Lothian NHS Board

NHS Lothian Headquarters
Waverley Court
4 East Market Street
Edinburgh
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www.nhslothian.scot

Date 07 August 2026
Your Ref
Our Ref 11699-11703

Enquiries to Richard Mutch
Extension 35687
Direct Line 0131 465 5687
loth.freedomofinformation@nhs.scot
richard.mutch@nhs.scot

Dear

FREEDOM OF INFORMATION – RIE PFI

I write in response to your request for information in relation to Royal Infirmary of Edinburgh PFI.

Question: 11699

- Please can I have a copy of the Commercial Compromise Joint Lifecycle Management and Supplemental Agreement (SA) agreed with Consort in relation to the end of the PFI deal at the Royal Infirmary of Edinburgh (RIE).

Answer:

Please fine the enclosed Supplemental Agreement. Where redactions are applied, original text has been removed and substituted with **[xx]** per: Section 33(1)(b) – Substantial prejudice to commercial interests. Information is exempt under section 33(1)(b) if its disclosure would, or would be likely to, prejudice substantially the commercial interests of any person. "Person" includes a public authority, company and partnership.

Question: 11700

- Please provide details of all lifecycle and remedial works which NHSL has identified as needed at the Royal Infirmary of Edinburgh (RIE) before it is returned to NHSL in 2027. To clarify, this part of my request is just for a description of all lifecycle and remedial works required, such as the fire stopping issue.

  Secondly, what is estimated cost of these lifecycle and remedial works.

Answer:

Please find enclosed the RIE Supplemental Agreement – Joint Lifecycle Management, FR Paper. Where redactions are applied, original text has been removed and substituted with **[xx]** per: Section 33(1)(b) – Substantial prejudice to commercial interests. Information is exempt under section 33(1)(b) if its disclosure would, or would be likely to, prejudice substantially the commercial interests of any person. "Person" includes a public authority, company and partnership.

It is also the case the estimates are not covered under FOI(S)A only recorded accurate information.

Question: 11701

- Please provide full details of the legal costs incurred by NHSL in relation to agreeing the Commercial Compromise Joint Lifecycle Management and Supplemental Agreement (SA) with Consort in relation to the end of the PFI deal at the Royal Infirmary of Edinburgh (RIE).

Answer:

NHS Lothian does not hold a recorded figure showing the legal costs incurred solely in negotiating and agreeing the Commercial Compromise Joint Lifecycle Management agreement and Supplemental Agreement. While it holds legal invoices relating to a range of Royal Infirmary of Edinburgh PFI matters, it does not hold a recorded breakdown identifying costs attributable exclusively to the Supplemental Agreement

As per Section 17 of the Freedom of Information (Scotland) Act 2002 formally I must advise that we do not hold the specific information to answer your request.

Question: 11702

- A copy of all recorded communications between NHSL and the Scottish Government between January 1, 2025 and the date of this request which relate to the Commercial Compromise Joint Lifecycle Management and Supplemental Agreement (SA) agreed with Consort in relation to the end of the PFI deal at the Royal Infirmary of Edinburgh (RIE).

Answer:

Please fine enclosed communications from the Scottish Government.

Question: 11703

- How much of the annual unitary charge paid to PFI provider Consort for the Royal Infirmary of Edinburgh (RIE) to date has been set aside for use for lifecycle works by December 2027? And of that figure, how much has been spent on lifecycle works?

Answer:

NHS Lothian does not hold a recorded figure of how much of annual unitary charge paid to PFI provider Consort to date has been set aside for use for Lifecycle works by December 2027; and of that figure how much spent on lifecycle works.

As per Section 17 of the Freedom of Information (Scotland) Act 2002 formally I must advise that we do not hold the specific information to answer your request.

I hope the information provided helps with your request.

If you are unhappy with our response to your request, \you do have the right to request us to review it. Your request should be made within 40 working days of receipt of this letter, and we will

NHS Lothian

reply within 20 working days of receipt. If our decision is unchanged following a review and you remain dissatisfied with this, you then have the right to make a formal complaint to the Scottish Information Commissioner within 6 months of receipt of our review response. You can do this by using the Scottish Information Commissioner's Office online appeals service at www.itspublicknowledge.info/Appeal. If you remain dissatisfied with the Commissioner's response you then have the option to appeal to the Court of Session on a point of law.

If you require a review of our decision to be carried out, please write to the FOI Reviewer at the email address at the head of this letter. The review will be undertaken by a Reviewer who was not involved in the original decision-making process.

FOI responses (subject to redaction of personal information) may appear on NHS Lothian's Freedom of Information website at: https://org.nhslothian.scot/FOI/Pages/default.aspx

Yours sincerely

ALISON MACDONALD
Executive Director, Nursing
Cc: Chief Executive
Enc.

NHS Lothian

Meeting:	Finance and Resources Committee
Meeting date:	10 June 2026
Title:	RIE Supplemental Agreement - Joint Lifecyle Management
Responsible Executive:	Craig Marriott, Director of Finance
Report Author:	Bruce Barron, PPP Programme Director

1. Purpose

This report is presented for:

Assurance	☐	Decision	☒
Discussion	☒	Awareness	☒

This report relates to:

Annual Delivery Plan	☐	Local policy	☐
Emerging issue	☒	NHS / IJB Strategy or Direction	☐
Government policy or directive	☒	Performance / service delivery	☒
Legal requirement	☐	Other [please describe]	☐

This report relates to the following LSDF Strategic Pillars and/or Parameters:

Improving Population Health	☐	Scheduled Care	☒
Children & Young People	☐	Finance (revenue or capital)	☒
Mental Health, Illness & Wellbeing	☐	Workforce (supply or wellbeing)	☒
Primary Care	☐	Digital	☐
Unscheduled Care	☒	Environmental Sustainability	☐

This aligns to the following NHSScotland quality ambition(s):

Safe	☒	Effective	☒
Person-Centred	☐		

Any member wishing additional information should contact the Responsible Executive (named above) in advance of the meeting.

2. Report Summary

2.1 Situation

2.1.1 NHS Lothian (NHSL) formally concluded the Supplemental Agreement (SA) with Consort, funders and other related parties on 7th April 2026. Under this agreement future lifecycle investment in the RIE is effectively now under the control of the Board.

2.1.2 While the SA was being developed and concluded, and in anticipation of the next steps, the Project Board had been reviewing the future investment priorities and determining which might be delivered now, which should be held until the building reverts fully to NHSL at the end of 2027, and those that will require agreement of multiple parties before concluding.

2.1.3 The purpose of this paper is to report progress on the proposed investment priorities to the Finance and Resources Committee (F&RC) for consideration.

2.2 Background

2.2.1 Following a number of updates to Board and F&RC since 2021 on a strategy to bring the RIE into NHSL control and progress reports on the implementation strategy, the SA between Consort and its related parties and NHSL was concluded in April this year.

2.2.2 The SA creates an Available Sum to the Board for future investment in the hospital. This is achieved by the following process:

2.2.1.1 Consort will continue to receive Unitary Charge payments from NHSL until 13 December 2027 (Expiry Date).

2.2.1.2 Consort in turn will continue to meet its repayment obligation to senior lenders and subordinated lenders, contractual payments to its facilities and ancillary services contractor (Equans Services Limited), contractual payments to its management services provider (IML), insurance costs, director fees and taxation until the Expiry Date.

2.2.1.3 Consort's senior funding commitments would be met in full, with the payment profile remaining in line with the current arrangements. This will result in senior funders being paid off in full in September 2027. The Residual Balance of the Available Sums will be paid to the Board once funders have been paid in full in September 2027. Consort's subordinated debt will be paid shortly thereafter, in line with the arrangements outlined below, unless there is a termination as a result of a Consort default.

2.2.1.4 The subordinated debt will be paid to Consort when they (i) pay the Residual Balance of the Available Sums; and (ii) transfer the benefits and obligations under the ongoing Agreed Asset Works subcontracts for any lifecycle and fire safety works still ongoing in September 2027 to the Board.

2.2.1.5 Consort will not pay any further dividends to shareholders from now to the end of the contract (the last distribution payment having been made on or around 16

August 2021 - due to the Board's enhanced contract monitoring). Consort will also not be permitted to enter into further debt.

2.2.1.6 It is anticipated that this will leave a maximum sum of £86.363m (less lifecycle spend since September 2023) – the Available Sums - (which will be audited regularly between now and the end of the contract) to fund Life Cycle Works, Fire Safety Works and other costs. This sum is anticipated to fall well short of the required Fire Safety Works and outstanding Life Cycle works funding required to be invested in the RIE over the coming years. This expectation was notified to Scottish Government (SG) earlier this year and their written response on 15 April 2024 was provided to the Board at the private session held on 24 April 2024. SG has been present at all stages of the process to the conclusion of the Supplemental Agreement.

2.2.1.7 In the event that the Available Sums exceed the funding required to complete the Asset Works, or if the Asset Works have not been completed as at the Expiry Date, the Board will be entitled to retain any unspent balance of the Available Sums, the "Residual Balance of the Available Sums."

2.31. **[xxxxx]**

3.1 Capital Asset Working Group (CASWG)

3.1.1 As previously reported, pre-empting the financial resource provided via the Available Sum, the Capital Asset and Systems Working Group (CASWG) was established to review proposed lifecycle works.

3.1.2 Membership consists of representation from NHSL, Consort and Equans and is accountable to a Project Board and NHSL's Executive Steering Group.

3.1.3 A lifecycle investment programme had been previously developed by Consort and has been subject to review by NHSL and would be funded via the Available Sum.

3.1.4 An initial summary of this investment programme was provided to F&RC on 22 October 2025.

3.1.5 Appendix 1 provides an update of this programme including timelines of when the projects could be undertaken. It should be noted that a number may commence prior to the Expiry Date but will continue until well after. Although the SA anticipated this and provides for the novation of contracts, consideration is being given to where there may be appropriate points to cease works with Consort and then recommence directly by NHSL post Expiry Date.

3.1.4 Given the constraints of working in a live hospital site and the timelines dictated by the Scottish Fire and Rescue Service Enforcement Notice, Appendix 1 also makes reference to works already being progressed – item 12 – ward works.

3.1.5 The first new project that permission is sought to progress is the replacement of the existing CCTV system. Much of the current system is analogue and many of the cameras have failed. Further details are contained in appendix 1 (Item 1)

3.1.6 Given the long lead time for order to delivery of standby generators for the RIE (14-17 months), permission is also sought to progress design development (up to £0.35m) of an electrical resilience project to replace the currently unreliable generators and to remove reliance on temporary leased generators with a more appropriate arrangement which will remove the potential for power shedding in certain circumstances. (appendix 1 item 16)

3.1.6 Appendix 1 does not currently take account of further fire preventative measures as required by the enforcement notice. This may include L1 fire detection, external wall system amendments and sprinkler installation. The value of these works will significantly exceed the Available Sum and extend beyond the Expiry Date.

3.2 Quality/ Patient Care

Maintaining methodical and governed processes towards Handover, through identification of lifecycle programmes (planned, critical and reactive) with appropriate management and spend of the available sum will positively contribute to quality and safe patient care.

3.3 Workforce

A NHSL RIE Transition Team are resourced to support smooth transition and negotiate outstanding matters prior to 2027 Handback. A Business Case is in this respect is to be provided to the Finance and Resource Committee meeting of 10 June 2026.

3.4 Financial

3.4.1 The current calls on the Available Sum is detailed in Appendix 2 and summarised below.

3.4.2 Available Sum Extract – Table 1

Available Sum		£86.363m	
Spend to date	Incurred	£23.433m	
	Committed	£11.734m	
	Forecast	£48.580	
	Retention	£12.323m	Held by NHSL
	Deficit	-£9.708m	

3.4.3 Considering all expenditure to date, and items currently identified to be addressed, a deficit of £9.708m is predicted (not including a retention of £12.323m accumulated from previous deductions to Unitary Charge payments to Consort and held by NHSL). The deficit does also not include further fire works or unanticipated future lifecycle works due to system failures.

3.5 Risk Assessment / Management

Members are advised that risks associated with fire at the RIE are recorded in the Board's Corporate Risk Register, rectification and adherence to SFRS Enforcement Notices will impact on available sums. This report links to RIE Facilities Risk # 5189 on NHSL's Risk Register.

3.6 Equality and Diversity, including health inequalities Not applicable

3.7 Other impacts None.

3.8 Communication, involvement, engagement and consultation

3.8.1 The Board continues to carry out its duty to appropriately engage with internal and external stakeholders as projects are developed. Where staff may be affected, appropriate engagement will be followed in line with NHSL policy and procedure.

3.8.2 Assurance is also offered that the RIE Executive Steering Group meet weekly and/or fortnightly reviewing relevant PFI and commercial aspects of the campus, with appropriate governance arrangements to report to NHSL Board and NHSL RIE Project Board.

3.8.3 Members are mindful of the commercial sensitivities and that the Handback transaction will likely be subject to media attention.

3.9 Route to the Meeting

Content has previously been considered by the following groups as part of its continued development and negotiations. The groups have either supported the content, or their feedback has informed the development of the content presented in this report.

- Executive Steering Group – weekly / fortnightly
- RIE Programme Board – monthly
- NHSL Private Board - Specific content of the Supplemental Agreement – 13 August 2025
- F&RC - RIE Commercial Compromise Joint Lifecyle Management - 22 October 2025
- NHSL Private Board - Supplemental Agreement – 22 April 2026

4. Recommendation

This paper is to:

4.1 Provide awareness to F&RC of the processes in place to manage the anticipated Available Sum created by the Supplemental Agreement (as detailed in appendix 1 and 2) with Consort.

4.2 Request the agreement of F&RC to progress the replacement of the CCTV and commence technical design work, to permit the early ordering of replacement electrical generators, up to the value detailed above.

5. List of Appendices

The following appendices are included with this report:

- Appendix 1 – Proposed Works
- Appendix 2 – Spend Estimate

Proposed Works RIE 22-May-26

		Budget cost		Status	Risks	Leading Organisation
		£'000				
1	**CCTV replacement**	Tendered package at £642k however awaiting costs from Equans. Assume budget of £700k	Site wide	Tenders verified, preferred supplier to be appointed.	The exisitng CCTV installation is at the end of its useful service life and requires replacement as the server, software, and analogue cameras are either no longer supported for maintenance purposes or component parts are obsolete. CCTV is critical to the security of the RIE campus and if not upgraded, there will be areas of the site not covered by the CCTV footage in addition to areas currently with non functioning cameras.	Consort
2	**BMS replacement**	£3m	Site wide	Discussion with consultant to develop Employer Requirements / Scope of the upgrade.	The current BMS system is at the end of its useful service life and requires replacement, as the software, front end PC, outstation and controllers are either no longer supported for maintenance purposes or component parts are obsolete. The BMS is considered critical to the site as the system is primarily designed to control and monitor environmental conditions, water temperatures and HVAC systems.	Consort
3	**Medical IPS replacement (Starkstrom only)**	£1m	Theatres / ITU	Engagement with supplier to provide quotation / programme.	The existing Starkstrom system is at the end of its useful service life and requires replacement. Starkstrom has also confirmed that the current components are no longer supported and are therefore obsolete. The IPS is considered critical to the site as the system is primarily designed to protect the safety of patients, due to critical medical equipment in the hospital requiring a specific type of electrical power.	Consort
4	**AHU's remedial works (108 units)**	£4.3m	Site wide	Quotation and scope for the sample unit awaited. Programme to progress with the works is challenging as it would require up to 3 wards / areas to be decanted or left without mechanical ventilation. Programme likely to extend beyond Dec 27.	Consort commissioned JMC Ltd. to carry out an independent condition inspection and corresponding report of all AHUs on site. All 108no hospital AHU inspection reports have been completed. The AHU inspection report recommendations have been used to derive the proposed component part replacements and defect rectification works under lifecycle in order to comply with the requirements of SHTM 2025.	Consort
5	**MSFDs control panel replacement**	£1m	Site wide	Awaiting feedback from the FSDIG	The existing MFSD Control Panels are at the end of useful service life and require replacement. MFSD controls are critical to the operation of the fire dampers, for the safety of the building and its occupants, by preventing air movement under a fire condition. There are statutory requirements for the function, operation, and maintenance of the fire dampers and their associated controls.	Consort
6	**UCV canopies replacement**	£8m	Theatres x 6	On hold, awaiting clarity on wider expenditure. Works involve wider theatre works including theatre pendants and panels which are not Consort's assets. Also to include full ventilation replacement and BMS upgrades. Programme likely to extend beyond Dec 27.	The existing operating theatre UCV Canopies and associated control panels are at the end of useful service life and require replacement. Six Theatres currently have UCV canopies installed. The current condition of the systems is reported as 'poor', and component parts are obsolete/unsupported. The project also to include the full replacement of the ventilation system to ensure compliance and compatibility with new canopies. However the canopies are currently validated and operational.	NHSL
7	**Surgeon Control Panels & Pendants**	£650k	Theatres x 24	Direct NHSL project, going through procurement. Direct funding from SG Backlog funds. Currently funding is only for 4 theatres but rolling programme for all remaining theatres is required.	The NHSL's assets which consist of theatre pendants and surgeon control panels are obsolete and passed their useful life.	NHSL
11	**Lifts**	£4.5m	Site wide	Agreeing strategy and procurement. Programme likely to extend beyond Dec 27.	NHSL commissioned an independent condition survey of all lifts across RIE via the Authorising Engineer. The findings included in the reports confirm the obsolescence of parts and components but also the poor condition of the lifts. Lifts are classed as critical asset for the safe transfer / movement across the site and its critical service for theatre department etc. It is recommended that investment plan is developed to replace all the lifts across the campus.	NHSL
12	**Wards Life Cycle Works**	£17.90	Site Wide	Future works include further 10 Wards with programme of works planned between July 26 and July 28.	The high level Consort's scope of works to the wards to date included: - Nurse Call. - Fabric improvements including flooring where required. - Fire alarm heads replacement (below ceilings). - Fire stopping. - Hazard rooms changes. Moving forward, the above scope will be expanded by NHSL to also include the following: - Electrical Distribution Boards replacement which are at the end of useful life. - Void Detection to provide L1 fire and alarm system. - Dead legs removal in water infrastructure. - Replacement of wash hand basin's taps to provide ability to install POU filters.	Consort / NHSL
13	**LED replacement**	£2.6m	Site Wide	Negotiations with Consort re the scope which requires to be developed. Programme likely to extend betond Dec 27.	Existing installation uses fluorescent tubes which are now obsolete and difficult to source when needing replacing.	Consort / NHSL
14	**Further Surveys**	£100k	Site Wide	M&E survyes - scope is being developed	Full investigation of the condition of the wider infrastructure and plant required to establish any further investment plans.	NHSL
15	**Asset Information / handback survey**	£1m	Site Wide	Consort's asset register requires a review to confirm number / condition / SoA / General Arrangements.		NHSL / NHS Assure
16	**Electrical Infrastructure**	£10m for the Infrastructure Project £2.6m for the recurring generator hire	Energy Centre	Procurement strategy is being discussed with Consort.	The project solution shall address the resilience, obsolescence, reliability and maintenance issues affecting the RIE site's existing main HV switchboard and standby generation equipment. The scope includes new substation and standby generators and control panel and removal of existing Combined Heat and Power Plant. Currently the temporary generators hire incur recurring costs and the project is to address required resilience for the hospital.	Consort / NHSL
17	**Main Entrance**	£500k	Main Entrance	Scope is being developed collaboratively between NHSL, Consort and Equans.	Upgrade works necessary to the new main entrance to the RIE. Originally the main entrance was from the car park on which the new RHCYP was developed. The east entrance was never designed to cope with the level of traffic now expierienced and requires a revamp.	Consort / NHSL
18	**Fire**	-	Site Wide	Awaiting strategy		NHSL

Jan-26	Feb-26	Mar-26	Apr-26	May-26	Jun-26	Jul-26	Aug-26	Sep-26	Oct-26	Nov-26	Dec-26	Jan-27	Feb-27	Mar-27	Apr-27	May-27	Jun-27	Jul-27	Aug-27	Sep-27	Oct-27	Nov-27	Dec-27	Jan-28	Feb-28	Mar-28	Apr-28	May-28	Jun-28	Jul-28	Aug-28	Sep-28	Oct-28	Nov-28	Dec-28	Jan-29	Feb-29	Mar-29	Apr-29	May-29	Jun-29	Jul-29	Aug-29	Sep-29	Oct-29

Appendix 2

CASWG COST/SPEND ESTIMATE 26-May-26

Available Sum		£86,363,235.86
Spend to date		
Decant Faciltiy - Feasibility Costs to 31st August 2024	Consort Direct	£117,966.00
Ground floor flooring	Equans - FSC	£15,324.96
Pharmacy Cold Room Sys 2 repair	Equans - FSC	£958.05
LDRP additional Nurse Call equipment	Equans - FSC	£2,121.59
Change of use of rooms	Consort Direct	£1,710.00
2 x Temp Standyby Generator Hire (5th July 24 to 28th May 25)	Equans - FSC	£1,054,806.61
Temp Steam Generator Hire Further Costs (PLACEHOLDER)	Equans - FSC	£0.00
Additonal 2 x Backup Generator hire (18th September 2025 - 19th June 2026)	Equans - FSC	£324,456.91
Level 2 Arc corridor flooring out of hours	Equans - FSC	£27,047.11
A&E Flooring works out of hours	Equans - FSC	£5,102.17
Pregnancy Support Unit out of hours	Equans - FSC	£1,778.59
Car Park 2A - Additional out of hours	Equans - FSC	£1,151.50
EFREC Flooring works out of hours	Equans - FSC	£902.84
Clean theatre corridor flooring out of hours	Equans - FSC	£7,209.68
Radiology Flooring & out of hours	Equans - FSC	£8,220.00
Fire Incident Response Team (FIRT) (Up to February 26)	NHSL Permanent Staff	£3,583,834.56
Void Survey Costs	Consort Direct & Equans FSC	£22,413.00
Void Detection Project	Equans - FSC	£96,257.71
Ward 108 Fire Damper & Ventilation Survey	Equans - FSC	£1,374.99
Amber escape signage	Consort Direct	£66,838.79
Fire Strategy Surveys (per FSDIG)	Equans - FSC	£3,080.00
HSDU Steam Gens Certuss attendance	Equans - FSC	£1,313.39
Aecom Phase 2 Fire Strategy	Consort Direct	£741,762.50
Pre 1 October 2023 commited works	0	£2,550,777.14
Firestopping Works (to 2nd February 2026)	FES - Time and Line	£2,163,674.25
2 x Temp Standby Generator hire (to 4th July 2024)	Equans - FSC	£771,997.15
2 x Temp Standby Generator hire (from 29th May 2025 - 19th June 2026)	Equans - FSC	£1,182,317.02
Temp Steam Generator Hire	Equans - FSC	£403,917.03
Ward Related Lifecycle Works (incl Nurse Call)	Equans - FSC	£3,091,280.39
HSDU Steam Works	Equans - FSC	£225,213.22
All Other Lifecycle Works - See Lifecycle Spend Tab	Mix - See Lifecycle Spend Tab	£6,959,096.91
Balance - less spend		£62,929,331.80
Committed		
Pharmacy Cold Room Sys 2 repair		£867.40
2 x Temp Standyby Generator Hire (5th July 24 to 28th May 25)	Equans - FSC	£0.00
Temp Steam Generator Hire Further Costs (PLACEHOLDER)	Equans - FSC	£0.00
Additonal 2 x Backup Generator hire (18th September 2025 - 19th June 2026)	Equans - FSC	£535,568.98
A&E Flooring works out of hours	Equans - FSC	£0.00
Fire Strategy Surveys (per FSDIG)	Equans - FSC	£4,199.98
Contract Document Preparation Monthly Cost Valuations	Equans - FSC	£1,547.00
Amber escape signage	Consort Direct	£28,364.14
Aecom Phase 2 Fire Strategy	Consort Direct	£108,237.50
Provision for Fire Incident Response Team (FIRT) (Mar 26 - Dec 27) NB: Provision Released Quarterly	NHSL Permanent Staff	£3,941,666.67
Provision for Standby Generator Hire (to June 26)	Equans - FSC	
Pre 1 October 2023 commited works	0	£1,551,755.72
Firestopping Works (to 2nd February 2026)	FES - Time and Line	£0.00
2 x Temp Standby Generator hire (to 4th July 2024)	Equans - FSC	£0.00
2 x Temp Standby Generator hire (from 29th May 2025 - 19th June 2026)	Equans - FSC	£7,950.28
Temp Steam Generator Hire	Equans - FSC	£48,054.52
Ward Related Lifecycle Works (incl Nurse Call)	Equans - FSC	£736,004.85
HSDU Steam Works	Equans - FSC	£63,656.47
All Other Lifecycle Works - See Lifecycle Spend Tab	Mix - See Lifecycle Spend Tab	£1,247,917.41
Provision for Reactive Lifecycle (1st May 26 - 13th Dec 27)NB: Provision Released Monthly	Equans - FSC	£3,333,333.33
Provision for Other Lifecycle Works Currently Under Development *	Equans - FSC	£125,000.00
Balance - less spend and committed		£51,195,207.55
Forecast		
Provision for further Decant Facility - Feasibility Costs	Consort Direct	£2,034.00
Provision for Change of Use of Rooms (Subject to Fire Strategy)	TBC - Equans FSC expected	£1,998,290.00
Provision of Steam Generators		£234,000.00
Provision for Additional Void Detection Project	Equans - FSC	£7,903,742.29
Provision for Electrical Resilience Project (NHSL Additional Scope £10m less LC cont)	TBC - SA Protocol expected	£8,650,000.00
Provision for Change of Use of Rooms (Subject to Fire Strategy)	TBC - Equans FSC expected	£0.00
[Provision for Firestopping]	0	£0.00
Provision for Maintenance Works required by Law	0	£0.00
Provision for Standby Generator Hire (to Jun 27)- Subject to Electrical Resilience Project	Equans - FSC	£2,800,000.00
Provision for Risk and Time Critical Assets (per CASWG)		£14,811,130.31
Air Handling Units	£4,381,000.00	
Building Management System (BMS)	£2,530,000.00	
Isolated Power Systems (IPS)	£1,037,000.00	
MFSDs Control Panel	£1,048,000.00	
Ultraclean Ventilation	£943,000.00	
Closed-Circuit Television (CCTV)	£884,000.00	
HSDU Steam Pipework	£288,000.00	
Project Documentation	£1,000,000.00	
CASWG Provision	£2,700,000.00	
Provision for Ward Related Firestopping Works		£4,111,211.88
Provision for Ward Related Lifecycle Works (incl Nurse Call)		£5,970,046.90
Provision for Electrical Resilience Project (Lifecycle Elements - GCP & CHP)		£1,350,000.00
Provision for Other Lifecycle Works Currently Under Development *		£750,000.00
Balance - less spend, committed and forecast		£2,614,752.17
Retention		£12,323,121.65
Balance - less spend, committed and forecast		-£9,708,369.48

Health and Social Care Finance Directorate
Fiona Bennett, Chief Financial Officer Health and Social Care

Scottish Government
Riaghaltas na h-Alba

E: alan.morrison@gov.scot

Professor Caroline Hiscox
Chief Executive
NHS Lothian
Mainpoint
102 Westport
Edinburgh
EH3 9DN

26 March 2026

Dear Professor Hiscox

Royal Infirmary of Edinburgh PFI Project

Certificate Issued in Terms of Section 1 of the National Health Service (Private Finance) Act 1997 as amended by the NHS Health Service Reform (Scotland) Act 2004

I, Alan Morrison, Deputy Director Health Infrastructure and Sustainability, hereby certify that the documents set out in the schedule to this certificate comprise, and each of them respectively comprises, an externally financed development agreement for the purposes of Section 1 of the National Health Service (Private Finance) Act 1997 as amended by section 11 and schedule 1 of the National Health Service Reform (Scotland) Act 2004 and, accordingly, Lothian Health Board is authorised to enter into each of them.

Yours sincerely

Alan Morrison

Alan Morrison,
Deputy Director
Health and Social Care Finance Directorate

Item	Document	Description
1.	Supplemental Agreement (Handover)	The Royal Infirmary of Edinburgh NHS Trust (the statutory predecessor to Lothian Health Board (the "**Board**")) and Consort Healthcare and (Edinburgh Royal Infirmary) Limited ("**Service Co**") entered into a project agreement on 20 August 1998 for the financing, design and construction, equipping and operation of, and the provision of certain services by Service Co in connection with the New Royal Infirmary of Edinburgh (as amended, supplemented and varied from time to time, the "**Project Agreement**"). The Project Agreement (together with certain agreements referred to therein) was certified by the Secretary of State as an externally financed development agreement for the purposes of and pursuant to the National Health Service (Private Finance) Act 1997. The Supplemental Agreement (Handover) between the Board and Service Co shall document the agreement reached between the Board and Service Co to supplement and amend the Project Agreement in respect of (amongst other things): - the Asset Works (these being the Life Cycle Works, the Life Cycle (TAWO) Works, the Maintenance Works Required by Law and the Additional Works) that may be undertaken by Service Co; - the Available Sums (to be calculated in accordance with the Supplemental Agreement (Handover)) to be made available by Service Co for, among other things, the Asset Works; - the Handover Requirements to be satisfied by Service Co; - amendments to the terms of the Project Agreement; and - the residual balances of the Available Sums to be paid by Service Co to the Board. The Supplemental Agreement (Handover) shall also include the following nine Schedules: - Schedule Part 1: Amendments to Project Agreement; - Schedule Part 2: Operating Model Summary

Item	Document	Description
		- Schedule Part 3: Baseline Documents - Schedule Part 4: Life Cycle (TAWO) Works - Schedule Part 5: Project Board - Schedule Part 6: Pro forma Schedule of Programmed Maintenance - Schedule Part 7: Conditions Precedent - Schedule Part 8: Matrix and Financial Information - Schedule Part 9: Letters Defined terms not defined above are as defined in the Supplemental Agreement (Handover).
2.	Other Documents	The "other documents" means any other documents to be delivered by the Board pursuant to the Supplemental Agreement (Handover) together with all consents, waivers, undertakings, notices, letters, certificates and documents to be signed and/or initialled by the Board in order to achieve execution of the Supplemental Agreement (Handover).

SUPPLEMENTAL AGREEMENT

between

LOTHIAN HEALTH BOARD

and

CONSORT HEALTHCARE
(EDINBURGH ROYAL INFIRMARY)
LIMITED

Supplemental Agreement (Handover) relating
to
the handover of the Project Facilities
by Service Co to the Board at the
Expiry Date

2026
LP/JM/55127.00005

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SUPPLEMENTAL AGREEMENT IS MADE ON THE DAY OF

between

(1) LOTHIAN HEALTH BOARD a health board constituted in Scotland under the National Health Service (Constitution of Health Boards) (Scotland) Order 1974 (S.I. 1974/267) as amended by the National Health Service (Constitution of Health Boards) (Scotland) Amendment Order 2003 (S.S.I. 2003/217) pursuant to Section 2 of the National Health Service (Scotland) Act 1978 as amended by Section 28 of

the National Health Service and Community Care Act 1990 and having its principal address at Mainpoint, 102 West Port, Edinburgh, EH3 9DN (the “Board”); and

(2) CONSORT HEALTHCARE (EDINBURGH ROYAL INFIRMARY) LIMITED, a company incorporated in Scotland under the Companies Acts (company number SC187449) and having its registered office at c/o Infrastructure Managers Limited 2nd Floor Drum Suite, Saltire Court, 20 Castle Terrace, Edinburgh, United Kingdom, EH1 2EN (“Service Co”).

WHEREAS:

A The Royal Infirmary of Edinburgh NHS Trust (the statutory predecessor of Lothian University Hospitals National Health Service Trust, in turn the statutory predecessor of the Board) and Service Co entered into an agreement dated 20 August 1998 (as amended, varied and supplemented from time to time the “Project Agreement”).

B The Project Agreement sets out the terms and conditions of a project for the financing, design and construction, equipping and operation of, and the provision of certain services by Service Co in connection with the New Royal Infirmary of Edinburgh (the “Project”).

C The Parties agree that the Project Agreement will reach its natural expiry on the Expiry Date.

D In accordance with Clause 22 (Handover) of the Project Agreement, the Project Facilities shall be in a condition to satisfy the Handover Requirements at the Expiry Date. The Parties have agreed to replace Clause 22 (Handover) of the Project Agreement with the provisions of this Supplemental Agreement.

E Upon the Expiry Date, the NRIE and the University Accommodation and any residual Project Facilities shall be handed back by Service Co to the Board and the University respectively.

F The Parties have agreed to enter into this supplemental agreement (the “Supplemental Agreement”) to document the agreement reached between the Parties in respect of:

(a) The Asset Works to be undertaken by Service Co;

(b) The Available Sums to be made available by Service Co for, among other things, the Asset Works;

(c) The Handover Requirements to be satisfied by Service Co;

(d) The Residual Balance of the Available Sums payable by Service Co to the Board.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION 1.1

Definitions

In this Supplemental Agreement, unless the context otherwise requires:

Actual Shortfall means, in any month up to and including the month in which the Expiry Date occurs, the amount by which the aggregate of:

(a) the Costs (Incurred) from the date of this Supplemental Agreement up to and including that month;

(b) the Costs (Committed) up to and including that month (including any Costs (Committed) at the date of this Supplemental Agreement);

(c) Operating Expenditure (as defined in the Loan Facilities Agreement as at the date of this Supplemental Agreement) (excluding the Costs) payable from the date of the Supplemental Agreement up to and including that month;

(d) Financing Costs (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement) payable from the date of this Supplemental Agreement up to and including that month;

(e) Financing Principal (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement) payable from the date of this Supplemental Agreement up to and including that month;

(f) all taxes due and payable from the date of this Supplemental Agreement up to and including that month;

(g) an amount equal to Subordinated Debt Interest accrued up to and including that month other than, without double counting, any amount to be met directly by Service Co from the amount referred to in limb (h) of the definition of Available Sums pursuant to Clause 6.4.1 (Negligent acts and omissions of Service Co);

(h) an amount equal to Subordinated Debt accrued but unpaid under the Original Financial Model (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement) up to and including that month other than, without double counting, any amount to be met directly by Service Co from the amount referred to in limb (i) of the definition of Available Sums pursuant to Clause 6.4.1(Negligent acts and omissions of Service Co); and

(i) an amount equal to £1,000,000 representing working capital,

exceeds the aggregate of:

1. credit balances standing to the credit of the Borrower Project Accounts (as defined in the Loan Facilities Agreement as at the date of this Supplemental Agreement) as at the date of this Supplemental Agreement; and

2. Project Revenues (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement) receivable from the date of this Supplemental Agreement up to and including that month which, for the avoidance of doubt, shall include the Board Shortfall Amount paid by the Board to Service Co up to and including that month;

in the case of each of paragraphs (a) to (i) (inclusive)and paragraphs 1 and 2 (in the absence of manifest error) as shown in the line titled “Actual Available Cash Headroom/(Cash Shortfall)” of the Cash Profile (being line 48 of the Cash Profile set out in Part B (Cash Profile) of Schedule Part 8 (Matrix and Financial Information)) such Cash Profile as updated in accordance with Clause 7.4.1.5 (Financial Monitoring); Additional Maintenance Costs means the additional maintenance costs (without double counting) reasonably and properly incurred and vouched for by Service Co or a Service Provider in the circumstances referred to in Clauses 28.6 (w), (x), (y) and (z) (Consequences of matters for which Trust is responsible) of the Project Agreement;

Additional Works means the works (excluding the Life Cycle (TAWO) Works) to be carried out pursuant to an Additional Works Request;

Additional Works Request has the meaning given to it in Clause 3.3A.1 (Additional Works and the Available Sums);

Additional Works Request Costs means all costs and expenses reasonably and properly incurred and vouched for by Service Co in connection with Additional Works;

Agreed Life Cycle Works Derogations has the meaning given to it in Clause 3.5.3.1 (Agreed Derogations);

Amended Facilities Agreement means an amendment agreement to the Loan Facilities Agreement between Service Co, Holding Company, NewCo, SisterCo, the Arrangers, the Agent and the Account Bank (with term "Arrangers", "Agent" and "Account Bank" being defined in the Loan Facilities Agreement) on or around the date of this Supplemental Agreement; Asset Works means:

(a) the Life Cycle Works; and/or

(b) the Life Cycle (TAWO) Works; and/or

(c) Maintenance Works Required by Law; and/or

(d) any Additional Works;

Associated Documents means any performance bond, retention bond, advance payment bond (if ever required) or parent company guarantee required to be provided pursuant to a Life Cycle (TAWO) Works Contract or a Consultancy Appointment, as agreed between the Board and Service Co;

Automatic Transfer Provisions means the provisions set out in the Automatic Transfer Provisions (Pro Forma) with any such amendments being approved by the Parties pursuant to the paragraph 4.4 of Section 1 of Part A of the Protocol, that all rights, claims, entitlements to or against Service Co as well as all liabilities and obligations of Service Co whether accrued, existing and/or which may arise in the future under, arising out of and/or in connection with the relevant Life Cycle (TAWO) Works Documents (excluding the Sub-Consultancy Appointment and any Collateral Warranty), be automatically transferred from Service Co to the Board with effect from the Residual Balance of the Available Sums Payment Date or if earlier, the earlier termination of the Project Agreement;

Automatic Transfer Provisions (Pro Forma) means the automatic transfer provisions set out in Part F (Pro Forma Automatic Transfer Provisions) of the Protocol;

Automatic Transfer Documents means the Life Cycle (TAWO) Works Documents which contain Automatic Transfer Provisions;

Available Sums means the sum calculated in respect of the period from 1st October 2023 until Service Co is wound up in the Operating Model (shown in Cell BA2 of Worksheet ‘FS’) as derived from:

(a) Credit balances on the Borrower Project Accounts as (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement) at 1st October 2023 **[xx]:** plus

(b) Project Revenues (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement); plus

(c) Any Board Shortfall Amount (from the date paid by the Board to Service Co) insofar as this has not been met by early payment by the Board of any Service Payments; less

(d) Operating Expenditure (excluding (i) Actual Life Cycle Maintenance Costs (such terms as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement), (ii) the Costs; and (iii) expenditure incurred as a direct result of Service Co's negligent acts or omissions); less

(e) Financing Costs (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement); less

(f) Financing Principal (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement); less

(g) All taxes due and payable; less

(h) Subordinated Debt Interest; less

(i) Repayment of Subordinated Debt; less

(j) Repayment of Service Co equity of **[xx]**

subject to such movements in the terms of the Operating Model as updated from time to time (as may occur over such time), including movements in working capital and Service Co's rights and obligations pursuant to this Supplemental Agreement;

Baseline Documents means:

(a) the Baseline Forecast; and (b) the

Baseline Programme,

in the event that there is a conflict in relation to timing of works relating to (a) and (b) above, then the timings set out in the Baseline Programme shall prevail;

Baseline Forecast is Service Co's life cycle forecast up to the Expiry Date as set out in Part B (Baseline Forecast) of Schedule Part 3(Baseline Documents);

Baseline Programme means the schedule of Life Cycle Works prepared by Service Co and forecast to be undertaken by Service Co up to the Expiry Date as set out in Part A (Baseline Programme) of Schedule Part 3 (Baseline Documents);

Board's Consents has the meaning given to it in Clause 13.1 (Consents and Assurances);

Board's Matrix Cost Allocation means the aggregate of the Matrix Actions Costs which have been reasonably and properly incurred in respect of the Board's Matrix Cost Allocation Actions as set out in the column headed "Board's Matrix Cost Allocation" in the Matrix;

Board's Matrix Cost Allocation Actions means the Matrix Actions agreed to be carried out by Service Co but not required to be carried out by Service Co under the Project Agreement as at 1 October 2023 as described in the column headed "Board's Matrix Cost Allocation" of the Matrix;

Board Shortfall Amount means the amount (expressed as a positive number) of the Actual Shortfall for the relevant month up to a maximum aggregate amount equal to the aggregate amount of the following Costs only:

(a) Life Cycle (TAWO) Works Costs (incurred or committed to be incurred up to and including the month which the Actual Shortfall relates); and

(b) Maintenance Works Required by Law (Fire Safety) Costs (incurred or committed to be incurred up to and including the month which the Actual Shortfall relates); and

(c) the Additional Works Request Costs (incurred or committed to be incurred up to and including the month which the Actual Shortfall relates);

Cash Buffer means the amount of two hundred fifty thousand pounds sterling (£250,000.00);

Cash Profile means the profile of Service Co's cash (with an opening credit balance dated October 2023) set out in Part B (Cash Profile) of Schedule Part 8 (Matrix and Financial Information), such balances being updated on each and every month up to the Expiry Date, calculated as follows:

(a) Opening credit balances on the Borrower Project Accounts (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement); plus

(b) Project Revenues (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement); less

(c) Operating Expenditure (excluding (i) Actual Life Cycle Maintenance Costs (such terms as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement), (ii) the Costs; and (iii) expenditure incurred as a direct result of Service Co's negligent acts or omissions); less

(d) All taxes due and payable; less

(e) Financing Costs (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement); less

(f) Financing Principal (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement); less

(g) Subordinated Debt outstanding balance (including accrued Subordinated Debt Interest); less

(h) £1,000,000 working capital,

and which identifies, amongst other things, all Projected Shortfalls and Actual Shortfalls;

CDM Regulations means the Construction (Design and Management) Regulations 2015 as the same may be amended, extended, consolidated or replaced from time to time and shall include any orders, regulations or other delegated or subordinate legislation made thereunder;

Claims means any actions, claims, entitlements, rights and demands whether known to the Parties or unknown, whether accrued, existing and/or which may arise in the future to the Board arising out of or in connection with (i) the Project Agreement as amended and / or supplemented by this Supplemental Agreement or any other supplemental agreement; or (ii) this Supplemental Agreement; or (iii) the Service Co Head Lease, the Sub-Lease, the Car Park F Lease or the Car Park F Sub-Lease; or (iv) otherwise;

Collateral Warranty means the collateral warranty in the form of the proforma collateral warranty in Annex 2 (Proforma Collateral Warranty) of Part B (Life Cycle Works (TAWO) Documentation) of Schedule Part 4 (Life Cycle (TAWO) Works), duly completed, as updated pursuant to paragraph 5 of Section 1 of Part A of the Protocol;

Companies means each of Service Co, Consort Healthcare (Edinburgh Royal Infirmary) Holdings Limited (company no. SC187448) (this being "Holding Company"), Consort Healthcare (Edinburgh Royal Infirmary) Investments Limited (company no. SC319583) (this being "NewCo"), Consort Healthcare (Edinburgh Royal Infirmary) Finance Limited (company no. SC319582) (this being "SisterCo"), or any of them as the context may require;

Conditions Precedent means the conditions set out in Schedule Part 7 (Conditions Precedent);

Consents means the Board's Consents and the Service Co's Consents;

Consort Maintenance Works has the meaning given to it in Part B (Liability for Consort Maintenance Works) of Schedule 3 of the Facilities Service Contract;

Consultant means any consultant appointed by Service Co and/or any Third Party Contractor and/or the Service Provider, and/or in the case of the appointment of any Independent Certifier referred to in any Life Cycle (TAWO) Works Contract, a joint appointment with the Board and/or the University, to carry out the design and/or provide professional services (including, without limitation, employer's agent services, contract administration services, quantity surveying, cost management, project management, architectural services, services engineer, mechanical or electrical engineering services, fire engineering services, civil and/or structural engineer, Principal Designer services, Independent inspection, testing, monitoring, completion, certification and/or defects or snagging notification services) in respect of any part of the Life Cycle (TAWO) Works whose identity has been approved in writing by the Board and any approved replacement of any such Consultant;

Consultancy Appointment means the consultancy appointments in the form of the proforma consultancy appointments in Annex 3 (Proforma Consultancy Appointments) of Part B (Life Cycle Works (TAWO) Documents) of Schedule Part 4 (Life Cycle (TAWO) Works), duly completed, as updated pursuant to paragraph 5 of Section 1 of Part A of the Protocol;

Contract Contingency means a reasonable provision for:

(a) fixed contractual costs and committed payments due to be met by Service Co in connection with the Project; and

(b) non-fixed contractual costs and committed payments which in the reasonable opinion of Service Co's directors may become due under such contracts,

(c) the balance of any indemnity payment paid by the Board to Service Co pursuant to paragraph 11 of Section 1 of Part A of the Protocol to the extent not required by Service Co to fund any Losses;

but for the avoidance of doubt excluding any (i) costs pertaining to the Life Cycle (TAWO) Works Contracts (which include the Automatic Transfer Provisions) from the Residual Balance of the Available Sums Payment Date and (ii) fixed contractual costs and/or non-fixed contractual costs and/or committed payments associated or pursuant to the NewCo Investment;

Costs means (without double counting) this being the aggregate of the:

(a) Life Cycle Works Costs;

(b) Life Cycle (TAWO) Works Costs;

(c) Board's Matrix Cost Allocation;

(d) Service Co's Matrix Cost Allocation;

(e) Debated Matrix Cost Allocation;

(f) Service Co's Reactive Maintenance Works Costs;

(g) Additional Maintenance Costs;

(h) Maintenance Works Required by Law Costs;

(i) Additional Works Request Costs;

(j) costs and expenses reasonably and properly incurred by Service Co pursuant to any dispute referred to in Schedule 20 (Dispute Resolution Procedure) of the Project Agreement; and

(k) any costs and expenses reasonably and properly incurred by Service Co in relation to the preparation and provision by Service Co to the Board of documentation referred to in Clause 6.6.2 (Project Documentation) of this Supplemental Agreement;

Costs Aggregate Cap means:

(a) the aggregate of the Costs (Committed) to be incurred and Costs (Incurred) in the period up to 13th December 2025 being not more than 66% of the Available Sums at 13th December 2025; and

(b) the aggregate of the Costs (Committed) to be incurred and Costs (Incurred) in the period up to 13th December 2026 being not more than 87% if the Available Sums at 13th December 2026;

Costs (Committed) means the Costs committed to be incurred by Service Co at any relevant point in time as set out in the Cash Profile provided that, if there is a discrepancy between the calculation of the Costs committed to be incurred by Service Co at any relevant point in time and the amount shown in the Cash Profile, the calculation shall prevail;

Costs (Committed Vouching) means all relevant vouching on an open book basis for any and all Costs (Committed);

Costs (Forecast) means the Costs forecast to be incurred by Service Co as set out in the Cash Profile provided that, if there is a discrepancy between the calculation of the Costs forecast to be incurred by Service Co at any relevant point in time and the amount shown in the Cash Profile, the calculation shall prevail;

Costs (Forecast Vouching) means all available relevant vouching on an open book basis for any and all Costs (Forecast);

Costs (Incurred) means the Costs incurred by Service Co as set out in the Cash Profile provided that, if there is a discrepancy between the calculation of the Costs incurred by Service Co at any relevant point in time and the amount shown in the Cash Profile, the calculation shall prevail;

Costs (Incurred Vouching) means all relevant vouching on an open book basis for any and all Costs (Incurred);

Costs of Adjudication shall have the meaning given to it in Clause 3.6A.2.4 (Life Cycle Works Breach of Law);

Costs Thresholds has the meaning given to in in Clause 4.1.4 (Available Sums for Asset Works);

December 2024 Letter means the letter dated 18 December 2024 from the Board's Director of Finance to Service Co's Hospital Manager, as set out in Part B (December 2024 Letter) of Schedule Part 9 (Letters);

Debated Matrix Cost Allocation means the aggregate of the Matrix Action Costs which have been reasonably and properly incurred in respect of Debated Matrix Cost Allocation Works set out in the column headed "Debated Matrix Costs" in the Matrix;

Debated Matrix Cost Allocation Works means the Matrix Actions which the Parties cannot agree whether or not Service Co was required to carry out under the Project Agreement as at 1 October 2023 but agreed to be carried out by Service Co as described in the column headed "Debated Matrix Costs" of the Matrix;

Electrical Resilience Works Costs means all costs and expenses reasonably and properly incurred and vouched for by Service Co in connection with electrical resilience at the Site;

Existing Claims means any actions, claims, entitlements, rights and demands that the Board has commenced against Service Co and/or notified in writing to Service Co arising out of or in connection with the Project Agreement as amended by this Supplemental Agreement or any other supplemental agreement prior to the Residual Balance of the Available Sums Payment Date;

Expiry Date means the date of expiry of the Contract Period which the Parties agree shall mean 00:00.01 on 13th December 2027;

Facilities Service Contract means the contract in connection with the provision of the Facilities Service between Service Co, the Board and the Haden Building Management Limited (now Equans Services Limited) dated 20th August 1998 in respect of the Facilities Service;

Facilities Service Labour Cost Benchmarking means the benchmarking of the labour cost element of the payments to be made by Service Co to the Service Provider pursuant to the Facilities Service Contract;

FIRT Costs means the aggregate of all amounts deducted by the Board from payments to Service Co (including amounts deducted prior to the Supplemental Agreement Effective Date) purported in connection with the employment of the fire incident response team;

Fire Stopping Works Costs means all costs and expenses reasonably and properly incurred and vouched for by Service Co in connection with the carrying out of the fire stopping works;

Funders' Consent means any consent required to be procured by Service Co from the Funders pursuant to the Funding Agreements for the performance of its obligations under this Supplemental Agreement, the Project Agreement or otherwise;

Future Claims means any claims that the Board may have against Service Co from the Residual Balance of the Available Sums Payment Date for any breach or nonperformance of any obligation pertaining to Clause 6 (Payment of Residual Balances), Clause 11 (Secondary Period), Clause 12 (Payment), Clause 14 (Miscellaneous), and Clause 15 (Confidentiality) of this Supplemental Agreement which are to be performed by or on behalf of Service Co on or after the Residual Balance of the Available Sums Payment Date;

Handover Certificate has the meaning given to it in Clause 8.5.1 (Handover Certificate);

Handover Certificate Date has the meaning given to it in Clause 8.5.1 (Handover Certificate);

Handover Requirements has the meaning given to it in Clause 8.2 (Handover);

Hazard Room Reconfiguration Works Costs means all costs and expenses reasonably and properly incurred and vouched for by Service Co in connection with the carrying out of hazard room reconfiguration works;

Heads of Terms means the heads of terms agreed between the Board and Service Co and attached to the email dated 2 September 2024 with a title "RE: NRIE – Commercial Proposal and Heads of Terms [MFMAC-A.FID15675473] [SWLLPLEGALDIV.FID5055796]" from Nigel Sievwright to among others, Jennifer McKay and setting out the commercial outline for this Supplemental Agreement;

IML means Infrastructure Managers Limited a company incorporated under the Companies Acts (company number 05372427) and having its registered office address at 8th Floor, 6 Kean Street London WC2B 4AS;

IML Payment Milestone means each of the:

(a) completion of the design (including, where relevant, review of the employer's requirements provided to Service Co by the Board) and development of the performance specification for the relevant Life Cycle (TAWO) Works Contract, with such completed design and performance specification ready for being used for the tender pertaining to the Life Cycle (TAWO) Works); or

(b) execution of the relevant Life Cycle (TAWO) Works Contract (including the completion of the tender process relative to such Life Cycle (TAWO) Works Contract); or

(c) practical completion of the relevant Life Cycle (TAWO) Works in accordance with the relevant Life Cycle (TAWO) Works Contract;

IML Percentage means the percentage (as agreed between the Parties on a case by case basis) of IML's fee;

Interim Payment of the Cash Buffer means the Cash Buffer less the amount a prudent director would reasonably and properly reserve to discharge the outstanding obligations of Service Co prior to the winding up and striking off of Service Co; January 2025 Letter means the letter dated 17 January 2025 from Service Co's Hospital Manager to the Board's Director of Finance, as set out in Part C (January 2025 Letter) of Schedule Part 9 (Letters);

Life Cycle Works means the Maintenance Works (other than the Life Cycle (TAWO) Works) and/or life cycle works to be carried out by or on behalf of Service Co pursuant to Part 2 of the Schedule of Programmed Maintenance;

Life Cycle Works Breach of Law has the meaning given to it in Clause 3.6A.1.3 (Life Cycle Works Breach of Law);

Life Cycle Works Costs means all costs and expenses reasonably and properly incurred by Service Co in connection with the Life Cycle Works;

Life Cycle Works Derogations has the meaning given to it in Clause 3.5.1 (Agreed Derogations);

Life Cycle Works Design means the design in relation to any Life Cycle Works and any relevant Life Cycle Works Costs pertaining to such design;

Life Cycle (TAWO) Works means the works to be carried out pursuant to a Life Cycle (TAWO) Works Contract;

Life Cycle (TAWO) Works Contract means the works contract in the form of the proforma works contract in Annex 1 (Proforma Life Cycle (TAWO) Works Contract) of Part B (Life Cycle (TAWO) Works Documents) of Schedule Part 4 (Life Cycle (TAWO) Works), duly completed, as updated pursuant to paragraph 5 of Section 1 of Part A of the Protocol;

Life Cycle (TAWO) Works Costs means (without double counting):

(a) all costs and expenses reasonably and properly incurred by Service Co in connection with the Life Cycle (TAWO) Works; and

(b) the cost and expenses reasonably and properly incurred by Service Co in complying with its obligations under the Life Cycle (TAWO) Works Protocol other than those referred to in limb (a) above; and

(c) Electrical Resilience Works Costs;

Life Cycle (TAWO) Works Documents means the Life Cycle (TAWO) Works Contract, the Consultancy Appointment, the Sub-Consultancy Appointment, the Collateral Warranty and the Associated Documents;

Life Cycle (TAWO) Works Protocol or the Protocol means the protocol set out in Part A (Life Cycle (TAWO) Works Protocol) of Schedule Part 4 (Life Cycle (TAWO) Works));

Maintenance Works Required by Law means any works Service Co and/or the Board is required to undertake pursuant to a notice issued by a Competent Authority to comply with Law;

Maintenance Works Required by Law Costs means the aggregate of any Maintenance Works Required by Law (Fire Safety) Costs and Maintenance Works Required by Law (Other) Costs;

Maintenance Works Required by Law (Fire Safety) Costs means all costs and expenses reasonably and properly incurred by Service Co in connection with the Maintenance Works Required by Law (Fire Safety), the FIRT Costs and the Fire Stopping Works Costs, Void Detection Works Costs and the Hazard Room Reconfiguration Works Costs;

Maintenance Works Required by Law (Other) has the meaning given to it in Clause 3.6.1.2.2;

Maintenance Works Required by Law (Other) Costs means all costs and expenses reasonably and properly incurred by Service Co in connection with the Maintenance Works Required by Law (Other);

Management Agreement means the management agreement between Service Co and IML dated 27th and 31st August 2015 as amended by the variations dated (i) 19th June 2017; (ii) 28th March 2022; and (iii) 5th September 2023;

Matrix means the matrix set out in Part A (Matrix) of Schedule Part 8 (Matrix and Financial Information) of this Supplemental Agreement as updated and/or amended pursuant to Clause 7.6.3.3.2 (Matrix) of this Supplemental Agreement ;

Matrix Actions means the activities and works including, without limitation, feasibility studies and design activities, brief descriptions of which are set out in the Matrix;

Matrix Actions Costs means the costs and expenses reasonably and properly incurred by Service Co carrying out or procuring or facilitating the carrying out of the Matrix Actions;

Monthly Financial Report means the monthly financial reporting cycle report pursuant to the Operating Model (as updated from time to time) prepared by Service Co and issued to the Board on a monthly basis, which shall include the following:

(a) A running total of the Available Sums available to the Board to ensure that the Board is made aware at any point in time as to the balance of the Available Sums, including a description of all monies deducted from the Available Sums in any relevant month which shall include:

  (i) All Costs (Incurred) plus Costs (Incurred Vouching) in undertaking the Asset Works for that month;

  (ii) All Costs (Committed) plus Costs (Committed Vouching) in undertaking the Asset Works for that month;

  (iii) All Costs (Forecast) plus Costs (Forecast Vouching) in undertaking the Asset Works for that month;

  (iv) The Costs Aggregate Cap; (v) The Cash Profile,

  plus a statement whether there are any Projected Shortfalls and/or Actual Shortfalls pertaining to the Cash Profile;

(b) All Matrix Actions and all Matrix Action Costs in undertaking the Asset Works for that month;

(c) All costs incurred relating to Service Co's Other Costs for that month;

(d) All costs incurred in relation to the Funders or Senior Funding Agreements, including any repayments and interest payments pursuant to the Senior Funding Agreements and any reserving required by Funders plus any other sums due to the Funders pursuant to the Senior Funding Agreement for that month;

(e) All costs incurred in relation to the Subordinated Funding Agreements, including any repayments and interest payable pursuant to the Subordinated Funding Agreements for that month;

(f) All payments to the Service Provider for that month;

(g) All payments to Service Co's management services provider IML pursuant to the Management Agreement for that month;

(h) All insurance costs incurred for that month;

(i) All director's fees incurred for that month;

(j) All taxation incurred for that month;

(k) Any anticipated Maintenance Works Required by Law and all Maintenance Works Required by Law Costs;

Monthly Financial Report Supporting Documentation has the meaning given to it in Clause 7.4.1.2 (Financial Monitoring Report);

NewCo Investment means NewCo's 100% ordinary shareholding in both Service Co and SisterCo, with a value of circa **[xx]**

November Letter means the letter from the Board to Service Co dated 14th November 2022, as set out in Part A (November Letter) of Schedule Part 9 (Letters);

Operating Expenditure has the meaning given to it in the Loan Facilities Agreement;

Operating Model means Project's Co's financial operating model for the Project titled ERI_250930_OperatingModel, last modified on 27th November 2025, with model size 7.26MB a summary of the key outputs of which is set out in Schedule Part 2 (Operating Model Summary) of this Supplemental Agreement, as updated from time to time;

Part 2 of the Schedule of Programmed Maintenance means the second part of the relevant Schedule of Programmed Maintenance which relates to Life Cycle Works as approved in accordance with the Project Agreement;

Performance Monitoring Report means the report produced by Service Co for the Board pursuant to Clause 23.5 (Payment Provisions - Payments and Reconciliations) of the Project Agreement;

Performance, Quality and Compliance Manager means Service Co's performance, quality and compliance manager who is engaged to drive improvements in the performance monitoring and reporting of the Services;

Project Board means the group established by the Parties pursuant to and for the purposes set out in Clause 7.6.1 (Project Board) and any other purpose the Parties may agree in writing and which shall meet in accordance with the Project Board Terms of Reference;

Project Board Terms of Reference means the terms of reference for the Project Board as set out in Part B (Terms of Reference for Project Board) of Schedule Part 5 (Project Board), as updated from time to time;

Projected Shortfall means, in any month up to and including the month in which the Expiry Date occurs, the amount by which the aggregate of:

(a) the Costs (Incurred) from the date of this Supplemental Agreement up to and including that month;

(b) the Costs (Committed) up to and including that month (including any Costs (Committed) at the date of this Supplemental Agreement);

(c) the Costs (Forecast) up to and including that month (including any Costs (Forecast) at the date of this Supplemental Agreement);

(d) Operating Expenditure (as defined in the Loan Facilities Agreement as at the date of this Supplemental Agreement) (excluding the Costs) payable from the date of the Supplemental Agreement up to and including that month;

(e) Financing Costs (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement) payable from the date of this Supplemental Agreement up to and including that month;

(f) Financing Principal (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement) payable from the date of this Supplemental Agreement up to and including that month;

(g) all taxes due and payable from the date of this Supplemental Agreement up to and including that month;

(h) an amount equal to Subordinated Debt Interest accrued up to and including that month other than, without double counting, any amount to be met directly by Service Co from the amount referred to in limb (h) of the definition of Available Sums pursuant to Clause 6.4.1 (Negligent acts and omissions of Service Co);

(i) an amount equal to Subordinated Debt accrued but unpaid under the Original Financial Model (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement) up to and including that month other than, without double counting, any amount to be met directly by Service Co from the amount referred to in limb (i) of the definition of Available Sums pursuant to Clause 6.4.1 (Negligent acts and omissions of Service Co);

(j) an amount equal to £1,000,000 representing working capital, exceeds the aggregate of:

1. credit balances standing to the credit of the Borrower Project Accounts (as defined in the Loan Facilities Agreement as at the date of this Supplemental Agreement) as at the date of this Supplemental Agreement; and

2. Project Revenues (as defined in the Loan Facilities Agreement at the date of this Supplemental Agreement) receivable from the date of this Supplemental Agreement up to and including that month which, for the avoidance of doubt, shall include the Board Shortfall Amount paid by the Board to Service Co up to and including that month;

in the case of each of paragraphs (a) to (j) (inclusive)and paragraphs 1 and 2 (in the absence of manifest error) as shown in the line titled "Projected Available Cash Headroom/(Cash Shortfall)" of the Cash Profile (being line 107 of the Cash Profile set out in Part B (Cash Profile) of Schedule Part 8 (Matrix and Financial Information)) such Cash Profile as updated in accordance with Clause 7.4.1.5 (Financial Monitoring);

Residual Balance of the Available Sums means the amount (if a positive number) of the Available Sums less the aggregate of:

(a) the Costs (Incurred) for which Service Co has provided the Costs (Incurred Vouching) as at the Residual Balance of the Available Sums Payment Date; and

(b) the Cash Buffer; and

(c) the Contract Contingency;

Residual Balance of the Available Sums Payment Date means given to it in Clause 8.5.1.1 (Handover Certificate);

Residual Balance of the Cash Buffer means the amount (if any) of the Cash Buffer less the Interim Payment of the Cash Buffer and any other reasonable and proper costs incurred by Service Co in winding up Service Co all as properly vouched by Service Co with such vouching being provided to the Board as soon as reasonably practicable;

Residual Balance of the Contract Contingency means the remaining balance (if any) of the Contract Contingency;

Residual Balances means the Residual Balance of the Available Sums, the Residual Balance of the Cash Buffer and the Residual Balance of the Contract Contingency;

Self-Proving Manner means, when referring to the manner of execution of any agreement, contract, or other document, subscription of such agreement, contract or other document in such a manner as will comply with the requirements of sections 3, 7, 8, 9B and 9C of and Schedule 2 (as applicable) to the Requirements of Writing (Scotland) Act 1995 as the same may be amended, extended, consolidated or replaced from time to time;

Service Co’s Consents has the meaning given to it in Clause 13.2.1 (Service Co's Consent);

Service Co’s Cost Allocation has the meaning given to it in Clause 5.1 (Service Co’s Cost Allocation);

Service Co's Key Personnel means the personnel set out in Part 1 (Key Personnel) of Schedule Part 5 (Project Board);

Service Co's Matrix Cost Allocation means the aggregate of the Matrix Actions Costs which have been reasonably and properly incurred in respect of Consort Cost Allocation Actions as set out in the column headed "Service Co Cost Allocation” in the Matrix;

Service Co's Matrix Cost Allocation Actions means the Matrix Actions required to be carried out by Service Co under the Project Agreement as at 1 October 2023 and agreed to be carried out by Service Co, as described in the column headed “Service Co's Cost Allocation” of the Matrix;

Service Co’s Other Costs means any Service Co costs and obligations not modelled in the Operating Model, including any outstanding liabilities and fees (including contingent liabilities) which are vouched for on an open book basis to the Board in respect of winding up Service Co (including, but not limited to, costs relating to the Management Agreement , all legal costs and all director's fees and a breakdown of Service Co’s winding up costs);

Service Co's Reactive Maintenance Works means the Consort Maintenance Works where Service Co is responsible for the Cost (as such term is defined in the Facilities Service Contract) of under the Facilities Service Contract, other than any Asset Works;

Service Co's Reactive Maintenance Works Costs means the Cost (as such term is defined in the Facilities Service Contract) which have been reasonably and properly incurred of Consort Maintenance Works which Service Co is responsible for under the Facilities Service Contract, other than Asset Works;

Service Performance Score Improvements has the meaning given to it in Clause 7.5.1.4 (Performance Monitoring - Specific);

Service Performance Score Improvement Payment means a payment of £10,000 from the Available Sums from Service Co to the Board;

Service Performance Score Review has the meaning given to it in Clause 7.5.1.1 (Performance Monitoring);

Side Letter means the proforma side letter supplement agreement set out in Part G of the Protocol, as amended, and entered into between the Board and Service Co;

Sub-Contract means any contract entered into between any Third Party Contractor and any Sub-Contractor, and/or the Service Provider and any Sub-Contractor, the terms and conditions of which contract have been approved by the Board pursuant to the Protocol;

Sub-Contractor means any party appointed by any Third Party Contractor and/or the Service Provider to carry out any part of the Life Cycle (TAWO) Works;

Sub-Consultant means any party appointed by any Consultant to carry out the design of any part of the Life Cycle (TAWO) Works;

Sub-Consultancy Appointment means any contract entered into between any Consultant and any Sub-Consultant the terms and conditions of which contract have been approved by the Board pursuant to the Protocol;

Subordinated Debt means the outstanding balance of **[xx]** on the notes issued pursuant to the Secured Loan Note Instrument dated 20 August 1998 for issuing secured loan notes by Service Co;

Subordinated Debt Interest means interest payable at SONIA plus 6% per annum on the Subordinated Debt provided that any interest that is unpaid on the date of payment shall not itself accrue interest from the date of payment:

Supplemental Agreement Effective Date means:

(a) the last date of execution of this Supplemental Agreement; or

(b) if this Supplemental Agreement is signed in Counterpart, the date inserted on page 1 of this Supplemental Agreement;

Supplemental Assignation in Security has the meaning given to it in the Amended Facilities Agreement;

Supplemental Facilities Service Contract means a supplemental agreement to the Facilities Service Contract to be entered into between Service Co and the Service Provider on or around this date of this Supplemental Agreement to reflect the terms of this Supplemental Agreement as are relevant to the Facilities Service Contract;

Supplemental Management Agreement means a supplemental agreement to the Management Agreement between Service Co and IML on or around the date of this Supplemental Agreement to reflect such terms of this Supplemental Agreement as are relevant to the Management Agreement;

Supplemental University Facilities Service Contract means a supplemental agreement to the University Facilities Service Contract between Service Co and the Service Provider on or around the date of this Supplemental Agreement to reflect such terms of this Supplemental Agreement as are relevant to the University Facilities Service Contract;

Third Party Contractor means a contractor appointed by Service Co to carry out any Life Cycle (TAWO) Works;

Transaction Documents means this Supplemental Agreement, the Amended Facilities Agreement, the Supplemental Assignation in Security, the Supplemental Facilities Service Contract, the Supplemental Management Agreement and the Supplemental University Facilities Service Contract;

University Facilities Service Contract means the contract in connection with the provision of the University Facilities Service between Service Co, the Board and Haden Building Management Limited (now Equans Services Limited) dated 20th August 1998 in respect of the University Facilities Service;

VAT Invoice has the meaning given to it in Clause 12.6.2 (VAT Invoice);

Void Detection Works Costs means all costs and expenses reasonably and properly incurred and vouched for by Service Co in connection with the carrying out of installation of additional void detection.

1.2 Interpretation

1.2.1 All words and expressions defined in the Project Agreement shall have the same meanings in this Supplemental Agreement (unless stated otherwise) and the provisions of Clause 1 (Interpretation), Clause 41 (Dispute Resolution Procedure), Clause 43 (Amendments), Clause 44 (Further Assurance), Clause 46 (Entire Agreement), Clause 47 (Waiver), Clause 49 (Governing Law and Jurisdiction), Clause 51 (Partial Invalidity) of the Project Agreement shall apply to this Supplemental Agreement mutatis mutandis as they apply to the Project Agreement. For the avoidance of doubt, the "Trust" includes the Board and its successors and permitted assignees.

1.2.2 Any reference to a document being "in the Agreed Form" means the form of that document approved by the Board and Service Co and signed for and on behalf of each Party for the purpose of identification.

1.2.3 Headings used in this Supplemental Agreement are for convenience of reference only.

1.2.4 Except where the context expressly requires otherwise, references to Clauses and the Schedule are references to Clauses of and the Schedule to this Supplemental Agreement.

1.2.5 The Schedule to this Supplemental Agreement is an integral part of this Supplemental Agreement.

1.2.6 The Parties agree that this Supplemental Agreement and documents referred to in this Supplemental Agreement which require to be executed by the Parties may be signed electronically. Neither Party challenges the validity of this Supplemental Agreement and such other documents on the basis that this Supplemental Agreement and such other documents having been signed electronically.

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2 EFFECT OF SUPPLEMENTAL AGREEMENT

2.1 The Parties agree that the Conditions Precedent set out in Schedule Part 7 have been satisfied prior to entry into this Supplemental Agreement.

2.2 The Parties agree that:

2.2.1 The Supplemental Agreement shall become fully and effectively binding on the Parties on the Supplemental Agreement Effective Date;

2.2.2 The Project Agreement shall be supplemented and amended as set out in this Supplemental Agreement;

2.2.3 Save as to the extent expressly supplemented and amended by this Supplemental Agreement, the Project Agreement remains in full force and effect;

2.2.4 This Supplemental Agreement is supplemental to the Project Agreement and from the Supplemental Agreement Effective Date, the Project Agreement and this Supplemental Agreement shall, be read and construed together as constituting the Project Agreement between the Board and Service Co;

2.2.5 In the event of any conflict between the provisions of this Supplemental Agreement and the Project Agreement, insofar as the provisions of the Project Agreement are applicable to the subject matter of this

Supplemental Agreement, the provisions of this Supplemental Agreement shall prevail in each case;

2.2.6 This Supplemental Agreement supersedes all other agreements (including the Heads of Terms (which were, in any event, not binding upon the Parties)) and understandings between the Board and Service Co prior to the Supplemental Agreement Effective Date in so far as they relate to the specific subject matter of this Supplemental Agreement;

2.2.7 The Parties agree subject to Clause 14.3 (Continuing Obligations), this Supplemental Agreement shall only terminate upon early termination of the Project Agreement prior to the Expiry Date.

3 MAINTENANCE WORKS AND ASSET WORKS

3.1 Programmed Maintenance

3.1.1 The Parties agree that in respect of Programmed Maintenance:

3.1.1.1 Service Co's obligations to submit a Schedule of Programmed Maintenance and revisions thereto for review in accordance with the Review Procedure are set out in Clauses 18.7 and 18.8 (Programmed and Unprogrammed Maintenance Works) of the Project Agreement; and

3.1.1.2 the Board is entitled to accelerate or defer Programmed Maintenance in accordance with Clause 18.12 (Programmed and Unprogrammed Maintenance Works) of the Project Agreement.

3.2 Unprogrammed Maintenance Works

3.2.1 The Parties agree that in respect of Unprogrammed Maintenance Works:

3.2.1.1 which are not an emergency, the provisions of Clause 18.13 (Programmed and Unprogrammed Maintenance Works) of the Project Agreement shall apply; and

3.2.1.2 which are as a result of an emergency, Clause 18.14 (Programmed and Unprogrammed Maintenance Works) of the Project Agreement shall apply.

3.3 Life Cycle Works

3.3.1 The Parties agree that in respect of the Life Cycle Works, the Trust's Representative shall have the option to give written notice to Service Co to:

3.3.1.1 without prejudice to Board's rights pursuant to Clause 18.12 (Programmed and Unprogrammed Maintenance Works) of the Project Agreement, carry out the entirety of the Life Cycle Works set out in Part 2 of the Schedule of Programmed Maintenance;

3.3.1.2 carry out specific Life Cycle Works set out in Part 2 of the Schedule of Programmed Maintenance; and

3.3.1.3 not carry out any of the Life Cycle Works set out in Part 2 of the Schedule of Programmed Maintenance.

3.3.2 In respect of paragraphs 3.3.1.1 and 3.3.1.2 above, upon the Trust's Representative's reasonable written notice

3.3.2.1 Service Co shall submit any Life Cycle Works Design to the Review Procedure pursuant to Clause 18.9A of the Project Agreement with the Board providing comments to Service Co in relation to such submission pursuant to paragraph 3.1(k) of the Review Procedure; and

3.3.2.2 Service Co shall use its reasonable endeavours to obtain a Collateral Warranty from any Service Co Party appointed by Service Co to undertake Life Cycle Works other than the Service Provider undertaking Life Cycle Works pursuant to the Facilities Service Contract.

3.3.3 In the event that the Trust's Representative gives written notice to Service Co to carry out specific Life Cycle Works only pursuant to Clause 3.3.1.2 or not carry out any of the Life Cycle Works pursuant to Clause 3.3.1.3 or not carry out or abort Life Cycle Works pursuant to Clauses 3.6.2.8 or 4.1.5.2, then in respect of any Life Cycle Works not to be carried out as

a consequence of such request and without limiting any other right or relief of Service Co under the Project Agreement:

3.3.3.1 the relevant works shall be omitted from Part 2 of the Schedule of Programmed Maintenance by Service Co;

3.3.3.2 such omission shall be deemed to be a deferment necessary to avoid the circumstances set out in paragraph 3.1.8 of Schedule 13 (Review Procedure), referred to in Clause 18.12 (Programmed and Unprogrammed Maintenance Works) of the Project Agreement and the provisions of Clause 18.12 of the Project Agreement shall, mutatis mutandis, apply; and

3.3.3.3 the provisions of Clause 18.14A (Programmed and Unprogrammed Maintenance Works) of the Project Agreement shall, mutatis mutandis, apply provided that the relief set out in such clause shall apply until the relevant Life Cycle Works are undertaken by Service Co; and

3.3.3.4 such deferment shall be deemed to constitute the circumstances referred to in Clause 18.14A (Programmed and Unprogrammed Maintenance Works) of the Project Agreement and, accordingly, shall be deemed to be an Excusing Cause pursuant to Clause 28.6(d) (Consequences of matters for which Trust is responsible) of the Project Agreement.

3.3.4 The Parties agree that carrying out the Life Cycle Works (or any part of them) or entering into arrangements to carry out the Life Cycle Works (or any part of them) shall be subject to:

3.3.4.1 Clause 4.1.4 (Available Sum for Asset Works); and

3.3.4.2 Clause 9.2.2 (Remedies available to the Parties from the Supplemental Agreement Effective Date).

3.3A Additional Works and the Available Sums

3.3A.1 The Trust's Representative shall be entitled to request Service Co to carry out Additional Works which will be completed prior to the Residual Balance of the Available Sums Payment Date pursuant to Schedule 10 (Change Procedure) of the Project Agreement utilising the Available Sums ("Additional Works Request") and Service Co shall use its reasonable endeavours to carry out any Additional Works pursuant to and in accordance with Schedule 10 (Change Procedure) of the Project Agreement.

3.3A.2 All Additional Works shall be Asset Works.

3.4 Life Cycle (TAWO) Works

3.4.1 The provisions of Schedule Part 4 (Life Cycle (TAWO) Works Protocol) shall apply in respect of the Life Cycle (TAWO) Works.

3.4.2 The Parties agree to be bound by the provisions of Schedule Part 4 (Life Cycle (TAWO) Works Protocol) in respect of the Life Cycle (TAWO) Works.

3.4.3 The Parties agree to work collaboratively together pursuant to the Life Cycle (TAWO) Works Protocol to establish the specification and costs of the Life Cycle (TAWO) Works including:

3.4.3.1 working collaboratively together within the fire strategy development and implementation working group in order to determine practically deliverable solutions in relation to fire safety works and which may result in Life Cycle (TAWO) Works pursuant to the Life Cycle (TAWO) Works Protocol;

3.4.3.2 working collaboratively together within the critical assets and systems working group in order to determine practically deliverable solutions in relation to electrical resilience at the Project Facilities and which may result in Life Cycle (TAWO) Works pursuant to the Life Cycle (TAWO) Works Protocol; and/or

3.4.3.3 in any other forum as agreed in order to determine practically deliverable solutions for Asset Works.

3.5 Agreed Derogations

3.5.1 The Parties agree that the Board may, where permissible, propose derogations from a relevant Law in connection with Life Cycle Works ("Life Cycle Works Derogations").

3.5.2 If the Board proposes Life Cycle Works Derogations, the Parties shall consider whether such Life Cycle Woks Derogations are:

3.5.2.1 reasonably likely to have an adverse impact on health and safety; or

3.5.2.2 not in accordance with Good Industry Practice.

3.5.3 Subject to approval of the relevant Competent Authority pursuant to Clause 3.6.1.6 and further to the Parties considering the Life Cycle Works Derogations pursuant to Clause 3.5.2, the Parties shall either:

3.5.3.1 agree the Life Cycle Works Derogations (these being the "Agreed Life Cycle Works Derogations")

3.5.3.2 not agree the Life Cycle Works Derogations in which case the Board shall have the option to refer this dispute to the Dispute Resolution Procedure.

3.6 <u>Maintenance Works Required by Law</u>

3.6.1 Carrying out Maintenance Works Required by Law

3.6.1.1 Each Party shall, as soon as reasonably practicable following receipt of a notice from a Competent Authority requiring Maintenance Works Required by Law, provide a copy of such notice to the other Party.

3.6.1.2 The Parties agree to work collaboratively pursuant to the relevant working groups and/or Protocol:

3.6.1.2.1 within the fire strategy development and implementation working group in order to determine practically deliverable solutions in relation to Maintenance Works Required by Law required pursuant to any notice issued by SFRS to either the Board or Service Co or jointly to the Board and Service Co ("Maintenance Works Required by Law (Fire Safety)") together with an estimate of Maintenance Works Required by Law (Fire Safety) Costs);

3.6.1.2.2 to determine practically deliverable solutions in relation to any Maintenance Works Required by Law other than Maintenance Works Required by Law (Fire Safety) required pursuant to a notice from a Competent Authority issued to the Board and/or Service Co after the Supplement Agreement Effective Date ("Maintenance Works Required by Law (Other)" together with an estimate of any Maintenance Works Required by Law (Other) Costs).

3.6.1.3 The Parties agree that:

3.6.1.3.1 the Board shall as soon as reasonably practicable instruct any relevant Maintenance Works Required by Law (Fire Safety) and Service Co shall then carry out any relevant Maintenance Works Required by Law (Fire Safety) pursuant to the Life Cycle (TAWO) Works Protocol or as otherwise agreed between the Parties; and

3.6.1.3.2 the Maintenance Works Required by Law (Fire Safety) Costs shall be met by:

(A) the Available Sums; and/or

(B) the Board pursuant to Clause 3.6.3 (Board Shortfall Amount).

3.6.1.4 Notwithstanding any other provision of this Supplemental Agreement or the Project Agreement:

3.6.1.4.1 if the Board does not instruct or withdraws an instruction in respect of Maintenance Works Required by Law (Fire Safety) pursuant to Clause 3.6.1.3, Service Co shall be permitted to carry out the Maintenance Works Required by Law (Fire Safety); and

3.6.1.4.2 Service Co shall be permitted at any time to carry out any Maintenance Works required by Law (Other) which it is required to carry out pursuant to any notice from a Competent Authority;

3.6.1.5 Service Co shall use its reasonable endeavours to:

3.6.1.5.1 liaise with the Competent Authority in respect of any Agreed Life Cycle Works Derogations in order to seek approval from the Competent Authority in respect of any Agreed Life Cycle Works Derogations;

3.6.1.5.2 report all such relevant discussions pursuant to paragraph 3.6.1.5.1 above to the Board as soon as reasonably practical and also document such discussions in the Monthly Financial Report.

3.6.1.6 In accordance with Clause 3.6.1.5, Service Co shall be permitted to carry out any Maintenance Works Required by Law or procure the carrying out of the Maintenance Works Required by Law pursuant to the Protocol subject to any Agreed Life Cycle Works Derogations which have been approved by such relevant Competent Authority.

3.6.2 Projected Shortfalls and Actual Shortfalls

3.6.2.1 Service Co's Representative shall, as soon as reasonably practicable, following receipt of a notice from a Competent Authority requiring Maintenance Works Required by Law or a copy of such a notice from the Board, identify (having regard to all the circumstances at the relevant time and acting reasonably) whether incurring the estimated Maintenance Works Required by

Law (Fire Safety) Costs will create Projected Shortfalls and/or Actual Shortfall and notify the Board of its assessment and provide the corresponding Cash Profile.

3.6.2.2 Notwithstanding Clause 3.6.2.1, Service Co shall, on a monthly basis, assess (having regard to all the relevant circumstances at the time and acting reasonably) whether there are Projected Shortfalls and/or Actual Shortfalls and this shall be reported in the Monthly Financial Report.

3.6.2.3 If a Cash Profile, issued pursuant to Clause 3.6.2.1 or Clause 3.6.2.2, demonstrates any Projected Shortfalls and/or Actual Shortfalls, Service Co shall prepare and issue for the Board's review a report setting out how the demonstrated Projected Shortfalls and/or Actual Shortfalls have arisen and the steps which could reasonably be taken to mitigate the demonstrated

Projected Shortfalls and/or Actual Shortfalls (a "Shortfalls Report").

3.6.2.4 Once a Shortfalls Report has been received by the Board, the Parties shall discuss the way forward in respect of any Projected Shortfalls and/or Actual Shortfalls at the next meeting of the Project Board.

3.6.2.5 In the event that the Parties agree or determine at the relevant Project Board that there are Projected Shortfalls and/or Actual Shortfalls, the Parties shall consider how any Projected Shortfalls and/or Actual Shortfalls may be mitigated and funded.

3.6.2.6 Subject to Clause 3.6A (Life Cycle Works Breach of Law), following discussion between the Parties pursuant to Clause 3.6.2.5, the Trust's Representative shall notify Service Co as soon as reasonably practicable in relation to the following:

3.6.2.6.1 what steps could be reasonably taken by Service Co to mitigate the Projected Shortfalls and/or an Actual Shortfalls; and/or

3.6.2.6.2 whether it proposes any Life Cyle (TAWO) Works, Additional Works, Life Cycle Works and/or Matrix Actions (in so far as reasonably practicable and having regard to Service Co's obligations and contractual rights and entitlements in respect of the same) are to be not carried out, omitted, deferred, postponed, suspended or aborted in order to avoid or reduce Projected Shortfalls and/or an Actual Shortfalls.

3.6.2.7 Following a notification from the Trust's Representative to Service Co described in Clause 3.6.2.6 above, the Parties shall discuss the following at the next meeting of the Project Board:

3.6.2.7.1 whether the measures proposed by the Board will avoid or reduce the Projected Shortfalls and/or an Actual Shortfalls;

3.6.2.7.2 whether any Life Cyle (TAWO) Works, Additional Works, Life Cycle Works and/or Matrix Actions (in so far as reasonably practicable and having regard to Service Co's obligations and contractual rights and entitlements in respect of the same) shall be not carried out, omitted, deferred, postponed, suspended or aborted; and

3.6.2.7.3 what the amount of any resulting Projected Shortfalls and/or an Actual Shortfalls may be pursuant to any updated Cash Profile to be prepared by Service Co.

3.6.2.8 Subject to Clause 3.6A (Life Cycle Works Breach of Law), following discussion between the Board and Service Co described in Clause 3.6.2.7 above, as soon as reasonably practicable and in any event in time for the Board and/or Service Co to comply with the timescales set out in any notice from a Competent Authority, the Trust's Representative shall notify Service Co to confirm if relevant, the Life Cycle (TAWO) Works, Additional Works, Life Cycle Works and/or Matrix Actions (in so far as reasonably practicable and having regard to Service Co's obligations and contractual rights and entitlements in respect of the same) which shall be not carried out, omitted, deferred, postponed, suspended (other than in respect of Life Cycle Works) or aborted (as applicable) and the provisions of:

3.6.2.8.1 Clause 3.3.3 (Life Cycle Works) shall apply in respect of Life Cycle Works where such notification is to not carry out, omit, defer, postpone or abort Life Cycle Works; and

3.6.2.8.2 Clause 4.1.2 (Available Sums for Assets Works) (including the requirement that the Costs (Incurred) reflect Costs (Incurred

Vouching)) shall apply where such notification is to not carry out, omit, defer, postpone, suspend or abort Life Cycle TAWO) Works, Additional Works, and/or Matrix Actions and such Costs (Incurred shall include,
for the avoidance of doubt, any Life
Cycle TAWO) Works, Costs, Additional Works Requests Costs and/or Matrix Action Costs incurred in not carrying out, omitting, deferring, postponing, suspending or aborting the relevant works, as the case may be).

3.6.2.9 Subject to Clause 3.6.3 (Board Shortfall Amount), Service Co shall carry out any Maintenance Works Required by Law (Fire Safety) if instructed by the Board pursuant to the Protocol.

3.6.2.10 If, the Parties having followed the process set out in Clauses 3.6.2.3 to 3.6.2.8, the Projected Shortfalls and/or Actual Shortfalls have not been eliminated, the Trust's Representative may request that such process is repeated with a view to eliminating any or all Projected Shortfalls and/or Actual Shortfalls.

3.6.3 Board Shortfall Amount

3.6.3.1 The Parties agree that Service Co's Representative shall:

3.6.3.1.1 to the extent any Board Shortfall Amount does not exceed the amount of the Retained Retentions, request from the Board the release of the Retained Retentions for the relevant Board Shortfall Amount (a "Board Shortfall Amount Release Request"); and

3.6.3.1.2 to the extent any Board Shortfall Amount exceeds the amount of the Retained Retentions, raise an invoice to the Board for the relevant Board Shortfall Amount (a "Board Shortfall Amount Invoice"),

no earlier than ten (10) Business Days before the end of the month, two months prior to the month in which the Actual Shortfall occurs (as set out in the Cash Profile); and

3.6.3.2 The Parties agree that the Board shall pay all Board Shortfall Amounts to Service Co up to the Residual Balance of the Available Sums Payment Date as follows:

3.6.3.2.1 the Board shall pay the Board Shortfall Amount set out in the relevant Board Shortfall Amount Release Request to Service Co, in accordance with Clause 12.2 (Payment), within ten (10) Business Days of receiving a Board Shortfall Amount Release Request from Service Co; and

3.6.3.2.2 the Board shall pay the pay the Board Shortfall Amount set out in the relevant Board Shortfall Amount Invoice to Service Co, in accordance with Clause 12 (Payment), within ten (10) Business Days of receiving the relevant Board Shortfall Amount Invoice from Service Co.

3.6A Life Cycle Works Breach of Law

3.6A.1 The Parties agree that:

3.6A.1.1 the Trust's Representative cannot notify Service Co to not carry out, omit, defer postpone, suspend or abort any Maintenance Works Required by Law;

3.6A.1.2 the Trust's Representative cannot notify Service Co to not carry out, omit, defer postpone, suspend or abort any Maintenance Works required by a statutory authority;

3.6A.1.3 Service Co's Representative may notify the Trust's Representative if the Trust's Representative's notification to Service Co to not carry out, omit, defer, postpone, or abort any Life Cycle Works would give rise to a breach of any regulation, bye-law, directive, statute, statutory instrument or other legislative measure having the force of law in Scotland (but for the avoidance of doubt excluding, without limitation, any SHTMs, HTMs, HBNs, SHBNs and/or any notes and/or guidance issued by the NHS and/or NHS Scotland) ("Life Cycle Works Breach of Law").

3.6A.1.4 if the Trust's Representative receives a notification from Service Co's Representative pursuant to Clause 3.6A.1.3, the Parties shall meet within five (5) Business Days to discuss such notification. The Parties agree that the Service Provider shall be entitled to attend this meeting (if available to do so);

3.6A.1.5 within five (5) Business Days of the meeting referred to in Clause 3.6A.1.4:

3.6A.1.5.1 if the Parties agree that there is a Life Cycle Works Breach of Law, the Parties shall record this in writing and the relevant notification from the Trust's Representative shall be deemed to be withdrawn and Service Co shall as soon as reasonably practicable carry out the applicable Life Cycle Works;

3.6A.1.5.2 if the Parties have not agreed and therefore Dispute that there is a Life Cycle Works Breach of Law, evidenced by the absence of a written agreement being recorded pursuant to Clause 3.6A.1.5.1 within the said five (5) Business Days, either Party may refer such Dispute to an adjudicator (called "the Expert" in paragraph 2 of Schedule 21 (Dispute Resolution Procedure) of the Project Agreement) agreed between the Parties or appointed in accordance with the procedure specified in Clause 3.6A.2, for adjudication in accordance with the procedure specified in paragraph 2 (Adjudication Procedure) of Schedule 21 (Dispute Resolution Procedure) of the Project Agreement, as amended by Clause 3.6A.2, to determine whether there is a Life Cycle Works Breach of Law.

3.6A.2 The Parties agree that any Dispute referred for adjudication pursuant to Clause 3.6A.1.5.2, shall be adjudicated in accordance with the Adjudication Rules (as such are defined in paragraph 2 of Schedule 21 (Dispute Resolution Procedure) of the Project Agreement) amended as follows:

3.6A.2.1 notwithstanding Rules 6, 7 , 8 and 9 of the Adjudication Rules and any amendments thereto in paragraph 2.1 of Schedule 21 (Dispute Resolution Procedure) of the Project Agreement), the Adjudicator shall be an expert with at least ten (10) years' experience and practice in Scotland in relation to regulations, bye-laws, directives, statutes, statutory instruments or other legislative measure having the force of law in Scotland (but for the avoidance of doubt excluding, without limitation, any SHTMs, HTMs, HBNs, SHBNs and/or other notes and/or guidance issued by the NHS and/or NHS Scotland) applicable to the relevant Services performed at the Project Facilities, and in the event of the Parties failing to agree the identity of the Adjudicator, the Adjudicator, shall be nominated by or on behalf of the chairman, president (or senior office holder at the time available) from one of the following bodies as is appropriate having regard to the relevant Services affected by the Life Cycle Works Breach of Law which are the subject of the Dispute:

3.6A.2.1.1 the Royal Incorporation of Architects in Scotland; or

3.6A.2.1.2 the Royal Institution of Chartered Surveyors (Scottish Branch; or

3.6A.2.1.3 the Institution of Civil Engineers (ICE) Scotland or Scottish Branch; or

3.6A.2.1.4 the Institution of Engineering and Technology (IET), Scotland or Scottish Branch; or

3.6A.2.1.5 The Law Society of Scotland,

(as constituted, reconstituted, formed or reformed from time to time);

3.6A.2.2 notwithstanding Rule 22 of the Adjudication Rules and any amendments thereto in paragraph 2.1 of Schedule 21 (Dispute Resolution Procedure) of the Project Agreement), the Adjudicator shall determine the Dispute in 28 days and there shall not be any extension of the 28 days requested by the Party referring the Dispute and no other extensions to the 28 days, agreed by the Parties;

3.6A.2.3 notwithstanding Rules 14 and 33 of the Adjudication Rules and any amendments thereto in paragraph 2.1 of Schedule 21 (Dispute Resolution Procedure) of the Project Agreement, the decision of the Adjudicator shall be final and binding on the Parties and shall be implemented by the Parties without delay in accordance with Rule 28A of the Adjudication Rules;

3.6A.2.4 notwithstanding Rules 21(v) and 24 of the Adjudication Rules and any amendments thereto in paragraph 2.1 of Schedule 21 (Dispute Resolution Procedure) of the Project Agreement, in particular Adjudication Rule 24A) and notwithstanding any other provisions of the Project Agreement and/or this Agreement to the contrary, the unsuccessful party shall meet the Adjudicator's fees and expenses including those of any specialist consultant appointed under Rule 19(viii), and the reasonably incurred reasonable costs arising in the adjudication, and the reasonable costs reasonably incurred by the successful party (the "Costs of Adjudication"). The unsuccessful party shall pay the Costs of Adjudication within the timescale (if any) set out by the Adjudicator, failing which when demanded by the successful party.

4 AVAILABLE SUMS FOR ASSET WORKS

4.1 The Parties acknowledge and agree that:

4.1.1 the Available Sums shall be used by Service Co to fund, amongst other things, the Asset Works;

4.1.2 Service Co shall be permitted to account from the Available Sums for:

4.1.2.1 the Costs (Incurred) where this reflects the Costs (Incurred Vouching);

4.1.3 the Asset Works shall be scheduled to be carried out so that the Costs Aggregate Cap and the Cash Profile are not breached.

4.1.4 Service Co shall not be obliged to incur or commit to incur Costs for the Asset Works which shall:

4.1.4.1 result in the Cash Profile demonstrating an Actual Shortfall in any month up to and including the month in which the Expiry Date occurs (tested as at the date the Cash Profile is delivered to the Board for each month up to and including the month in which the Expiry Date occurs); and/or

4.1.4.2 breach the Costs Aggregate Cap at the relevant dates in 2025 and 2026,

(the "Costs Thresholds").

4.1.5 in the event that it is projected that for any month the Costs shall exceed the Costs Thresholds, the Parties shall meet as soon as is reasonably practicable to discuss this matter and shall:

4.1.5.1 agree adjustments to the Costs for any relevant month to ensure that the Costs Thresholds can be met; and

4.1.5.2 subject to Clause 3.6A, agree whether any Life Cyle (TAWO) Works, Additional Works and/or Life Cycle Works are not to be carried out, omitted, deferred, postponed, suspended (other than in respect of Life Cycle Works) or aborted (as applicable) and the

provisions of:

4.1.5.2.1 Clause 3.3.3 (Life Cycle Works) shall apply in respect of Life Cycle Works where such notification is to not carry out, omit, defer, postpone or abort Life Cycle Works; and

4.1.5.2.2 Clause 4.1.2 (Available Sums for Assets Works) (including the requirement that the Costs (Incurred) reflect Costs (Incurred Vouching)) shall apply where such notification is to not carry out, omit, defer, postpone, suspend or abort Life Cycle TAWO) Works, Additional Works, and/or Matrix Actions and such Costs (Incurred shall include, for the avoidance of doubt, any Life Cycle TAWO) Works, Costs, Additional Works Requests Costs and/or Matrix Action Costs incurred in not carrying out, deferring, postponing, suspending or aborting the relevant works, as the case may be).

4.1.5.3 agree adjustments to Part 2 of the Schedule of Programmed Maintenance for any relevant month to reflect Clause 4.1.5.1 and Clause 4.1.5.2 above.

4.2 Without prejudice to Clauses 27.8 and Clause 27.9 of the Project Agreement, the Parties agree that in respect of any Maintenance Works to be carried out by the Service Provider pursuant to the Facilities Service Contract up to and including the Expiry Date:

4.2.1 any amounts deducted and retained from the payments due to the Service Provider by Service Co in respect of the Maintenance Works; and/or

4.2.2 any amounts paid under the Facilities Service Contract by the Service Provider to Service Co (including retentions and/or deductions) pursuant to the provision of Maintenance Works relating to the Facilities Service Contract,

shall have the effect of increasing the amount available to form the Available Sums (compared to the position had Service Co not made such deduction or had the Service Provider not paid such amount).

4.3 Without prejudice to Clauses 27.8 and Clause 27.9 of the Project Agreement, the Parties agree that in respect of any Life Cycle (TAWO) Works to be carried out by a Third Party Contractor pursuant to the Life Cycle (TAWO) Works Contract up to and including the Expiry Date:

4.3.1 any amounts deducted and retained from the payments due to the Third Party Contractor by Service Co in respect of the Life Cycle (TAWO) Works; and/or

4.3.2 any amounts paid under the Life Cycle (TAWO) Works Contract by the Third Party Contractor to Service Co (including liquidated damages, monies due under performance bonds, parent company guarantees, retention bond and/or advanced payment bonds (if applicable)) pursuant to the provision of Life Cycle (TAWO) Works relating to the Life Cycle (TAWO) Works Contract,

shall have the effect of increasing the amount available to form the Available Sums (compared to the position had Service Co not made such deduction or had the Third Party Contractor not paid such amount).

5 SERVICE CO'S COST ALLOCATION

5.1 The Parties agree that Service Co shall be entitled to spend up to **[xx]** per annum from the date of this Supplemental Agreement Effective Date on its office administrative costs ("Service Co's Cost Allocation").

5.2 Service Co shall not incur office administrative costs in excess of Service Co's Cost Allocation unless agreed by the Board (such agreement not to be unreasonably withheld or delayed).

5.3 The Parties agree that any unutilised element of Service Co's Cost Allocation shall have the effect of increasing the amount available to form the Available Sums (compared to the position had Service Co utilised all of the Service Co's Cost Allocation).

6 PAYMENT OF RESIDUAL BALANCES OF THE AVAILABLE SUMS AND RESIDUAL BALANCE OF CASH BUFFER

6.1 <u>Payment of Residual Balance of Available Sums</u>

Subject to Clause 6.5 (Early Termination of the Project Agreement), the Parties agree that Service Co shall pay the Residual Balance of the Available Sums to the Board in accordance with Clause 12 (Payment) within five (5) Business Days of making payment of all sums due to the Funders pursuant to the Funding Agreements.

6.2 <u>Payment of Residual Balance of Cash Buffer</u>

6.2.1 Subject to Clause 6.5 (Early Termination of the Project Agreement), Service Co shall pay:

6.2.1.1 the Interim Payment of the Cash Buffer to the Board in accordance with Clause 12 (Payment) within six (6) months of the Expiry Date; and

6.2.1.2 The Residual Balance of the Cash Buffer to the Board in accordance with Clause 12 (Payment) within sixty (60) days from Service Co's final payment from the Cash Buffer.

6.2.2 Service Co shall provide any vouching for costs incurred by Service Co in relation to the winding up of Service Co to the Board as soon as reasonably practicable after such costs being incurred.

6.3 Payment of the Residual Balance of the Contract Contingency

Subject to Clause 6.5 (Early Termination of the Project Agreement), Service Co shall pay the Residual Balance of the Contract Contingency to the Board in accordance with Clause 12 (Payment) within ninety (90) days from the Expiry Date.

6.4 Negligent acts and omissions of Service Co

6.4.1 The Parties agree that any Service Co costs arising as a direct result of Service Co's negligent acts or omissions (which, for the avoidance of doubt does not include the negligent acts or omissions of any other party including, without limitation, any Service Co Party, Service Provider, any Third Party Contractor, Sub-Contractor, Consultant or Sub-Consultant or their directors, officers, employees or other workmen) in relation to the Asset Works shall be met directly by Service Co from the amounts referred to in limbs (h), (i) or (j) of the definition of Available Sums.

6.4.2 Service Co shall, when requested by the Trust's Representative, take all reasonable steps to pursue and enforce its entitlements and/or rights under the Facilities Service Contract (including any remedies relating to Deductions and/or Retentions available to Service Co against the Service Provider after the Residual Balance of the Available Sums Payment Date), any Life Cycle (TAWO) Works Contract (prior to the Residual Balance of the Available Sums Payment Date) or any Consultancy
Appointment (prior to the Residual Balance of the Available Sums Payment Date) or any Additional Works Request it has other than where doing so would be frivolous or vexatious in nature or the Parties agree would have no reasonable prospect of success. The costs and expenses reasonably incurred and vouched for by Service Co in taking such steps shall be paid:

6.4.2.1 up to the Residual Balance of the Available Sums Payment Date, from the Available Sums; and/or

6.4.2.2 after the Residual Balance of the Available Sums Payment Date, by the Board to Service Co as soon as

reasonably practicable following a demand by Service Co;

6.4.3 The Parties agree that any amounts recovered pursuant to taking such steps set out in Clause 6.4.2 shall either (subject to the amount recovered being greater than the reasonable costs and expenses incurred and vouched for by Service Co in taking such steps):

6.4.3.1 up to the Residual Balance of the Available Sums Payment Date, have the effect of increasing the amount available to form the Available Sums compared to the position had Service Co not recovered such amount; or

6.4.3.2 after the Residual Balance of the Available Sums Payment Date, be payable by Service Co to the Board within ten (10) Business Days of receipt by Service Co of such amount.

6.4.4 For the avoidance of doubt, the provisions of the Project Agreement shall continue to apply in relation to any damage to the Project Facilities including any Trust Equipment, University Equipment, Trust Assets and/or University Assets arising as a result of carrying out of the Life Cycle Works and Service Co shall insure damage to the Project Facilities including any Trust Equipment, University Equipment, Trust Assets and/or University Assets arising as a result of carrying out of the Life Cycle Works under and subject to the terms of the Insurances.

6.5 Early Termination of Project Agreement

6.5.1 The Parties agree that if the Project Agreement terminates at any time and for any reason prior to the Expiry Date:

6.5.1.1 then the provisions of Clauses 6.1 (Payment of the Residual Balance of the Available Sum) to 6.3 (Payment of the Residual Balance of the Contract Contingency) shall not apply and any payment of the Residual Balances by Service Co to the Board shall be dealt with through the operation of the provisions of Schedule 26 (Compensation on Termination) of the Project Agreement; and

6.5.1.2 the Board Matrix Cost Allocation and the Debated Matrix Cost Allocation shall be determined and taken into account in terms of Schedule 26 (Compensation on Termination) of the Project Agreement.

6.6 Project Documentation

6.6.1 The Parties agree that Service Co shall deliver to the Board as soon as reasonably practicable and by no later than six (6) months from the Supplemental Agreement Effective Date, copies of the following technical documentation pertaining to the Project (including the NRIE and the University Accommodation) in so far as and in such format as Service Co and/or the Service Provider holds such documentation:

6.6.1.1 operation and maintenance manuals;

6.6.1.2 health and safety files;

6.6.1.3 as-built drawings;

6.6.1.4 room data sheets;

6.6.1.5 Reviewable Design Data;

6.6.1.6 commissioning data;

6.6.1.7 test certificates.

6.6.1.8 asset register;

6.6.1.9 condition surveys; and

6.6.1.10 any other asset information it retains.

6.6.2 The Parties agree that in the event that Service Co does not hold or holds incomplete documentation referred to in Clause 6.6.1, then the Trust's Representative can request that such missing or incomplete documentation be prepared by Service Co and provided by Service Co to the Board by the Residual Balance of the Available Sums Payment Date.

7 DELIVERY OF SERVICES UP TO THE EXPIRY DATE

7.1 Transparency and Openness

7.1.1 The Parties agree to openness and transparency in relation to any and all information that requires to be shared between the Parties pursuant to the Project and the Project Agreement.

7.2 Existing Project Agreement obligations

7.2.1 The Parties agree to work together to ensure that the Project Facilities are handed back to the Board on the Expiry Date.

7.2.2 The Parties agree that:

7.2.2.1 Service Co shall be prohibited from paying any further Distributions to its Shareholders and/or any other party from 16th August 2021 onwards;

7.2.2.2 Service Co shall not subscribe to further Subordinated Debt;

7.2.2.3 the Performance Tables set out Part 1 to 11 of Schedule 8 (Service Requirements) of the Project Agreement shall not be amended;

7.2.2.4 the Performance Standards set out in the Project Agreement shall not be amended;

7.2.2.5 Service Co shall pay IML for IML's services in respect of Life Cycle (TAWO) Works only on the relevant IML Payment Milestone being achieved and in accordance with the relevant IML Percentage.

7.3 Improvement to the Services

7.3.1 The Parties agree that:

7.3.1.1 Service Co shall provide an annual Schedule of Programmed Maintenance in accordance with the pro forma set out in Schedule Part 6 (Pro Forma Schedule of Programmed Maintenance) (subject to any further evolvement or amendments to the format of the Schedule of Programmed Maintenance that are agreed between Service Co and the Board) to the Board in accordance with Clause 18.7 (Programmed and Unprogrammed Maintenance Works) of the Project Agreement;

7.3.1.2 Service Co shall liaise with the Service Provider to discuss in good faith the current performance monitoring procedures pursuant to the Facilities Service Contract between Service Co and the Service Provider; and

7.3.1.3 Service Co and the Service Provider carried out a Facilities Service Labour Cost Benchmarking with a negotiated settlement in 2025 and Service Co has provided the Board with the results of that Facilities Service Labour Cost Benchmarking.

7.3.2 Service Co shall closely monitor the performance of the Service Provider in the delivery of the Services.

7.3.3 The Parties acknowledge that the Service Provider has:

7.3.3.1 recruited seven (7) additional full time staff to enhance operational performance; and

7.3.3.2 reduced its gross margin by four percent (4%) from sixteen percent (16%) to twelve percent (12%) for works carried out under and in accordance with the Facilities Service Contract,

and Service Co shall continue to use its reasonable endeavours to ensure that the Service Provider meets the provisions of Clauses 7.3.3.1 and 7.3.3.2.

7.3.4 The Parties agree that the Performance, Quality and Compliance Manager shall:

7.3.4.1 continue to work with the Board to monitor and report on the performance of the Services pursuant to Clause 21 (Monitoring of Performance) of the Project Agreement and Schedule 14 (Performance Measurement System) of the Project Agreement including;

7.3.4.1.1 any further enhanced performance, monitoring and reporting as required pursuant to the Project Agreement; and

7.3.4.1.2 any further improvement in the operation of the Performance Review Committee in order to ensure

detailed reporting and appropriate scrutiny of the Service Performance Score and associated supporting back-up.

7.4 <u>Financial Monitoring</u>

7.4.1 Financial Monitoring Report

7.4.1.1 By no later than the 21st of each month, Service Co shall issue the Monthly Financial Report in respect of the previous month to the Board for review and comment.

7.4.1.2 The Trust's Representative shall be entitled to request any Monthly Financial Report supporting documentation in respect of the relevant Monthly Financial Report at any time ("Monthly Financial Report Supporting Documentation").

7.4.1.3 In the event that Service Co seeks to update the Operating Model, such as to reflect Service Co's commitments to Funders (including any reserving or other requirements of Funders), Service Co shall specifically make the Board aware of this in the relevant Monthly Financial Report and shall provide any updated Operating Model to the Board as soon as reasonably practicable.

7.4.1.4 Service Co and the Board shall seek to agree the content of the Monthly Financial Report at the relevant Project Board meeting.

7.4.1.5 Service Co shall update the Cash Profile on a monthly basis and deliver the updated Cash Profile to the Board as part of the Monthly Financial Report.

7.4.2 Maximisation of Available Sums

The Parties agree that they will work together in good faith to seek to agree ways to:

7.4.2.1 maximise the Available Sums available for the Asset Works; and

7.4.2.2 minimise and mitigate all other calls on the Available Sums.

7.4.3 Financial Transparency of Service Co

To facilitate financial transparency of Service Co for the Board and to provide visibility of expenditure being incurred by Service Co, Service Co shall:

7.4.3.1 provide the Board with a copy of Service Co's annual budget and by no later than the 28th of February each year and the Board shall be entitled to raise queries in relation to this annual budget with Service Co at any time;

7.4.3.2 provide the Board, when requested by the Trust's Representative, any supporting information pertaining to Service Co's annual budget, including any sub-contracts, agreements and taxation calculations (subject to any confidentiality restrictions within such documentation);

7.4.3.3 only amend the existing agreements for Service Co director's remuneration if the Board has provided its written consent to such amendment;

7.4.3.4 only enter into new agreements pertaining to Service Co directors' remuneration if the Board has provided its written consent to such agreement;

7.4.3.5 only appoint additional employees to Service Co if the Board has provided its written consent to such an appointment;

7.4.3.6 only amend the Management Agreement if such amendment has been submitted for review to the Board pursuant to Schedule 13 (Review Procedure) of the Project Agreement. For the avoidance of doubt, any such amendments shall be a "Submitted Item" for the purposes of the Review Procedure;

7.4.3.7 permit the Board to nominate a senior executive to attend Service Co's board meetings and allow this senior executive to attend such meetings and receive board papers in advance of such meetings.

7.5 <u>Performance Monitoring</u>

7.5.1 Performance Monitoring - Specific

7.5.1.1 Service Co shall continue to review how it determines its Service Performance Score (the "Service Performance Score Review") and articulate that in the monthly Performance Monitoring Report.

7.5.1.2 Service Co shall continue to provide the Board with Service Co's monthly Performance Monitoring Report in accordance with the timescales in the Project Agreement for delivering the monthly Performance Monitoring Report.

7.5.1.3 The Board shall review the monthly Performance Monitoring Report and shall feedback any comments it may have to Service Co at the Performance Review Committee.

7.5.1.4 At the Performance Review Committee meeting, the Parties shall seek to agree any necessary improvements to Service Co's monitoring of its Service Performance Score marking ("Service Performance Score Improvements"). If any such Service Performance Score Improvements are agreed between the Parties, the Parties shall also agree the timescales for implementation. Any failure by Service Co to implement

such agreed Service Performance Score Improvements by the agreed timescales shall lead to:

7.5.1.4.1 this being discussed at the next Performance Review Committee meeting with Service Co being bound to comply with any recommendations of the Performance Review Committee in respect of the Service Performance Score Improvements; and

7.5.1.4.2 the Board shall be entitled to apply a deduction of this Service Performance Score Improvement Payment from the next Service Payment .

7.6 Project Board, Cost Allocation and Matrix

7.6.1 Project Board

7.6.1.1 The Parties agree that the Project Board will be conducted in accordance with the Project Board Terms of Reference.

7.6.1.2 The Parties and the Service Provider have established a Project Board which:

7.6.1.2.1 is a liaison forum with the Scottish Fire and Rescue Service regarding fire safety matters;

7.6.1.2.2 is an advisory body to the Board in relation to the Life Cycle (TAWO) Works Protocol and any relevant Life Cycle (TAWO) Works update (including any relevant claims which may arise under such Life Cycle (TAWO) Works and whether the Life Cycle (TAWO) Works shall lead to a Shortfall and/or a Cash Shortfall and/or a breach of the Costs Threshold);

7.6.1.2.3 provides executive management and guidance over the key deliverables of the Asset Works;

7.6.1.2.4 provides a forum to discuss the Service Performance Score related matters (if relevant);

7.6.1.2.5 provides a forum to review the Monthly Financial Report;

7.6.1.2.6 provides a forum to schedule the Asset Works and Costs in accordance with the Costs Thresholds; and

7.6.1.2.7 provides a forum to discuss and agree Additional Works which are to progressed through Schedule 10 (Change Procedure) of the Project Agreement.

7.6.2 Key Personnel

7.6.2.1 Service Co's Key Personnel are identified in Part 1 (Key Personnel) of Schedule Part 5 (Project Board).

7.6.2.2 Service Co shall, as far as it is within Service Co's reasonable control, ensure that such Service Co's Key Personnel continue to sit on and retain their involvement on the Project Board in order to provide continuity and oversight for the carrying out of the Asset Works.

7.6.2.3 The Parties agree that the identity of any replacement of Service Co's Key Personnel to sit and participate on the Project Board shall not be made without the consent of the Board.

7.6.3 Matrix

7.6.3.1 The Parties have agreed to record whether the Matrix Actions Costs are Board’s Matrix Cost Allocation, Service Co Matrix Cost Allocation or Debated Matrix Cost Allocation in the Matrix.

7.6.3.2 Not Used;

7.6.3.3 The Parties have agreed:

7.6.3.3.1 the Matrix attached at Part A (Matrix) Schedule Part 8 (Matrix and Financial Information) records the Matrix Actions, Board’s Matrix Cost Allocation, Service Co Matrix Cost Allocation and the Debated Matrix Cost Allocation as at the Supplemental Agreement Effective Date; and

7.6.3.3.2 the Matrix may be amended and/or updated from time to time including to reflect further, amended and/or updated Matrix Actions, Board’s Matrix Cost Allocation, Service Co Matrix Cost Allocation and the Debated Matrix Cost Allocation. Any amended and/or updated Matrix shall be agreed by the Project Board, which shall be evidenced by the Trust's Representative and the Service Co Representative signing or initialling (for the avoidance of doubt, including electronic signing or initialling) such amended and/or updated Matrix.

8 HANDOVER

8.1 The Parties agree to work together in good faith to ensure a smooth transition of the handback of the Project Facilities from Service Co to the Board at the Expiry Date.

8.2 The Parties agree that the handover requirements for the Project Facilities shall be as follows:

8.2.1 Subject to Clause 8.2.2, Service Co complying with its obligations in respect of Programmed Maintenance, Unprogrammed Maintenance Works and Life Cycle Works and Additional Works pursuant to Clause 3 (Maintenance Works and Asset Works) and/or any void detection works, hazard room reconfiguration works and/or fire stopping works up to the Expiry Date; and

8.2.2 Service Co complying with its obligations relating to Life Cycle (TAWO) Works pursuant to Clause 3.4 (Life Cycle (TAWO) Works) up to the Handover Certificate Date,

these being the "Handover Requirements".

8.3 Without prejudice to the Board's rights to apply the Payment Mechanism for any Performance Failures, the Parties agree that the Board's sole remedy if the Handover Requirements have not been satisfied shall be the exercise by the Board of its remedies against the relevant:

8.3.1 Third Party Contractor or Consultant, as the case may be, pursuant to the relevant Automatic Transfer Documents or relevant Collateral Warranty; and/or

8.3.2 Service Co Party pursuant to a Collateral Warranty, as described in Clause 3.3.2.2 (Life Cycle Works).

8.4 For the avoidance of doubt, if the Handover Requirements have not been satisfied at the Handover Certificate Date, this shall not prevent the deemed issue by the Board of a Handover Certificate to Service Co pursuant to the provisions of Clause 8.5 (Handover Certificate).

8.5 <u>Handover Certificate</u>

8.5.1 The Board shall be deemed to issue a handover certificate (the "Handover Certificate") to Service Co on the later of the following dates:

8.5.1.1 the date that the Residual Balance of the Available Sums has been paid to the Board by Service Co pursuant to Clause 6.1 (the "Residual Balance of the Available Sums Payment Date"); and

8.5.1.2 the date that all relevant Collateral Warranties in favour of the Board obtained by Service Co:

8.5.1.2.1 which Service Co is required to provide pursuant to Clause 3.3.2.2 (Life Cycle Works); or

8.5.1.2.2 are specified in the Life Cycle (TAWO) Works Contracts, SubContracts, Consultancy Appointments and Sub-Consultancy Appointments in respect of Life Cycle (TAWO) Works, where such Life Cycle (TAWO) Works Contracts, Sub-Contracts, Consultancy Appointments or Sub-Consultancy Appointments, as the case may be, have been executed prior to the Residual Balance of the Available Sums Payment Date, have been delivered to the Board by Service Co,

this being the "Handover Certificate Date".

8.6 The Parties agree that the deemed issue of the Handover Certificate on the Handover Certificate Date shall:

8.6.1 entitle Service Co to make payment of its Subordinated Debt obligations (including any pertaining interest in relation to the Subordinated Debt (but with exception of accrued interest on capitalised interest on any outstanding Subordinated Debt which shall not be paid by Service Co)); and

8.6.2 entitle Service Co to begin the process of winding up Service Co following the Expiry Date which shall be completed as soon as reasonably practicable;

8.7 The Parties agree the Board or the University (where applicable)shall be entitled to continue any Life Cycle (TAWO) Works pursuant to the Life Cycle (TAWO) Works Contracts that contain Automatic Transfer Provisions either from:

8.7.1 the date of early termination of the Project Agreement; or

8.7.2 the Residual Balance of the Available Sums Payment Date (notwithstanding any other provision of the Project Agreement or Project Documents (including any direct agreements));

8.8 The Parties agree the Board or the University (where applicable) shall be entitled to carry out any relevant services to any relevant Life Cycle (TAWO) Works where sectional completion or practical completion has occurred pursuant to paragraph 5 of the relevant Side Letter from:

8.8.1 where the Board has stated in a Trust's Additional Works Order that services shall not to be provided by Service Co to the completed Life Cycle (TAWO) Works pursuant to paragraph 3.1(e) of Section 1 of the Protocol, from the date of sectional completion or practical completion;

8.8.2 where the Project Agreement has been terminated early, from the date of such early termination.

8.9 Claims

8.9.1 On the Residual Balance of the Available Sums Payment Date, the Board releases and discharges all Claims other than the Existing Claims and
Future Claims but without prejudice to and does not limit or affect the Board's whole rights, remedies, pleas, claims, entitlements and demands against Service Co Parties, Service Co's sub-contractors and subconsultants or Third Party Contractors arising under, out of and/or in connection with any Automatic Transfer Document and/or any other collateral agreements, consultancy agreements, collateral warranties, performance guarantees and/or any Service Provider collateral agreement, all in respect of the Asset Works.

9 RELIEF

9.1 Remedies available to Service Co at the Supplemental Agreement Effective Date

9.1.1 The Parties agree that:

9.1.1.1 the November Letter will not be further acted upon by the Board and the Board agrees that this shall include without limitation the Board not issuing any notice of termination or notice of default pursuant to Clause 31 (Serious Issue Events) of the Project Agreement in connection with the Serious Issue Event alleged to have occurred in the November Letter; and

9.1.1.2 the Serious Issue Event referred to in the November Letter will be deemed not to have occurred; and

9.1.1.3 the Board shall not and shall procure the Trust's Representative shall not:

9.1.1.3.1 levy any Deficiency Points in respect of the Facilities Service;

9.1.1.3.2 exercise any other right or remedy which it or they may have (including, without limitation, making adjustments to the Performance Factor, applying Retentions and/or levying Deductions),

arising out of or in connection with the issues which are specifically outlined in the November Letter; and

9.1.1.4 all accrued Deficiency Points (whether or not accrued pursuant to the November Letter and/or regardless of their cause) as at the Supplemental Agreement Effective Date will be cancelled by the Board and any right or remedy of the Board or the Trust's Representative arising out of or in connection with the accrual or levy of such Deficiency Points shall be cancelled and shall have no effect; and

9.1.1.5 without prejudice to Clause 9.2.1, there are no further Serious Issue Events as at the Supplemental Agreement

Effective Date and the Board shall not give notice of termination or notice of default pursuant to Clause 31 (Serious Issue Events) of the Project Agreement in respect of any Serious Issue Events alleged to have occurred.

9.2 <u>Remedies available to the Parties from the Supplemental Agreement Effective Date</u>

9.2.1 Subject to Clauses 9.2.2 to 9.2.4, the Parties agree that the Board and the Trust's Representative shall be entitled in respect of the period from the Supplemental Agreement Effective Date, without limitation, to make adjustments to the Performance Factor, apply Retentions, levy

Deductions, levy Performance Deductions and/or levy Deficiency Points together with any other right or remedy that the Board may have (including any remedy in respect of Unavailability) in accordance with and subject to the provisions of the Project Agreement arising out of or in connection with:

9.2.1.1 any Performance Failure at the Project Facilities occurring from the Supplemental Agreement Effective Date;

9.2.1.2 any Performance Failure at the Project Facilities pertaining to the matters specifically referred to in the December 2024 Letter and the January 2025 Letter (the "December 2024 Matters");

9.2.1.3 any Performance Failure at the Project Facilities in respect of circumstances which were not known and were not acted upon by the Board prior to the Supplemental Agreement Effective Date and, for the avoidance of doubt, the Board's remedies in respect of such Performance Failures shall only apply in respect of the period from the Supplemental Agreement Effective Date and not prior to that date.

9.2.2 The Parties agree that, notwithstanding any provision of this Supplemental Agreement or the Project Agreement to the contrary:

9.2.2.1 Service Co's Representative shall notify the Board as soon as reasonably possible of any possibility that it is unable to pay its debts as they fall due, as reasonably demonstrated by Service Co's directors' assessment having regard to s123 of the Insolvency Act 1986 and shall provide all supporting evidence in relation to the inability to pay any such debts.

9.2.2.2 the Parties shall meet within two (2) Business Days to discuss the potential breach of the Costs Thresholds and shall work collaboratively together to understand and resolve this issue.

9.2.2.3 at the meeting described in Clause 9.2.2.2, if the Parties:

9.2.2.3.1 Agree; or

9.2.2.3.2 Subject to Clause 9.2.2.4, do not agree,

that there shall be a breach of the Costs Thresholds, the Board shall either:

(A) defer any Retentions and/or Deductions (which cannot be passed down to the Service Provider) for any relevant month with such Retentions and Deductions (which cannot be passed down to the Service Provider) being rolled over to the next relevant month where the Costs Thresholds are not breached; or

(B) if already applied, re-pay the relevant Retention and/or Deduction to Service Co and

the Available Sums shall be increased accordingly.

9.2.2.4 the Parties agree that pursuant to Clause 9.2.2.3.2 above, the Board will be entitled to raise a dispute pursuant to the Dispute Resolution Procedure as to whether or not the Costs Thresholds have been breached. In the event that it is determined pursuant to the Dispute Resolution Procedure that:

9.2.2.4.1 the Costs Thresholds have not been breached, the Board shall be entitled to apply any relevant Retentions and/or Deductions;

9.2.2.4.2 the Costs Threshold have been breached, the Board shall continue to defer the Retentions and/or Deductions to the relevant month where the Costs Thresholds are not breached.

9.2.3 The Parties agree that pursuant to the December 2024 Matters:

9.2.3.1 The Board shall be entitled to levy Deficiency Points for the purposes of increased monitoring pursuant to Clause 21.4 (Increased Monitoring) of the Project Agreement but that such Deficiency Points shall not accrue towards a Serious Issue Event referred to in Clause 31.1(e) (List of Serious Issue Events) of the Project Agreement; and

9.2.3.2 No Serious Issue Event shall arise.

9.2.4 The Board agrees and acknowledges that, if the Board does not make payment to Service Co in respect of any Retentions made by the Board, this (and any future Retentions and/ or Deductions) will adversely affect the amount of the Available Sums and such Retentions and/or Deductions are not passed down by Service Co to the Service Provider.

9.2.5 The Parties agree that:

9.2.5.1 in relation to the Retentions levied by the Board **[xx] [xx]** up to the Supplemental Agreement Effective Date (the "Retained Retentions"), the provisions of Clauses 23.9 (b) to (e) (Retentions for poor performance) of the Project Agreement shall be disapplied; and

9.2.5.2 the Retained Retentions shall (if required) be paid by the Board to Service Co to fund any Board Shortfall Amount, in accordance with Clause 3.6.3 (Board Shortfall Amount); and

9.2.5.3 after the Supplemental Agreement Effective Date, the provisions of Clauses 23.9(b) to (e) (Retentions for poor performance) of the Project Agreement shall apply in respect of Retentions.

9.2.6 The Parties agree that, notwithstanding any other provision of this Supplemental Agreement or the Project Agreement the Board:

9.2.6.1 shall not be entitled to apply any Retentions and/or Deductions (except to the extent that it has been agreed by the Board, the Service Provider and Service Co that these can be passed on by Service Co to the Service Provider); and

9.2.6.2 shall continue to defer Retentions and/or Deductions (except to the extent that it has been agreed by the Board, the Service Provider and Service Co that these can be passed on by Service Co to the Service Provider); and

9.2.6.3 shall, if already applied, pay the relevant Retention and/or Deduction (except to the extent that it has been agreed by the Board, the Service Provider and Service Co that these can be passed on by Service Co to the Service Provider) to Service Co and the Available Sums shall be increased accordingly,

in each case, as required to avoid a breach of the Costs Thresholds as notified by Service Co to the Board pursuant to Clause 9.2.2 above for the duration of any disagreement or dispute between Service Co and the Board in respect of whether a breach of the Costs Thresholds has or will occur.

10 AMENDMENTS TO PROJECT AGREEMENT

10.1 The Parties agree that the amendments to the Project Agreement set out in Schedule Part 1 (Amendments to Project Agreement) shall be made.

11 SECONDARY PERIOD

11.1 The Parties agree that:

11.1.1 there shall be no Secondary Period pursuant to the Project Agreement.

11.1.2 there shall be no obligation on the Board to pay Service Co the Management Fee during the Secondary Period.

11.1.3 the Head Lease, Sub-Lease and Car Park F Lease and the Car Park F Sub-Lease shall terminate upon the Expiry Date (or (if earlier) the date when the Project Agreement terminates) and the terms of the renunciations terminating all relevant leases shall be agreed by the Parties acting reasonably in such a manner to give effect to the terms of this Supplemental Agreement and such renunciations (as agreed between the Parties) shall be validly executed and delivered by Service Co to the Board within ten (10) Business Days of the Expiry Date or (if earlier) the date when the Project Agreement terminates.

11.2 Execution of Renunciation Documents

11.2.1 The Board shall procure that the Board's Solicitors (as defined as “the Trust’s Solicitors” in the Project Agreement) shall deliver to Service Co's Solicitors, no later than twenty (20) Business Days prior to the Expiry Date, engrossments of the documents then required to record a valid renunciation with effect from the

Expiry Date of each of the Service Co Head Lease, the Sub-Lease, the Car Park F Lease and the Car Park F Sub-Lease and which such documents shall be in a form agreed by the Board's Solicitors and Service Co's Solicitors, both acting reasonably, (said renunciation documents hereinafter referred to as the "Renunciation Head Lease", the "Renunciation Sub-Lease", the "Renunciation Car Park F Lease" and the "Renunciation Car Park F Sub-Lease" and together the "Renunciation Documents".

11.2.2 Service Co shall duly execute the Renunciation Documents and return them to the Board's Solicitors within ten (10) Business Days of Service Co Solicitors' receipt of the said engrossments from the Board's Solicitor's together with particulars of signing, evidence of the authority of the signator(y)(ies) of the said engrossments on behalf of Service Co to bind Service Co, and all necessary completed and signed Land Register of Scotland Registration Forms or Books of Council & Session Forms to enable registration in the Land Register of Scotland, or Books of Council & Session as appropriate.

11.2.3 The Board shall procure that the engrossments of the Renunciation Head Lease, the Renunciation Sub-Lease, the Renunciation Car Park F Lease and the Renunciation Car Park F Sub-Lease are duly executed on behalf of the Scottish Ministers within ten (10) Business Days of the date of receipt of the said duly executed engrossments from Service Co's solicitors.

11.2.4 Upon or within ten (10) Business Days after the Expiry Date (or if earlier before the expiry of the protected period under any of the Advance Notices, (and subject to Service Co's Solicitors having provided all necessary and complete registration forms), the Board shall procure that the Board's Solicitors shall present the completed engrossments of the Renunciation Head Lease, the Renunciation Sub-Lease, the Renunciation Car Park F Lease and the Renunciation Car Park F SubLease for registration in the Land Register of Scotland or Books of Council & Session and as appropriate obtain an electronic extract of the Renunciation Documents where possible and otherwise extracts for each party to the Renunciation Documents, otherwise an extract of them for each party. For the avoidance of doubt, the Renunciation Head Lease, the Renunciation Sub-Lease, the Renunciation Car Park F Lease and the Renunciation Car Park F Sub-Lease shall be of no force and effect, notwithstanding the prior execution or completion of the same, until the Expiry Date.

11.3 Delivery of Renunciation Documents

11.3.1 On the Expiry Date, the Board shall deliver/exhibit to Service Co:

11.3.1.1 Subject to Service Co's compliance with its obligation in terms of Clause 11.2.1 hereof, certified true copies of the completed duly executed engrossments of the Renunciation Head Lease, the Renunciation Sub-Lease, the Renunciation Car Park F Lease and the Renunciation Car Park F SubLease;

11.3.1.2 Legal Report(s) in respect of The Scottish Ministers' heritable title to the Site brought down to a date as near as practicable to the Expiry Date, which reports will show:

11.3.1.2.1 no entries adverse to the Scottish Ministers' ability to accept the Renunciation Head Lease and the Renunciation Car Park F Lease;

11.3.1.2.2 the Advance Notices (as defined in Section 56 of the Land Registration etc. (Scotland) Act 2012) for the Renunciation Head Lease and the Renunciation Car Park F Lease; and

11.3.1.2.3 no other Advance Notices affecting the Service Co Site or the Car Park F Property other than those submitted by Service Co.;

11.3.1.3 Legal Report(s) in respect of the Scottish Minister's interest in the Sub-Lease brought down to a date as near as practicable to the Expiry Date, which reports will show:

11.3.1.3.1 no entries adverse to the Scottish Ministers' ability to grant the Renunciation Sub-Lease and the Renunciation Car Park F Sub-Lease;

11.3.1.3.2 the relevant Advance Notices for the Renunciation Sub-Lease and the Renunciation Car Park F Sub-Lease; and

11.3.1.3.3 no other Advance Notices affecting the Sub Lease Site or Car Park F other than those submitted by Service Co.

11.3.2 On the Expiry Date, Service Co shall deliver/exhibit to the Board:

11.3.2.1 Legal Report(s) (including a personal search against Service Co) in respect of Service Co's interest in the Head Lease brought down to a date as near as practicable to the Expiry Date, which reports will show:

11.3.2.1.1 no entries adverse to Service Co's' ability to grant the Renunciation SubLease and the Renunciation Car Park F Sub-Lease;

11.3.2.1.2 the relevant Advance Notices for the Renunciation Sub-Lease and the Renunciation Car Park F Sub-Lease; and

11.3.2.1.3 no other Advance Notices affecting the Sub Lease Site or Car Park F other than those submitted by the Scottish Ministers.

11.3.2.2 A duly executed discharge by any party holding a standard security over Service Co's interest in the Service Co Head Lease;

11.3.2.3 A letter of non-crystalisation from any party in favour of whom Service Co has granted a floating charge, which shall be in the chargeholder's usual style but releasing

Service Co's interest in the Service Co. Site and Car Park F from the ambit of the floating charge;

11.3.2.4 A search in the Register of Charges and Company File of Service Co disclosing no entry prejudicial to (a) the grant of the Renunciation Head Lease and the Renunciation Car Park F Lease, or (b) the acceptance of the Renunciation Sub-Lease and the Renunciation Car Park F Sub-Lease;

11.3.2.5 Properly completed Land Register of Scotland Registration Forms and Books of Council & Session Forms, (as appropriate) in respect of Service Co's interest in the Renunciation Head Lease, the Renunciation Sub-Lease, the Renunciation Car Park F Lease and the Renunciation Car Park F Sub-Lease.

11.3.3 The Renunciation Head Lease, the Renunciation Sub-Lease, the Renunciation Car Park F Lease and the Renunciation Car Park F SubLease shall take effect from the Expiry Date notwithstanding that they may not have been signed by both Parties to the Renunciation Documents. Service Co shall be bound by the terms of the Renunciation Head Lease, the Renunciation Sub-Lease, the Renunciation Car Park F Lease and the Renunciation Car Park F Sub-Lease from the Expiry Date. The Board shall procure that the Scottish Ministers observe and are bound by the terms of the Renunciation Head Lease, the Renunciation Sub-Lease, the Renunciation Car Park F Lease and the Renunciation Car Park F Sub-Lease from the Expiry Date.

12 PAYMENT

12.1 Any payments including any VAT thereon (including default interest referred to in Clause 12.3 below) to be made by Service Co to the Board shall be made without any withholding or set-off by electronic transfer to:

12.1.1 **[xx]**

12.1.2 **[xx]**

12.1.3 **[xx]**

12.1.4 **[xx]**

on the date or dates referred to in this Supplemental Agreement.

12.2 Notwithstanding Clause 23.12 and 23.13 (Set-Off) of the Project Agreement, all payments including any VAT thereon (including default interest referred to in Clause 12.3 below) to be made by the Board to Service Co shall be made without any withholding or set-off by electronic transfer to:

12.2.1 **[xx]**

12.2.2 **[xx]**

12.2.3 **[xx]**

12.2.4 **[xx]**

12.3 Any late payments shall accrue default interest at a rate per annum equal to the base rate of the Bank of England plus 2% from the day after the last day on which such amount could have been paid to the Board or Service Co as applicable until the date of payment in full (except where such payment remains unpaid as a result of a technical failure affecting the banking system generally).

12.4 The Board shall deliver to Service Co a VAT Invoice in relation to any sums received within ten (10) Business Days of receipt of payment.

12.5 Not Used.

12.6 <u>VAT Invoice</u>

12.6.1 All amounts stated to be payable by either Party under this Supplemental Agreement shall be exclusive of any VAT properly charged thereon.

12.6.2 In addition:

12.6.2.1 Service Co shall issue the Board with a VAT credit note pursuant to Clause 6 (Payment of Residual Balances) setting out the following information:

12.6.2.1.1 an identifying VAT number;

12.6.2.1.2 the date of issue;

12.6.2.1.3 the name, address and registration of the supplier, this being Service Co pursuant to Clause 6 (Payment of Residual Balances);

12.6.2.1.4 the name and address of the customer, this being the Board pursuant to Clause 6 (Payment of Residual Balances);

12.6.2.1.5 the identifying number and date of issue of the VAT invoice or invoices relating to the supply for which there is a decrease in price;

12.6.2.1.6 a description sufficient to identify the goods or services supplied;

12.6.2.1.7 the amount of the decrease in price excluding VAT (per the Residual Balances); and

12.6.2.1.8 the rate and the amount (expressed in Sterling) of the VAT credited in respect of the decrease in price,

(this being the "VAT Invoice") within seven (7) days of making payment of the Residual Balances.

12.6.2.2 the Board shall issue Service Co with a valid VAT invoice quarterly in respect of the FIRT Costs.

13 CONSENTS AND ASSURANCES

13.1 Board's consents

13.1.1 The Board warrants to Service Co that it has secured all consents, approvals, permissions and authorisations required by it to enter into this Supplemental Agreement or which may be required for the performance of its obligations under this Supplemental Agreement and that the terms of, and entry into this Supplemental Agreement have been approved by the Board on 13th August 2025 (the "Board's Consent").

13.2 Service Co's consent

13.2.1 Service Co warrants to the Board that it has secured all consents, approvals, permissions and authorisations required by it to enter into this Supplemental Agreement under the Project Documents or Funding Agreements or otherwise or which may be required for the performance of its obligations under this Supplemental Agreement (the "Service Co's Consents").

13.3 Changes

13.3.1 Service Co shall continue to work in partnership with the Board in respect of any of the following:

13.3.1.1 Trust Service Change;

13.3.1.2 Trust Additional Works Item; and/or

13.3.1.3 Novel Changes.

13.3.2 Service Co shall facilitate and use its reasonable endeavours to obtain, if required, any Funders' Consent, required in connection with Trust Service Changes, Trust Additional Works Items and Novel Changes.

13.4 Funders' Consent

13.4.1 Service Co shall update the Board on a monthly basis at the Project Board in relation to the progress of obtaining any Funders' Consent, including any Funders' Consent referred to in Clause 13.3.2 (Changes).

14 MISCELLANEOUS

14.1 No double counting

The Board will not be required to pay any sums, Losses or compensation twice under any provision of this Supplemental Agreement in respect of the same sums, Loss, or compensation including without prejudice to the generality, where such Loss gives rise to a sum, Losses or compensation (a) under two or more grounds under this Supplemental Agreement or (b) under one or more grounds under this Supplemental Agreement and under the Project Agreement, save to the extent that the compensation actually received by Service Co did not amount to full compensation in respect of the Losses in question. There shall be no double counting of any sums claimed under any provision of this Supplemental Agreement or under this Supplemental Agreement and the Project Agreement.

14.2 Co-operation and Good Faith

Where the provisions of this Supplemental Agreement, and in particular the Life Cycle (TAWO) Works Protocol, require the Board and Service Co to co-operate or seek to agree documents, design proposals, technical specifications or any other matter then the Board and Service Co shall at all times act reasonably, in the utmost good faith and without undue delay in relation to the matter in question.

14.3 Continuing obligations

Termination of this Supplemental Agreement on early termination of the Project Agreement prior to the Expiry Date shall not affect the continuing rights and obligations of Service Co and the Board under Clause 11 (Secondary Period), Clause 12 (Payment), Clause 14 (Miscellaneous), Clause 15 (Confidentiality) and Clause 17 (Governing Law)] or under any other Clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

14.4 No Qualifying Refinancing

The Parties acknowledge and agree that the entry into this Supplemental Agreement or other documents associated with this Supplemental Agreement shall not constitute a Qualifying Refinancing for the purposes of Clause 3A (Changes to Funding
Agreements and Refinancing) or Schedule 27 (Refinancing) of the Project Agreement.

15 CONFIDENTIALITY

15.1 Each Party undertakes that it shall keep confidential all matters relating to this Supplemental Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto, other than:

15.1.1 any provision of information to the Parties own professional advisers; and

15.1.2 the Funders, shareholders, potential shareholders, the Service Provider
and subject to appropriate confidentiality restrictions, Third Party Contractors, Sub-Contractors, Consultants, Sub-Consultants and the
Trust may, subject to appropriate confidentiality restrictions, pass to the University such documents and other information as is reasonably required by the University in respect of the University Accommodation.

15.1.3 each Party agrees that it shall not make any press announcements or publicise this Supplemental Agreement, or the existence of each, or their contents, in any way except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of each Party (which shall not be unreasonably withheld or delayed).

16 COUNTERPARTS

16.1 This Supplemental Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts.

16.2 Where executed in counterparts:

16.2.1 this Supplemental Agreement will not take effect until each of the counterparts has been delivered;

16.2.2 where any counterpart is being held as undelivered, delivery will take place on the date of delivery agreed between the Parties (the "agreed date"). The agreed date will be inserted at the beginning of this Supplemental Agreement; and section 2(3) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 is hereby excluded and

shall not apply to the execution arrangements in respect of this Supplemental Agreement.

17 GOVERNING LAW

This Supplemental Agreement shall be governed by and construed in accordance with the laws of Scotland and the Parties hereto submit to the non-exclusive jurisdiction of the Courts of Scotland.

IN WITNESS WHEREOF these presents typewritten on this and 50 preceding pages together with the Schedule are executed as follows:

SUBSCRIBED for and on behalf of LOTHIAN HEALTH BOARD

at Mainpoint, 102 West Port, Edinburgh, EH3 9DN	at Mainpoint, 102 West Port, Edinburgh, EH3 9DN
on	on ....
by	by
……………………………………….	……………………………………….
Authorised Signatory - Chief Executive	Authorised Signatory - Director of Finance
……………………………………….	……………………………………….
Full Name	Full Name

SUBSCRIBED for and on behalf of CONSORT HEALTHCARE (EDINBURGH ROYAL INFIRMARY) LIMITED

at	at ....
on	on ....

by	by
………………………………………. Director	………………………………………. Director
………………………………………. Full Name	………………………………………. Full Name

SCHEDULE

PART 1 AMENDMENTS TO PROJECT AGREEMENT

1.1 The Parties agree that the following amendments shall be made to the Project Agreement:

1.1.1 Clause 6.15 (Performance Review Committee)

(a) Add a new limb (i) to Clause 6.15 as follows:

(i) and to perform such other functions as are detailed in, at such times and in accordance with the terms of Supplemental Agreement (Handover).

1.1.2 Clause 7.4(a) (Heritable Interest)

(a) Delete Clause 7.4(a) in its entirety and treat as pro non scripto and replace with the following clause:

(i) Until the Expiry Date or earlier termination of this Agreement the Trust shall not sell or alienate or dispose of its heritable interest in the Site or any part of the Site nor shall it grant any interposed Head Lease in respect of the Service Co Site or any part thereof except where permitted in terms of this Agreement.

1.1.3 Clause 7.4 (Expansion Area)

(a) Delete Clause 7.4(b) in its entirety and treat as pro non scripto and replace with the following clause:

(i) The Trust will have the option at any time after the later of (i) the Phase Transfer Completion Date for Phase 2 of the Project Facilities and (ii) the Actual Completion Date of the University Accommodation on giving three months written notice to Service Co to recover possession from Service Co of the Expansion Area subject to the compliance by the Trust with the following provisions:

1.1.4 Clause 7.2(d) (Grant of University Lease)

(a) Delete Clause 7.2(d) and replace with the following:

(i) The Trust shall procure that until the Expiry Date or earlier termination of the Project Agreement any alterations or additions to the University Accommodation shall be effected only as a Trust Works Change Order, a Trust Additional Works Order or as Life Cycle (TAWO) Works and otherwise shall be strictly prohibited.

1.1.5 Clause 7.6(d) (Grant of Sub-Lease)

(a) Delete Clause 7.6(d) in its entirety and treat as pro non scripto and replace with the following clause:

(i) The Sub-Lease shall commence on the Phase Transfer Completion Date for Phase 2 and shall terminate on the Expiry Date or (if earlier) the date when the Project Agreement terminates as provided herein or in the Sub-Lease.

1.1.6 Clause 7.8 (Early Termination of Project Agreement)

(a) Delete Clause 7.8 (a) to (b) in their entirety and treat as pro non scripto and replace with the following clause:

(i) Upon termination of this Agreement by the Trust or by Service Co for any reason whatsoever prior to the Expiry Date, the Service Co Head Lease and the Sub-Lease and the Car Park F Head Lease and Car Park F Sub Lease shall automatically cease and determine. In such circumstances, if so required by the Trust or Service Co, Service Co shall without consideration fine or penalty and at the Trust's expense grant validly execute and deliver to the Trust formal deeds of renunciation of the Service Co Head Lease and Sub-Lease and the Car Park F Head Lease and Car Park F Sub Lease which deeds of renunciation shall also be validly executed by the Trust and at the Trust's cost duly recorded/registered in the General Register of Sasines or the Land Register, as appropriate, and an extract thereof will be delivered to Service Co. Save as expressly provided in this Agreement, Service Co shall be entitled to no compensation for the unexpired duration of its interest as tenant under the Service Co Head Lease and as tenant under the Car Park F Head Lease nor shall the Trust be entitled to any compensation for the unexpired duration of its interest in the Sub-Lease and the Car Park F Sub Lease.

1.1.7 Clause 7.9 (The Walk Away Option)

(a) Delete Clause 7.9 in its entirety and treat as pro non scripto and replace with "Clause 7.9 Not Used".

1.1.8 Clause 7.10 (Option to Purchase)

(a) Delete Clause 7.10 in its entirety and treat as pro non scripto and replace with "Clause 7.10 Not Used".

1.1.9 Clause 7.11 (Post Contract Period)

(a) Delete Clause 7.11 in its entirety and treat as pro non scripto and replace with “Clause 7.11 Not Used”.

1.1.10 Clause 7.12 (Compliance with Title Deeds)

(a) Delete Clause 7.12(a) in its entirety and treat as pro non scripto and replace with the following clause:

(i) For so as long as the Service Co Head Lease endures but subject always to the terms of sub-clause 7.4.(a)(ii) [Dealings with Heritable Interest] and 7.5(d) [Dealings with Service Co Site] hereof the Trust will not grant or enter into or permit any deed, burden or document of a similar nature capable of adversely affecting the Trust's title to the Site to be recorded against such title, save at the request of Service Co in accordance with the other provisions of this Agreement or with the consent of Service Co which consent shall not be unreasonably withheld or delayed; Provided that Service Co shall have absolute discretion regarding consent.

1.1.11 Clause 7.13(l) (Contamination of Service Co Site)

(a) Delete Clause 7.13(l) in its entirety and treat as pro non scripto and replace with "Not Used".

1.1.12 Clause 18.9A

(a) Insert new Clause 18.9A as follows:

(i) If the Board, acting reasonably, requires Service Co to provide Life Cycle Works Design this shall be notified to Service Co as soon as reasonably possible, and Service Co shall submit any relevant design details to the Board and/or any relevant programme when such information will be provided to the Board within ten (10) Business Days of such notification for review and Service Co shall submit the Life Cycle Works Design in accordance with any relevant programme to the Review Procedure and the Board shall review and raise comments in relation to such design pursuant to paragraph 3.1(k) of the Review Procedure;

1.1.13 Clause 22.1 (Handover)

(a) Delete Clause 22 in its entirety and treat as pro non scripto and replace with the following clause:

(i) The Parties agree that the handover of the Project Facilities shall be governed by the provisions of the Supplemental Agreement (Handover).

1.1.14 Clause 26.1(e) (General Requirements)

(a) Delete Clause 26.1(e) in its entirety and treat as pro non scripto and replace with the following clause:

(i) All Insurance Policies insofar as they relate to damage to assets (including the Project Facilities) shall cover the same to at least the reinstatement value.

1.1.15 Clause 26.7(b)(ii) (Reinstatement)

(a) Delete Clause 26.7(b)(ii) in its entirety and treat as pro non scripto.

1.1.16 Clause 28A.3 (Defects in Life Cycle (TAWO) Works)

(a) Add the following new Clause 28A.3 (Defects in Life Cycle (TAWO) Works) as follows:

(i) 28A.3 In respect of Clause 28.6(z):

28A.3.1 for the avoidance of doubt, the provisions of Clause 28.6(z) shall not limit Service Co's and the Third Party Contractor's responsibility for any Life Cycle (TAWO) Works Defect; and

28A.3.2 Service Co:

(a) shall comply with its obligations pursuant to Clause 6.4.2 of the Supplemental Agreement (Handover) in respect of any request by the Trust to Service Co in connection with the relevant Life Cycle (TAWO) Works Defect; and

(b) agrees that Clause 28.7(b)(ii) shall not apply;
and

28A.3.3 Service Co confirms that it has not and undertakes that it shall not make Excusing Cause relief pursuant to Clause 28.6 available to the Service Provider under the equivalent provisions of the Facilities Service Contract or otherwise to the extent that the Service Provider was the Third Party Contractor who carried out the Life Cycle (TAWO) Works in which the relevant Life Cycle (TAWO) Works Defect has occurred.

1.1.17 Clause 28.6 (Consequences for matters for which the Trust is responsible)

(a) Delete Clause 28.6(e) and replace with the following clause:

(i) the implementation of any Trust Additional Works Item (including a Trust Additional Works Item arising out of a Change of Law) and/or any Trust Additional Works Item for Life Cycle (TAWO) Works and/or any Additional Works up to the completion of the works comprised in the:

(A) Trust Additional Works Item during the period of time agreed between the Trust and Service Co or otherwise determined; or

(B) any Trust Additional Works Item for Life Cycle (TAWO) Works;
or

(C) any Additional Works Request,

for the implementation of the works described in paragraphs (A), (B) or (C) above or following the period of time agreed or determined to the extent that non completion is caused by the Trust's failure to permit Service Co to carry out such works or any other Excusing Cause;

(b) Add the following new clauses at Clauses 28.6(w), (x), (y) and (z) as follows:

(i)

(w) any works set out in the Baseline Documents not being carried out on the date set out for the relevant works in the Baseline Documents unless the relevant works were included in Part 2 of the Schedule of Programmed Maintenance and were scheduled to be carried on the date set out for the relevant works in the Baseline Documents but were not carried out by Service Co;

(ii)

(x) Service Co did not carry out the works which were included in Part 2 of the Schedule of Programmed Maintenance as a result of:

(A) a written instruction by the Board or the Trust's Representative to Service Co or the Service Co's Representative; and/or

(B) a decision of the Performance Review Committee, documented between the Board and Service Co;

(iii)

(y) decision of the Project Board, as notified by the Trust’s Representative to Service Co, that proposed Life Cycle Works are not to be carried out (whether or not such Life Cycle Works were included in Part 2 of the Schedule of Programmed Maintenance or the Baseline Documents);

(iv)

(z) until the Expiry Date or if earlier termination of the Project Agreement, subject to Clause 28A.3.2(a), a Life Cycle (TAWO) Works Defect which only becomes apparent to Service Co following completion or sectional completion of each relevant constituent element of Life Cycle (TAWO) Works.

1.1.18 Clause 34.2(c) (Savings)

(a) Delete Clause 34.2(c) in its entirety and treat as pro non scripto.

1.1.19 Clause 34.4 (Transfer to Trust of Assets, Contracts etc.)

(a) Delete the opening sentence of Clause 34.4 in its entirety and replace with the following:

(i) On the termination of this Agreement for any reason:

1.1.20 Clause 34.5 (Handover arrangements)

(a) Delete the opening sentence of Clause 34.5 in its entirety and replace with the following:

(i) On the termination of this Agreement for any reason, both before and after any such termination Service Co shall have the following duties:

1.1.21 Clause 34.5 (Handover arrangements)

(a) Insert a new Clause 34.5(c)(3) as follows:

(i) "All records and reports held by Service Co pursuant to Clause 40 (Records and Reports) and all Life Cycle (TAWO) Works Documents;

1.1.22 Clause 34.7 (Handover arrangements)

(a) Delete Clause 34.7 in its entirety and treat as pro non scripto and replace with the following clause:

(i) Upon termination of the Agreement pursuant to Clause 33, the Trust shall or shall procure that any third party who is engaged by the Trust to provide any of the Services or services similar to or in the nature of the Services shall indemnify Service Co and the Service Providers in respect of all Losses relating to any Transferred Employee or any other employee of Service Co and/or the Service Providers or any trade union or staff association or workers' representative arising from the employment of

such Transferred Employees or other employee by the Trust or such third party as from termination of any such employment

by Service Co or any Service Provider as a consequence of the termination of this Agreement.

1.1.23 Schedule 0 (Definitions)

(a) New definitions shall be inserted as follows:

(i) Life Cycle Works has the meaning given to it in the Supplemental Agreement (Handover);

(ii) Life Cycle (TAWO) Works has the meaning given to it in the Supplemental Agreement (Handover);

(iii) Life Cycle (TAWO) Works Contract has the meaning given to it in the Supplemental Agreement (Handover);

(iv) Life Cycle (TAWO) Works Defect means in respect of the Life Cycle (TAWO) Works:

(1) defective design of the Life Cycle (TAWO) Works; or

(2) any defect, omission, shrinkage or other fault caused by defective workmanship or defective materials, plant or equipment used in the Life Cycle (TAWO) Works having regard to Good Industry Practice and to appropriate British standards and codes of practice as at the date of construction of the Life Cycle (TAWO) Works.

as a result of any failure by the Third Party Contractor to comply with its obligations under the Life Cycle (TAWO) Works Contract, provided in either case that any such failure, defect, omission, shrinkage or other fault has not been caused or contributed to by Service Co;

(v) Life Cycle Works Design has the meaning given to it in the Supplemental Agreement (Handover);

(vi) Life Cycle (TAWO) Works Protocol or the Protocol has the meaning given to it in the Supplemental Agreement (Handover);

(vii) Trust Protocol Additional Works Confirmation has the meaning given to it in paragraph 1.1 of Section 1 of Part A of Part 4 of the Protocol;

(viii) Trust Protocol Additional Works Item has the meaning given to it in paragraph 1.1 of Section 1 of Part A of Part 4 of the Protocol;

(ix) Trust Protocol Additional Works Order means the document referred to in paragraph 3.1 of Section 1 of Part A of Part 4 of the Protocol for Life Cycle (TAWO) Works;

(x) Trust Protocol Service Change has the meaning given to it in paragraph 1.2.2 of Section 2 of Part A of Part 4 of the Protocol;

(xi) Trust Protocol Service Change Confirmation means the document referred to in paragraph 1.2.1 of Section 2 of Part A of Part 4 of the Protocol;

(xii) Trust Protocol Service Change Order means the document referred to in paragraph 1.2.3 of Section 2 of Part A of Part 4 of the Protocol;

(xiii) Supplemental Agreement (Handover) means the supplemental agreement entered into between the Board and the Service Provider on or around , which, inter alia, sets out a procedure to identify and procure the Asset Works.

(b) Delete the following definitions and treat as pro non scripto:

(i) "Handover Certificate"

(ii) "Handover Maintenance Amount"

(iii) "Handover Maintenance Programme"

(iv) "Handover Requirements"

(v) "Handover Works"

(vi) "Secondary Period";

(vii) "Walk Away Notice"

(viii) "Walk Away Option" (ix) "Walk Away Option Expiry Date"

(c) Amend the following definitions as follows:

(i) "Change"

(A) Delete definition and treat as pro non scripto and replace with following definition:

(I) means a Service Co Additional Works Item, a Service Co Service Change, a Service Co Works Change, a Trust Service Change, a Trust Works Change, a Trust Additional Works Item, a Trust Protocol Additional Works Item or a Trust Protocol Service Change;

(ii) "Expiry Date"

(A) Delete definition and treat as pro non scripto and replace with following definition:

(I) means the date of expiry of the Contract Period in accordance with the provisions of Clause 33.1 [Non Default Termination] which the Parties agree shall mean 00:00.01 on 13th December 2027;

(iii) "Novel Change"

(A) Delete definition and treat as pro non scripto and replace with following definition:

(I) means any Change (other than a Trust Protocol Additional Works Item or a Trust Protocol Service Change which shall be dealt with in accordance with the Protocol) which, if implemented by Service Co, would be a Trust Additional Works Item or Trust

Service Change which (in either case) is not a Similar Change;

(iv) "NRIE"

(A) Insert after "and the Pharmacy Facilities" and before "and with effect from" the following: :

(I) "any completed works resulting from the Life Cycle Works and Additional Works ".

(v) " Qualifying Change"

(A) Delete definition and treat as pro non scripto and replace with following definition:

(I) means a Change (other than a Service Co Service Change, a Service Co Additional Works Item or a Service Co Works Change) which shall be valued in accordance with the General Procedure in Part 5 of Schedule 10 [Change Procedures], and other than a Trust Protocol Additional Works Item or a Trust Protocol Service Change which shall be valued and dealt with in accordance with the Protocol;

(vi) " Service Description"

(A) Delete definition and treat as pro non scripto and replace with following definition:

(I) means section (c) of each of Parts 1 to 11 of Schedule 8 [Service Requirements] and in respect of Car Park F, the Car Park F Services Specification, each as amended from time to time in accordance with Clause 24 [Change Procedures] and Clause 19.2 [Service Co Service Changes] and/or as amended by a Trust Protocol Service Change in accordance with the Protocol;

(vii) " Service Requirements"

(A) Delete definition and treat as pro non scripto and replace with following definition:

(I) means in respect of each Service the Core Service Requirements, the Car Park F Services Specification, the Service Description and the Method Statements for that Service as amended from time to time in accordance with Clause 19.2 [Service Co Service Change] and Clause 24 [Change Procedures], and/or

as amended by a Trust Protocol Service Change in accordance with the Protocol;

(viii) " Similar Change"

(A) Delete definition and treat as pro non scripto and replace with following definition:

(I) means:

(a) a Trust Works Change or a Trust Additional Works Item or a Trust Protocol Additional Works Item (which Trust Protocol Additional Works Item shall be dealt with in accordance with the Protocol) the effect of which is that, after implementation of the Change, the physical facilities affected or constructed by the Change will not be materially different from other physical facilities ("the original facilities") within the NRIE or the University Accommodation as described in the Core Construction Requirements (including function as well as physical properties) at the date of this Agreement and which in the case of a Trust Works Change or a Trust Additional Works Item is without any material difference in relative value (as a proportion of capital cost), distribution and nature of the life cycle maintenance intended by Service Co to be funded out of the Facilities Maintenance Element and/or the University Availability Element (compared to the life cycle maintenance of the original facilities) and which in the case of a Trust Protocol Additional Works Item shall be dealt with in accordance with and funded in accordance with the Supplemental Agreement (Handover); or

(b) a Trust Service Change or a Trust Protocol Service Change (and a Trust Protocol Service Change shall be dealt with in accordance with the Protocol) the effect of which is to provide a greater or lesser quantity or scope of Services which are not materially different from Services to be provided in accordance with the Service Requirements at the date of this Agreement ("the original services") (to avoid doubt in respect of a Trust Service Change without any material difference in the life cycle maintenance intended by Service Co to be funded out of the Facilities Maintenance Element and/or the University Availability Element), and a Trust Protocol Service Change shall be dealt with in accordance with the Protocol, in each case, in respect of a Trust Service Change, where the Performance Monitoring System and the Availability Criteria (together with the Excusing Causes) to the extent necessary to reflect the factual description of the change and the other provisions of this Agreement may be applied to the area affected by, or the Services to be provided pursuant to, the Change with the same likely results as would arise as when they are applied to the original facilities and/or the original services subject only to such amendments as are necessary to take account of the immaterial differences between the original facilities or the original services as the case may be and such area or Services and a Trust Protocol Service Change shall be dealt with in accordance with the Protocol;

(ix) "Technical Requirements"

(A) At the end of this definition delete reference to "and the Handover Requirements".

1.1.24 Schedule Part 13 (Review Procedure)

(a) Paragraph 3.1(k) shall be deleted and treated as pro non scripto and replaced by the following paragraph:

(k) in relation to the submission of Service Co's Life Cycle Works Design in accordance with Clause 18.9A on the grounds that:

(i) the Life Cycle Works Design is not agreed by the Board;

(ii) the Life Cycle Works Design is incomplete;

(iii) the estimate of the Life Cycle Works Costs pertaining to the Life Cycle Works Design are not agreed by the Board;

(iv) inconsistent with current NHS guidance;

(v) the proposed Life Cycle Works Design is not in accordance with Good Industry Practice; or

(vi) where relevant, following implementation of the proposed Life Cycle Works Design, the structural, mechanical or electrical performance of the Project Facilities would not be of a standard of performance equivalent to that existing prior to the carrying out of such Life Cycle Works Design and there is a more suitable alternative available to Service Co than that specified in the proposed Life Cycle Works Design; or

(vii) where the proposed Life Cycle Works Design would be carried out in, or affect, a part or parts of the Project Facilities used by the Trust for the provision of clinical services or by the University for the provision of educational or research facilities:

(a) the alteration of the Project Facilities pursuant to the proposed Life Cycle Works Design would have a material adverse effect on the provision by the Trust of clinical services or the University of educational and research facilities within such part or parts;

(b) the safety of the patients or other users of the Project Facilities would be adversely affected;

in each case, compared with the Project Facilities prior to the carrying out of such Life Cycle Works Design.

1.1.25 Schedule 26 (Compensation on Termination)

(a) Paragraph 1.2(d) of Part A (Compensation on Termination for the Trust Default and Voluntary Termination) of Schedule 26 (Compensation on Termination), shall be deleted and replaced with “(d) Not Used”.

(b) Paragraph 1.2(e) of Part A (Compensation on Termination for the Trust Default and Voluntary Termination) of Schedule 26 (Compensation on Termination), shall be deleted and replaced with “(e) Not Used”.

(c) Paragraph 1 of Part B (Compensation on Termination for the Service Co Default) of Schedule 26 (Compensation on Termination), shall be amended to add "and Part E" after "this Part B" and before "of this Schedule 26".

(d) Paragraph 3.14 of Part B (Compensation on Termination for Service Co Default) of Schedule 26 (Compensation on Termination) shall be deleted and replaced with the following:

(i) If the Trust has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify Service Co of this decision and pay to Service Co the amount, if any, by which the Adjusted Highest Compliant Tender Price exceeds the Revised Senior Debt Termination Amount within twenty (20) Business Days of such notification.

(e) Not Used.

(f) Not Used. .

(g) The headings at Part D and paragraph 1 of Part D of Schedule 26 (Compensation on Termination) shall be amended by the addition of “and Service Co Default”.

(h) Paragraph 1.1 of Part D (Corrupt Gifts and Fraud) of Schedule 26 (Compensation on Termination), shall be deleted and replaced as follows:

(i) If the Trust terminates this Agreement pursuant to Clause 31 [Serious Issue Events] or Clause 39A.2(i) [Corruption], or the Trust or Service Co terminates this Agreement pursuant to Clause 26.7(g) [Reinstatement], the Trust shall pay to Service Co the “Corrupt Gifts Termination Sum” as set out in paragraph 1.2.

(i) In Part E (General) of Schedule 26 (Compensation on Termination), “or Service Co Default pursuant to Clause 31 (Serious Issue Events)” shall be added to the end of heading above paragraph 1.1.

(j) Paragraph 1.5 of Part E (General) of Schedule 26 (Compensation on Termination) shall be deleted and replaced as follows:

(i) "1.5 Following a retendering exercise under Section B of this Schedule 26, the Trust shall pay to Service Co the amount, if any, by which the Adjusted Highest Compliant Tender Price exceeds the Revised Senior Debt Termination Amount paid by the Trust to Service Co pursuant to paragraph 1.1 above and Part D of this Schedule 26 no later than the date falling twenty (20) Business Days after the later of:

(a) the date on which the Trust receives the Market Value of the Agreement from the New Service Co; and

(b) if Service Co has referred a dispute to relating to the Adjusted Highest Compliant Tender Price to dispute resolution pursuant to paragraph 3.10 of Section B of this Schedule 26, the date on which the dispute is finally determined in accordance with Clause 41 [Dispute Resolution Procedure],

provided that, to avoid doubt, if the dispute referred by Service Co to dispute resolution (pursuant to 1.5(b) above) concerns only a proportion of the Adjusted Highest Compliant Tender Price then the Trust shall pay the undisputed portion of such sum (to be payable to Service Co as referred to above) no later than twenty (20) Business Days after the date referred to in (a) above (the "Undisputed Payment Date") and the Trust shall pay interest to Service Co on any amount referred to in paragraph 1.5 above which has been withheld (to the extent such amount is payable to Service Co as referred to above), from the Undisputed Payment Date until the date on which payment is made under paragraph (b) above at the No Default Interest Rate."

(k) Paragraph 1.6 of Part E (General) of Schedule 26 (Compensation on Termination) shall be deleted and reinstated as follows:

(i) If the amount referred to in paragraph 1.5 above is zero or a negative number then, on entering into the New Agreement with the New Service Co, the Trust shall, subject to paragraph 1.9, have no obligation to make any payment to Service Co and (if a negative number) an amount equal to the amount referred to in paragraph 1.5 above shall be due and payable by Service Co to the Trust on the date of the New Agreement.

(l) Paragraph 1.7 of Part E (General) of Schedule 26 (Compensation on Termination) shall be deleted and replaced as follows:

(i) "1.7 If the Trust follows the no retendering procedure set out in paragraph 4 of Section B of this Schedule 26 then the Trust shall pay to Service Co an amount equal to the amount, if any, by which the Adjusted Estimated Fair Value exceeds the Revised Senior Debt Termination Amount no later than the date falling twenty (20) Business Days after the Compensation Date together with interest on such amount calculated in accordance with paragraph 1.2(b) above unless the Trust has paid Post Termination Service Amounts pursuant to paragraph 3.5 of Section B above."

(m) Paragraph 1.8 of Part E (General) of Schedule 26 (Compensation on Termination) shall be deleted and replaced with the following:

(i) To the extent that the amount referred to in paragraph 1.7above is less than zero, then an amount equal to the amount referred to in paragraph

1.7 shall be due and payable by Service Co to the Trust on the Compensation Date.

(n) New paragraph 1.9 shall be added to Part E (General) of Schedule 26 (Compensation on Termination) as follows:

(i) "1.9 Notwithstanding any other provision of this Agreement the Trust shall not set off any amounts agreed or determined as due and payable by Service Co to the Trust against the Trust's obligations to pay Revised Senior Debt Termination Amount following termination of this Agreement."

(o) A new paragraph 2.2 (c) shall be added to paragraph 2.2 (Full and Final Settlement) of Part E (General) of Schedule 26 (Compensation on Termination) as follows:

(i) "(c) the liability of the Trust to pay the Revised Senior Debt Termination Amount pursuant to Part D of this Schedule 26."

PART 2

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PART 3

BASELINE DOCUMENTS

PART A

BASELINE PROGRAMME

The document titled “Part A (Baseline Programme)" is the document referred to in this Part A (Baseline Programme) of this Schedule Part 3 (Baseline Documents) and referred to in this Supplemental Agreement, as signed and dated by the Board and Service Co and to take effect on the Supplemental Agreement Effective Date.

PART B

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PART 4

LIFE CYCLE (TAWO) WORKS

PART A

LIFE CYCLE (TAWO) WORKS PROTOCOL

The document titled “Life Cyle (TAWO) Works Protocol" is the document referred to in this Part A (Life Cycle (TAWO) Works Protocol) of this Schedule Part 4 (Life Cycle (TAWO) Works) and referred to in this Supplemental Agreement, as signed and dated by the Board and Service Co and to take effect on the Supplemental Agreement Effective Date.

PART B

LIFE CYCLE (TAWO) WORKS DOCUMENTATION

Annex 1

PROFORMA LIFE CYCLE (TAWO) WORKS CONTRACT

The document titled “Annex 1 (Proforma Life Cyle (TAWO) Works Contract)" is the document referred to in this Annex 1 (Proforma Life Cycle (TAWO) Works Contract) of Part B (Life Cycle (TAWO) Documentation) of this Schedule Part 4 (Life Cycle (TAWO) Works) and referred to in this Supplemental Agreement, as signed and dated by the Board and Service Co and to take effect on the Supplemental Agreement Effective Date.

Annex 2

PROFORMA COLLATERAL WARRANTY

The document titled “Annex 2 (Proforma Collateral Warranty)" is the document referred to in this Annex 2 (Proforma Collateral Warranty) of Part B (Life Cycle (TAWO) Documentation) of this Schedule Part 4 (Life Cycle (TAWO) Works) and referred to in this Supplemental Agreement, as signed and dated by the Board and Service Co and to take effect on the Supplemental Agreement Effective Date.

Annex 3

PROFORMA CONSULTANCY APPOINTMENT

The document titled “Annex 3 (Proforma Consultancy Appointment)" is the document referred to in this Annex 3 (Proforma Consultancy Appointment) of Part B (Life Cycle (TAWO) Documentation) of this Schedule Part 4 (Life Cycle (TAWO) Works) and referred to in this Supplemental Agreement, as signed and dated by the Board and Service Co and to take effect on the Supplemental Agreement Effective Date.

PART 5

PROJECT BOARD

PART A

KEY PERSONNEL

[xx]

PART B

TERMS OF REFERENCE FOR PROJECT BOARD

The document titled “Part B (Terms of Reference for Project Board)" is the document referred to in this Part 2 (Terms of Reference of Project Board) of this Schedule Part 5 (Project Board) and referred to in this Supplemental Agreement, as signed and dated by the Board and Service Co and to take effect on the Supplemental Agreement Effective Date.

PART 6

PRO FORMA SCHEDULE OF PROGRAMMED MAINTENANCE

The document titled “Pro Forma Schedule of Programmed Maintenance" is the document titled “Schedule Part 6 – NRIE PA SA(H) – Sch Pt 6 – Form of SoPM – Apr 25 to Mar 26 – Rev2 20241125(1013087243.1)xlsx” attached to the email issued by **[xx]** of Shepherd + Wedderburn to **[xx]** of Morton Fraser MacRoberts and **[xx]** of Freeths (and copied to other relevant parties) dated 27th March 2026 and timed 10.47, and the Parties each confirm that they hold copies of such Pro Forma Schedule of Programmed Maintenance.

PART 7

CONDITIONS PRECEDENT

1. THE COMPANIES AND THE SERVICE PROVIDER

1.1 A certified true copy of the constitutional documents of each of the Companies;

1.2 A certified true copy of a resolution of the board of directors of each of the Companies and the Service Provider:

1.2.1 approving the terms of, and the transactions contemplated by the Transaction Documents to which it is party and resolving that it execute, deliver and perform the Transaction Documents to which it is party

1.2.2 authorising a specified person or persons to execute the Transaction Documents to which it is party on its behalf; and

1.2.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is party.

1.3 A certified true copy of a specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above in relation to the Transaction Documents to which it is a party and related documents.

1.4 A certified true copy of a consent letter from each of the “A Shareholder” and “C Shareholder” (as defined in the Shareholders Agreement) of each of the Companies confirming that the amendments to the Loan Facilities Agreement as set out in the Amended Facilities Agreement and in case of Service Co, also the amendments to the Project Agreement as set out in this Agreement are for the benefit of, and in the best interests of the relevant Companies.

1.5 A certified true copy of the certificate of an authorised signatory of each Company provided by Service Co pursuant to Schedule 1 of the Amended Facilities Agreement certifying that each copy document relating to it specified in Schedule 1 of the Amended Facilities Agreement is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Amended Facilities Agreement.

2. BOARD VIRES

2.1 Certified copy of board minute of the full NHS Lothian Board dated 13th August 2025:

2.1.1 Approving the draft Supplemental Agreement dated 30 July 2025;

2.1.2 Authorising the Chief Executive and/or the Director of Finance to negotiate and agree the final terms of the Supplemental Agreement on behalf of the Board;

2.1.3 Pursuant to paragraph 8.1 (Execution of Documents) of the Standing Orders, authorising the Chief Executive and/or the Director of Finance (as executive members of the Board) to approve, seal, execute, deliver and/or initial the final form of the following documents on behalf of the Board: the Supplemental Agreement;

2.5.4 Authorising the Board to execute, deliver and perform the Supplemental Agreement;

2.2 Certificate to Service Co setting out the names and specimen signatures of the Chief Executive and Director of Finance who are authorised to approve, seal, execute, deliver and/or initial the Supplemental Agreement;

2.3 Certified true copies of the Board's current versions of the following documentation:

(a) Standing Orders;

(b) Standing Financial Instructions; and

(c) Lothian NHS Board Scheme of Delegation.

2.4 Certified true copy of the EFDA certificate from the Scottish Government.

3. TRANSACTION DOCUMENTS

3.1 Certified true copies of the Amended Facilities Agreement and the Supplemental Assignation in Security executed by the Companies.

3.2 Certified true copies of the evidence of the perfection of the assignation granted under the Supplemental Assignation in Security (by way of copies of executed intimations of assignation together with proof of service of such intimations).

3.3 Certified true copies of the Supplemental Facilities Service Contract, Supplemental Management Agreement, Supplemental University Facilities Service Contract, duly executed by the parties thereto.

3.4 Certified true copies of the guarantee confirmation letters from each of the Facilities Service Contract Guarantor and the University Facilities Service Contract Guarantor (both terms as defined in the Loan Facilities Agreement).

4. OTHER DOCUMENTS AND EVIDENCE

4.1 The Operating Model.

PART 8

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