

SCHEDULE PART 26

Dispute Resolution Procedure

This is the Schedule Part 26 comprising the Dispute Resolution 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 26

SECTION 1

Dispute Resolution Procedure

- 1 The procedure set out in this Schedule Part 26 (the "Dispute Resolution Procedure") shall apply to any dispute, claim or difference arising out of or relating to this Agreement ("Dispute") except where it has been excluded from this procedure by an express term of this Agreement.
- 2 This Dispute Resolution Procedure shall not impose any pre-condition on any party or otherwise prevent or delay any party from commencing proceedings in any court of competent jurisdiction in relation to any Dispute in which that party requires either:
 - 2.1 an order (whether interlocutory or final) restraining the other party from doing any act or compelling the other party to do any act; or
 - 2.2 a judgement for a liquidated sum to which there is no stutable defence.

Liaison Committee

- 3 Subject to paragraph 2 of this Schedule Part 26, all Disputes shall first be referred to the Liaison Committee for resolution. Any decision of the Liaison Committee shall be final and binding unless the parties otherwise agree.

Mediation

- 4 If the parties have been unable to resolve the Dispute within fourteen (14) days of referral to the Liaison Committee, they may refer the Dispute to mediation in accordance with this paragraph 4.
 - 4.1 Mediation shall be conducted using a sole mediator ("the "Neutral") (such expression not to exclude the presence of a pupil mediator) in or substantially in accordance with CEDR's Model Mediation Procedure Agreement 4th Edition (February 1999) ("MMP") for the time being in use. The Neutral shall be a Centre for Effective Dispute Resolution ("CEDR") accredited mediator agreed between the Parties, or in default of agreement within fourteen (14) days of notice to mediate served pursuant to paragraph 4.3, appointed by CEDR.
 - 4.2 The Parties agree during the course of the Mediation to co-operate fully, promptly and in good faith with CEDR and the Neutral in the performance of their obligations under this paragraph 4 including the doing of all such acts and the signing of all such documents as CEDR or the Neutral may reasonably require to give effect hereto, including CEDR's standard agreement to mediate on the terms of the MMP for the time being. Any breach or default by either Party of this paragraph 4.2 shall forthwith release the other Party from further compliance with this paragraph 4 and CEDR and the Parties from any mediation agreement signed between them (save for any accrued financial obligations to CEDR and/or the Neutral) and the Mediation shall be deemed to be abandoned.
 - 4.3 Mediation shall commence by either Party serving on the other written notice to mediate pursuant to this paragraph 4 (a "Notice to Mediate").
 - 4.4 Unless agreed otherwise in the course of the procedure the mediation fees shall be borne in equal parts by the Parties and each Party shall bear its own costs of such Mediation.

4.5 If and to the extent that the Parties do not resolve any Dispute or any issue therein following the application of this paragraph 4 either Party shall be at liberty to commence adjudication proceedings in respect of such an unresolved Dispute or issue.

5 Adjudicator

5.1 Subject to paragraph 6 (*Fast Track Dispute Resolution Procedure*), if a Dispute has not been resolved within fourteen (14) days of it being referred to the Chief Executives of the Board and Project Co, and they have chosen not to refer the Dispute to mediation, either party may by notice to the other refer the Dispute to an Adjudicator in accordance with this paragraph 5.

The First Notice

5.2 If any such Dispute arises then one Party (the "Applicant") may serve upon the other (the "Respondent") a notice in writing of its intention to refer the Dispute to adjudication (the "First Notice") which shall state in sufficient detail (i) the nature of the Dispute, (ii) the remedy sought and (iii) the legal basis for that remedy. The notice shall be accompanied by relevant extracts from the Project Agreement including this Schedule Part 26.

5.3 The First Notice accompanied by the said extracts from the Project Agreement, shall also be served forthwith (where applicable) by the Applicant:

5.3.1 on the Adjudicator (if any) named in the Project Agreement or otherwise agreed between the Parties;

or if it is known that the Adjudicator is unable or unwilling to act;

5.3.2 on the relevant Nominating Body (if any) named in Section 2 of this Schedule Part 26 with a request that it nominates an appropriate individual to carry out the role of Adjudicator within 3 Business Days of receipt of the First Notice.

5.4 In the event that there is no named Adjudicator but there is a relevant Nominating Body named in Section 2 of this Schedule Part 26 and if the Parties shall have failed to agree on the appointment of an Adjudicator within 3 Business Days of the date of the First Notice, then the Applicant may send a copy of the First Notice to the relevant Nominating Body with a request that he appoint an appropriate Adjudicator within 3 Business Days of receipt of the said copy of the First Notice.

5.5 In the event that there is no named Adjudicator and there is no relevant Nominating body applicable to the Dispute, and if the Parties shall have failed to agree on the appointment of an Adjudicator within three days of the date of the First Notice, then the Applicant may send a copy of the First Notice to the Chairman, or failing him, the Vice-Chairman (or equivalent officers), of the Scottish branch of the Chartered Institute of Arbitrators (Arbiters) with a request that he appoint an appropriate Adjudicator within 3 Business Days of the said copy of the First Notice.

5.6 Where paragraph 5.3.1 applies the Adjudicator shall be requested to notify both Parties in writing within two (2) days of receipt by the Adjudicator of the First Notice that:

5.6.1 the appointment is accepted on the terms set out in the Project Agreement as sent to him; or

5.6.2 the appointment cannot be accepted.

5.7 Where paragraph 5.3.2 applies the Applicant shall serve the First Notice on the relevant Nominating Body named in Section 2 of this Schedule Part 26 with a request that the said body

shall notify to both Parties the appointment of an Adjudicator on the terms set out in the Project Agreement within three (3) days of the said request.

- 5.8 Where paragraph 5.3.2, 5.4 or 5.5 applies the Nominating Body or said Chairman or Vice-Chairman (as the case may be) shall be requested to notify the appointment of an Adjudicator to both parties within three (3) days of the said request.
- 5.9 Any appointment under paragraph 5 shall bind both Parties immediately the relevant Nominating Body or the said Chairman or Vice-Chairman, as the case may be, notifies both Parties in writing of the appointment, or where paragraph 5.3.1 applies, from the date upon which the Adjudicator notifies the Parties of his willingness to act.
- 5.10 The procedure stated in paragraphs 5.2 to 5.9 is to be carried out with the object of securing the appointment of the Adjudicator and the referral of the Dispute to the Adjudicator within seven (7) days of the First Notice and requiring a Decision by the Adjudicator within twenty eight (28) days of such referral unless;
- 5.10.1 a longer period is agreed by both parties in writing after service of the Second Notice (as defined in paragraph 5.12); or
- 5.10.2 the Adjudicator, with the written consent of the Applicant (such consent copied to the Respondent) by written notice to both parties extends the twenty eight (28) day period by up to fourteen (14) days.

For the purpose of this paragraph "referral" shall be deemed to take place on the date of service of the Second Notice under Paragraph 5.12.

Alternative Appointment

- 5.11 In the event that the Adjudicator issues a notice under paragraph 5.6.2 or, for whatever reason, fails to notify the Parties as provided under paragraph 5.6 within two (2) days of receipt of the First Notice or if the appointed Adjudicator fails to make his Decision within the period specified in paragraph 5.10 then either Party may make written application to the relevant Nominating Body or the Chairman or Vice-Chairman of the Chartered Institute of Arbitrators (Scottish Branch) (and at the same time serve a copy of the application on the other Party) for an alternative appointment and the provisions of paragraphs 5.3.2 and 5.4 to 5.9 shall apply *mutatis mutandis*.

The Second Notice

- 5.12 When an Adjudicator has been appointed or selected in accordance with paragraphs 5.2 to 5.10 the Applicant shall not later than seven (7) days from the date of service of the First Notice on the Respondent, refer the Dispute by a notice in writing (the "Second Notice") to the Adjudicator (with a copy at the same time to the Respondent) setting out in concise terms the background to the Dispute, the contractual provisions relied upon and the remedy sought by the Applicant, to the extent that these matters are not contained in the First Notice.

Impartiality

- 5.13 Howsoever an Adjudicator is appointed it shall be a requirement of such appointment that the Adjudicator has no subsisting connection with either Party. The Adjudicator shall be under a duty to act impartially.

Liability

- 5.14 Neither the Adjudicator nor any employee or agent of the Adjudicator will be liable for anything done or omitted in the discharge or purported discharge of the Adjudicator's functions, unless such act or omission is in bad faith.

Fees and Expenses

- 5.15 The Adjudicator immediately upon appointment shall be requested to notify both Parties in writing of the fees and expenses applicable to the determination, and the procedure to be applied to the conduct of the determination. In default of agreement by the Parties of the Adjudicator's fees and expenses the Adjudicator shall be entitled to payment of such reasonable amounts as he may determine by way of fees and expenses reasonably incurred by him, borne by the Parties as the Adjudicator shall specify or, in default, equally.
- 5.16 The Parties shall be jointly and severally responsible for the Adjudicator's fees and expenses and shall pay the same within seven (7) days of receipt of the Adjudicator's fee account.
- 5.17 The Parties may at any time agree to revoke the appointment of the Adjudicator and in such circumstances the fees and expenses of that Adjudicator shall, subject to paragraph 5.18 be determined and payable in accordance with paragraph 5.15.
- 5.18 Where the revocation of the appointment of the Adjudicator is due to the default or misconduct of the Adjudicator the Parties shall not be liable to pay the Adjudicator's fees and expenses.

Adjudicator's Powers and Duties

- 5.19 The Adjudicator shall have the power to take the initiative in ascertaining the facts and the law. Without prejudice to the generality of the foregoing the Adjudicator may:
- 5.19.1 open up, review and revise any decision taken or any certificate given by any person referred to in the Project Agreement.
 - 5.19.2 decide that any of the parties to the Dispute is liable to make a payment under the Project Agreement or assess and/or make an award of damages in connection with the Project Agreement and, when those payments are due and the final date for payment;
 - 5.19.3 having regard to any term of the Project Agreement relating to the payment of interest, decide the circumstances in which, the rates at which, and the period for which simple or compound rates of interest shall be paid;
 - 5.19.4 request any Party to the Project Agreement to supply him with such documents as he may reasonably require including, if he so directs, any written statement which may be limited in length at the discretion of the Adjudicator from the other Party supporting or supplementing the Second Notice and any response thereto;
 - 5.19.5 meet and question any of the Parties to the Project Agreement and their representatives but not outwith the presence of the other Party;
 - 5.19.6 subject to obtaining any necessary consent from a third party or parties, make such site visits and inspections as he considers appropriate, whether accompanied by the Parties or not;
 - 5.19.7 subject to obtaining any necessary consent from a third party or parties, carry out any tests or experiments;

- 5.19.8 obtain and consider such representations and submissions as he requires;
 - 5.19.9 give directions as to the timetable for the determination, any deadlines, or limits as to the length of written documents or oral representations to be complied with;
 - 5.19.10 issue such other directions relating to the conduct of the determination as he considers appropriate;
 - 5.19.11 with the prior written consent of the Parties, not to be unreasonably withheld, resign on account of illness, incapacity or other material grounds;
 - 5.19.12 Not used.
 - 5.19.13 make use of his own specialist knowledge;
 - 5.19.14 obtain advice from specialist consultants (including without limitation legal advice), provided that at least one of the Parties so requests or consents;
- 5.20 The Adjudicator shall act as an expert and not as an arbitrator and shall act fairly and impartially.
- 5.21 the Parties shall not initiate or continue a reference to the Adjudicator and the Adjudicator must resign where the Dispute is the same or substantially the same as one which has previously been referred to adjudication under the Project Agreement, and a decision has already been given in that adjudication.

Resignation

- 5.22 Where the Adjudicator resigns pursuant to paragraph 5.19.11, or dies or becomes incapable of acting, the Parties, acting in accordance with the procedure set out in paragraphs 5.6 to 5.12 may appoint a new expert to act as Adjudicator, and the Adjudicator so appointed shall conduct the reference *ab initio*.

The Decision

- 5.23 The Adjudicator shall, unless both Parties have previously informed him in writing that they have reached agreement on the Dispute, be required to make his decision within the period calculated in accordance with paragraph 5.10 and be required to notify both Parties of his decision in writing.
- 5.24 The Adjudicator shall not be required to state reasons for his decision, unless one of the Parties requests at the time of appointment of the Adjudicator that reasons be provided.
- 5.25 The decision may include, without prejudice to paragraph 5.16, a direction that one Party should be responsible for the Adjudicator's fees and expenses and, if the Adjudicator thinks fit, a direction that one Party should make a contribution to the other Party's costs of the determination.
- 5.26 Such decision shall be binding on both Parties unless and until the issue in dispute between the parties is finally determined by subsequent court proceedings pursuant to paragraph 7 or agreement between the Parties.
- 5.27 A decision shall be implemented without delay and the Parties shall be entitled to summary enforcement thereof, regardless of whether such decision is or is to be the subject of any

challenge or review. The Parties agree to registration of the decision in the Books of Council and Session for execution.

CONSOLIDATION OF DISPUTES

- 5.28 In the event of a Dispute arising under, out of or in connection with this Agreement which in the reasonable opinion of Project Co relates to a dispute or potential dispute or difference ("Related Dispute") arising under, out of, or in connection with any other Agreement between Project Co and a third party (all such Agreements being referred to as the "Related Agreements") and where the Related Dispute has been referred to an adjudicator for determination under an adjudication procedure (the "Related Procedure") which meets the requirements set out in section 108 of the Housing Grants, Construction and Regeneration Act 1996 and is in all material respects equivalent to the adjudication procedure in this Schedule 26, Project Co may or may procure that the other party to the Related Dispute shall as soon as practicable, and in any case within fourteen (14) calendar Days of the referral of the Dispute to the Adjudicator, give to the Adjudicator conducting the adjudication under this Agreement and also to the other parties to the Dispute and the Related Dispute the particulars set out in Paragraph 5.29 below.
- 5.29 The particulars referred to in Paragraph 5.28 above are:
- 5.29.1 a copy of the Related Agreement;
 - 5.29.2 a preliminary statement from Project Co and/or, as the case may be, the other party to the Related Dispute setting out:
 - 5.29.2.1 the basis and grounds for consolidation of the Related Dispute and the dispute or difference;
 - 5.29.2.2 the cases of the parties to the Related Dispute;
 - 5.29.2.3 any relief sought by the parties to the Related Dispute; and
 - 5.29.2.4 a list of any documents served in relation to the Related Dispute.
- Any such particulars sent by Project Co to the Adjudicator and the other parties to the dispute or difference shall be sent at the same time to the other party to the Related Dispute.
- 5.30 On receiving the particulars set out in Paragraph 5.29 above prior to the Actual Completion Date and within fourteen (14) calendar Days of the referral of the Dispute to the Adjudicator, the Adjudicator may, at the request of Project Co, immediately order consolidation of the Dispute and the Related Dispute and shall have the authority and the power referred to in Paragraph 5.37 below.
- 5.31 On receiving the particulars set out in Paragraph 5.29 above on or after the Actual Completion Date and within fourteen (14) calendar Days of the referral of the Dispute to the Adjudicator, the Adjudicator shall immediately request that the parties to the Dispute and the other party to the Related Dispute attend a meeting with the Adjudicator with a view to determining whether or not the Dispute and the Related Dispute should be consolidated.
- 5.32 Project Co shall use its reasonable endeavours to procure that an authorised representative of the other party to the Related Dispute shall attend the meeting with the Adjudicator referred to in

Paragraph 5.31 above. Project Co and the Board each agree to send an authorised representative or nominee to any meeting of this kind under this Agreement or under a Related Agreement, which they may be requested to attend. The parties hereby agree that the Board shall be entitled to attend any meeting of the kind referred to in Paragraph 5.31 above, in relation to a Related Agreement as Project Co's nominee.

5.33 At the meeting referred to in Paragraph 5.31 above, the Board's Representative shall, as a preliminary matter, either:

5.33.1 confirm to the Adjudicator that the Board accepts the proposed consolidation of the Related Dispute with the Dispute ; or

5.33.2 inform the Adjudicator that the Board does not accept the proposed consolidation of the Related Dispute with the Dispute.

5.34 Where Paragraph 5.33.1 above applies, the Adjudicator shall immediately order consolidation of the Dispute and the Related Dispute and shall have the authority and the power referred to in Paragraph 5.37 below

5.35 Where Paragraph 5.33.2 above applies, the Adjudicator shall issue within one (1) day of the meeting referred to in Paragraph 5.31 above his written decision, which shall not include any reasons, as to whether or not there is demonstrably no basis or ground for consolidation of the Dispute and the Related Dispute. If the Adjudicator determines that there is demonstrably no basis or ground for consolidation of the Dispute and the Related Dispute, the Dispute and the Related Dispute shall not be consolidated. If the Adjudicator determines otherwise, or if the Adjudicator has failed or is unable to reach a decision within one (1) day of the meeting referred to in Paragraph 5.31 above, the Adjudicator shall immediately order consolidation of the Dispute and the Related Dispute and shall have the authority and the power referred to in Paragraph 5.37 below.

5.36 Notwithstanding anything to the contrary, a Related Dispute shall only be consolidated with a Dispute under this Agreement if the Adjudicator receives the particulars set out in Paragraph 5.31 above within fourteen (14) calendar days of the referral of the Dispute under this Agreement to the Adjudicator.

5.37 The Adjudicator shall have the authority and the power to consolidate the Dispute and the Related Dispute and to direct that all procedural and/or evidential matters arising in both the Dispute and the Related Dispute are consolidated in whatever manner the Adjudicator considers shall lead to the fair and expeditious resolution of both the Dispute and the Related Dispute and the parties (including the party to the Related Dispute) shall thereafter abide by and implement such consolidation and any such direction.

5.38 In the event that the Related Dispute is consolidated with the Dispute, the Adjudicator shall reach a decision on the Dispute and the Related Dispute at the same time and in any event within twenty eight (28) calendar days of the earlier of the referral of the Dispute or the referral of the Related Dispute, or such longer period as is agreed by the parties to the Dispute and the Related Dispute after the date that the Related Dispute has been consolidated with the Dispute. The Adjudicator shall be entitled to extend the said period of twenty-eight (28) calendar days by up to fourteen (14) calendar days with the consent of the parties by whom the relevant Dispute and the Related Dispute were referred.

- 5.39 Without fettering or restricting the Adjudicator's power and authority in any way, it is the intention of Project Co and the Board that in the event that the Related Dispute is consolidated with the Dispute, the Adjudicator shall, insofar as is relevant, practicable and appropriate, come to the same conclusion as to the facts and apply the same reasoning and analysis in reaching a decision on both the Dispute and the Related Dispute.
- 5.40 In the event that an adjudicator under a Related Agreement (the "Related Adjudicator") orders that a Dispute under this Agreement be consolidated with a Related Dispute with which he is dealing under the Related Agreement, then:
- 5.40.1 notwithstanding anything in the adjudication rules above, with effect from the time of such order, the Adjudicator shall cease to have authority or jurisdiction to determine the Dispute which shall instead be determined by the Related Adjudicator and the appointment of the Adjudicator under this Agreement shall cease; and
- 5.40.2 such order shall be binding on Project Co and the Board and both of them shall acknowledge the appointment of the Related Adjudicator as the adjudicator of the Dispute, with Project Co procuring that the third party who is a party to the Related Agreement shall with effect from the time of such order comply with the requirements of the Related Agreement (including if applicable any requirement or direction of the Related Adjudicator appointed under such Related Agreement) as to the future conduct of the determination of the Dispute and the Related Dispute; and
- 5.40.3 notwithstanding rule 5.15 to 5.18 and 5.25 of the adjudication rules above, Project Co and the Board shall be jointly responsible with the third party who is a party to the Related Agreement for the Related Adjudicator's fees and expenses including those of any specialist consultant appointed under the adjudication procedure in the Related Agreement, in respect of the period in which the Dispute is consolidated with the Related Dispute pursuant to an order of the Related Adjudicator (the "Consolidated Adjudication Costs"). Project Co and the Board agree that the Related Adjudicator shall have the discretion to make directions to require Project Co, the Board and the third party who is a party to the Related Agreement to pay or make contribution to the Consolidated Adjudication Costs in different proportions. If no such directions are made, Project Co, the Board and the third party who is a party to the Related Agreement shall bear the Consolidated Adjudication Costs in equal shares, and if Project Co, the Board or the third party has paid more than such equal share, that party or third party shall be entitled to a contribution from the other party, parties or third party, as the case may be; and
- 5.40.4 notwithstanding anything to the contrary a Dispute under this Agreement shall only be consolidated with a Related Dispute, if the Related Adjudicator receives particulars of the Dispute within fourteen (14) calendar days of the referral of the Related Dispute to the Related Adjudicator under the Related Agreement.
- 5.41 Notwithstanding anything to the contrary above, Project Co shall pay the Board's reasonable costs arising from the consolidation of the Dispute and the Related Dispute in circumstances where Project Co has requested the Adjudicator to order consolidation of the Dispute and the Related Dispute and the Board does not accept the proposed consolidation of the Dispute and the Related Dispute and it is subsequently determined by the Adjudicator that there was no basis or ground for Project Co to request the Adjudicator to order consolidation of the Related Dispute and the Dispute.

5.42 If, in respect of any Dispute to which Paragraphs 5.28 to 5.40 of this Schedule 26 Part 1 applies, any provision thereof is held to be or is rendered void or ineffective or will otherwise be unenforceable, then Project Co and the Board agree that the terms of Paragraphs 5.43A to 5.43C shall apply.

5.43A. If any dispute arising under this Agreement raises issues which relate to:

- (i) Any dispute between Project Co and the Contractor arising under the Building Contract or otherwise affects the relationship or rights of Project Co and/or the Contractor under the Building Contract ("the Building Contract Dispute"); or
- (ii) Any dispute between Project Co and the Service Provider arising under the FM Contract or otherwise affects the relationship or rights of Project Co and/or the FM Contractor under the FM Contract ("the FM Contract Dispute");

then Project Co may include as part of its submissions made to the Adjudicator submissions made by the Contractor or by the Service Provider as appropriate.

5.43B. The Adjudicator shall not have jurisdiction to determine the Building Contract Dispute or the FM Contract Dispute but the decision of the Adjudicator shall be binding on Project Co and the Contractor insofar as it determines the issues relating to the Building Contract Dispute and on Project Co and the Service Provider insofar as it determines the issues relating to the FM Contract Dispute.

5.43C. Any submissions made by the Contractor or the Service Provider shall:

- (i) be made within the time limits applicable to the delivery of submissions by Project Co; and
- (ii) concern only those matters which relate to the dispute between the Board and Project Co arising out of this Agreement or in connection therewith.

5.44 In the event that Project Co does not invoke the provisions of Clauses 5.28 - 5.43 and any dispute arising under this Agreement raises issues which relate to:-

- (i) any dispute between Project Co and the Contractor arising under the Building Contract or otherwise affects the relationship or rights of Project Co and/or the Contractor under the Building Contract ("a Building Contract Dispute"); or
- (ii) any dispute between Project Co and the service provider arising under the FM Contract or otherwise affects the relationship or rights of Project Co and/or the FM Contractor under the FM Contract ("the FM Contract Dispute")

and these issues have previously been determined by an Adjudicator the parties consent to the same Adjudicator being appointed to determine the dispute.

5.45. Notwithstanding paragraph 5.26 and 2 above neither party shall make any application whatsoever to the Court of Session in relation to subject matter of the Adjudication, the conduct of the Adjudication or the decision of the Adjudicator

- (a) after the date ninety (90) calendar days from the decision of the Adjudicator; and
- (b) unless it shall involve the pursuit of a claim or a counterclaim of a monetary value in excess of £20,000 (Indexed) or in the case of claims or counterclaims of a lesser monetary

value arising out of the same facts and circumstances an aggregate monetary value in excess of £20,000 (Indexed).

6 Fast Track Dispute Resolution Procedure

- 6.1** Any dispute which relates to matters which are expressly stated in this Agreement to be subject to the Fast Track Dispute Resolution Procedure, may at any time be referred direct to an Adjudicator without observing paragraphs 2, 3 and (where appropriate) 4. Following such referral, the provisions of paragraph 5.1 shall apply provided that:
- 6.2** The Parties shall use all reasonable endeavours to agree as soon as possible and in any event within sixty (60) Business Days of the date of the Project Agreement the identity of the Fast Track Adjudicators who shall determine Disputes pursuant to this Schedule Part 26 or otherwise as provided in the Project Agreement. If the Parties shall fail to agree the identity of any such Fast Track Adjudicator then either Party may at the expiry of such sixty (60) Business Days refer the appointment of such Fast Track Adjudicator to the President for the time being of the Law Society of Scotland. In each case due regard shall be had to the provisions of Section 2 of this Schedule Part 26.
- 6.3** Upon the application of either Party at any time, the person appointed pursuant to paragraph 6.2 above shall act as the Fast Track Adjudicator to determine the Dispute on terms of reference set out in paragraph 6.4. The Fast Track Adjudicator shall be deemed appointed upon his/her receipt of the application.
- 6.4** The provisions of paragraphs 5.13 to 5.23 (inclusive), and 5.25 above shall apply to proceedings before the Fast Track Adjudicator, save that references therein to the "Adjudicator" shall read the "Fast Track Adjudicator".
- 6.5** The periods substituted into the Fast Track Adjudicator terms of reference in accordance with paragraph 6.4 may be extended either by:
- 6.5.1** agreement of the parties after the Dispute has been referred; or
 - 6.5.2** the Fast Track Adjudicator with the consent of the parties provided always that his/her decision is given within five (5) Business Days from the deemed date of his/her appointment.
- 6.6** The decision of the Adjudicator in the Fast Track Dispute Resolution Procedure shall be binding on both Parties unless and until finally determined by subsequent court proceedings pursuant to paragraph 7 or agreement between the Parties.
- 6.7** A decision of the Adjudicator in the Fast Track Dispute Resolution Procedure shall be implemented without delay and the Parties shall be entitled to summary enforcement thereof, regardless of whether such decision is or is to be the subject of any challenge or review. The Parties agree to registration of the decision in the Books of Council and Session for execution.

7 Scottish Courts

- 7.1** All Disputes, to the extent not finally resolved pursuant to the procedures set out in the foregoing provisions of this Schedule shall be referred to the Scottish Courts.

8 Patient Damage Disputes

- 8.1** Any dispute in relation to a Patient Damage Notice referred by either party to this Dispute Resolution Procedure shall be determined in accordance with the Fast Track Dispute Resolution Procedure, under the exception that the time period for determination of the dispute by the Fast Track Expert shall be twenty eight (28) days from the date of appointment.
- 8.2** In the event that any dispute relating to any matter in a Patient Damage Notice is referred to the Dispute Resolution Procedure by either the Board or ProjectCo, then such dispute shall be determined having regard to all of the evidence and information provided by the Board and ProjectCo.
- 8.3** In determining what was the cause of any damage to the Facilities (including without limitation the question of whether the damage is Patient Damage) the standard of proof to be applied shall be the balance of probabilities.

SCHEDULE PART 26

SECTION 2

Nominating Bodies

1. Nominating Bodies

The following procedure shall be followed in appointing the Adjudicator.

- i. if the Dispute arises under, out of, or in connection with or is related to the provision or delivery of Services such as those anticipated in this Agreement the Adjudicator shall be nominated by or on behalf of the President for the time being of the British Institute of Facilities Management;
- ii. if the Dispute arises under, out of, in connection with or is related to financial matters or methods of accounting or otherwise to matters usually and properly within the knowledge of a chartered accountant then the Adjudicator shall be a chartered accountant who has been professionally qualified for not less than 10 (ten) years nominated by or on behalf of the President for the time being of the Institute of Chartered Accountants in Scotland;
- iii. if the Dispute arises under, out of, in connection with or is related to building or construction matters usually and properly within the knowledge of a civil engineer then the Adjudicator shall be a civil engineer nominated by or on behalf of the President for the time being of the Institution of Civil Engineers;
- iv. if the Dispute arises under, out of, in connection with or is related to building or construction matters usually and properly within the knowledge of an architect then the Adjudicator shall be an architect nominated by or on behalf of the President for the time being of the Royal Institute of Architects in Scotland;
- v. if the Dispute arises under, out of, in connection with or is related to building or construction matters usually and properly within the knowledge of a chartered surveyor then the Adjudicator shall be a chartered surveyor nominated by or on behalf of the President for the time being of the Royal Institute of Chartered Surveyors in Scotland;
- vi. if the Dispute arises in connection with or is related to the meaning or construction of this Agreement or the parties are unable to agree that the Dispute falls within Paragraphs 1.i to 1.v of this Section 2 of Schedule Part 26 then the Adjudicator shall be a Solicitor or Advocate of not less than ten (10) years' standing nominated by or on behalf of the President for the time being of the Law Society of Scotland;

2. Qualifications of the Adjudicator

The following provisions shall apply in respect of the qualification of the Adjudicator:

- i. no person shall be appointed to act as the Adjudicator unless he shall be qualified by education, experience and training to determine the Dispute. If within ten (10) Business Days of appointment of an Adjudicator in accordance with Section 1 of this Schedule Part 26 either Party objects on the ground that the proposed Adjudicator is not so qualified then the person identified in paragraphs 1.i to 1.v of this Section 2 (whichever shall be appropriate) shall decide the issue and his decision shall be final and binding on the Parties. In so deciding he shall consider any submission either Party may wish to make. If he shall decide that the

proposed Adjudicator is not so qualified then the person identified in paragraphs 1.i to 1.vi of this Section 2 (whichever shall be appropriate) shall be requested to appoint a replacement in accordance with the provisions of Section 1 of this Schedule Part 26.

- ii. unless both Parties otherwise agree, no person shall be appointed as the Adjudicator who at the time of appointment is (or within three years before such appointment has been) a director, office holder or an employee of or retained as consultant to either Party or any associated companies or Project Co or is the holder of shares in either Party or any associated companies or Project Co (unless it is a company quoted on a recognised stock exchange and his shareholding is less than one per cent of the issued shares capital (of any class) in such company);
- iii. no person shall be appointed as the Adjudicator or continue to act as the Adjudicator if at the time of appointment or at any time before he gives his determination under such appointment he or his employer has or may have some interest or duty which conflicts or may conflict with his function under such appointment unless:-
 - (a) before accepting such appointment he shall have disclosed such interest or duty stating that it conflicts or may conflict with his function under such appointment; and
 - (b) in respect of any such interest or duty arising after his appointment he shall have disclosed such interest or duty immediately he becomes aware of it; and
 - (c) in the opinion of the parties there is no material risk of such interest or duty prejudicing his decision as Adjudicator;
- iv. if either Party objects to a proposed appointment of an Adjudicator or to an appointed Adjudicator continuing to act as such, on the grounds of a matter referred to in Paragraphs 2.i to 2.iii of this Section 2, within four (4) Business Days of either such matter being disclosed, or becoming aware of a matter which has not hitherto been disclosed, then that Party may apply to the person identified in paragraphs 1.i to 1.vi of this Section 2 (whichever shall be appropriate) who shall decide if there is a material risk that the decision of the proposed Adjudicator would be prejudiced and therefore whether he should not make or terminate the appointment (as the case may be). In so deciding he shall consider any submissions either party or the Adjudicator may wish to make. If he shall so decide then the appointment of the Adjudicator shall not be made or shall cease forthwith (as the case may be) and he shall appoint a replacement in accordance with the provisions of Section 1 of this Schedule Part 26.

Confidentiality

All information, data or documentation disclosed or delivered by a Party to the Adjudicator or to the other Party in consequence of or in connection with the appointment of the Adjudicator hereunder shall be treated as confidential save to the extent that it is already in the public domain and the Adjudicator and the Parties shall not disclose any such information, data or documentation to any person or company save with the consent of the Party providing any such information, data or documentation. All such information, data or documentation shall remain the property of the Party disclosing or delivering the same, and it and all copies thereof shall be returned on completion of the Adjudicator's work.