

SCHEDULE PART 24

This is the Schedule Part 24 comprising the Handback Procedure referred to in the Project Agreement relating to the design, financing and construction of, and the provision of services at the Stobhill Local Forensic Psychiatric Unit

between

Greater Glasgow Health Board

and

Stobhill Healthcare Facilities Limited



SCHEDULE PART 24

Handback Procedure

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- 1.1 On the Expiry Date, each element of the Facilities shall be in a condition which is:
 - 1.1.1 consistent with due performance by Project Co of the Service Level Specification and Method Statement for the Estates Service; and
 - 1.1.2 consistent with the Facilities and each of the elements of them having been designed and constructed in accordance with the applicable design life requirements set out in paragraph of the Board's Construction Requirements, together referred to as the "Handback Requirements".
- 1.2 Not less than twelve (12) months prior to the Expiry Date, Project Co and the Board's Representative shall conduct a joint inspection of the Facilities.
- 1.3 Within thirty (30) Business Days after the completion of the inspection, if it is found that any element of the Facilities is not in a condition consistent with the Handback Requirements, Project Co shall forthwith provide to the Board Representative's in accordance with the Schedule Part 10 (*Review Procedure*):
 - 1.3.1 Project Co's proposal as to the maintenance works (if any) (the "Handback Works") required to be carried out in respect of the Facilities in order to procure that they will, on the Expiry Date, satisfy the Handback Requirements;
 - 1.3.2 Project Co's proposal as to the programme (the "Handback Programme") for the carrying out of the Handback Works over the remainder of the Project Term, such programme shall describe the total works to be carried out and the method of carrying out such works during the overall period in which the Handback Works are to be executed; and
 - 1.3.3 Project Co's estimate of the cost of carrying out the Handback Works (the "Handback Amount").

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The Board's Representative may, within fifteen (15) Business Days after receipt of the details set out in paragraph 1.3 from Project Co, raise comments in accordance with paragraph 3.8.6 of the Schedule Part 10 (*Review Procedure*) on Project Co's proposals and estimate referred to in paragraph 1 above.

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- 3.1 On agreement, or determination in accordance with the Schedule Part 26 (*Dispute Resolution Procedure*), of the Handback Works, the Handback Programme and/or the Handback Amount (as the case may be), Project Co shall procure that the Handback Works are carried out in accordance with the Handback Programme. Project Co shall carry out the Handback Works at its own cost notwithstanding that the actual cost of the Handback Works may be higher than the Handback Amount.

- 3.2 Notwithstanding anything contained in the Agreement to the contrary, the Board shall be entitled to retain a sum, calculated in accordance with this paragraph 3.2 (the "Handback Retention"). The Handback Retention shall be equivalent to ten per cent (10%) of the Monthly Service Payment falling due within the last twelve months prior to the Expiry Date and such sum shall be applied by the Board in accordance with paragraph 3.4 and paragraph 5 below provided that the percentage of the Monthly Service Payment to be retained under this clause 3.2. shall be adjusted as necessary once the Handback Amount has been agreed or determined under paragraph 3.1. The adjusted percentage for each remaining month prior to the Expiry Date will be calculated by taking the total of the Handback Amount less any sums already retained pursuant to this paragraph 3.2. and dividing the resultant figure by the number of months remaining prior to the Expiry Date and expressing the resulting amount as a percentage of the Monthly Service Payment.
- 3.3 Project Co shall carry out the Handback Works to the satisfaction of the Board's Representative in accordance with Good Industry Practice and in accordance with the Handback Programme so as to meet the Handback Requirements.
- 3.4 If Project Co shall fail to carry out its obligations under paragraph 3.1 above then the Board may (without prejudice to any other rights and remedies it may possess) itself undertake or procure such Handback Works and recover the costs reasonably and properly incurred of so doing against Project Co by deduction from the Handback Retention .
- 3.5 Notwithstanding:
- 3.5.1 the agreement of the Board's Representative to any Handback Works, the Handback Programme or the Handback Amount;
- 3.5.2 the participation of the Board's Representative in any inspection under this Part 24 of the Schedule; and/or
- 3.5.3 the complete or partial carrying out of the Handback Works,
- Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works in accordance with the Service Level Specification and Method Statement for the Estates Service.

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- 4.1 Not later than thirty (30) Business Days before the Expiry Date, Project Co and the Board's Representative shall conduct a joint inspection of the Facilities. Such inspection shall confirm whether or not the condition of the Facilities is in accordance with paragraph 1 above.
- 4.2 On, or within ten (10) Business Days after, the Expiry Date, the Board's Representative shall either:
- 4.2.1 issue to Project Co a Handback Certificate and return the balance of the Handback Retention to Project Co in accordance with paragraph 6 ; or
- 4.2.2 notify Project Co of its decision not to issue the Handback Certificate stating the reasons for such decision.

- 4.3 Any notice given by the Board's Representative in accordance with paragraph 4.2.2 shall set out each respect in which the Handback Works have not been completed or the Facilities do not comply with the Handback Requirements and shall state the Board Representative's estimate of the cost of procuring that the Facilities comply in all respects with the Handback Requirements.
- 4.4 Project Co may, within ten (10) Business Days after receipt of the notice given in accordance with paragraph 4.2.2 by notice to the Board's Representative, object to any matter set out in the Board Representative's notice. The notice from Project Co shall give details of the grounds of such objection and shall set out Project Co's proposals in respect of such matters.
- 4.5 If no agreement is reached between Project Co and the Board's Representative as to any matter referred to in Project Co's notice given in accordance with paragraph 4.4 within twenty (20) Business Days of receipt of that notice by the Board's Representative, then either Project Co or the Board's Representative may refer the matter for determination in accordance with the Schedule Part 26 (*Dispute Resolution Procedure*) as to:
- 4.5.1 whether the Facilities comply in all respects with the Handback Requirements; and
 - 4.5.2 the estimated cost of procuring that the Facilities comply in all respects with the Handback Requirements, where the Facilities do not comply in all respects with the Handback Requirements.
- 5 If it is agreed or determined in accordance with the Schedule Part 26 (*Dispute Resolution Procedure*) that the Facilities did not, at the Expiry Date, comply in all respects with the Handback Requirements, the Board shall recover an amount from Project Co equal to the estimated cost of completing such Handback Works or procuring that the Facilities comply in all respects with the Handback Requirements. Such amount shall be recovered by deduction from the Handback Retention and the Board's Representative shall issue the Handback Certificate and return the balance of the retained sum in accordance with paragraph 6 below to Project Co no later than five (5) Business Days after the estimated cost has been agreed or determined.
- 6 If the estimated costs of completing the Handback Works and/or procuring that the Facilities comply in all respects with the Handback Requirements as agreed or determined to be required pursuant to paragraph 5 above are greater than the Handback Retention, Project Co shall no later than five (5) Business Days after the estimated cost has been so agreed or determined, pay to the Board a sum equal to the difference between such estimated costs and the Handback Retention.
- 7 The balance of the Handback Retention shall be deemed to accrue interest annually at the base rate of the Bank of Scotland less two per cent. On issue of the Handback Certificate in accordance with paragraph 4.2.1 or paragraph 5, the Board shall pay over to Project Co the balance of the retained sum along with a sum representing interest accrued as aforesaid.