

**SCHEDULE PART II**

**Part I: Form of Contractors' Collateral Agreement**

**GREATER GLASGOW HEALTH BOARD**

and

**STOBHILL HEALTHCARE FACILITIES LIMITED**

and

**BALFOUR BEATTY CONSTRUCTION LIMITED**

---

**CONTRACTORS' COLLATERAL AGREEMENT**

---

**THIS AGREEMENT** is made  
**BETWEEN:**

- (1) **GREATER GLASGOW HEALTH BOARD** of Gartnavel Hospital, 1055 Great Western Road, Glasgow G12 0XH (the "**Board**")
- (2) **BALFOUR BEATTY CONSTRUCTION LIMITED**, a company incorporated under the laws of Scotland with registered number SC106247, whose registered office is at Dean House, 24 Ravelston Terrace, Edinburgh EH4 3TP (the "**Contractor**"); and
- (3) **STOBHILL HEALTHCARE FACILITIES LIMITED**, a company incorporated under the laws of Scotland with registered number SC275420, whose registered office is at Saltire Court, 20 Castle Terrace, Edinburgh EH1 2EN ("**Project Co**").

**WHEREAS:**

- (A) The Board and Project Co have agreed the terms on which Project Co will design, develop and construct and operate the Facilities and, accordingly, have entered into the Project Agreement and the Project Documents.
- (B) The Contractor has entered into the Construction Contract with Project Co.
- (C) This Agreement is the "**Contractor's Collateral Agreement**" contemplated by the Project Agreement.

**NOW IT IS AGREED** as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

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

<b>"Ancillary Documents"</b>	means the documents defined as such in the Project Agreement
<b>"Business Day"</b>	means a day other than a Saturday, Sunday or a bank holiday in Scotland.
<b>"Construction Contract"</b>	has the meaning given in the Project Agreement
<b>"Funders Construction Agreement"</b>	<b>Direct</b> means the agreement dated on or around the date hereof among Project Co, the Contractor and the Senior Funder.
<b>"Novation Effective Date"</b>	means the date of performance of the obligations set out in Clauses 5.5.1
<b>"Parent Company Guarantee"</b>	has the meaning given in the Construction Contract

<b>"Project Agreement"</b>	means the Project Agreement of even date herewith between (1) the Board and (2) Project Co
<b>"Proposed Novation Date"</b>	has the meaning given in Clause 5.1
<b>"Proposed Novation Notice"</b>	has the meaning given in Clause 5.1
<b>"Proposed Step-in Date"</b>	has the meaning given in Clause 4.1.1
<b>"Proposed Substitute"</b>	has the meaning given in Clause 5.1
<b>"Security Documents"</b>	has the meaning given the Funders Construction Direct Agreement
<b>"Senior Funder"</b>	has the meaning given to it in the Project Agreement
<b>"Step-in Date"</b>	means the date of issue of the Step-in Undertaking
<b>"Step-in Notice"</b>	has the meaning given in Clause 4.1
<b>"Step-in Period"</b>	means the period commencing on the Step-in Date and ending on the earliest of:- <ul style="list-style-type: none"> <li>(a) the date of the first anniversary of the Step-in Date (but subject always to Clause 5.7);</li> <li>(b) the Step-out Date;</li> <li>(c) the Novation Effective Date; and</li> <li>(d) termination of the Construction Contract under Clause 6.1</li> </ul>
<b>"Step-in Undertaking"</b>	has the meaning given in Clause 4.2.4
<b>"Step-out Date"</b>	has the meaning given in Clause 4.4.1
<b>"Termination Notice"</b>	has the meaning given in Clause 3.3

## 1.2 Interpretation

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

- 1.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.2 all references to Clauses are references to Clauses of this Agreement;

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

## 2 PRIORITY OF RIGHTS

The Board shall not be entitled to exercise any rights to serve a Step-In Notice or a Proposed Novation Notice unless:

- 2.1 the Funders Construction Direct Agreement has expired; or

- 2.2 any period in respect of any relevant matter existing under the Funders Construction Direct Agreement, during which rights to step in to the Construction Contract or novate the Construction Contract can be exercised, has expired without such right(s) being exercised; or
- 2.3 the Senior Funder has consented in writing.

### 3 **WARRANTIES, TERMINATION NOTICE AND TRUST TERMINATION**

#### 3.1 **Contractor's Warranties and Undertakings**

Subject to Clause 3.2, the Contractor warrants and undertakes to the Board that it has complied with and fulfilled and shall continue to comply with and fulfil its duties and obligations arising under or by virtue of the Construction Contract, provided that the Board shall only be entitled to make a claim against the Contractor under this Clause 3.1 if the Project Agreement has terminated and shall not be entitled to do so during the Step-in Period or after the Construction Contract has been novated under Clause 5. To avoid doubt any claim which the Board may have against the Contractor shall be reduced to reflect any reduced compensation amount paid or payable by the Board attributable to any defect in the Works on termination of the Project Agreement such that the Board shall not be entitled to double recovery.

#### 3.2 **Liability of Contractor**

The Contractor agrees and undertakes to the Board that it will owe no greater duties and obligations and have the same but no greater liability in time or in nature to the Board than if the Board had been named as joint employer with Project Co under the Construction Contract provided always that:-

- (a) -the Board acknowledges that the liability of the Contractor to the Board howsoever arising shall be subject to the aggregate liability caps contained within the Construction Contract and that the quantum of liability of the Contractor to the Board shall be limited to the unused balance of such liability cap as is available at the time of payment to the Board;
- (b) the Contractor shall be entitled in any action or proceedings brought by the Board to rely on any limitation in the Construction Contract and to raise the equivalent rights in defence of liability (excluding counterclaim and set-off in respect of amounts due to the Contractor under the Construction Contract) as it would have against Project Co under the Construction Contract; and
- (c) notwithstanding anything to the contrary contained herein the Contractor shall only be liable for the reasonable costs (as objectively and independently assessed) of repair, renewal or re-instatement of the Works together with all decant costs reasonably and necessarily incurred which are directly attributable to the Contractor's breach of the Construction Contract and shall have no liability to the Board for any other losses howsoever arising

and provided always that the Contractor shall not be entitled to argue that its liability to the Board has been reduced or extinguished in any way on the grounds

that Project Co or any intermediate of Project Co in the Project escaped loss resulting from any breach by reason of the disposal of such interest in the Project.

### 3.3 Termination Notice

- 3.3.1 The Contractor undertakes not to terminate the Construction Contract on account of an Event of Project Co Default without first giving the Board not less than 20 Business Days prior written notice specifying the ground for that termination and subject to Clause 3.3.2, Any such notice by the Contractor shall be a "**Termination Notice**". To avoid doubt the Contractor shall not be prohibited by this Clause 3.3.1 from exercising a statutory right to suspend performance of its obligations under or pursuant to the Construction Contract (including without limitation execution of the Works) from the date of the Termination Notice until the Step-in Date.
- 3.3.2 The Termination Notice may be given by the Contractor up to 5 Business Days before the earliest date on which the Contractor reasonably expects to become entitled to exercise its right to terminate subject to the Contractor's obligations under the Funder Direct Agreement. If following the giving of a Termination Notice such right to terminate does not in fact arise the Contractor shall without delay give to the Board written notification to that effect.
- 3.3.3 Notwithstanding any provision of the Construction Contract to the contrary, on termination of the Project Agreement by the Board, the Parties agree that the Construction Contract shall not come to an end except in accordance with the terms of this Agreement.

## 4 STEP-IN AND STEP-OUT

### 4.1 Step-in Notice

- 4.1.1 if the Board has terminated the Project Agreement in accordance with the terms of the Project Agreement or if the Board has received a Termination Notice, then subject and postponed to the rights of the Senior Funder in terms of the Funders Construction Direct Agreement, the Board may give written notice to the Contractor (a "**Step-in Notice**") of the intention of the Board to issue a Step-in Undertaking on a specified date (the "**Proposed Step-in Date**") provided that such proposed step-in date shall be:
- (a) no later than five (5) Business Days after termination of the Project Agreement where this has been terminated by the Board; and (b) no earlier than the date falling 5 days prior to the date of expiry of the Termination Notice and no later than the date of expiry of the Termination Notice where a Termination Notice has been given by the Contractor.
- 4.1.2 Unless the Contractor otherwise consents, only one Step-in Notice may be given during the period of this Agreement. Subject to Clause 6.1 below,

the Contractor shall not be entitled to terminate the Construction Contract until after the Proposed Step-in Date.

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

4.2.1 Within 3 Business Days of receipt of any Step-in Notice, the Contractor shall give written notice to the Board of:-

4.2.1.1 all amounts due and payable to the Contractor under the Construction Contract on or before the date of issue of the Step-in Notice but remaining unpaid at such date;

4.2.1.2 the nature and the amount of any monetary claim asserted by the Contractor under the Construction Contract against Project Co arising out of or in connection with the breach for which the Termination Notice was served; and

4.2.1.3 where the Contractor intends to terminate the Construction Contract due to some default or breach of contract of a non-financial nature:

- (a) the provision of the Construction Contract alleged to have been breached or not fulfilled;
- (b) the steps reasonably required to remedy the specified breaches (if they are capable of being remedied) or conditions not fulfilled;
- (c) the time within which the specified steps can reasonably be expected to be taken;
- (d) (if applicable) the amount of damages claimed and the manner in which they have been calculated; and
- (e) (if applicable) the relief to be sought.

The Contractor shall continue to make diligent enquiry of the matters referred to in (a), (b) and (c) above and shall inform the Board as soon as practicable of any material change in such sums, obligations, liabilities and other information of which it becomes aware prior to the expiry of the notice period contained in the Termination Notice or, where a Step-in Notice has been issued due to the Board terminating the Project Agreement on or prior to the Proposed Step-in Date.

4.2.2 All information given by the Contractor in terms of Clause 4.2.1 shall be prepared diligently and be given in good faith and the Contractor shall take all reasonable steps to ensure that the statements to be submitted by it under Clause 4.2.1 (and any amendments or supplements thereto) shall be true, complete and accurate statements of the amounts to which the Contractor considers itself to be entitled.

- 4.2.3 Without prejudice to the rights of the Contractor to pursue any claims against Project Co following the expiration of the period of notice contained in the Termination Notice, or, in respect of a Step-in Notice issued due to the Board terminating the Project Agreement, the Proposed Step-in Date, or following expiry or termination of the Step-In Period for the purpose of determining the extent of the liability of the Board pursuant to Clause 4.4.2.2 in respect of matters occurring prior to the Step-in Notice, submission by the Contractor of the statements referred to in Clause 4.2.1 (as amended or supplemented from time to time) shall be conclusive.
- 4.2.4 Not later than the Proposed Step-in Date the Board shall decide if it is prepared to issue a Step-in Undertaking. If it does so decide, the Board shall promptly give the Contractor written notification of such decision. The Board shall deliver to the Contractor on the Proposed Step-in Date, a written undertaking in form and substance agreed with the Contractor (both the Board and the Contractor acting reasonably) (the "**Step-in Undertaking**"), incorporating a Clause in terms similar to Clause 12 but only to the extent that there will not be double counting of default interest accruing under the Construction Contract and this Agreement) and undertaking to the Contractor:-
- 4.2.4.1 to pay or procure the payment to the Contractor, within 15 days of demand by the Contractor, of any sum due and payable but unpaid by Project Co to the Contractor under the Construction Contract before the Step-in Date and which has been notified by the Contractor to the Board in accordance with Clause 4.2.1 or 4.2.2;
- 4.2.4.2 to perform or discharge or procure the performance or discharge of, any unperformed or undischarged obligations of Project Co under the Construction Contract which shall have fallen due for performance or discharge before the Step-in Date and which have been notified by the Contractor to the Board in accordance with Clause 4.2.1 and 4.2.2 within such period as the Contractor may reasonably require;
- 4.2.4.3 to pay or procure the payment of any sum due and payable by Project Co under the Construction Contract as a result of any act or omission occurring during the Step-in Period which shall arise from any act or omission occurring after the Step-in Date (but subject to Clauses 4.4 and 5.5.2.2); and
- 4.2.4.4 to perform or discharge or procure the performance or discharge of any obligations of Project Co under the Construction Contract as a result of any act or omission occurring during the Step-in Period (but subject to Clauses 4.4 and 5.5.2.2).
- 4.2.6 Upon release of the Parent Company Guarantee from the encumbrance constituted by the Security Documents, Project Co shall immediately assign all its rights and powers under the Parent Company Guarantee to the Board in accordance with Clause 7 of the same. If the Board shall not have issued



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

#### 4.3 Restriction of Right of Termination

If during or in respect of the Step-in Period, the Contractor confirms to the Board that subject to payment by the Board to the Contractor of all outstanding amounts properly due and owing to the Contractor under the Construction Contract other than any sums which are the subject of a bona fide dispute under the construction Contract it shall continue to observe and perform its duties and obligations under the Construction Contract shall, without prejudice to Clause 6.1, only be entitled to exercise its rights of termination under the Construction Contract:-

4.3.1 by reference to an event arising during the Step-In Period (and any expiry of any remedy period referred to in the Construction Contract where the act or omission giving rise to the commencement of such remedy period remains unremedied shall be deemed for these purposes to be an event arising during the Step-In Period) provided that the following events

(a) any Project Co Event of Default; or

(b) an event which is a breach of the Construction Contract and which is capable of remedy and is remedied within any relevant period set out therein,

(notwithstanding that they may have occurred during the Step-In Period) shall not entitle the Contractor to exercise such rights of termination during the Step-In Period; or

4.3.2 if the Board fails to pay when due any amount owed to the Contractor or to perform or discharge when falling due for performance or discharge any obligation under the Step-in Undertaking or fails to procure such payment or performance or discharge; or

4.3.3 if such rights of termination arise in circumstances where there is no default under the Construction Contract by the Board or the Contractor.

#### 4.4 Step-Out

4.4.1 The Board may, at any time, give the Contractor at least 40 Business Days prior written notice to terminate the Step-in Period on a date specified in the notice (the "**Step-out Date**").

4.4.2 The Board shall give the Contractor at least 60 Business Days prior written notice that subject to Clause 5.4.1 the Step-in Period will end due to the occurrence (subject to Clause 5.7) of the first anniversary of the Step-in Date;

provided that:-

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

4.4.2.2 all liability under the Step-in Undertaking pursuant to any claims properly made up to the date specified in either Clause 4.4.1 or Clause 4.4.2 (as the case may be) shall have been fully and unconditionally discharged by or on behalf of the Board;

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

## 5 NOVATION

### 5.1 Proposed Substitute

At any time that the Board is entitled to give a Step-in Notice pursuant to Clause 4.1 or at any time during the Step-in Period the Board may give notice (a "**Proposed Novation Notice**") to the Contractor that it wishes itself or another person (a "**Proposed Substitute**") to assume, by way of sale, transfer or other disposal, the rights and obligations of Project Co under the Construction Contract and specifying a date (the "**Proposed Novation Date**"):

- 5.1.1 falling not later than 15 Business Days after termination of the Project Agreement until this has been terminated by the Board;
- 5.1.2 falling not later than the expiry of the Termination Notice where a Proposed Novation Notice is given by the Board at a time when it is entitled to give a Step-in Notice pursuant to Clause 4.1; and
- 5.1.3 falling not later than 20 Business Days after the date of the Proposed Novation Notice, where a Proposed Novation Notice is given during the Step-in Period

Save as provided for in Clause 5.4, only one Proposed Novation Notice may be given during the period of this Agreement. Without prejudice to Clauses 4.3 and 6, the Contractor shall not be entitled to terminate the Construction Contract during the notice period specified in a Proposed Novation Notice.

### 5.2 Information for Consent to Novation

The Proposed Novation Notice shall only be effective in writing if the Contractor consents to that novation in writing in accordance with Clause 5.3 and the Board shall (as soon as practicable) supply the Contractor with such information as the Contractor requires in terms of Clauses 5.2.4 and 5.2.5 to enable it to decide whether or not to grant such consent. Where the Proposed Substitute is not the Board, a novation in accordance with a Proposed Novation Notice shall only be

effective if the Contractor consents to that novation in writing in accordance with Clause 5.3 and the Board shall (as soon as practicable) supply the Contractor with such information as the Contractor reasonably requires to enable it to decide whether or not to grant such consent. Such information shall include without limitation:-

- 5.2.1 the name and registered address of the Proposed Substitute;
- 5.2.2 the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- 5.2.3 the names of the directors and the secretary of the Proposed Substitute;
- 5.2.4 details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- 5.2.5 the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Construction Contract

provided always that where the Proposed Substitute is the Board, the Contractor shall at all times when considering any information provided under this clause 5.2 pay due regard to the Board's status as a publicly funded health authority.

### 5.3 Grant of Consent

The Contractor may only withhold or delay consent to a novation where the Board has failed to show to the Contractor's satisfaction (acting reasonably) that:-

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

no officer of the Proposed Substitute who will have responsibilities in relation to the Construction Contract following novation has committed any serious criminal offence or act of grave misconduct in the course of his business or profession.

The Contractor shall notify the Board in writing, within 5 Business Days of the later of receipt of a Proposed Novation Notice and all information required under Clause 5.2, as to whether or not it has decided to grant such consent (together with an explanation of its reasons if it has decided to withhold its consent).

### 5.4 Consent withheld

If, in accordance with Clause 5.3, the Contractor withholds its consent to a Proposed Novation Notice the Board shall be entitled to give one or more

subsequent Proposed Novation Notices, pursuant to the provisions of Clause 5.1, containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which (where the replacement Proposed Substitute is not the Board) the Board has good cause to believe would fulfil the requirements of Clause 5.3, provided that only one Proposed Novation Notice may be outstanding at any one time; and provided further that

- 5.4.1 where a Step-in Notice has not been issued, any revised Proposed Novation Date shall be a date falling no later than the date of expiry of the Termination Notice; and
- 5.4.2 if the Proposed Novation Notice was served during the Step-in Period any Revised Proposed Novation Date shall be a date falling not later than 28 Business Days after the date of the Revised Proposed Novation Notice and for the avoidance of doubt the Step-In Period shall continue (subject to the terms of this Agreement).

## 5.5 Implementation of Novation

5.5.1 If the Contractor consents to a novation pursuant to a Proposed Novation Notice then subject to the parties entering into the Novation Agreement Project Co shall immediately assign all its rights and powers under the Parent Company Guarantee to the Board in accordance with Clause 7 of the same. On the Proposed Novation Date and without prejudice to Clause 6.1:-

5.5.1.1 the Proposed Substitute shall become a party to the Construction Contract in place of Project Co and, thereafter, shall be treated as if it was and had always been named as a party to the Construction Contract in place of Project Co; and

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

- (l) the Proposed Substitute shall be granted all of the rights and assume all of the obligations and liabilities of Project Co under the Construction Contract (including those arising prior to the end of the Step-in Period) provided that the Contractor will not be in breach of its obligations under this Agreement if the Proposed Substitute and Project Co do not enter into such agreements.;

5.5.2 On and after the Novation Effective Date:-

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

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

5.5.2.2.1 all obligations of the Board under the Step-in Undertaking which have accrued up to the Novation Effective Date and are identifiable as at that date shall have been fully and unconditionally discharged in full on that date or otherwise assumed by the Proposed Substitute; and

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

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

5.5.4 Project Co acknowledges that (unless the terms of the novation expressly preserve an obligation or liability of Project Co) following upon the Novation Effective Date it shall release the Contractor from any liability which it has to Project Co pursuant to the Construction Contract or the Works howsoever arising.

5.5.5 The Contractor acknowledges that (unless the terms of the novation expressly preserve an obligation or liability of the Contractor) following upon the Novation Effective Date it shall release Project Co from any liability which it has to Project Co pursuant to the Construction Contract or the Works howsoever arising.

## 5.6 Termination After Novation

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

5.6.1 in respect of any event arising after that date (any expiry of any remedy period referred to in the Construction Contract where the act or omission giving rise to the commencement of such remedy period remains unremedied being deemed for these purposes to be an event arising after that date) in each case subject to expiry of any applicable remedy period provided for in the Construction Contract if the event in question is capable of remedy; or

5.6.2 if the Proposed Substitute does not discharge the obligations and liabilities assumed by it under Clause 5.5 which relate to matters arising prior to the

end of the Step-in Period, within 5 Business Days following the Novation Effective Date.

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

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

5.7.1 the Board shall be in the course of conducting discussions in good faith with a Proposed Substitute (the novation to whom has been approved by the Contractor in accordance with Clause 5.3) the Step-in Period shall be extended and shall continue until such date as is proposed by the Board and agreed by the Contractor; or

5.7.2 contracts have been exchanged by the Board with a Proposed Substitute (which has been approved by the Contractor in accordance with Clause 5.3) as at such date.

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

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

#### **6.1 Rights of Termination**

If:-

6.1.1 no Step-in Notice or Proposed Novation Notice is given before a Termination Notice expires; or

6.1.2 a Step-in Undertaking is not issued on the Proposed Step-in Date; or

6.1.3 the Step-in Notice is withdrawn or, pursuant to Clause 4.2.6, deemed to have been withdrawn; or

6.1.4 the Step-in Period ends other than on the occurrence of the Novation Effective Date; or

6.1.5 in the absence of a Step-in Undertaking, the Contractor withholds its consent to a novation pursuant to a Proposed Novation Notice, in accordance with Clause 5.3 and does not subsequently grant consent to a novation in accordance with Clause 5.4 on or before the Proposed Novation Date; or

6.1.6 in the absence of a Step-in Undertaking, the obligations of the Proposed Substitute set out in Clauses 5.5.1 are not performed on the date required by Clause 5.5.1, or

6.1.7 the Contractor is entitled to terminate the Construction Contract under Clause 5.6

the Contractor shall be entitled to:-

- 6.1.8 exercise all of its rights under the Construction Contract and act upon any and all grounds for termination available to it in relation to the Construction Contract whenever occurring; and/or
- 6.1.9 pursue any and all claims and exercise any and all rights and remedies against Project Co
- 6.1.10 pursue any and all claims and exercise any and all rights and remedies against the Board for any undischarged liabilities of the Board in respect of the Step-In Period

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

Until completion of the Novation Agreement pursuant to Clause 5.5 (unless the terms of such Novation Agreement expressly preserves any obligation or liability of Project Co), Project Co shall continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Construction Contract notwithstanding:-

- 6.2.1 the service of a Step-in Notice or the issue of a Step-in Undertaking or the expiry of the Step-in Period or the release of a Step-in Undertaking; or
- 6.2.2 the service of a Proposed Novation Notice; or
- 6.2.3 any other provision of this Agreement

## **7 REVOCATION OF NOTICES**

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

## **8 ASSIGNATION**

### **8.1 Binding on Successors and Assignees**

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

### **8.2 Restriction on Assigantion**

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

- 8.2.1 This Clause 8.2 shall not prevent any party assigning or transferring its rights under the Funding Agreements and the Security Documents in accordance with the terms of the Funding Agreements; and
- 8.2.2 Project Co shall not assign this Agreement within 5 years from the Commissioning End Date;
- 8.2.3 the Board shall be entitled, without the consent of any other Party, to transfer all its rights and obligations hereunder, to any person to whom it assigns or otherwise disposes of the benefit of the Project Agreement in accordance with Clause 50 of the Project Agreement, and otherwise with Project Co and the Contractor's consent (not to be unreasonably withheld or delayed)
- 8.2.4 nothing in this sub-clause shall restrict the rights of the Secretary of State to effect a statutory transfer;
- 8.2.5 the Contractor shall assign this Agreement to any party to whom it assigns the Construction Contract (in accordance with the terms of that agreement).

**9 CONFIDENTIALITY**

- 9.1 The parties shall be bound to observe, *mutatis mutandis*, the terms of clause 42 of the Construction Contract with respect to any information or document referred to in Clause 42 of the Construction Contract which shall come into its possession pursuant to this Agreement.
- 9.2 The Contractor agrees that the Board shall be entitled to disclose the terms of this Agreement to the Scottish Ministers and HM Treasury and that the Board shall be free to use and disclose such information on such terms and in such manner as the Scottish Ministers and/or HM Treasury see fit.

**10 NOTICES**

**10.1 Address**

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

**10.2 Effective receipt**

Subject to Clause 10.3:-

- 10.2.1 a letter delivered by hand shall be effective when it is delivered to the addressee; and
- 10.2.2 a letter sent by first class prepaid post shall be deemed received on the second Business Day after it is put in the post;



### 10.3 Timing

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

#### **Board**

NHS Greater Glasgow Primary Care Division  
Division Headquarters  
Gartnavel Royal Hospital  
1055 Great Western Road  
Glasgow G12 OXH  
For the attention of: Head of Estates and Property Management

#### **Contractor**

Attention: The Company Secretary, Balfour Beatty Construction Limited, Dean House, 24 Ravelston Terrace, Edinburgh EH4 3TP

#### **Project Co**

c/o Quayle Munro Limited  
8 Charlotte Square  
Edinburgh  
EH2 4DR  
For the attention of: Anthony Ostrowski

## 11 PAYMENTS AND TAXES

### 11.1 Payments

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

### 11.2 VAT

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

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

### 11.3 Deductions from payments

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

12 **DEFAULT INTEREST**

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

13 **NOT USED**

14 **AGENCY**

14.1 **No Delegation**

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

14.2 **No Agency**

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

14.3 **Independent Contractor**

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

15 **WHOLE AGREEMENT**

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

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

16 **WAIVER**

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

17 **SEVERABILITY**

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

18 **COSTS AND EXPENSES**

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

19 **AMENDMENTS**

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

20 **GOVERNING LAW AND JURISDICTION**

20.1 **Law**

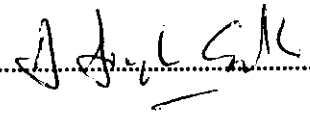
This Agreement shall be governed by and construed in all respects in accordance with the laws of Scotland.

20.2 Jurisdiction


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

IN WITNESS WHEREOF this Agreement consisting of this page and the preceding 18 pages is executed as follows:

SUBSCRIBED for and on behalf of  
GREATER GLASGOW HEALTH BOARD  
on the 11th day of July 2005  
by:

.....Authorised Signatory

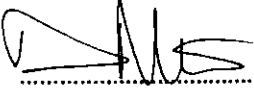
DOUGLAS GRIFFIN.....Signatory Full name

.....Authorised Signatory

ROSSLYN CROCKETT.....Signatory Full name

SUBSCRIBED for and on behalf of  
BALFOUR BEATTY CONSTRUCTION LIMITED  
on the 13th day of July 2005  
by:

DAVID MUIR

.....Attorney

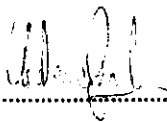
in the presence of 

DAVID STEINHILBER..... witness

..... witness name

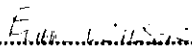
11th Floor, 24 Princes Street, Edinburgh..... witness address

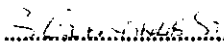
**SUBSCRIBED** for and on behalf of  
**STOBHILL HEALTHCARE FACILITIES LIMITED**  
on the        day of                    2005  
by:

.....Director/Secretary/Authorised Signatory

in the presence of

.....witness

..... witness name

..... witness address  
