

GREATER GLASGOW HEALTH BOARD

and

PARSONS BRINCKERHOFF LIMITED

and

STOBHILL HEALTHCARE FACILITIES LIMITED

SERVICE PROVIDERS' COLLATERAL AGREEMENT

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AMONG:

- (1) **GREATER GLASGOW HEALTH BOARD**, Gartnavel Hospital, 1055 Great Western Road, Glasgow (the "Board");
- (2) **PARSONS BRINCKERHOFF LIMITED**, a company incorporated under the laws of England with registered number 02554514, whose registered office is at Amber Court, William Armstrong Drive, Newcastle Business Park, Newcastle Upon Tyne NE4 7YQ (the "Service Provider"); 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 Service Provider has entered into the Service Contract with Project Co.
- (C) This Agreement is the "Service Providers' Collateral Agreement" contemplated by the Project Agreement.

NOW IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

"Project Agreement"	means the Project Agreement of even date herewith between (1) the Board and (2) Project Co
"Proposed Novation Date"	has the meaning given in Clause 5.1
"Proposed Novation Notice"	has the meaning given in Clause 5.1
"Proposed Step-in Date"	has the meaning given in Clause 4.1.1
"Proposed Substitute"	has the meaning given in Clause 5.1
"Security Documents"	has the meaning given the Funder Service Provider Direct Agreement
"Senior Funders"	has the meaning given to it in the Project Agreement
"Service Contract"	has the meaning given in the Project Agreement
"Step-in Date"	means the date of issue of the Step-in Undertaking
"Step-in Notice"	has the meaning given in Clause 4.1
"Step-in Period"	means the period commencing on the Step-in Date and ending on the earliest of:- <ul style="list-style-type: none"> (a) the date of the first anniversary of the Step-in Date (but subject always to Clause 5.7); (b) the Step-out Date; (c) the Novation Effective Date; and (d) termination of the Service Contract under Clause 4.3
"Step-in Undertaking"	has the meaning given in Clause 4.2.4
"Step-out Date"	has the meaning given in Clause 4.4.1
"Termination Notice"	has the meaning given in Clause 3.3.1

1.2 Interpretation

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

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

- 1.2.3 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.2.4 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.2.5 any reference to time of day shall be a reference to 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 Funder Service Provider Direct Agreement has expired; or

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

3 WARRANTIES, TERMINATION NOTICE AND BOARD TERMINATION

3.1 **Service Provider's Warranties and Undertakings**

The Service Provider 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 Service Contract, provided that the Board shall only be entitled to make a claim against the Service Provider 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 Service Contract has been novated under Clause 5.

3.2 **Liability of Service Provider**

Any liability arising from any claim for breach of the warranty under or pursuant to Clause 3.1 shall be in addition to and without prejudice to any other present or future liability of the Service Provider to the Board (including, without prejudice to the generality of the foregoing, any liability in negligence) and shall not be released, diminished or in any other way be affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Board by any person nor by any action or omission of any person whether or not such action or omission might give rise to an independent liability of such person to the Board provided always that the Service Provider shall owe no greater duties or obligations to the Board under this Agreement than it owes or would have owed to Project Co under the Service Contract.

3.3 **Termination Notice**

3.3.1 The Service Provider undertakes not to terminate the Service Contract on account of an Event of Project Co Default without first giving the Board not less than 25 Business Days prior written notice specifying the ground for that termination subject to Clause 3.3.2 below any such notice, other than one given in circumstances where there is no default under the Service Contract by Project Co or the Service Provider, shall be a "**Termination Notice**".

3.3.2 Where the Service Provider's right to terminate is subject to the terms of the Funder Service Provider Direct Agreement then the Service Provider shall notify the Board of the same as soon as reasonably practicable upon becoming aware of the provisions of the Funder Service Provider Direct Agreement applying. Thereafter as soon as the Service Provider becomes entitled to terminate the Service Contract free from the constraints contained in the Funder Service Provider Direct Agreement, whether upon the expiry of the Step-in Period (as such term is defined in the Funder

Service Provider Direct Agreement) or otherwise, then the Service Provider undertakes to the Board not to terminate the Service Contract on account of an Event of Project Co Default (whether occurring before or after the Service Provider's right to terminate the Service Contract was free from the constraints of the Funder Service Provider Direct Agreement) without first giving the Board not less than fifteen (15) Business Days' prior notice specifying the grounds for that termination and noting that the Service Provider's right of termination is not subject to the Funder Service Provider Direct Agreement. Any such notice, other than one given in circumstances where there is no default under the Service Contract by Project Co or the Service Provider, shall for the purposes of this Agreement also be a Termination Notice and the provisions of this Agreement shall apply accordingly.

3.3.3 Notwithstanding any provision of the Service Contract to the contrary, on termination of the Project Agreement by the Board, the Parties agree that the Service 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 to the provisions of this Agreement, the Board may give written notice to the Service Provider (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 Service Provider.

4.1.2 Unless the Service Provider otherwise consents, only one Step-in Notice may be given during the period of this Agreement. Subject to Clause 6.1 below, the Service Provider shall not be entitled to terminate the Service 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 Service Provider shall give written notice to the Board of any sums of which the Service Provider has actual knowledge which are due and payable but unpaid by Project Co and of any other material obligations or liabilities, of which the Service Provider has actual knowledge, which should have been performed

or discharged by Project Co under the Service Contract, in each case, as at the date of the Step-in Notice.

4.2.2 The Service Provider shall inform the Board in writing as soon as reasonably practicable of:-

- (a) any change in such sums, obligations or liabilities referred to in Clause 4.2.1; and
- (b) any further sums, obligations or liabilities thereafter falling due and payable but unpaid or falling due for performance or discharge and unperformed or undischarged (as the case may be);

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

4.2.3 The Service Provider shall give the Board the information referred to in Clauses 4.2.1 and 4.2.2 in good faith and may not give any further notifications pursuant to Clause 4.2.2 less than 2 Business Days prior to the Proposed Step-in Date. The Board shall not be required to assume any liability under a Step-in Undertaking for any outstanding obligations and/or liabilities of Project Co to the Service Provider which are not notified to the Board pursuant to Clauses 4.2.1 or 4.2.2.

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 Service Provider written notification of such decision. The Board shall deliver to the Service Provider on the Proposed Step-in Date, a written undertaking in form and substance agreed with the Service Provider (both the Board and the Service Provider 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 Service Contract and this Agreement) and undertaking to the Service Provider:-

4.2.4.1 to pay or procure the payment to the Service Provider, within 15 days of demand by the Service Provider, of any sum due and payable but unpaid by Project Co to the Service Provider under the Service Contract before the Step-in Date and which has been notified by the Service Provider 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 Service Contract which shall have fallen due for performance or discharge before the Step-in Date and which have been notified by the Service Provider to the Board in accordance with Clause 4.2.1 and 4.2.2 within such period as the Service Provider may reasonably require;

4.2.4.3 to pay or procure the payment of any sum due and payable by Project Co under the Service 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) but not, to avoid doubt, any sum due in respect of any Services provided before the Step-in-Date; and

4.2.4.4 to perform or discharge or procure the performance or discharge of any obligations of Project Co under the Service Contract as a result of any act or omission occurring during the Step-in-Period which shall arise after the Step-in Date (but subject to Clauses 4.4 and 5.5.2.2) but not, to avoid doubt, to perform discharge or to procure the performance or discharge of any obligations in respect of any services provided before the Step-in-Date.

4.2.6 Upon release of the Guarantee from the encumbrance created by the Security Documents Project Co shall immediately assign all its rights and powers under the Guarantee to the Board in accordance with Clause 6 of the same.

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

4.3 **Restriction of Right of Termination**

During or in respect of the Step-in Period, the Service Provider confirms to the Board that it shall continue to observe and perform its duties and obligations under the Service Contract and shall, without prejudice to Clause 6.1, only be entitled to exercise its rights of termination under the Service Contract:-

4.3.1 by reference to an Event of Project Co Default arising during the Step-in Period, provided that no event of default by Project Co under the Project Agreement (whether resulting in termination of the Project Agreement or otherwise, and notwithstanding that it has occurred during the Step-in Period) shall entitle the Service Provider 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 Service Provider 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 Service Contract by the Board or the Service Provider.

4.4 **Step-Out**

4.4.1 The Board may, at any time, give the Service Provider at least 30 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 Service Provider at least 60 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 Service Contract in relation to the maintenance of records and the provision of reports during the Step-in Period so as to permit the Service Provider to monitor the performance of Project Co's other obligations under the Service Contract; and

4.4.2.2 all liability under the Step-in Undertaking pursuant to any claims 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;

the Board shall be released from the Step-in Undertaking on the expiry of the Step-in-Period in accordance with Clause 4.4.1 or 4.4.2. Such release shall not affect the continuation of Project Co's obligations towards the Service Provider under the Service 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 Service Provider 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 Service 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 28 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 Service Provider shall not be entitled to terminate the Service Contract during the notice period specified in a Proposed Novation Notice.

5.2 Information for Consent to Novation

If the Proposed Novation Notice specifies the Board as the Proposed Substitute, the Service Provider's consent to the novation shall be deemed to have been given automatically. Where the Proposed Substitute is not the Board, a novation in accordance with a Proposed Novation Notice shall only be effective if the Service Provider consents to that novation in writing in accordance with Clause 5.3 and the Board shall (as soon as practicable) supply the Service Provider with the following information:-

- 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 Service Contract.

5.3 Grant of Consent

The Service Provider may only withhold or delay consent to a novation where the Proposed Substitute is not the Board and the Board has failed to show to the Service Provider'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 Service 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 Service Contract;

The Service Provider shall notify the Board in writing, within 5 days of the later of receipt of a Proposed Novation Notice and all information required under Clause 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 Service Provider 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 Clauses 5.3.1 and 5.3.2, 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.

5.5 Implementation of Novation

5.5.1 If the Service Provider consents to a novation pursuant to a Proposed Novation Notice (whether automatically or otherwise) then on the Proposed Novation Date and without prejudice to Clause 6:-

5.5.1.1 upon release of the Guarantee from the encumbrance constituted by the Security Documents, Project Co shall immediately assign all its rights and powers under the Guarantee to the Board in accordance with Clause 6 of the same;

and on the Proposed Novation Date and without prejudice to Clause 6.1:-

5.5.1.2 subject to the prior performance by Project Co of their obligations under Clause 5.5.1.1 the Proposed Substitute shall become a party to the Service 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 Service Contract in place of Project Co; and

5.5.1.3 the Service Provider 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 Service Provider (acting reasonably), pursuant to which

- (i) the Proposed Substitute shall be granted all of the rights of Project Co under the Service Contract (including those arising prior to the end of the Step-in Period);
- (ii) subject to the Service Provider giving to the Proposed Substitute within three (3) Business Days of receipt of the Proposed Novation Notice such notice as is referred to in Clause 4.2.1 and to the provisions of Clauses 4.2.2 and 4.2.3, *mutatis mutandis*, the Proposed Substitute shall assume all of the obligations and liabilities of Project Co under the Service Contract (including those arising prior to the end of any Step-in Period and those arising during the period of the Proposed Novation Notice);

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

5.5.2 On and after the Novation Effective Date:-

5.5.2.1 the Service Provider shall owe its obligations under the Service 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; 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 Service 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 Service Provider to monitor the performance of Project Co's other obligations under the Service Contract.

5.5.3 The Board and the Service Provider 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 Service Contract necessary to reflect the fact that the Project Agreement may have terminated at the time of the Novation Effective Date.

5.6 **Termination After Novation**

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

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

5.6.2 if the Proposed Substitute does not discharge the obligations and liabilities assumed by it under Clause 5.5.1.3 which relate to matters arising prior to the end of the Step-in Period, within 15 Business Days of 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 Service Provider whether automatically or otherwise 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 Service Provider;
or

5.7.2 contracts have been exchanged by the Board with a Proposed Substitute (which has been approved by the Service Provider 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 SERVICE 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 Service Provider 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 are not performed on the Proposed Novation Date; or

6.1.7 the Service Provider is entitled to terminate the Service Contract under Clause 5.6; or

6.1.8 the Board exercises its right to step-out under Clause 4.4.1

the Service Provider shall be entitled to:-

6.1.9 exercise all of its rights under the Service Contract and act upon any and all grounds for termination available to it in relation to the Service Contract whenever occurring; and/or

6.1.10 pursue any and all claims and exercise any and all rights and remedies against Project Co.

6.2 Project Co's Rights and Obligations

Until completion of a Novation pursuant to Clause 5.5 , Project Co shall continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Service 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.

Notwithstanding the foregoing, Project Co's rights against the Service Provider under the Service Contract accrued prior to or as a result of the termination of the Project Agreement shall be preserved.

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 Assignment

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

- 8.2.1 This Clause 8.2 shall not prevent any Senior Funder 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 as the Service Provider'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 Service Provider shall assign this Agreement to any party to whom it assigns the service 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 40 of the Service Contract with respect to any information or document referred to in Clause 40 of the Service Contract which shall come into its possession pursuant to this Agreement.
- 9.2 The Service Provider 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 or by facsimile transmission to the relevant address or facsimile number set out below or to such other address or facsimile number as a Party may notify to the others in writing by not less than five Business Days' prior notice.

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;

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; and

10.2.3 a facsimile transmission shall be effective upon completion of transmission.

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

Address: NHS Greater Glasgow Primary Care Division
Division Headquarters
Gartnavel Royal Hospital
1055 Great Western Road
Glasgow G12 0XH

Fax : 0141 211 3790

Attention: Head of Estates and Property Management

Service Provider

Address: Amber Court
William Armstrong Drive
Newcastle Business Park
Newcastle Upon Tyne
NE4 7YQ

Fax: as notified from time to time

Attention: Company Secretary

Project Co

Address: c/o Quayle Munro
8 Charlotte Square
Edinburgh EH2 4DR

Fax: 0131 226 3391

Attention: 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 AGGREGATE LIABILITY

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

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 Service Provider 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 Service Contract, the Guarantee and the Funder Service Provider 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

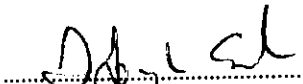
The Parties each submit to the jurisdiction of the Scottish courts as regards any claim or matter arising in relation to this Agreement.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding 17 pages is executed as follows:

SUBSCRIBED for and on behalf of
GREATER GLASGOW HEALTH BOARD
on the 1st day of August 2005 at Glasgow
by:

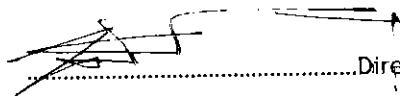
.....Authorised Signatory

Rosslyn Crockett.....Signatory Full Name

.....Authorised Signatory

P. Doreen Griffin.....Signatory Full Name

SUBSCRIBED for and on behalf of
PARSONS BRINCKERHOFF LIMITED at ~~6~~
on the 8th day of July 2005
by:

.....Director/Secretary/Authorised Signatory

in the presence of

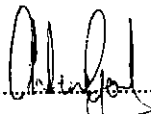
..... witness

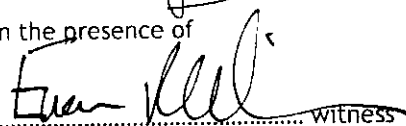
..... witness name

e/o PARSON..... witness address

BRINCKERHOFF
GOOALMINGA
G07 202

SUBSCRIBED for and on behalf of
STOBHILL HEALTHCARE FACILITIES LIMITED at Glasgow
on the 12th day of July 2005
by:

.....Director/Secretary/Authorised Signatory

in the presence of
..... witness

..... witness name

..... witness address
EHS - CAP