
LEASE PLUS AGREEMENT
for
[Insert property details]

**Note: A Lease Plus Agreement is to be used where land is owned by Liftco or its subsidiary.
Where land is not owned by Liftco, please refer to the Land Retained Agreement.**

There are drafting options within this Lease Plus Agreement for "standard" schemes and "specialist" schemes. Whether a scheme is standard or specialist will be determined by CHP (with the agreement of commissioners) as part of the business case approval process with reference to its clinical functionality and use. For example, GP surgeries and health centres are likely to be standard schemes, whereas Community Hospitals which include inpatient accommodation and urgent care centres which are operational 24/7 are likely to be specialist schemes.

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**NHS LIFT Standard Form Lease Plus Agreement
Version 6**

IMPORTANT NOTICE

This is the sixth version of the NHS LIFT standard form of Lease Plus Agreement (LPA) the intention of which is to minimise the time and costs of dealing with legal issues relating to LIFT. Community Health Partnerships (CHP), NHS England (NHSE) and the Department of Health [and Social Care](#) (DH) expect the standard form LPA to be used substantially un-amended. A certain degree of customisation of the standard form LPA will be necessary to reflect the individual features of particular schemes; in particular, the scope of services required from the Landlord, the capital value of the Facilities and the nature of the clinical activities undertaken. However project specific justification must be given to any such customisation and consent for such customisation will be required from the relevant approving bodies.

In the context of the current economic climate and the steps being taken by HM Treasury to review operational PFI contracts, there are a number of aspects of the LPA version 6 which have been reviewed to ensure that they comply with current HM Treasury guidance and still deliver value for money for the public sector.

In particular, we have taken the opportunity to consider where the LPA requires updating to ensure off balance sheet assessment under current accounting guidance.

Users of this standard form should be aware of the following points:

- 1 The standard form LPA is not a replacement for independent, specialist advice and tenants must ensure that they have taken appropriate legal, financial and technical advice before using this document.
- 2 The standard form LPA should be used in conjunction with guidance issued by CHP and DH from time to time.
- 3 This notice and the footnotes should be removed as appropriate before finalisation of the document for execution and/or submission for approval.
- 4 Local Authorities entering into an LPA should seek the necessary approvals from the relevant Government department.
- 5 Should you have any questions on the draft you are asked to contact property@communityhealthpartnerships.co.uk.

Prescribed Clauses

LR1 Date of lease	
LR2 Title number(s)	LR2.1 Landlord's title number(s)
	LR2.2 Other title numbers
LR3 Parties to this lease	Landlord
	Tenant
	Other Parties [None]
LR4 Property	In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail. [See definition of "Premises" at paragraph 1.1 of Schedule 1 of this lease]
LR5 Prescribed statements etc	LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003. [None]
	LR5.2 This lease is made under, or by reference to, provisions of: [None]
LR6 Term for which the Property is leased	The term as specified in this lease at [paragraph 1.1 of Schedule 1 in the definition of "Term"]
LR7 Premium	[None]
LR8 Prohibitions or restrictions on disposing of this lease	This lease contains a provision that prohibits or restricts dispositions.
LR9 Rights of acquisition etc	LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land [See clause 5A.1 – Tenant's option to purchase reversion] [See clause 38.4 – Tenant's right of pre-emption to purchase reversion] [See clause 43.4 – Tenant's option to purchase reversion] [See clause 48.10 – Tenant's option to purchase reversion]
	LR9.2 Tenant's covenant to (or offer to) surrender this lease

	[None]
	LR9.3 Landlord's contractual rights to acquire this lease
	[None]
LR10 Restrictive covenants given in this lease by the Landlord in respect of land other than the Property	[See clause 33 – Use in other parts of the Facilities]
LR11 Easements	LR11.1 Easements granted by this lease for the benefit of the Property
	[The easements as specified in Part 1 of Schedule 2 of this lease]
	LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property
	[The easements as specified in Part 2 of Schedule 2 of this lease]
LR12 Estate rentcharge burdening the Property	[None]
LR13 Application for standard form of restriction	The Parties to this lease apply to enter the following standard form of restriction [against the title of the Property] or [against title number]:
<i>[This is a standard form restriction – Form M can be inserted here. No need to complete Form RX1.]</i>	“No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by [NAME OF TENANT] of [ADDRESS] (or its conveyancer) that the provisions of Clause 38.4 of a Lease Plus Agreement dated [DATE] and made between [LANDLORD] and [TENANT] has been complied with or that they do not apply.”
	[The Parties to this lease apply to enter the following standard form of restriction [against the title of the Property] or [against title number]:
	“No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by [TENANT] [or his conveyancer] that the provisions of Clause 33.4 of the Lease Plus Agreement [provide details] have been complied with.”
<i>[Form M]</i>	
LR14 Declaration of trust where there is more than one person comprising the Tenant	[None]
	<i>[If Tenant is likely to be two or more individuals, add wording for Tenant's solicitors to complete].</i>

BETWEEN:

- (1) [] whose principal office is at [] (“the Landlord”)
- (2) **[TENANT]** (may be CHP, individual GPs or other stakeholders) of [] (“the Tenant”)

WHEREAS

- A. The Department of Health, pursuant to the Health and Social Care Act 2001, committed to introducing new solutions to the investment needs of community based care services. Partnerships UK and the Department of Health set up Community Health Partnerships Limited (formerly Partnerships for Health Limited) for the purposes of enabling supporting and investing in local health economies, through the setting up of Local Improvement Finance Trusts to deliver improved facilities and services. Community Health Partnerships Limited investments in Local Improvement Finance Trusts will help deliver a significant part of the Government’s targets in the health sector as set out in the NHS Plan of July 2000.
- B. The current policy of the Department of Health and Social Care is to implement such investment projects through Local Improvement Finance Trusts. [] is the Local Improvement Finance Trust for the local health economy of [].
- C. The Landlord has agreed to develop/refurbish the Premises and the remainder of the Facilities of which the Premises form part by carrying out the Works on the Site in accordance with Tenant’s Requirements and the Landlord’s Proposals.
- D. The Landlord is the owner of the freehold interest in the Site and has agreed to grant a lease of the Premises to the Tenant.
- E. The Landlord has obtained detailed Planning Permission for the carrying out of the Works on the Site.
- F. The parties acknowledge the existence of the Strategic Partnering Agreement (as defined in this Lease) the provisions of which shall apply where indicated in this Lease.

PRELIMINARY

1 DEFINITIONS, INTERPRETATION AND CONSTRUCTION

This Lease shall be interpreted according to the provisions of Schedule 1 (Definitions and Interpretation).

PART A: PROPERTY INTERESTS

2 DEMISE

In consideration of the covenants on the part of the Tenant contained in this Lease the Landlord with full title guarantee DEMISES the Premises to the Tenant for the Term.

3 RIGHTS AND RESERVATIONS

The Landlord demises the Premises¹ with the benefit of the rights set out in Part 1 of Schedule 2 but subject to the exceptions and reservations set out in Part 2 of Schedule 2.

4 ENCUMBRANCES

4.1 The Premises are demised subject to the Landlord's Title.

4.2 The Tenant covenants to comply with the Landlord's Title in so far as it affects the Premises [save for []].

5 SECURITY OF TENURE

The Tenant's rights of security of tenure under the Landlord and Tenant Act 1954 shall not be excluded.

5A OPTION TO PURCHASE FREEHOLD²

5A.1 The Landlord grants the Tenant an option to purchase the Site on the terms set out in Schedule 14A.

5A.2 If requested by the Tenant, the Landlord will give the Tenant consent to the entry against the Landlord's title to the Site at the Land Registry of the following entries in order to protect this agreement:

5A.2.1 agreed notices in order to protect the options contained in Clauses 5A.1, 43.4 and 48.10 of this Lease; and

5A.2.2 a restriction in order to protect the rights contained in Clause 38.4 of this Lease in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate or the proprietor of any registered charge is to be registered without a certificate signed by [NAME OF TENANT] of [ADDRESS] (or its conveyancer) that the provisions of Clause 38.4 of a Lease Plus Agreement dated [DATE] and made between [LANDLORD] and [TENANT] has been complied with or that they do not apply."

5A.3 If the Landlord has assigned or transferred the entirety of its interest in the Site pursuant to the terms of this Lease or otherwise upon the expiry of this Lease (and provided that the Landlord has complied with all pre-transfer obligations contained in Clauses 38.2, 38.4, 38.5 and Schedule 14B (if applicable)) then simultaneously with such assignment or transfer the Tenant (having been provided with not less than 10 Business Days' notice of completion of the assignment or transfer) or otherwise upon the expiry of this Lease shall provide the Landlord with an appropriate certificate to cancel the restriction set out in Clause 5A.2.2 or consent to the registration of the disposition (as appropriate) unless the assignment or transfer is pursuant to Clause 38.7 in which case the Tenant shall only be obliged to provide a certificate confirming that the restriction does not apply.

PART B : DEVELOPMENT PHASE

¹ Third party income generation opportunities to be considered by the parties. Where the Tenant will not be the Tenant of the whole Site, the lease will need to be reviewed for consistency

² This right shall only be available to the main public sector tenant of the Facilities.

6 LICENCE TO ENTER TO CARRY OUT THE WORKS³

- 6.1 Immediately following the grant of this Lease, the Tenant shall grant a licence in favour of the Landlord and all others duly authorised by the Landlord to enter the Premises to carry out and complete the Works. The grant of this licence shall be deemed to have taken place following the grant of the Lease without further formality.
- 6.2 The grant of the licence referred to in Clause 6.1 shall not operate as any demise of the Premises by the Tenant to the Landlord.

With effect from the grant of the licence, the Landlord shall be responsible for all outgoings payable in relation to the Site⁴.

7 PROJECT PROGRAMME

- 7.1 Any Project Programme submitted in accordance with the provisions set out below shall be prepared in accordance with Good Industry Practice and shall be in sufficient detail so as to enable the Tenant's Representative to monitor the progress including all commissioning activities and likely future progress of the Works.
- 7.2 The initial Project Programme is set out at Schedule 7 Part 1 (Project Programme). Any change to the Project Programme shall only be made in accordance with this Clause and Schedule 13 (Review Procedure). The Landlord shall promptly submit to the Tenant's Representative a copy of any version of the Project Programme varied in accordance with this Clause 7 and Schedule 13 (Review Procedure).
- 7.3 If it appears to the Tenant's Representative at any time that the actual progress of the Works has significantly fallen behind the Project Programme, then the Tenant's Representative shall be entitled to require the Landlord to submit to the Tenant's Representative a report identifying the reasons for the delay and, unless the event causing the delay is still subsisting and it is not possible to predict with any certainty when the delay might come to an end, require the Landlord (at the Tenant's option):
- 7.3.1 to produce and submit to the Tenant's Representative in accordance with Schedule 13 (Review Procedure) a revised Project Programme showing the manner and the periods in which the Works will be carried out to ensure completion; and/or
- 7.3.2 to produce and submit to the Tenant's Representative in accordance with Schedule 13 (Review Procedure) a revised Project Programme showing the steps which are to be taken to eliminate or reduce the delay.

8 DESIGN AND CONSTRUCTION

- 8.1 The Landlord shall carry out and complete, or procure the carrying out and completion of the Works:
- 8.1.1 so as to procure satisfaction of the Tenant's Requirements;

³ If completion of the Works is being carried out in Phases, appropriate drafting will need to be inserted. Please contact CHP for precedent drafting if required on a scheme specific basis.

⁴ In circumstances where vacant possession cannot be provided to the Landlord at financial close, it may be necessary to include an additional provision obliging the Tenant to provide vacant possession at the agreed date.

- 8.1.2 in accordance with the Landlord's Proposals;⁵
- 8.1.3 on or before the Completion Date and, in any event before the Long Stop Date; and
- 8.1.4 in accordance with the terms of this Lease.
- 8.2 To avoid doubt, the obligations set out in Clause 8.1 are independent obligations that must each be satisfied. In particular:
- 8.2.1 the fact that the Landlord has complied with the Landlord's Proposals shall not be a defence to a claim that the Landlord has not satisfied the Tenant's Requirements; and
- 8.2.2 the fact that the Landlord has satisfied the Tenant's Requirements shall not be a defence to a claim that the Landlord has failed to comply with the Landlord's Proposals.
- 8.3 The Landlord warrants that it has used, and will continue to use, the degree of skill and care in the design of the Facilities that would reasonably be expected of a competent professional designer experienced in carrying out design activities of a similar nature, scope and complexity to those comprised in the Works.
- 8.4 The Landlord shall carry out, or procure carrying out of the Works in accordance with:
- 8.4.1 all Law (including, in particular the CDM Regulations, for the purposes of which (as between the Landlord and the Tenant) the Landlord shall act as "client") and all relevant codes of practice;
- 8.4.2 Requisite Consents; and
- 8.4.3 the Project Programme.
- 8.5 The Landlord shall be responsible for applying for and obtaining all Requisite Consents.
- 8.6 The Landlord shall be free to subcontract the whole or any part or parts of the Works. Notwithstanding any such subletting of the whole or any part of the design and/or construction, the Landlord will remain solely responsible to the Tenant for the Works.
- 8.7 [The Tenant confirms that, as at the date of this Lease, it has reviewed such of the Landlord's Proposals as have been initialled by the Tenant and that, subject to any qualifications and/or comments notified by the Tenant to the Landlord in writing, such Proposals satisfy the Tenant's Requirements in respect of Clinical Functionality, so far as can reasonably be determined given the level of detail of Design Data that has been disclosed to the Tenant]⁶ .
- 8.8 [The Landlord shall procure that within twenty-one (21) days of any Contractor, Consultants or Design Sub-Contractor being appointed that such Contractor, Consultants or Design Sub-Contractor shall execute and deliver to the Landlord a

⁵ The detailed designs prepared at financial close. This is likely to include loaded 1:50 drawings.

⁶ The wording will only apply where the intended Premises will comprise specialist elements in relation to which the Tenant alone possesses knowledge regarding the proposed operation of such elements which is necessary to assess whether the relevant elements achieve clinical functionality: e.g. day surgery, ACAD.

deed of warranty in the form set out in Schedule 20 in favour of the Tenant and/or Public Sector Body subject to such amendments as may be approved by the Tenant (such approval not to be unreasonably withheld or delayed)].

8A SAFETY DURING CONSTRUCTION

8A.1 Responsibility for Design

As between the Landlord and the Tenant, the Landlord shall be entirely responsible for the safety of any design which forms part of the Works and for the adequacy, stability and safety of all site operations and methods of construction.

8A.2 The Landlord as "Client"

The Landlord hereby elects to be treated as the only Client in respect of the Works and Services pursuant to Regulation 4 of the CDM Regulations. The Landlord shall not, during the Term, seek in any way to withdraw, terminate or derogate from such election.

8A.3 Duties under the CDM Regulations

The Landlord shall observe, perform and discharge and/or shall procure the observance, performance and discharge of all of the obligations, requirements and duties arising under the CDM Regulations in connection with the Works and Services and shall issue to the Tenant's Representative within five (5) Business Days of its delivery to the Landlord, one electronic copy (on computer disk, tape or other format) of each and every health and safety file to be prepared by it pursuant to the CDM Regulations in relation to the Works and Services and electronic or paper copies of every amendment or update made to such file during the Term.

8A.4 The Landlord warrants that it has the competence, resources and capacity to, and shall, observe, perform and discharge or shall procure the observance, performance and discharge of:

8A.4.1 all the obligations, requirements and duties of the Client arising under the CDM Regulations in connection with the Works and, where necessary, the provision of the Services; and

8A.4.2 any obligations incumbent on the Client under any Code of Practice for the time being approved by the Health and Safety Commission pursuant to the Health and Safety at Work etc. Act 1974 issued in connection with the CDM Regulations.

8A.5 The Tenant to co-operate and provide information

Notwithstanding the election made under Clause 8A.2 above, the Tenant shall observe and continue to observe its duties which pursuant to Regulation 4 of the CDM Regulations are to remain with the Tenant, and notably those duties under Regulations 4(4) and 8(4).

9 DESIGN REVIEW PROCEDURE

The Landlord and the Tenant shall comply with the design review procedure set out in Schedule 5, Part 1.⁷

10 COMPLIANCE WITH THE TENANT'S REQUIREMENTS FOR THERMAL AND ENERGY EFFICIENCY⁸

10.1 For the purposes of this Clause 10.1 and Clause 10.2 an "average year figure" means the latest twenty (20) year annual average Heating Degree Day figure available at the date which is two (2) years following the Actual Completion Date, calculated to a base of 18.5 degrees Celsius, as published by []⁹ for the [] area. During the period of two (2) years following the Actual Completion Date, the parties shall monitor the actual energy consumption at the Facilities in accordance with the procedure set out in Part [] of Schedule 3 (Tenant's Requirements), with a view to **establishing the Energy Thresholds (as defined in Schedule 10 (Payment Mechanism) for the purposes of Schedule 10 (Payment Mechanism) and]**¹⁰ ascertaining whether and to what extent the thermal and energy efficiency of the Facilities is in excess of **insert target GJ figure to reflect the Tenant's Requirements]** Giga Joules/100m³ per year. If the average Heating Degree Day figure for the two (2) year period referred to above is either greater than 103% or less than 97% of the average year figure, then such monitoring shall continue until the earlier of:

10.1.1 such time as there has been a period of twenty four (24) consecutive calendar months the Heating Degree Day figure for such period, when averaged, is neither greater than 103% nor less than 97% of the average year figure; and

10.1.2 the date five (5) years after the Actual Completion Date.

If as a result of such monitoring there is any indication that the thermal and energy efficiency of the Facilities causes energy use exceeding **insert target]** Giga Joules per 100m³ per year, the parties shall investigate the matter to determine the cause of such failure either in the manner agreed between them or in such manner as may be determined in accordance with Schedule 21 (Dispute Resolution Procedure).

10.2 The Landlord shall install equipment to record and monitor energy consumption in the Facilities. Such equipment must be suitable to enable a detailed monitoring of the energy trends and consumption to allow analysis of the data collected to enable various matters, including:

10.2.1 comparisons to be made with the declared energy targets; and

10.2.2 early warning of deviations from norms and malfunctions.

10.3 All information gathered in accordance with Clause 10.2 shall be secured so that it is not lost or degraded as a result of any equipment or service malfunctions. In addition, such information shall be secured from any adjustment, modification or loss from any other source.

⁷ The design review procedure sets out the process for development and review of the detailed designs after financial close. The Tenant's consent shall be required to any changes in the Landlord's Proposals.

⁸ Specialist schemes may include ongoing energy monitoring and target provisions, where appropriate.

⁹ Parties to complete with agreed source of heating degree day information.

¹⁰ Only applicable to specialist schemes which have included energy painshare and gainshare in Schedule 10.

- 10.4 If following any investigation pursuant to Clause 10.1, it is agreed between the parties or determined in accordance with Schedule 21 (Dispute Resolution Procedure) that such failure arises as a consequence of the design and construction of the Facilities by the Landlord failing to achieve a thermal and energy efficiency of equal to or less than *[insert target]* Giga Joules per 100m³ per year then, to the extent that such failure arises as a consequence of the design and/or construction of the Facilities by the Landlord, the Landlord shall compensate the Tenant for any costs, losses or expenses incurred by the Tenant as a result of such failure, during the period of monitoring referred to in Clause 10.1 above, and the Tenant, acting reasonably, shall require that the Landlord shall at its own expense procure that such additional work or other remedial work is carried out to remedy the relevant defect, or otherwise compensate the Tenant in a manner approved by the Tenant (such approval not to be unreasonably withheld or delayed). Where the solution selected by the Tenant is compensation:
- 10.4.1 the Tenant should not as a consequence face any additional liability upon early termination of this Lease and the determination of the Pre-emption Price pursuant to Schedule 14B and Schedule 14E; and
- 10.4.2 such compensation shall be a sum equal to the cost to the Tenant of procuring the excess energy predicted to be consumed by it as a result of the relevant defect until the end of the Term, taking into consideration the likely future cost of energy sources, as determined by an appropriately qualified representative of *[CIBSE]*, provided that the cost of such opinion shall be borne by the Landlord. The lump sum compensation payment shall be calculated at a discount rate of 3.5% real.

11 TENANT'S REPRESENTATIVE¹¹

- 11.1 The Tenant shall appoint jointly with the other tenants at the Site a Tenant's Representative to act on its behalf in relation to the matters identified in this Lease as functions or powers of the Tenant to be carried out by the Tenant's Representative. The Tenant's Representative shall also exercise such other functions and powers of the Tenant under this Lease as may be notified to the Landlord from time to time arising under this Lease.
- 11.2 The Tenant may by notice to the Landlord change the Tenant's Representative provided the other tenants at the Facilities implement a change appointing the same replacement under their leases. Subject to this proviso, such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause any material inconvenience to the Landlord in the execution of its obligations under this Lease).
- 11.3 The Tenant shall, jointly with the other tenants at the Facilities, identify to the Landlord the party who shall during any period when the Tenant's Representative is unavailable to carry out or exercise his functions under this Lease (whether through sickness incapacity holiday or for any other reason whatsoever) carry out on a temporary basis the functions which would otherwise be performed by the Tenant's Representative on behalf of all the tenants at the Facilities.
- 11.4 The Landlord shall keep the Tenant's Representative fully informed of the state of progress with regard to the design and construction of the Works and all

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Tenants should consider appointing the Independent Tester to perform this role.

communications between the Landlord and the Tenant shall (save as excepted above) be conducted via the Tenant's Representative.

11.5 The Landlord shall procure that:

11.5.1 subject to complying with all relevant safety procedures (which shall include any relevant health and safety plans for the construction of the Works, any reasonable site rules and directions with regard to site safety that may be issued by or on behalf of the Landlord or its contractor(s) having responsibility for the Site from time to time) the Tenant's Representative shall have unrestricted access at all reasonable times during normal working hours to:

(a) view the Works at the Site on reasonable prior notice appropriate to the circumstances, provided that the notice procedures in this sub-clause shall not apply to the right of access for the Tenant's Representative and his staff and visitors to any office and/or other facilities provided at the Site for his use; and

(b) subject to obtaining the consent of the relevant manufacturer or supplier (which the Landlord agrees to use all reasonable endeavours to obtain), visit any site or workshop where materials, plant or equipment are being manufactured, prepared or stored for use in the Works for the purposes of general inspection and in attending any tests or investigation being carried out in respect of the Works;

11.5.2 the Tenant's Representative shall have such rights of access to the Site in an emergency as he (acting reasonably) considers suitable in the circumstances; and

11.5.3 monthly progress meetings and site meetings are held and that the Tenant's Representative shall have the right to attend such monthly progress meetings and site meetings and to attend such other meetings as the Tenant's Representative may reasonably request.

11.6 Subject to Clause 11.7, the Tenant's Representative shall have the right at any time prior to the Actual Completion Date to request the Landlord to open up and inspect any part or parts of the Works where the Tenant's Representative reasonably believes that such part or parts of the Works is or are defective and the Landlord shall comply with such requests.

11.7 Prior to exercising the right in accordance with Clause 11.6, the Tenant's Representative shall notify the Landlord of his intention to exercise such right, setting out detailed reasons.

11.8 Not used.

11.9 The Landlord shall be solely responsible for opening up and inspecting in accordance with Clause 11.6 save where the inspection shows that the relevant parts of the Works are not defective, in which case Clause 14.11 shall apply.

11.10 If, following the exercise of the Tenant's Representative of his right pursuant to Clause 11.6, the inspection shows the relevant part or parts of the Works is/are defective, the Landlord shall rectify and make good such defect(s) and any

consequence of any rectification and/or making good defect(s) shall be carried out by the Landlord at no cost to the Tenant and the Landlord shall not be entitled to any extension of time or additional payment in relation to such rectification and making good of the Works.

- 11.11 If, following the exercise by the Tenant's Representative of his right pursuant to Clause 11.6, the Tenant's Representative is of the opinion that the inspection shows that the relevant part or parts of the Works is or are defective and the Landlord does not agree with such opinion, the matter shall be determined in accordance with Schedule 21 (Dispute Resolution Procedure).
- 11.12 Without prejudice to the rights of the Tenant's Representative pursuant to this Clause 11, the parties acknowledge that the exercise of such rights shall not in any way affect the obligations of the Landlord under this Lease save as expressly set out in this Clause 11.

12 CERTIFICATION OF COMPLETION OF THE WORKS

- 12.1 The Landlord and the Tenant have prior to the date of this Lease, in compliance with all Law relating to procurement which is applicable to either party, appointed a suitably qualified and experienced consultant to act as the Independent Tester for the purposes of this Lease upon the terms of the Independent Tester Contract.
- 12.2 Neither the Landlord nor the Tenant shall, without the other's prior written approval (which shall not be unreasonably withheld or delayed):-
 - 12.2.1 terminate, repudiate or discharge the Independent Tester Contract or treat the same as having been terminated, repudiated or otherwise discharged;
 - 12.2.2 waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Tester; or
 - 12.2.3 vary the terms of the Independent Tester Contract or the service performed or to be performed by the Independent Tester.
- 12.3 The Landlord and the Tenant shall comply with, and fulfil their respective duties and obligations arising under or in connection with the appointment of the Independent Tester.
- 12.4 The Landlord and the Tenant agree to co-operate with each other generally in relation to all matters within the scope of, or in connection with the appointment of the Independent Tester. All instructions and representations issued or made by either of the parties to the Independent Tester shall be simultaneously copied to the other and both parties shall be entitled to attend all inspections undertaken by, or meetings involving, the Independent Tester.
- 12.5 In the event of the Independent Tester's appointment being terminated otherwise than for full performance, the parties shall liaise and co-operate with each other in order to appoint, in accordance with this Clause 12, a replacement consultant to act as the Independent Tester as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the parties and the terms of his appointment shall, unless otherwise agreed, be as set out in the Independent Tester Contract.

- 12.6 In the event the parties fail to agree the identity and/or terms of a replacement Independent Tester in accordance with Clause 12.5, within ten (10) Business Days of the original Independent Tester's appointment being terminated, then such disagreement shall be referred for resolution in accordance with Schedule 21 (Dispute Resolution Procedure).
- 12.7 [The Landlord shall give the Independent Tester and the Tenant's Representative not less than [five (5)] Business Days' notice and not more than [ten (10)] Business Days' notice of the date upon which the Landlord considers that the Works will be complete and any tests on completion to be performed in accordance with the commissioning of the Works will be carried out. The Tenant's Representative and the Independent Tester shall be entitled to inspect the Works on the date or dates reasonably specified by the Landlord in accordance with this Clause and to attend any of the tests on completion. The Landlord shall, if so requested, accompany the Tenant's Representative and the Independent Tester on any such inspections.
- 12.8 The parties shall procure that the Independent Tester shall, within [] Business Days of any inspection made pursuant to Clause 12.7, notify the Landlord and the Tenant of any outstanding matters [(including, without limitation, the repetition of any tests on completion which are required to be carried out and passed in accordance with any plan for the commissioning of the Works)] which are required to be attended to before the Works can be considered to be complete in accordance with the Tenant's Requirements, the Landlord's Proposals and the Completion Acceptance Schedule. The Landlord shall attend to such matters and shall, if necessary, give the Independent Tester further notices in accordance with Clause 12.7 (dealing only with matters raised in the notification under this Clause) so that the procedures in Clause 12.7 and this Clause 12.8 are repeated as often as may be necessary to ensure that all outstanding matters in relation to the Works are attended to.]¹²

13 COMMISSIONING¹³

[(Standard scheme commissioning drafting)]¹⁴

- 13.1 Not less than [] months before the Completion Date the Landlord shall prepare a programme for commissioning of all aspects of the Works for approval by the Tenant (such approval not to be unreasonably withheld or delayed). Such programme shall distinguish any commissioning that the Tenant will itself carry out. [The Final Commissioning Programme shall be consistent with the Outline Commissioning Programme set out in Schedule 7 Part 2. The Final Commissioning Programme shall then replace the Outline Commissioning Programme.]¹⁵
- 13.2 Once approved, the Landlord without prejudice to the provisions of Clause 12 shall carry out any commissioning in accordance with the approved programme.

¹² Do not include Clauses 12.7 and 12.8 where the specialist scheme drafting for Clause 13 is used, as this duplicates Clauses 13.10 and 13.11.

¹³ Where completion of the Works is carried out in phases, phasing drafting will need to be incorporated throughout the LPA including the commissioning provisions.

¹⁴ It is envisaged that all commissioning will be completed before completion of the building works given the relatively straight forward nature of the proposed projects. Tenant's commissioning is likely to entail installation of any equipment it is not happy to allow the Landlord to move, provide or install (if any).

¹⁵ Standard scheme drafting may be modified to include for the Final Commissioning Programme where the Tenant is required to provide or install equipment before the Actual Completion Date.

- 13.3 The Landlord shall allow access to the Site at reasonable times to enable the Tenant to carry out any commissioning of the Works for which it is responsible (if any). [The Tenant shall comply with the Final Commissioning Programme.]
- 13.4 [The Final Commissioning Programme shall (amongst other things) set out:
- 13.4.1 the equipment to be supplied by the Tenant and installed by the Landlord;
 - 13.4.2 the equipment which will be supplied and installed by the Tenant;
 - 13.4.3 the extent, timing and conditions upon which the Tenant will be permitted early access to carry out the Tenant's Commissioning.]
- 13.5 The Landlord shall give to the Tenant's Representative and the Independent Tester not less than five (5) Business Days' notice of the date or dates on which any tests are to be carried out as part of the commissioning of the Works.
- 13.6 The Independent Tester shall confirm to the Landlord and the Tenant's Representative once any commissioning required as part of the Tenant's Requirements or the Landlord's Proposals has been carried out to his reasonable satisfaction. If and to the extent that such commissioning is required as part of the completion of the Works, such confirmation will be given by the issue of a certificate in accordance with Clause 13.12.
- 13.7 Not used.
- 13.8 Not used.
- 13.9 Not used.
- 13.10 Not used.
- 13.11 Not used.]

[OR]

[(Specialist scheme commissioning drafting)]¹⁶

- 13.1 Not less than [] months before the Completion Date the Tenant shall provide the Landlord with a draft of the Final Commissioning Programme as jointly developed by the Tenant and the Landlord in accordance with the provisions of Clauses 13.2 and 13.3. The Landlord shall provide the Tenant with comments on the draft Final Commissioning Programme submitted to it no later than [] months before the Completion Date. The parties shall, within [] Business Days of receipt by the Tenant of the Landlord's comments agree the terms of the Final Commissioning Programme provided that the Tenant may by prior notice to the Landlord change the scope and time of the Tenant's Commissioning and reimburse the Landlord its reasonable costs incurred as a result of such change in scope or time. If the Landlord and Tenant are unable to agree the Final Commissioning Programme or the change in scope or time of the Tenant's Commissioning [] months before the Completion

¹⁶

The equipment and commissioning requirements of the project will be determined on a project specific basis depending on the clinical complexity of the scheme.

Date the matter shall be referred for determination in accordance with Schedule 21 (Dispute Resolution Procedure).

- 13.2 The Final Commissioning Programme shall be in accordance with the Outline Commissioning Programme and shall impose no greater or more onerous obligations on the Tenant than those set out in the Outline Commissioning Programme (unless otherwise agreed by the Tenant in its absolute discretion). The Final Commissioning Programme shall then replace the Outline Commissioning Programme.
- 13.3 The Final Commissioning Programme shall describe the steps necessary, the party responsible for taking each of such steps and the timing and sequence of each of such steps to ensure:
- 13.3.1 that the Landlord's Pre-Completion Commissioning and the Tenant's Commissioning¹⁷ will not delay the Actual Completion Date from occurring by the Completion Date;
- 13.3.2 that the Landlord's Post Completion Commissioning and the Tenant's Post Completion Commissioning is completed by the Commissioning End Date.
- 13.4 The parties shall procure that the steps that they are responsible for carrying out and completing pursuant to the Final Commissioning Programme include, [in the case of the Landlord's activities, the activities described at [paragraph [] of the Tenant's Requirements].¹⁸
- 13.5 In accordance with the Completion Process the Landlord shall notify the Independent Tester and the Tenant's Representative of the date when the Landlord (acting reasonably) considers that the Works will be complete in accordance with the Tenant's Requirements [the Completion Acceptance Schedule] and this Lease not less than [] months prior to such anticipated completion. Such notification shall trigger the activities of the Independent Tester under this Clause 13.
- 13.6 The parties each undertake to co-operate with the Independent Tester to ensure that the Independent Tester is familiar with all necessary aspects of the Project for the purposes of its role as described in this Clause 13.

Commissioning prior to Completion Date

- 13.7 The Landlord shall:
- 13.7.1 undertake the Landlord's Pre-Completion Commissioning in accordance with the Final Commissioning Programme, and
- 13.7.2 permit the Tenant to undertake the Tenant's Commissioning including [permitting specialist contractors engaged by the Tenant to deliver and

¹⁷ Each of the Tenant and the Landlord will undertake inspection and commissioning activities both prior to and after completion. Parties need to consider which commissioning activities have to occur before and which after completion (and, in each case, by whom) on a project specific basis. It is assumed that the Final Commissioning Programme will set out all requirements and obligations in relation to the development nature, principles and performance of the completion tests to be performed to enable certification of completion to take place. Clause 13 should be amended as necessary to reflect any particular project arrangements.

¹⁸ Tenant to describe any other core requirements to be complied with in relation to the Landlord's commissioning activities.

install equipment] on such dates as agreed between the Tenant and the Landlord, in accordance with the Final Commissioning Programme.¹⁹

- 13.8 The Landlord shall give written notice to the Independent Tester and the Tenant of the commencement of the Landlord's Pre-Completion Commissioning and shall ensure that the Independent Tester and the Tenant's Representative are invited to witness all of, and are provided with all information they may reasonably require in relation to, the Landlord's Pre-Completion Commissioning and that the Independent Tester is invited to comment on the Landlord's Pre-Completion Commissioning.
- 13.9 The Landlord shall (or shall procure that the Contractor shall) give the Tenant access to the Facilities at such times as may be set out in the Final Commissioning Programme to enable the Tenant to undertake the Tenant's Commissioning [within the period defined in the Completion Process and] in accordance with the Final Commissioning Programme for the period prior to completion.

Pre-Completion inspection

- 13.10 The Landlord shall give the Independent Tester and the Tenant's Representative not less than [] Business Days' notice and not more than [] Business Days' notice of the date upon which the Landlord considers that the Works will be complete and the tests on completion to be performed in accordance with the Final Commissioning Programme will be carried out. [Following receipt of the notice specified in this Clause 13.10] the Tenant's Representative and the Independent Tester shall be entitled to inspect the Works on the date or dates reasonably specified by the Landlord in accordance with this Clause 13.10, and to attend any of the tests on completion. The Landlord shall, if so requested, accompany the Tenant's Representative and the Independent Tester on any such inspection.

Pre-Completion matters

- 13.11 The Landlord and Tenant shall procure that the Independent Tester within [] Business Days of any inspection made pursuant to Clause 13.10, notifies the Landlord and the Tenant of any outstanding matters (including, without limitation, the repetition of any of the tests on completion which are required to be carried out and passed in accordance with the Final Commissioning Programme) which are required to be attended to before the Works can be considered to be complete in accordance with the Tenant's Requirements, the Landlord's Proposals, and the Completion Acceptance Schedule. The Landlord shall attend to such matters and shall, if necessary, give the Independent Tester further notices in accordance with Clause 13.10 (but dealing only with matters raised in the notification under this Clause 13.11) so that the procedures in Clause 13.10 and this Clause 13.11 are repeated as often as may be necessary to ensure that all outstanding matters in relation to the Works are attended to.]

Completion Certificate²⁰

- 13.12 Pursuant to the terms of the Independent Tester Contract, the parties shall procure that the Independent Tester shall, when he is satisfied that completion has occurred in accordance with this Lease and the Completion Acceptance Schedule, issue a Certificate of Practical Completion to that effect stating the date upon which, in his

¹⁹ Project specific. Tenants will need to consider the Tenant's commissioning activities will entail. Parties will need to consider when the Tenant's commissioning activities (including, for example, installing of its own equipment) will be carried out.

²⁰ Clauses 13.12 to 13.25 apply to all schemes.

opinion, the Actual Completion Date occurred. Subject to Clauses 13.16 (Snagging) and 13.18 (Defects), the issue of the Certificate of Practical Completion shall, in the absence of manifest error, bad faith or fraud, be conclusive evidence for the purpose only of ascertaining the Payment Commencement Date, that the Actual Completion Date has occurred on the date stated in such Certificate.

- 13.13 The Independent Tester shall issue the Certificate of Practical Completion notwithstanding that there are Snagging Matters. Where there are Snagging Matters, the parties shall procure that the Independent Tester shall, within [] Business Days of the date of issue of the Certificate of Practical Completion, issue a Snagging Notice which shall specify the Snagging Matters and an estimate of the cost of rectifying such Snagging Matters.
- 13.14 Following the issue of a Snagging Notice, the Landlord shall, in consultation with the Tenant's Representative and in such manner as to cause as little disruption as reasonably practicable to the Tenant's Post Completion Commissioning and the Tenant's use of the Facilities, rectify all Snagging Matters within [] Business Days of the issue of the Snagging Notice.
- 13.15 Not used.
- 13.16 If, within [] Business Days of the issue of the Snagging Notice, the Landlord has failed to rectify the Snagging Matters specified in the Snagging Notice the Tenant may by itself (or engage others to) carry out the works necessary to rectify the Snagging Matters, at the risk and cost of the Landlord.
- 13.17 Not used.
- 13.18 The issue of the Certificate of Practical Completion shall in no way affect the obligations of the Landlord under this Lease including in respect of any Defects.

As-built specification

- 13.19 As soon as it is available, after the issue of the Certificate of Practical Completion the Landlord shall provide to the Tenant a copy of the as-built building specification, together with all [drawings relating to the Works].²¹

Post-Completion Commissioning²²

- 13.20 The Landlord and the Tenant shall, within [] Business Days following the Actual Completion Date, [in accordance with the Final Commissioning Programme,] respectively undertake and complete the Landlord's Post Completion Commissioning and the Tenant's Post-Completion Commissioning, in accordance with the Final Commissioning Programme. Both parties shall, at all times, and in particular in the period between the Actual Completion Date and the Commissioning End Date, use reasonable endeavours to assist the other party to ensure compliance with the Final Commissioning Programme.

²¹ To be specified on a project specific basis. Documents might include, for example: the appropriate section of any health and safety file; as-built drawings and maintenance manuals; and results of technical commissioning.

²² Tenant to consider what commissioning/services start up activities will be carried out by the Landlord and what commissioning activities will be carried out by the Tenant during this period. The Payment Mechanism and Performance Monitoring System may need to be structured so as to reflect the intention of the parties in relation to services start up during this period. The standard Payment Mechanism does not envisage any structuring of this type and may therefore need to be adjusted in project specific cases.

Information

- 13.21 The Landlord shall ensure that the Tenant's Representative is provided with all the information he may reasonably require in relation to the Landlord's Post-Completion Commissioning and the Tenant shall ensure that the Landlord is provided with all information the Landlord may reasonably require in relation to the Tenant's Post-Completion Commissioning.
- 13.22 If the Tenant's Representative, acting reasonably, makes any comment in relation to the carrying out of the Landlord's Post-Completion Commissioning, such comments shall be taken into account by the Landlord and if the Landlord acting reasonably makes any comment in relation to the carrying out of the Tenant's Post-Completion Commissioning such comment shall be taken into account by the Tenant.
- 13.23 *[On the occurrence of the Commissioning End Date the Independent Tester shall issue the Commissioning Completion Certificate.]*²³

Operational Manuals²⁴

- 13.24 With effect from the Commissioning End Date and throughout the remainder of the Term, the Landlord shall at all reasonable times make available on the Site to the Tenant's Representative all operation and maintenance manuals²⁵.

Decanting, Decommissioning and Equipment Transfer

- 13.25 Careful consideration will need to be given to the parties' respective responsibilities for the procurement, installation, maintenance and renewal of large fixed items of medical equipment, particularly where they need to be built into the facility, or if they will impact on the design of the facility. The Tenant should develop an equipment strategy early in the procurement process, and include risk transfer assumptions at Stage 1²⁶ Approval under the SPA New Projects Approval Process.*

Tenants to consider including drafting on a project specific basis to cover decant and decommissioning obligations on the Landlord in phased projects.

Note the drafting assumes that the Landlord will be responsible for Category A Equipment (essentially Group 1 fixtures and fittings). The Tenant will be responsible for supply and replacement of Category B Equipment, but will require the Landlord to install and commission and facilitate the decommissioning of such items, as they require wiring or plumbing into the building. The Tenant will be fully responsible for Category C Equipment, which are Group 3 and 4 loose furniture and fittings.

- 13.25.1 The responsibilities for each category of equipment are set out in the table below²⁷:

²³ This provision may not be necessary. It will depend on the significance of each party's activities during this period and will depend on how step-up of payments during this period are structured.

²⁴ To be amended on a project specific basis. For example, operational manuals may need to be made available at an earlier date depending on the timing of commissioning activities.

²⁵ Tenant to list any other manuals required.

²⁶ The equipment strategy should include an equipment responsibility matrix setting out each parties' responsibilities for supply, installation and commissioning, maintenance and replacement for equipment.

²⁷ The equipment responsibility matrix will need to be considered on a project specific basis in order that the scheme specific equipment (and in particular items of Group 2 equipment) are categorised as Category A, B or C Equipment as appropriate.

Category	Group	Supply	Initial Approval Process	Installation and Commissioning	Maintain & Repair	Replacement Approval Process	Replacement Supply and installation	Facilitate decommissioning	Decommissioning	Disposal
A	Group 1 & 2	Landlord	Reviewable Design Data	Landlord	Landlord	Review Procedure	Landlord	N/A	Landlord	Landlord
B	Group 2 Equipment	Tenant	Tenant	Landlord	Tenant	Tenant	Tenant	Landlord	Landlord / Tenant	Tenant
C	Group 2, 3 & 4	Tenant	Tenant	Tenant	Tenant	Tenant	Tenant	N/A	Tenant	Tenant

13.25.2 The quantities of each item of equipment shall be established by reference to the Room Data Sheets set out in Schedule 4 (Landlord's Proposals).

13.26 Selection, Supply, Installation and Commissioning of Equipment

13.26.1 Category A Equipment

- (a) The Landlord shall procure the Category A Equipment in accordance with the Tenant's Requirements and the Landlord's Proposals.
- (b) The Landlord shall Supply, Install and Commission Category A Equipment as part of the Works prior to the Actual Completion Date.

13.26.2 Category B Equipment

- (a) The Tenant shall deliver to the Landlord and the Landlord will Install and, where applicable, Commission, Category B Equipment prior to the Actual Completion Date and in accordance with the Final Commissioning Programme.
- (b) The Landlord shall make available an appropriate storage area where the Tenant can arrange for the delivery and temporary storage of Category B Equipment. The storage area shall be located within the Site and be secure, and Category B Equipment within it shall be insured by the Landlord²⁸. Upon delivery of the items, the Tenant shall confirm that the order reflects that which has been ordered and issued to the Landlord for Installation within the Facilities. The Landlord shall be responsible for all equipment within the storage area until it is required for Installation by the Landlord.
- (c) For the avoidance of doubt any failure by the Tenant and/or any Tenant Party to deliver any items of Category B Equipment in

²⁸

Parties to consider whether it is more cost effective for Category B Equipment stored within the Site during the construction phase to be insured by the Landlord or the Tenant. Consequential amendments to Schedule 8 (Insurance) may be required.

accordance with paragraph (a) above will not constitute or be interpreted as a breach of this Lease, an Excusing Cause (pursuant to Clause 36A), a Delay Event (pursuant to Clause 14) and/or a Compensation Event (pursuant to Clause 14) and will not delay the production of the Certificate of Practical Completion (pursuant to Clause 13)²⁹.

- (d) Notwithstanding Clause 13.26.2(a), the Landlord shall remain under an obligation to Install and Commission the Category B Equipment within [ten (10)] Business Days where such delivery takes place after the Certificate of Practical Completion, and any failure to comply shall give rise to a right for the Tenant to Install and Commission such Category B Equipment at the Landlord's expense.
- (e) Where the Tenant has not provided sufficient requirements for environmental conditions, space and service installations to the Landlord for items of Category B Equipment, the 1:50 drawings and Room Data Sheets approved via the Reviewable Design Data process shall be deemed as Tenant acceptance that the environmental conditions, space and services installations are suitable for the Tenant supplied items of Category B Equipment.

13.26.3 Category C Equipment

- (a) The Tenant shall be responsible for the purchase and/or transfer from existing buildings and Installation and Commissioning of Category C Equipment after the Actual Completion Date.
- (b) Where the Tenant has not provided sufficient requirements to the Landlord for items of Category C Equipment, the 1:50 drawings and Room Data Sheets approved via the Reviewable Design Data process shall be deemed as Tenant acceptance that the environmental conditions, space and services installations are suitable for the Tenant supplied items, provided the Landlord has demonstrated having included a reasonable space allowance (where relevant) in order to accommodate each item of Category C Equipment listed for that room/area.

13.26.4 [Service Equipment

The Landlord shall Supply, Install, Commission, Maintain, Repair and Replace all Service Equipment in accordance with the Tenant's Requirements, Service Level Specifications and the Landlord Proposals and Method Statements throughout the Term.]

²⁹

The drafting may be amended on a project specific basis but as a starting point it assumes that the Category B Equipment will be of a type that its absence would not result in Unavailability, and that it could be installed either by the contractor as snagging or by the FM contractor without additional demobilisation / mobilisation cost to the Landlord. Medical equipment requiring installation is likely to be undertaken by the relevant manufacturer as a Landlord Party. Where the delay in installation is a result of the manufacturer's delay in delivering the item to site, it is reasonable to assume the manufacturer would not seek to recover demobilisation / mobilisation costs from the Landlord. Where the delay in installation is a result of the building not being ready for the equipment to be installed on the anticipated date, it is reasonable for the Landlord to be responsible for additional demobilisation / mobilisation costs. Parties to consider on a scheme specific basis the impact of any delay in delivery of Category B Equipment by the Tenant and consequences of this (including costs) for installation and commissioning by the Landlord. Further drafting amendments may be required to the Completion Acceptance Schedule and to ensure that the Landlord would not suffer the consequences of Unavailability after the issue of the Certificate of Practical Completion.

13.27 Maintenance, Repair and Replacement of Equipment

13.27.1 Category A Equipment

- (a) The Landlord shall Maintain (such term having the meaning given in Clause 13.28 below), Repair, Replace, Decommission and Dispose of Category A Equipment throughout the Term of the Lease.

13.27.2 Category B and C Equipment

- (a) The Landlord shall not be responsible for the Maintenance, Repair, or Replacement of Category B or C Equipment. It is expected that the Landlord will work proactively (at no extra cost) with the Tenant to support the unhindered and timely management of any associated installation and commissioning of replacement Category B or C Equipment throughout the Term.

13.28 Definitions

For the purposes of Clauses 13.25 to 13.28, the following definitions shall apply:

"Category A Equipment"

means items identified as Category A Equipment in Part [x] of the Landlord's Proposals;

"Category B Equipment"

means items identified as Category B Equipment in Part [x] of the Landlord's Proposals;

"Category C Equipment"

means items identified as Category C Equipment in Part [x] of the Landlord's Proposals;

"Commission" or "Commissioning"

means the bringing into use of a piece of equipment (using all due skill and attention and having due regard to the suppliers' or manufacturers' instructions) such that it will satisfy the completion tests as set out in Schedule 6 (Completion Acceptance Schedule) and Schedule 11 (Independent Tester Contract);

"Decommissioning"

means the withdrawal of an item of equipment by the Landlord or the Tenant from use within the Facilities during the Operational Phase, which shall include its disconnection from all building services, dismantling as appropriate, general making safe, making all necessary arrangements in respect of the building to enable the equipment to be removed from the Facilities, and removal to an appropriate on Site storage area until its collection or Disposal;

"Disposal"

means the disposal of equipment off Site in a manner compliant with all Law, Consents, Good Industry Practice and NHS Requirements;

"Equipment Responsibility Matrix" "ERM"

means the matrix set out at Clause 13.25.1 above;

"Install" or "Installation"

means the assembly, placing and/or fixing in place of a piece of equipment using all due skill and attention and having due regard to the suppliers' or manufacturers' instructions, Tenant's Requirements, Landlord's Proposals, Room Data Sheets and operational requirements of the Tenant;

"Maintenance" or "Maintain"

means in the context of these Clauses 13.25, 13.26 and 13.27 only, the maintenance of equipment in accordance with the manufacturer's instructions to ensure that the equipment continues to function correctly;

"Repair"

means any repair works to equipment undertaken by the Landlord, whether planned or unplanned, to enable the equipment to continue to satisfy the standards set out in the Tenant's Requirements, and Service Specifications;

"Replace" or "Replacement"

means the replacement of an item of equipment as necessary to satisfy the standards set out in the Tenant's Requirements and Service Specifications;

["Service Equipment"

means equipment, materials, stock, consumables, items, utensils, apparatus, plant, fixtures required to comply with the Landlord's obligations in Schedule 9 or otherwise necessary to enable the proper and satisfactory provision of the Services and the Availability of the Facilities;]

"Supply"

means the procurement, purchase, finance and delivery to the Facilities of an item of equipment;

"Transfer"

means the transfer of equipment from the Tenant's existing estate into the Facilities;

14 DELAY EVENTS³⁰ [AND LIQUIDATED DAMAGES]³¹

14.1 If, at any time, the Landlord becomes aware that there will be (or is likely to be) a delay in completion of the Works, the Landlord shall forthwith give notice to the Tenant's Representative to that effect specifying the relevant delay or impediment. In relation to any such delay or impediment:

14.1.1 if the Tenant's Representative is satisfied, or it is determined in accordance with Schedule 21 (Dispute Resolution Procedure), that such

³⁰ Delay Events give rise to an extension of time for completion of construction. Compensation is payable for all Delay Events (other than Force Majeure or Relief Events) as follows:

- Tenant Alterations: Variation Procedure
- Tenant breach Clause 14.3.2, 14.3.3 and 14.3.4: Compensation Event

³¹ A Delay Event can occur after the original Completion Date. However, the Tenant should be under no obligation to accept early completion where Landlord has completed prior to the revised completion date.

For the majority of Lift transactions, the Landlord will be adequately incentivised to complete the Works without delay by virtue of the fact that the Landlord will receive no Lease Payment until the Premises are complete. The term of the Lease will start from financial close and will therefore be eroded by any delays. The provisions set out in Clause 14.11 – 14.13 should therefore be considered optional to be used only where specific circumstances require certainty as to the Completion Date of the Works (e.g. where the Tenant has already given notice to terminate an existing lease of other premises and needs to know that the new Premises being constructed by the Landlord will be ready in time or additional costs or lost benefits will arise).

delay or impediment has arisen as a result of the occurrence of a Delay Event, then, subject to Clause 14.2 (Mitigation) the Tenant's Representative shall allow the Landlord an extension of time equal to the delay or impediment caused by such Delay Event (taking into account reasonably foreseeable consequences of the Delay Event) and shall fix a new Completion Date which shall replace the existing Completion Date; but

- 14.1.2 to avoid doubt, there shall be no extension to the Term of this Lease as a result of any such delay or impediment.
- 14.2 If the Landlord is (or claims to be) affected by a Delay Event:
 - 14.2.1 it shall (and shall procure that the Landlord Parties shall) take and continue to take all reasonable steps to eliminate or mitigate the consequences of such an event upon the performance of its obligations under this Lease and, where relevant, resume performance of its obligations affected by the Delay Event as soon as practicable; and
 - 14.2.2 it shall neither be relieved from liability under this Lease nor entitled to any extension of time for the purpose of Clause 14.1.1 (Delay Event) to the extent that it is delayed or impeded due to its failure (if any) to comply with its obligations under Clause 14.2.1 above.
- 14.3 For the purposes of this Lease, Delay Events means any of the following to the extent in each case that there will be (or is likely to be) a delay in completion of the Facilities:
 - 14.3.1 an Alteration initiated by a Tenant's Variation Enquiry in accordance with paragraph 2 of Part 1 of Schedule 12 (Variation Procedure) in relation to which the Landlord has issued a response pursuant to paragraph 3.2(b) of Part 1 of Schedule 12 (Variation Procedure) specifying and providing evidence that implementation of the Alteration would delay the completion of the Facilities if this has been agreed between the parties or determined to be the case in accordance with Schedule 21 (Dispute Resolution Procedure);
 - 14.3.2 any breach by the Tenant and/or any Tenant Party of any of the Tenant's express obligations under this Lease to the extent in each case that any such breach is not caused, or contributed to, by the Landlord or any Landlord Party;
 - 14.3.3 the execution of works on the Site not forming part of this Lease by the Tenant or any contractors employed by the Tenant³²;
 - 14.3.4 opening up of the Works pursuant to Clauses 11.6 to 11.12 (inclusive) (Right to open up) where such Works are not subsequently found to be defective (unless it is agreed or determined in accordance with Schedule 21 (Dispute Resolution Procedure) that the opening up of the Works was reasonable in the light of other defects previously discovered by the Tenant);
 - 14.3.5 Force Majeure; or

³²

This would not catch works undertaken by FundCo under another LPA in a multi-occupancy Facility, as those works would not have been instructed by the "Tenant".

- 14.3.6 a Relief Event.
- 14.4 Without prejudice to the generality of Clause 14.1, the Landlord shall give notice in writing to the Tenant's Representative as soon as it (or the Contractor) can reasonably foresee a Delay Event occurring or, if the same is not reasonably foreseeable, as soon as it (or the Contractor) shall become aware of a Delay Event. The Landlord shall within [] Business Days after such notification, give further written details to the Tenant's Representative which shall include:
- 14.4.1 a statement of which Delay Event the claim is based upon;
 - 14.4.2 details of the circumstances from which the Delay Event arises;
 - 14.4.3 details of the contemporary records which the Landlord will maintain to substantiate its claim for extra time;
 - 14.4.4 details of the consequences (whether direct or indirect, financial or non financial) which such Delay Event may have upon completion of the Facilities; and
 - 14.4.5 details of any measures which the Landlord proposes to adopt to mitigate the consequences of such Delay Event.
- 14.5 As soon as possible but in any event within [] Business Days of the Landlord (or the Contractor) receiving, or becoming aware of, any supplemental information which may further substantiate or support the Landlord's claim then the Landlord shall submit further particulars based on such information to the Tenant's Representative.
- 14.6 The Tenant's Representative shall, after receipt of written details under Clause 14.4, or of further particulars under Clause 14.5, be entitled by notice in writing to require the Landlord to provide such further supporting particulars as he may reasonably consider necessary. The Landlord shall afford the Tenant's Representative reasonable facilities for investigating the validity of the Landlord's claim including, without limitation, on site inspection.
- 14.7 Subject to the provisions of this Clause 14, the Tenant's Representative shall fix a revised Completion Date in accordance with Clause 14.1.1 (New Completion Date) as soon as reasonably practicable and in any event within [] Business Days of the later of:
- 14.7.1 the date of receipt by the Tenant's Representative of the Landlord's notice given in accordance with Clause 14.4 and the date of receipt of any further particulars (if such are required under Clause 14.6), whichever is the later; and
 - 14.7.2 the date of receipt by the Tenant's Representative of any supplemental information supplied by the Landlord in accordance with Clause 14.5 and the date of receipt of any further particulars (if such are required under Clause 14.6), whichever is the later.
- 14.8 If the Landlord has failed to comply with the requirements as to the giving of notice under Clause 14.4, or has failed to maintain records or afford facilities for inspection to the Tenant's Representative, then the following provisions shall apply:

- 14.8.1 the Tenant's Representative may require the Landlord to submit details of the reasons for such failure. If the Tenant's Representative has not stated that he is satisfied with the reasons given within [] Business Days of their receipt, the Landlord may refer the matter for resolution in accordance with Schedule 21 (Dispute Resolution Procedure);
- 14.8.2 if either the Tenant's Representative is satisfied with the reasons given or the decision of the Dispute Resolution Procedure is that the failure is excusable, then the Tenant's Representative shall proceed to the evaluation of the request for an extension of time in accordance with Clause 14.7; or
- 14.8.3 if the decision of the Tenant's Representative (or in the event that the decision is disputed, if the determination in accordance with Schedule 21 (Dispute Resolution Procedure)) is that the failure is not excusable, then the Landlord shall not be entitled to a revised Completion Date in respect of the relevant Delay Event to the extent that the Tenant's Representative has, as a result of such failures, been prevented from assessing the consequences of the Delay Event.

14.9 If:

- 14.9.1 the Tenant's Representative declines to fix a revised Completion Date; or
- 14.9.2 the Landlord considers that a different Completion Date should be fixed; or
- 14.9.3 there is a disagreement as to whether a Delay Event has occurred;

then the Landlord shall be entitled to refer the matter for determination in accordance with Schedule 21 (Dispute Resolution Procedure).

Compensation

14.10 If either the Delay Event is a Delay Event referred to in Clause 14.11.1 or there is an event referred to in Clause 14.11.2 (each a "Compensation Event"), the Landlord's sole right to compensation shall be as provided for in this Clause 14. To avoid doubt, no other Delay Event (or event referred to in Clause 14.3 pursuant to which the Landlord incurs a loss or expense) shall entitle the Landlord to receive any compensation save as otherwise expressly provided in Schedule 12 (Variation Procedure) in the case of a Delay Event referred to in Clause 14.3.1 (Alteration).

14.11 For the purposes of Clause 14.10, a Compensation Event means either:

- 14.11.1 any Delay Event referred to in Clause 14.3.2 (Breach), 14.3.3 (Execution of non project related works) or 14.3.4 (Opening up of Works) for which, in each case, it has been agreed or determined pursuant to this Clause that the Landlord is entitled to an extension of time; or
- 14.11.2 in the period prior to the Actual Completion Date, in circumstances where there is no delay in completion of the Facilities, any breach by the Tenant and/or any Tenant Party of any of the Tenant's express obligations under this Lease to the extent in each case that any such breach is not caused, or contributed to, by the Landlord or any Landlord Party.

- 14.12 Subject to Clause 14.13, if it is agreed, or determined, that there has been a Compensation Event, and the Landlord has incurred loss and/or expense as a direct result of such Compensation Event, the Landlord shall be entitled to such compensation as would place the Landlord in no better or no worse position than it would have been in had the relevant Compensation Event not occurred. The Landlord shall promptly provide the Tenant's Representative with any additional information he may require in order to determine the amount of such compensation.
- 14.13 The Landlord shall take all reasonable steps so as to minimise the amount of compensation due in accordance with this Clause 14 in relation to any Compensation Event and any compensation payable shall:
- 14.13.1 exclude any amounts incurred or to be incurred as a result of any failure of the Landlord (or any Landlord Party) to comply with this Clause 14; and
- 14.13.2 be reduced by any amount which the Landlord will recover under any insurance policy (or would have recovered if it had complied with the requirements of this Lease or of any policy of insurance required under this Lease) which amount, to avoid doubt, shall not include any excess or deductibles or any amount over the maximum amount insured applicable to any such insurance policy.
- 14.14 The amount of any compensation due to the Landlord under this Clause 14 shall be agreed between the parties or, failing agreement, determined pursuant to Schedule 21 (Dispute Resolution Procedure).
- 14.15 [If the Works are not completed by the Completion Date (as extended in accordance with this Clause 14) the Landlord shall immediately become liable to pay to the Tenant and the Tenant accepts liquidated damages at the rate of £[] per day for the period that the Works remain uncompleted³³.
- 14.16 The parties agree that the rate of liquidated damages specified in Clause 14.15 represents a fair and reasonable estimate of the losses and expenses that the Tenant may suffer as a result of any delay in completion of the Works and shall accordingly not be construed as a penalty.
- 14.17 The right of the Tenant to deduct or recover liquidated damages may only be waived by written notice from the Tenant to the Landlord.]

15 RELIEF EVENTS

- 15.1 For the purpose of this Lease, subject to Clause 59 (Mitigation), "Relief Events" means any of the following events:-
- 15.1.1 fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquake, riot or civil commotion;
- 15.1.2 failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;

³³

In such circumstances, the level of liquidated damages should be set at a level that provides compensation for all anticipated losses that the Tenant may suffer in the event of delay (e.g. the cost of securing temporary accommodation and any removal costs in moving into and out of temporary accommodation). On a scheme specific basis, the Tenant may agree that nominal liquidated damages are payable, thereby giving up the right to claim general damages.

- 15.1.3 accidental loss or damage to the Works and/or Facilities or any roads servicing the same;
- 15.1.4 without prejudice to any obligation of the Landlord to provide stand-by power facilities in accordance with the Tenant's Requirements or the Service Specifications, failure or shortage of power, fuel or transport;
- 15.1.5 blockade or embargo falling short of Force Majeure;
- 15.1.6 official or unofficial strike, lockout, go slow or other dispute in each case generally affecting the construction, building maintenance or facilities management industry (or a significant sector of that industry);
- 15.1.7 the discovery of fossils, antiquities and human remains;

provided in each case that such event does not arise (directly or indirectly) as a result of any wilful act or default of the party claiming relief and/or (i) in the case of the Landlord claiming relief, any Landlord Party and (ii) in the case of the Tenant claiming relief, any Tenant Party.

- 15.2 Subject to Clauses 15.2A and 15.3, no right of termination shall arise under this Lease by reason of any failure by a party to perform any of its obligations under this Lease to the extent that such failure to perform occurs because of the occurrence of a Relief Event (and, to avoid doubt, unless expressly stated to the contrary in this Lease, it is acknowledged that all other rights and obligations of the parties under this Lease remain unaffected by the occurrence of a Relief Event).
- 15.2A Without prejudice to the Landlord's rights under Clause 14 (Delay Events) the Landlord shall only be relieved of its obligations under Clauses 7 (Project Programme), 8 (Design and Construction of the Works), 9 (Design Review Procedure) 11.5-11.12 (Tenant's Representative), 13 (Commissioning) and 14 (Delay Events) by Delay Events in accordance with Clause 14 (Delay Events).
- 15.3 Where a party is (or claims to be) affected by a Relief Event:
 - 15.3.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Lease, resume performance of its obligations affected by the Relief Event as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and
 - 15.3.2 it shall not be entitled to rely upon the relief afforded to it pursuant to Clause 15.2 of this Lease to the extent that it is not able to perform, or has not in fact performed, its obligations under this Lease due to its failure (if any) to comply with its obligations under Clause 15.3.1 above.
- 15.4 The party claiming relief shall serve written notice on the other party within five (5) Business Days of it becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- 15.5 A subsequent written notice shall be served by the party claiming relief on the other party within a further five (5) Business Days of the notice referred to in Clause 15.4 which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the

Relief Event on the ability of the party to perform, the action being taken in accordance with Clause 15.3, the date of the occurrence of the Relief Event and an estimate of the period of time required to overcome it (and/or its effects).

- 15.6 The party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- 15.7 If, following the issue of any notice referred to in Clause 15.5, the party claiming relief receives or becomes aware of any further information relating to the Relief Event (and/or any failure to perform), it shall submit such further information to the other party as soon as reasonably possible.
- 15.8 To avoid doubt, the occurrence of a Relief Event shall not entitle the Landlord to any compensation and the remedies available to the Tenant set out in Schedule 10 shall continue to apply where a Relief Event occurs.

16 QUALITY ASSURANCE AND PROJECT EXECUTION PLAN

Quality Plans and Systems

- 16.1 The Landlord shall procure that all aspects of the Lease Operations are the subject of quality management systems.
- 16.2 The quality management systems referred to in Clause 16.1 above shall be reflected in appropriate quality plans, the standard of which shall be consistent with BS EN ISO 9001 or 9002 (as the case may be) or any equivalent standard which is generally recognised as having replaced them (or either of them).
- 16.3 Without limitation to the generality of Clause 16.2, there shall be:
 - 16.3.1 a Design Quality Plan;
 - 16.3.2 a Construction Quality Plan; and
 - 16.3.3 a Services Quality Plan for each Service,provided that the Design Quality Plan and the Construction Quality Plan may be incorporated into one document.
- 16.4 The Landlord shall procure that the Lease Operations are carried out in compliance with the Quality Plans. All Quality Plans shall be submitted to the Tenant's Representative in accordance with Schedule 13 (Review Procedure) and the Landlord shall not be entitled to implement or procure the implementation of any Quality Plan unless the Landlord is entitled to proceed with such implementation pursuant to Schedule 13 (Review Procedure).
- 16.5 The Landlord shall implement the quality management systems referred to in Clause 16.1 and shall procure that:
 - 16.5.1 the Contractor implements the Design Quality Plan;
 - 16.5.2 the Contractor implements the Construction Quality Plan;

- 16.5.3 each Service Provider implements the relevant Services Quality Plan for each Service being provided by that Service Provider.
- 16.6 Where any aspect of the Lease Operations is performed by more than one contractor or subcontractor, then the provisions of this Clause 16 (in so far as relevant or appropriate to the activities to be performed by such contractor or subcontractor) shall apply in respect of each of such contractors or subcontractors, and references in this Clause 16 to the "Contractor" or the "Service Provider" or "Supply Chain Member" shall be construed accordingly. To avoid doubt, this Clause shall not be construed as requiring subcontractors of the Supply Chain Members to have their own quality plans but only to comply with the Design Quality Plan and the Construction Quality Plan or the relevant aspects of the Services Quality Plan (as the case may be).
- 16.7 The Landlord shall from time to time submit to the Tenant's Representative in accordance with Schedule 13 (Review Procedure) any changes to any of the Quality Plans required for such Quality Plan to continue to comply with the requirements set out in Clause 16.2. The Tenant's Representative may raise comments on any such proposed change only on the grounds set out in paragraph 4.3 of Schedule 13 (Review Procedure).
- 16.8 In the event that any ambiguity, uncertainty, dispute or discrepancy arises in relation to the nature and scope of the Landlord's obligations under this Clause 16, wherever possible, the provisions of this Clause 16 shall be interpreted and construed in such a manner as to resolve the apparent ambiguity, uncertainty, dispute or discrepancy so that all the provisions of this Clause 16 may be given meaning and effect but, if such interpretation or construction is not possible, the provisions of this Clause 16 shall be given meaning and effect in the following order of precedence (in descending order):
- 16.8.1 the provisions and standards referred to in Clause 16.2;
 - 16.8.2 the Quality Plans referred to in Clause 16.3;
 - 16.8.3 Tenant's Requirements and/or Service Specifications (as the case may be);
 - 16.8.4 Landlord's Proposals and/or the Method Statements (as the case may be);
 - 16.8.5 Landlord's and/or the Supply Chain Member's quality manuals and procedures; and
 - 16.8.6 Good Industry Practice.
- 16.9 If there is no objection under Schedule 13 (Review Procedure) to a change to any Quality Plan proposed pursuant to Clause 16.7, the Quality Plan shall be amended to incorporate such change.

Quality Manuals and Procedures

- 16.10 If any Quality Plan refers to, relies on or incorporates any quality manual or procedure, then such quality manual or procedure or the relevant parts of it shall be submitted to the Tenant's Representative at the time that the relevant Quality Plan or part of (or change to) a Quality Plan is submitted in accordance with Schedule 13 (Review Procedure), and the contents of such quality manual or procedure shall be taken into account in the consideration of the relevant Quality Plan or part of (or change to) a Quality Plan in accordance with Schedule 13 (Review Procedure).

Quality Management

- 16.11 The Landlord shall maintain a quality management system which shall:
- 16.11.1 ensure the effective operation of the quality systems described in this Clause 16;
 - 16.11.2 cause an audit of the quality systems at regular intervals and the findings of such audit will be reported to the Tenant's Representative;
 - 16.11.3 require review of all quality systems at intervals agreed with the Tenant's Representative to ensure their continued suitability and effectiveness;
 - 16.11.4 require liaison with the Tenant's Representative on all matters relating to quality management; and
 - 16.11.5 require production of reports and their delivery to the Landlord.

Quality Monitoring

- 16.12 The Tenant's Representative may carry out audits of the Landlord's quality management system (including all relevant Quality Plans and any quality manuals and procedures) to establish that compliance with Clauses 16.1 and 16.3 is being maintained by the Landlord. The Tenant's Representative may carry out such audits at approximate intervals of three (3) months and may carry out other periodic monitoring, spot checks and auditing of the Landlord's quality management systems. The Landlord shall procure that the Tenant's Representative shall have a like right in respect of the Supply Chain Members. The Landlord shall co operate and shall procure that any Supply Chain Member co-operates with the Tenant's Representative including providing him with all information and documentation which he reasonably requires in connection with his rights under this Clause.

17 CONSTRUCTION INDUSTRY TAX DEDUCTION SCHEME³⁴

- 17.1 This Clause relates to the Construction Industry Tax Deduction Scheme (the "**Scheme**");

- 17.1.1 in this Clause (but not otherwise):

- (a) "**the Legislation**"
means Chapter 3 of Part 3 of the Finance Act 2004 (the "**FA 2004**"), any regulations made under Section 73 of the FA 2004, the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2007 (SI 2007/672) (the "**CIS Regulations**") and any other statute or subordinate legislation relating to the Scheme as from time to time modified or replaced whether before or after the date of this Lease;
- (b) "**contractor**"
means a person who is a contractor for the purposes of the Legislation pursuant to Section 59 of the FA 2004;

³⁴ Legal Advisors for the Tenant to ensure drafting is up to date at the time of signing of the LPA.

- 17.1.2 each of the Landlord and the Tenant shall comply with their respective obligations under the Legislation;
- 17.1.3 the Parties believe that all payments under this Lease will be exempt from the CIS Regulations under Regulation 23 (SI 2005/2045) (the "**PFI Exemption**"), however, if and to the extent that the payments under this Lease are contract payments then the Tenant, as contractor, shall verify in accordance with Regulation 6 of the Regulations (SI 2005/2045) whether the Landlord or its nominee are registered for gross payment, for payment under deduction or are not registered under Chapter 3 of the FA 2004 and for these purposes the Landlord hereby agrees to provide the Tenant with all information and assistance which may be required by the Tenant under the Scheme including (but not limited to) the Landlord's name, unique taxpayer reference (UTR), company registration number, the National Insurance number (if applicable) and/or such other information as may be required under Regulation 6 (SI 2005/2045) of the CIS Regulations in sufficient time to enable the Tenant to comply with its obligations. the Tenant shall, upon reasonable request from the Landlord, keep the Landlord informed of the verification process with HM Revenue and Customs;
- 17.1.4 if any payment due from the Tenant to the Landlord under this Lease is a contract payment under the Legislation then:
- (a) if the Tenant is satisfied that the Landlord is registered for gross payment under Section 63(2) of the FA 2004, the Tenant shall make a payment to the Landlord without any deduction; or
 - (b) if the Landlord is not registered for gross payments under the Legislation, the Tenant shall make the payment to the Landlord subject to the deduction of the relevant percentage in accordance with the Legislation;
- 17.1.5 where any error or omission has occurred in calculating or making the statutory deduction then:
- (a) in the case of an over deduction, the Tenant shall correct that error by repayment of the sum over deducted to the Landlord; and
 - (b) in the case of an under deduction, the Landlord shall correct that error or omission by repayment of the sum under deducted to the Tenant;
- 17.1.6 if compliance with this Clause involves the Tenant or the Landlord in not complying with any other of the terms of this Lease, then the provisions of this Clause shall prevail;
- 17.1.7 in the event of any conflict between this Clause and any other term of this Lease, the provisions of this Clause shall prevail.

18 DOCUMENTS, INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

- 18.1 As soon as they are available, after certification of completion of the Works in accordance with Clause 13, the Landlord shall provide to the Tenant **[two (2)]** copies

of all as-built specifications and drawings of the Facilities together with all necessary operational documentation information and the health and safety file required in accordance with the CDM Regulations.

Project Data

18.2 The Landlord shall make available to the Tenant free of charge and either in a format required by the Tenant (acting reasonably) or by giving the Tenant equivalent access (for example through appropriate hardware or device) (and hereby irrevocably licences the Tenant to use) all Project Data that might reasonably be required by the Tenant and the Landlord shall ensure that it obtains all necessary licences, permissions and consents to ensure that it can make the Project Data available to the Tenant on these terms, for the purposes of:

18.2.1 the Tenant carrying out its duties under this Lease and/or any statutory functions which the Tenant may have; and

18.2.2 following termination of this Lease and/or the exercise by the Tenant of its rights under Clauses 5A (Options to Purchase Freehold) 38.4 (Alienation) 43.3 (Exercise of Option or Termination) or 48.9 (Force Majeure (Exercise of Option or Termination)), the design or construction of the Facilities, the operation, maintenance or improvement of the Facilities and/or the carrying out of the Lease Operations

(together, the "Approved Purposes"), and in this Clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

Intellectual Property Rights

18.3 The Landlord:

18.3.1 hereby grants to the Tenant, free of charge, an irrevocable, non-exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Lease or upon or at any time following termination of this Lease) licence (carrying the right to grant sub-licences) to use the Intellectual Property Rights which are or become vested in the Landlord; and

18.3.2 shall, where any Intellectual Property Rights are or become vested in a third party, use all reasonable endeavours to procure the grant of a like licence to that referred to in Clause 18.3.1 above to the Tenant,

in both cases, solely for the Approved Purposes.

18.4 The Landlord shall use all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the term of this Lease vest, and remain vested throughout the term of this Lease, in the Landlord and the Landlord shall enter into appropriate agreements with any the Landlord Party (or other third parties) that may create or bring into existence, or from which it may acquire any Intellectual Property Rights.

*Maintenance of data*³⁵

18.4A To the extent that any of the data, materials and documents referred to in this Clause are generated by or maintained on a computer or similar system, the Landlord shall:

18.4A.1 use all reasonable endeavours to procure for the benefit of the Tenant, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the Tenant or its nominee to access and otherwise use (subject to the payment by the Tenant of the relevant fee, if any) such data for the Approved Purposes. As an alternative, the Landlord may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format; and

18.4A.2 enter into the NCC's then current multi-licence escrow deposit agreement or standard single licence escrow deposit agreement as appropriate in each case.

18.4B The Landlord shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in Clause 18.4A in accordance with Good Industry Practice. Without prejudice to this obligation, the Landlord shall submit to the Tenant's Representative for approval its proposals for the back-up and storage in safe custody of such data, materials and documents and the Tenant shall be entitled to object if the same is not in accordance with Good Industry Practice. The Landlord shall comply, and shall cause all the Landlord Parties to comply, with all procedures to which the Tenant's Representative has given its approval. The Landlord may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Tenant's Representative, who shall be entitled to object on the basis set out above.

Claims

18.5 Where a claim or proceedings is made or brought against the Tenant which arises out of the infringement of any rights in or to any Intellectual Property Rights [(other than any Disclosed Data)] or because the use of any materials, plant, machinery or equipment in connection with the Works or the Lease Operations infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of the Tenant otherwise than in accordance with the terms of this Lease, the Landlord shall indemnify the Tenant at all times from and against all such claims and proceedings and the provisions of Clause 45.3 (Conduct of Claims) shall apply.

PART C: PAYMENT

19 LEASE PAYMENT

19.1 Subject to Clause 19A below, the Landlord shall not be entitled to receive any payment of the Lease Payment until the Payment Commencement Date. Subject to the provisions of this Lease, the Tenant shall pay the Landlord the Lease Payment in

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If either party is to be given access to any of the other party's computer systems, as a matter of good practice and also to clarify potential liability for unauthorised access to those systems under the Computer Misuse Act 1990 (as amended), the scope of each party's authorisation to access each other's computer systems will need to be defined clearly. The terms of such authorisation will be project specific.

respect of each Contract Month following the Payment Commencement Date in accordance with the provisions of this Clause 19 and Schedule 10.

[19A CAPITAL WORKS PAYMENT

19A.1 The Tenant may pay the Capital Works Payment to the Landlord no later than the later of:

19A.1.1 the twentieth (20th) Business Day following the Actual Completion Date; and

19A.1.2 the twentieth (20th) Business Day following receipt by the Tenant of a VAT invoice from the Landlord for the Capital Works Payment

such payment to be made by direct transfer into the Landlord's [specify account details] and the Tenant shall give the Landlord prior written notification of such payment.

19A.2 Where Clause 19A.1 applies:

19A.2.1 the provisions of paragraph 2 Part B of Schedule 10 shall apply; and

19A.2.2 the provisions of paragraph 2A of Part B of Schedule 10 shall not apply.

19A.3 Where the Tenant either:

19A.3.1 notifies the Landlord in writing that it does not intend to make the Capital Works Payment; or

19A.3.2 does not pay the Capital Works Payment into the Landlord's bank account in accordance with Clause 19A.1 above in accordance with Clause 19.3,

then Clause 19A.4 shall apply.

19A.4 Where Clause 19A.3 applies:

19A.4.1 the provisions of clause 19A.1, 37.15A and paragraph 2 Part B of Schedule 10 shall not apply;

19A.4.2 the provisions of paragraph 2A Part B of Schedule 10 shall apply; and

19A.4.3 the formula in paragraph 5.1 Part C of Schedule 10 shall be amended to state as follows:

$$D = Dn \times AW \times DP.$$

19A.4.4 paragraph 5.1.8 Part C of Schedule 10 shall not apply, and 19A.4.5 the provisions in Schedule 14B, 14E and 14F relating to the Additional Adjustment shall not apply

19A.5 For the avoidance of doubt, where the Tenant does not make a Capital Works Payment, this will not give rise to a Landlord right of re-entry pursuant to Clause 44.³⁶

³⁶ Drafting to be included in circumstances where the Tenant makes a capital contribution at practical completion. Note there are also consequential amendments to Schedule 10 (Payment Mechanism) in these circumstances (see paragraphs 2 and 2A of Part B, and paragraph 5.1 of Part C) and to Schedules 14B and 14F.

*Invoicing and payment arrangements*³⁷

19.2

19.2.1 Not later than the Delivery Date, the Landlord is required to deliver to the Tenant a Performance Monitoring Report and a Payment Notice. The Performance Monitoring Report shall contain the following information in respect of the Contract Month just ended:

- (a) a summary of all Performance Failures affecting the Tenant;
- (b) the Functional Areas affected by such Performance Failures and the Performance Failure Rectification Times (if any);
- (c) a detailed description of all Unavailability Events affecting the Tenant ;
- (d) the duration of any Unavailability Event affecting the Tenant in hours, with the time and date it commenced and the time and date it ceased and the number of days over which the Unavailability Event occurred;
- (e) the deductions calculated in accordance with paragraph 5 of Part C of Schedule 10 to be made by the Tenant in respect of Unavailability Events and the deductions calculated in accordance with paragraph 3 of Part C of Schedule 10 to be made by the Tenant in respect of Performance Failures; and
- (f) such information as is required to be included under GP16 of the General Service Specification.

19.2.2 The Payment Notice to be delivered to the Tenant shall contain the following information:

- (a) the Lease Payment claimed by the Landlord for the current Contract Month;
- (b) a summary of Rating Costs for the current Contract Month;
- (c) a summary of the Utilities Costs [excluding Energy] claimed by the Landlord for the Contract Month just ended;³⁸
- (d) the total deductions calculated in accordance with paragraph 5 of Part C and paragraph 3 of Part C of Schedule 10 for the Contract Month just ended;
- (e) any other amount due and payable from one party to the other under this Lease, evidence of which has been supplied to the Landlord during the Contract Month just ended;

³⁷ In accordance with SoPC4, under no circumstances must these monthly service payments be made in advance. However, capital contributions may be made at practical completion – see Clause 19A.

³⁸ This will need to be aligned with which party is responsible for purchase of Energy. See the relevant provisions of Schedule 10 and, in particular, the footnote to the definition of "Utilities".

- (f) any VAT payable in respect of any of the above amounts; and
 - (g) any adjustments to reflect previous overpayments and/or underpayments (each adjustment stated separately).
- 19.2.3 If the Payment Notice shows a net amount owing by the Tenant to the Landlord it shall be accompanied by an invoice from the Landlord to the Tenant in respect of such amount.
- 19.2.4 If the Tenant does not dispute the Payment Notice or the invoice and the Payment Notice has been delivered by the Delivery Date it shall pay the Lease Payment for the relevant Contract Month on or before the relevant Payment Date in accordance with Clause 19.3.
- 19.2.5 Subject to Clause 19.2.6 and 19.2.7, the Payment Date for an invoice shall be the last Business Day of the Contract Month in which the invoice is delivered.
- 19.2.6 In the event that the whole or any part of the Payment Notice is disputed payment shall be made in accordance with Clause 19.4.
- 19.2.7 In the event that the Landlord fails to deliver any Payment Notice by the Delivery Date the invoice accompanying that Payment Notice shall fall due for payment (subject always to Clause 19.2.6) as many days after the Payment Date as the Payment Notice was delivered after the Delivery Date.
- 19.2.8 If any Payment Notice shows a net amount owing by the Landlord to the Tenant the Tenant shall issue an invoice to the Landlord in respect of such amount promptly following its receipt of such Payment Notice and the Landlord shall pay to the Tenant the amount shown by such invoice not later than the fifteenth (15th) Business Day after it has received it.

Manner of payment

- 19.3 All payments under this Lease shall be made in pounds sterling to the bank account of the Landlord (in the case of payments due to the Landlord) or the Tenant (in the case of payments due to the Tenant) (in each case located in the United Kingdom), quoting the invoice number against which payment is made.

Disputes

- 19.4 If either party (acting in good faith) disputes all or any part of the Lease Payment calculated in accordance with this Clause 19 and/or Schedule 10, the undisputed amount of the Lease Payment and 50% of the disputed amount (together being the "Disputed Amount Payment") shall be paid by the Tenant in accordance with Clause 19.2 and the provisions of Schedule 21 (Dispute Resolution Procedure) shall apply. Following resolution of the dispute the difference between the amount agreed or determined to have been payable and the Disputed Amount Payment shall be paid forthwith by the Tenant to the Landlord or by the Landlord to the Tenant (as appropriate) together with interest on such amount calculated in accordance with Clause 19.5. For the avoidance of doubt such interest shall run from the Payment Date for the relevant Lease Payment (or such later date determined in accordance with Clause 19.2.7) had the Tenant not disputed all or part of that Lease Payment to

the date of payment. In the event that the Landlord shall default in paying any sums so due to the Tenant the Tenant shall be entitled to deduct such sums due to the Landlord under Clause 19.2.2(e) and the provisions of Clause 19.6 shall apply.

Late Payments

- 19.5 Each party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made pursuant to the terms of this Lease on the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment.

Set-Off

- 19.6 Other than in respect of any sums taken into account in calculating the invoice pursuant to this Clause 19 and Schedule 10, whenever any sum of money shall be agreed, or determined, as due and payable by the Landlord to the Tenant, such sum may at the Tenant's discretion be deducted from or applied to reduce the amount of any sum then due, or which at any time afterwards may become due, to the Landlord from the Tenant under this Lease provided that the Tenant has given the Landlord not less than [] Business Days' notice of its intention to deduct or apply such sum.
- 19.7 Whenever any sum of money shall be agreed, or determined, as due and payable by the Tenant to the Landlord, such sum may at the Landlord's discretion be deducted from or applied to reduce the amount of any sum then due, or which at any time afterwards may become due, from the Landlord to the Tenant under this Lease provided that the Landlord has given the Tenant not less than [] Business Days' notice of its intention to deduct or apply such sum.

VAT

- 19.8 All amounts stated to be payable by either party under this Lease shall be exclusive of any VAT properly chargeable on any amount.
- 19.9 Each party shall pay to the other party any VAT properly chargeable to it in respect of any supply made to it under this Lease provided that it shall first have received from the other party a valid tax invoice in respect of that supply which complies with the requirements of Part III VAT (General) Regulations 1995.
- 19.10 If either party (referred to in this Clause as the "First Party") shall consider that any VAT which the other party (referred to in this Clause as the "Second Party") claims to be properly chargeable to the First Party in connection with this Lease it is not in fact properly so chargeable, the First Party shall be entitled to require the Second Party to obtain a ruling from the Commissioners of HM Revenue and Customs (or, if relevant, such other body as is charged at the time with the collection and management of VAT) (referred to in this Clause as the "Commissioners") as to the VAT (if any) properly so chargeable. The Second Party shall forthwith request the Commissioners for such a ruling.
- 19.11 The following further provisions shall apply in respect of the applications for a ruling in accordance with Clause 19.10:
- 19.11.1 prior to submitting its request for such a ruling and any further communication to the Commissioners in connection with the obtaining of the ruling, the Second Party shall first obtain the agreement of the First

Party to the contents of such request and any such further communication, such agreement not to be unreasonably withheld or delayed;

- 19.11.2 the Second Party shall provide to the First Party copies of all communications received from the Commissioners in connection with the application for a ruling as soon as practicable after receipt; and
 - 19.11.3 the Second Party shall use all reasonable endeavours (including without limitation the provision of such additional information as the Commissioners may require) to obtain such a ruling as soon as reasonably practicable following the initial request.
- 19.12 If a ruling is required by the First Party under Clause 19.10, the First Party shall not be obliged to pay the VAT so claimed by the Second Party unless and until a ruling is received from the Commissioners which states that a sum of VAT (the "VAT Sum") is properly so chargeable or the Commissioners state that they are not prepared to give any ruling on the matter. In this case, then subject to Clauses 19.13 and 19.14 and provided that the First Party shall first have received a valid tax invoice which complies with the requirements of Part III VAT Regulations 1995 and which states the VAT Sum to be the amount of VAT chargeable to the First Party, the First Party shall pay the VAT Sum (and any interest or penalties attributable to the VAT Sum) to the Second Party.
- 19.13 If the First Party disagrees with any ruling obtained pursuant to Clause 19.10 by the Second Party from the Commissioners, then the Second Party (provided that it is indemnified to its reasonable satisfaction against all costs and expenses including interest and penalties which it may incur in relation thereto) shall take such action and give such information and assistance to the First Party as the First Party may require to challenge such ruling or otherwise to resist or avoid the imposition of VAT on the relevant supply.
- 19.14 The following further provisions shall apply if the First Party shall exercise its rights under Clause 19.13.
- 19.14.1 the action which that First Party shall be entitled to require the Second Party to take shall include (without limitation) contesting any assessment to VAT or other relevant determination of the Commissioners before any VAT tribunal or court of competent jurisdiction and appealing any judgement or decision of any such tribunal or court;
 - 19.14.2 if the Second Party shall be required to pay to or deposit with the Commissioners a sum equal to the VAT assessed as a condition precedent to its pursuing any appeal, the First Party shall, at its election, either pay such sum to the Commissioners on behalf of the Second Party or on receipt of proof in a form reasonably satisfactory to the First Party that the Second Party has paid such sum to or deposited such sum with the Commissioners the First Party shall pay such sum to the Second Party;
 - 19.14.3 save as specifically provided in Clause 19.12, the First Party shall not be obliged to pay to the Second Party any sum in respect of the VAT in dispute to the Second Party or in respect of VAT on any further supplies made by the Second Party to the First Party which are the same type and raise the same issues as the supplies which are the subject of the relevant dispute unless and until the final outcome of the relevant dispute is that it is

either determined or agreed that VAT is properly chargeable on the relevant supply or supplies; and

- 19.14.4 the Second Party shall account to the First Party for any costs awarded to the Second Party on any appeal, for any sum paid to or deposited with the Commissioners in accordance with Clause 19.14.2 which is repayable to the Second Party and for any interest to which the Second Party is entitled in respect of such sums.

Economic and Monetary Union

- 19.15 Without prejudice to Article 3 of Regulation (EC) No. 103/97 of 17th June 1997 of the Authority of Ministers of the European Union, the introduction of the euro shall not, of itself:

19.15.1 have the effect of altering any provision of, or (in whole or in part) of discharging, cancelling, rescinding, terminating or otherwise excusing performance under this Lease; or

19.15.2 give the parties to this Lease the right unilaterally to alter any provision of, or (in whole or in part) to discharge, cancel, rescind, terminate or otherwise avoid its obligations under this Lease.

- 19.16 If, following the introduction of the euro, Sterling is substituted by the euro as the currency of the United Kingdom, then all references in this Lease to "Sterling" or "£" shall be construed as references to "euro" or "€" (as the case may be), at the agreed Sterling-euro conversion rate provided that the provisions of this Clause shall not apply during any transitional period when Sterling is a sub-unit of the euro, unless the parties otherwise agree.

- 19.17 Without prejudice to Clauses 19.15 and 19.16, the parties will negotiate in good faith in order to agree any amendments to this Lease which are reasonably necessary as a result of the introduction of the euro (and, if relevant, so as to ensure that the terms of this Lease reflect then current market practices and conventions relating to the introduction of the euro).

20 PAYMENT OF OUTGOINGS

- 20.1 The Landlord covenants to:

20.1.1 pay and discharge all rates taxes charges duties assessments outgoings and impositions whatsoever whether parliamentary parochial local or otherwise which are now or shall at any time hereafter during the Term be charged rated assessed or imposed on or in respect of the whole or any part of the Facilities or the owner or occupier of the same save only such as the Tenant is bound by law to pay notwithstanding any contract to the contrary [save in respect of any business rate charged rated assessed or imposed on or in respect of the whole [or any part of] the Facilities or the owner or occupier of the same which the parties acknowledge and agree shall remain the responsibility of the Tenant]³⁹;

³⁹

Optional drafting for inclusion where business rates are to be paid directly by CHP as Tenant.

- 20.1.2 pay for all sewerage drainage water [Energy]⁴⁰ telephone communication infrastructure and any other services or amenities of like nature used by or available to the Facilities (including all standing charges) and to observe and perform all present and future regulations and requirements of the statutory supply authorities; and
 - 20.1.3 keep the Tenant indemnified against non-payment breach non-observance or non-performance of this Clause 20.1 save to the extent that such non-payment breach non-observance or non-performance was caused or contributed to by the Tenant failing to comply with its obligations to pay Utilities Costs and/or Rating Costs pursuant to this Lease.
- 20.2 The Landlord covenants to pay for the insurances procured pursuant to Clauses 37.1 - 37.3.

PART D : TENANT’S OBLIGATIONS

21 COVENANT

The Tenant covenants to comply with its obligations contained in this Lease including, without limitation, those set out in this Part D.

22 USER

- 22.1 The Tenant shall not use or permit or suffer the Premises to be used otherwise than for the Permitted Use.
- 22.2 The Tenant shall not use or permit or suffer to be used the Premises or any part of the same for any illegal or immoral purpose or for any dangerous noxious noisy or offensive trade or business or purpose whatsoever.
- 22.3 [Without prejudice to the obligations on the Landlord contained in this Lease and in particular the obligation to carry out the Works in accordance with the Consents, nothing in this Lease shall be deemed to constitute any warranty or representation by the Landlord that the Premises or any part of the same are authorised for use for any specific purpose under the Planning Acts or that any such use will remain authorised and the Tenant hereby acknowledges that the Landlord has not given any such representation or warranty.]⁴¹

(N.B: Include the following Clause if the Tenant is a GP or GPs)

- 22.4 The Tenant shall be permitted to use the Premises for purposes which are not NHS or publicly funded:
 - 22.4.1 without the consent of the Landlord where such use does not reduce full reimbursement of the Lease Payment pursuant to GP Rent Reimbursement Arrangements; and

⁴⁰ Contracts for Energy should be with public sector if this delivers better value for money. Where Energy is procured by the Tenant, delete references to Energy in Clause 20.1.2 on a project specific basis. There may be merit in retaining responsibility for payment of outgoings with the Landlord, particularly for multiple occupancy buildings with shared common areas, where lack of clarity should not result in those costs falling between two LPAs.

⁴¹ This Clause can be inserted where the proposed facility may be used for multiple use over the course of the Term in order to exclude any implied warranty that the Facilities can be used for all and any planning purposes throughout the Term. However it is not in any way intended to limit the obligation on the Landlord to comply with the planning consent relating to the building of the Facilities.

- 22.4.2 with the consent of the Landlord (such consent not to be unreasonably withheld or delayed) where such use does reduce full reimbursement of the Lease Payment pursuant to GP Rent Reimbursement Arrangements.

23 ALIENATION BY TENANT

23.1 General

The Tenant may not assign underlet charge or part with the possession or share the use or occupation of or create any encumbrance over the whole or any part or parts of the Premises save as permitted by this Clause 23.

23.2 Assignment

23.2.1 The Tenant may assign the whole of the Premises with the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed).

23.2.2 Without prejudice to the generality of Clause 23.2.1 the Tenant shall not be permitted to assign this Lease unless for the purposes of Section 19 (1A) of the Landlord and Tenant Act 1927 the conditions and circumstances set out in the remaining clauses of this Clause 23.2 are complied with or satisfied as the case may be.

23.2.3 The Tenant shall if required by the Landlord obtain from the assignee a direct covenant with the Landlord in such form as the Landlord may reasonably require that the assignee will during the Term pay the Lease Payment and perform and observe the covenants on the part of the Tenant and the conditions contained in this Lease.

23.2.4 All arrears of the Lease Payment due under the terms of this Lease shall have been paid prior to completion of the intended assignment.

23.2.5 The intended assignee is in the opinion of the Landlord (acting reasonably) of sufficient financial standing to enable it to be able to comply with the covenants on the part of the Tenant contained in this Lease and is likely to continue to do so following the proposed assignment.

(NB delete Clauses 23.2.6 and 23.2.7 if Tenant is not Public Sector Body or GP).

23.2.6 The Tenant may not assign the Premises in accordance with this Clause 23 other than to a Public Sector Body or one or more GPs or APMS Provider or to one or more independent sector providers contracted to provide clinical services for the National Health Service or to any body person or organisation who (and in the case of a Public Sector Body statutorily) succeeds to all or part of the functions of the Tenant.

23.2.7 Notwithstanding any other provision in this Clause 23 the Tenant may assign the whole of the Premises to any body person or organisation to whom the functions of the Tenant are statutorily transferred.

(NB Delete the following Clauses 23.2.8 and 23.2.9 if Tenant is Public Sector Body or GP).

- 23.2.8 The Tenant shall if reasonably required by the Landlord enter into an Authorised Guarantee Agreement with the Landlord in a form permitted by the Landlord and Tenant (Covenants) Act 1995 and agreed by the Landlord and Tenant (each acting reasonably).
- 23.2.9 The Tenant shall if reasonably required by the Landlord procure guarantors for an intended assignee who shall (inter alia) jointly and severally covenant with the Landlord that the assignee will pay the Lease Payment and will observe and perform the covenants contained in this Lease and such covenant shall also provide that:
- (a) any neglect or forbearance of the Landlord in endeavouring to obtain payment of the Lease Payment or any delay to take any steps to enforce performance by the assignee of such covenants or any other act omission matter or thing whatever whereby (but for this provision) the guarantors would be exonerated either wholly or in part from the guarantee other than a release under seal given by the Landlord shall not release or in any way lessen or affect the liability of the guarantors;
 - (b) should the assignee (being a company) go into liquidation where the liquidator disclaims this Lease or be wound up or cease to exist then should the Landlord so require the guarantors will accept a new lease of the Premises commencing from the date of such disclaimer or (as the case may be) such winding-up or ceasing to exist for the residue then unexpired of the Term at the rent then payable (such rent to commence as from the date of such disclaimer or winding-up or cesser of existence and to be subject to the same tenant's covenants and to the same provisos and conditions as those in force immediately before such disclaimer) and to be granted at the cost in all respects of the guarantors in exchange for a counterpart duly executed by the guarantors.

(NB: This version of 23.3 is for use where this Lease is of the whole or a major part of the Facilities and underlettings to third parties are granted/envisaged at the time the Lease Plus is entered into⁴².)

23.3 Underletting with consent of the Landlord

General

- 23.3.1 Subject to Clause 23.4, the Tenant may underlet the whole of the Premises or a Permitted Part with the prior written consent of the Landlord such consent not to be unreasonably withheld or delayed⁴³;

Underlettings of Whole

- 23.3.2 Any underlease of the whole of the Premises shall:

⁴² Please see Clause 23.3A where the Lease is part of the Facilities and underlettings to third parties are not intended at the outset.

⁴³ Consideration should be given on a scheme specific basis to amendments to this Lease in light of the proposed form of Underlease to GPs and other Undertenants. It may be appropriate for the Landlord to enter into direct covenants in the Underlease with the Undertenant to perform the covenants on the part of the Landlord in this Lease.

- (a) not involve the payment of a premium or fine or be at a rent (whether before or after any review) less than the Lease Payment under this Lease;
- (b) provide for the review of the rent payable under the underlease at the same times and in the same manner as the Lease Payment under this Lease;
- (c) prohibit any further underletting save for an underletting of the whole or a Permitted Part on the same terms as set out in Clause 23.3.2 and 23.3.3 respectively;
- (d) prohibit the assignment of the whole of the premises demised by the proposed underlease save with the consent of the Tenant and the Landlord such consent not to be unreasonably withheld or delayed;
- (e) (where the underlessee is not a Public Sector Body or GP or GPs only) before the underlease is completed, or, if earlier, before the undertenant becomes contractually bound to take the underlease, be validly excluded from the operation of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in accordance with the provisions of section 38A of that Act and the relevant Schedules of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 and the Tenant shall provide the Landlord with such evidence as the Landlord requires as to the valid exclusion of the underlease and the parties agree that the Landlord shall be entitled to withhold consent to a proposed underletting of the whole of the Premises if the Tenant fails to comply with this obligation;

Underlettings of Part

23.3.3 Any underlease of a Permitted Part shall:

- (a) not involve the payment of a premium or fine or be at a rent (whether before or after any review) less than the Proportion of the Lease Payment⁴⁴;
- (b) provide for the review of the rent payable under the underlease at the same time and in the same manner as the Lease Payment⁴⁵.
- (c) prohibit any further underletting save for one further underletting of the whole or part of the Permitted Part;
- (d) prohibit the assignment of the whole of the premises demised by the proposed underlease save with the consent of the Tenant and the Landlord such consent not to be unreasonably withheld or delayed;

⁴⁴ Where it is intended that there may be underlettings to persons other than GPs at any time during the term this will need to be amended to allow lettings at no less than the lower of the Proportion of the Lease Payment and the market rent of the underlease

⁴⁵ On a scheme specific basis consideration should be given to modifying this Clause 23.3.3(c) and 23.3.4(f) to permit more flexible underlettings

- (e) (where the underlessee is not a Public Sector Body or GP or GPs only) before the underlease is completed, or, if earlier, before the undertenant becomes contractually bound to take the underlease, be validly excluded from the operation of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in accordance with the provisions of section 38A of that Act and the relevant Schedules of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 and the Tenant shall provide the Landlord with such evidence as the Landlord requires as to the valid exclusion of the underlease and the parties agree that the Landlord shall be entitled to withhold consent to a proposed underletting of a Permitted Part if the Tenant fails to comply with this obligation;

23.3.4 In relation to any permitted underlease the Tenant shall:

- (a) procure that the underlessee covenants by deed with the Landlord to observe and perform the tenant's covenants and the conditions in the underlease;
- (b) enforce the performance and observance by any and every such underlessee of the covenants provisions and conditions of the underlease and shall not at any time either expressly or by implication waive any breach of the same;
- (c) not vary the terms of the same (or agree so to do) without the prior written consent of the Landlord such consent not to be unreasonably withheld or delayed;
- (d) procure that the rent reserved thereunder shall not be commuted or payable more than one quarter in advance and shall not permit the reduction of any rent reserved;
- (e) ensure that the rent is reviewed in accordance with the terms of the underlease;
- (f) ensure that the provisions of the underlease are not inconsistent with the terms of this Lease;⁴⁶;

(NB: delete following provisions if Tenant is a Public Sector Body or GP).

- (g) not agree the reviewed rent with the underlessee without the approval of the Landlord (such approval not to be unreasonably withheld);
- (h) (where the underlease provides such an option) not agree that a third party determining the rent in default of agreement shall act as an arbitrator or as an expert without the approval of the Landlord (such approval not to be unreasonably withheld);

⁴⁶

This Clause may need to be modified on a scheme specific basis to refer to the proposed Underlease being "not inconsistent" with the terms of this Lease

- (i) not agree upon the appointment of a person to act as a third party determining the rent in default of agreement without the approval of the Landlord (such approval not to be unreasonably withheld).

(NB: This version Clause 23.3A is for use where this Lease is of part of the Facilities and underlettings to third parties are not granted/envisaged at the time this Lease Plus is entered into.⁴⁷)

23.3A Underletting with consent of the Landlord

General

23.3A.1 Subject to Clause 23.4, the Tenant may underlet the whole of the Premises or a Permitted Part with the prior written consent of the Landlord such consent not to be unreasonably withheld or delayed;

Underlettings of Whole

23.3A.2 Any underlease of the whole of the Premises shall:

- (a) not involve the payment of a premium or fine or be at a rent (whether before or after any review) less than the Lease Payment under this Lease;
- (b) provide for the review of the rent payable under the underlease at the same times and in the same manner as the Lease Payment under this Lease;
- (c) prohibit any further underletting save for an underletting of the whole or a Permitted Part on the same terms as set out in Clause 23.3A.3;
- (d) prohibit the assignment of the whole of the premises demised by the proposed underlease save with the consent of the Tenant and the Landlord such consent not to be unreasonably withheld or delayed;
- (e) (where the underlessee is not a Public Sector Body or GP or GPs only) before the underlease is completed, or, if earlier, before the undertenant becomes contractually bound to take the underlease, be validly excluded from the operation of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in accordance with the provisions of section 38A of that Act and the relevant Schedules of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 and the Tenant shall provide the Landlord with such evidence as the Landlord requires as to the valid exclusion of the underlease and the parties agree that the Landlord shall be entitled to withhold consent to a proposed underletting of the whole of the Premises if the Tenant fails to comply with this obligation;

Underlettings of Part

23.3A.3 Any underlease of a Permitted Part shall:

⁴⁷

23.3A is to be substituted where appropriate in place of 23.3 within the Lease document

- (a) subject to Clause 23.3A.3(b) not involve the payment of a premium or fine or be at a rent (whether before or after any review) less than the Proportion of the Lease Payment⁴⁸;
- (b) provide for the review of the rent payable under the underlease at the same times and in the same manner as the Lease Payment under this Lease;⁴⁹
- (c) prohibit any further underletting;
- (d) prohibit the assignment of the whole of the premises demised by the proposed underlease save with the consent of the Tenant and the Landlord such consent not to be unreasonably withheld or delayed;
- (e) (where the underlessee is not a Public Sector Body or GP or GPs only) before the underlease is completed, or, if earlier, before the undertenant becomes contractually bound to take the underlease, be validly excluded from the operation of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in accordance with the provisions of section 38A of that Act and the relevant Schedules of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 and the Tenant shall provide the Landlord with such evidence as the Landlord requires as to the valid exclusion of the underlease and the parties agree that the Landlord shall be entitled to withhold consent to a proposed underletting of a Permitted Part if the Tenant fails to comply with this obligation;

23.3A.4 In relation to any permitted underlease the Tenant shall:

- (a) procure that the underlessee covenants by deed with the Landlord to observe and perform the Tenant's covenants and the conditions in the underlease;
- (b) enforce the performance and observance by any and every such underlessee of the covenants provisions and conditions of the underlease and shall not at any time either expressly or by implication waive any breach of the same;
- (c) not vary the terms of the same (or agree so to do) without the prior written consent of the Landlord such consent not to be unreasonably withheld or delayed;
- (d) procure that the rent reserved thereunder shall not be commuted or payable more than one quarter in advance and shall not permit the reduction of any rent reserved;
- (e) ensure that the rent is reviewed in accordance with the terms of the underlease;

⁴⁸ Please see footnote 40.

⁴⁹ Please see footnotes 41 and 42.

- (f) ensure that the provisions of the underlease are not inconsistent with the terms of this Lease⁵⁰;

(NB delete following provisions if Tenant is a Public Sector Body or GP)

- (g) not agree the reviewed rent with the underlessee without the approval of the Landlord (such approval not to be unreasonably withheld);
- (h) (where the underlease provides such an option) not agree that a third party determining the rent in default of agreement shall act as an arbitrator or as an expert without the approval of the Landlord (such approval not to be unreasonably withheld);
- (i) not agree upon the appointment of a person to act as a third party determining the rent in default of agreement without the approval of the Landlord (such approval not to be unreasonably withheld).

23.4 Underletting without consent of the Landlord

23.4.1 Subject to Clause 23.4.3, the Tenant may underlet the whole of the Premises or a Permitted Part without the prior consent of the Landlord and without complying with Clauses ~~[23.3.2 - 23.3.4/ 23.3A.2 - 23.3A.4]~~ provided that any underlease of the whole of the Premises or a Permitted Part shall:

- (a) not involve the payment of a premium or fine or be at a rent (whether before or after any review) less than the:
 - (i) Lease Payment in the case of an underlease of the whole of the Premises; or
 - (ii) Proportion of the Lease Payment in the case of an underlease of a Permitted Part;
- (b) provide for the review of the rent payable under the underlease at the same time and in the same manner as the Lease Payment;
- (c) prohibit any further underletting save for one further underletting of the whole of the Premises or a Permitted Part on the same terms as set out in this Clause 23.4 (as the case may be);
- (d) prohibit the assignment of the whole of the premises demised by the proposed underlease save with the consent of the Tenant such consent not to be unreasonably withheld or delayed;
- (e) before the underlease is completed, or, if earlier, before the undertenant becomes contractually bound to take the underlease, be validly excluded from the operation of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in accordance with the provisions of section 38A of that Act and the relevant Schedules of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;

⁵⁰

Please see footnote 45.

- (f) contain a provision whereby the underlease is automatically terminated in the event this Lease is terminated.

23.4.2 In relation to any permitted underlease where Landlord consent is not required pursuant to this Clause 23.4 the Tenant shall:

- (a) enforce the performance and observance by any and every such underlessee of the covenants provision and conditions of the underlease and shall not at any time either expressly or by implication waive any breach of the same;
- (b) procure that the rent reserved thereunder shall not be commuted or payable more than one quarter in advance and shall not permit the reduction of any rent reserved;
- (c) ensure that the rent is reviewed in accordance with the terms of the underlease;
- (d) not vary the terms of the same (or agree so to do) relating to the provisions referred to at Clauses 23.4.1 (a) to 23.4.1 (e) above without the prior consent of the Landlord such consent not to be unreasonably withheld or delayed;
- (e) ensure the terms of the underlease are not inconsistent with the terms of this Lease.

23.4.3 Prior to any underlease which is the subject of this Clause 23.4 being completed or assigned or, if earlier, before the tenant of the underlease becomes contractually bound to enter into or assign the underlease; the Tenant shall provide the Landlord with a certificate from a firm of solicitors acting for the Tenant substantially in the form set out in Schedule 25 (Form of Certificate)⁵¹ to confirm that such underlease complies with the provisions of this Clause 23.4 and the parties acknowledge and agree that it shall and shall be deemed to be a material breach of the obligations of the Tenant under this Lease if the Tenant enters into (or becomes contractually bound to enter into) an underlease with an undertenant or the undertenant assigns (or becomes contractually bound to assign) an underlease or such undertenant otherwise takes occupation of the whole of the Premises or a Permitted Part (as the case may be) in circumstances where the provisions of this Clause 23.4 apply without first delivering to the Landlord a certificate substantially in the form set out in Schedule 25.

23.5 Where the Landlord is of the opinion that any undertenant of the Tenant is in breach of an underlease between the Tenant and such undertenant (Underlease Breach) and the Landlord would be acting reasonably in prosecuting any proceedings against such undertenant with respect to such Underlease Breach had a direct deed of covenant between the Landlord and such undertenant been provided to the Landlord at the time such undertenant entered into the underlease with the Tenant (an LPA Parallel Issue), the provisions of these Clauses 23.5 to Clause 23.7 shall apply.

⁵¹ The form of certificate to be provided by the solicitors to the Tenant should be set out in the LPA to ensure that future underlettings without consent during the term of the LPA can occur without the need for the parties (and the Funder) to agree on the form of certificate to be provided. This will be the case even if all of the proposed agreements for underlettings by the Tenant are entered into at financial close.

23.6 Where an LPA Parallel Issue arises, the Landlord shall be entitled to give notice to the Tenant pursuant to which the Landlord shall, as agent for and on behalf of the Tenant, conduct the resolution of any dispute, claim or difference (including any negotiations and the commencement and prosecution or defence of any proceedings) under such underlease in relation to an LPA Parallel Issue in the manner and within the time limits prescribed therefor in such underlease and in such manner so as not to prejudice or affect the rights, remedies and obligations of the Tenant under such underlease (Name Borrow).

23.7 Where the Landlord Name Borrows:

23.7.1 the Landlord shall keep the Tenant fully informed of all steps taken in accordance with Clause 23.6 and of all documents and other information, given or received in connection therewith;

23.7.2 the Tenant shall give the Landlord all reasonable co-operation, access and assistance for the purposes of considering, prosecuting or defending any LPA Parallel Issue; and

23.7.3 the Tenant shall bear the reasonable costs of the Landlord pursuing the LPA Parallel Issue (subject to the Landlord providing the Tenant with documentary evidence in support of such costs as the Tenant may reasonably request).

23.8 Sharing

Nothing in this Clause 23 shall prevent the Tenant sharing or parting with the occupation or possession of the Premises or any part or parts thereof with a person body or organisation providing ancillary or complementary services to the Permitted Use subject to the following conditions:

23.8.1 no relationship of landlord and tenant is created thereby;

23.8.2 the occupation by such person shall cease immediately upon such person ceasing to provide services ancillary or complementary to the Permitted Use; and

23.8.3 the Tenant shall supply written details of such occupation to the Landlord within ten (10) Business Days after the commencement of such occupation.

23.9 Charging

The Tenant shall not be permitted to charge or create any encumbrance over the whole or part of the Premises.

24 NOTICE OF DEALINGS

The Tenant shall deliver or cause to be delivered to the Landlord or its agents for the time being a notice of every assignment charge underletting or devolution of the title of the Premises or any part of the same together with a certified copy of any deed or document effecting or evidencing the same within one (1) month after the completion of any such deed or document or after the date of any probate letters of administration or other instrument or any order of Court by which such assignment charge underletting or devolution may be

effected or evidenced and to pay to the Landlord or the Landlord's agents their reasonable fees being not less than thirty pounds together with VAT for the registration of each such deed document instrument or order.

25 NUISANCE/OBSTRUCTION/PRESCRIPTIVE RIGHTS

25.1 The Tenant shall not do or permit or suffer any negligent or deliberate act or omission in or upon the Premises or any other part of the Facilities it is entitled to use (other than the Lease Operations) which:

25.1.1 may be or become a nuisance to the Landlord or the other tenants of the Facilities or cause damage to the Facilities⁵²; or

25.1.2 may cause another tenant of the Facilities to make deductions under its lease with the Landlord

and any liability under this Clause 25.1 shall be reduced by any amount which the Landlord recovers or would have recovered under any insurance policy having:

- (a) diligently and fully pursued any claim;
- (b) complied with the requirements of this Lease in relation to insurance and of the insurance policy;
- (c) exhausted all means of recovery under the insurance policy; and
- (d) obtained the consent of the Tenant (such consent not to be unreasonably withheld or delayed) to any compromise reached in relation to the claim which amount, to avoid doubt, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

25.2 The Tenant shall not permit any new window light opening doorway path passage drain or other encroachment right or easement to be made or acquired into against or upon the Premises and in the event that any such window light opening doorway path passage drain or other encroachment shall be made or attempted to be made or any such right or easement attempted to be acquired the Tenant shall give notice thereof to the Landlord promptly upon becoming aware of the same and shall permit the Landlord and its surveyors servants and agents to enter the Premises to ascertain the nature of such encroachment or easement and at the request and cost of the Landlord to adopt such means as may be required or deemed proper by the Landlord for preventing any such encroachment or the acquisition of any such easement provided to do so does not interfere materially with the Tenant's use and enjoyment of the Premises for the Permitted Use.

25.3 The Tenant shall not give to any third party any acknowledgement that the Tenant enjoys the access of light to any of the windows or openings in the Premises by the consent of that third party nor pay to any third party any sum of money nor enter into any agreement with any third party for the purpose of inducing or binding that third party to abstain from obstructing the access of light to any of the windows or openings in the Premises and if any of the owners of adjacent or neighbouring land or buildings do or threaten to do anything which obstructs the access of light to any of the windows or openings in the Premises the Tenant shall notify the Landlord promptly upon

⁵²

Consider, in relation to refurbishment of existing premises only, whether appropriate to refer here to the Works also.

becoming aware of the same and at the request and cost of the Landlord shall permit the Landlord if necessary to bring all such actions as it may think fit in the name of the Tenant against any of the owners of the adjacent or neighbouring land or buildings in respect of such obstruction of the access of light.

- 25.4 [The Tenant shall take all appropriate and reasonable steps in accordance with good estate management practice to keep the Premises secure whilst they are wholly or substantially vacant, in particular outside of Operational Hours].⁵³

26 YIELD UP

The Tenant shall yield up the Premises and hand over all keys relating to the Premises at the determination of the Term in accordance with the covenants contained in this Lease having removed all tenant's or trade fixtures (making good at the expense of the Tenant nevertheless any damage to the Premises caused by such removal to the reasonable satisfaction of the Landlord) and all furniture fittings papers and refuse of the Tenant and every moulding sign writing or painting of the name or business of the Tenant or other occupiers of the Premises.

27 DAMAGE

- 27.1 The Tenant shall not cause or permit damage to the Premises arising from any deliberate or negligent act or omission during the [carrying out of the Tenant's Commissioning and/or the] Operational Phase.⁵⁴

- 27.2 [The Tenant shall keep the Premises clean and tidy at all times to a standard appropriate to the designated use of the area.]⁵⁵

- 27.3 [The Tenant shall keep the Site⁵⁶ [(excluding the areas exclusively demised to third parties under other leases and areas to be exclusively demised under any agreement for lease to be entered into with any third party at or about the date of this Lease)]⁵⁷ clean and tidy at all times to a standard appropriate to the designated use of the area.]

- 27.4 [In complying with Clause 27.2 and 27.3 above, the Tenant shall:

27.4.1 use methods and materials appropriate to the surfaces, furniture, fixtures, equipment and areas to be cleaned; and

27.4.2 comply with manufacturers' guidelines (relating to such furniture, fixtures, equipment and areas) supplied to the Tenant, but only insofar as necessary to avoid invalidation of any related manufacturers warranties and (in either case) so as not to cause damage to the Site and the Facilities.]

28 SIGNS

⁵³ The drafting cannot be incorporated into a GP or other health professional sublease. This Clause should be deleted where Liftco/Fundco is providing security as a soft FM service (4th (or subsequent) Wave LIFT projects only and/or in circumstances where the Facilities are in 24 hour occupation by the Tenant).

⁵⁴ Obligation replicated at Clause 32A so that Landlord shall not damage Tenant's Assets.

⁵⁵ The drafting cannot be incorporated into a GP or other health professional sublease. Clauses 27.2-27.4 should be deleted where Liftco/Fundco is providing cleaning as a soft FM service (4th (or subsequent) Wave LIFT projects only).

⁵⁶ This should be considered on a scheme specific basis. On certain developments it may not be practical or appropriate for the lead tenant/CHP to be responsible for ensuring the Site/Facilities/building is secured.

⁵⁷ Careful consideration needs to be given to what areas should be excluded – reference to other areas "intended for letting" may be necessary.

The Tenant shall not affix place or exhibit or permit or suffer to be affixed placed or exhibited to or upon the exterior of any part of the Premises or to or through any windows or to or upon any boundary wall rail or fence at the Premises any sign placard poster signboard or other advertisement save as may have been previously approved in writing by the Landlord such approval not to be unreasonably withheld or delayed.

29 PLANNING

In relation to the Planning Acts the Tenant (for the avoidance of doubt in its capacity as Tenant only, and in particular not in its capacity as competent authority in relation to planning matters) shall:

- 29.1 at all times during the Term not act in a manner which shall constitute a breach of the Planning Acts so far as they relate to occupation and use of the Premises save to the extent that compliance falls to be dealt with pursuant to Clause 46;
- 29.2 give full particulars to the Landlord of any notice or proposal for a notice or order or proposal for any order made given or issued to the Tenant by any third party or competent authority under or by virtue of the Planning Acts or the Party Wall etc Act 1996 affecting the Premises promptly upon receipt of the same by the Tenant and if so required by the Landlord to produce the original of such notice order or proposal to the Landlord;
- 29.3 at the request and cost of the Landlord make or join with the Landlord in making such objection or representation against or in respect of any proposal for such a notice or order as the Landlord may reasonably require;
- 29.4 not without the consent of the Landlord (such consent not to be unreasonably withheld or delayed) enter into any agreement under Section 106 of the Town and Country Planning Act 1990.

30 COSTS

The Tenant shall pay to the Landlord on demand all costs charges expenses damages and losses (including without prejudice to the generality of the foregoing solicitors' costs counsel's architects' surveyors' and other professional fees and commission payable to a bailiff) properly incurred by the Landlord in connection with:

- 30.1 the preparation and/or service of any notice under Section 146 or 147 of the Law of Property Act 1925 notwithstanding that forfeiture for any breach is avoided otherwise than by relief granted by the Court;
- 30.2 the enforcement of any of the covenants on the part of the Tenant and the conditions in this Lease whether during or after the termination of the Term.

PART E : LANDLORD'S OBLIGATIONS

31 COVENANT

The Landlord covenants to comply with its obligations contained in this Lease including, without limitation, those set out in this Part E.

32 QUIET ENJOYMENT

The Landlord covenants with the Tenant that the Tenant paying the Lease Payments in accordance with this Lease and performing and observing the covenants on the part of the Tenant contained in this Lease shall and may peaceably and quietly hold and enjoy the Premises from and including the Actual Completion Date during the remainder of the Term without any interruption by the Landlord or any person rightfully claiming under or in trust for the Landlord [provided that any activities of the Landlord contemplated by the Final Commissioning Programme shall not constitute a breach of this covenant]⁵⁸.

32A DAMAGE

32A.1 The Landlord shall not cause or permit damage to the Tenant's Assets arising from any deliberate or negligent act or omission during the carrying out of the Landlord's Commissioning and/or the Lease Operations.

33 [USE IN OTHER PARTS OF THE FACILITIES⁵⁹

The Landlord covenants with the Tenant that:

33.1 the Landlord shall not at any time during the Operational Phase use or permit the use of any other part of the Site for any use or purpose other than [the Permitted Use] [use as] and for any use which is not incompatible with the use of the Premises by the Tenant for the Permitted Use;

33.2 the Landlord shall not at any time during the Operational Phase carry out any works to develop new accommodation in the airspace above any part of the Facilities without first obtaining the prior written consent of the Tenant and the Strategic Partnering Board. For the purposes of this Clause "accommodation" shall mean accommodation for human habitation (whether living or working) but shall exclude plant, machinery, aerials and forms of accommodation not designed for human habitation (whether for living or working);

33.3 no aerials or other devices emitting electromagnetic radiation shall be erected on any part of the airspace above the Facilities without the consent of the Tenant;

33.4 the Landlord shall not Dispose of the Site without first procuring that (in the case of a purchaser or lessee) such Disposee enters into a deed of covenant in a form acceptable to the Tenant in which the Disposee covenants directly with the Tenant to comply with the provisions of this Clause 33 (including this Clause 33.4 and Clause 33.5) or (in the case of a chargee) procures that a deed of covenant is entered into by any purchaser of the Site from that chargee in a form acceptable to the Tenant in which the purchaser covenants directly with the Tenant to comply with the provisions of this Clause 33 (including this Clause 33.4 and 33.5) as though (in either such case) reference in this Clause 33 to the Landlord are to the Disposee and references to the Site are to the Site or the part of the Site in respect of which the Disposal is made;

33.5 the Landlord shall apply to the Land Registry to place a restriction against the title number(s) under which the Site is registered in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by [TENANT] [or his conveyancer] that the

⁵⁸ May be relevant depending upon whether there is Landlord commissioning scheduled to take place after the Actual Completion Date.

⁵⁹ This Clause is to be deleted where the Tenant has a lease of the whole of the Site.

provisions of Clause 33.4 of the Lease Plus Agreement [provide details] have been complied with.”

In this Clause 33 “Disposal” means a sale or the grant of a charge or any other form of security or the grant of a lease of the Site in each case whether the sale charge or lease is of the whole or part of the relevant property and “Dispose” and “Dispossee” shall be construed accordingly.]

34 PROVISION OF THE SERVICES AND THE LEASE OPERATIONS

34.1 Throughout the Operational Phase, the Landlord shall provide (or procure the provision by the Service Provider of) the Services:

34.1.1 in accordance with the terms of this Lease;

34.1.2 in accordance with the Method Statements; and

34.1.3 as an obligation independent from, and in addition to, Clause 34.1.1, in such manner as ensures that the Service Specifications are met.

34.2 The Landlord shall at its own cost be solely responsible for procuring that the Services are at all times performed in compliance with all Law and Requisite Consents (including without limitation the giving of notices and the obtaining of any such Requisite Consents) and so as not to prejudice the renewal of any such Requisite Consents.

Landlord Services Changes

34.3 The Landlord may at any time submit to the Tenant’s Representative in accordance with Schedule 13 proposals for amendments to or substitution for the Method Statements or any part of them. If there is no comment on such proposed amendment or substitution (on the grounds set out in paragraph 3.1.2 of Schedule 13), then the Method Statements as so amended or substituted shall be the Method Statements for the purposes of this Lease, subject to any further amendment or substitution to which there has been no comment in accordance with Schedule 13.

34.4 To avoid doubt, an amendment to or substitution for the Method Statements proposed pursuant to Clause 34.3 shall not be a Qualifying Variation entitling the Landlord to any payment (or other compensation) or to any relief from the performance of its obligations under this Lease.

No disruption

34.5 The Landlord shall perform the Services so as to co-ordinate with the Tenant’s operations at the Facilities and shall take all reasonable care to ensure that it does not interfere with the operations of the Tenant.

34.6 The Landlord shall comply with the provisions of Schedule 15.

34A TRANSFER OF EMPLOYMENT

34A.1 The provisions of Schedule 16 (Transfer of Employment and Pensions) shall apply in relation to any transfers of staff to the Landlord or any Supply Chain Member pursuant to or necessitated by this Lease.

34A.2 The provisions of Schedule 18 (Handover on Expiry or Termination) shall apply in relation to any transfers of staff on expiry or termination of this Lease.

35 MAINTENANCE

Programmed Maintenance Works

- 35.1 No later than three (3) months prior to the Completion Date, the Landlord shall submit to the Tenant's Representative in accordance with Schedule 13 a Schedule of Programmed Maintenance for the period from the Completion Date to the expiry of that Contract Year.
- 35.2 Not later than three (3) months prior to the commencement of each subsequent Contract Year the Landlord shall submit to the Tenant's Representative in accordance with Schedule 13 a Schedule of Programmed Maintenance for the next succeeding Contract Year.
- 35.3 Each Schedule of Programmed Maintenance ("Programmed Maintenance Information") shall contain the following information:
- 35.3.1 details of the proposed start and end dates for each period of Programmed Maintenance, the works to be carried out and the proposed hours of work; and
 - 35.3.2 details of any effect of the Programmed Maintenance on the delivery of any of the Services and/or the activities of the Tenant.
- 35.4 Not later than twenty (20) Business Days prior to the commencement of any quarter (being a three month period commencing on 1 April, 1 July, 1 October or 1 January), the Landlord may submit to the Tenant's Representative for approval in accordance with paragraph 3.1.3 of Schedule 13 a revision to the Schedule of Programmed Maintenance for the Contract Year in which the relevant quarter falls showing the effect of the proposed changes to the Programmed Maintenance Information. If the Tenant's Representative does not raise comments on such proposed revision in accordance with Schedule 13, the Schedule of Programmed Maintenance as revised shall become the Schedule of Programmed Maintenance in respect of that quarter.
- 35.5 Where the Tenant's Representative raises comments in respect of any revision (proposed in accordance with Clause 35.4) to the Programmed Maintenance periods and/or hours of work shown in a Schedule of Programmed Maintenance in accordance with paragraph 3.1.3 of Schedule 13, he shall indicate whether, and if so when, the Programmed Maintenance can be re-scheduled and the Landlord shall amend the relevant Schedule of Programmed Maintenance accordingly.

Programmed and Unprogrammed Maintenance

- 35.6 The Landlord shall not carry out any Programmed Maintenance or Unprogrammed Maintenance Works save:
- 35.6.1 in accordance with a Schedule of Programmed Maintenance to which no objection has been made under Schedule 13 or, where comment has been raised in respect of the Programmed Maintenance periods and/or time, the Schedule of Programmed Maintenance has been amended pursuant to Clause 35.5;

- 35.6.2 in accordance with the procedures set out in Clause 35.8; or
- 35.6.3 in an emergency or in the case of an Unavailability Event, in accordance with Clause 35.9.
- 35.7 Notwithstanding that there has been no objection to a Schedule of Programmed Maintenance, the Tenant's Representative may, at any time [(but subject to Clause 35.7A), require the Landlord to accelerate or defer any Programmed Maintenance to the Premises or Common Parts] by giving written notice to the Landlord, (unless otherwise agreed) not less than twenty (20) Business Days prior to the scheduled date for carrying out such Programmed Maintenance, which notice shall set out the time and/or periods at or during which the Tenant requires the Programmed Maintenance to be performed. The Landlord shall, within ten (10) Business Days, notify the Tenant of the amount of the Estimated Increased Maintenance Costs. The Tenant shall, within a further period of ten (10) Business Days following receipt by the Tenant of notification of the amount of the Estimated Increased Maintenance Costs, at the Tenant's option, either confirm or withdraw its request to accelerate or defer the Schedule of Programmed Maintenance. If the Tenant does not respond within this ten (10) Business Day period, the request shall be deemed to have been withdrawn. The Tenant shall reimburse the Landlord the direct and reasonable costs actually incurred by the Landlord as a consequence of such acceleration or deferment up to, but not exceeding, the amount of the Estimated Increased Maintenance Costs.
- 35.7A The Tenant's Representative may not require any acceleration or deferral of Programmed Maintenance which shall have an adverse impact upon other tenants of the Facilities unless those tenants agree to the proposed change.
- 35.8 Subject to Clause 35.9, the Landlord shall not carry out any Unprogrammed Maintenance Works (excluding any works of a de minimis nature in respect of which the parties have agreed this Clause shall not apply (and excluding works carried out for the purposes of Rectification, which shall take place in accordance with the provisions of Schedule 10)) unless and until the Tenant's Representative has approved the proposed commencement date, the proposed hours of work and estimated duration of the requisite Unprogrammed Maintenance Works in accordance with the provisions of paragraph 3.1.3 of Schedule 13. Nothing in this sub-clause (including any approval of the Tenant pursuant to Schedule 13) shall prevent the Tenant from making any deductions calculated in accordance with paragraph 3 and paragraph 5 of Part C of Schedule 10 or exercising its other remedies under this Lease.
- 35.9 If, as a result of an emergency or an Unavailability Event, the need arises for Unprogrammed Maintenance Works, the Landlord may carry out such Unprogrammed Maintenance Works provided that the Landlord shall notify the Tenant's Representative as soon as possible (and in any event within two (2) Business Days of the occurrence of the emergency) of the extent of the necessary Unprogrammed Maintenance Works and the reasons for them. The Landlord shall take all reasonable steps to minimise the duration of such Unprogrammed Maintenance Works. Nothing in this Clause 35.9 shall prevent the Tenant from making any deductions calculated in accordance with paragraph 3 and paragraph 5 of Part C of Schedule 10 or exercising its other remedies under this Lease.
- 35.10 Where Programmed Maintenance scheduled to be carried out in accordance with the Schedule of Programmed Maintenance has been deferred by the Tenant's Representative under Clause 35.7, the Landlord shall not be treated as having failed to perform the Services on account of the condition of the Facilities or any part of

them from the time the Programmed Maintenance was scheduled to have been completed until the time the deferred Programmed Maintenance was scheduled to have been completed, but not afterwards, provided always, to avoid doubt, that the Landlord shall not be relieved from the consequences of any failure to maintain the Facilities in respect of any period prior to the period for performing the particular work according to the Schedule of Programmed Maintenance.

Five Year Maintenance Plan

- 35.11 The Landlord shall deliver to the Tenant's Representative not less than **[forty (40)]** Business Days prior to the Completion Date and, to the commencement of each subsequent Contract Year the latest version of the Five Year Maintenance Plan.
- 35.12 The Tenant shall have a right to inspect the Facilities and the Maintenance Works to ensure that the Facilities are being maintained in accordance with the Service Specifications and that the Facilities comply with the Tenant's Requirements and Landlord's Proposals and the Service Specifications to the extent applicable as at the date of such inspection throughout the Term subject to any Variations made pursuant to Schedule 12. The Tenant may appoint an independent third party for the purposes of carrying out any such inspection and shall make known the findings to the Landlord and the Funders. The parties shall then meet to discuss any implications of such findings and any steps that are necessary to remedy any failure to comply with such obligations. The Landlord shall (subject to Clause 47 (Variation Procedure)) take into account such discussions in the next Schedule of Programmed Maintenance⁶⁰ so that any failure to comply with such obligations shall be remedied.

35A LIFECYCLE PROFILE AND LIFECYCLE SPEND

- 35A.1 The Landlord shall keep detailed records of the replacement and renewal of Lifecycle Assets and Lifecycle Spend. **[On request by the Tenant and in any event not more than once in each year,]** the Landlord shall deliver to the Tenant a proposed Lifecycle Schedule, together with a report on any differences between the Lifecycle Profile and Lifecycle Spend for the previous year and a prediction of any differences between the Lifecycle Profile and the Lifecycle Spend for the following year.
- 35A.2 The Landlord shall upon written request permit Tenant to inspect any part of the Facility and/or access to all the Landlord's records, receipts, invoices, reports, drawings, technical specifications and performance logs relating to any Lifecycle Asset and Lifecycle Spend. **[The Landlord shall provide all reasonable co-operation and assistance to the Tenant to allow it access to such documents and information and shall in a bona fide manner respond promptly to all reasonable requests for further documents and information made by the Tenant in respect of any Lifecycle Asset and the condition of the same and Lifecycle Spend].**
- 35A.3 The Landlord agrees that sums reserved for the replacement or renewal of Lifecycle Assets (the "Lifecycle Fund") shall be held by the Landlord, and the Landlord shall not be permitted to subcontract the holding of the Lifecycle Fund to the Service Provider.
- 35A.4 The Landlord shall include the Lifecycle schedule as part of the Schedule of Programmed Maintenance.

36 MONITORING OF PERFORMANCE

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Some of the failures may have been rectified prior to this as a result of operation of the payment mechanism.

- 36.1 The Landlord shall be responsible for monitoring its performance of its obligations under this Lease during the Operational Phase, in the manner and at the frequencies set out in Schedule 9 (Service Specifications). The Landlord shall provide the Tenant's Representative with relevant particulars of any aspects of its performance which fail to meet the requirements of this Lease (unless otherwise notified in writing by the Tenant). The Tenant may at all reasonable times observe, inspect and satisfy itself as to the adequacy of the monitoring procedures (including without limitation by carrying out sample checks).

Service Failure Points

- 36.2 The Tenant may, by notice to the Landlord and in accordance with the provisions of Schedule 10, award Service Failure Points in respect of a Service in accordance with Schedule 9 (Service Specifications), depending on the performance of that Service in any month as measured in accordance with Schedule 9 (Service Specifications). Service Failure Points which are agreed, or determined, to have been awarded in circumstances where such award was not justified shall be deemed to have been cancelled.

Warning Notices

- 36.3 Without prejudice to the Tenant's rights under Clause 43 (Landlord Events of Default) and any other express rights under this Lease, if at any time the Landlord has:

- 36.3.1 committed any material breach of its obligations under this Lease; or
- 36.3.2 in relation to any Service, accrued more than the number of Service Failure Points in any one (1) month rolling period listed against that Service in Schedule 9 (Service Specifications)

then the Tenant may give written notice (a "Warning Notice") to the Landlord setting out the matter or matters giving rise to such notice and containing a reminder to the Landlord of the implications of such notice. Any such notice shall state on its face that it is a "Warning Notice".

- 36.4 Without prejudice to the Tenant's rights under Clause 43 (Landlord Events of Default) and to any other express rights under this Lease, if the Landlord receives [] or more Warning Notices in any [] period in respect of any Service, the Tenant may by notice to the Landlord increase the level of its monitoring of the Landlord, or (at the Tenant's option) of the Landlord's monitoring of its own performance of its obligations under this Lease, in respect of the relevant Service, in which case, the following provisions shall apply until such time as the Landlord shall have demonstrated to the reasonable satisfaction of the Tenant that it will perform (and is capable of performing) its obligations under this Lease:

- 36.4.1 any such notice to the Landlord shall specify in reasonable detail the additional measures to be taken by the Tenant or by the Landlord (as the case may be) in monitoring the performance of the Landlord;
- 36.4.2 if the Landlord (acting reasonably) objects to any of the specified measures on the grounds that they are excessive it shall notify the Tenant in writing within two (2) Business Days of the receipt of the notice of the measures objected to (and of any changes necessary in order to prevent prejudice to the Landlord's performance of its obligations under this Lease);

- 36.4.3 the measures to be taken by the Tenant and the Landlord (as the case may be) shall be agreed between the parties or, in the absence of agreement within three (3) Business Days of the Tenant's receipt of the Landlord's objection, determined pursuant to Schedule 21 (Dispute Resolution Procedure); and
- 36.4.4 the Landlord shall bear its own costs and indemnify and keep indemnified the Tenant at all times from and against all reasonable costs and expenses (if any) incurred by or on behalf of the Tenant in relation to such increased level of monitoring (including an appropriate sum in respect of general staff costs and overheads).
- 36.5 The provisions of Clauses 36.6 to 36.11 (inclusive) shall apply if:
- 36.5.1 the Tenant, acting reasonably, considers that a breach by the Landlord of any obligation under this Lease:
- (a) may create an immediate and serious threat to the health or safety of any user of the Facilities; or
 - (b) may result in a material interruption in the provision of one or more of the Services; or
 - (c) is prejudicial to the ability of the Tenant to provide Clinical Services to a material degree; or
- 36.5.2 The Landlord has, in relation to any Service, accrued more than the number of Service Failure Points in any one (1) month rolling period (to avoid doubt, comprising the then previous thirty (30) days) listed against that Service in Schedule [9 (Service Specifications)]; or⁶¹
- 36.5.3 the Landlord is not in breach of its obligations as described in Clauses 36.5.1 and 26.5.2, but the Tenant considers the circumstances constitute an emergency.⁶²
- 36.6 In any of the circumstances set out in Clause 36.5, the Tenant, acting reasonably, may (without prejudice to its rights under Clause 43 (Landlord Events of Default) or any other express rights under this Lease) either:
- 36.6.1 if it considers that there is sufficient time and that it is likely that the Landlord will be willing and able to provide assistance, require the Landlord by written notice to take such steps as the Tenant considers necessary or expedient to mitigate or rectify such state of affairs and the Landlord shall use its best endeavours to comply with the Tenant's requirements as soon as reasonably practicable; or

⁶¹ This is intended to cover a situation where very poor performance in any service is provided over a relatively short time period requiring the Tenant to step in to such service. This provision gives the Tenant a right to step in and rectify the problem itself if a sufficient number of Service Failure Points have been accumulated. This should be seen as a "last resort" mechanism for the Tenant and the threshold should be set accordingly.

⁶² The term "emergency" is used here in a broad sense and is intended to cover extraordinary clinical circumstances or "major incidents" where, in exceptional situations, the scope or nature of the assistance required from the Landlord will be beyond that envisaged in the Service Specifications. In such a situation, the Tenant must be free to take action (albeit at its own cost) to ensure that its clinical services can be provided.

- 36.6.2 if it considers there is not sufficient time, or that the Landlord is not likely to be willing and able to take the necessary steps, take such steps as it considers to be appropriate (either itself or by engaging others to take any such steps) to ensure performance of the relevant Services to the standards required by this Lease (or as close as possible to those standards as the circumstances permit and, in any event, in accordance with Good Industry Practice).
- 36.7 If:
- 36.7.1 the Landlord does not confirm, within ten (10) Business Days of a notice served pursuant to Clause 36.6.1 (or such shorter period as is appropriate in the case of an emergency), that it is willing to take such steps as are referred to in Clause 36.6.1; or
- 36.7.2 the Landlord fails to take the steps notified to it by the Tenant pursuant to Clause 36.6.1 within such time as the Tenant, acting reasonably, shall think fit,
- then (without prejudice to Clause 36.6.2) the Tenant, acting reasonably, may itself take or engage others to take such steps as it considers appropriate.
- 36.8 Where the Tenant considers it to be necessary or expedient to do so, the steps which the Tenant may take pursuant to this Clause 36 shall include the partial or total suspension of the right and obligation of the Landlord to provide the relevant Services to the Tenant but only for so long as the circumstances referred to in Clause 36.5 subsist or, in the circumstances set out in Clause 36.5.2, until such time as Landlord shall have demonstrated to the reasonable satisfaction of the Tenant that it will perform (and is capable of performing) its obligations in respect of the relevant Services to the required standard.
- 36.9 If the Tenant either takes steps itself or requires the Landlord to take steps in accordance with this Clause 36 as a result of the circumstance referred to in Clause 36.5.3:
- 36.9.1 the Tenant shall indemnify and keep indemnified the Landlord at all times from and against all additional direct reasonable costs, losses, expenses or damages suffered or incurred in relation to undertaking such steps over and above those that would otherwise have been incurred in the proper performance of the Landlord's obligations under this Lease; and
- 36.9.2 any costs incurred by the Tenant in taking such steps or requiring the Landlord to take such steps shall be borne by the Tenant.
- 36.10 To the extent that the parties shall agree, or it shall be determined in accordance with Schedule 21 (Dispute Resolution Procedure), that the Tenant was not reasonable in requiring the Landlord to take such steps (or in taking such steps itself) as are referred to in this Clause 36, then the Tenant shall indemnify and keep indemnified the Landlord at all times from and against any costs, losses, expenses or damages (over and above those that would otherwise have been incurred by the Landlord in the proper performance of its obligations under this Lease) that are directly and reasonably incurred by the Landlord in complying with those requirements of the Tenant as are agreed or determined not to be reasonable. To avoid doubt, it is acknowledged that the Landlord has no right to require determination before taking

any such action that the Tenant may specify; only subsequently may it refer any dispute for resolution to determine if the Tenant was reasonable in requiring the Landlord to take such steps.

36.11 Subject to Clauses 36.9 and 36.10:

36.11.1 any costs or expenses incurred by the Landlord in taking such steps as are required by the Tenant pursuant to Clause 36.6.1 shall be borne by the Landlord;

36.11.2 the Landlord shall reimburse the Tenant for all reasonable costs, losses, expenses or damages incurred by it in relation to taking the steps, or engaging others to take the steps, referred to in Clauses 36.6 and 36.7; and

36.11.3 the Tenant shall be entitled to deduct any such amount from any amount payable to the Landlord under the provisions of this Lease.⁶³

36A EXCUSING CAUSES

36A.1 If an Excusing Cause interferes adversely with, or causes a failure of, the performance of the Lease Operations and/or causes the occurrence of an Unavailability Event or Performance Failure and provided that the effect of such Excusing Cause is claimed within ten (10) Business Days of the date on which the Landlord became aware (or ought reasonably to have become so aware) of the occurrence of the Excusing Cause, then (subject to Clause 36A.3 (Insured Exposure) and 36A.4 (Mitigation) to the extent such failure or interference or occurrence of an Unavailability Event or Performance Failure arises as a result of such Excusing Cause:

36A.1A.1 such failure by the Landlord to perform, and any poor performance of, any affected Service shall not constitute a breach of the provisions of this Lease by the Landlord;

36A.1A.2 such interference shall be taken account of in measuring the performance of any affected Service in accordance with the performance monitoring system, which shall be operated as though the relevant Service had been performed free from such adverse interference, and

36A.1A.3 any such Unavailability Event or Performance Failure shall be deemed not to have occurred

so that the Landlord shall be entitled to payment under the Lease as if there had been no such interference.

36A.2 For the purpose of Clause 36A an Excusing Cause means:

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Where the Tenant itself takes remedial action under Clause 36.5.1 and Clause 36.6.2 the Tenant shall continue to pay the Lease Payment in respect of those services which are affected by the "step-in" as if there were no continuing default on the part of the Landlord. To the extent that services are not affected by the Tenant "step-in", the payment mechanism shall operate as normal. The costs of the Tenant "step-in" will be deducted in accordance with Clause 36.11. Step-in by the Tenant under Clause 36.5.2 is dealt with in Clause 36.9.

- 36A.2.1 any breach of any express provision of this Lease by the Tenant or any Tenant Party (unless, and to the extent, caused or contributed to by the Landlord or any Landlord Party);
- 36A.2.2 subject to Clause 36A.3 any deliberate act or omission of the Tenant or of any Tenant Party or any failure by the Tenant or a Tenant Party (having regard always to the interactive nature of the activities of the Tenant and of the Landlord) to take reasonable steps to carry out its activities in a manner which minimises undue interference with the Landlord's performance of the Lease Operations, save where (and to the extent)⁶⁴:
- (a) caused or contributed to by the Landlord or any Landlord Party;
 - (b) the Tenant or Tenant Party is acting in accordance with a recommendation or instruction of the Landlord or any Landlord Party;
 - (c) any such act or omission giving rise to such failure was within the contemplation of the parties or was otherwise provided for in this Lease;
 - (d) the consequences of any such deliberate act or omission giving rise to such failure would have been prevented by the proper performance of the Landlord's obligations under this Lease; or
 - (e) the Landlord is otherwise covered by insurance of the type specified in Schedule 8 to this Lease in respect of such failure;
- 36A.2.3 the outbreak or the effects of any outbreak of any Medical Contamination unless and to the extent that the effects of such outbreak are caused (or contributed to) by any failure of the Landlord or any Landlord Party to comply with procedures (or Tenant instructions) relating to control of infection or to take all reasonable steps to mitigate the effect of such Medical Contamination;
- 36A.2.4 the implementation of any action taken by the Tenant or any Tenant Party, or any suspension of the Landlord's obligation to deliver any or any part of the Services or the compliance by the Landlord with instructions given by the Tenant, in each case in the circumstances referred to in Clauses 36.6 - 36.11 (Monitoring Performance) (inclusive);
- 36A.2.5 the carrying out of any Minor Alterations in accordance with the terms of this Lease during the period of time agreed between the Tenant and the Landlord;
- 36A.2.6 the carrying out of planned preventative maintenance in accordance with the Schedule of Programmed Maintenance.

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Note there is also reference to interactive nature of relationship between Landlord and Tenant in Schedule 1 – interpretation provisions.

Where in this Clause 36A.2 a cause is said to be an Excusing Cause save to the extent that some other cause operates, the relevant financial effects of the said cause shall be apportioned between the Tenant or Tenant Party on the one hand, and the Landlord on the other, by reference to the respective influence of each cause.⁶⁵

Insured exposure

36A.3 Without prejudice to Clause 37, the Landlord shall not be entitled to any payment which would not have been due under this Lease but for Clause 36A (Excusing Causes) to the extent that the Landlord is or should be able to recover under any policy of insurance required to be maintained by the Landlord or any Landlord Party in accordance with this Lease (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of the Landlord (or any Landlord Party), including but not limited to non-disclosure or under-insurance) or any other policy of insurance which the Landlord has taken out and maintained.

Provided that where the Excusing Cause is caused by the deliberate or negligent act or omission of the Tenant, the Tenant shall be responsible for the deductibles and any amount over the maximum amount insured under such insurance policy.

Mitigation of Excusing Cause

36A.4.1 The Landlord shall take all reasonable steps to mitigate the consequences of an Excusing Cause on the Landlord's ability to perform its obligations under this Lease. To the extent that the Landlord does not take such steps, the Landlord shall not be entitled to, and shall not receive, the relief specified in this Clause 36A.

36A.4.2 To avoid doubt, Clause 36A.2.2 (Acts of the Tenant) shall not impose a general obligation on the Tenant to take (or to procure that any Tenant Party takes) such steps and shall apply (and be construed) solely for the purposes of establishing whether an Excusing Cause has occurred.

37 INSURANCE⁶⁶

The Insurances

37.1 The Landlord shall, at its own cost, procure that the insurances, details of which are set out in Part 1 of Schedule 8, are taken out prior to the commencement of the Works and are maintained for the periods specified in Part 1 of Schedule 8.

37.2 The Landlord shall, at its own cost, procure that the insurances, details of which are set out in Part 2 of Schedule 8, are taken out prior to the Actual Completion Date and are maintained for the periods specified in Part 2 of Schedule 8.

37.3 Without prejudice to the other provisions of this Clause 37, the Landlord shall, at all relevant times, at its own cost, effect and maintain in full force those insurances which it is required to effect by any applicable Law.

⁶⁵ In schemes which include phased working, it is possible that Delay Events affecting construction works may also impact on service delivery. For this reason, it may be necessary to include additional excusing causes on a project specific basis, although Tenants should take care not to do so automatically (for example Relief Events do not give relief from deductions for Performance Failure in any circumstances, even though they are classified as Delay Events).

⁶⁶ Insurances not referred to in paragraph 1 of Part 2 of Schedule 8 are not Pass Through Costs (whether or not Required Insurances) and are a cost to the Landlord.

37.3A The Landlord shall ensure that its brokers give the Tenant a letter of undertaking in the agreed form set out in Schedule 8 Part 4.

37.4 All Insurances referred to in Clauses 37.1 and 37.2 shall:

37.4.1 be maintained in the names of the parties specified in Schedule 8 and shall be composite policies of insurance (and not joint) unless stated otherwise in any case in Schedule 8;

37.4.2 be placed with insurers who are acceptable to the Tenant (such acceptance not to be unreasonably withheld or delayed);

37.4.3 provide that they shall continue in effect and unaltered for the benefit of the insured parties for at least sixty (60) Business Days after written notice by registered mail or fax of any cancellation, change, modification or lapse by reason of non-payment of premiums or instalment or otherwise has been received by the insured parties;

37.4.4 Not used

37.4.5 in respect of any policy of insurance which insures the rights of more than one party, contain a provision that:

(a) no claim of any of the insured under the policy shall be defeated, prejudiced or otherwise affected by any act or omission on the part of any other insured and shall insure the interests of each insured regardless of any act or omission on the part of any other insured party; and

(b) operates, save for limits of liability and/or amount, in the same manner as if there were a separate policy with and covering each insured and be without right of contribution from any other insurance which is carried by an insured;

37.4.6 in so far as they relate to damage to assets (including the Facilities), cover the same for the full reinstatement value; and

37.4.7 comply with the relevant provisions of Schedule 8.

Subrogation and Vitiating

37.5 The Landlord shall:

37.5.1 procure that all policies of insurance to be effected by it pursuant to this Clause 37 other than those in paragraph 2 of Part 2 of Schedule 8 shall contain a provision to the effect that the insurers have agreed to waive all rights of subrogation against the Tenant (and all Tenant Parties other than subcontractors of the Tenant who are not subcontractors performing medical or other similar services) save to the extent that the Tenant has vitiated the policy by a deliberate act or omission; and

37.5.2 where the Landlord is obliged to effect insurance under this Clause 37, other than those in paragraph 2 of Part 2 of Schedule 8 not bring any claim or action against the Tenant (or any Tenant Party other than a subcontractor who is not performing medical or other similar services) in

respect of any loss or damage in circumstances where the Landlord could recover such loss or damage under such insurance (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of the Landlord (or any Landlord Party), including but not limited to non-disclosure or under-insurance);

provided that, to avoid doubt, this Clause 37.5 shall not by itself prevent the Landlord from claiming against the Tenant (or any Tenant Party) for any loss or damage not covered because of the level of deductibles under such insurance permitted by this Lease or to the extent such loss or damage exceeds the maximum of such insurance required by this Lease.

- 37.6 Neither party shall take any action or fail to take any reasonable action or (in so far as it is reasonably within its power) permit or allow others to take or fail to take any action (including failure to disclose any fact) as a result of which any of the Insurances may be rendered void, voidable, unenforceable or suspended or impaired in whole or in part or which may otherwise render any sum paid out under any relevant policy repayable in whole or in part.

Evidence of the Insurances

- 37.7 The Landlord shall use reasonable endeavours to obtain the best value insurance available in the European insurance market for the Insurances taking into account the reasonable commercial considerations of a landlord in a similar position to that of the Landlord.
- 37.8 Not less than twenty (20) Business Days prior to the expiry or amendment of any relevant insurance policy, the Landlord shall submit to the Tenant evidence of the steps it has taken pursuant to Clause 37.7 and a request for approval from the Tenant of the insurer and the principal terms and conditions of such insurance policy (and any revision to such terms and conditions or change in identity of such insurer), such approval not to be unreasonably withheld or delayed.
- 37.9 The Landlord shall supply the Tenant with copies of every policy of Insurance (or such other evidence of the Insurances as may be reasonably required) as soon as it is available, together with evidence of payment of the premiums. If the Landlord defaults in insuring or continuing to maintain the Insurances, the Tenant may insure against any risk in respect of which such default has occurred and recover any premiums from the Landlord as a debt.

Acceptance and compliance

- 37.10 The supply to the Tenant of any draft insurance policy or certificate of insurance or other evidence of compliance with this Clause 37 shall not imply acceptance by the Tenant that the extent of insurance cover is sufficient and its terms are satisfactory or in respect of any risks not insured against, that the same were Uninsurable Risks.
- 37.11 Neither failure to comply nor full compliance with the insurance provisions of this Lease shall relieve the Landlord of its liabilities and obligations under this Lease.
- 37.12 Not used.

Application of Proceeds

- 37.13 All insurance proceeds received by the Landlord under the insurances referred to in paragraph 1 of Part 1 and paragraph 1 of Part 2 of Schedule 8, shall be paid into an insurance proceeds account in the names of the Landlord and the tenants of the Facilities and shall be held on trust for the purposes of, and to be applied in accordance with, this Lease and the other leases of premises at the Facilities.
- 37.13A Subject to the provisions of the Funder's Direct Agreement the Landlord shall apply any proceeds of any policies of Insurance:
- 37.13A.1 in the case of third party legal liability or employers' liability insurance, in satisfaction of the claim, demand, proceeding or liability in respect of which such proceeds are payable; and
- 37.13A.2 in the case of any other insurance, so as to ensure the performance by the Landlord of its obligations under this Lease including, where necessary the reinstatement, restoration or replacement of the Facilities, assets, materials or goods affected by the event giving rise to the insurance claim and consequent payment of proceeds.
- 37.13B Where reinstatement monies are required to be released from the insurance proceeds account the Tenant shall give its consent to the release of monies from the insurance proceeds account within one (1) Business Day of a request from the Landlord (such consent not to be unreasonably withheld).
- 37.13C If the proceeds of any insurance claim are insufficient to cover the settlement of such claims, the Landlord will make good any deficiency forthwith.

Damage or Destruction

- 37.14 In the event of damage to or destruction of all, or a material part of, the Facilities:
- 37.14.1 if the Tenant serves written notice that it does not wish the Premises to be reinstated and this Lease to continue the Landlord shall refer the matter to the Strategic Partnering Board in accordance with the Strategic Partnering Agreement. If the Strategic Partnering Board concurs this Lease shall terminate twenty (20) Business Days from the date of the Strategic Partnering Board's decision but without prejudice to the rights and remedies of either party in respect of any antecedent and subsisting claim or breach of covenant. In such circumstances the Landlord shall retain any proceeds of insurance;
- 37.14.2 if the Tenant does not serve written notice on the Landlord in accordance with Clause 37.14.1 within forty (40) Business Days of the damage to or destruction of the Facilities or if the Strategic Partnering Board does not concur that this Lease should be terminated, then (subject to receipt of the amount of any applicable excess payable by the Tenant pursuant to Clause 45.2) the Landlord shall make application for and use all reasonable endeavours to obtain all necessary consents and approvals and shall rebuild, reinstate and make good (as the case may be) the Facilities with all reasonable speed (when it is lawful so to do) making up any shortfall at its own expense and in case of rebuilding or substantial reinstatement this shall be satisfied if the Landlord provides in the premises so rebuilt or reinstated accommodation as convenient and commodious as is reasonably practicable but not necessarily identical to

the Premises or the Facilities as the same existed prior to such damage or destruction.

Determination on Destruction

37.15 If, at the expiration of the period of [thirty six (36) months] calculated from the date upon which the Facilities shall have been destroyed or so damaged as to render them unfit for occupation and use, the Landlord shall have been unable to obtain all necessary consents and approvals for and to complete the rebuilding replacement and/or reinstatement of the Facilities having complied with Clause 37.14.2, then either party may determine this Lease by notice in writing to the other provided always that such determination will take place without prejudice to any and all rights then subsisting between the parties. If the Landlord has failed to comply with Clause 37.14.2 the Tenant only shall have the right to determine this Lease in the manner and with the effect described in this Clause 37.15.

37.15A.1 Subject to clause 19A.3:

37.15A.1.1 Subject to the deduction set out at Clause 37.15A.1.2 and to the extent that there are funds remaining following the deduction set out at clause 37.15A.1.2 the Tenant shall be entitled to receive the [Unreceived Benefit] payable from the monies that otherwise would have been paid to the Landlord pursuant to clause 37.16

37.15A.1.2 The Landlord and the Tenant acknowledge that the amount of any monies payable to the Landlord pursuant to Clause 37.16 shall first be applied to satisfy any amounts then outstanding (including any breakage costs actually and reasonably incurred in exercising the right of sale and the [Early Repayment Fee] to be made pursuant to and in accordance with Clause [] of the Facilities Agreement) and due pursuant to the terms of the Facilities Agreement.

37.15A.1.3 The Landlord undertakes to pay to the Tenant the sum due pursuant to 37.15A.1 in full within twenty-eight (28) Business Days of receipt by the Landlord of any monies pursuant to Clause 37.16.

Right to Insurance Moneys on Frustration

37.16 If this Lease shall determine under the provisions of Clause 37.15 above all moneys payable or to become payable under any insurance effected pursuant to this Lease by the Landlord shall be paid to the Landlord for its own use and benefit, unless the Landlord has failed to comply with its obligations under Clause 37.14.2 in which case such monies shall be paid into the insurance account and applied by the parties in accordance with any direction of the Strategic Partnering Board giving due consideration to applying such monies in or towards meeting the accommodation needs of the Tenant.

Uninsurable Risks

37.17

37.17.1 Either party shall notify the other promptly on becoming aware of an Uninsurable Risk.

37.17.2 The Landlord shall liaise with the Strategic Partnering Board in accordance with the Strategic Partnering Agreement to establish an appropriate response to the situation within twenty (20) Business Days and shall promptly notify the Tenant of the outcome.

37.17.3 In the event that the Landlord does not accept the decision of the Strategic Partnering Board in accordance with Clause 37.17.2:

- (a) the Landlord may serve written notice on the Tenant to terminate this Lease not less than twelve (12) months from the date of the notification under Clause 37.17.1 and on expiry of such notice subject to Clause 37.17.6 this Lease shall determine without prejudice to the rights and remedies of either party in respect of any antecedent and subsisting claim or breach of covenant; or
- (b) if the Landlord is able to secure insurance in respect of the Uninsurable Risk within the worldwide insurance market with a reputable insurer of good standing (regardless of the terms of such insurance) the Landlord may take out and maintain such insurance and shall then serve written notice on the Tenant stating that the risk shall cease to be considered an Uninsurable Risk. To the extent, if any, that the cost of insuring the Uninsurable Risk is an Insurance Cost, the Landlord may require the Tenant to pay the premium in respect of such insurance and in such event the Tenant shall make no objection to the full amount of such premium being included in the next Payment Notice due to be served under this Lease (except insofar as the Tenant has already paid the amount of such premium) and the provisions of Clause 37.5 shall apply on the basis that the level of deductibles under the insurance taken out and maintained by the Landlord pursuant to this Clause 37.17.3(b) is permitted by this Lease, PROVIDED ALWAYS that if the Tenant is a Public Sector Body then it may serve notice on the Landlord pursuant to Clause 37.17.6.

37.17.4 If the Landlord has served notice in accordance with Clause 37.17.3(a) and the Facilities are subsequently damaged or destroyed so as to render the Premises unfit for occupation and use the Landlord or the Tenant may terminate this Lease forthwith by service of written notice upon the other.

37.17.5 Where the Landlord has not served notice pursuant to Clause 37.17.3(a):

- (a) where there is an Uninsurable Risk, the Landlord shall approach the insurance market on a regular basis and in any event at intervals of not less than six (6) months to establish whether the relevant risk remains an Uninsurable Risk; and
- (b) where a risk which was previously an Uninsurable Risk ceases to be so, and the Landlord has become aware that this is the case, the Landlord shall forthwith take out and maintain insurance in accordance with the requirements of this Lease in respect of the risk and the provisions of this Clause 37.17 (Uninsurable Risks) shall no longer apply to the risk.

37.17.6 In the event that :

- (a) the decision of the Strategic Partnering Board in accordance with Clause 37.17.2 is that the Tenant should bear the risk which has become an Uninsurable Risk; or
- (b) the proviso to Clause 37.17.3(b) applies; or
- (c) whilst the risk remains an Uninsurable Risk or in a case where the Landlord has served notice under Clause 37.17.3(a) and such notice has not expired,

then the Tenant, provided it is a Public Sector Body, may serve written notice on the Landlord that it elects to bear the risk which has become an Uninsurable Risk in respect of the Facilities on the same terms as it was previously insured and such notice shall have the effect of suspending any notice period then operative pursuant to Clause 37.17.3(a) or (as the case may be) of relieving the Tenant from any obligation to pay the premium referred to in Clause 37.17.3(b). In the event that the Tenant so elects and there occurs damage to the Facilities, or a third party claim is made against the Landlord as the case may be, the Tenant shall bear the costs of reinstatement, or liability for the third party claim as the case may be, in the same manner and to the same extent as the insurer had the relevant risk continued to be insurable. To the extent that the Landlord had previously maintained insurance for business interruption and it became unavailable concurrently with the relevant risk becoming an Uninsurable Risk, the Tenant shall also bear the cost of income lost because of damage to the Facilities in the same manner as the insurer had such insurance continued to be available (and subject to the same level of deductibles), but only to the extent necessary to allow the Landlord to meet its obligations in respect of servicing its senior debt during the resultant period of Unavailability⁶⁷.

37.17.7 The Tenant may subject to obtaining the prior approval of the Strategic Partnering Board by sixty (60) Business Days' written notice served on the Landlord cease to bear liability for the Uninsurable Risk in respect of which it shall have served notice pursuant to Clause 37.17.6 whereupon the Landlord shall have the right to serve written notice on the Tenant to terminate this Lease on expiry of a period equal to that between the date the Tenant served its notice under Clause 37.17.6 and the date twelve (12) months from the notice served in Clause 37.17.1 provided that for the avoidance of doubt the Tenant shall be liable for claims relating to events occurring prior to the expiry of the sixty (60) Business Days' notice period notwithstanding that such claims are made after the expiry of the sixty (60) Business Days' notice period.

37.17.8 At any time during the subsistence of an Uninsurable Risk in respect of paragraph 2 of Part 2 of Schedule 8:

- (a) the Landlord shall be permitted (subject to any rights of the Tenant to make deductions for Unavailability Events) to exclude the Tenant from the whole or any part of the Premises where the Landlord believes (acting reasonably) that it is highly likely that a

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This and the following Clause should not appear in leases to GP practices. Where there are more than one head lease plus agreements in respect of a Facility this right (and the associated right in Clause 37.17.7) will only be given to the lead tenant. The other tenants' leases will not determine if the lead tenant exercises this right.

third party liability will arise as a result of the Safety Condition not being met by the Landlord;

- (b) for the purposes of Schedule 10 each Functional Area shall be deemed to have suffered an Unavailability Event for such period that the Tenant is excluded from the Premises;
- (c) the Landlord shall take such steps as are necessary in accordance with Good Industry Practice to make the Premises comply with the Safety Condition;

37.17.9 The Landlord is not required to insure against a risk for so long as such risk is an Uninsurable Risk.

37.18 [Without prejudice to the provisions of Clause 45 the Tenant shall comply with any reasonable requirements of the Landlord in relation to the notification and management of claims made under the insurances described at Part 2 of Schedule 8.]⁶⁸

Risk management

37.19 With effect from the date of this Lease, the Tenant and Landlord shall each designate or appoint an insurance and risk manager and notify details of the same to the other party. Such person shall:

37.19.1 be responsible for dealing with all risk management matters on behalf of its appointing or designating party including (without limitation) ensuring compliance by that party with this Clause 37.19;

37.19.2 advise and report to that party on such matters; and

37.19.3 ensure that any report or survey conducted by any insurer of any relevant procedures in relation to the Project is disclosed to the other party.

37.20 Without prejudice to the provisions of Clause 37.16, the parties shall notify one another, and in the Landlord's case the relevant insurer, of any circumstances which may give rise to a claim of a value equal to or in excess of [] thousand pounds (£[],000) (Indexed) (as defined in Schedule 8) under the Insurances within five (5) Business Days of becoming aware of the same (or earlier, if so requested by the terms of the relevant insurance policy). If any insurer disputes any such claim, the Landlord shall provide the Tenant with full details of any disputed claim and the parties shall liaise with one another to ensure that the relevant claim is preserved or pursued.

Unavailability of Terms or Conditions

37.21 If, upon the renewal of any insurance which the Landlord is required to maintain or to procure the maintenance of pursuant to this Lease:

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This is likely to only be necessary where there is more than one LPA in the Facilities (co-ordination of claims to avoid multiple excesses/deductibles). The intention of the Clause is to allow the Landlord (should he consider it appropriate) to develop and communicate a procedure for the notification and managements of insurance claims with which he can rely on the Tenant to comply.

37.21.1 any Insurance Term is not available to the Landlord in the worldwide insurance market with reputable insurers of good standing; and/or

37.21.2 the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom,

(other than, in each case, by reason of one or more actions of the Landlord and/or any subcontractor of the Landlord) then Clause 37.22 shall apply.

37.22 If it is agreed or determined that Clause 37.21 applies then the Tenant shall waive the Landlord's obligations in Clause 37 and/or Schedule 8 in respect of that particular Insurance Term and the Landlord shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Lease as a result of the failure to maintain insurance incorporating such Insurance Term for as long as the relevant circumstances described in Clause 37.21 continue to apply to such Insurance Term.

37.23 To the extent that the parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution Procedure, that an alternative or replacement term and/or condition of insurance is available to the Landlord in the worldwide insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address the Landlord's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which contractors in the UK are (at such time) generally prepared to pay, the Landlord shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition.

37.24 The Landlord shall notify the Tenant as soon as reasonably practicable and in any event within five days of becoming aware that Clause 37.21.1 and/or Clause 37.21.2 are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Landlord shall provide the Tenant with such information as the Tenant reasonably requests regarding the unavailability of the Insurance Term and the parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.

37.25 In the event that Clause 37.21.1 and/or Clause 37.21.2 apply in respect of an Insurance Term, (irrespective of the reasons for the same) the Landlord shall approach the insurance market at least every four months to establish whether Clause 37.21.1 and/or Clause 37.21.2 remain applicable to the Insurance Term. As soon as the Landlord is aware that Clause 37.21.1 and/or Clause 37.21.2 has ceased to apply to the Insurance Term, the Landlord shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Lease.

37.26 In respect of changes in the insurance premium payable with respect to the insurance set out in paragraph 1 of Part II of Schedule 8, the provisions of Part V of Schedule 8 shall apply.

38 ALIENATION BY THE LANDLORD

38.1 The Landlord shall not assign, transfer or otherwise dispose of or deal with its reversionary interest in the Site or any part thereof other than:

- 38.1.1 by the grant of any security for any loan made to the Landlord under the Funding Agreements; or
- 38.1.2 by the assignment or transfer of the entirety of the Landlord's interest in the Site where either:
 - (a) such a dealing has been approved by the Strategic Partnering Board in accordance with Clauses 5.3 to 5.5 of the Strategic Partnering Agreement; or
 - (b) is required by the Funders in response to a default by the Landlord under the Funding Agreements

and in either case, the assignment or transfer is in accordance with Clauses 38.2 to 38.6; or

- 38.1.3 subject to Clause 33 by the grant of a lease or leases of the Site (or part of the Site) other than the Premises.
- 38.2 Where the Landlord or any Funder under a Funding Agreement seeks to exercise its rights under Clause 38.1.2 the Landlord shall first serve notice on the Tenant notifying the Tenant of the same and such notice shall state the price at which it proposed to sell the same.
- 38.3 In the event that the Landlord serves notice on the Tenant pursuant to Clause 38.2 the Tenant may at any time afterwards exercise the pre-emption right granted by the Landlord pursuant to Clause 38.4.
- 38.4 ⁶⁹The Landlord grants the Tenant a pre-emption right to purchase the Site on the terms set out in Schedule 14B and if such a right is exercised the Landlord shall act in the same manner and the same provisions shall apply as if the Tenant had exercised the option contained in Schedule 14B.
- 38.5 In the event that the Tenant shall not exercise its pre-emption right in Clause 38.4 the Landlord may assign or transfer the entirety of the Landlord's interest in the Site:

PROVIDED that:

- 38.5.1 the disposal is completed no later than six (6) months after the date of the Tenant deciding not to exercise its pre-emption right under this Clause 38;
- 38.5.2 the disposal shall be (taking into account the terms of any related transactions or series of transactions) at a consideration (whether monetary or non monetary) of no less than the Pre-emption Price (as defined in Schedule 14B) and on the same terms as the Site would have been transferred to the Tenant had the Tenant exercised its options in Clause 38.4 of this Lease;

and if the disposal of the Landlord's interest in the Site is carried out in accordance with this Clause 38.5 then the right of pre-emption granted to the Tenant under Clause 38.4 shall lapse and be of no further effect.

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This right shall only apply to the main public sector tenant of the Facilities.

- 38.6 The Landlord may seek approval under Clause 38.1 and serve notice under Clause 38.2 on as many occasions as it shall deem fit PROVIDED that such approval shall not be sought or notice served under Clause 38.2 less than twelve (12) months after such approval was previously sought or notice so served.
- 38.7 The provisions of Clauses 38.2 to 38.6 shall not apply to the transfer of the entirety of the Landlord's interest in the Site to a wholly owned subsidiary company of Liftco or any of that company's wholly owned subsidiary companies.

38A SALE OF SHARES IN LANDLORD AND SUPERIOR HOLDING COMPANIES⁷⁰

- 38A.1 When any Funder⁷¹ under a Funding Agreement seeks to sell, dispose or transfer any shares in the Landlord or any Holding Company of the Landlord (but excluding any shares in Liftco or any Holding Company of Liftco) or any interest in such shares (the "Shares") the Landlord shall first serve notice on the Tenant notifying the Tenant of the same and of the price agreed to be paid by that third party for the Shares (the "Purchase Price").
- 38A.2 In the event that the Landlord serves notice on the Tenant pursuant to Clause 38A.1 the Tenant may at any time within the following twenty-eight (28) day period serve a notice on the Landlord and Liftco agreeing to purchase or procure the purchase by its nominee of the Shares at a price equal to the Purchase Price.
- 38A.3 If the Tenant serves a notice pursuant to Clause 38A.2 then it shall complete the purchase of the Shares in accordance with Schedule 14C, within ten (10) Business Days of service of such notice.
- 38A.4 Further to Clauses 38A.1 to 38A.3 inclusive, the Landlord shall procure that [Liftco] [Holdco] grants the Tenant an option to purchase the Shares or a proportion of the Shares on the terms set out in Schedule 14C and if such a right is exercised Liftco shall act in the same manner and the same provisions shall apply as if the Tenant had exercised the option contained in Schedule 14C.
- 38A.5 In the event that a disposal transfer or sale of the Shares in respect of which a notice under Clause 38A.2 is served is not carried out within six months after the date upon which the Tenant either notifies the Landlord and Liftco that it does not want to purchase the Shares or the time periods set out in Clauses 38A.2 and/or 38A.3 have elapsed without the Tenant taking or completing the actions required under that notice then a notice served under 38A.1 shall cease to have effect (to the intent that the Landlord is required to serve further notice under Clause 38A.1 before any disposal transfer or sale of the Shares and this Clause 38A.5 shall apply to each further occasion on which notice is given under Clause 38A.1) PROVIDED that this Clause 38A.5 will not affect any prior exercise of the option in Clause 38A.2 in respect of any notice which shall cease to have effect under this Clause 38A.5.
- 38A.6 Where the Tenant either notifies the Landlord and Liftco that it does not want to purchase the Shares or the time periods set out in Clauses 38A.2 and 38A.3 have elapsed without the Tenant taking or completing the action required under that notice the Funder shall not sell the relevant Shares at less than the Purchase Price without first serving notice on the Tenant under Clause 38A.1 wherein such lower price is substituted for the Purchase Price.

⁷⁰

This right shall only be available to the main public sector tenant of the Facilities.

⁷¹

This right shall only apply to the main public sector tenant of the Facilities.

39 SUB-CONTRACTING

39.1 [The Landlord shall not terminate or agree to the termination of the engagement and/or employment of (or the replacement of) a Supply Chain Member without the prior written consent of the Tenant. Such consent shall not be unreasonably withheld and shall be given or refused within seven (7) Business Days of a request by the Landlord accompanied by all relevant information reasonably required by the Tenant in order to reach its decision.]⁷²

39.2 The Landlord shall procure that none of the persons listed below (or any replacement of the same in accordance with the other provisions of this Clause 39) shall sub-contract all (or substantially all) of their obligations under or in the agreement set out next to its name:

Person	Contract
[insert name of Contractor]	Construction Contract
[insert name of Services Provider] ⁷³	Service Contract

without, in each case, the prior written consent of the Tenant (such consent not to be unreasonably withheld or delayed).

39.3 If the contract set out next to the name of any person referred to in Clause 39.2 shall at any time lapse, terminate or otherwise cease to be in full force and effect (whether by reason of expiry or otherwise), with the effect that such person shall cease to act in relation to this Lease, the Landlord shall forthwith appoint a replacement.

39.4 Any replacement of a person named in Clause 39.2 (or any subsequent replacement of such a person in accordance with this Clause 39) shall be approved by the Tenant (such approval not to be unreasonably withheld or delayed). Provided that the Tenant's approval shall not be required where all of the following apply:-

- 39.4.1 the replacement shall be required by the Landlord as a consequence of the default of the relevant person under the relevant Supply Chain Agreement between the Landlord and that person and/or the relevant Supply Chain Member terminating the relevant Supply Chain Agreement;
- 39.4.2 the replacement is not an Unsuitable Person; and
- 39.4.3 the replacement is properly qualified and competent to carry out its obligations under its contract with the Landlord in accordance with Clause 39.5.

39.5 The Landlord shall procure that any replacement for any person referred to in Clause 39.2 shall enter into a contract upon the same or substantially similar terms as the person so replaced.

39.6 The Landlord will supply to the Tenant copies of all Supply Chain Agreements within five (5) Business Days of entering into the same.

⁷² This Clause may be deleted where all of the Landlord's material obligations under this Lease are to be performed either by itself or the persons named at Clause 39.2.
⁷³ This table should include all of the Sub Contractors from Liftco.

39.7 Save for the granting of security to the Funders pursuant to the Funding Agreements, the Landlord shall not, without the prior written consent of the Tenant (such approval in the case of any proposed sub-contracting shall not be unreasonably delayed and may only be withheld in circumstances where the proposed sub-contractor is an Unsuitable Person), assign, transfer, sub contract or otherwise dispose of any interest in any contract entered into by the Landlord for the purposes of performing its obligations under this Lease.

39A PERFORMANCE AND SUBCONTRACTORS

39A.1 The Landlord will be responsible for ensuring the due performance by its Supply Chain Members and subcontractors of their obligations under the Supply Chain Agreements and subcontracts of any tier.

39A.2 Where:

39A.2.1 the Facility Deduction Percentage⁷⁴ in:

- (a) any three successive Contract Months is at least []%; or
- (b) each of any four successive Contract Months is at least []%; or
- (c) any [six] out of any twelve successive Contract Months is at least []%;

provided that any Deduction arising as a direct result of a Relief Event or the occurrence of Force Majeure shall be disregarded;

39A.2.2 any Service Provider appointed by the Landlord is an Unsuitable Person;

in addition to any other rights of the Tenant under this Lease, the Tenant may (in its absolute discretion) require the Landlord by written notice to terminate a Supply Chain Agreement to which it is a party and under which a Supply Chain Member has caused or materially contributed to the occurrence of the event specified above in respect of any relevant Service and procure that a replacement Supply Chain Member is appointed in accordance with Clause 39 (Sub-Contracting) to provide all those Services which were performed by the previous contractor as soon thereafter as is reasonably practicable.

39A.3 If the Tenant exercises its rights under Clause 39A.2 the Landlord shall forthwith put forward proposals for the interim management or provision of the relevant Services to the Tenant – until such time as an alternative Supply Chain Member can be engaged by the Landlord. If the Landlord fails to do so (or its proposals if implemented are not reasonably likely to give adequate provision of the relevant Services) then without prejudice to the other rights of the Tenant the Tenant may perform, or procure a third party to perform, such Services itself, changed according to context, to such Services in those circumstances.

39A.4 Where a Landlord Party is convicted under the Health and Safety Regime in connection with the provision of the Lease Operations (a “H & S Conviction”), the Landlord undertakes to procure that (unless agreed otherwise by the Strategic Partnering Board) within ninety (90) Business Days from the date of the H & S

⁷⁴

Bidders to propose default thresholds in Clauses 39A.2 on a project specific basis.

Conviction (or, in the case of H & S Conviction which is subject to any appeal or any further judicial process and where such appeal or further judicial process does not result in the successful appeal against or quashing of the H & S Conviction, within sixty (60) Business Days of the date of the decision of such appeal or judicial process), the involvement in this Lease of each relevant Landlord Party is terminated and (where applicable) a replacement is appointed in accordance with Clause 39 (Sub-Contracting).

39B The Tenant may undertake a review of the Services in accordance with the process and provisions set out in Schedule 25 (Services Review).

40 EQUIPMENT

40.1 [Transfer of the equipment and consumables to the Landlord

Some projects may require the provision or transfer of equipment or consumables. Outline provisions will be required to be inserted on a project specific basis as to how these are provided and to what standards. There will need to be consideration of any warranties to be given, terms of transfer, valuation of assets etc. Certain equipment will have to transfer with the property where it is located.

40.2 Transfer to the Tenants on expiry or termination.

Schemes to consider on a project specific basis whether there will be any such obligation on the Landlord and, if so, who will be the transferee and what will be the terms of transfer.

40.3 Risk and obligations assumed by either party.]

41 [PROVISIONS RELATING TO IT SERVICES AND MEDICAL EQUIPMENT

41.1 *Some projects may require the provision of IT infrastructure and/or services. Outline provisions will be required to be inserted on a project specific basis as to how these are provided and to what standards.*

41.2 *Similar provisions may be needed re medical equipment⁷⁵.]*

[41A SOFT SERVICES MARKET TESTING

The provisions of Schedule 22 (Soft Services Market Testing Procedure) shall apply to Soft Services Market Testing of the Market Tested Soft Services.^{76]}

PART F: FLEXIBILITY

42 FLEXIBILITY

The Landlord shall perform its obligations under this Lease and shall conduct its business generally with regard to the following principles:

42.1 the Landlord shall accede to any request from the Tenant to terminate this Lease before its expiry by effluxion of time where:

⁷⁵ Please refer to the note against Clause 13.25 (Decanting, Decommissioning and Equipment Transfer) in relation to installation and commissioning of medical equipment.

⁷⁶ Applies in respect of soft FM services included in 4th (or subsequent) Wave LIFT schemes only.

- 42.1.1 the Tenant certifies that this accords with the Strategic Service Development Plan developed under the Strategic Partnering Agreement;
- 42.1.2 the Landlord is working on proposals for new developments with the Strategic Partnering Board which have received Stage 1 Approval (as defined in the Strategic Partnering Agreement) and such proposals identify the Tenant as a prospective occupier of the new development(s); and
- 42.1.3 the Landlord is of the view (acting reasonably) that it will either be able to
 - (a) let the Premises to another Acceptable Tenant on terms broadly comparable to the terms of this Lease and/or
 - (b) sell its interest in the Site or develop the Site in such a manner that (in either case) would place the Landlord in no worse economic position than it would have been in had this Lease continued

“Acceptable Tenant” means a tenant that would, having regard to the amounts outstanding under any facility provided to the Landlord in connection with this Lease (and where such facility relates to this Lease and other properties or arrangements to the extent only that such amounts relate to this Lease) and the terms of the lease to be entered into by it, be of acceptable credit quality (either by itself or with the addition of any credit support that it is able to provide) to the Landlord (acting reasonably)

such termination to take effect on the date the Tenant takes up occupation of the new premises (under the Lease Plus Agreement pursuant to the Strategic Partnering Agreement) identified in the Strategic Service Development Plan provided the Tenant has served not less than three months’ written notice of such date to the Landlord.

- 42.2 The Landlord shall procure that the Facilities are designed with appropriate flexibility to enable alternative uses of the Facilities to be achievable subject to its overriding obligation to comply with the Tenant’s Requirements.

42A CHANGES TO FUNDING AGREEMENTS

- 42A.1 Subject to Clause 42A.2, the Landlord shall be free, at any time, to enter into, terminate, amend, waive its rights and generally deal with its Funding Agreements on such terms and conditions as it sees fit provided that (at the time such action is contemplated and effected) the same will not materially and adversely affect the ability of the Landlord to perform its obligations under the Project Documents, the Funding Agreements or this Lease.
- 42A.2 No amendment, waiver or exercise of a right under any Funding Agreement or Project Document shall have the effect of increasing the Tenant’s liabilities in the event of the Tenant exercising any of the options under Schedule 14 of this Lease unless the Landlord has obtained the prior written consent of the Tenant to such increased liability for the purposes of this Clause 42A.2
- 42A.3 Not used.
- 42A.4 The Landlord shall liaise with the Tenant and shall use all reasonable endeavours to provide the Tenant with a copy of the relevant agreement in settled draft form, not

less than ten (10) Business Days before it enters into any Funding Agreement (other than the Initial Funding Agreements).

42A.5 Without prejudice to the provisions of this Lease, if at any time an amendment is made to any Project Document or Funding Agreement, or the Landlord enters into a new Project Document or Funding Agreement (or any agreement which affects the interpretation or application of any Project Document or Funding Agreement), the Landlord shall deliver to the Tenant a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation, certified as a true copy by an officer of the Landlord.

PART G: TERMINATION

43 LANDLORD EVENT OF DEFAULT

43.1 For the purposes of this Lease, a Landlord Event of Default means one of the following events or circumstances:

43.1.1 the Landlord failing to achieve the Actual Completion Date within a period of twelve (12) months⁷⁷ after the Completion Date; or

43.1.2 the Landlord abandoning the Works (other than as a consequence of a breach by the Tenant of its obligations under this Lease).

43.2 The Landlord shall notify the Tenant of the occurrence, and details, of any Landlord Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Landlord Event of Default, in either case promptly on the Landlord becoming aware of its occurrence.

43.3 Within a reasonable time of the occurrence of a Landlord Event of Default, or (if later) of the time the Tenant becomes aware of the same, and while the same is subsisting, the Tenant may (subject to the provisions of the Funder's Direct Agreement):

43.3.1 exercise the relevant option granted by the Landlord in Clause 43.4; and/or

43.3.2 terminate this Lease in its entirety by notice in writing having immediate effect but without prejudice to the rights and remedies of either party in respect of any antecedent and subsisting claim or breach of covenant.

43.4 In the event of a Landlord Event of Default referred to in Clauses 43.1.1 or 43.1.2, the Landlord grants the Tenant an option to purchase the Site during the Option Period as defined in Schedule 14D and on the terms set out in Schedule 14D and if such a right is exercised the Landlord shall act in the same manner and the same provisions shall apply as if the Tenant had exercised the option contained in Schedule 14D.

43.5 If the option granted by the Landlord in Clause 43.4 is exercised then the Landlord shall put the Site in a safe clean and orderly condition and shall transfer the Site to the Tenant in such condition.

43.6 [If [insert outstanding matters] have not occurred by [] either the Landlord or the Tenant may determine this Lease and the demise granted by it at any time on or within [] months after [] by serving notice in writing on the other party

⁷⁷

The parties can agree to vary this period, on a scheme specific basis.

terminating this Lease and on service of that notice this Lease shall determine and cease and be void but without prejudice to any claim by either party against the other in respect of any antecedent breach of a covenant or condition contained in this Lease.^{78]}

44 RE-ENTRY⁷⁹

If the Lease Payment or any part of it is at any time unpaid after the due date for payment or if any of the covenants on the part of the Tenant in this Lease are not performed or observed or if the Tenant being a company enters into administration or liquidation whether compulsory or voluntary (save for the purpose of amalgamation or reconstruction of a solvent company) or being an individual commits any act of bankruptcy or if a receiver is appointed of the Tenant's undertaking or if the Tenant enters into an agreement or makes any arrangement with creditors for the liquidation of the debts of the Tenant by composition or otherwise or suffers any distress or process of execution to be levied on the goods of the Tenant then and in any such case it shall be lawful for the Landlord at any time thereafter to re-enter upon the Premises or any part of the same in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the rights and remedies of either party in respect of any antecedent and subsisting claim or breach of covenant.

PART H: MISCELLANEOUS

45 INDEMNITIES

Landlord indemnities to Tenant

- 45.1 The Landlord shall indemnify and keep the Tenant indemnified at all times from and against all Direct Losses sustained by the Tenant in consequence of:
- 45.1.1 any claim for, or in respect of, the death and/or personal injury of any employee of, or person engaged by, the Landlord or any Landlord Party notwithstanding any act or omission of the Tenant or any Tenant Party provided that any claim against the Tenant or any Tenant Party for clinical, medical or professional negligence shall be excluded;
 - 45.1.2 any claim for, or in respect of, the death and/or personal injury of any third party (other than a person referred to in Clause 45.2.1 arising out of, or in the course of, the Lease Operations, save to the extent caused (or contributed to) by any negligent act or omission by the Tenant or any Tenant Party, breach of any express provision of this Lease by the Tenant or any Tenant Party or any deliberate act or omission of the Tenant or any Tenant Party;
 - 45.1.3 any physical loss of or damage to Tenant's Assets arising by reason of any act or omission of the Landlord or any Landlord Party, save to the extent that such loss or damage arises out of the breach of any express provision of this Lease by the Tenant or any Tenant Party or any deliberate act or omission of the Tenant or any Tenant Party; and

⁷⁸ Instead of the Lease not being completed until certain matters have been complied with, the Lease could take effect immediately but can be terminated if those matters are not complied with. A two tier set of notices may be appropriate to give the parties a grace period in which to satisfy any outstanding matters before the final break notice is served. Note that this must link with the buy back provisions to ensure the freehold may be re-acquired by the NHS if the break clause is exercised.

⁷⁹ The Landlord's rights to re-enter are subject to the Tenant's statutory rights of protection against termination of the Lease.

- 45.1.4 any loss of or damage to property or assets of any third party arising by reason of any act or omission of the Landlord or any Landlord Party, save to the extent that such loss or damage arises out of the breach of any express provision of this Lease by the Tenant or any Tenant Party or any deliberate act or omission of the Tenant or any Tenant Party.

Provided that in the case of Clause 45.1.3 and 45.1.4 where the loss or damage referred to has been caused by a negligent act or omission of the Tenant or any Tenant Party then the Tenant shall be responsible for the deductibles under any policy of insurance required under this Lease and any amount over the maximum amount insured under such insurance policy.⁸⁰

Tenant indemnities to Landlord

- 45.2 The Tenant shall indemnify and keep the Landlord indemnified at all times from and against all Direct Losses which, for the avoidance of doubt and notwithstanding the other provisions of this Lease shall include any lost revenue resulting from another tenant on the Site making deductions under its lease with the Landlord and sustained by the Landlord in consequence of:

45.2.1 any claim for, or in respect of, the death and/or personal injury of any employee of, or person engaged by, the Tenant or any Tenant Party notwithstanding any act or omission of the Landlord or any Landlord Party;

45.2.2 any claim for, or in respect of, the death and/or personal injury of any third party (other than a person referred to in Clause 45.1.1) arising by reason of any act or omission of the Tenant or any Tenant Party in the course of the provision of the clinical and medical services at the Premises, negligent act or omission by the Tenant or any Tenant Party, breach of any express provision of this Lease by the Tenant or any Tenant Party or any deliberate act or omission of the Tenant or any Tenant Party, save to the extent caused (or contributed to) by any act or omission of the Landlord or any Landlord Party;

45.2.3 any physical damage to any part of the Premises or any assets or other property of the Landlord or any Landlord Party arising by reason of any breach of any express provision of this Lease by the Tenant or any Tenant Party or any deliberate act or omission of the Tenant or any Tenant Party, save to the extent caused (or contributed to) by any act or omission of the Landlord or any Landlord Party; and

45.2.4 any loss of or damage to property or assets of any third party arising by reason of any breach of any express provision of this Lease by the Tenant or any Tenant Party or any deliberate act or omission of the Tenant or any Tenant Party, save to the extent caused (or contributed to) by any act or omission of the Landlord or any Landlord Party.

Provided that in the case of Clause 45.2.3 and 45.2.4:

⁸⁰ The parties should consider the risk of vandalism on a project by project basis. In particular, the Landlord should use good design to minimise such risks. There should be an early discussion (pre stage 1 approval) between the parties as to which party is taking this risk where it cannot be adequately mitigated through design.

- (a) there shall be excluded from the indemnity given by the Tenant any liability for the occurrence of risks against which the Landlord is bound to insure under this Lease; and
- (b) where the loss or damage referred to has been caused by any breach of any express provision of this Lease by the Tenant or any Tenant Party or by any deliberate act or omission of the Tenant or any Tenant Party or by a negligent act or omission by the Tenant or any Tenant Party then the Tenant shall be responsible for the deductible under any policy of insurance required under this Lease and any amount over the maximum amount insured under such insurance policy.

Conduct of claims

45.3 This Clause 45.3 shall apply to the conduct, by a party from whom an indemnity is sought under this Lease, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. The party having, or claiming to have, the benefit of the indemnity is referred to as "the Beneficiary" and the party giving the indemnity is referred to as "the Indemnifier". Accordingly:

45.3.1 if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Lease, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of the same;

45.3.2 subject to Clauses 45.3.3, 45.3.4 and 45.3.5 below, on the giving of a notice by the Beneficiary pursuant to Clause 45.3.1 above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;

45.3.3 with respect to any claim conducted by the Indemnifier pursuant to Clause 45.3.2 above:

- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
- (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute; and
- (c) the Indemnifier shall not pay or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

45.3.4 the Beneficiary shall be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Lease if:

- (a) the Indemnifier is not entitled to take conduct of the claim in accordance with Clause 45.3.2 above; or
- (b) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within twenty (20) Business Days of the notice from the Beneficiary under Clause 45.3.1 above or notifies the Beneficiary that it does not intend to take conduct of the claim; or
- (c) the Indemnifier fails to comply in any material respect with the provisions of Clause 45.3.3 above;

45.3.5 the Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which Clause 45.3.2 above applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Clause 45.3.5, then the Indemnifier shall be released from any liability under its indemnity under Clause 45.1 or Clause 45.2 (as the case may be) and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to Clause 45.3.2 in respect of such claim;

45.3.6 if the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

- (a) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
- (b) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including for this purpose indirect or consequential losses or claims for loss of profits which are excluded by this Lease from being recovered from the Indemnifier); and

45.3.7 any person taking any of the steps contemplated by Clauses 45.3.1 – 45.3.5 shall comply with the requirements of any insurer who may have an

obligation to provide an indemnity in respect of any liability arising under this Lease.

Mitigation – indemnity claims

- 45.3.8 To avoid doubt the provisions of Clause 59 apply to any indemnity given under this Lease and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with the provisions of such Clause 59.

Taxation

- 45.4 If any payment by one party under an indemnity in this Lease is subject to income tax or corporation tax (or any tax replacing them) in the hands of the recipient, the recipient may demand in writing to the party making the payment that the payment shall be increased by such amount as would ensure that, after taking into account any such tax payable in respect of such additional amount, the recipient receives and retains a net sum equal to the amount it would have otherwise received had the payment not been subject to such tax. The party making the payment shall pay such additional amount within ten (10) Business Days of receipt of such demand.

Limitations

- 45.5 The indemnities under this Lease shall not apply and (without prejudice to the Tenant's rights under Schedule 10) there shall be no right to claim damages for breach of this Lease, in tort or on any other basis whatsoever to the extent that any loss claimed by either party is for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or is a claim for consequential loss or for indirect loss of any nature ("Indirect Losses") suffered or allegedly suffered by either party.
- 45.6 Subject to any of the provisions relating to Tenant negligence in Clauses 45.1 and 45.2 the Tenant shall not be liable in tort to the Landlord or any Landlord Party in respect of any negligent act or omission of the Tenant or any Tenant Party relating to or in connection with this Lease and the Landlord shall procure that no Landlord Party shall bring such a claim against the Tenant. The Landlord has accepted this on the basis that it and each Landlord Party will cover the risk of negligent acts or omissions by insurance or in such other manner as it (or they) may think fit.

46 CHANGE OF LAW AND COMPLIANCE WITH STATUTORY REQUIREMENTS

- 46.1 Subject to Clause 46.3.3(d) and 46.3.3(e), on the occurrence of any Relevant Change in Law, the parties shall be entitled to seek adjustments to the Lease Payment to compensate for any increase or decrease (as the case may be) in the net cost to the Landlord of performing the Lease Operations. Such adjustments (if any) will be calculated in accordance with (and subject to) Clause 46.3.
- 46.2 Relevant Change in Law means the occurrence of any (a) General Change in Law which comes into effect during the Operational Phase and which involves Capital Expenditure, (b) Discriminatory Change in Law, (c) Specific Change in Law or (d) Qualifying Change in Law; each having an impact on the cost of performance of the Lease Operations:

- 46.2.1 provided that:

- (a) the impact of such Relevant Change in Law (either singly or in aggregate with any other such Relevant Change in Law in any Contract Year) on the cost of performance of the Lease Operations exceeds [one thousand pounds (£1,000)] (index linked). To avoid doubt, any such amount of [one thousand pounds (£1,000)] (index linked) shall always be borne by the Landlord;
- (b) such Change in Law was not reasonably foreseeable at the date of this Lease by an experienced contractor performing operations similar to the relevant Lease Operations, on the basis of draft bills published in Government green or white papers or other Government departmental consultation papers, bills, draft statutory instruments or draft instruments or proposals published in the Official Journal of the European Communities, in each case published:
 - (i) prior to the date of this Lease; and
 - (ii) in substantially the same form or having substantially the same effect as the Relevant Change in Law; and
- (c) a Change in Law relating to the application for, coming into effect, terms, implementation, repeal, revocation or otherwise of any Planning Permission shall not constitute a Relevant Change in Law.

46.3 On the occurrence of a Relevant Change in Law:

- 46.3.1 either party may give notice to the other of the occurrence of the Relevant Change in Law;
- 46.3.2 the parties shall meet within twenty (20) Business Days of the notice referred to in Clause 46.3.1 to consult and seek to agree the effect of the Relevant Change in Law. If the parties, within twenty (20) Business Days of this meeting, have not agreed the occurrence or the effect of the Relevant Change in Law, either party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with the Dispute Resolution Procedure; and
- 46.3.3 within ten (10) Business Days of the agreement taking into account the reasonable commercial considerations of a landlord in a similar position to that of the Landlord or determination referred to in Clause 46.3.2 above, the Tenant's Representative shall (where such Relevant Change in Law necessitates a Variation) issue a Variation Enquiry and the relevant provisions of Schedule 12 shall apply except that:
 - (a) the Landlord may give notice to the Tenant's Representative that it objects to such a Variation Enquiry only on the grounds that the implementation of the Variation would not give effect to or comply with the Relevant Change in Law;
 - (b) the Tenant shall issue a Variation Confirmation in respect of the Variation in accordance with the relevant provisions of Schedule 12;

- (c) the Tenant shall not be entitled to withdraw any Variation Enquiry or Variation Confirmation issued in accordance with this Clause 46.3.3;
- (d) the Landlord shall, without prejudice to its general obligation to comply with the terms of this Lease:
 - (i) use all reasonable endeavours to mitigate the adverse effects of any Relevant Change in Law and take all reasonable steps to minimise any increase in costs arising from such Relevant Change in Law; and
 - (ii) use all reasonable endeavours to take advantage of any positive or beneficial effects of any Relevant Change of Law and take all reasonable steps to maximise any reduction in costs arising from such Relevant Change in Law; and
- (e) any compensation payable, or increase or reduction to the Lease Payments, shall be calculated in accordance with Clause 46.4 or Clause 46.5 (as appropriate) provided that:
 - (i) the amount of any compensation payable; or
 - (ii) the amount by which the Lease Payment is to be increased or reduced,

shall not take into account any amounts incurred or to be incurred as a result of the Landlord's failure to comply with Clause 46.3.3(d) above.

46.4 Any compensation payable or increase in, or reduction to the Lease Payment, pursuant to this Clause 46.4 shall be calculated on the basis that the Landlord shall be placed in no better or worse position than it would have been in had the Relevant Change in Law not occurred, including any impact on the residual value of the Premises, and any assessment of whether the Landlord is in a better or worse position shall take account (inter alia) of the provisions of Clause 46.3.3(d) and 46.3.3(e) and shall also take account of the following factors;

- 46.4.1 the extent to which the Landlord has been (or will be) compensated as a result of any indexation of the Lease Payment under this Lease;
- 46.4.2 any decrease in its costs resulting from any Relevant Change in Law;
- 46.4.3 any amount which the Landlord will recover under any insurance policy (or would have recovered if it had complied with the requirements of this Lease or of any policy of insurance required under this Lease) which amount, to avoid doubt, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to such insurance policy; and
- 46.4.4 any increase or decrease in the fees which Liftco will charge to the Landlord which relate solely to the increase or decrease in the Partnering

Services Costs of Liftco which are allocated to the Lease Payment under this Lease in accordance with the Strategic Partnering Agreement

The Landlord shall not be entitled to any other payment or compensation or, save as expressly provided otherwise in this Lease, relief in respect of such Relevant Change in Law or associated Variation (or the consequences of either).

46.5 Either party may give notice to the other of the need for a Variation which is necessary in order to enable the Landlord to comply with any Change in Law which is not a Relevant Change in Law, in which event:

46.5.1 the parties shall meet within twenty (20) Business Days to consult in respect of the effect of the Change in Law and any Variation required as a consequence; and

46.5.2 within twenty (20) Business Days of the meeting referred to in Clause 46.5.1 above the Tenant's Representative shall, if a Variation is required in order to comply with the Change in Law, issue a Variation Enquiry and the relevant provisions of Schedule 12 shall apply except that:

(a) the Landlord may give notice to the Tenant's Representative that it objects to such a Variation Enquiry only on the grounds that the implementation of the Variation would not implement the Change in Law;

(b) the Tenant shall issue a Variation Confirmation in respect of the Variation in accordance with the relevant provisions of Schedule 12;

(c) the Tenant shall not be entitled to withdraw any Variation Enquiry or Variation Confirmation issued in accordance with this Clause 46.5.2(c); and

(d) the Landlord shall not be entitled to any payment or other compensation or relief from any performance of its obligations under this Lease in respect of such Change in Law or associated Variation (or the consequences of either).

47 VARIATIONS

47.1 Subject to Clause 47.2, the Tenant may at any time carry out or procure Minor Alterations with the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed. The Tenant may at its option instruct the Landlord to undertake any Minor Alteration for a price agreed in advance between the parties.

47.2

47.2.1 In determining its consent in accordance with Clause 47.1, the Landlord shall inform the Tenant whether it considers that the Minor Alteration will result in increased cost to the Landlord in providing the Services.

47.2.2 The parties will as soon as reasonably practicable agree whether there will be increased costs and, if so, the level of those costs. If the parties cannot agree within twenty (20) Business Days of the Tenant's application for

consent under Clause 47.1, the matter shall be referred to Schedule 21 (Dispute Resolution Procedure).

47.2.3 In determining whether there will be increased costs and, if so, the amount of such costs, the Landlord shall act reasonably, in good faith, on an open book basis and using all reasonable endeavours to minimise and mitigate such cost.

47.3 The Tenant shall indemnify the Landlord against any increased costs referred to in Clause 47.2.1.

*Alterations and Additional Alterations*⁸¹

47.4 The Tenant may issue a Variation Enquiry in respect of an Alteration or Additional Alteration and the provisions of Schedule 12 shall apply to all Alterations and Additional Alterations required by the Tenant.

47.5 For the avoidance of doubt all Variations required to comply with a Change in Law or a change of statutory requirements pursuant to Clause 46 shall be deemed to be Alterations or Additional Alterations for the purposes of this Lease.

47.6 Not used.

Service Alterations

47.7 The provisions of Schedule 12 will apply to Service Variations.

48 FORCE MAJEURE

48.1 Subject to Clause 48.2 the party claiming relief shall be relieved from liability under this Lease to the extent that by reason of the Force Majeure it is not able to perform its obligations under this Lease. Notwithstanding this Clause 48.1 the remedies available to the Tenant set out in Schedule 10 shall continue to apply in the event of Force Majeure.

48.2 Where a party is (or claims to be) affected by an event of Force Majeure:

48.2.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Lease, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and

48.2.2 it shall not be relieved from liability under this Lease to the extent that it is not able to perform, or has not in fact performed, its obligations under this Lease due to its failure (if any) to comply with its obligations under Clause 48.2.1.

48.3 The party claiming relief shall serve written notice on the other party within five (5) Business Days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.

⁸¹

Variations for all schemes (standard and specialist) follow the same procedure.

- 48.4 A subsequent written notice shall be served by the party claiming relief on the other party within a further five (5) Business Days which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the party to perform, the action being taken in accordance with Clause 48.2, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it (and/or its effects).
- 48.5 The party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- 48.6 If, following the issue of any notice referred to in Clause 48.4, the party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other party as soon as reasonably possible.

Modifications

- 48.7 The parties shall endeavour to agree any modifications to the Lease which may be equitable having regard to the nature of an event or events of Force Majeure. The Dispute Resolution Procedure (Schedule 21) shall not apply to a failure of the Landlord and Tenant to reach agreement pursuant to this Clause 48.7.

Termination

- 48.8 If, in the circumstances referred to in this Clause 48, the parties have failed to reach agreement on any modification to this Lease pursuant to Clause 48.7 within six (6) calendar months of the date on which the party affected initially serves notice on the other party in accordance with Clause 48.3 and the event of Force Majeure is subsisting the Landlord may at any time afterwards terminate this Lease by three months' written notice to the Tenant provided always that the effect of the relevant event of Force Majeure continues to prevent either party from performing any material obligation under this Lease.
- 48.9 In the event the Landlord serves notice on the Tenant pursuant to Clause 48.8 the Tenant may at any time afterwards exercise the option granted by the Landlord pursuant to Clause 48.10⁸².
- 48.10 The Landlord grants the Tenant an option to purchase the Site on the terms set out in Schedule 14E and if such right is exercised the Landlord shall act in the same manner and the same provisions shall apply as if the Tenant had exercised the option contained in Schedule 14E.

49 DISPUTE RESOLUTION

Except where expressly provided otherwise in this Lease, any dispute arising out of or in connection with this Lease shall be resolved in accordance with the procedure set out in Schedule 21 (Dispute Resolution Procedure).

50 NOTICES

⁸²

This right shall only be available to the main tenant of the Facilities.

50.1 All notices under this Lease shall be in writing and all certificates, notices or written instructions to be given under the terms of this Lease shall be served by sending the same by first class post, facsimile or by hand, leaving the same at:

If to the Landlord: [Address]

Fax No: []

If to the Tenant: [Address]

Fax No: []

50.2 Either party to this Lease may change its nominated address or facsimile number by prior written notice to the other party.

50.3 Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

50.3.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or

50.3.2 by 11am on the next following Business Day, if sent after 4pm, on a Business Day but before 9am on that next following Business Day.

51 AMENDMENTS

This Lease may not be varied except by a deed in writing duly executed by authorised representatives of the parties.

52 WAIVER

Any relaxation, forbearance, indulgence or delay (together "indulgence") of any party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that party or any other person).

53 NO AGENCY

53.1 Nothing in this Lease shall be construed as creating a partnership or as a contract of employment between the Tenant and the Landlord.

53.2 Save as expressly provided otherwise in this Lease, the Landlord shall not be, or be deemed to be, an agent of the Tenant and the Landlord shall not hold itself out as having authority or power to bind the Tenant in any way.

54 ENTIRE AGREEMENT AND WARRANTIES

54.1 Except where expressly provided otherwise in this Lease, this Lease constitutes the entire agreement between the parties in connection with its subject matter and

supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Lease.

54.2 Each of the parties acknowledge that:

54.2.1 it does not enter into this Lease on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Lease or not) save for [the certificate of title issued by [] dated on or about the date of this Lease in respect of the Site addressed to the Landlord and its Funders and]⁸³ those statements or representations (if any) expressly repeated or referred to in this Lease and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Lease; and

54.2.2 this Clause 54.2.2 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Lease which was induced by fraud, for which the remedies available shall be all those available under the law governing this Lease.

54.3 The Landlord warrants to the Tenant on the terms set out in Schedule 17 the Corporate Warranties. Each of the Corporate Warranties shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provision of this Lease.

54.4 The Landlord hereby acknowledges and agrees that compliance by it with the Corporate Warranties (or any of them) shall not itself constitute performance of any of its other obligations under this Lease.

54.5 Subject to Clause 54.2.1, the Landlord shall not in any way be relieved from any obligation under this Lease nor shall it be entitled to claim against the Tenant on grounds that any information, whether obtained from the Tenant or otherwise (including information made available by the Tenant) is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

54.6 Not used.

54.7 Neither the Tenant nor any of its agents, servants or advisers shall be liable to the Landlord (whether in contract, tort or otherwise and whether or not arising out of any negligence on the part of the Tenant or any of its agents, servants or advisers) in respect of any inadequacy of any kind whatsoever in the Works and Facilities Information.

54.8 The Tenant gives no warranty or undertaking that the Works and Facilities Information represents all of the information in its possession or power relevant or material to this Lease. Neither the Tenant nor any of its agents, servants or advisers shall be liable to the Landlord in respect of any failure to disclose or make available to the Landlord (whether before or after the execution of any of the Project Documents) any information, documents or data or to keep the Information up to date or to inform the Landlord (whether before or after the execution of this Lease) of any inaccuracy, error, omission, unfitness for purpose, defects or inadequacy in the Information.

83

The wording may not be appropriate if there is a future scheme where the land has been acquired by Fundco in advance of the grant of the LPA.

54.9 Subject to the provisions of paragraphs 1.9 to 1.15 of Schedule 16 (Transfer of Employment and Pensions), the Landlord acknowledges and confirms that:

54.9.1 it has conducted its own analysis and review of the Works and Facilities Information and, before execution of this Lease, has satisfied or will satisfy itself as to the accuracy, completeness and fitness for purpose of all such Information upon which it places reliance; and

54.9.2 it shall not be entitled to make any claim against the Tenant or any of their agents, servants or advisers, whether in damages or for extensions of time or additional payments under this Lease, on the grounds of any misunderstanding or misapprehension in respect of the Works and Facilities Information or on the grounds that incorrect or insufficient information relating thereto or to the Site was given to it by any person whether or not in the employ of the Tenant, nor shall it be relieved from any risks or obligations imposed on or undertaken by it under this Lease on any such ground.

55 SEVERABILITY

If any provision of this Lease shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Lease.

56 COUNTERPARTS

This Lease may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full original of this Lease for all purposes.

57 COSTS AND EXPENSES

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Lease.

58 NO PRIVITY

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Lease is not intended to, and does not, give to any person who is not a party to this Lease any rights to enforce any provisions contained in this Lease.

59 MITIGATION AND DOUBLE RECOVERY

59.1 Each of the Tenant and the Landlord shall at all times take all reasonable steps to minimise and mitigate any loss and/or costs and/or expenses for which the relevant party is entitled to bring a claim against the other party or exercise any rights pursuant to this Lease.

59.2 Neither Party shall be entitled to recover under this Lease from the other any amount payable pursuant to, or as a result of, any delay, failure or other default in the performance of its respective obligations under this Lease or exercise any other right or remedy (including without limitation, the right to claim Deductions) to the extent that it has already received or recovered the same amount or exercised any right or

remedy (including without limitation, by way of Deductions) in respect of the same delay, failure or default, as the case may be, under this Lease.

60 NO IMPLIED RIGHTS

Nothing in this Lease shall by implication of law or otherwise operate to confer on the Tenant any easement right or privilege whatsoever over or against the Facilities or any adjoining property of the Landlord which might in any way restrict or prejudicially affect the future rebuilding alteration or development of such adjoining or other property nor shall the Tenant be entitled to compensation for any damage or disturbance caused by or suffered through any such rebuilding alteration or development.

61 DUE DATES

If the Landlord (at the request of the Tenant) grants any concession as a result of which the Tenant is entitled to defer the payment of any monies due then for all purposes in connection with this Lease (and in particular in relation to section 17 of the Landlord and Tenant (Covenants) Act 1995) such monies shall be deemed to fall due on the subsequent date agreed between the Landlord and the Tenant pursuant to the concession in lieu of the earlier date.

62 FURTHER ASSURANCE

62.1 Each party shall do all things and execute all further documents necessary to give full effect to this Lease if the as-built drawings do not accord with the drawings referred to in the definition of Premises, including entering into a new lease where required. If a new lease is entered into, liabilities and rights under the existing Lease shall be saved and carried forward to the new lease⁸⁴.

Prohibition on Corruption

62.2 The term "Prohibited Act" means:

62.2.1 offering, giving or agreeing to give to any Participant the Tenant or any Tenant Party or any other public body or to any person employed by or on behalf of any Participant the Tenant or any other public body any gift or consideration of any kind as an inducement or reward:

- (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Lease or any other agreement with the Tenant any Tenant Party any Participant or any other public body; or
- (b) for showing or not showing favour or disfavour to any person in relation to this or any other agreement with any Participant the Tenant any Tenant Party or any other public body.

62.2.2 entering into this Lease or any other agreement with any Participant the Tenant any Tenant Party or any other public body in connection with which commission has been paid or has been agreed to be paid by Liftco or the Landlord or on either of their behalves, or to either of their knowledge,

⁸⁴

This may be required if the Premises may be varied. If the area demised by the Lease is altered, a deemed surrender and regrant of the land interest would take place. It is preferable to formalise this by entering into a new Lease on the same terms but with reference to the altered Premises.

unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to that Participant and the Tenant.

- 62.2.3 committing any offence:
- (a) under the Prevention of Corruption Acts 1889 to 1916;
 - (b) under any Law creating offences in respect of fraudulent acts; or
 - (c) at common law, in respect of fraudulent acts in relation to this Lease or any other agreement with any Participant the Tenant any Tenant Party or any other public body; or
 - (d) under the Bribery Act 2010; or
- 62.2.4 defrauding or attempting to defraud or conspiring to defraud any Participant the Tenant or any other public body.

Warranty

- 62.3 The Landlord warrants that in entering into this Lease it has not committed any Prohibited Act.
- 62.3A The Landlord warrants and undertakes to the Tenant that it has and will throughout the duration of this Lease have in place adequate procedures (as referred to in section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Landlord from bribing any person with the intention of obtaining or retaining business for the Landlord or with the intention of obtaining or retaining an advantage in the conduct of business for the Landlord.
- 62.4 If the Landlord or any Landlord Party (or anyone employed by or acting on behalf of them) commits any Prohibited Act, then the Landlord shall act in accordance with Clauses 62.4.1 to 62.4.5 (inclusive) below:
- 62.4.1 if the Prohibited Act is committed by an employee of the Landlord, then the Landlord will, within twenty (20) Business Days of receipt of a notice of that Prohibited Act from the Tenant terminate the employee's employment and (if necessary) procure the performance of the relevant part of the Lease Operations by another person PROVIDED THAT the Landlord shall not be entitled to avoid termination of this Lease in such circumstances if it shall itself in connection with the Prohibited Act committed by the employee have committed the Prohibited Act specified in section 7 of the Bribery Act 2010;
 - 62.4.2 if the Prohibited Act is committed by a Contractor and/or Service Provider (including without limitation any employee that is not acting independently of that Contractor and/or Service Provider) then the Landlord will, within twenty (20) Business Days of receipt of a notice of that Prohibited Act from the Tenant terminate the relevant Supply Chain Agreement and procure the performance of the relevant part of the Services by another person, where relevant, in accordance with Clause 39;

- 62.4.3 if the Prohibited Act is committed by an employee of a Contractor and/or Service Provider acting independently of that Contractor and/or Service Provider then the Landlord will, within twenty (20) Business Days of receipt of a notice of that Prohibited Act from the Tenant procure the removal of the employee from any and all Lease Operations and (if necessary) procure the performance of the relevant part of the Lease Operation by another person PROVIDED THAT the Landlord shall not be entitled to avoid termination of this Lease in such circumstances if the Contractor and/or Service Provider shall itself in connection with the Prohibited Act committed by its employee have committed the Prohibited Act specified in section 7 of the Bribery Act 2010;
- 62.4.4 if the Prohibited Act is committed by any other person not specified in Clauses 62.4.1, 62.4.2 or 62.4.3 above then the Landlord will within twenty (20) Business Days of receipt of a notice of that Prohibited Act from the Tenant procure the removal of such person from any and all Lease Operations and terminate the appointment of their employer (where such person is not employed by the Landlord and/or the Contractor and/or Service Provider) and (if necessary) procure the performance of the relevant part of the Services by another person PROVIDED THAT the Landlord shall not be entitled to avoid termination of this Lease in such circumstances if it shall itself in connection with the Prohibited Act committed by the employee have committed the Prohibited Act specified in section 7 of the Bribery Act 2010;
- 62.4.5 any notice of a Prohibited Act under this Clause 62.4.5 shall specify:
- (a) the nature of the Prohibited Act; and
 - (b) the identity of the party who the Tenant believes has committed the Prohibited Act.

Clause 62.5 to be included only where the Tenant is a public sector body

- 62.5 Without prejudice to its other rights or remedies under this Clause 62 the Tenant shall be entitled to recover from the Landlord:
- 62.5.1 the amount or value of any such gift, consideration or commission; and
 - 62.5.2 any other loss sustained in consequence of breach of this Clause 62.

Permitted Payments

- 62.6 Nothing contained in this Clause 62 shall prevent the Landlord from paying any proper commission or bonus to its employees within the agreed terms of their employment.

Notification

- 62.7 The Landlord shall notify the Participants of the occurrence (and details) of any Prohibited Act promptly on the Landlord becoming aware of its occurrence.

63 GOVERNING LAW AND JURISDICTION

- 63.1 This Lease shall be considered as a contract made in England and Wales, and this Lease and any dispute or claim arising out of or in connection with it or its subject matter or formation (including any non-contractual disputes or claims) shall be subject to the laws of England and Wales.
- 63.2 Subject to the provisions of Schedule 21 (Dispute Resolution Procedure), both parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any dispute or claim arising out of or in connection with this Lease or its subject matter or formation (including non-contractual disputes or claims), and each of them irrevocably submits to the jurisdiction of those courts.

64 STAMP DUTY CERTIFICATE

Not used.

65 PERSONAL DATA

- 65.1 The Landlord undertakes to the Tenant that it shall comply with the obligations of a "data controller" ~~under the provisions of the Seventh Data Protection Principle as set out in Schedule 1 of the Data Protection Act 1998~~ as required by the Data Protection Legislation including the provisions which specifically relate to the security of personal data. In addition the Landlord:
- 65.1.1 warrants that it has, or will have at all material times, (and shall use best endeavours to procure that all "data processors", Supply Chain Members and their agents and sub-contractors of any tier have or will have at all material times) the appropriate technical and organisational measures in place against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data held or processed by it and that it has taken, or will take at all material times, all reasonable steps in line with its obligations under the Data Protection Legislation to ensure the reliability of any of its staff which will have access to Personal Data processed as part of the Lease Operations;
- 65.1.2 undertakes that it will only act on the instructions of the Tenant in relation to the processing of any Personal Data made available by or on behalf of the Tenant as part of the Lease Operations subject to the Landlord's obligations under the Data Protection Legislation and any other applicable Law;
- 65.1.3 undertakes that it will only obtain, hold, process, use, store and disclose Personal Data as is necessary to perform its obligations under this Lease and that such Personal Data will be held, processed, used, stored and disclosed only in accordance with the Data Protection ~~Act 1998~~ Legislation and any other applicable Law; and
- 65.1.4 undertakes that it will allow the Tenant access to any relevant premises on reasonable notice to inspect its procedures described at 65.1.1 above.

66 CONFIDENTIALITY

Confidential Information

- 66.1 The parties agree that the provisions of this Lease and each Ancillary Document shall, subject to Clause 66.2 below, not be treated as Confidential Information and may be disclosed without restriction.
- 66.2 Clause 66.1 above shall not apply to provisions of this Lease or an Ancillary Document designated as Commercially Sensitive Information and listed in Part 1 of Schedule 23 (Commercially Sensitive Information) which shall, subject to Clause 66.4, be kept confidential for the periods specified in that Part.
- 66.3 The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Lease and Ancillary Documents or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

Permitted disclosure

- 66.4 Clauses 66.1 and 66.3 shall not apply to:
- 66.4.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Lease for the performance of those obligations;
 - 66.4.2 any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 66;
 - 66.4.3 any disclosure to enable a determination to be made under Schedule 21 (Dispute Resolution Procedure) or in connection with a dispute between the Landlord and any of its subcontractors;
 - 66.4.4 any disclosure which is required pursuant to any Law or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
 - 66.4.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - 66.4.6 any provision of information to the parties' own professional advisers or insurance advisers or insurers or to the Funders or the Funders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Landlord to enable it to carry out its obligations under this Lease, or may wish to acquire shares in the Landlord in accordance with the provisions of this Lease to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
 - 66.4.7 [any disclosure by the Tenant of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a

due diligence exercise, to any person in connection with the operation of Schedule 22 (Soft Services Market Testing Procedure);]⁸⁵

- 66.4.8 any property registration required;
- 66.4.9 any disclosure of information by the Tenant to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Tenant for any purpose related to or ancillary to this Lease;⁸⁶
- 66.4.10 any disclosure for the purpose of:
 - (a) the examination and certification of the Tenant's or the Landlord's accounts;
 - (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Tenant has used its resources;
 - (c) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance; or
 - (d) (without prejudice to the generality of Clause 66.4.4 above) compliance with the FOIA and/or the Environmental Information Regulations;
- 66.4.11 disclosure pursuant to Clause 66.12 (Department of Health [and Social Care](#) Disclosure);

provided that, to avoid doubt, neither Clause 66.4.10(d) nor Clause 66.4.4 above shall permit disclosure of Confidential Information otherwise prohibited by Clause 66.3 (Confidential Information) where that information is exempt from disclosure under section 41 of the FOIA.

- 66.5 Where disclosure is permitted under Clause 66.4 (Permitted Disclosure), other than under Clauses 66.4.2, 66.4.4, 66.4.5, 66.4.8 and 66.10, the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Lease.
- 66.6 the Landlord shall not make use of this Lease or any information issued or provided by or on behalf of the Tenant in connection with this Lease otherwise than for the purpose of this Lease, except with the written consent of the Tenant.
- 66.7 Where the Landlord, in carrying out its obligations under this Lease, is provided with information relating to patients or service users of the Facilities or any Tenant Party, the Landlord shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Landlord has sought the prior written consent of that person and has obtained the prior written consent of the Tenant.
- 66.8 On or before the expiry of the Term, the Landlord shall ensure that all documents or computer records in its possession, custody or control, which contain information

⁸⁵ Soft Services market testing will only apply where soft FM services are procured.

⁸⁶ Amend for GPs

relating to any patient or service user of the Facilities or Tenant Party including any documents in the possession, custody or control of a Supply Chain Member, are delivered up to the Tenant.

- 66.9 The parties acknowledge that the National Audit Office has the right to publish details of this Lease (including Commercially Sensitive Information) in its relevant reports to Parliament.
- 66.10 The provisions of this Clause 66 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

Announcements

- 66.11 Unless otherwise required by any Law or any regulatory or governmental authority (but only to that extent), neither party shall make or permit or procure to be made any public announcement or disclosure (whether for publication in the press, the radio, television screen or any other medium) of any Confidential Information or in the case of the Landlord of its (or any the Landlord Party's) interest in the Project or, in any such case, any matters relating thereto, without the prior written consent of the other party (which shall not be unreasonably withheld or delayed).

Department of Health and Social Care and HM Treasury Disclosure⁸⁷

- 66.12 Subject to Clause 66.13, the Tenant shall be free to disclose the terms of this Lease, the Independent Tester's Appointment, the Funders' Direct Agreement and the Collateral Agreements to the Department of Health and Social Care and or HM Treasury and the parties agree that the Tenant shall be free to use and disclose such information on such terms and in such manner as the Department of Health and Social Care and or HM Treasury see fit.
- 66.13 The Tenant shall notify the Landlord in writing not less than ten (10) Business Days prior to any intended disclosure of the terms of any of the documents referred to in Clause 66.12 to the Department of Health and Social Care and/or HM Treasury. The Landlord shall notify the Tenant in writing of any terms of such documents (the "Sensitive Information") that the Landlord objects to being disclosed within five (5) Business Days of any such notification by the Tenant (failing which the Landlord shall be deemed to have notified the Tenant that it has no objection to any such disclosure). Without prejudice to the Tenant's right to disclose the Sensitive Information pursuant to Clause 66.7, the Tenant shall consult with the Landlord following receipt of a notification from the Landlord that it objects to disclosure of such Sensitive Information with a view to agreeing whether or not part or all of the Sensitive Information can be removed from the information to be disclosed.
- 66.14 The Landlord shall provide to both the Tenant and HM Treasury (addressed to PF2@hmtreasury.gsi.gov.uk or such other address as HM Treasury may notify to the Landlord from time to time) the following information: a calculation of the equity internal rate of return (for both an actual cumulative return to the date of preparation and for the expected forecast return up to the end of the Term) for the Project and for each of the Shareholders to be prepared using the Senior Credit Agreement Financial Model and calculated on a cash basis to include all Distributions and any other payments made to Shareholders in respect of fees. This is to be provided on each 31

⁸⁷ References to "Department of Health and Social Care" should be amended to the relevant Government department where the Tenant is a Local Authority.

March and 30 September throughout the Term (or such other six (6) month reporting cycle as the Parties may agree).

- 66.15 The parties agree that the internal rate of return information provided pursuant to Clause 66.14 shall not be treated as Confidential Information and the Landlord acknowledges that the government intends to publish such information on a website.

67 FREEDOM OF INFORMATION⁸⁸

- 67.1 The Landlord acknowledges that the Tenant is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Tenant's compliance with its Information (for the purposes of this Clause 67 "Information" has the meaning given under Section 84 of the Freedom of Information Act 2000) disclosure requirements pursuant to the same in the manner provided for in Clauses 67.2 to 67.8.

- 67.2 Where the Tenant receives a Request for Information in relation to Information that the Landlord is holding on its behalf and which the Tenant does not hold itself the Tenant shall refer to the Landlord such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and the Landlord shall:

67.2.1 provide the Tenant with a copy of all such Information in the form that the Tenant requires as soon as practicable and in any event within ten (10) Business Days (or such other period as the Tenant acting reasonably may specify) of the Tenant's request; and

67.2.2 provide all necessary assistance as reasonably requested by the Tenant in connection with any such Information, to enable the Tenant to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

- 67.3 Following notification under Clause 67.2, and up until such time as the Landlord has provided the Tenant with all the Information specified in Clause 67.2.1 the Landlord may make representations to the Tenant as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Tenant shall be responsible for determining at its absolute discretion:

67.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;

67.3.2 whether Information is to be disclosed in response to a Request for Information, and

in no event shall the Landlord respond directly, or allow its Supply Chain Members to respond directly, to a Request for Information unless expressly authorised to do so by the Tenant.

- 67.4 The Landlord shall ensure that all Information held on behalf of the Tenant is retained for disclosure for at least the number of years (from the date it is acquired) [specified

⁸⁸

These provisions only apply to the extent the Tenant is a public body subject to the FOIA.

in the Tenant Policy relating to records retention] and shall permit the Tenant to inspect such Information as requested from time to time.

- 67.5 The Landlord shall transfer to the Tenant any Request for Information received by the Landlord as soon as practicable and in any event within two (2) Business Days of receiving it.
- 67.6 The Landlord acknowledges that any lists provided by it listing or outlining Confidential Information are of indicative value only and that the Tenant may nevertheless be obliged to disclose Confidential Information in accordance with Clause 67.3.
- 67.7 In the event of a request from the Tenant pursuant to Clause 67.2, the Landlord shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Tenant of the Landlord's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Tenant under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Tenant's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") the Tenant shall inform the Landlord in writing whether or not it still requires the Landlord to comply with the request and where it does require the Landlord to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Tenant is entitled to under Section 10 of the FOIA. In such case, the Tenant shall notify the Landlord of such additional days as soon as practicable after becoming aware of them and shall reimburse the Landlord for such costs as the Landlord incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
- 67.8 The Landlord acknowledges that (notwithstanding the provisions of Clause 66 (Confidentiality)) the Tenant may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Landlord or the Project:

67.8.1 in certain circumstances without consulting with the Landlord; or

67.8.2 following consultation with the Landlord and having taken its views into account,

provided always that where Clause 67.8.1 above applies the Tenant shall, in accordance with the recommendations of the Code, draw this to the attention of the Landlord prior to any disclosure.

68 [DISASTER PLAN⁸⁹

- 68.1 The parties shall comply with the provisions of the disaster plan, a copy of which is annexed to this Lease as Attachment [].⁹⁰

⁸⁹

The use of a disaster plan is not likely to be necessary for premises with a capital value below £10m (unless operating theatres or similar clinical facilities are included) such as GP surgeries. However it might be applicable to other schemes where, for example a flu outbreak, may require additional or different cleaning services.

68.2 The parties shall liaise with each other in order periodically to review and update the disaster plan.]

IN WITNESS WHEREOF the parties have executed this Lease as a Deed the day and year first above written.

Execution Clause of Landlord

Execution Clause of Tenant

⁹⁰

This is not the same as a Trust's Major Incident Plan. It is intended to deal with how services will continue to be provided following the occurrence of some form of emergency or disaster at the Site, as well as in the aftermath of events outside the Site where use of the Facilities is required.

SCHEDULE 1

Definitions and Interpretations

1 DEFINITIONS

1.1 In this Lease, unless the context otherwise requires, the following expressions shall have the following meanings:

"Acceptable Tenant"

has the meaning given in Clause 42.1.3

"Actual Completion Date"

means the date on which the Works have been completed in accordance with this Lease, as such date shall be stated in the certificate referred to in Clause 13 or, in the event of dispute, as such date may be determined in accordance with Schedule 21 (Dispute Resolution Procedure)

"Additional Alteration"

means either a Minor Structural Alteration or a Major Structural Alteration enquiry issued after the Actual Completion Date

"Agenda for Change"

means the NHS handbook entitled "Agenda for Change: NHS Terms and Conditions Handbook" as varied, supplemented or replaced from time to time

"Alteration"

means either a Minor Structural Alteration or Major Structural Alteration issued prior to the Actual Completion Date

"Ancillary Documents"

means the Construction Contract, the Service Contract and any other Supply Chain Agreements and the Performance Guarantees [*Tenant to consider if there are any other project significant documents*], as the same may be amended or replaced from time to time;

"APMS Provider"

[*means an alternative provider of medical services operating under an APMS contract*]

"Approved Reviewable Design Data"

means an item of Reviewable Design Data which has been returned or has been deemed to have been returned endorsed either "no comment" or "comments" in accordance with Clause 9 and Schedule 5 (Reviewable Design Data) (provided that in the case of any item of Reviewable Design Data which has been returned or has been deemed to have been returned endorsed "comments", the Landlord has taken account of the Tenant's Representative's comments), as such item of Reviewable Design Data may be varied or amended from time to time in accordance with Schedule 12 (Variation Procedure).

"Area Weighting"

means the weightings attached to the Functional Areas specified in Appendix E to Schedule 10 (Payment Mechanism)

"Assigned Staff"

has the meaning given in paragraph 1.2 of Schedule 18 (Handover On Expiry Or Termination)

"Associated Companies"

means in respect of a relevant company, a company which is a Subsidiary, a Holding Company, or a company that is Subsidiary of the ultimate Holding Company of that relevant company and in the case of Liftco shall include each of the shareholder in Liftco

"Availability Conditions"

has the meaning given in Schedule 10 (Payment Mechanism)

"Best Value Change in Law"

means a Change in Law which comprises:

- (a) an order made by the Secretary of State in the exercise of powers conferred upon him by Section 4 of the Local Government Act 1999 the substance of which amounts to a change in a performance standard or a change in the definition of or details of a performance indicator (as opposed to a change in the description of a performance indicator);
- (b) a direction made by the Audit Commission in the exercise of powers conferred upon it by Sections 44 and 46 of the Audit Commission Act 1989 which in substance is similar to an order referred to in (a) above; or
- (c) guidance issued by the Secretary of State or Audit Commission or other competent authority in respect of (a) or (b) above which in each case is not foreseeable at the date of this Lease

"Business Day"

means a day other than a Saturday, Sunday or a bank holiday in England

"Capital Expenditure"

means capital expenditure (as such term is interpreted in accordance with generally accepted accounting principles in the United Kingdom from time to time)

["Capital Works Payment"

means the sum of [] in pounds sterling (£[]) plus VAT payable by the Tenant to the Landlord for its completion of the Works in accordance with the terms of this Lease]

"Certificate of Practical Completion"

means the certificate to be issued by the Independent Tester in accordance with Clause 13;

"CDM Regulations"

means the Construction (Design and Management) Regulations 2015 (and "CDM Regulation" shall be construed accordingly);

"Change in Law"

means the coming into effect or repeal (without re-enactment or consolidation) in England & Wales of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England & Wales in each case after the date of this Lease

"CIBSE"

means the Chartered Institution of Building Services Engineers

"Client"

has for the purposes of Clause 8.4, 8A and Schedule 12 paragraph 8 the same meaning as ascribed to the term "client" in the CDM Regulations

["Clinical Functionality"]

means:

- (a) the following matters as shown on the [1:500 scale development control plan]:
 - (i) the points of access to and within the [development site] and the [buildings];
 - (ii) the relationship between one or more [buildings] that comprise the [development]; and
 - (iii) the adjacencies between different departments [referenced to a drawing number or numbers];
- (b) the following matters as shown on the [1:200/1:100 scale plans] – referenced to a list of drawing numbers in the Landlord's Proposals for example):
 - (i) the points of access to and within the [development site] and the [buildings];
 - (ii) the relationship between one or more [buildings];⁹¹
 - (iii) the adjacencies between different departments; and
 - (iv) the adjacencies between rooms within departments;
- (c) the quantity, description and areas (in square metres) of those rooms and spaces shown on the [Schedules of Accommodation];
- (d) the location and relationship of equipment, furniture, fittings and user terminals as shown on the [1:50 loaded room plans] in respect of:
 - (i) all bed and trolley positions;
 - (ii) internal room elevations;
 - (iii) actual ceiling layouts; and
 - (iv) [other project specific requirements might need to be considered, for example, with regard to theatres and imaging departments]; and
- (e) The location of and the inter-relationships between rooms within a department as shown on [] scale drawings;

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

⁹¹

The need to check the relationship between buildings will be project specific.

["Clinical Use"

means the use of a room or space to the extent that it is used by the Tenant its subtenants or other occupiers or the employees, tenants, agents and/or contractors of any of them (but not, to avoid doubt, the Landlord) for carrying out of the Clinical Services or such other services as may be carried out by any subtenants or other occupiers from time to time]

"Clinical Services"

means management, responsibility, administration and carrying out of the clinical and medical [and social care] [and any other services provided by the Tenant or Tenant's occupiers] services provided at the Facilities [and other relevant areas] by [the Tenant][Tenant's occupiers] from time to time and which are not services to be provided by the Landlord to the Tenant under this Lease

"Collateral Agreements"

means the collateral agreements between the Tenant and the Contractor and the Service Provider and the Independent Tester

"Commercially Sensitive Information"

means the sub set of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 Commercially Sensitive Material of Schedule 23 (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 23;

"Commissioning Completion Certificate"

means the certificate to be provided by the Independent Tester on completion of the commissioning in accordance with the Completion Acceptance Schedule and the Final Commissioning Programme

"Commissioning End Date"

means the date by which the parties' commissioning activities are to be completed in accordance with the Final Commissioning Programme

"Common Parts"

the Facilities excluding:

- (a) those parts comprised in the Premises;
- (b) those parts let or intended to be let by the Landlord to a tenant or occupied exclusively by the Landlord; and
- (c) the Conducting Media which are within and exclusively serve
 - (i) the Premises; or
 - (ii) those parts of the Facilities let or intended to be let by the Landlord to a tenant; or
 - (iii) those parts of the Facilities occupied exclusively by the Landlord

"Compensation Event"

means an event set out in Clause 14

"Completion Acceptance Schedule"

means the matters that must be satisfied before the Independent Tester can certify the Actual Completion Date as set out in Schedule 6

"Completion Date"

means [insert date on which completion is scheduled to occur] as extended in accordance with this Lease

"Completion Process"

means the process and procedures for carrying out the notifications, testing, inspections and completion certification as defined in Part [] of Schedule 6 (Completion Acceptance Schedule) the dates for which shall be incorporated in the Final Commissioning Programme

"Conducting Media"

means all gas and water pipes water tanks cisterns drains sewers watercourses pumps electric and communication wires and cables ducts gutters waste pipes conduits chimney flues meters and other similar media now or at any time providing services to or under any part of the Facilities whether for drainage gas water electricity telephone television or any other service provided to in or on the Facilities

"Confidential Information"

means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all Personal Data and sensitive personal data [special categories of personal data] within the meaning of the Data Protection Act 1988 Legislation and
- (b) Commercially Sensitive Information

"Consent and Approval Procedure"

means the procedure set out in Schedule 13

"Construction Contract"

means the design and build contract dated the same date as this Lease between the Landlord and the Contractor

"Construction Quality Plan"

means the document attached at [Schedule 4 (Landlord's Proposals)]

"Consultants"

means the professional consultants appointed by the Contractor and including but not limited to architect, civil and structural engineer, mechanical and electrical engineer, quantity surveyor, planning supervisor and project manager or such other professional consultants as shall be appointed by the Contractor in their place

"Contract Month"

means a calendar month, except for the first contract month which is the period from the Payment Commencement Date to the last day of the calendar month in which the Payment Commencement Date falls, and the last contract month which is the period

from the first day of the calendar month in which expiry or termination occurs to the date of expiry or termination of this Lease

"Contract Year"

means in respect of the period from the date of this Lease to the following 31 March and subsequently each period of 12 calendar months commencing on 1 April, until the final Contract Year which is the period from the 1 April prior to the end of the Term

"Contractor"

means [please insert the name of the Contractor] engaged by the Landlord to carry out the Works and any substitute design and/or building contractor or other contractor engaged by or on behalf of the Landlord as may be permitted by the terms of this Lease and/or the Funder's Direct Agreement⁹²

"Convictions"

means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 (as amended by the Protection of Freedoms Act 2012) by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) and the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2001 (SI 2001/1192) or any replacement or amendment to those Orders)

"Corporate Warranties"

means the warranties to be given by the Landlord set out in Schedule 17

"Data Protection Legislation"

means for the periods in which they are in force in the United Kingdom, the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the GDPR and all applicable Laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time

"DBS"

means the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012

"Deduction"

shall have the meaning given in Schedule 10 (Payment Mechanism)

"Default Interest Rate"

means 8% above ~~LIBOR~~ the Bank of England's base rate from time to time

"Defects"

means any defect or fault in the Works and/or of the Facilities (not being a Snagging Matter) which occurs due to a failure by the Landlord to meet the Tenant's Requirements and/or the Landlord's Proposals or otherwise to comply with its obligations under this Lease

⁹²

This definition will need to be amended if more than one person is appointed to carry out the Works.

"Delay Event"

has the meaning given in Clause 14 (Delay Events)

"Delivery Date"

means the date being five (5) Business Days after the start of a Contract Month

"Design Data"

means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing and/or operation of the Premises

"Design Quality Plan"

means the document attached at [\[Schedule 4 \(Landlord's Proposals\)\]](#)

"Design Sub-Contractor"

means any sub-contractor or supplier of the Contractor that has responsibility for any element of the design of the Works

"Direction Employer"

means a contractor who obtains a Direction Letter

"Direction Letter"⁹³

means a letter issued by the NHS Business Services Authority (on behalf of the Secretary of State pursuant to Section 7(2) of the Superannuation (Miscellaneous Provisions) Act 1967) to the Landlord or a Supply Chain Member (as appropriate) is to be granted access to the NHS Pension Scheme in connection with this Lease or the relevant Supply Chain Agreement (as appropriate)

"Directive"

means the EC Council Directive 2001/23/EC

"Direct Losses"

means, subject to the provisions of Clause 45.6, all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses

"Disclosed Data"

means any Design Data and any other written information, data and documents (excluding, to avoid doubt, information contained in the First Employee List or any subsequently updated version of that list) made available or issued to the Landlord or any Landlord Party in connection with this Lease by or on behalf of the Tenant (or any Tenant Party) whether before or after the completion of this Lease

"Discriminatory Change in Law"

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

- (a) primary healthcare and/or social care premises whose design, construction, financing and operation are procured by a contract under the NHS Lift initiative (or any similar successor programme) in relation to other similar primary healthcare and/or social care centres; or

⁹³

This will need to be evidenced by the Landlord prior to financial close.

- (b) companies undertaking partnering arrangements and/or projects procured by contracts in either case under the NHS Lift initiative (or any similar successor programme) in relation to other companies undertaking similar projects; or
- (c) the Facilities in relation to other primary healthcare and/or social care premises; or
- (d) the Landlord in relation to other companies, save that:
 - (i) such action shall not be a Discriminatory Change in Law where it is in response to any act or omission on the part of the Landlord or Liftco which is illegal (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
 - (ii) such action shall not be deemed to be discriminatory solely on the basis that its effect on the Landlord or Liftco is greater than its effect on other companies; and
 - (iii) a change in taxes or the introduction of a tax affecting companies generally or a change in VAT shall be deemed not to be discriminatory in any circumstances

"Dispute Resolution Procedure"

means the procedure set out in Schedule 21

"Employee Liability Information"

the employee liability information to be provided pursuant to Regulation 11 of the Transfer Regulations

"Energy"

means electricity, gas, oil, coal and any other fossil-based fuel including renewable energy generated from natural resources including biomass, sunlight, wind, rain, tides and geothermal heat which are naturally replenished

"Enhanced DBS & Barred List Check"

an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) (as appropriate)

"Enhanced DBS & Barred List Check (child)"

a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's barred list

"Enhanced DBS & Barred List Check (adult)"

a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS adult's barred list

"Enhanced DBS & Barred List Check (child & adult)"

a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's and adult's barred list

"Enhanced DBS Check"

a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for

"Enhanced DBS Position"

any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted

"Environmental Information Regulations"

means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations

"Equal Pay Ruling"

has the meaning given in paragraph 1.23 of Schedule 16 (Transfer of Employment and Pensions)

"Estimated Increased Maintenance Costs"

means any additional reasonable costs which the Landlord will incur as a direct consequence of the acceleration or deferment of any Programmed Maintenance

"Excusing Cause"

has the meaning given in Clause 36A

["Existing Service Provider"

any organisation or body other than the Tenant (including for the avoidance of doubt, any sub-contractor or agent engaged by the Tenant) who is engaged in the provision of services which will become the Lease Operations for which the Landlord or a Supply Chain Member will become responsible in accordance with the provisions of this Lease]⁹⁴

"Facilities"

means the buildings on the Site and other facilities, together with all supporting infrastructure (including Plant and Group 1 Equipment) Conducting Media and amenities located on the Site as required to enable the Landlord to comply with its obligations under this Lease all as the same may be varied, amended or supplemented from time to time in accordance with this Lease

"Facility Deduction Percentage"

means the percentage of the aggregate of the Lease Payments under this Lease and other Lease Plus Agreements within the Facilities represented by the aggregate Deductions made under this Lease and other Lease Plus Agreements within the Facilities

"Fair Deal Guidance"

means the Department of Health document Fair Deal for Staff Pensions: staff transfers from Central Government – DH Guidance for NHS Pension Scheme, available at <http://www.nhsbsa.nhs.uk/2806.aspx>

⁹⁴

which

Throughout the Lease and Schedules, references are included to the Existing Service Provider. Prior to the inclusion of such provisions and requirements in the Lease and Schedule the following should be checked – (a) the existing services for there are Existing Service Providers and (b) the terms of the existing contracts in place with those Existing Service Providers to ensure that they contain the necessary provisions to allow the relevant drafting included in this Lease in square brackets to be included or where the existing contracts do not contain the necessary provisions, the wording in square brackets in this Lease will need to be deleted.

"Fair Deal for Staff Pensions"

means the HM Treasury document Fair Deal for Staff Pensions: staff transfer from Central Government October 2013, available at <https://www.gov.uk/government/publications/fair-deal-guidance>

"Fees Regulations"

means The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

"Final Commissioning Programme"

means the programme to be jointly developed and agreed by the Tenant and the Landlord in accordance with Clause 13

"Financial Close"

means the date of this Lease

"Five Year Maintenance Plan"

means the plan, to be prepared by or on behalf of the Landlord, for any works for the maintenance or repair of the Facilities, including the renewal or replacement of plant or equipment as necessary, during each five year period for the duration of the Operational Phase, which shall be delivered and updated in accordance with the provisions of Clause 35

"FOIA"

means the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act

"Force Majeure"

means any of the following events or circumstances:

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear contamination unless in any case the Landlord and/or any Landlord Party is the source or cause of the contamination; or
- (c) chemical or biological contamination of the Works and/or the Premises and/or the Site from any of the events referred to in paragraph (a) above; or
- (d) pressure waves caused by devices travelling at supersonic speeds;

which directly causes either party to be unable to comply with all or a material part of its obligations under this Lease

"Functional Area"

means one of the areas within the Facilities set out in Appendix E to Schedule 10

"Funders"

means all or any of the persons who provide financing or funding in respect of the Lease Operations under the Funding Agreements including [] and, where the context so permits, prospective financiers or funders

"Funder's Direct Agreement"

means the agreement entered into simultaneously with the date of this Lease between the Landlord, the Senior Funders and the Tenant in the form set out in Schedule 19 (Funder's Direct Agreement) of this Lease

"Funding Agreements"

means all or any of the agreements or instruments to be entered into by the Landlord relating to the financing of the Lease Operations (including the Initial Funding Agreements and any agreements or instruments to be entered into by the Landlord relating to the rescheduling of their indebtedness or the refinancing of the Lease Operations)

"Funding Shortfall"

has the meaning given in paragraph 2 of Part 2 of Schedule 12

"GDPR"

means (a) the General Data Protection Regulations (Regulation (EU) 2016/679) which comes into force on 25 May 2018; and (b) any equivalent legislation amending or replacing the General Data Protection Regulations (Regulation (EU) 2016/679)

"General Change in Law"

means a Change in Law which is not a Discriminatory Change in Law, a Specific Change in Law or a Qualifying Change in Law

"General Procedure"

has the meaning given in paragraph 1.1 of Part 3 of Schedule 12

"Gigajoule"

means the international unit of energy being 1 Joule multiplied by a factor of 10 to the power of 9;

"Group 1 Equipment"

means []

"Good Industry Practice"

means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances

"Government"

means the government of the United Kingdom

"GP"

means a person who is registered as a fully registered medical practitioner with the General Medical Council under the provisions of the Medical Act 1983 or any subsequent or similar legislation

"GP Rent Reimbursement Arrangements"

means either:

- (a) the National Health Service (General Medical Services – Premises Costs) (England) Directions 2013; or

- (b) a PMS pilot scheme pursuant to the National Health Service (Primary Care) Act 1997 as amended by the National Health Service Act 2006; or
- (c) a PMS scheme pursuant to the National Health Service Maintenance Staff Pay and Conditions of Service

"Health and Safety Regime"

means the Food Safety Act 1990 (and associated regulations) the Health and Safety Act 1974 (and associated regulations), the Fire Precaution Act 1971, the Environmental Protection Act 1996, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time

"Heating Degree Days"

means, in respect of each calendar month, the figure published by [] showing the extent to which the average outdoor temperature in [*insert nearest geographical location where measurement takes place*] was less than a mean temperature of +18.5 degrees Celsius

"Holdco"

means [] Limited, registered in England (registered number []), whose registered office is at [], being a Holding Company of the Landlord

"Holding Company"

has the same meaning given to it in Section 1159 of the Companies Act 2006

"Independent Tester"

means [] of [] or such substitute Independent Tester as may be permitted under this Lease

"Independent Tester Contract"

means the contract dated the same date as this Lease in the form set out in Schedule 11 (Independent Tester Contract) between the Landlord, the Tenant, the Independent Tester, the Contractor and the Senior Funder

"Indirect Losses"

has the meaning given in Clause 45.5

"Information"

has the meaning given under Section 84 of the Freedom of Information Act 2000

"Initial Funding Agreements"

means [*describe the Funding Agreements put into place upon signature of this Lease*]

"Initial Period"

means the period of two years beginning on the first day of the first full calendar month immediately after expiry of the 3 months following the Actual Completion Date⁹⁵

"Insurances"

⁹⁵

The timing of the start of the Initial Period is defined in this way to capture a date from which the Facilities are likely to be fully operational. There is not much point collecting data unless the data is likely to be representative. The Tenant may amend the definition dependent upon the Tenant's commissioning programme.

means, as the context requires, all or any of the insurances required to be maintained by the Landlord pursuant to this Lease

"Insurance Term"

means any terms and/or conditions required to be included in a policy of insurance by Clause 37 and/or Schedule 8 (Insurance) but excluding any risk

"Intellectual Property"

means all registered or unregistered trade marks, service marks, patents, "registered designs, utility models, applications for any of the foregoing copyrights, unregistered designs, the sui generis rights of the extraction relating to databases, trade secrets and other confidentiality information or know-how

"Intellectual Property Rights"

means the Intellectual Property which (or the subject matter of which) is created, brought into existence, acquired, used or intended to be used by the Landlord, and Landlord Party or by other third parties (for the use by or on behalf of for the benefit of the Landlord or any Landlord Party) for the purposes of the design or construction of the Facilities, the operation, maintenance, improvement and/or testing of the Facilities or the conduct of any other Project Operation or otherwise for the purposes of this Lease

"IT"

means information technology systems, hardware and software

"Landlord Event of Default"

has the meaning given in Clause 43.1

"Landlord Party"

means any of the Landlord's agents and contractors (including without limitation the Contractor and the Service Providers) and its or their subcontractors of any tier and its or their directors officers employees and workers in relation to the Project and "Landlord Parties" shall be construed accordingly

"Landlord's Commissioning"

means the Landlord's commissioning activities to be carried out in accordance with Clause 13

"Landlord's Help Desk"

means the help desk facilities referred to in Schedule 9 (Service Specifications)

"Landlord's Post-Completion Commissioning"

means the Landlord's commissioning activities carried out in accordance with Clause 13.20 (Post-Commissioning Activities)

"Landlord's Pre-Completion Commissioning"

means the Landlord's commissioning activities to be carried out in accordance with Clause 13 (Pre-Completion Commissioning & Completion)

"Landlord's Proposals"

means the document described, or set out, in Schedule 4 as the same may be amended from time to time in accordance with this Lease

"Landlord's Title"

means the covenants and other encumbrances affecting the Landlord's title to the Site as more particularly set out in Part III of Schedule 2 to this Lease

"Law"

means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation;
- (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (c) any applicable guidance, direction or determination with which the Tenant and/or the Landlord is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Landlord by the Tenant; and
- (d) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales, in each case in force in England and Wales

"Lease Operations"

means the carrying out of the Works, the management and provision of the Services and the performance of all other obligations of the Landlord under this Lease [and the Management Agreement] from time to time

"Lease Payment"

has the meaning given in Schedule 10 (Payment Mechanism)

"Lease Plus Agreement"

means a lease agreement entered into pursuant to the Strategic Partnering Agreement between a Landlord and a Participant and/or any other Public Sector Body and/or any GP under which, inter alia, the Landlord leases accommodation to a Participant and provides related services to the Participant and/or any other Public Sector Body and/or any GP on substantially the same terms as set out in [Part 1 of] Schedule 16 of the Strategic Partnering Agreement, which such amendments as are required in connection with the circumstances of any such Lease Plus Agreement and as may be agreed between the parties thereto and the Strategic Partnering Board

"Lettable Unit"

means the area(s) edged [] on plan []

"Lifecycle Assets"

means each item of building fabric, plant and machinery, furniture, fittings and Category A Equipment (but excluding any Tenant's Assets) to be renewed or replaced during the Term as identified in the Lifecycle Schedule or as may be identified by the Parties applying Good Industry Practice

"Lifecycle Profile"

means the amounts profiled to be spent by the Landlord on the replacement or renewal of Lifecycle Assets as shown in the Financial Model [in row []] from the Actual Completion Date onwards

"Lifecycle Schedule"

means the detailed annual lifecycle schedule showing when the Lifecycle Assets will be renewed or replaced, and forming part of the Schedule of Programmed Maintenance

"Lifecycle Spend"

means the actual amount spent by the Landlord on the replacement or renewal of Lifecycle Assets

"Liftco"

means [] a company incorporated in England and Wales under registration number []

"Local Government Requirements"

means all local government circulars, guidance, official requests or requirements for the time being in force, but only to the extent that the same are published and publicly available or the existence and contents of them have been notified to Liftco by a Participant

"Long Stop Date"

means expiry of the period described in Clause 43.1.1

"Management Agreement"

means the agreement between the Landlord and Liftco pursuant to which the Landlord agrees to pay to Liftco various fees in connection with management services provided by Liftco

"Maintenance Works"

means any works for maintenance or repair of the Facilities that are necessary to ensure that the Facilities are maintained in accordance with Service Specifications and Method Statements and that the Facilities comply with the Tenant's Requirements and the Landlord's Proposals (including, without limitation, the renewal or replacement of any plant or equipment) throughout the Term

"Major Structural Alteration"

means a Structural Alteration which in the view of the Strategic Partnering Board should only be carried out following and in the light of a review by it of local health and social care needs

["Market Tested Soft Services"

means cleaning and security services]⁹⁶

"Medical Contamination"

means a disease carrying agent which cleaning and prevention of infection or contamination techniques in use in accordance with Good Industry Practice and this Lease cannot substantially prevent or cannot substantially remove with the result that:

- (a) it is unsafe to admit patients or staff to the relevant area or to use the area for the purpose for which it is intended; and
- (b) the area cannot be made safe for the admission of patients or staff

"Method Statements"

⁹⁶

Applicable to 4th (or subsequent) Wave LIFT schemes procuring these soft FM services only.

means the method of providing a Service as set out or identified in Part 2 of Schedule 9 as amended from time to time in accordance with Clause 47 and Clause 34

"Minimum Unavailability Deduction"

has the meaning given in Schedule 10 (Payment Mechanism)

"Minor Alterations"

means any work of a minor nature not materially affecting the structure of the Premises or Facilities carried out after the Payment Commencement Date

"Minor Structural Alteration"

means any Structural Alteration with a cost of £[20,000] (index linked) or less or where if the cost is greater than £[20,000] (index linked) the Strategic Partnering Board have determined that it is not a Major Structural Alteration

"NCC"

means the National Computing Centre Limited (or any body that may supersede or replace it from time to time)

"NHS Compensation Regulations"

means The NHS (Compensation for Premature Retirement) Regulations 2002 (SI 2002/1311) (as amended from time to time)

"NHS Employment Check Standards"

the documents which set out the pre-appointment checks that are required by Law, those that are mandated by any Regulatory Body policy, and those that are required for access to the NHS Care Record Service and include, without limitation, verification or identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks

"NHS Pension Scheme"

means the NHS Pension Scheme for England and Wales established pursuant to regulations made in exercise of powers under sections 10 and 13 and Schedule 3 of the Superannuation Act 1972 (as amended from time to time)

"NHS Pension Scheme Regulations"

means The National Health Service Pension Scheme Regulations 1995 (SI 1995/300) and The National Health Service Pension Scheme Regulations 2008 (SI 2008/653) (as amended)

"NHS Requirements"

means:

- (a) in relation to the Works, Health Building Notes and Health Technical Memoranda and such other requirements as are designated as NHS Requirements in the Tenant's Requirements; and
- (b) in relation to the Services, Health Building Notes, Health Technical Memoranda, all Executive Letters, Health Service Guidelines, Health Circulars of the NHS and any similar official requests, requirements and guidance having similar status for the time being in force, but only to the extent that the same are published and publicly available or the existence and contents of them have been notified to the Landlord by the Tenant

"NHS Tenant Employee"

means a Transferring Employee who is a member or is entitled to be a member of the NHS Pension Scheme on or immediately before the Transfer Date

["Occasional Service"

means any service the Tenant agrees with the Landlord to pay for on a pay per use basis]

"Operational Hours"⁹⁷

means the following times:

Monday to Friday [] am to [] pm
Saturday [] am to [] pm
Sunday [] am to [] pm

other than any day which is a Bank Holiday in England

"Operational Phase"

means the period from the Actual Completion Date until the end of the Term

"Original Senior Commitment"

means the amount committed by the Senior Funder under the Initial Funding Agreements as at Financial Close (as adjusted to take into account any Qualifying Variation)

"Outline Commissioning Programme"

means the programme setting out the standards, specifications, procedures and other requirements of the carrying out and completion of the commissioning activities of the parties set out in outline in Schedule 7 Part 2

"Participant"

has the same meaning as in the Strategic Partnering Agreement (including for the avoidance of doubt any persons that may have been added as a Participant to that Agreement after the date thereof)

"Partnering Services Costs"

means the costs defined as such in the Strategic Partnering Agreement

"Patient Area Plans"

means those patient area plans [annexed to this Lease and numbered []]

"Patient Areas"

means those Functional Areas [shown edged [] on the Patient Area Plans]⁹⁸

"Payment Commencement Date"

means the later of the Completion Date (or such earlier date as may be agreed by the parties in their absolute discretion) and the [date falling [] Business Days after the]⁹⁹ Actual Completion Date¹⁰⁰

⁹⁷ This definition provides the period(s) during which Deductions may be made for Unavailability Events. They need not be the same as Normal Working Hours expressed in Schedule 13 and do not restrict the Tenant's use of the Facilities.

⁹⁸ This is intended to include all of the Functional Areas which patients have access to and will include consulting rooms, waiting rooms and patient toilets.

"Payment Date"

has the meaning given in Clause 19.2.5

"Payment Mechanism"

means the payment mechanism set out in Schedule 10

"Payment Notice"

means the monthly notice to be delivered by the Landlord to the Tenant containing the information specified in Clause 19.2.2

"Performance Failure"

has the meaning given in Schedule 10 (Payment Mechanism)

"Performance Guarantees"

means the guarantees to the Landlord in respect of the Supply Chain Agreements

"Performance Monitoring Report"

means the monthly report to be delivered by the Landlord to the Tenant containing the information specified in Clause 19.2.1

"Permitted Part"

means [either the whole or any part of the part of the Premises edged [] on Plan []¹⁰¹ (provided that there shall be no more than one underletting of this area) or a Lettable Unit¹⁰²

"Permitted Use"

means use as [a doctors' surgery and/or as] [a health centre for the provision of primary [and secondary] and community healthcare services] [to members of the public] [and use consistent with local authority functions] [and/or a pharmacy] [and/or the provision of dental services] and for purposes ancillary to such use[s]¹⁰³

"Personal Data"

has the meaning given to it in ~~Section 1(4)~~ [by the](#) Data Protection ~~Act 1998~~ [Legislation](#)

"Plan 1"

means the plan annexed to this Lease and marked "Plan 1"

"Plan 2"

means the plan annexed to this Lease and marked "Plan 2"

"Planning Acts"

means the Town and Country Planning Act 1990 the Planning (Listed Buildings and Conservation Areas) Act 1990 the Planning (Hazardous Substances) Act 1990 Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act

99 A grace period needs to be agreed to allow tenants to move in and, if required for commissioning post completion, particularly as Red Book reimbursement will not be available to GP tenants until they are seeing patients at the Premises. The figure to be inserted should not exceed 10.

100 To be agreed on a scheme specific basis.

101 The Lease has been drafted on the basis that the area originally intended for occupation by the head tenant will if the head tenant subsequently decides that such area is surplus to requirements be permitted to have a further underletting of whole or part but only one such further underletting.

102 In addition where the Lease Plus is of the whole or a major part of the Facilities underlettings of the areas intended at the outset for occupation by third parties will naturally be permitted.

103 This definition will need to be refined for particular schemes. It will be generic where there is a single headlease, and more specific in individual leases of part.

1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008 and the Localism Act 2011

"Planning Approval"

means detailed planning consent for the project dated [insert date] and annexed as Attachment []

"Planning Permission"

means any planning permission, approval of reserved matters, listed building consent, conservation areas consent and/or other consent or approval reasonably required from time to time for construction and/or operation of the Facilities (including without limitation the Planning Approval)

"Plant"

means the plant and equipment to be provided and/or maintained by the Landlord pursuant to this Lease;

"Premises"

means the airspace the dimensions of which are set out and shown edged [red] on [insert references to relevant plans which will show OS Datum references and location with reference to existing boundary features] together with any buildings erected therein but excluding any tenant's fixtures and fittings and excluding any airspace above and below the airspace so demised¹⁰⁴

"Principles of Good Employment Practice"

the guidance note issued by the Cabinet Office in December 2010 titled "SUPPLIER INFORMATION NOTE: WITHDRAWAL OF TWO-TIER CODE" (available at <http://www.cabinetoffice.gov.uk/sites/default/files/resources/withdrawal%20of%20TwoTier%20code.doc>) including Annex A of that guidance note setting out a set of voluntary principles of good employment practice, as amended, superseded or otherwise from time to time

"Programmed Maintenance"

means the maintenance work (for the avoidance of doubt, including but not limited to renewal or replacement of Lifecycle Assets) which the Landlord is to carry out in accordance with the Schedule of Programmed Maintenance

"Programmed Maintenance Information"

has the meaning given in Clause 35.3

"Prohibited Act"

has the meaning given to it in Clause 62 (Prohibition on Corruption) of this Lease

"Project"

means the carrying out of the Works, the maintenance of the Facilities, the management and provision of the Services and the performance of all other obligations of the Landlord under this Lease from time to time

¹⁰⁴

Where the premises are the same as the Site, then the definition of the Premises should be that used for the definition of the Site. The definition of the Site should be deleted and references to the Site should be amended to refer to the Premises. This Lease will need to be checked for consequential and scheme specific amendments e.g. much of Schedule 2 Part 1 will cease to be applicable. It is assumed that in most cases airspace above the Premises will not be included in the demise but this should be considered on a scheme specific basis.

"Project Data"

means:

- (a) all Design Data;
- (b) all drawings, reports, documents, plans, software, formulae, calculations and all other data relating to the provision of the services; and
- (c) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Operations or this Lease

"Project Documents"

means this Lease, the Construction Contract and the other Supply Chain Agreements dated the same date as this Lease between the Landlord and the relevant Supply Chain Members

"Project Execution Plan"

means the plan to be prepared and kept up to date by or on behalf of, the Landlord in accordance with Clause 16.2

"Project Operations"

means the carrying out of the Works, the carrying out of the Landlord's Pre-Completion Commissioning and Landlord's Post-Completion Commissioning, the maintenance of the Facilities (including the renewal or replacement of Plant), the management and provision of the Services and the performance of all other obligations of the Landlord under this Lease from time to time

"Project Programme"

means the programme for the design and construction of the Works set out in Schedule 7, Part 1 subject to variation only in accordance with Clause 7

"Proportion"

means the proportion which the net internal area of a Permitted Part bears to the net internal areas of the Premises

"Public Sector Body"

means CHP, the Secretary of State for Health and his successors or a body within Section 82 of the National Health Service Act 2006 or a local government body established pursuant to the local Government Act 1972 or the Local Government Act 1992

"Qualifying Change in Law"¹⁰⁵

means:

- (a) an NHS Requirement (other than any NHS Requirement which merely gives effect to Law generally and does not principally affect or principally relate to the provision or operation of primary healthcare premises); and
- (b) any Best Value Change in Law

"Qualifying Variation"

means a Variation (other than any revision to or substitution for the Method Statements pursuant to Clause 34) for which a Variation Confirmation has been

¹⁰⁵

Adapt depending on nature of tenant: CHP, Local Authority or other.

issued and the supplementary agreement referred to in paragraph 4.5 of Part 1 of Schedule 12 has become unconditional in all respects

"Quality Plans"

means the Design Quality Plan and the Construction Quality Plan, prepared in accordance with [Schedule 4 (Landlord's Proposals)], and the Services Quality Plan prepared in accordance with [Schedule 9 (Service Specification)], as required to be implemented by the Landlord in accordance with Clause 16 (Quality Assurance)

"Rating Cost"

means the Tenant's PT Proportion of the cost of complying with Clause 20.1.1 of this Lease incurred by the Landlord from time to time

"Rectification"

has the meaning given in Schedule 10 (Payment Mechanism)

"Rectification Time"

has the meaning given in Schedule 10 (Payment Mechanism)

"Recognition Agreement"

means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations relating to the recognition of a trade union or unions by an employer to any extent for the purposes of collective bargaining (as defined by Section 187(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended by the Trade Union Reform and Employment Rights Act 1993))

"Relevant Service Transfer Date"

has the meaning given in paragraph 1.1 of Schedule 16 (Transfer of Employment and Pensions)

"Relevant Transfer"

means a relevant transfer for the purposes of the Transfer Regulations

"Relief Event"

has the meaning given to that term in Clause 15.1

"Remuneration Costs"

has the meaning given to that term in paragraph 1.11.2 of Schedule 16 (Transfer of Employment and Pensions)

"Reorganisation Costs"

has the meaning given to that term in paragraph 1.11.3 of Schedule 16 (Transfer of Employment and Pensions)

"Requests for Information"

shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply)

"Requisite Consents"

means all permissions, consents, approval, certificates, permits, licences, statutory agreements and authorisations required by Law, and all necessary consents and agreements from any third parties (including without limitation any Planning Permission) needed to carry out the Lease Operations in accordance with this Lease

"Residual Value"

means the value allocated to the Site as at the date hereof on expiry of this Lease being £[]

"Retendering Information"

has the meaning given in paragraph 1.7 of Schedule 18 (Handover On Expiry Or Termination)

"Return Date"

has the meaning given to that term in Schedule 10

"Reviewable Design Data"

means the plans, drawings, documents and information relating to those elements of the Works described in Schedule 5, Part 2 [it is assumed that these will comprise inter alia the following:

- (a) site layout;
- (b) 1-50 drawings;
- (c) typical room layouts;
- (d) ranges of finishes;
- (e) demolitions;
- (f) typical fittings and materials^{106]}

"RPI"

means the Retail Prices Index (All Items) as published by the Office for National Statistics from time to time, or failing such publication, such other index as the parties may agree, or as may be determined in accordance with Clause 49 and Schedule 21, most closely to resemble such index

"Safety Condition"

means in relation to each Functional Area that:

- (a) persons entitled to use it may use it free from risk known at the time in accordance with Good Industry Practice to their health, safety or welfare; and
- (b) each Functional Area complies with all Law relating to fire, and health and safety

"Schedule of Programmed Maintenance"

means the programme referred to in Clause 35 to be submitted to the Tenant's Representative by the Landlord in accordance with Schedule 13

"Senior Credit Agreement"

means a loan agreement dated on or around the date of this Lease between the Senior Funder and Landlord

¹⁰⁶

The categories of design documents for review may vary depending on the nature of the Project, including the likely scope of any Works, the location of the Site and the position in relation to planning approvals. Accordingly this list may need to be altered to suit the requirements of the particular project.

“Senior Credit Agreement Financial Model”

means the financial model as defined in the Senior Credit Agreement as the same may be updated from time to time in accordance with the provisions of the Senior Credit Agreement (provided always that such model shall continue on the same basis after Senior Debt has been repaid until the end of the Term)

"Senior Debt"

means any debt arising under the Senior Funding Documents (as defined in the Senior Credit Agreement)

"Senior Funder"

means [] as defined in the Senior Credit Agreement

"Service(s)"

means the service(s) to be provided and/or procured by the Landlord for the Tenant in accordance with Schedule 9 as subsequently amended or adjusted in accordance with this Lease

"Service Failure Points"

has the meaning given in Schedule 10 (Payment Mechanism)

"Service Provider"

means any person engaged by or on behalf of the Landlord from time to time as may be permitted by this Lease and/or the Funder's Direct Agreement to procure the provision of the Services (or any of them)

"Services Quality Plan"

means the document set out at [Part [] of Schedule 9 (Service Specifications)]

"Services Review"

means the process set out in Schedule 25 for the review of the hard facilities management services

"Service Specifications"

means the requirements of the Tenant set out in Schedule 9 as amended from time to time in accordance with Clause 47

"Service Variation"

means a variation to a Service in accordance with Schedule 12

“Shareholders”

means [insert shareholders of the Landlord]

"Site"

means the land upon, or within which, the Landlord will carry out the Works known as [] and registered at the Land Registry under Title Number [] as the same is outlined in red on Plan 1 together with any buildings constructed upon such land¹⁰⁷

["Soft Services Market Testing"

has the meaning given in Schedule 22 (Soft Services Market Testing Procedure)]

"Snagging Matters"

¹⁰⁷

The extent of the site will need to be agreed on a scheme by scheme basis.

means minor items of outstanding work (including in relation to landscaping) which would not materially impair the Tenant's use and enjoyment of the Premises or the performance of the Services by the Landlord

"Snagging Notice"

means the notice to be issued by the Independent Tester in accordance with Clause 13 (Certification of Completion of the Works)

"Specific Change in Law"

means any Change in Law which specifically refers to the provision of a service the same or similar to the Services or to the holding of shares in companies whose main business is providing a service the same as or similar to such Services

"Standard DBS Check"

a disclosure of information which contains contain details of an individual's convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions

"Standard DBS Position"

any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which a Standard DBS Check is permitted

"Strategic Partnering Agreement"

means the agreement dated [] entered into between Liftco (1) and [] relating to the primary health and social care estate in the [] area

"Strategic Partnering Board" or "SPB"

means the board set up pursuant to the Strategic Partnering Agreement and defined in that agreement as the SPB

"Strategic Service Development Plan"

has the meaning set out in the Strategic Partnering Agreement

"Structural Alterations"

means any work affecting the Premises or the Facilities (being work of alteration, addition, demolition or extension or any variation in the quality or function of the Premises or Facilities) which is not work which the Landlord is obliged to carry out in accordance with any of the Service Specifications or Clause 35 and which is not a Minor Alteration and which is carried out after the Payment Commencement Date or otherwise in accordance with the express provisions of Clause 46

"Submitted Item"

has the meaning given in paragraph 1.2 of Schedule 13

"Subsidiary"

has the meaning given to it in Section 1159 of the Companies Act 2006

"Supply Chain Agreements"

the agreements between the Landlord and its Service Providers and Contractors from time to time

"Supply Chain Members"

means any party (except the Landlord) to a Supply Chain Agreement to which the Landlord is a party

"Temporary Alternative Accommodation"

has the meaning given to that term in Schedule 10

"Tenant Party"

means any subtenants of the Tenant and any of the Tenant's agents, contractors and subcontractors of any tier and its or their directors officers and employees, and any person, body or organisation with whom the Tenant is permitted to share occupation pursuant to Clause 23.5, but excluding the Landlord and any Landlord Party and statutory undertakers and utilities and "Tenant Parties" shall be construed accordingly

"Tenant Policies"

means, subject to paragraph 6.3 of Schedule 15, the policies of the Tenant set out in the document [annexed to this Lease as Attachment []]¹⁰⁸ as amended from time to time

"Tenant's Assets"

means any assets and equipment or other property purchased and used in the Facilities by or on behalf of the Tenant or any other Tenant Party (which, for the avoidance of doubt, shall not include the Facilities)

"Tenant's Commissioning"

means the Tenant's pre-completion commissioning activities to be carried out by the Tenant in accordance with Clause 13

"Tenant's Post Completion Commissioning"

means the Tenant's post completion commissioning activities to be carried out by the Tenant in accordance with Clause 13.20 (Post Completion Commissioning)

"Tenant's PT Proportion"

means the proportion [based on pro-rata floor area]/[which the Landlord shall determine to be fair and equitable (acting reasonably) from time to time] of the relevant Rating Cost payable by the Tenant

"Tenant's Representative"

means the person appointed by the Tenant pursuant to Clause 11

"Tenant's Requirements"

means the requirements of the Tenant as set out in Schedule 3 as the same may be amended from time to time in accordance with the terms of this Lease

"Tenant's U Proportion"

means the proportion equivalent to the amount of the relevant Utility [excluding Energy]¹⁰⁹ consumed at the Premises in the relevant period as a proportion of the total amount of the relevant Utility consumed at the Facilities (disregarding the Utilities consumed in the Common Parts) during the same period

"Term"

means the period commencing at midnight on the date of this Lease and expiring at midnight on [insert date []] years from date of Lease which will be 25 years plus estimated construction period] or on such other date as may be determined in accordance with this Lease

¹⁰⁸

Tenant Policies could alternatively be incorporated into the Tenant's Requirements (Schedule 3).

¹⁰⁹

Include words where Tenant pays for Energy.

“Transfer”

means a transfer of today's date of the Site made between (1) the Tenant and (2) the Landlord

"Transfer Date"

means the date on which a Relevant Transfer occurs

“Transfer Event”

the occurrence of a Relevant Transfer upon expiry or termination of this Lease

"Transfer Regulations"

means the Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI No. 246) and EC Council Directive 77/187 (as amended)

"Transferring Employees"

means any Transferring Tenant Employee or Transferring Non-Tenant Employee

"Transferring Non-Tenant Employee”

means in relation to any service equivalent to a Lease Operation, any persons employed by any Existing Service Provider who is wholly or mainly engaged in the provision of that service as at the Relevant Service Transfer Date and who will become an employee of the Landlord or a Supply Chain Member on the Relevant Service Transfer Date in accordance with the provisions of paragraph 1 of Schedule 16 (Transfer of Employment and Pensions)

"Transferring Tenant Employee”

means in relation to any service equivalent to a Lease Operation, all those persons employed by the Tenant under a contract of employment (excluding, to avoid doubt (without limitation), any person engaged by the Tenant as an independent contractor or persons employed by any sub-contractor engaged by the Tenant) who are wholly or substantially engaged in the provision of that service as at the relevant Transfer Date¹¹⁰

"Unavailable" and "Unavailability"

means in relation to a Functional Area that such Functional Area is in a state or condition which does not comply with any one or more of the Availability Conditions

"Unavailability Event"

has the meaning given in Schedule 10 (Payment Mechanism)

"Uninsurable Risk"

means in respect of the insurance referred to in Part 2 of Schedule 8 and for which, with effect from the Actual Completion Date:

- (a) insurance is not available within the worldwide insurance market with reputable insurers of good standing in respect of that risk; or
- (b) the insurance premium payable for insuring such risk is at such a level that the risk is not generally being insured against in the worldwide insurance

110

Schedule 16 is drafted on the basis that the employer of the Transferring Employees is a party to the Lease Plus Agreement (ie CHP or other employing organisation as the Tenant). In the event that the employer is not a party to the Lease Plus Agreement, then any employees who are to transfer will be considered to be Transferring Non-Tenant Employees for the purposes of these provisions. This will need to be considered further on a case-by-case basis.

market with reputable insurers of good standing by contractors in the United Kingdom;

to the extent that the Landlord has demonstrated to the Tenant that the Landlord and a prudent board of directors of a company operating the same or substantially similar PPP businesses in the United Kingdom to that operated by the Landlord would in similar circumstances (in the absence of the type of relief envisaged by Clause 37) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming uninsured, taking into account inter alia (and without limitation) the likelihood of the risk occurring (if it has not already occurred), the financial consequences for such company if such risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company

"Unprogrammed Maintenance Works"

means Maintenance Works (excluding any works of a de minimis nature in respect of which the parties have agreed Clause 35.8 shall not apply), which are not scheduled to be carried out as part of the Programmed Maintenance

["Unreceived Benefit"

means the amount set out in the column at Annex 1 to Schedule 14 of this Lease headed "Cumulative Discount" and corresponding to the month (as determined by reference to the number of months from the month in which the Actual Completion Date occurs) in which this Lease is determined in accordance with Clause 37.15]

"Unsuitable Person"

means either:

- (a) any person who has a material interest in the production, distribution or sale of tobacco products and/or alcoholic drinks;
- (b) any person whose activities are, in the reasonable opinion of the Participants, incompatible with the provision of health and social care in the Area; or
- (c) any person whose activities, in the reasonable opinion of the Participants, pose or could pose a threat to national security

"Use Condition"

means in relation to each Functional Area that it satisfies the applicable Use Parameters

"Use Parameters"

means in relation to each Functional Area that a reasonable user of the relevant Functional Area would consider that it can be used for the purpose for which it was intended at the date of this Lease in accordance with the activity database sheet included in the Landlord's Proposals (as such intended purposes may be modified by any Variation carried out in accordance with the provisions of this Lease)

"Utilities"

has the meaning given to that term in Schedule 10

"Utilities Cost"

has the meaning given to that term in Schedule 10

"Variation"

means an Alteration and/or an Additional Alteration and/or a Service Variation (as the case may be)

"Variation Confirmation"

has the meaning given in paragraph 4.5 of Part 1 of Schedule 12

"Variation Enquiry"

has the meaning given in paragraph 2.1 of Part 1 of Schedule 12

"VAT"

means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994 (as amended)

"Whitley Agreements"

means:

- (1) National Health Service Maintenance Staff Pay and Conditions of Service;
- (2) Whitley Councils for the Health Service (Great Britain) Ancillary Staffs Council - Rates of Pay, Conditions of Service and General Information;
- (3) Whitley Councils for the Health Services (Great Britain) Administrative and Clerical Staff Council - Pay and Conditions of Service (subject in the case of senior managers to the Secretary of State's Direction dated 27 January 1989);
- (4) Whitley Councils for the Health Services (Great Britain) General Council Conditions of Service; and
- (5) Whitley Councils for the Health Services (Great Britain) Professional and Technical Staffs B Council;

and any agreements derived from a process of national collective bargaining which shall replace any of them (including, for the avoidance of doubt where an employee has been assimilated on to this, Agenda for Change);

"Works"

means the design (including the preparation of all Design Data), construction, testing, commissioning and completion of the Facilities (including but not limited to the Premises) (including any temporary works) [and the installation and commissioning of Category A Equipment and Category B Equipment] to be performed by the Landlord in accordance with this Lease (as varied or supplemented from time to time in accordance with this Lease)

"Works and Facilities Information"

means all materials, documents and data relating to the proposed design or construction of the Works, the operation and maintenance of the Facilities and other matters relevant thereto supplied or made available to the Landlord or any Landlord Party including, without limitation as aforesaid, all such matters, documents, data and other information as were provided to Liftco or any of its Associated Companies or to any advisors and consultants or of the aforesaid

1.2 Interpretation

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

- 1.2.1 The headings and marginal notes and references to them in this Lease shall be deemed not to be part of this Lease and shall not be taken into consideration in the interpretation of this Lease.
- 1.2.2 Except where the context expressly requires otherwise, references to clauses, sub-clauses, paragraphs, sub-paragraphs, parts and Schedules are references to clauses, sub-clauses, paragraphs, sub-paragraphs and parts of and Schedules to this Lease and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Lease.
- 1.2.3 The Schedules to this Lease are an integral part of this Lease and a reference to this Lease includes a reference to the Schedules.
- 1.2.4 Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.
- 1.2.5 Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
- 1.2.6 The language of this Lease is English. All correspondence, notices, drawings, Design Data, test reports, certificates, specifications and information shall be in English. All operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Lease shall be in English.
- 1.2.7 References to any agreement or document include (subject to all relevant approvals and any other provisions of this Lease concerning amendments to agreements or documents) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned.
- 1.2.8 References to any Law are to be construed as references to that Law as from time to time amended or to any Law from time to time replacing, extending, consolidating or amending the same provided that the provisions of this paragraph shall be without prejudice to the operation of Clause 46 and Schedule 12 which shall operate in relation to a Change in Law on the basis set out in this Lease
- 1.2.9 References to a public organisation (other than the Tenant) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Tenant) shall include their successors and assignees.
- 1.2.10 References to the use and /or enjoyment of the Premises by the Tenant shall be deemed to include a reference to the use and/or enjoyment of the

Premises by any person deriving title under the Tenant and any other permitted occupier of the Premises

- 1.2.11 References to the operations of the Tenant shall be deemed to include a reference to the operations of anyone deriving title under the Tenant and any other permitted occupier of the Premises
- 1.2.12 References to a deliberate act or omission of the Tenant or any Tenant Party shall be construed having regard to the interactive nature of the activities of the Tenant and of the Landlord and the expression shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Lease.
- 1.2.13 The words in this Lease shall bear their natural meaning. The parties have had the opportunity to take legal advice on this Lease and no term shall, therefore, be construed contra proferentem.
- 1.2.14 Reference to “parties” means the parties to this Lease and references to “a party” mean one of the parties to this Lease.
- 1.2.15 In construing this Lease, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Lease and accordingly general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 1.2.16 All of the Landlord’s obligations, duties and responsibilities shall be construed as separate obligations, duties and responsibilities owed to the Tenant and to be performed at the Landlord’s own cost and expense.
- 1.2.17 References to amounts or sums expressed to be “index linked” are references to amounts or sums in [give Base Date reference] prices which require to be adjusted whenever the provision containing the amount or sum is given effect in accordance with this Lease to reflect the effects of inflation after that date. The adjustment shall be measured by changes in the relevant index published for that Contract Year as calculated in accordance with the following formula:

$$\text{Amount or sum in [date] prices x } \frac{\text{RPId}}{\text{RPI0}}$$

Where RPId is the value of the Retail Prices Index published or determined with respect to the month of [relevant month, or other date] most recently preceding the date when the provision in question is to be given effect and RPI0 is the value of the Retail Prices Index in respect of [date].

- 1.2.18 Reference to a document being in the Agreed Form is a reference to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf.
- 1.2.19 Where this Lease states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed

number of Business Days after a stipulated date or event, the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.

- 1.2.20 References to the Strategic Partnering Agreement or to a provision thereof shall be construed at a particular time as a reference to it as at the date of this Lease.
- 1.2.21 The validity of this Lease is not dependent upon the validity or continued existence of the Strategic Partnering Agreement.

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