

- (1) Forth Valley Health Board
- (2) Forth Health Limited

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## Project Agreement – Schedule (REDACTED)

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This is the Schedule to the Project Agreement (in 40 Parts) referred to in the foregoing Project Agreement between Forth Valley Health Board and Forth Health Limited

Jane Mackenzie  
for and on behalf of  
Forth Valley Health Board

Irene Marsh  
for and on behalf of  
Forth Health Limited

## PART 1 OF THE SCHEDULE: DEFINITIONS AND INTERPRETATIONS

### Section 1: Definitions

In this Agreement unless the context otherwise requires:

- “5 Year Maintenance Plan” means the plan, to be prepared by or on behalf of Project Co, for any works for the maintenance or repair of the Facilities, including the renewal or replacement of plant or equipment as necessary, during each five year period for the duration of the Operational Term, which shall be updated in accordance with Clause 28.11 (*5 Year Maintenance Plan*);
- “Access Areas” means the areas hatched in blue on the Works Site Plan;
- “Acquired Rights Directive” means Council Directives 77/187/EEC and 2001/23/EC;
- “Actual Completion Date” means the date on which the Works (other than the Finishing Works) have been completed in accordance with this Agreement, as such date shall be stated in the Certificate of Practical Completion for the final Phase or, in the event of dispute, as such date may be determined in accordance with Part 26 of the Schedule (*Dispute Resolution Procedure*);
- “Actual Liability” has the meaning given in Clause 48.7(c)(i) (*Compensation on Termination*);
- “Additional De Minimis Amount” has the meaning given in Clause 39.6(a) (*Changes in Law*);
- “Additional Permitted Borrowing” means on any date, the amount equal to any amount of principal outstanding under the Senior Funders Agreements (as the same may from time to time be amended, whether or not with the approval of the Board) in excess of the amount of principal scheduled under the Senior Funders Agreements at Financial Close to be outstanding at that date, but only to the extent that:
- (a) this amount is less than or equal to the

Additional Permitted Borrowings Limit; and

- (b) in respect of any Additional Permitted Borrowing the Security Trustee is not in material breach of its obligations under Clause 10.4.3 of the Funders' Direct Agreement as it applies to such Additional Permitted Borrowing,

and provided further that any such excess amount of principal which is (i) invested as part of any Qualifying Variation, or (ii) outstanding from time to time as a result of any drawing under the Senior Funders Agreements as entered into on or around the Effective Date, disregarding any subsequent amendment, or (iii) outstanding from time to time as a result of any amendment to the Senior Funders Agreements in respect of which the Board has agreed that its liabilities on a termination may be increased pursuant to Clause 4.3(a) (*Changes to Funding Agreements and Refinancing*) shall not be counted as Additional Permitted Borrowing;

"Additional Permitted Borrowings Limit" means an amount equal to:

- (a) 10% of the Original Senior Commitment, for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Funders Agreements is reduced to 50% or less of the Original Senior Commitment; and thereafter
- (b) the higher of:
  - (i) 5% of the Original Senior Commitment; and
  - (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in (a)

"Additional Rights" means:

- (a) a right of access to and egress from the

Works Site over the Access Areas, which right shall, in respect of the period during which the Board Access Works are being undertaken, be subject to and exercised in accordance with the terms of the Joint Operating Protocol;

- (b) a right, during the Construction Phase only, to enter upon the Access Areas for the purpose of inspecting, maintaining, renewing and connecting into all existing service media situated within the Access Areas together with the right to install, maintain and renew any additional service media, subject to and in accordance with the terms of the Joint Operating Protocol;
- (c) a right to enter upon the Drainage Area for the purpose of inspecting and, at the option of Project Co repairing the drainage scheme within the Drainage Area;
- (d) a right to enter upon the Woodland Area for the purposes of inspecting, maintaining renewing and connecting into all existing service media situated within the Woodland Area together with the right to install, maintain and renew any additional service media and/or connect footpaths, in accordance with the terms of the Joint Operating Protocol; and
- (e) a right to enter upon the Works Drainage Scheme Area for the purpose of inspecting, laying, installing, maintaining, repairing and/or renewing the drainage scheme pursuant to the Works,

in each case:

- (i) with or without vehicles, plant, equipment machinery; and
- (ii) only for the purpose of carrying out the Project Operations;

“Ad-Hoc Payment”

has the meaning given in Part 18 of the Schedule (*Payment Mechanism*);

“Adverse Law”

means any Change in Law which would if passed into Law have the following effects, and any administrative act of the Government or any minister of the Crown, department, agency, regulator or other public body or official not amounting to a Change in Law but which has (or would, if made, have) the following effects:

- (a) remove, transfer to another party or otherwise have a material adverse effect upon the Board’s legal capacity (or obligation) to perform any of its material obligations in relation to the Project which are material to the interests of Project Co and/or its Funders; or
- (b) amend or repeal (without re-enactment, consolidation or replacement by Law having an equivalent effect) the National Health Service (Residual Liabilities) Act 1996 or the National Health Service (Private Finance) Act 1997;

provided that,

- (i) in the circumstances referred to in paragraph (a), where a Change in Law would have the effect of transferring the legal capacity or obligation of the Board in relation to such material obligations to a new entity (a “Board Substitute”), the relevant Law shall not be an Adverse Law if:

(aa) either:

- (i) the provisions of the National Health Service (Residual Liabilities) Act 1996 and the National Health Service (Private Finance) Act 1997 (together the “Protective

Legislation”) apply to such Board Substitute in full (as applied to the Board as at the date of this Agreement); or

(ii) the relevant Law has the same effect in relation to the Board Substitute as the Protective Legislation; and

(bb) the relevant Law does not otherwise have any adverse material effect on the legal capacity or obligation of the Board Substitute which affects (or could reasonably be expected to affect) the Board Substitute’s ability to perform any material obligations owed to Project Co and/or the Funders in relation to the Project which are material to the interests of Project Co and/or its Funders, when compared to the material obligations of the Board under this Agreement;

“Adverse Planning Decision”	means a decision by a Relevant Authority pursuant to which the Planning Approval is amended, revoked, quashed or otherwise rendered ineffective;
“Agreement”	means this Project Agreement (including its Schedule Parts);
“Allocated Allowances”	has the meaning given in Section A of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
“Allowable Expenses”	has the meaning given in Clause 39.7 ( <i>Change in Law</i> );
“Alternative Drainage Scheme”	means the alternative drainage scheme to be installed to provide drainage from the Site to the River Carron, capable of serving the Site and also capable of being

installed and made operational in accordance with the existing servitude rights benefiting the Site disclosed in the Certificate of Title, provided that the Board and Project Co acknowledge and accept:

- (a) that the Alternative Drainage Scheme may require to encroach into and occupy a larger part of the land hatched black on the Works Site Plan than the Carron Drainage Scheme (but, for the avoidance of doubt, the Alternative Drainage Scheme shall not be permitted to occupy a width of more than 10 metres from the eastern boundary of the area hatched in black); and
- (b) that the Alternative Drainage Scheme, while being sufficient to serve the Site, may not have sufficient capacity to allow future connections into the Alternative Drainage Scheme;

“Ancillary Documents”

means the Construction Contract, the Service Contracts and the Performance Guarantees, all as the same may be amended or replaced from time to time;

“Ancillary Rights”

means:

- (a) rights of free and uninterrupted passage over and within, access to and egress from the Site and Works Site together with rights to use, connect into, inspect, maintain, repair, replace, renew, lay or install and if required remove any pipes, wires, cables, sewers and others for the provision of water, sewerage, soil, drainage, gas, electricity, telephone and all other services in or under and/or serving the Site, Works Site and/or the Facilities, which rights during the Construction Phase shall be exercised in accordance with the provisions of the Licence in the manner previously agreed with the Board as the same may be varied with the approval of the Board such approval not to be unreasonably withheld;

(b) the right to occupy the Retail Unit for the purpose of the Permitted Project Co Operations; and

(c) the Additional Rights,

but in each case only insofar as these rights are vested in the Board or the Scottish Ministers and are capable of being assigned or granted by the Board or the Scottish Ministers to Project Co, as a result of any restriction disclosed in the Certificate of Title;

“Annual Service Payment” has the meaning given to it in Section A of Part 18 of the Schedule (*Payment Mechanism*);

“APB Distribution” means, for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period;

“Approved RDD Item” means an item of Reviewable Design Data which has been returned or has been deemed to have been returned endorsed either “Level A - no comment” or “Level B – proceed subject to amendment as noted” by the Board’s Representative pursuant to the provisions of Clause 17.7 (*Design, Construction and Commissioning Process*) and Part 10 of the Schedule (*Review Procedure*) (provided that in the case of any item of Reviewable Design Data which has been returned or has been deemed to have been returned endorsed “Level B – proceed subject to amendment as noted” Project Co has taken account of the Board’s Representative’s comments), as such item of Reviewable Design Data may be varied or amended from time to time in accordance with Part 22 of the Schedule (*Variation Procedure*);

“Associated Companies” means, in respect of a relevant company, a company which is a Subsidiary, a Holding Company or a company that is a Subsidiary of the ultimate Holding Company of that relevant company, and in the case of Project Co shall include HoldCo and each of the Shareholders, and the term “Associate” shall be



	interpreted accordingly;
“Associated Entity”	has the meaning given in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> );
“Base Date”	has the meaning given in Section 2 to Part 1 of the Schedule ( <i>Definitions and Interpretation</i> );
“Benchmarking”	means the carrying out of a Benchmarking Exercise (as defined in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> ));
“Beneficiary”	has the meaning given in Clause 8.3 ( <i>Conduct of Claims</i> );
“Big Ticket Equipment”	has the meaning given to it in Part 13 of the Schedule ( <i>Equipment</i> );
“Board Access Works”	means together the Phase 1 Board Access Works, the Phase 2 Board Access Works and the Phase 3 Board Access Works;
“Board Access Works Contract”	means the contract in the Agreed Form entered or to be entered into between the Board and Expanded Structures Limited (registered number 05407121) relating to the Board Access Works;
“Board Additional Works Enquiry”	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> );
“Board Additional Works Item”	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> );
“Board Additional Works Variation”	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> );
“Board Assets”	means any assets and equipment or other property used by, or on behalf of, the Board or any Board Party on the Site, other than the Facilities;
“Board Conditions Precedent”	means the documents referred to in Section 2 of Part 2 of the Schedule ( <i>Completion Documents</i> );
“Board Contamination”	means any Contamination arising on or after the Effective Date, resulting from any act or omission of the Board or any Board Party, including, without

limitation, Medical Contamination;

- “Board Employees” means in relation to any service equivalent to a Service, all those persons employed by the Board under a contract of employment (excluding, to avoid doubt (without limitation), any person engaged by the Board as an independent contractor or persons employed by any sub-contractor engaged by the Board) who are wholly or substantially engaged in the provision of that service as at the Relevant Service Transfer Date;
- “Board Events of Default” has the meaning given in clause 45.1 (*Board Events of Default*);
- “Board Party” means any of the Board’s agents, contractors and sub contractors of any tier and its or their directors, officers and employees and/or other healthcare providers at the Facilities with the authority of the Board but excluding Project Co, any Project Co Party and statutory undertakers and utilities and “Board Parties” shall be construed accordingly;
- “Board Policies” means, subject to Clause 32.7 (*Exclusion of Board Policies*), the policies of the Board included on the compact disc labelled “Board Policies”, in the Agreed Form;
- “Board Service Variation” has the meaning given in Part 22 of the Schedule (*Variation Procedure*);
- “Board Service Variation Enquiry” has the meaning given in Part 22 of the Schedule (*Variation Procedure*);
- “Board Works Variation” has the meaning given in Part 22 of the Schedule (*Variation Procedure*);
- “Board Works Variation Confirmation” has the meaning given in Part 22 of the Schedule (*Variation Procedure*);
- “Board Works Variation Enquiry” has the meaning given in Part 22 of the Schedule (*Variation Procedure*);
- “Board’s Actuary” means an actuary from the Government Actuary’s Department as the Board may appoint or the Department may assign for the purposes of this

Agreement;

- “Board’s Commissioning” means the Board’s pre-completion commissioning activities to be carried out by the Board for each Phase in accordance with Clause 22 (*Pre-Completion Commissioning and Completion*);
- “Board’s Construction Requirements” means the requirements of the Board set out or identified in Section 3 of Part 8 of the Schedule (*Construction Matters*) as amended from time to time in accordance with the terms of this Agreement;
- “Board’s Cost Share” has the meaning given in Clause 39.7 (*Changes in Law*);
- “Board’s Post Completion Commissioning” means the Board’s post-completion commissioning activities to be carried out by the Board for each Phase in accordance with Clause 23.1 (*Post Completion Commissioning*);
- “Board’s Representative” means the person so appointed by the Board pursuant to Clause 11 (*Representatives*);
- “Bulk Transfer” means, where a Pensionable Board Employee elects to transfer accrued benefits from a Transferor Scheme to a Transferee Scheme, that the Pensionable Board Employee shall be awarded benefit credits in the Transferee Scheme which are, in actuarial terms, of equivalent value to the benefit credits which the Pensionable Board Employee held in the Transferee Scheme immediately prior to the transfer of benefits taking effect;
- “Business Day” means a day other than a Saturday, Sunday or a bank holiday in Edinburgh;
- “Cable Diversion Works” means the 11Kva cable diversion works and demolition and re-provision of the existing substation to be procured by the Board pursuant to Clause 5.3(h) (*Board’s Undertaking*) to meet the requirements of the Cable Diversion Works Specification;
- “Cable Diversion Works Specification” means the specification for the Cable Diversion Works set out in Part 40 of the Schedule (*Cable Diversion*

	<i>Works Specification</i> );
“Capital Cost of the Facilities”	has the meaning given in Clause 39.7 ( <i>Change in Law</i> );
“Capital Expenditure”	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> );
“Carron Drainage Scheme”	means the drainage scheme, comprising the upgrading of the existing drainage scheme, pipe and associated works and apparatus leading from the Site to the River Carron along the route shown shaded pink on the plan attached to this Agreement at Attachment E;
“Catering Service”	has the meaning given to it in Part 18 of the Schedule ( <i>Payment Mechanism</i> );
“Catering Service Specific Specification”	has the meaning given to it in Part 18 of the Schedule ( <i>Payment Mechanism</i> );
“CDM Regulations”	has the meaning given in Section 2 of Part 8 of the Schedule ( <i>Construction Matters</i> );
“Certificate of Practical Completion”	means the certificate to be issued by the Independent Tester for each Phase in accordance with Clause 22.12 ( <i>Pre-Completion Commissioning and Completion</i> ) in the form set out in Part 28 of the Schedule ( <i>Certificates</i> );
“Certificate of Title”	means the certificate of title for the Site and the Works Site, in the Agreed Form;
“Change in Control”	means any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (including the control over the exercise of voting rights conferred on that equity share capital or the control over the right to appoint or remove directors);
“Change in Law”	means the coming into effect or repeal (without re-enactment or consolidation) in Scotland of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in Scotland in each case after the

date of this Agreement;

“CIBSE”

has the meaning given to it in Section A of Part 18 of the Schedule (*Payment Mechanism*);

“Clinical Functionality”

(a) the following matters as shown on the 1:1250 and 1:500 scale development control plans contained in Project Co’s Proposals:

(i) the points of access to and within the Site and the Facilities;

(ii) the relationship between one or more buildings that comprise the Facilities; and

(iii) the adjacencies between different Hospital departments within the Facilities;

(b) the following matters as shown on the 1:200 scale plans contained in Project Co’s Proposals:

(i) the points of access to and within the Site and the Facilities;

(ii) the relationship between one or more buildings that comprise the Facilities;

(iii) the adjacencies between different Hospital departments within the Facilities; and

(iv) the adjacencies between rooms within the Hospital departments within the Facilities;

(c) the quantity, description and areas (in square metres) of those rooms and spaces shown on the Schedule of Accommodation;

(d) the location and relationship of equipment, furniture, fittings and user terminals as shown on the 1:50 loaded room plans included within Project Co’s Proposals in

respect of:

- (i) all bed and trolley positions;
  - (ii) internal room elevations; and
  - (iii) actual ceiling layouts; and
- (e) the location of and the inter-relationships between rooms within a department as shown on the 1:50 scale drawings included within Project Co's Proposals,

but only insofar as each of the matters listed in (a) to (e) above relate to or affect Clinical Use;

"Clinical Services"

means:

- (a) management, responsibility, administration and carrying out of the clinical and medical services provided at the Facilities by the Board from time to time;
- (b) Clinical Simulation Services; and
- (c) the provision of training and education required to deliver the services referred to in paragraph (a),

which are not services to be provided by Project Co to the Board under this Agreement;

"Clinical Simulation Services"

means the training and education services provided by the Board's Clinical Simulation Centre based at the Facilities, to medical undergraduate and postgraduate staff, nursing and dental medical specialists from across Scotland;

"Clinical Use"

means the use of a room or space to the extent that it is used by the Board or its employees, tenants, agents and/or contractors (but not, to avoid doubt, any Project Co Party) for carrying out the Clinical Services;

"Collateral Agreements"

means the Contractor's Collateral Agreement and the Service Providers' Collateral Agreements;

“Commercially Sensitive Information”	means the sub set of Confidential Information listed in column 1 of Section 1 and column 1 of Section 2 of Part 34 of the Schedule ( <i>Commercially Sensitive Information</i> ), in each case for the period specified in column 2 of Sections 1 and 2 of Part 34 of the Schedule ( <i>Commercially Sensitive Information</i> ) respectively;
“Commissioners”	has the meaning given in Clause 53.3 ( <i>VAT</i> );
“Commissioning End Date”	means, subject to Clause 41 ( <i>Delay Events</i> ): <ul style="list-style-type: none"> <li>(a) in relation to Phase 1, the date which is 12 weeks following the Phase 1 Actual Completion Date;</li> <li>(b) in relation to Phase 2, the date which is 6 weeks following the Phase 2 Actual Completion Date; and</li> <li>(c) in relation to Phase 3, the date which is 12 weeks following the Phase 3 Actual Completion Date;</li> </ul>
“Common Terms Agreement”	means the agreement with that title among, inter alios, Project Co, the Security Trustee and European Investment Bank, dated on or around the date hereof;
“Compensation Event”	has the meaning given in Clause 41.10 ( <i>Compensation</i> );
“Compensation Payment”	has the meaning given in Clause 48.6 ( <i>Compensation on Termination</i> );
“Completion Criteria”	has the meaning given in Clause 2.3.3 ( <i>Appointment</i> ) of the Independent Tester Contract;
“Completion Date”	means 7 April 2011 or such revised date as: <ul style="list-style-type: none"> <li>(a) determined by the adjustment to the Programme at Financial Close pursuant to Clause 19.3 (<i>The Programme</i>); or</li> <li>(b) may be fixed pursuant to Clause 41 (<i>Delay Events</i>);</li> </ul>

“Completion Process”	means the process and procedures for carrying out the notifications, testing, inspections and completion certification as set out in Appendix B of Part 12 of the Schedule ( <i>Outline Commissioning Programme</i> ) as may be applicable to each Phase of the Works the dates for which shall be incorporated in each Final Commissioning Programme;
“Completion Tests”	means the completion and commissioning tests to be undertaken by Project Co in order to satisfy the Independent Tester that the Completion Criteria have been satisfied;
“Compliant Tender”	has the meaning given in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> );
“Conditional Expiry Date”	means 11 May 2007 or such later date as the parties may agree in writing;
“Confidential Information”	means: <ul style="list-style-type: none"> <li>(a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998; and</li> <li>(b) Commercially Sensitive Information;</li> </ul>
“Consents”	means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorisations required by Law, and all necessary consents and agreements from any third parties (including, without limitation, any Planning Permission), needed to carry out the Project Operations in accordance with this Agreement;
“Construction Contract”	means the design and build contract dated on or around the date as this Agreement between Project Co and the Contractor as amended from time to time



in accordance with this Agreement;

- “Construction Energy Target” has the meaning given in paragraph 6 of Section 7 of Part 8 of the Schedule (*Construction Matters*);
- “Construction Phase” means the period from and including the Effective Date to and including the Finishing Works Actual Completion Date;
- “Construction Quality Plan” means the document at Section 8 of Part 8 of the Schedule (*Construction Matters*);
- “Contamination” means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour) and including without limitation genetically modified organisms;
- “Contracting Associate” means the Contractor and any Service Provider;
- “Contract Month” means a calendar month, provided that:
- (a) the first Contract Month shall be the period from and including Payment Commencement Date 1 to and including the last day of the calendar month in which Payment Commencement Date 1 falls; and
  - (b) the last Contract Month shall be the period from and including the first day of the calendar month in which the Expiry Date or Termination Date (as the case may be) falls to and including the Expiry Date or Termination Date (as the case may be);
- “Contract Year” means the period of twelve (12) calendar months commencing on and including 1 April and each subsequent period of twelve (12) calendar months commencing on each 1 April, provided that:
- (a) the first Contract Year shall be such period as commences on and includes the Effective Date and ends on the immediately following 31 March; and

- (b) the final Contract Year shall be such period as commences on and includes the anniversary of 1 April that falls in the year in which this Agreement expires or is terminated (for whatever reason) and ends on the date of expiry or earlier termination of this Agreement (as the case may be);

“Contractor”	means Laing O’Rourke Construction North Limited (registered number 04309402) engaged by Project Co to carry out the Works and any substitute design and/or building contractor engaged by Project Co as may be permitted by this Agreement;
“Contractor’s Collateral Agreement”	means the collateral agreement between the Board, Project Co and the Contractor in the Agreed Form;
“Contractor’s Site Manager”	means the manager to be appointed by the Contractor for purposes of supervision of all day-to-day activities on the Works Site;
“Contractor’s Site Rules”	means the Contractor’s rules, applicable on the Works Site to the Board, Project Co, the Contractor and their respective sub-contractors and suppliers of every tier during the construction of the Facilities;
“Convictions”	means other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 Scottish SI 2003/231) or any replacement or amendment to those Orders);
“Cumulative Allowable Expenses”	has the meaning given in Clause 39.7 ( <i>Changes in Law</i> );
“Decanting”	means the decanting activities set out in the relevant Final Commissioning Programme and Table A of Appendix A to Part 12 of the Schedule ( <i>Outline</i>

*Commissioning Programme*);

“Deed of Servitude”	means a deed of servitude required to be executed to enable Project Co to implement the Carron Drainage Scheme;
“Deemed Liability”	has the meaning given in Clause 48.7(c)(ii) ( <i>Compensation on Termination</i> );
“Default Interest”	means any increased margin that is payable to the Senior Funders or which accrues as a result of any payment due to the Senior Funders not being made on the date on which it is due;
“Default Interest Rate”	means 2% over LIBOR;
“Defects”	means any defect or fault in the Works and/or the Facilities (not being a Snagging Matter) which occurs due to a failure by Project Co to meet the Board’s Construction Requirements and/or Project Co’s Proposals or otherwise to comply with its obligations under this Agreement;
“Delay Event”	has the meaning given in Clause 41.3 ( <i>Delay Events</i> );
“De Minimis Amount”	has the meaning given in Clause 39.6(a) ( <i>Changes in Law</i> );
“Department of Health”	means the Department of Health, or such body that may supersede or replace the Department of Health from time to time;
“Design Data”	means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing and/or operation of the Facilities;
“Design Quality Plan”	means the document at Section 8 of Part 8 of the Schedule ( <i>Construction Matters</i> );
“Directive”	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> );
“Direct Losses”	means, subject to the provisions of Clause 9.1 ( <i>Limits on Liability</i> ), all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an

agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;

“Disaster Plan” means the plan to be agreed pursuant to Part 5 of the Schedule (*Disaster Plan*);

“Disclosed Data” means any Design Data and any other written information, data and documents, including any spreadsheet models made available electronically (but excluding information contained in the First Employee List or any subsequently updated version of that list, and the Certificate of Title) made available or issued to Project Co or any Project Co Party in connection with the Project by or on behalf of the Board (or any Board Party) whether before or after the execution of this Agreement;

“Discriminatory Change in Law” means any Change in Law the effect of which is to discriminate directly against:

(a) hospitals whose design, construction, financing and operation are procured by a contract under the PFI (or any similar successor programme) in relation to other similar hospital projects; or

(b) companies undertaking projects procured by contracts under the PFI (or any similar successor programme) in relation to other companies undertaking similar projects; or

(c) the new Acute Hospital for Forth Valley in relation to other hospitals; or

(d) Project Co in relation to other companies,

save that:

(i) such action shall not be a Discriminatory Change in Law where it is in response to any act or omission on the part of Project Co which is illegal (other than an act or omission rendered illegal by virtue

of the Discriminatory Change in Law itself);

(ii) such action shall not be deemed to be discriminatory solely on the basis that its effect on Project Co is greater than its effect on other companies; and

(iii) a change in taxes or the introduction of a tax affecting companies generally or a change in VAT shall be deemed not to be discriminatory in any circumstances (to avoid doubt, such changes being given effect in accordance with Clause 53 (*Taxation*));

“Displaced Employee” has the meaning given in paragraph 4 of Schedule 38 (*Transitional Arrangements*);

“Dispute” has the meaning given in paragraph 1 of Part 26 of the Schedule (*Dispute Resolution Procedure*);

“Dispute Resolution Procedure” means the procedure set out in Part 26 of the Schedule (*Dispute Resolution Procedure*);

“Draft Proposal” has the meaning given in Part 17 of the Schedule (*Benchmarking and Market Testing Procedure*);

“Drainage Area” means the area shown shaded blue on the plan attached to this Agreement at Attachment D;

“Effective Date” means the date upon which each of the Project Co Conditions Precedent and Board Conditions Precedent has been satisfied or waived in accordance with Clause 3.2 (*Effective Date*);

“Emissions Specific Change in Law” means any Change in Law which:

(a) causes carbon dioxide emissions by an installation at the Facilities (where such carbon dioxide emissions are not already covered by the GGETS Regulations in terms of levels, scope or otherwise at the Effective Date) to become subject to the GGETS

Regulations or any amendment to the Methodology or the set level of Allocated Allowances as at Financial Close;

- (b) causes greenhouse gas emissions other than carbon dioxide by an installation at the Facilities to become specified emissions under the GGETS Regulations;
- (c) introduces or amends the regulation of any emissions other than greenhouse gases by an installation at the Facilities (whether by introduction of a trading scheme, permitting scheme or otherwise), and/or includes the EPC Scheme; or
- (d) regulates the emission of greenhouse gases (including carbon dioxide) by a mechanism other than the GGETS Regulations;

“Employee Transfer” means a relevant transfer of an undertaking in accordance with the Transfer Regulations;

“Enabling Works” means the demolition of all existing buildings and removal of all services located on or under the Enabling Works Site to be procured by the Board pursuant to Clause 5.3(g) (*Board’s Undertaking*) to meet the requirements of the Enabling Works Specification;

“Enabling Works and Cable Diversion Works Site Plan” means the plan attached to this Agreement at Attachment G;

“Enabling Works Site” means the area shown outlined in green on the Enabling Works and Cable Diversion Works Site Plan;

“Enabling Works Specification” means the specification for the Enabling Works set out in Part 39 of the Schedule (*Enabling Works Specification*);

“Encumbrance” means any option, right of pre-emption, pledge, security, interest, lien, charge, mortgage, lease, licence, claim, condition, retention or other encumbrance or restriction whether imposed by agreement, by law or otherwise;

“Energy”	has the meaning given to it in Section A of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
“Energy Consumption”	has the meaning given in Part 18 of the Schedule ( <i>Payment Mechanism</i> );
“Energy Year”	has the meaning given in Part 18 of the Schedule ( <i>Payment Mechanism</i> );
“Environmental Information (Scotland) Regulations”	means the Environmental Information (Scotland) Regulations 2004 together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant Government Department in relation to such regulations;
“EPC Scheme”	means the mandatory emissions trading scheme known as the Energy Performance Commitment and such other proposals contemplated in the UK government consultation paper entitled “Consultation on Measures to Reduce Carbon Emissions in the large non energy intensive Business and Public Sectors”;
“Equal Pay Ruling”	has the meaning given to it in Clause 30.24 ( <i>Board Indemnities</i> );
“Equipment”	means the equipment listed in the Equipment Responsibilities Matrix;
“Equipment Responsibilities Matrix”	has the meaning given in Part 13 of the Schedule ( <i>Equipment</i> );
“Estatecode”	has the meaning given in Sub-Section B of Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
“Estimated Increased Maintenance Costs”	has the meaning given in Clause 28.7 ( <i>Maintenance</i> );
“ETO Reason”	means an economic, technical or organisational reason entailing changes in the workforce satisfying the requirements of the Transfer Regulations;
“Excluded Person”	has the meaning given in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> );
“Excusing Cause”	has the meaning given in Clause 8.7 ( <i>Excusing Causes</i> );

“Executive”	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> );
“Existing Sub Station”	has the meaning given to it in paragraph 1.2 of Part 40 of the Schedule ( <i>Cable Diversion Works Specification</i> );
“Expert”	means the individual(s) appointed in accordance with Part 26 of the Schedule ( <i>Dispute Resolution Procedure</i> );
“Expiry Date”	means the date on which this Agreement will terminate in accordance with Clause 46.3 ( <i>Non-Default Termination</i> );
“Facilities”	means the Hospital, buildings and other facilities in respect of which a Certificate of Practical Completion has been issued, together with all supporting infrastructure (including the Plant and all Project Co Equipment) and amenities located on the Site as required to enable Project Co to comply with its obligations under this Agreement, all as the same may be varied, amended or supplemented from time to time in accordance with this Agreement;
“Fair Value”	means the amount at which an asset or liability could be exchanged in an arms length transaction between informed and willing parties, other than in a forced or liquidated sale;
“Fees Regulations”	means the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004;
“Final Commissioning Programme”	means the programme to be jointly developed and agreed by the Board and Project Co for each Phase in accordance with the provisions of Clause 22.2 ( <i>Pre-Completion Commissioning and Completion</i> );
“Financial Close”	means the Effective Date;
“Financial Model”	means the computer spreadsheet model for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term



accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model, as amended from time to time in accordance with the terms of Clause 37 (*Custody of Financial Model*), the output from which at the Effective Date is shown at Part 19 of the Schedule (*Financial Model*) and a copy of which is attached to this Agreement on disk as Attachment B;

- “Financial Supplement” means the document with that title between the Board and Project Co dated on or around the Effective Date;
- “Finishes” means those finishes listed at Table A of Part 10 of the Schedule (*Review Procedure*);
- “Finishing Works” means the works and activities set out and described as such in Section B of Part 9 of the Schedule (*The Programme*);
- “Finishing Works Actual Completion Date” means the date on which the Finishing Works have achieved the Completion Criteria, as such date shall be stated in the Finishing Works Completion Certificate or, in the event of dispute as such date may be determined in accordance with Part 26 of the Schedule (*Dispute Resolution Procedure*);
- “Finishing Works Completion Certificate” means a certificate in the form set out in Part 28 of the Schedule (*Certificates*) to be issued by the Independent Tester in accordance with Clause 23.8 (*Finishing Works*);
- “Finishing Works Completion Date” means (subject to Clause 41 (*Delay Events*)) the date described as such in Section B of Part 9 of the Schedule (*The Programme*);
- “FOI(S)A” means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation (as defined in Section 73 of the Freedom of Information (Scotland) Act 2002) made under the Freedom of Information (Scotland) Act 2002 from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant Government Department in relation to such Act;

“Force Majeure”	has the meaning given in Clause 43 ( <i>Force Majeure</i> );
“Funders”	means all or any of the persons who provide financing or funding in respect of the Project Operations under the Funding Agreements including the Senior Funders and the Shareholders and, where the context so permits, prospective financiers or funders;
“Funders’ Direct Agreement”	means the funders’ direct agreement entered into on or around the date of this Agreement between the Board, the Security Trustee and Project Co;
“Funding Agreements”	means all or any of the agreements or instruments to be entered into by Project Co or any of its Associates relating to the financing of the Project Operations (including the Initial Funding Agreements and any agreements or instruments to be entered into by Project Co or any of its Associates relating to the rescheduling of their indebtedness or the refinancing of the Project Operations);
“Funding Shortfall”	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> );
“GAD Initial Bulk Transfer Terms”	means the terms on which the SPPA will finance a bulk transfer payment at the initial transfer described in Clause 31.6 ( <i>Pension Matters</i> ) being that set out in the “Note by the Government Actuary’s Department on the Basis for the Transfer of Accrued Pension Rights” dated 28th April 2006 as attached to the letter dated 28th April 2006 from Jon Spain of the Government Actuary’s Department to Christopher Sheppard of Mercer Human Resource Consulting referred to in Section A of Part 31 of the Schedule ( <i>Bulk Transfer Assumptions</i> );
“General Procedure”	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> );
“GGETS Regulations”	has the meaning given in Section A of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
“Good Industry Practice”	means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be

	expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;
“Government”	means the government of the United Kingdom or the Scottish Ministers;
“Greenhouse Gas Emissions Permits”	has the meaning given in Section A of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
“Handback”	means the return of the Facilities by Project Co to the Board on the Expiry Date in accordance with this Agreement
“Handback Amount”	has the meaning given in Part 24 of the Schedule ( <i>Handback Procedure</i> );
“Handback Bond”	has the meaning given in Part 24 of the Schedule ( <i>Handback Procedure</i> );
“Handback Certificate”	means the certificate of confirmation that the Facilities comply with the Handback Requirements to be issued by the Board in accordance with Part 24 of the Schedule ( <i>Handback Procedure</i> ), in the form set out in Part 28 of the Schedule ( <i>Certificates</i> );
“Handback Procedure”	means the procedure for Handback described in Part 24 of the Schedule ( <i>Handback Procedure</i> );
“Handback Programme”	has the meaning given in Part 24 of the Schedule ( <i>Handback Procedure</i> );
“Handback Requirements”	has the meaning given in Part 24 of the Schedule ( <i>Handback Procedure</i> );
“Handback Works”	has the meaning given in Part 24 of the Schedule ( <i>Handback Procedure</i> );
“Health and Safety Regime”	means the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act 1990 and the Water Industry (Scotland) Act 2002 and any similar or analogous health, safety or environmental legislation in force from time to time;

“Health Board”	means a Health Board established under Section 2 of the National Health Service (Scotland) Act 1978 (or any successor body to any such body established with substantially the same powers or duties);
“H&S Conviction”	has the meaning given in Clause 44.1(f) ( <i>Project Co Events of Default</i> );
“HoldCo”	means Forth Health Holdings Limited (registered number 05986955);
“Holding Company”	has the meaning given to it in Section 736 of the Company Act 1985, as amended by Section 144 of the Companies Act 1989;
“Hospital”	means the new Acute Hospital for Forth Valley;
“Hospital Facilities”	has the meaning given to it in Part 18 of the Schedule ( <i>Payment Mechanism</i> );
“Hospital Manager”	means Project Co’s duty manager who shall be present at the Facilities in accordance with the Service Level Specifications;
“ICT Schedule”	means the document set out at Part 36 of the Schedule ( <i>ICT Schedule</i> );
“Indemnifier”	has the meaning given in Clause 8.3 ( <i>Conduct of Claims</i> );
“Indemnity Period”	means the period commencing from the time direct physical damage by an insured occurs and ending when the claimant ceases to be affected in consequence of the damage, as stated in Part 21 of the Schedule ( <i>Insurance Requirements</i> );
“Independent Tester”	means Currie & Brown UK Limited (registered number 1300409) or such substitute independent tester as may be permitted pursuant to this Agreement;
“Independent Tester Contract”	means the independent tester contract entered into on or around the date of this Agreement between Project Co, the Board and the Independent Tester;
“Indirect Losses”	has the meaning given in Clause 9 ( <i>Limits on Liability</i> );

“Information”	has the meaning given under Section 73 of the Freedom of Information (Scotland) Act 2002;
“Initial Funding Agreements”	means the Funding Agreements entered into on or prior to Financial Close, as set out in Section 1 of Part 37 of the Schedule ( <i>Funding Agreements</i> );
“Initial Approach”	means the draft Deed of Servitude, covering letter, design, specification and drawings agreed between the Board and Project Co or determined in accordance with Clause 16.3.2 ( <i>Deed of Servitude</i> ) and forwarded to the Landowner in accordance with Clause 16.3.3 ( <i>Deed of Servitude</i> );
“Initial Period”	has the meaning given to it in the Payment Mechanism;
“Insurance Proceeds Account”	means the account numbered [REDACTED] <sup>1</sup> with sort code [REDACTED] <sup>2</sup> in the joint names of Project Co and the Board with the Account Bank (as defined in the Insurance Proceeds Account Agreement);
“Insurance Proceeds Accounts Agreement”	means the insurance proceeds account agreement entered into on or around the date of this Agreement between the Board, Project Co, The Governor and Company of the Bank of Scotland and the Security Trustee;
“Insurance Term”	means any terms and/or conditions required to be included in a policy of insurance by Clause 36 ( <i>Insurance</i> ) and/or Part 21 of the Schedule ( <i>Insurance Requirements</i> ) but excluding any risk;
“Insurances”	means, as the context requires, all or any of the insurances required to be maintained by Project Co pursuant to this Agreement;
“Intellectual Property”	means all registered or unregistered trade marks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered designs, the sui generis rights of extraction relating to databases, trade secrets and other confidential information or know-

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<sup>1</sup> Redacted Section 33(1)b of FOI(S)A 2002

<sup>2</sup> Redacted Section 33(1)b of FOI(S)A 2002

how;

- “Intellectual Property Rights” means the Intellectual Property which (or the subject matter of which) is created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for the use by or on behalf of or for the benefit of Project Co) for the purposes of the design or construction of the Facilities, the operation, maintenance, improvement and/or testing of the Facilities or the conduct of any other Project Operation or otherwise for the purposes of this Agreement;
- “IRR” has the meaning given in Part 22 of the Schedule (*Variation Procedure*);
- “IT” means information technology systems, hardware and software;
- “Joint Operating Protocol” has the meaning given to it in Section 1 of Part 33 of the Schedule (*Joint Operating Protocol*);
- “Junior Debt” has the meaning given in Section F of Part 23 of the Schedule (*Compensation on Termination*);
- “Landowner” means the heritable proprietor or heritable proprietors of the land through which the Carron Drainage Scheme is to be implemented;
- “Law” means:
- (a) any applicable statute or proclamation or any delegated or subordinate legislation;
  - (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
  - (c) any applicable guidance, direction or determination with which the Board and/or Project Co is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to Project Co by the Board; and

(d) any applicable judgement of a relevant court of law which is a binding precedent in Scotland,

in each case in force in Scotland;

“Liaison Committee” means the committee referred to in Clause 12 (*Liaison*);

“Liaison Procedure” means the procedure referred to in Clause 12 (*Liaison*);

“LIBOR” means the rate per annum determined by the Governor and Company of the Bank of Scotland to be the offered rate for six month sterling deposits in the London interbank market which appears on Telerate Page 3750 (or such other page as may replace that page on the Dow Jones Telerate service);

“Licence” means the licence granted by the Board on behalf of the Scottish Ministers pursuant to Clauses 14.1 (*Access during Construction*) and 14.2 (*Access following Construction*), in the Agreed Form;

“Liquid Market” means that there are sufficient willing parties (being at least two parties, each of whom is capable of being a Suitable Substitute Contractor) in the market for PFI contracts or similar contracts for the provision of services (in each case the same as or similar to this Agreement) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Senior Funders specifically for the purposes of the Project and to which this Agreement may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;

“Maintenance Works” means any works for maintenance or repair of the Facilities comprised within a Phase that are necessary to ensure that the Facilities are maintained in accordance with the Service Level Specifications and Method Statements for the Estate Service and the Grounds and Gardens Maintenance Service (each as defined in Sub-Section B of Section 1 of Part 14 of the Schedule (*Service Requirements*)) and that the

Facilities comply with the Board's Construction Requirements and Project Co's Proposals (including, without limitation, the renewal or replacement of any Plant or Project Co Equipment), from the relevant Phase Actual Completion Date until the end of the Operational Term;

"Market Tested Services"	has the meaning given in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> );
"Market Testing"	has the meaning given in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> );
"Market Testing Date"	has the meaning given in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> );
"Market Testing Meeting"	has the meaning given in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> );
"Market Testing Proposal"	has the meaning given in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> );
"Medical Contamination"	means a disease carrying agent which cleaning and prevention of infection or contamination techniques in use in accordance with Good Industry Practice and this Agreement cannot substantially prevent or cannot substantially remove with the result that:  (a) it is unsafe to admit patients or staff to the relevant area or to use the area for the purpose for which it is intended; and  (b) the area cannot be made safe for the admission of patients or staff;
"Methodology"	has the meaning given in Section A of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
"Method Statements"	means the method of providing a Service as set out or identified in Section 2 of Part 14 of the Schedule ( <i>Service Requirements</i> ) as amended from time to time in accordance with Clause 40 ( <i>Variation Procedure</i> ) and Clause 27 ( <i>The Services</i> );
"Monthly Service Payment"	has the meaning given in Part 18 of the Schedule ( <i>Payment Mechanism</i> );



“Monthly Service Payment Statement”	means the service payment statement to be submitted by Project Co in accordance with the requirements of the Performance Monitoring Programme;
“National Health Service Board” or “NHS Board”	means a body established pursuant to Section 12A of the National Health Service (Scotland) Act 1978;
“NCC”	means the National Computing Centre Limited (or any body that may supersede or replace it from time to time);
“NHS”	means the National Health Service;
“NHS Pension Scheme”	means the National Health Service Pension Scheme for Scotland, the rules of which are set out in the National Health Service Superannuation Scheme (Scotland) Regulations 1995 as amended or substituted from time to time;
“NHS Requirement”	means: <ul style="list-style-type: none"> <li style="margin-bottom: 10px;">(a) in relation to the Works, Health Building Notes and Health Technical Memoranda and such other requirements as are designated as NHS Requirements in the Board’s Construction Requirements which are not specifically excluded by virtue of Appendix A to the Board’s Construction Requirements; and</li> <li style="margin-bottom: 10px;">(b) in relation to the Project Operations (other than the Works), Health Building Notes, Health Technical Memoranda, all Executive Letters, Health Service Guidelines, Health Circulars of the NHS and any similar official requests, requirements and guidance having similar status for the time being in force, but: <ul style="list-style-type: none"> <li style="margin-bottom: 10px;">(i) only to the extent the same are published and publicly available or the existence and contents of them have been notified to Project Co by the Board; and</li> <li style="margin-bottom: 10px;">(ii) in the case of the Transition</li> </ul> </li> </ul>

Services, only those specifically referred to in Sub-Section D of Section 1 of Part 14 of the Schedule (*Service Requirements*);

“NHS Specific Change in Law”	means:  (a) any Change in Law which principally affects or principally relates only to the provision or operation of healthcare premises and any change in a NHS Requirement (other than any NHS Requirement which merely gives effect to Law generally and does not principally affect or principally relate to the provision or operation of the Hospital or healthcare premises); or  (b) an Emissions Specific Change in Law;
“Operational Term”	means the period from the Phase 1 Actual Completion Date until the end of the Project Term;
“Option Period”	has the meaning given in Clause 36.14(c) ( <i>Uninsurable risks</i> );
“Original Senior Commitment”	means the amount committed under the Senior Funders Agreements as at Financial Close (as adjusted to take into account any Qualifying Variation);
“Outline Commissioning Programme”	means the programme setting out the standards, specifications, procedures and other requirements for the carrying out and completion of the commissioning activities of the parties for each Phase of the Works set out in outline in Part 12 of the Schedule ( <i>Outline Commissioning Programme</i> );
“Patient Rights and Responsibilities”	means the document entitled “The NHS and You” issued by the Scottish Executive Health Department in June 2005;
“Patient Service Period”	has the meaning given in Sub-Section B of Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
“Payment Commencement Date”	means Payment Commencement Date 1, Payment Commencement Date 2 or Payment Commencement

Date 3, as appropriate;

“Payment Commencement Date 1” means the later of the original Phase 1 Completion Date (or such earlier date as may be agreed pursuant to Clause 19.5 (*Notification of early completion*) or otherwise by the parties in their absolute discretion) and the Phase 1 Actual Completion Date;

“Payment Commencement Date 2” means the later of the original Phase 2 Completion Date (or such earlier date as may be agreed pursuant to Clause 19.5 (*Notification of early completion*) or otherwise by the parties in their absolute discretion) and the Phase 2 Actual Completion Date;

“Payment Commencement Date 3” means the later of the original Phase 3 Completion Date (or such earlier date as may be agreed pursuant to Clause 19.5 (*Notification of early completion*) or otherwise by the parties in their absolute discretion) and the Phase 3 Actual Completion Date;

“Payment Date” has the meaning given in Clause 35.2(a) (*Invoicing and payment arrangements*);

“Payment Mechanism” means the payment mechanism set out in Part 18 of the Schedule (*Payment Mechanism*);

“Pensionable Board Employee” means a Transferring Board Employee who is a member of or is entitled to be a member of the NHS Pension Scheme on or immediately prior to the Relevant Service Transfer Date;

“Pension-related Redundancy Payments” means, where a Pensionable Board Employee is dismissed from employment by reason of redundancy, all employer contributions and additional payments payable in respect of such Pensionable Board Employee’s dismissal by reason of redundancy to the NHS Pension Scheme pursuant to the NHS Superannuation Scheme (Scotland) Regulations 1995 and all compensation payable pursuant to the NHS (Compensation for Premature Retirement) (Scotland) Regulations 2003 (as these Regulations may be amended from time to time), and/or (as the case may be), and to the extent that they are due, payments payable to Pensionable Board Employees pursuant to the arrangements contemplated by Clause 31.8

*(Pension Matters)* of this Agreement;

“Performance Failure” has the meaning given in Section A of Part 18 of the Schedule (*Payment Mechanism*);

“Performance Guarantees” means the performance guarantees to Project Co in respect of the Construction Contract and the Service Contract dated on or around the Effective Date, in the Agreed Form;

“Performance Monitoring Programme” has the meaning given in Sub-Section B of Section 1 of Part 14 of the Schedule (*Service Requirements*);

“Permitted Borrowing” means without double counting, any:

(a) advance to Project Co under the Senior Funders Agreements;

(b) Additional Permitted Borrowing; and

(c) interest and, in respect of the original Senior Funders Agreements only (as entered into on or around the Effective Date prior to any subsequent amendment), other amounts accrued or payable under the terms of such original Senior Funders Agreements,

except where the amount referred to in paragraphs (a) to (c) above is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing;

“Permitted Project Co Operations” means the operation of a newsagents/convenience store in the Retail Unit, provided that the sale of the following shall not be Permitted Project Co Operations:

(a) alcohol;

(b) aromatherapy, homeopathy or similar products;

(c) candles and charcoal;

(d) cosmetic products which have been tested on animals;

- (e) financial products and services;
- (f) firearms or weapons of whatsoever nature (which shall include razorblades, scissors, knives, pins and needles);
- (g) fruit drinks for babies;
- (h) healthcare products (other than first aid, foot care, holiday health and incontinence products);
- (i) optician services and glasses;
- (j) pets and livestock;
- (k) pharmaceutical products (by way of prescriptions or over the counter products);
- (l) pornographic products; and
- (m) tobacco products, matches and smokers' requisites;

"PFI" has the meaning given in Recital (E);

"Phase" means, as the context may require, Phase 1 and/or Phase 2 and/or Phase 3 as described in Section B of Part 9 of the Schedule (*The Programme*) and "Phases" shall be construed accordingly

"Phase 1" means Phase 1 as described in Section B of Part 9 of the Schedule (*The Programme*);

"Phase 1 Board Access Works" means the roundabout construction works (comprising a new roundabout access off Stirling Road, a link road, an internal second roundabout at the Site and associated infrastructure works) progressed to a level of completion which will provide the availability of an unimpeded traffic access to the Works Site, defined as:

- (a) the completion of the formation of all earthworks, capping and sub-base layers;
- (b) operational drainage; and

	(c) road surfacing to the base course,  as specified in the "Works Information" section of the Board Access Works Contract;
"Phase 2"	means Phase 2 as described in Section B of Part 9 of the Schedule ( <i>The Programme</i> );
"Phase 2 Board Access Works"	means those works specified as Phase 1, Phase 2 and Phase 3 in the "Works Information" section of the Board Access Works Contract;
"Phase 3"	means Phase 3 as described in Section B of Part 9 of the Schedule ( <i>The Programme</i> );
"Phase Actual Completion Date"	means, as the context may require, the Phase 1 Actual Completion Date and/or the Phase 2 Actual Completion Date and/or the Phase 3 Actual Completion Date;
"Phase Completion Date"	means, as the context may require, the Phase 1 Completion Date and/or the Phase 2 Completion Date and/or the Phase 3 Completion Date;
"Phase 1 Actual Completion Date"	means the date on which Phase 1 has been completed in accordance with this Agreement, as such date shall be stated in the Certificate of Practical Completion for Phase 1, or, in the event of dispute, as such date may be determined in accordance with Part 26 of the Schedule ( <i>Dispute Resolution Procedure</i> );
"Phase 1 Completion Date"	means (subject to Clause 41 ( <i>Delay Events</i> )) the date described as such in the Section B of Part 9 of the Schedule ( <i>The Programme</i> );
"Phase 2 Actual Completion Date"	means the date on which Phase 2 has been completed in accordance with this Agreement, as such date shall be stated in the Certificate of Practical Completion for Phase 2, or, in the event of dispute, as such date may be determined in accordance with Part 26 of the Schedule ( <i>Dispute Resolution Procedure</i> );
"Phase 2 Completion Date"	means (subject to Clause 41 ( <i>Delay Events</i> )) the date described as such in Section B of Part 9 of the Schedule ( <i>The Programme</i> );

“Phase 3 Actual Completion Date”	means the date on which Phase 3 has been completed in accordance with this Agreement, as such date shall be stated in the Certificate of Practical Completion for Phase 3, or, in the event of dispute, as such date may be determined in accordance with Part 26 of the Schedule ( <i>Dispute Resolution Procedure</i> );
“Phase 3 Completion Date”	means (subject to Clause 41 ( <i>Delay Events</i> )) the date described as such in Section B of Part 9 of the Schedule ( <i>The Programme</i> );
“Phasing Plans”	the plans attached to this Agreement at Attachment F;
“Physical Damage Policies”	means the insurances referred to in paragraph 1 of Section 1, paragraph 1 of Section 1a and paragraph 1 of Section 2 and of Part 21 of the Schedule ( <i>Insurance Requirements</i> );
“Planning Approval”	means detailed planning consent for the Project dated 9 March 2007 and annexed as Attachment C;
“Planning Challenge”	<p>means, in respect of the Planning Approval, any of the following occurring within three months of the date of that Planning Approval:</p> <ul style="list-style-type: none"> <li>(a) any application for judicial review under Chapter 58 of the Rules of the Court of Session (or any statutory challenge or appeal which proceeds on principles similar to judicial review); or</li> <li>(b) any statutory challenge under section 239 of the Town and Country Planning (Scotland) Act 1997,</li> </ul> <p>in each case other than by Project Co or any Project Co Party;</p>
“Planning Challenge Dismissal”	<p>means, in relation to a Planning Challenge:</p> <ul style="list-style-type: none"> <li>(a) a decision by a Relevant Authority pursuant to which the Planning Challenge is dismissed or otherwise rejected and in respect of which any rights of appeal have expired, been</li> </ul>

rejected or otherwise lost; or

(b) the withdrawal of that Planning Challenge;

“Planning Permission”	means any planning permission, approval of reserved matters, listed building consent, conservation areas consent and/or other consent or approval reasonably required from time to time for construction and/or operation of the Facilities (including without limitation for any Board Additional Works Item or Works Changes and the Planning Approval);
“Plant”	means the plant and equipment to be provided and/or maintained by Project Co pursuant to this Agreement;
“Post Completion Commissioning”	means, as appropriate, Project Co’s Post Completion Commissioning and/or the Board’s Post Completion Commissioning;
“Preferred Tenderer”	has the meaning given in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> );
“Primary Care Board”	means a Primary Care Board established under Section 16A(1) of the National Health Service Act 1977;
“Principal Shareholder”	means John Laing Social Infrastructure Limited (registered number 03576132);
“Procurement Legislation”	means the Public Contracts (Scotland) Regulations 2006 SI 2006/5 and any other legislation or rules which may from time to time regulate the procurement activities of the Board;
“Programme”	means the programme set out in Section A of Part 9 of the Schedule ( <i>The Programme</i> ) as revised and issued by Project Co (or on its behalf) from time to time pursuant to Clause 19 ( <i>Programme and Dates for Completion</i> );
“Programmed Maintenance”	means the maintenance work which Project Co is to carry out in accordance with the Schedule of Programmed Maintenance;
“Programmed Maintenance Information”	has the meaning given in Clause 28.3 ( <i>Maintenance</i> );



“Prohibited Act”	has the meaning given in Clause 54 ( <i>Corrupt Gifts</i> );
“Project”	has the meaning given in Recital (B);
“Project Co Conditions Precedent”	means the documents referred to in Section 1 of Part 2 of the Schedule ( <i>Completion Documents</i> );
“Project Co Equipment”	means the Equipment, to the extent that Project Co is responsible for maintaining and/or replacing such Equipment pursuant to the Equipment Responsibilities Matrix;
“Project Co Event of Default”	has the meaning given in Clause 44 ( <i>Project Co Events of Default</i> );
“Project Co Party”	means Project Co’s agents and contractors (including without limitation the Contractor and the Service Providers) and sub-licensees and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and any Permitted Project Co Operations, and “Project Co Parties” shall be construed accordingly;
“Project Co’s Actuary”	means such actuary as Project Co may appoint for the purposes of this Agreement;
“Project Co’s Post-Completion Commissioning”	means Project Co’s commissioning activities carried out for each Phase in accordance with Clause 23.1 ( <i>Post Completion Commissioning</i> );
“Project Co’s Pre-Completion Commissioning”	means Project Co’s commissioning activities to be carried out for each Phase in accordance with Clause 22 ( <i>Pre Completion Commissioning and Completion</i> );
“Project Co’s Proposals”	means the document at Section 4 of Part 8 of the Schedule ( <i>Construction Matters</i> ) as amended from time to time in accordance with Clause 40 ( <i>Variation Procedure</i> );
“Project Co’s Representative”	means the person appointed by Project Co pursuant to Clause 11 ( <i>Representatives</i> );
“Project Data”	means: <ul style="list-style-type: none"> <li>(a) all Design Data;</li> <li>(b) all drawings, reports, documents, plans,</li> </ul>

software, formulae, calculations and other data relating to the provision of the Services;  
and

- (c) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Operations or this Agreement;

“Project Documents” means the Ancillary Documents and the Funding Agreements;

“Project Operations” means the carrying out of the Works, the carrying out of Project Co’s Pre-Completion Commissioning and Project Co’s Post-Completion Commissioning, the maintenance of the Facilities (including the renewal or replacement of Plant), the management and provision of the Services and the performance of all other obligations of Project Co under this Agreement from time to time;

“Project Term” means the period commencing at midnight on the Effective Date and expiring at 23:59 on 31 March 2042, or on such other date as may be determined in accordance with this Agreement;

“Proposal” means:

- (a) in the case of a bill, the bill being introduced by the Government or receiving the support of the Government at its second reading in the first House of Parliament into which it is introduced or the bill passing a second reading in the first House of Parliament into which it is introduced; or
- (b) in the case of subordinate legislation, the proposed statutory instrument or order being laid before Parliament in draft; or
- (c) in the case of a directive, regulation or decision of the European Union, its adoption; or
- (d) in the case of an administrative act as referred to in the definition of Adverse Law,

any of the following prior or preparatory to the making of such an act:

- (i) the taking by the Board, the Government, a minister of the Crown, or a department, agency, regulator or other public body or official of any step in a process defined by Law for the making of such administrative acts, other than any early stages of such process (such as, without limitation, consultation or information gathering) following the completion of which further substantive steps remain in such process before the making of such an administrative act can occur; or
- (ii) any communication from the Government, a minister of the Crown, or the department, agency, regulator or other public body or official responsible for making such administrative acts, to the effect that such an administrative act will be made;

“Prospective Tenderers”	has the meaning given in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> );
“Protective Legislation”	means each of the National Health Service (Residual Liabilities) Act 1996 and the National Health Service (Private Finance) Act 1997;
“Qualifying Variation”	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> );
“Quality Manager”	means the quality manager appointed pursuant to Clause 25 ( <i>Quality Assurance</i> );
“Quality Plans”	means the Design Quality Plan and Construction Quality Plan, prepared in accordance with Section 9 of Part 8 of the Schedule ( <i>Construction Matters</i> ), and the Services Quality Plan, prepared in accordance with Section 3 of Part 14 of the Schedule ( <i>Service</i>

*Requirements*), as required to be implemented by Project Co in accordance with Clause 25 (*Quality Assurance*);

- “Range of Finishes” has the meaning given in paragraph 1.2.3(c)(i) of Part 10 of the Schedule (*Review Procedure*);
- “Recognition Agreement” means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers’ associations relating to recognition of a trade union or unions by an employer to any extent for the purpose of collective bargaining (as defined by Section 178(2) of the Trade Union and Labour Regulations (Consolidation) Act 1992);
- “Rectification” has the meaning given in Part 18 of the Schedule (*Payment Mechanism*);
- “Redundancy Costs” means those payments which are payable to the relevant Displaced Employee under such Displaced Employee’s terms and conditions of employment together with any Pension-related Redundancy Payments payable in the event that such Displaced Employee is dismissed by reason of redundancy (as that term is defined in section 139 of the Employment Rights Act 1996);
- “Reinstatement Plan” has the meaning given in Clause 36.22(c)(i) (*Reinstatement*);
- “Reinstatement Works” shall have the meaning given in Clause 36.22(c)(i) (*Reinstatement*);
- “Refinancing” has the meaning given in Part 29 of the Schedule (*Refinancing*);
- “Relevant Authority” means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;
- “Relevant Change in Law” has the meaning given in Clause 39 (*Change in Law*);
- “Relevant Incident” has the meaning given in Clause 36.22(c)

	<i>(Reinstatement)</i> ;
“Relevant Payment”	has the meaning given in Clause 36.14(c) <i>(Uninsurable risks)</i> ;
“Relevant Proceeds”	has the meaning given in Clause 36.22(c)(ii)(cc) <i>(Reinstatement)</i> ;
“Relevant Service Transfer Date”	has the meaning given in Clause 30.1 <i>(Employee Transfer)</i> ;
“Relevant Tax Liability”	has the meaning given in Clause 48.7(c) <i>(Compensation on Termination)</i> ;
“Relevant Works Change in Law”	has the meaning given in Clause 39.6 <i>(Change in the Law)</i> ;
“Relief”	has the meaning given in Clause 48.7(a) <i>(Compensation on Termination)</i> ;
“Relief Events”	has the meaning given to it in Clause 42 <i>(Relief Events)</i> ;
“Request for Information”	has the meaning set out in the FOI(S)A or the Environmental Information Scotland Regulations as relevant (where the meaning set out for the term “request” shall apply);
“Restricted Period”	has the meaning given in Clause 50.8 <i>(Changes in Control)</i> ;
“Restricted Person”	means either: <ul style="list-style-type: none"> <li>(a) a person providing or proposing to provide healthcare services of a similar nature to those provided or contemplated by the Board at the time in question; or</li> <li>(b) any person who has a material interest in the production of tobacco products and/or alcoholic beverages; or</li> <li>(c) any person who has a material interest in the development, production or sale of pharmaceutical products or preparations;</li> </ul>

“Retail Unit”	means the area within the Hospital shown shaded blue and outlined in red on the plans attached to this Agreement at Attachment I;
“Revenue”	means the projected Unavoidable Fixed Costs and Senior Debt Service Costs of Project Co;
“Review Procedure”	means the procedure set out in Part 10 of the Schedule ( <i>Review Procedure</i> );
“Reviewable Design Data”	means the Design Data listed at Section 5 of Part 8 of the Schedule ( <i>Construction Matters</i> );
“Room Data Sheets”	has the meaning given in Section 1A of Part 22 of the Schedule ( <i>Variation Procedure</i> );
“RPI”	means the Retail Prices Index (All Items) as published by the Office for National Statistics from time to time (“the Index”) or, failing such publication or in the event of a fundamental change to the Index, such other index as the parties may agree, or such adjustments to the Index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been in had the Index not ceased to be published or the relevant fundamental change not made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;
“Schedule of Accommodation”	means the schedule of accommodation set out in the Agreed Form document labelled “Schedule of Accommodation”;
“Schedule of Programmed Maintenance”	means the programme referred to in Clause 28.1 ( <i>Programmed Maintenance Works</i> ) to be submitted to the Board’s Representative by Project Co in accordance with Part 10 of the Schedule ( <i>Review Procedure</i> );
“Security Trustee”	means the person appointed as security trustee for the Senior Funders under the Senior Funders Agreements and authorised to act on behalf of the Senior Funders;

“Selection Period”	has the meaning given in paragraph 1.2(c)(i) of Part 10 of the Schedule ( <i>Review Procedure</i> );
“Senior Debt”	has the meaning given to it in Section F of Part 23 of the Schedule ( <i>Compensation on Termination</i> );
“Senior Debt Amount”	has the meaning given in Section F of Part 23 of the Schedule ( <i>Compensation on Termination</i> );
“Senior Debt Service Costs”	means interest and debt service costs incurred in respect of the Senior Funders Agreements, less: <ul style="list-style-type: none"> <li>(a) sums which are in arrears; and</li> <li>(b) all sums reserved by Project Co and which Project Co is entitled to use to make such payments, without breaching the Senior Funders Agreements;</li> </ul>
“Senior Funders”	means any person providing finance to Project Co under the Senior Funders Agreements;
“Senior Funders Agreements”	has the meaning given in Section F of Part 23 of the Schedule ( <i>Compensation on Termination</i> );
“Serco Initial Bulk Transfer Terms”	means the terms on which the Service Provider’s Actuary will calculate the amount of funds required by the trustees of The Serco Pension Scheme from the NHS Pension Scheme at the initial transfer described in Clause 31.6 ( <i>Pension Matters</i> ) in order to provide past service benefits under the Serco Pension Scheme which are regarded by the Board and Board’s Actuary as being of broadly comparable value to the benefits being given up by Pensionable Board Employees who elect to take a transfer of their past service benefits in the NHS Pension Scheme to the Serco Pension Scheme being the terms set out in the “Note by the Trustees of the Serco Pension & Life Assurance Scheme on the Basis for the Transfer of Accrued Pension Rights into that Scheme ” dated 9 May 2006 as referred to in Section B of Part 31 of the Schedule ( <i>Bulk Transfer Assumptions</i> );
“Serco Pension Scheme”	means the Serco Pension and Life Assurance Scheme governed by a Definitive Trust Deed and General Rules dated 20 May 2004 (as amended from time to

	time);
“Service Contract”	means the contract dated on or around the Effective Date between Project Co and the Service Provider, by which Project Co will procure the performance of the Services (as amended or replaced from time to time in accordance with this Agreement);
“Service Failure Points”	has the meaning given to it in Section A of Part 18 of the Schedule ( <i>Payment Mechanism</i> );
“Service Level Specifications”	means the requirements of the Board set out in Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> ) as amended from time to time in accordance with Clause 40 ( <i>Variation Procedure</i> );
“Service Provider”	means Serco Limited, registered number 00242246, whose registered office is at Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire, RG27 9UY or any other person engaged by Project Co from time to time as may be permitted by this Agreement to procure the provision of the Services (or any of them);
“Service Provider’s Actuary”	means Christopher Sheppard of Mercer Human Resource Consulting or such other actuary as the Service Provider may appoint for the purposes of this Agreement;
“Service Provider’s Collateral Agreement”	means the collateral agreement between the Board, Project Co and the Service Provider in the Agreed Form;
“Service Variation”	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> );
“Services”	means the services to be provided, managed and/or procured by Project Co for the Board in accordance with Part 14 of the Schedule ( <i>Service Requirements</i> ) as subsequently amended or adjusted in accordance with this Agreement;
“Services Quality Plan”	means the document set out in Section 3 of Part 14 of the Schedule ( <i>Service Requirements</i> );



“Shareholder(s)”	means a party listed as such in Part 27 of the Schedule ( <i>Project Co Information</i> ) as changed from time to time in accordance with this Agreement;
“Shareholders Agreements”	means the agreement or agreements between the Shareholders relating to Project Co, including any agreement relating to the subscription of equity (or other shareholder funding) by the Shareholders in Project Co or HoldCo;
“Site”	means the land made available to Project Co for the Project and outlined in red on the plan attached to this Agreement at Attachment D;
“Site Conditions”	means the condition of the Site including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions;
“Small Works”	has the meaning given in Section 1A of Part 22 of the Schedule ( <i>Variation Procedure</i> );
“Snagging Matters”	means minor items of outstanding work (including in relation to landscaping) which would not materially impair the Board’s use and enjoyment of the Facilities or the carrying out by the Board of the Clinical Services or the performance of the Services by Project Co;
“Snagging Notice”	means the notice to be issued by the Independent Tester in accordance with Clause 22.13 ( <i>Completion Certificate</i> );
“SPPA”	means the Scottish Public Pensions Agency acting in its capacity as administrator of the NHS Pension Scheme in Scotland;
“Staff”	has the meaning given in Sub-Section B of Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
“Sub-Contracts”	means the contracts entered into by or between Project Co, the Contractor and/or a Service Provider and other third parties in relation to any aspect of the Project Operations;

“Sub-Contractors”	means any third party (including the Contractor and a Services Provider) who enters into any Sub-Contract;
“Submitted Item”	has the meaning given to it in paragraph 1.2 of Part 10 of the Schedule ( <i>Review Procedure</i> );
“Subsidiary”	has the meaning given to it in Section 736 of the Companies Act 1985, as amended by Section 144 of the Companies Act 1989;
“Tenderers”	has the meaning given in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> );
“Tender Requirements”	has the meaning given in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> );
“Tender Validity Period”	has the meaning given in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> );
“Termination Date”	means the date on which termination of this Agreement takes effect in accordance with its terms;
“Third Party Shareholder”	means Forth Valley Investment Company Limited (registered number 95957), whose registered office is at 26 New Street, St Helier, Jersey, Channel Islands, JE4 8PP;
“Topographical Survey”	means the topographical survey included in the Agreed Form document with that title;
“TPL Risk”	means a risk which is required to be insured under the third party liability insurance policies referred to in Part 21 of the Schedule ( <i>Insurance Requirements</i> );
“Transferee Scheme”	means a pension scheme of which a Pensionable Board Employee becomes a member following the transfer of his or her employment pursuant to this Agreement on a Relevant Service Transfer Date or at any other time during the course of, or on the expiry or earlier termination of this Agreement where such transfer of employment takes place in connection with and as a consequence of the transfer of responsibility for provision of services to a new Service Provider or to the Board;
“Transferor Scheme”	means a pension scheme of which a Pensionable

Board Employee was a member prior to the transfer of his or her employment pursuant to this Agreement on a Relevant Service Transfer Date or at any other time during the course of, or on the expiry or earlier termination of this Agreement where such transfer of employment takes place in connection with and as a consequence of the transfer of responsibility of services to a new Service Provider or to the Board;

- “Transfer Regulations” means the Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI No. 2006/246) or any subsequent modification or re-enactment of such regulations from time to time;
- “Transferring Board Employee” means any Board Employee who transfers under an Employee Transfer in accordance with this Agreement;
- “Transferring Employee” means any Transferring Board Employee or Transferring Private Sector Employee;
- “Transferring Private Sector Employee” means in relation to a service equivalent to a Service, any person employed by any sub-contractor engaged by the Board who is wholly or mainly engaged in the provision of that service as at the Relevant Service Transfer Date and who will become an employee of Project Co or a Service Provider on the Relevant Service Transfer Date in accordance with the provisions of Clause 30 (*TUPE and Employment Matters*);
- “Transferring Scheme” means a pension scheme of which a Pensionable Board Employee becomes a member following the transfer of his or her employment pursuant to this Agreement on a Relevant Service Transfer Date or at any other time during the course of, or on the expiry or earlier termination of this Agreement, where such transfer of employment takes place in connection with and as a consequence of responsibility for provision of services to a new Service Provider or to the Board;
- “Transfer Value” means the sum of money payable by the Transferor Scheme to the Transferee Scheme in connection with a Bulk Transfer in consideration of which the Transferee Scheme agrees to assume the liability to

	provide pensions benefits to the Pensionable Board Employee in place of the Transferor Scheme;
“Transition Period”	has the meaning given to it in Sub-Section B of Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
“Transition Services”	means the services to be provided during the Transition Period in accordance with the Transition Service Specification;
“Transition Service Specification”	has the meaning given to it in Sub-Section B of Section 1 of Part 14 of the Schedule ( <i>Service Requirements</i> );
“Transitional Arrangements Schedule”	means the document set out at Part 38 of the Schedule ( <i>Transitional Arrangements</i> );
“TUPE Information”	has the meaning given in Part 17 of the Schedule ( <i>Benchmarking and Market Testing Procedure</i> );
“Unavailability Event”	has the meaning given in Section A of Part 18 of the Schedule ( <i>Payment Mechanism</i> )
“Unavoidable Fixed Costs”	means the fixed costs incurred by Project Co which first fall due for payment by Project Co during the period of indemnity but excluding: <ul style="list-style-type: none"> <li>(a) costs which could have reasonably been mitigated or avoided by Project Co;</li> <li>(b) payments to Project Co’s Associated Companies;</li> <li>(c) payments which are not entirely at arm’s length;</li> <li>(d) payments to holders of equity or subordinated debt in Project Co or HoldCo and any other financing costs other than Senior Debt Service Costs;</li> <li>(e) indirect losses suffered or allegedly suffered by any person;</li> <li>(f) fines, penalties or damages for unlawful acts, breaches of contract or other legal</li> </ul>

obligations;

- (g) payments Project Co can recover under contract or in respect of which Project Co has a remedy against another person in respect of the same liability;
- (h) payments to the extent that Project Co has available to it including:
  - (i) reserves which Project Co can draw upon without breaching the Senior Funders Agreements; and
  - (ii) standby or contingent facilities or funds of Senior Debt or equity which Project Co is entitled to have available; and
- (i) payments representing any profits of the Project Co (to the extent not already covered in paragraph (e) above;

“Uninsurable”

means, in relation to a risk, either that:

- (a) insurance is not available to Project Co in respect of the Project in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or
- (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by service providers in the United Kingdom;

“Unprogrammed Maintenance Work”

has the meaning given in Clause 28.8 (*Maintenance*);

“Unreasonable Act”

means any act or omission which is contrary to any reasonable instruction, guidance or rules for the operation or management of the Facilities;

“Variation”

has the meaning given in Part 22 of the Schedule (*Variation Procedure*);

“Variation Confirmation”	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> );
“Variation Enquiry”	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> );
“Variation Procedure”	means the procedure set out in Part 22 of the Schedule ( <i>Variation Procedure</i> );
“VAT”	means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;
“VAT Sum”	has the meaning given in Clause 53.5 ( <i>VAT</i> );
“Viability Statement”	means a case made by the Board and accepted in writing by NHS Forth Valley Health Board (or any other commissioner from time to time of the Board’s healthcare services) and the Scottish Executive that the Facilities (or substantially all of them) are no longer needed on the grounds of the healthcare needs of the Board’s geographical area;
“Warning Notice”	has the meaning given in Clause 29.4 ( <i>Monitoring of Performance</i> );
“Whitley Agreements”	means (1) National Health Service Maintenance Staff Pay and Conditions of Service; (2) Whitley Councils for the Health Service (Great Britain) Ancillary Staffs Council - Rates of Pay, Conditions of Service and General Information; (3) Whitley Councils for the Health Services (Great Britain) Administrative and Clerical Staff Council - Pay and Conditions of Service (subject in the case of senior managers to the Secretary of State’s Direction dated 27 January 1989); (4) Whitley Councils for the Health Services (Great Britain) General Council Conditions of Service; and (5) Whitley Councils for the Health Services (Great Britain) Professional and Technical Staffs B Council and any agreements derived from a process of national collective bargaining which shall replace any of them;
“Woodland Area”	means the area of land outlined in red on the Works Site Plan excluding the area referred to in paragraph

	(a) of the definition of "Works Site";
"Works"	means the design (including the preparation of all Design Data), construction, testing, commissioning and completion of the Facilities (including any temporary works and the Finishing Works) and the procurement, supply and installation of those items of Equipment as specified in Part 13 of the Schedule ( <i>Equipment</i> ) to be Project Co's responsibility in accordance with this Agreement (as varied, amended or supplemented from time to time in accordance with this Agreement);
"Works Drainage Scheme Area"	means the area shaded blue on the Works Site Plan;
"Works Site"	means: <ul style="list-style-type: none"> <li>(a) in respect of the Construction Phase only, the land made available for the Project outlined in blue on the Works Site Plan, but excluding: <ul style="list-style-type: none"> <li>(i) for the avoidance of doubt, the Access Areas; and</li> <li>(ii) any land disposed to SP Distribution Limited (or other utility provider) as referred to Clause 5.3(j) (<i>Board's Undertaking</i>) with effect from the date of such disposition; and</li> </ul> </li> <li>(b) in respect of any period during which Project Co is exercising the Additional Rights, any land in respect of which such rights are exercised;</li> </ul>
"Works Site Plan"	means the plan attached to this Agreement at Attachment E;
"Works Variation Capital Limit"	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> ); and
"Works Variation Delay Limit"	has the meaning given in Part 22 of the Schedule ( <i>Variation Procedure</i> ).

## **PART 1 OF THE SCHEDULE: DEFINITIONS AND INTERPRETATIONS**

### **Section 2: Interpretation**

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

1. The headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement.
2. Except where the context expressly requires otherwise, references to Clauses, Sub-clauses, paragraphs, sub-paragraphs, parts and Schedules are references to Clauses, Sub-clauses, paragraphs, sub-paragraphs and parts of and Schedules to this Agreement and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Agreement.
3. The Schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules.
4. Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.
5. Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
6. The language of this Agreement is English. All correspondence, notices, drawings, Design Data, test reports, certificates, specifications and information shall be in English. All operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Agreement shall be in English.
7. References to any agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments to agreements or documents) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned.
8. References to any Law are to be construed as references to that Law as from time to time amended or to any Law from time to time replacing, extending, consolidating or amending the same provided that the provisions of this



paragraph shall be without prejudice to the operation of Clause 39 (Changes in Law) and Part 22 of the Schedule (Variation Procedure) which shall operate in relation to a Change in Law on the basis set out in this Agreement.

9. References to a public organisation (other than the Board) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Board) shall include their successors and assignees.
10. References to a deliberate act or omission of the Board or any Board Party shall be construed having regard to the interactive nature of the activities of the Board and of Project Co and the expression shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
11. The words in this Agreement shall bear their natural meaning. The parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
12. Reference to "parties" means the parties to this Agreement and references to "a party" mean one of the parties to this Agreement.
13. In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
14. All of Project Co's obligations, duties and responsibilities shall be construed as separate obligations, duties and responsibilities owed to the Board and to be performed at Project Co's own cost and expense.
15. References to amounts or sums expressed to be "index linked" or subject to "indexation" are references to amounts or sums at 1 April 2006 ("Base Date") prices which require to be adjusted whenever the provision containing the amount or sum is given effect in accordance with this Agreement to reflect the effects of inflation after that date. The adjustment shall be measured by changes in the relevant index published for that Contract Year as calculated in accordance with the following formula:

$$\text{Amount or sum in April 2006 prices} \times \frac{RPI_d}{RPI_o}$$

Where RPI<sub>d</sub> is the value of the Retail Prices Index published or determined with respect to the month of February most recently preceding the date when the provision in question is to be given effect and RPI<sub>0</sub> is the value of the Retail Prices Index in respect of February 2006.

16. Reference to a document being in the "Agreed Form" is a reference to the form of the relevant document agreed between the parties and for the purpose of identification signed or initialled by each of them or on their behalf.
17. Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of Business Days after a stipulated date or event the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.
18. Where this Agreement states that an obligation shall be performed "no later than" or "by" a prescribed number of Business Days before a base date or "by" a date which is a prescribed number of Business Days before a base date, the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.
19. The operation of the Housing Grants, Construction and Regeneration Act 1996 (referred to in Recital (F) of the Agreement) upon any Project Document shall not affect the rights or obligations of the parties under this Agreement.
20. A "certified true copy" means, in relation to a document, a true and complete copy of that document which has been certified as such, dated and signed by:
  - (a) a duly authorised officer of; or
  - (b) a solicitor acting on behalf of,the company or other person issuing such copy.