

DATED 13 JUL 2005

(1) GREATER GLASGOW HEALTH BOARD

and

(2) STOBHILL HEALTHCARE FACILITIES LIMITED

and

(3) CAPITA SYMONDS LIMITED

and

(4) DEXIA MANAGEMENT SERVICES LIMITED

and

(5) DEXIA CREDIT LOCAL

and

(6) BALFOUR BEATTY CONSTRUCTION LIMITED

INDEPENDENT TESTER
CONTRACT

relating to the design, financing and construction of, and
the provision of services at the Stobhill Local Forensic
Psychiatric Unit

INDEPENDENT TESTER CONTRACT

AMONG:-

- (1) **GREATER GLASGOW HEALTH BOARD**, Board Headquarters, Gartnavel Hospital, 1055 Great Western Road, Glasgow, G12 0XH (the "**Board**");
- (2) **STOBHILL HEALTHCARE FACILITIES LIMITED**, a company incorporated under the laws of Scotland (registered number SC275420) and having its registered office at Saltire Court, 20 Castle Terrace, Edinburgh EH1 2EN ("**Project Co**");
- (3) **CAPITA SYMONDS LIMITED**, a company incorporated in England under number 02018542 whose registered office is at 61 - 71 Victoria Street, Westminster, London, SW1H 0XA (the "**Independent Tester**");
- (4) **DEXIA CREDIT LOCAL**, London Branch of Shackleton House, 4 Battle Bridge Lane, London, SE1 2RB as Agent under the Senior Funders' Agreements (as defined in the Project Agreement) on behalf of itself and the Banks (the "**Agent**") which expression shall include in substitution all other persons from time to time being Agent under the Senior Funders' Agreements);
- (5) **DEXIA MANAGEMENT SERVICES LIMITED** of Shackleton House, 4 Battle Bridge Lane, London, SE1 2RB as Security Trustee for the Banks under the Senior Funders' Agreements (as defined in the Project Agreement) on behalf of itself and the Banks (the "**Security Trustee**") which expression shall include in substitution all other persons from time to time being Security Trustee under the Senior Funders' Agreements); and
- (6) **BALFOUR BEATTY CONSTRUCTION LIMITED**, a company incorporated under the laws of Scotland (registered number SC106247) whose registered office is at Dean House, 24 Ravelston Terrace, Edinburgh EH4 3TP (the "**Contractor**")

WHEREAS:

- (A) Project Co and the Board have entered into an agreement for the financing, design and construction and the provision of certain services in connection with a local forensic psychiatric unit at the Site (the "**Project**") pursuant to the Government's private finance initiative (the "**Project Agreement**") under the terms of which they have jointly agreed to appoint an independent tester.
- (B) Project Co has entered into the Construction Contract with the Contractor for the development of the Works at the Site.
- (C) Project Co has entered into the Funding Agreements with the Agent and the Security Trustee.
- (D) The Independent Tester is an independent adviser willing to provide services to Project Co, the Contractor and the Board and for the benefit of the Agent and the Security Trustee.
- (E) Project Co, the Board, the Agent and the Security Trustee have jointly agreed to engage the Independent Tester to carry out the duties and obligations ascribed to the Independent Tester in the Project Agreement upon the terms of this Agreement.

IT IS AGREED as follows:

1 INTERPRETATION

- 1.1 Unless the context otherwise requires, words and expressions defined in the Project Agreement have the same meanings in this Agreement as in the Project Agreement.
- 1.2 The headings in this Agreement do not affect its interpretation.
- 1.3 Unless the context otherwise requires, all references to Clauses and Schedules are references to clauses of and schedules to this Agreement.

2 APPOINTMENT

- 2.1 Project Co, the Board, the Agent and the Security Trustee jointly engage the Independent Tester to perform the obligations and tasks which are ascribed to the Independent Tester under the Project Agreement and under the Construction Contract and which are summarised in Appendix 1 upon the terms and conditions set out below. The Contractor is a party to this Agreement solely to make the commitments on its part as expressly made in this Agreement and in the event of any breach by the Independent Tester of any provisions of this Agreement to receive the rights arising under and benefits of this Agreement.
- 2.2 The Independent Tester shall provide the services under Clause 2.1 above (the "Services") independently, fairly and impartially to and as amongst Project Co, the Board, the Contractor, the Security Trustee and the Agent in relation to the Project Agreement at such times and at such locations as the parties shall agree from time to time. Whilst the Independent Tester may take account of any representations made by Project Co, the Board, the Agent, the Security Trustee and the Contractor (as appropriate) the Independent Tester shall not be bound to comply with any representations made by any of them in connection with any matter on which the Independent Tester is required to exercise his professional judgement.
- 2.3 **Varied Services**
 - 2.3.1 The Independent Tester shall carry out and perform any varied services (the "Varied Services") required for the implementation of the Project reasonably required by the Board and Project Co which are not included in, or which are omitted from, those Services which are set out in Appendix 1, subject to prior agreement by the Board and Project Co to the costs thereof.
 - 2.3.2 If the Independent Tester shall at any time be required to perform Varied Services, it shall give to the Board and Project Co a written estimate of the cost thereof (taking into account any reduction in work or other expense which might also occur as a result of the circumstances giving rise to the Varied Services). In the event that the parties are unable to reach agreement in relation to the costs the issue shall be referred to dispute resolution pursuant to Clause 17.1 or the requirement pursuant to Clause 2.3.1 may be withdrawn.
- 2.4 The Independent Tester shall provide the Services and the Varied Services:
 - 2.4.1 exercising the reasonable care, skill and diligence to be expected of a properly qualified and competent professional adviser who has held itself out as competent and experienced in rendering such services for projects of a similar size, nature, scope and complexity to the Project; and

- 2.4.2 in accordance with Good Industry Practice, all applicable Law and NHS Requirements.
- 2.4.3 For the purposes of this Clause 2.4 “Good Industry Practice” shall mean the exercise of that degree of skill, diligence, prudence, foresight and operating practice that would reasonably and ordinarily be expected from skilled and experienced operators with appropriately qualified personnel engaged in the same type of undertaking as the Independent Tester in compliance with Law.
- 2.5 All instructions to the Independent Tester must be given signed and given jointly by the Board’s Representative and Project Co’s Representative or such other person appointed pursuant to Clause 11 of the Project Agreement (*Representatives*).
- 2.6 The Independent Tester shall comply with all reasonable instructions given to it by Project Co and the Board except and to the extent that the Independent Tester reasonably considers that any such instructions vary or might vary the Services or the Varied Services or its authority or responsibilities under this Agreement or prejudices or might prejudice the exercise by the Independent Tester of its professional judgement in accordance with Clauses 2.2 and 2.4 above. The Independent Tester shall promptly confirm in writing to Project Co and the Board whether or not it shall comply with any such instruction setting out the grounds upon which the decision is made.
- 2.7 The Board, Project Co and the Contractor agree to co-operate with and provide reasonable assistance to the Independent Tester to familiarise the Independent Tester with all necessary aspects of the Project to enable the Independent Tester to carry out its obligations under this Agreement.
- 2.8 The Independent Tester shall be deemed to have full knowledge of the provisions of the Project Agreement, the Construction Contract and the Service Contract and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of Project Co and the Board which are set out in the Project Agreement.
- 2.9 The Independent Tester shall promptly and efficiently perform the Services as soon as reasonably practicable but consistent with the standards specified in Clauses 2.2 and 2.4 above.
- 2.9.1 Subject to Clause 2.9.2, the Independent Tester shall use the following partners, directors or employees: Peter Henderson in connection with the performance of the Services and such persons’ services shall be available when necessary and for so long as may be necessary to ensure the proper performance by the Independent Tester of the Services. Such persons shall have full authority to act on behalf of the Independent Tester for all purposes in connection with this Agreement.
- 2.9.2 None of the persons mentioned in Clause 2.9.1 shall be removed or replaced unless he/she ceases to work as a partner in or director or employee of the Independent Tester or he/she is unable to work because of death or ill-health or by mutual agreement between Project Co and the Board. The Independent Tester shall notify (giving a minimum of ten (10) Business Days notice) Project Co and the Board of any such circumstances and shall be responsible for finding a replacement whose appointment shall be subject to approval in writing by Project Co and the Board.

3 **DURATION**

- 3.1 The Services shall commence on the last date of execution of this Agreement or the commencement of the Services whichever is the earlier.
- 3.2 The Parties shall hereby agree that this Agreement governs all of the Services and the Varied Services provided by the Independent Tester in relation to the Project whether before or after the date hereof.

4 **FEE**

- 4.1 Project Co shall pay to the Independent Tester a fee of sixty five thousand pounds (£65,000)(the "Fee") for the Services provided in relation to the Project Agreement. The Fee is exclusive of value added tax and inclusive of disbursements. To avoid doubt the Agent, Security Trustee or Contractor are not liable for making payment of the Fee. The Independent Tester shall issue an invoice to Project Co on a monthly basis in accordance with Appendix 2, Part2. The date on which the invoice is received by Project Co shall constitute the due date. The final date for payment by Project Co shall be thirty (30) days after receipt of the Independent Tester's invoice. If Varied Services are provided then they shall be included within the invoices referred to above and shall be paid for equally by (1) the Board and (2) Project Co or as otherwise agreed.
- 4.2 Not later than five (5) Business Days after the due date ascertained in accordance with Clause 4.1, Project Co may give written notice to the Independent Tester stating the amount which Project Co proposes to pay and the basis on which the amount is calculated.
- 4.3 Where Project Co intends to withhold payment of any amount stated in the invoice, Project Co and the Board shall give written notice to the Independent Tester not later than five (5) Business Days before the final date for payment pursuant to Clause 4.1. The notice shall state the amount to be withheld and the ground or grounds for withholding the payment and if there is more than one ground, the notice shall identify the amount attributable to each ground.
- 4.4 If Project Co (and where applicable the Board) fails to pay the Independent Tester any sum payable under this Agreement by the final date for payment, Project Co shall pay the Independent Tester simple interest on that sum from the final date for payment until the actual date of payment at the Default Interest Rate.
- 4.5 If Project Co (and where applicable the Board) fails to pay the amounts properly due pursuant to these provisions and no notice to withhold the payment has been given pursuant to Clause 4.3, the Independent Tester may suspend performance of any or all of the Services. This right is subject to the Independent Tester first giving Project Co and the Board not less than seven (7) Business Days' notice in writing of such intention stating the grounds for suspension. The right to suspend performance shall cease when Project Co (and/or the Board (if appropriate)) pays the amount properly due.
- 4.6 Neither the Board nor Project Co shall issue instructions or do anything which does or is reasonably likely materially to increase the Fee payable to the Independent Tester without the prior approval of the other (such approval not to be unreasonably withheld or delayed).
- 4.7 Without prejudice to Clause 2.3, as soon as the Independent Tester becomes aware of the same and before acting on the same the Independent Tester shall inform the Board and Project Co of any instructions which either party has given him which will or could reasonably be expected to increase the fees payable to the Independent Tester under the terms of this Agreement. The Independent Tester

shall if requested by either Project Co or the Board provide both the Board and Project Co with as detailed an estimate as is reasonably practicable of the increase to the fees payable to it if it carries out such instructions. The estimate of increased fees shall be based upon the rates contained in Appendix 2, Part 3.

- 4.8 The obligations of Project Co and the Board to pay the Independent Tester for any Varied Services shall be several and not joint.

5 LIMITATIONS ON AUTHORITY

- 5.1 The Independent Tester shall not:

5.1.1 make or purport to make any alteration or addition to or omission from the design of the Facilities (including, without limitation, the setting of performance standards) or issue any instruction or direction to any contractor or professional consultant employed or engaged in connection with the Project; or

5.1.2 (unless both Project Co and the Board consent in writing) consent or agree to any waiver or release of any obligation of Project Co or the Board under the Project Agreement.

- 5.2 For the avoidance of doubt, the Independent Tester shall not express an opinion on and shall not interfere with or give any advice, opinion or make any representation in relation to any matters which are beyond its role and responsibilities under this Agreement.

6 TERMINATION

- 6.1 Project Co, the Board, the Agent and the Security Trustee may by joint notice in writing (a "Joint Notice") immediately terminate this Agreement if the Independent Tester:

6.1.1 is in breach of any of the terms of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Tester within 21 days of receipt by the Independent Tester of a Joint Notice specifying the breach and requiring its remedy;

6.1.2 is incompetent, guilty of gross misconduct and/or any material failure, negligence or delay in the provision of the Services and/or its other duties under this Agreement;

6.1.3 fails to comply with Clause 2.9;

6.1.4 fails or refuses after written warning to provide the Services and/or its other duties under this Agreement reasonably and as properly required of him; or

6.1.5 is subject to an event analogous to any of the events set out in Clause 44.1.1 (*Project Co Events of Default - Insolvency*) of the Project Agreement.

- 6.2 If the Project Agreement is rescinded, terminated or repudiated for any reason and, notwithstanding that the validity of such rescission, termination or repudiation may be disputed, this Agreement may be terminated by Joint Notice and with immediate effect.

- 6.3 Following any termination of this Agreement, but subject to any set-off or deductions which Project Co or the Board may be entitled properly to make as a

result of any breach of this Agreement by the Independent Tester, the Independent Tester shall be entitled to be paid in full and final settlement of any valid claim which the Independent Tester may have in consequence thereof, any fees due under Clause 4 above in respect of the Services and the Varied Services carried out in accordance with this Agreement prior to the date of termination.

- 6.4 Termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination (including the right of Project Co, the Board, the Agent, the Security Trustee and/or the Contractor to recover damages from the Independent Tester).
- 6.5 If this Agreement is terminated in accordance with this Clause 6.1, Project Co, the Board, the Agent and the Security Trustee shall use reasonable endeavours to engage an alternative Independent Tester within 30 days, subject to Law and public procurement rules. If within such period Project Co and the Board are unable to procure the appointment of an alternative Independent Tester on reasonable commercial terms, the Independent Tester shall pay to Project Co and/or the Board and/or the Contractor, as the case may be, any reasonable incremental loss, damage or extra costs suffered by each of them.
- 6.6 Termination of this Agreement shall not affect the continuing rights and obligations of Project Co, the Board, the Agent, the Security Trustee and the Contractor and the Independent Tester under Clauses 7 (*Confidential Information and Copyright*), 8 (*Professional Indemnity Insurance*), 5 (*Limitations on Authority*), 17 (*Dispute Resolution Procedure*) and this Clause or under any other Clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.
- 6.7 Should the Independent Tester seek to terminate this Agreement due a breach by Project Co and/or the Board, the Independent Tester agrees that it will not, without first giving the Agent and the Security Trustee not less than 30 days notice in writing, exercise any right it may have to terminate or suspend the Agreement or to treat the same as having been repudiated by Project Co or the Board or to discontinue the performance of any services to be performed by the Independent Tester pursuant thereto. Such right to terminate or suspend the Agreement with Project Co and the Board or treat the same as having been repudiated or discontinue performance shall cease if, within such period of notice the Agent and or the Security Trustee shall give notice in writing to the Independent Tester requiring the Independent Tester to accept the instructions of the Agent and or the Security Trustee or its appointee (in relation only to Project Co's rights and obligations under the Agreement) to the exclusion of Project Co upon the terms and conditions of the Agreement.

7 CONFIDENTIAL INFORMATION AND COPYRIGHT

- 7.1 The Independent Tester shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to Project Co's or the Board's or the Contractor's (if appropriate) technology or other know-how business plans or finances or any such information relating to a subsidiary, supplier, customer or client of Project Co or the Board or the Contractor (if appropriate) where the information was received during the period of this Agreement. Upon termination of this Agreement for whatever reasons the Independent Tester shall deliver up to Project Co or the Board or the Contractor (as appropriate) all working papers, computer disks and tapes or other material and copies provided to or prepared by him pursuant either to this Agreement or to any previous obligation owed to Project Co or the Board or the Contractor (if appropriate).

- 7.2 The copyright in all reports, calculations and other similar documents provided by the Independent Tester in connection with the Project shall remain vested in the Independent Tester but the Independent Tester grants to Project Co, the Board, the Agent and the Security Trustee and their nominees a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.

8 PROFESSIONAL INDEMNITY INSURANCE

- 8.1 Without prejudice to its obligations under this Agreement, or otherwise at law, the Independent Tester shall maintain professional indemnity insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) for any one claim in respect of any neglect, error or omission on the Independent Tester's part in the performance of its obligations under this Agreement for the period commencing on the date of this Agreement and expiring 12 years after:
- 8.1.1 the date of final certification of the Works; or
 - 8.1.2 the termination of this Agreement,
- whichever is the earlier, provided that such insurance is available in the market place at commercially reasonable rates.
- 8.2 The Independent Tester shall maintain such insurance with reputable insurers carrying on business in the United Kingdom who are acceptable to Project Co and the Board, such acceptance not to be unreasonably withheld or delayed.
- 8.3 Any increased or additional premium required by insurers by reason of the Independent Tester's own claims record or other acts, omissions, matters or things particular to the Independent Tester shall be deemed to be within commercially reasonable rates.
- 8.4 The Independent Tester shall immediately inform Project Co, the Board and the Contractor if such insurance ceases to be available at commercially reasonable rates in order that the Independent Tester and Project Co and the Board can discuss means of best protecting the respective positions of Project Co and the Board and the Independent Tester in respect of the Project in the absence of such insurance.
- 8.5 The Independent Tester shall fully co-operate with any measures reasonably required by Project Co and the Board including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if Project Co and the Board undertake in writing to reimburse the Independent Tester in respect of the net cost of such insurance to the Independent Tester above commercially reasonable rates or, if Project Co and the Board effect such insurance at rates at or above commercially reasonable rates, reimbursing Project Co and the Board in respect of what the net cost of such insurance to Project Co and the Board would have been at commercially reasonable rates.
- 8.6 The Independent Tester shall, prior to commencing the provision of the Services and no less than thirty (30) days prior to renewal dates, produce for inspection by Project Co and the Board documentary evidence that such insurance is being properly maintained.

8.7 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Agreement for any reason whatsoever, including (without limitation) breach by Project Co and the Board.

9 LIMITATION OF LIABILITY

Save in respect of death or personal injury, fraud, wilful default or gross negligence, the total liability of the Independent Tester under or in connection with this Agreement whether in contract or delict, in negligence or for breach of statutory duty or otherwise for any claims shall be limited to ten million pounds (£10,000,000) for any one claim.

10 NOTICES

10.1 All notices or other communications required in connection with this Agreement shall be in writing and sent by hand, by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number set out in the Project Agreement or to such other address or facsimile number as a party to this Agreement may notify to another party to this Agreement in writing save that any notice to the Contractor may not be served by facsimile transmission.

11 ASSIGNATION

11.1 The Independent Tester shall not assign or transfer any of its rights or obligations under this Agreement or sub-contract the whole or any part of the without the prior written agreement of Project Co, the Board, the Agent and the Security Trustee, which agreement will not be unreasonably withheld.

11.2 Neither Project Co nor the Board shall be entitled to assign or transfer any of their respective rights or obligations under this Agreement save that the parties hereby consent on three occasions only to any such assignation or transfer which is contemporaneous to the assignation or transfer of the Project Agreement and is made to the same assignee or transferee. In the event that the Project Agreement is novated to a third party, the term "Project Agreement" shall include any replacement contract arising from such novation.

11.3 The Independent Tester shall not be entitled to contend that any person to whom this Agreement is assigned in accordance with Clause 11.2 is precluded from recovering under this Agreement any loss incurred by such assignee resulting from any breach of this Agreement (whenever happening) by reason that such person is an assignee and not a named party to this Agreement.

12 CUMULATIVE RIGHTS AND ENFORCEMENT

12.1 Any rights and remedies provided for in this Agreement whether in favour of Project Co or the Board or the Independent Tester or the Contractor or the Agent and Security Trustee are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.

12.2 The duties and obligations of the Independent Tester arising under or in connection with this Agreement are owed to Project Co, the Board and the Contractor or the Agent and Security Trustee both jointly and severally and Project Co, the Board and/or the Contractor or the Agent and Security Trustee may accordingly enforce the provisions hereof and pursue their respective rights hereunder in their own name, whether separately or with each other.

12.3 Project Co, the Board, the Contractor, the Agent and the Security Trustee covenant with each other that they shall not waive any rights, remedies or entitlements or take any other action under this Agreement which would or might reasonably be expected to adversely affect the rights, remedies or entitlements of the others

without the others' prior written consent, such consent not to be unreasonably withheld or delayed.

13 WAIVER

The failure of any party at any one time to enforce any provision of this Agreement shall in no way affect its right thereafter to require complete performance by any other party, nor shall the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

14 SEVERABILITY

In the event that any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall, to that extent, be omitted from this Agreement and the rest of this Agreement shall stand, without affecting the remaining clauses.

15 EXECUTION

This Agreement may be executed in multiple copies. Any single document executed by all the Parties shall constitute a full and original instrument for all purposes.

16 VARIATION

A variation of this Agreement is valid only if it is in writing and signed by or on behalf of each party.

17 DISPUTE RESOLUTION PROCEDURE

17.1 All disputes shall be resolved in accordance with terms equivalent (mutatis mutandis) to the Dispute Resolution Procedure as set out in the Project Agreement (excluding for the avoidance of doubt the Liaison Committee and the Fast Track Dispute Resolution Procedure).

17.2 Project Co, the Board and the Independent Tester shall co-operate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this Agreement.

18 GOVERNING LAW AND JURISDICTION

18.1 Subject to Clause 17 above, this Agreement shall be governed by and construed in accordance with the laws of Scotland, and (subject as aforesaid) the parties hereby submit to the non-exclusive jurisdiction of the courts of Scotland.

18.2 No action or proceedings may be commenced against the Independent Tester for any breach of this Agreement after the expiry of 12 years following the date of completion of the Services or 12 years from the termination of this Agreement, whichever is the earlier.

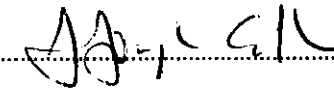
19 THIRD PARTY RIGHTS

Save as expressly set out herein, no provision of this Agreement is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party against any party to this Agreement.

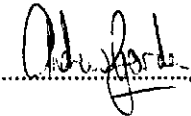
IN WITNESS WHEREOF these presents consisting of this and the preceding 9 pages and the Schedule annexed hereto are executed as follows:-

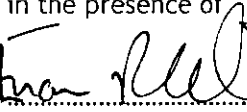
SUBSCRIBED for and on behalf of
GREATER GLASGOW HEALTH BOARD
on the 11th day of July 2005
by


..... Authorised Signatory


..... Authorised Signatory

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


..... Director

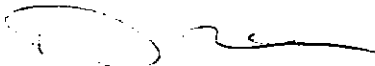
in the presence of

..... witness

..... witness name

..... witness address
EWS 6702

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


..... Attorney

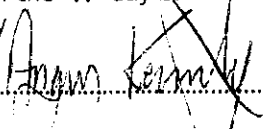
in the presence of 

..... witness name

..... witness name

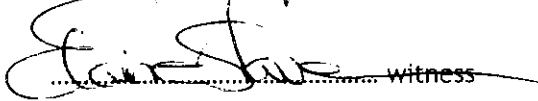
..... witness address
EWS 6702, EDSBURGH

SUBSCRIBED for and on behalf of
CAPITA SYMONDS LIMITED
on the 11 day of JULY 2005
by



.....Director

in the presence of



..... witness

ELAINE SLAVEN

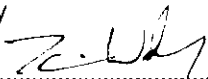
..... witness name

ST ANDREW HOUSE

..... witness address

141 WEST WILE STREET, GLASGOW G1 2RN

SUBSCRIBED for and on behalf of
DEXIA CRÉDIT LOCAL, LONDON BRANCH
on the 13 day of July 2005
by

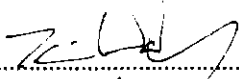


.....Authorised Signatory



.....Authorised Signatory

SUBSCRIBED for and on behalf of
DEXIA MANAGEMENT SERVICES LIMITED
on the 13 day of July 2005
by



.....Authorised Signatory



.....Authorised Signatory

This is the Schedule referred to in the foregoing Agreement among the Board, ProjectCo, the Independent Tester, the Agent, the Security Trustee and the Contractor

Appendix 1

Scope of Services - Independent Tester Contract

The Independent Tester shall perform the role of Independent Tester as referred to in Clauses 20 (*Independent Tester*), 22 (*Pre-Completion Commissioning and Completion*) and 23 (*Post Completion Commissioning*) and the relevant Schedules of the Project Agreement and Clauses 16.3 of the Construction Contract (including complying with any time limits specified in such Clauses), including but not limited to the following scope of Services:

1. MONTHLY REPORT AND COMPLETION CERTIFICATION

The Independent Tester shall:

- 1.1 During the construction period, provide the Board and Project Co with a monthly report on the activities carried out by the Independent Tester. Undertake inspections, as necessary, in accordance with the Project Agreement. Report on the completion status of the Project, identifying any work that is not complete or is non-compliant with the Project Agreement.
- 1.2 Advise Project Co and the Board of the need for any additional surveys and investigations which may be necessary to demonstrate whether the Works are finished or complete.
- 1.3 Certify the date that completion of the Works has occurred by reference to the Tests on Completion (as defined in Appendix 2, Part 1) and issue a Certificate of Practical Completion in accordance with the Project Agreement.
- 1.4 Within five (5) Business Days of issue of the Certificate of Practical Completion, issue a Snagging Notice specifying any Snagging Matters and an estimate of the cost of their rectification. Monitor, review progress and confirm due rectification of such Snagging Matters in accordance with the Project Agreement. For the avoidance of doubt, any work relating to Snagging matters which, other than in respect of Excluded Snagging Matters, arises from rectification outwith the 40 day snagging period shall be deemed part of Varied Services and shall be remunerated accordingly.
- 1.5 Review the programme for the rectification of all Snagging Matters to be carried out and advise Project Co and the Board as appropriate.

And in order to enable the Independent Tester to discharge these primary functions which are to be performed independently, fairly and impartially to and as amongst Project Co, the Board and the Contractor and having regard to the interests of the Security Trustee and the Agent, the Independent Tester shall discharge at least the further duties described below.

2. GENERAL

The Independent Tester shall:

- 2.1 Familiarise itself with the Project Agreement (including the Design Data, the Design Quality Plan, the Construction Quality Plan and any Variations issued from time to time and any other relevant documentation or information referred to in the

Project Agreement, relevant Service Level Specifications and Method Statements and the Construction Contract to the extent necessary to be in a position to carry out the Services in accordance with the terms of the Project Agreement, the Construction Contract and this Agreement.

- 2.2 Following notification by Project Co, pursuant to Clauses 22.8 and 22.10 (Pre-Completion Commissioning and Completion) of the Project Agreement, inspect and comment as required on the Works as required by the Completion Process.

3. DESIGN COMPLIANCE CHECK

The Independent Tester shall:

- 3.1 Monitor the construction, structural and services design for the Project to establish that the design is generally in accordance with the Project Agreement.
- 3.2 Monitor the detailed working drawings and specifications for a sample number and type of rooms which in his professional judgment is appropriate to be selected by the Independent Tester to verify that they comply with the approved outline design as described in the Project Agreement. The Independent Tester has indicated that in normal circumstances a minimum of twenty-five percent (25%) of rooms should be sampled. If in the professional judgment of the Independent Tester, because of the results of its sample or other circumstances a different sampling percentage is appropriate, he shall provide a detailed report in respect of that and, if so agreed (or determined as between Project Co and the Board by the Dispute Resolution Procedure) any change in the percentage sampling resulting in a change in fees will be borne by Project Co, or the Board or the Contractor as they shall agree or as determined by the Dispute Resolution Procedure.
- 3.3 Review the detailed design information for any approved design or specification variations for compliance with the performance and quality standards of the Project Agreement, and the Contractor's Quality Plan.

4. PROCEDURE REVIEW

The Independent Tester shall:

- 4.1 Monitor the operation of the quality assurance procedures of the Contractor at regular intervals (maximum three (3) months) during the execution of the Works.
- 4.2 Review the proposed procedures and programmes for the testing, commissioning and Board's occupation.
- 4.3 Monitor the procedures for the identification, approval and recording of agreed Variations to the Works in accordance with the Project Agreement.

5. CONSTRUCTION REVIEW

The Independent Tester shall:

- 5.1 Visit the Site and monitor the Works for their compliance with the Project Agreement. The frequency and timing of the Independent Tester's visits are dependent on the progress of construction on Site. The Contractor shall agree a programme with the Independent Tester for the inspection of key construction processes and the completed Project and shall give the Independent Tester advance notice of these Works being carried out on Site. The Independent Tester shall identify any aspect of the Works which need to be inspected before being

covered over by subsequent activity so that he may satisfy himself that these have been constructed in accordance with the Contractor's Quality Plan without the need for opening up.

- 5.2 Randomly check that the Works are being undertaken in accordance with any health and safety plan that has been agreed by the Board and Project Co and in a workmanlike manner.
- 5.3 Review any samples as required by the Project Agreement and check that they have been approved in accordance with that agreement.
- 5.4 Review any extensions to the time for completion of the Works granted or to be granted in accordance with the Project Agreement.
- 5.5 Witness a sample proportion of the testing and commissioning procedures at random. The Independent Tester has indicated that these proportions should amount to approximately fifty percent (50%). The Independent Tester shall review one hundred percent (100%) of all test results. If in the professional judgment of the Independent Tester, because of the results of witnessing (or because of other circumstances) a different sampling percentage is appropriate he shall provide a detailed report in respect of that and any change in the percentage sampling resulting in a change of fees will be borne by Project Co, the Board or the Contractor as they shall agree, failing such agreement, as determined by the Dispute Resolution Procedure.
- 5.6 Inspect rectification works which have previously prevented the Independent Tester from certifying the Project as complete. Following the issue of the Certificate of Practical Completion, agree a list of Snagging Matters with Project Co together with its programme for implementation. For the avoidance of doubt and acknowledging the level of duty of care required under the foregoing Agreement and the Services carried out thereunder the Independent Tester shall be liable for agreeing the content of and extent of the Snagging Matters.
- 5.7 Check the production of the relevant operating manuals, relevant approvals, test results, inspection records and as built drawings and monitor the timely handover of this documentation.

6. PARTICIPATION IN DISPUTE RESOLUTION

As and when required by the Board or Project Co, the Independent Tester shall participate in the Dispute Resolution Procedure of the Project Agreement (as such term is defined in the Project Agreement) to the extent that issues under the Project Agreement which have been referred to the said Dispute Resolution Procedure relate to the Independent Tester's other obligations and tasks as set out in this Appendix 1 and this Agreement.

Appendix 2

Part 1

Tests on Completion

1. The Facilities have been constructed in accordance with Project Co's Proposals and the Board's Construction Requirements with the exception of those items identified in the Snagging Notice which will not affect Availability or disrupt the Board's use of the Facilities for performing the Clinical Services.
2. The Facilities are clean, which shall be defined as follows:
 - Free from dirt, dust, grit, debris, stains, scuff marks or any other extraneous item(s).
 - Glass and metal surfaces have a clean, smear free appearance.
3. All Consents relevant to the Works which Project Co are required to obtain have been obtained and complied with and copies of all necessary Consents have been supplied to the Board subject to Clause 6.2.1 (a) of the Construction Contract. The Works have been completed in accordance with the requirements of Building Control.
4. The Facilities, with exception of the "Non-Patient Areas" exclusive to Project Co, are free of all temporary or unused materials, plant and equipment used in connection with the Works.
5. All mechanical and electrical installations comprised in the Works have been tested and commissioned as a minimum in accordance with or where applicable by reference to the standards contained in the CIBSE Commissioning Codes and IEE Regulations and.
6. Project Co has supplied to the Board a copy of the draft documentation required to be supplied by the Contractor pursuant to this Agreement.
7. The draft as built documentation to be supplied in accordance with Clause 2.3.6.2 of the Construction Contract shall:
 - 7.1 comprise insofar as available at the date of issue of the Certificate of Practical Completion As Built plans, drawings, specifications, manufacturer's reference and maintenance data, details of materials used in construction and associated strength and performance data indicating any changes and revisions made during construction together with records of inspections and tests carried out to substantiate conformance to required standards. These records shall include records of any part of the Works carried out by sub-contractors manufacturers and suppliers and independent inspecting authorities including test certificates and insurance reports; and
 - 7.2 be such to enable another experienced party to operate and maintain the buildings and engineering services and Equipment comprising the Facilities without requiring other data sources.
8. The draft operations and maintenance manuals to be supplied in accordance with Clause 2.3.6.2 of the Construction Contract containing the following details insofar as reasonably available at the date of issue of the Certificate of Practical Completion:
 - 8.1 any manuals and guarantees provided by manufacturers, suppliers and sub-contractors;
 - 8.2 technical data, including dimensions, weights and performance data;

- 8.3 the operating instructions, including normal and emergency measures, warnings and precautions in use;
 - 8.4 technical description presented graphically;
 - 8.5 installation data, including testing after installation;
 - 8.6 servicing instructions and routines, including lubrication, preventative maintenance procedures, faults diagnosis and replacement;
 - 8.7 parts list, cross references to “exploded” illustration; and
 - 8.8 recommended spares holdings.
9. Project Co has supplied to the Board the appropriate access codes, swipe cards and keys as may be applicable for access to and within the Facilities.
10. Project Co has provided written confirmation from the commissioning engineer, in accordance with the requirements of the Contract Administration Requirements under the Construction Contract, of the satisfactory performance of all mechanical, electrical and building services equipment and installations supplied and/or installed by Project Co.

Appendix 2

Part 2

Schedule of Drawdown Fees

Date for Payment	Amount	£65,000.00
End of Contract Month		
1 July 2005	£6000	
2 August 2005	£1000	
3 September 2005	£1000	
4 October 2005	£1000	
5 November 2005	£1000	
6 December 2005	£2500	
7 January 2006	£2500	
8 February 2006	£2500	
9 March 2006	£2500	
10 April 2006	£2500	
11 May 2006	£2500	
12 June 2006	£2500	
13 July 2006	£2500	
14 August 2006	£2500	
15 September 2006	£2500	
16 October 2006	£3000	
17 November 2006	£3000	
18 December 2006	£3000	
19 January 2007	£7000	
20 February 2007	£7000	
21 March 2007	£7000	
Total	<u>£65000</u>	

