Signed by

Print Name: Thomas Andrew Divers

Print Name: Wendy Hull

Designation: Chief Executive

Designation; Director of Finance

For and on behalf of Impregilo Parking (Glasgow) Limited

Place

Place

Date

Date

Signed by

Witnessed by

Print Name

Print Name

Designation

Designation

Address

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