



**Registration of a Charge**

Company name: **ELGIN HEALTH (EASTER ROSS) HOLDINGS LIMITED**  
Company number: **SC243125**



X8YKTB74

Received for Electronic Filing: **11/02/2020**

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**Details of Charge**

Date of creation: **04/02/2020**  
Charge code: **SC24 3125 0004**  
Persons entitled: **BANK OF SCOTLAND PLC AS SECURITY TRUSTEE**  
Brief description:  
**Contains fixed charge(s).**  
**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **PINSENT MASONS LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 243125

Charge code: SC24 3125 0004

The Registrar of Companies for Scotland hereby certifies that a charge dated 4th February 2020 and created by ELGIN HEALTH (EASTER ROSS) HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th February 2020 .

Given at Companies House, Edinburgh on 11th February 2020

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

EXECUTION VERSION

**SCOTTISH SECURITY AGREEMENT**

between

**ELGIN HEALTH (EASTER ROSS) HOLDINGS LIMITED**

and

**BANK OF SCOTLAND PLC**  
as Security Trustee

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re: Support Services Agreement

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**Pinsent Masons**

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The DATE OF DELIVERY OF THIS SECURITY AGREEMENT is 4 February

2019  
2020

and is made between

- (1) **ELGIN HEALTH (EASTER ROSS) HOLDINGS LIMITED**, a company incorporated in Scotland (Registered No. SC243125), having its registered office at C/O Infrastructure Managers Limited 2nd Floor, 11 Thistle Street, Edinburgh, United Kingdom, EH2 1DF (the "Chargor") and
- (2) **BANK OF SCOTLAND PLC** (formerly known as The Governor and Company of the Bank of Scotland), as Security Trustee for the Finance Parties (the "Security Trustee", which expression includes any successor appointed as Security Trustee for the Finance Parties as defined in the Loan Facilities Agreement), acting through its office at New Usher House, 11 Earl Grey Street, Edinburgh EH3 9BN.

#### Background

- (A) The Chargor is entering into this Security Agreement in connection with its entry into the Assigned Contract.
- (B) The Board of Directors of the Chargor is satisfied that entering into this Security Agreement is for the purposes and to the benefit of the Chargor and its business.
- (C) The Security Trustee is holding the benefit of this Security Agreement on trust for the Finance Parties.

IT IS AGREED as follows:

#### 1 INTERPRETATION

##### 1.1 Definitions

In this Security Agreement, except to the extent that the context requires otherwise:

"Act" means the Insolvency Act 1986;

"Assigned Contract" means the document listed in Schedule 2;

"Charged Assets" means all assets of the Chargor the subject of any security created by this Security Agreement;

"Charges" means all or any of the charges or other Security created (or expressed to be created), or which may at any time be created (or expressed to be created), by or pursuant to this Security Agreement;

"Currency of Account" means Sterling;

"Enforcement Event" means the occurrence of any Event of Default as defined in Clause 13 of the Loan Facilities Agreement provided that any relevant Event of Default has not been waived by the Agent in accordance with the terms of the Loan Facilities Agreement;

"Liabilities" means all present and future moneys, debts and liabilities due, owing or incurred by the Chargor to any Finance Party under or in connection with any Finance Document (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise);

**"Loan Facilities Agreement"** means the Loan Facilities Agreement dated 5 November 2003 between the Chargor and, inter alia, The Governor and Company of the Bank of Scotland (now known as Bank of Scotland plc) as amended, supplemented, novated, extended or restated from time to time; and

**"Secured Rights"** means the Chargor's whole right, title and interest, past, present and future, in and to the Assigned Contract.

## **1.2 References to this Security Agreement and Other Documents**

Except to the extent that the context requires otherwise, any reference in this Security Agreement to this Security Agreement or any other agreement or document is a reference to this Security Agreement or, as the case may be, the relevant agreement or document as from time to time amended, supplemented, novated, restated or replaced as permitted by the Financing Documents and includes a reference to any document which so amends, supplements, novates, restates, replaces or is entered into, made or given pursuant to or in accordance with any of the terms of, this Security Agreement or, as the case may be, the relevant agreement or document.

## **1.3 Loan Facilities Agreement Definitions**

Except to the extent otherwise defined herein or as the context requires otherwise, terms and references defined or construed in the Loan Facilities Agreement shall have the same meanings and constructions when used in this Security Agreement.

## **1.4 References to Statutes**

Except where otherwise stated, any reference in this Security Agreement to any Act of Parliament or any Section of, Schedule to or other provision of an Act of Parliament shall be construed, at any particular time, as including reference to any modification, extension or re-enactment thereof then in force and instruments, orders and regulations then in force and made under or deriving validity from the relevant Act.

## **1.5 Headings**

Headings shall be ignored in construing this Security Agreement.

## **1.6 Schedules**

The Schedules to this Security Agreement shall be deemed to be incorporated in and form part of this Security Agreement.

## **2 UNDERTAKING TO PAY**

### **2.1 Covenant to Pay**

The Chargor undertakes to the Security Trustee (as security trustee for the Finance Parties) that the Chargor will pay or discharge each of its Liabilities in accordance with the terms of the relevant Finance Document or, if not so provided immediately on demand by the Finance Parties to whom it is payable (but subject always to the provisions of the relevant Finance Document).

### **2.2 Security Trustee's Sole Right to Appropriate**

Subject to the provisions of the Financing Documents the Chargor hereby irrevocably waives any right to appropriate any payment to, or other sum received, recovered or held by, the Security Trustee in or towards discharge of any particular part of the Liabilities and agrees that the Security Trustee shall have the exclusive right to appropriate any such payment or other sum in accordance with the Financing Documents, which right shall override any application made or purported to be made by the Chargor.

### **2.3 Discharge**

Subject to Clause 13.4, each sum appropriated by the Security Trustee as provided in the Financing Documents in or towards discharge of a particular part of the Liabilities shall discharge pro tanto not only the obligations of the Chargor to the Security Trustee in respect of that part of the Liabilities but also its obligations to the Finance Parties in respect of an amount of the Liabilities equal to the sum so appropriated.

## **2A. CREATION OF SECURITY**

### **2A.1 All the security created under this Security Agreement:**

2A.1.1 is created in favour of the Security Trustee;

2A.1.2 is created over present and future assets of the Chargor; and

2A.1.3 is security for the payment of all the Liabilities.

2A.2 If the rights of the Chargor under a document cannot be secured without the consent of a party to that document:

2A.2.1 this Security will secure all amounts which the Chargor may receive, or has received, under that document but exclude the document itself; and

2A.2.2 unless the Security Trustee otherwise requires, the Chargor must use reasonable endeavours to obtain the consent of the relevant party to that document being secured under this Security Agreement.

The Security Trustee holds the benefit of this Security Agreement on trust for the Finance Parties.

## **3 SECURITY**

### **3.1 Assignment Provisions**

3.1.1 As security for payment of all Liabilities, the Chargor hereby assigns and agrees to assign absolutely to the Security Trustee all its present and future rights, title, benefits and interests in, to and under the Assigned Contract including all monies which at any time may be or become payable to the Chargor pursuant thereto and the net proceeds of any claims, awards and judgements which may at any time be receivable or received by the Chargor pursuant thereto.

3.1.2 A reference in this Security Agreement to the Assigned Contract includes all rights, remedies and benefits to which the Chargor is at any time entitled under the Assigned Contract now or at any time hereafter including, without limitation:

- (a) any right to receive payment under the Assigned Contract and to the proceeds of such payment;
- (b) any entitlement to make any claim under the Assigned Contract and to the proceeds of such claim; and
- (c) any right to terminate the Assigned Contract or to enforce any provision thereof.

### 3.2 Delivery of Documents

During the continuance of the Charges the Chargor shall deposit with the Security Trustee, and the Security Trustee shall be entitled to hold, on request, executed originals of the Assigned Contract.

### 3.3 Further Security

The Chargor shall, promptly upon the Security Trustee so requiring by notice to the Chargor, execute and deliver (or procure the execution and delivery of) to the Security Trustee (in such form as the Security Trustee shall reasonably require) in favour of the Security Trustee securing the Liabilities such other Security over such of the Chargor's other present or future Charged Assets as it is practicable to grant as shall be specified in the relevant notice (whether generally or specifically and whether for the purposes of obtaining legal title to the relevant Charged Assets or creating Security which is effective under the laws of Scotland or any other jurisdiction or otherwise).

### 3.4 Further Assurance

The Chargor shall promptly execute and do all such assurances, acts and things as the Security Trustee may require:

- 3.4.1 for perfecting or protecting the Charges created or intended to be created by or pursuant to this Security Agreement or the priority of the Charges; or
- 3.4.2 for facilitating the realisation of the Charged Assets or the exercise of any rights vested in the Security Trustee,

and shall in particular (without prejudice to the generality of the foregoing) execute all dispositions, transfers, conveyances, assignations, assignments and assurances of the Charged Assets (whether to the Security Trustee or to its nominees or otherwise) and give all notices, orders and directions (whether conditional or unconditional) which the Security Trustee may think expedient.



### **3.5 Notices of Assignment**

Without prejudice to the other provisions of this Security Agreement, the Chargor shall immediately following execution hereof join with the Security Trustee in giving notice of the assignment in Clause 3.1 substantially in the form set out in Schedule 1 to each counterparty to an Assigned Contract and the Chargor shall use its reasonable endeavours to procure that each counterparty to whom any such notice is given shall promptly duly sign and return the form of acknowledgement thereon.

## **4 RESTRICTIONS ON DEALING**

### **4.1 Security**

The Chargor shall not create or have outstanding any Security on or over its Charged Assets (present or future or any part thereof) except for:-

4.1.1 the Charges; and

4.1.2 any other Security permitted by Clause 11.4.5 of the Loan Facilities Agreement and not prohibited by any other Finance Document.

### **4.2 Disposal**

The Chargor shall not assign or transfer (save as provided for under this Security Agreement or under any other Finance Document) to any person all or part of the benefit of the Assigned Contract or any interest therein or any of the revenues or proceeds thereof.

### **4.3 Assigned Contract**

4.3.1 The Chargor shall not amend, vary, waive or modify (or agree to amend, vary, waive or modify) or exercise any right to rescind or terminate any of the Assigned Contract or any provision thereof except as contemplated by and in the manner provided for in the Financing Documents.

4.3.2 Notwithstanding anything to the contrary, the Chargor shall remain liable under the Assigned Contract to perform all the obligations assumed by it thereunder and neither the Security Trustee nor any Finance Party shall be under any obligation or liability to the Chargor or any other person under or in respect of the Assigned Contract, whether by reason of this Security Agreement or otherwise.

## **5 CHARGOR UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES**

### **5.1 Undertakings**

The Chargor undertakes to the Security Trustee as set out in Schedule 3.1.

## **5.2 Representations and Warranties**

The Chargor represents and warrants to the Security Trustee as set out in Schedule 3.2.

## **6 WHEN SECURITY BECOMES ENFORCEABLE**

At any time after the occurrence of an Enforcement Event and during the continuance thereof the security hereby conferred by this Security Agreement (whether or not such Enforcement Event is continuing at the relevant time) shall become immediately enforceable. After this security has become enforceable, the Security Trustee may in its discretion enforce all or any part of this Security in any manner it sees fit or as the Finance Parties direct.

## **7 ENFORCEMENT**

### **7.1 Powers**

At any time after the Security shall have become enforceable in accordance with Clause 6 the Security Trustee shall be entitled, on giving to the counterparty or counterparties to the Assigned Contract without any requirement to give notice to the Chargor, either in its own name or in the name of the Chargor, or otherwise and in such manner and upon such terms and conditions as it thinks fit:

- (a) to sell, transfer, assign or otherwise dispose of the Secured Rights by public or private sale with or without advertisement in such manner and on such terms and conditions as the Security Trustee may consider expedient, and apply the proceeds in or towards payment or satisfaction of the Liabilities; and
- (b) generally, without prejudice to the other provisions of this Clause, to exercise all the rights powers and discretions and fulfil all the obligations in respect of the Secured Rights it would be entitled to exercise if it were the absolute owner of the Secured Rights, and to do all acts and things it may consider necessary or expedient for the realisation of the Secured Rights and the application of the proceeds in or towards payment or satisfaction of the Liabilities, or as may be incidental to the exercise of any of the rights, powers and discretions conferred on the Security Trustee under this Security.

## **8 SECURITY TRUSTEE'S RIGHTS**

### **8.1 Delegation**

The Security Trustee may delegate in any manner to any person any of the rights which are for the time being exercisable by the Security Trustee under this Security Agreement. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Security Trustee may in its absolute discretion think fit.

### **8.2 Continuation of Accounts**

At any time following:-

- 8.2.1 any Finance Party receiving notice (either actual or otherwise) of any subsequent Security affecting the Charged Assets or
- 8.2.2 the presentation of a petition or the passing of a resolution for or with a view to the winding-up of the Chargor

any Finance Party may open a new account in the name of the Chargor with that Finance Party (whether or not it permits any existing account to continue). If that Finance Party does not open such a new account, it shall nevertheless be treated as if it had done so at the

time, as the case may be, when the notice was received or was deemed to have been received of the subsequent Security or such petition was presented or such resolution was passed. No moneys thereafter paid into any account, whether new or continuing, shall discharge or reduce the amount recoverable pursuant to this Security Agreement unless and until so applied.

**8.3 Set-Off**

The Chargor authorises the Security Trustee to apply and agrees with the Security Trustee to permit each Finance Party to apply (without prior notice) any credit balance (whether or not then due) to which the Chargor is at any time beneficially entitled on any account at, any sum held to its order by and/or any liability to it of, any office of the Security Trustee, or, as the case may be, that Finance Party in or towards satisfaction of all or any part of the Liabilities which are then due and payable to that party under the Financing Documents and unpaid and, for that purpose, to convert one currency into another at such party's then prevailing spot rate of exchange. Neither the Security Trustee nor any Finance Party shall be obliged to exercise any of its rights under this Clause, which shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which it is at any time otherwise entitled (whether by operation of law, contract or otherwise).

**9 LIABILITY OF SECURITY TRUSTEE**

**9.1 Security Trustee's Liability**

The Security Trustee shall not in any circumstances:

- 9.1.1 be liable to account to the Chargor, any Finance Party, or any other person for anything except for sums actually received by the Security Trustee and not distributed or paid to the Chargor, the Finance Parties or other persons entitled or at the time of payment honestly and reasonably believed by the Security Trustee to be entitled thereto; or
- 9.1.2 be liable to the Chargor, any Finance Party, or any other person for any costs, charges, losses, damages, liabilities or expenses arising from or connected with any realisation or enforcement of the Charged Assets or from any act, default, omission or misconduct of the Security Trustee or its officers, employees or agents in relation to the Charged Assets or in connection with the Financing Documents except to the extent that they shall be caused by the Security Trustee's own fraud, gross negligence or wilful misconduct or that of their own officers or employees.

The Security Trustee shall not by virtue of this Clause 9.1 owe any duty of care or other duty to any person which it would not owe in the absence of this Clause 9.1.

**9.2 Other's Liability to Account**

All the provisions of Clause 9.1 shall apply, mutatis mutandis, in respect of the liability of any officer, employee or agent of the Security Trustee.

**10 POWER OF ATTORNEY**

**10.1 Appointment**

The Chargor, by way of security, irrevocably and severally appoints the Security Trustee to be its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney may think fit:

- 10.1.1 to do anything which the Chargor is obliged to do under this Security Agreement including to create charges over and execute dispositions, transfers, conveyances, assignments, assignments and assurances of, and other instruments, notices, orders and directions relating to, the Charged Assets and

- 10.1.2 generally to exercise all or any of the rights conferred on the Security Trustee in relation to the Charged Assets or under this Security Agreement or the Act.

**10.2 Ratification**

The Chargor hereby ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do or purport to do in the exercise or purported exercise of the power of attorney in Clause 10.1.

**10.3 Exercise of Power**

The appointment referred to in Clause 10.1 shall take effect immediately but the powers conferred thereby shall only be exercisable after the occurrence of an Enforcement Event.

**11 PROTECTION OF THIRD PARTIES**

No person (including a purchaser) dealing with the Security Trustee shall be concerned to enquire:

- 11.1 whether the Liabilities have become payable;
- 11.2 whether any power which the Security Trustee is purporting to exercise has become exercisable or is being properly exercised;
- 11.3 whether any money remains due under the Financing Documents; or
- 11.4 how any money paid to the Security Trustee is to be applied and the receipt of the Security Trustee shall be an absolute discharge to any such person.

**12 DEMANDS AND PAYMENTS**

**12.1 Demands**

Subject to the terms of the Loan Facilities Agreement, any demand for payment made by the Security Trustee (in its capacity as such), or any Finance Party (in its capacity as such) shall be valid and effective for all purposes of this Security Agreement notwithstanding that the demand contains no statement of the relevant Liabilities or that it inadvertently contains an inaccurate or incomplete statement of them.

**12.2 Payments**

All payments under or pursuant to this Security Agreement (including damages for its breach) shall be made in the Currency of Account and in such funds, to such account, with such financial institution and in such other manner as may be agreed between the parties and, if not so agreed, as the Security Trustee may direct.

**12.3 Receipts by the Security Trustee**

All amounts from time to time received or recovered by the Security Trustee in exercise of their rights under or in respect of this Security Agreement shall, subject to the discharge of any liabilities having priority to the Liabilities, be applied as follows:

- 12.3.1 in or towards the payment of the Liabilities in accordance with the Financing Documents, and
- 12.3.2 in payment of any surplus to the Chargor or other person entitled to it.

#### **12.4 Avoidance of Payments**

The Chargor shall on demand indemnify each Finance Party against any funding or other cost, charge, loss, liability or expense (including loss of profit) expended, paid, incurred or debited in account by that Finance Party as a result of that Finance Party being required for any reason (including, without limitation, any bankruptcy, insolvency, winding-up or similar law of any jurisdiction) to refund all or part of any amount received or recovered by it in respect of any of the Liabilities or any liability the discharge of which is, directly or indirectly, guaranteed or otherwise secured by the Chargor and shall in any event pay to the Security Trustee for the account of the relevant Finance Party on demand the amount so refunded by that Finance Party.

#### **12.5 Subrogation**

So long as any of the Charges remain outstanding:

- 12.5.1 any rights of the Chargor, by reason of the performance of any of its obligations under this Security Agreement, the enforcement of any of the Charges or any action taken pursuant to any rights conferred by or in connection with this Security Agreement, to be indemnified by any person, to prove in respect of any liability in the winding-up of any person or to take the benefit of or enforce any Security, guarantees or indemnities or to seek contribution from any person, shall be exercised and enforced only in such manner and on such terms, as the Security Trustee may require and
- 12.5.2 any amount received or recovered by the Chargor (a) as a result of any exercise of any such rights or (b) in the winding-up of any person shall be held in trust for and immediately paid to the Security Trustee.

#### **13 DISCHARGE OF SECURITY**

##### **13.1 Continuing Security**

Subject to this Clause 13, the Charges shall remain in full force and effect by way of continuing security and shall not be affected in any way by any settlement of account (whether or not any Liabilities remain outstanding thereafter) or other matter or thing whatsoever and shall be in addition to any other Security, guarantee or indemnity now or hereafter held by the Security Trustee or any other person in respect of the Liabilities.

##### **13.2 Security Unaffected**

Without prejudice to the generality of Clause 13.1, neither the Charges nor the Liabilities shall be affected in any way by:

- 13.2.1 any time, indulgence, concession, waiver or consent given to the Chargor or any other person, whether by the Security Trustee (in its capacity as such), any Finance Party (in its capacity as such) or any other person
- 13.2.2 (except to the extent of the relevant amendment or change) any amendment to or change in any Security, guarantee or indemnity (including this Security Agreement), the terms of any Liability or liability the discharge of which is, directly or indirectly, guaranteed or otherwise secured by the Chargor or any agreement or document relating to any of the foregoing
- 13.2.3 the making or absence of any demand for payment of any Liabilities on the Chargor or any other person, whether by the Security Trustee (in its capacity as such), any Finance Party (in its capacity as such) or any other person
- 13.2.4 the enforcement or absence of enforcement of any Security, guarantee or indemnity (including this Security Agreement)

- 13.2.5 any other Security, guarantee or indemnity now or hereafter held by the Security Trustee (in its capacity as such), any Finance Party (in its capacity as such) or any other person;
- 13.2.6 (except to the extent of the relevant release) the release of any Security, guarantee or indemnity (including this Security Agreement);
- 13.2.7 the administration or winding-up of the Chargor or any other person, or any step being taken for any such administration or winding-up; or
- 13.2.8 the illegality, invalidity or unenforceability of, or any defect in, any provision of any agreement or document relating to the Liabilities or any Security, guarantee or indemnity (including this Security Agreement) or any of the rights or obligations of any of the parties under or in connection with any such document or any Security, guarantee or indemnity (including this Security Agreement), whether on the grounds of ultra vires, not being in the interests of the Chargor or any other person, not having been duly authorised, executed or delivered by the Chargor or any other person or for any other reason whatsoever.

### 13.3 Final Redemption

Subject and without prejudice to Clause 13.4, upon proof being given to the satisfaction of the Security Trustee (i) that all the Liabilities have been discharged in full or (ii) that provision acceptable to the Security Trustee for such discharge has been made, and in either case that all facilities which might give rise to Liabilities have terminated, the Security Trustee shall at the request and cost of the Chargor execute and do all such deeds, acts and things as may be necessary to release the Charged Assets from the Charges or to re-assign them to the Chargor, as the case may be.

### 13.4 No Assurance etc.

No assurance, Security, Guarantee or payment which may be avoided under any law relating to bankruptcy, insolvency, administration or winding-up (including Section 238, 239, 242, 243 or 245 of the Act) and no release, settlement, discharge or arrangement given or made by any Finance Party (other than the Security Trustee acting in its capacity as such) on the faith of any such assurance, Security, Guarantee or payment, shall prejudice or affect the right of the Security Trustee to enforce the Charges to the full extent of the Liabilities or any other rights which any Finance Party may have in respect of the Liabilities or any part thereof. The Chargor agrees that in such circumstances the Charges and this Security Agreement shall be deemed to have remained in full force and effect notwithstanding any such assurance, Security, Guarantee, payment, release, settlement, discharge or arrangement. Without prejudice to the foregoing (and subject to Clause 13.3), the Security Trustee shall be entitled to retain this Security Agreement and shall not be obliged to release the Charged Assets from the Charges until the expiry of a period of one month plus such statutory period within which any assurance, Security, Guarantee or payment can be avoided or invalidated after the Liabilities shall have been discharged in full, and after any facility which might give rise to Liabilities has terminated. If at any time within such period:

- 13.4.1 a petition shall be presented to a competent court for an order for the administration or winding-up of the Chargor or of any party which has given the relevant assurance, Security, Guarantee or payment; or
  - 13.4.2 the Chargor or any such party shall pass a resolution for or with a view to its winding-up,
- the Security Trustee may continue to retain this Security Agreement and not to release the Charged Assets from the Charges for and during such further period as the Security Trustee in its absolute discretion shall determine.

**14 RIGHTS, AMENDMENTS, WAIVERS, CONSENTS AND DETERMINATIONS**

**14.1 Rights Additional**

The rights conferred by or pursuant to this Security Agreement shall be in addition to and not in substitution for the rights conferred by law, which shall apply to the Charges except in so far (if at all) as they are expressly excluded. Where there is any ambiguity or conflict between the rights conferred by law and those conferred by or pursuant to this Security Agreement, the terms of this Security Agreement shall prevail.

**14.2 Exercise of Rights**

Except as otherwise provided in this Security Agreement, all rights of the Security Trustee hereunder may be exercised at any time and from time to time at the absolute discretion of the Security Trustee. No failure on the part of the Security Trustee to exercise, and no delay on its part in exercising, any right under this Security Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right.

**14.3 Amendments, Waivers and Consents**

Any provision of this Security Agreement may be amended, supplemented or novated only if the Chargor and the Security Trustee (acting on the instructions of the Finance Parties) so agree in writing. Any waiver of, and any consent or approval by the Security Trustee under, any provision of this Security Agreement shall not be effective unless it is in writing, and may be given subject to any conditions thought fit by the Security Trustee, may be withdrawn or modified at any time and shall be effective only in the instance and for the purpose for which it is given.

**14.4 Determinations**

Any determination by the Security Trustee pursuant to this Security Agreement shall be conclusive in the absence of manifest error.

**15 PARTIAL INVALIDITY**

The illegality, invalidity or unenforceability of any provision of any Security Document under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision of that or any other Security Document.

**16 COMMUNICATIONS**

**16.1 Addresses**

Each communication under this Security Agreement shall be made by fax or otherwise in writing. Each communication or document to be delivered to a party under this Security Agreement shall be sent to it at the fax number or address, and marked for the attention of such person, if any, from time to time designated by it to the Security Trustee (or, in the case of the Security Trustee, by it to each party) for the purpose of this Security Agreement. The initial fax number, address and marking (if any) so designated by each party to this Security Agreement are set out under its name on the execution page of this Security Agreement. Any communication or document from or to the Chargor under this Security Agreement will be sent to, by or through the Security Trustee.

**16.2 Deemed Delivery**

Any communication from the Chargor shall be irrevocable, and shall not be effective until received by the Security Trustee. Any other communication to any person shall be deemed to be received by that person

- 16.2.1 if sent by fax between 9am and 5pm (local time in the place to which it is sent) or a working day in that place, when sent or, if sent by fax at any other time, at 9am (local time in the place to which it is sent) on the next working day in that place; or
- 16.2.2 in any other case, when left at the address for the Chargor or the Security Trustee as set out on the signing pages of this Agreement or within two (2) such Business Days after being put in the post postage prepaid and addressed to it at that address.

**17 GOVERNING LAW**

This Security Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of Scotland.

**18 WITHHOLDING**

The terms of Clause 8 of the Loan Facilities Agreement shall apply, mutatis mutandis, to any sums payable by the Chargor under this Security Agreement.

**19 CURRENCY INDEMNITY**

**19.1 Currency of Account**

The Currency of Account is the sole currency of account and payment for all sums payable by the Chargor under or in connection with this Security Agreement, including damages.

**19.2 Extent of Discharge**

Any amount received or recovered in a currency other than the Currency of Account (whether as a result of, or of the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up of the Chargor or otherwise) by the Security Trustee in respect of any Liability shall only constitute a discharge to the Chargor to the extent of the amount in the Currency of Account which the Security Trustee is able, in accordance with its usual practice, to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so).

**19.3 Indemnity**

If that amount in the Currency of Account is less than the amount of the Liability in the Currency of Account the Chargor shall indemnify the Security Trustee against any loss sustained by it as a result.

In any event, the Chargor shall indemnify the Security Trustee against the cost of making any such purchase. For the purpose of this Clause 19.3, it will be sufficient for the Security Trustee to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.



**19.4 Indemnity Separate**

The above indemnity constitutes a separate and independent obligation from the other obligations in this Security Agreement, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Security Trustee and shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any Liability or any other judgement or order.

**19.5 Counterparts and Delivery**

**19.5.1** This Security Agreement may be executed in any number of counterparts and by each of the parties on separate counterparts.

**19.5.2** Where executed in counterparts;

- (a) this Security Agreement shall not take effect until both of the counterparts have been delivered; and
- (b) delivery will take place when the date of delivery is agreed between the parties after execution of this Security Agreement as evidenced by the date inserted on page 1 of this Agreement.

**19.5.3** Where not executed in counterparts, this Agreement shall become effective on the date agreed between the parties as evidenced by the date of delivery inserted on page 1 of this Agreement.

**IN WITNESS WHEREOF** this Security Agreement consisting of this and the 12 preceding pages together with the Schedules hereto, has been executed as follows:

Executed for and on behalf of **ELGIN HEALTH (EASTER ROSS) HOLDINGS LIMITED**

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

before this witness

..... Witness  
..... Full Name  
..... Address  
.....

at .....

on ..... 2019

Address for notices: Infrastructure Managers Limited, 11 Thistle Street, Edinburgh EH2 1DF  
Attention: The Chief Executive  
Fax number: +44 (0)131 240 5051



This is Schedule 1 to the Security Agreement created by Elgin Health (Easter Ross) Holdings Limited in favour of Bank of Scotland plc (as Security Trustee) and delivered on 4 February 2019, 2020

## SCHEDULES

### SCHEDULE 1

#### Form of Notice of Assignment of Assigned Contract

To: [Party to Assigned Contract]  
Address:

[Date]

- 1 Bank of Scotland plc (in its capacity as Security Trustee (the "Security Trustee") and the Chargor GIVE NOTICE that:-
  - 1.1 by an assignment contained in a Security Agreement dated [ ] 2019 made between the Chargor and the Security Trustee, the Chargor assigned to the Security Trustee by way of security all its present and future right, title and interest in and to [describe subject matter of assignment] (the "Assigned Contract[s]"), including all moneys which at any time may be or become payable to the Chargor pursuant to the Assigned Contract[s] and the net proceeds of any claims, awards and judgments which may at any time be receivable or received by the Chargor pursuant to the Assigned Contract[s];
  - 1.2 all moneys payable by you to the Chargor pursuant to the Assigned Contract[s] shall be paid to the Proceeds Account (Account No. [00900016]) held with Bank of Scotland plc (sort code: 80-26-43) unless and until you receive written notice from the Security Trustee to the contrary, in which event you should make all future payments as then directed by the Security Trustee;
  - 1.3 this authority and instruction is irrevocable without the prior written consent of the Security Trustee;
  - 1.4 notwithstanding the assignment referred to above or the making of any payment by you to the Security Trustee pursuant to it, the Chargor shall remain liable under the Assigned Contract[s] to perform all the obligations assumed by it under the Assigned Contract[s] and neither the Security Trustee nor any receiver, delegate or sub-delegate appointed by it shall at any time be under any obligation or liability to you under or in respect of the Assigned Contract[s];
  - 1.5 the Chargor shall not and you agree that the Chargor shall not vary or waive (or agree to vary or waive) any provision of the Assigned Contract[s] or exercise any right to rescind or terminate the Assigned Contract[s] without the prior written consent of the Security Trustee but otherwise the Chargor shall be entitled to exercise all its rights, powers and discretions under the Assigned Contract[s] unless and until you receive written notice from the Security Trustee to the contrary, in which event all such rights, powers and discretions shall be exercisable by the Security Trustee or as it directs; and
  - 1.6 you should continue to give notices under the Assigned Contract[s] to the Chargor unless and until you receive written notice from the Security Trustee to the contrary, in which event all such notices shall be given to the Security Trustee or as it directs.
- 2 Please acknowledge receipt of this Notice of Assignment and confirm that:-
  - 2.1 you will pay all sums due under the Assigned Contract as directed by or pursuant to this Notice of Assignment;

- 2.2 you will not claim or exercise any set-off or counterclaim in respect of the Assigned Contract[s];
- 2.3 you have not received any other notice of any assignment, assignation or charge of the Assigned Contract[s] or of any other interest of any third party in the Assigned Contract[s];
- 2.4 you agree to and comply with the other provisions of this Notice of Assignment,  
by signing the acknowledgement on the attached copy of this Notice of Assignment and  
returning that copy to the Security Trustee at [ ] marked for the attention of  
[ ].

.....  
For and on behalf of  
ELGIN HEALTH (EASTER ROSS) HOLDINGS LIMITED as the Chargor

[On duplicate]

We acknowledge receipt of the Notice of Assignment of which this is a copy and confirm each of the matters referred to in paragraph 2 of the Notice of Assignment.

.....  
For and on behalf of  
[Party to Assigned Contract]

This is Schedule 2 to the Security Agreement created by Elgin Health (Easter Ross) Holdings Limited in favour of Bank of Scotland plc (as Security Trustee) and delivered on 4 February ~~2019~~ 2020.

## **SCHEDULE 2**

### **Contracts**

- 1 Support services agreement dated on or about the date hereof between the Borrower, Holdings and Infrastructure Managers Limited.

This is Schedule 3.1 to the Security Agreement created by Elgin Health (Easter Ross) Holdings Limited in favour of Bank of Scotland plc (as Security Trustee) and delivered on 4 February 2019/2020

### **SCHEDULE 3.1**

#### **Undertakings**

The Chargor undertakes to the Security Trustee that, subject to the provisions of the Project Documents listed in paragraph (a) of the definition of that term and the Financing Documents listed in paragraph (a) of the definition of that term of the Loan Facilities Agreement and the permissions and exceptions given therein in favour of the Chargor and provided that the Chargor shall not be obliged to satisfy any of these undertakings if by doing so it would be in breach of any of its obligations under any of the Financing Documents:-

#### **1 BUSINESS**

- 1.1 it will carry on and conduct its affairs and business in a proper and efficient manner and will ensure that, save as permitted by the Financing Documents, there is no material change in the nature of its business (whether by a single transaction or a number of related or unrelated transactions, whether at one time or over a period of time and whether by disposal, acquisition or otherwise);
- 1.2 it will not do, or suffer to be done, anything which could be expected to prejudice the validity of the Charges.

This is Schedule 3.2 to the Security Agreement created by Elgin Health (Easter Ross) Holdings Limited in favour of Bank of Scotland plc (as Security Trustee) and delivered on 4 February 2019.

## **SCHEDULE 3.2**

### **Representations and Warranties**

The Chargor represents and warrants to the Security Trustee that:

#### **1 POWERS**

- 1.1 It is duly incorporated and validly existing under the law of Scotland.
- 1.2 It has the power to enter into, exercise its rights under and perform and comply with its obligations under this Security Agreement, and to create the security and rights expressed to be created by this Security Agreement.

#### **2 AUTHORISATIONS AND CONSENTS**

All actions, conditions and things required to be taken, fulfilled and done in order:-

- 2.1 to enable it lawfully to enter into, exercise its rights and perform and comply with its obligations under this Security Agreement;
  - 2.2 to ensure that those obligations are valid and legally binding;
  - 2.3 to make this Security Agreement admissible in evidence in the courts of Scotland;
  - 2.4 to create and perfect the Security created under or pursuant to this Security Agreement;
- have been taken, fulfilled and done or shall be taken, fulfilled and done prior to the time when so legally required.

#### **3 NON-VIOLATION OF OTHER AGREEMENTS**

The Chargor's entry into, exercise of its rights and/or performance of or compliance with its obligations under this Security Agreement and/or creation of the Charges under this Security Agreement do not and will not:-

- 3.1 violate any agreement to which the Chargor is a party or which is binding on the Chargor or the Charged Assets; or
- 3.2 except for any Security permitted pursuant to clause 11.4.5 of the Loan Facilities Agreement result in the existence of, or oblige the Chargor to create, any Security over the Charged Assets.

#### **4 NO EXISTING SECURITY**

- 4.1 Except for the Charges, any Security created by any other Security Document and the Junior Security Document, no Security exists on or over the Charged Assets at the date of this Security Agreement.

#### **5 REPETITION**

- 5.1 Each of the representations and warranties in paragraphs 1 to 4 above will be correct and complied with in all respects at the times referred to in clause 10.2 of the Loan Facilities

Agreement during the continuance of this Security as if repeated then by reference to the then existing circumstances.

5.2 The information contained in this Schedule is complete and accurate in all respects.



EXECUTION VERSION

**SCOTTISH SECURITY AGREEMENT**

between

**ELGIN HEALTH (EASTER ROSS) HOLDINGS LIMITED**

and

**BANK OF SCOTLAND PLC  
as Security Trustee**

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re: Support Services Agreement

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**Pinsent Masons**

Pinsent Masons LLP  
Princes Exchange  
1 Earl Grey Street  
Edinburgh  
EH3 9AQ

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The DATE OF DELIVERY OF THIS SECURITY AGREEMENT is *04 FEBRUARY 2020* ~~2019~~

and is made between

- (1) **ELGIN HEALTH (EASTER ROSS) HOLDINGS LIMITED**, a company incorporated in Scotland (Registered No. SC243125), having its registered office at C/O Infrastructure Managers Limited 2nd Floor, 11 Thistle Street, Edinburgh, United Kingdom, EH2 1DF (the "Chargor") and
- (2) **BANK OF SCOTLAND PLC** (formerly known as The Governor and Company of the Bank of Scotland), as Security Trustee for the Finance Parties (the "Security Trustee", which expression includes any successor appointed as Security Trustee for the Finance Parties as defined in the Loan Facilities Agreement), acting through its office at New Ueberior House, 11 Earl Grey Street, Edinburgh EH3 9BN.

#### **Background**

- (A) The Chargor is entering into this Security Agreement in connection with its entry into the Assigned Contract.
- (B) The Board of Directors of the Chargor is satisfied that entering into this Security Agreement is for the purposes and to the benefit of the Chargor and its business.
- (C) The Security Trustee is holding the benefit of this Security Agreement on trust for the Finance Parties.

IT IS AGREED as follows:

## **1 INTERPRETATION**

### **1.1 Definitions**

In this Security Agreement, except to the extent that the context requires otherwise:

"Act" means the Insolvency Act 1986;

"Assigned Contract" means the document listed in Schedule 2;

"Charged Assets" means all assets of the Chargor the subject of any security created by this Security Agreement;

"Charges" means all or any of the charges or other Security created (or expressed to be created), or which may at any time be created (or expressed to be created), by or pursuant to this Security Agreement;

"Currency of Account" means Sterling;

"Enforcement Event" means the occurrence of any Event of Default as defined in Clause 13 of the Loan Facilities Agreement provided that any relevant Event of Default has not been waived by the Agent in accordance with the terms of the Loan Facilities Agreement;

"Liabilities" means all present and future moneys, debts and liabilities due, owing or incurred by the Chargor to any Finance Party under or in connection with any Finance Document (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise);

**"Loan Facilities Agreement"** means the Loan Facilities Agreement dated 5 November 2003 between the Chargor and, inter alia, The Governor and Company of the Bank of Scotland (now known as Bank of Scotland plc) as amended, supplemented, novated, extended or restated from time to time; and

**"Secured Rights"** means the Chargor's whole right, title and interest, past, present and future, in and to the Assigned Contract.

**1.2 References to this Security Agreement and Other Documents**

Except to the extent that the context requires otherwise, any reference in this Security Agreement to this Security Agreement or any other agreement or document is a reference to this Security Agreement or, as the case may be, the relevant agreement or document as from time to time amended, supplemented, novated, restated or replaced as permitted by the Financing Documents and includes a reference to any document which so amends, supplements, novates, restates, replaces or is entered into, made or given pursuant to or in accordance with any of the terms of, this Security Agreement or, as the case may be, the relevant agreement or document.

**1.3 Loan Facilities Agreement Definitions**

Except to the extent otherwise defined herein or as the context requires otherwise, terms and references defined or construed in the Loan Facilities Agreement shall have the same meanings and constructions when used in this Security Agreement.

**1.4 References to Statutes**

Except where otherwise stated, any reference in this Security Agreement to any Act of Parliament or any Section of, Schedule to or other provision of an Act of Parliament shall be construed, at any particular time, as including reference to any modification, extension or re-enactment thereof then in force and instruments, orders and regulations then in force and made under or deriving validity from the relevant Act.

**1.5 Headings**

Headings shall be ignored in construing this Security Agreement.

**1.6 Schedules**

The Schedules to this Security Agreement shall be deemed to be incorporated in and form part of this Security Agreement.

## **2 UNDERTAKING TO PAY**

### **2.1 Covenant to Pay**

The Chargor undertakes to the Security Trustee (as security trustee for the Finance Parties) that the Chargor will pay or discharge each of its Liabilities in accordance with the terms of the relevant Finance Document or, if not so provided immediately on demand by the Finance Parties to whom it is payable (but subject always to the provisions of the relevant Finance Document).

### **2.2 Security Trustee's Sole Right to Appropriate**

Subject to the provisions of the Financing Documents the Chargor hereby irrevocably waives any right to appropriate any payment to, or other sum received, recovered or held by, the Security Trustee in or towards discharge of any particular part of the Liabilities and agrees that the Security Trustee shall have the exclusive right to appropriate any such payment or other sum in accordance with the Financing Documents, which right shall override any application made or purported to be made by the Chargor.

### **2.3 Discharge**

Subject to Clause 13.4, each sum appropriated by the Security Trustee as provided in the Financing Documents in or towards discharge of a particular part of the Liabilities shall discharge pro tanto not only the obligations of the Chargor to the Security Trustee in respect of that part of the Liabilities but also its obligations to the Finance Parties in respect of an amount of the Liabilities equal to the sum so appropriated.

## **2A. CREATION OF SECURITY**

### **2A.1 All the security created under this Security Agreement:**

2A.1.1 is created in favour of the Security Trustee;

2A.1.2 is created over present and future assets of the Chargor; and

2A.1.3 is security for the payment of all the Liabilities.

2A.2 If the rights of the Chargor under a document cannot be secured without the consent of a party to that document:

2A.2.1 this Security will secure all amounts which the Chargor may receive, or has received, under that document but exclude the document itself; and

2A.2.2 unless the Security Trustee otherwise requires, the Chargor must use reasonable endeavours to obtain the consent of the relevant party to that document being secured under this Security Agreement.

The Security Trustee holds the benefit of this Security Agreement on trust for the Finance Parties.

## **3 SECURITY**

### **3.1 Assignment Provisions**

3.1.1 As security for payment of all Liabilities, the Chargor hereby assigns and agrees to assign absolutely to the Security Trustee all its present and future rights, title, benefits and interests in, to and under the Assigned Contract including all monies which at any time may be or become payable to the Chargor pursuant thereto and the net proceeds of any claims, awards and judgements which may at any time be receivable or received by the Chargor pursuant thereto.

3.1.2 A reference in this Security Agreement to the Assigned Contract includes all rights, remedies and benefits to which the Chargor is at any time entitled under the Assigned Contract now or at any time hereafter including, without limitation:

- (a) any right to receive payment under the Assigned Contract and to the proceeds of such payment;
- (b) any entitlement to make any claim under the Assigned Contract and to the proceeds of such claim; and
- (c) any right to terminate the Assigned Contract or to enforce any provision thereof.

### 3.2 **Delivery of Documents**

During the continuance of the Charges the Chargor shall deposit with the Security Trustee, and the Security Trustee shall be entitled to hold, on request, executed originals of the Assigned Contract.

### 3.3 **Further Security**

The Chargor shall, promptly upon the Security Trustee so requiring by notice to the Chargor, execute and deliver (or procure the execution and delivery of) to the Security Trustee (in such form as the Security Trustee shall reasonably require) in favour of the Security Trustee securing the Liabilities such other Security over such of the Chargor's other present or future Charged Assets as it is practicable to grant as shall be specified in the relevant notice (whether generally or specifically and whether for the purposes of obtaining legal title to the relevant Charged Assets or creating Security which is effective under the laws of Scotland or any other jurisdiction or otherwise).

### 3.4 **Further Assurance**

The Chargor shall promptly execute and do all such assurances, acts and things as the Security Trustee may require:

- 3.4.1 for perfecting or protecting the Charges created or intended to be created by or pursuant to this Security Agreement or the priority of the Charges; or
- 3.4.2 for facilitating the realisation of the Charged Assets or the exercise of any rights vested in the Security Trustee,

and shall in particular (without prejudice to the generality of the foregoing) execute all dispositions, transfers, conveyances, assignments, assignments and assurances of the Charged Assets (whether to the Security Trustee or to its nominees or otherwise) and give all notices, orders and directions (whether conditional or unconditional) which the Security Trustee may think expedient.

**3.5 Notices of Assignment**

Without prejudice to the other provisions of this Security Agreement, the Chargor shall immediately following execution hereof join with the Security Trustee in giving notice of the assignment in Clause 3.1 substantially in the form set out in Schedule 1 to each counterparty to an Assigned Contract and the Chargor shall use its reasonable endeavours to procure that each counterparty to whom any such notice is given shall promptly duly sign and return the form of acknowledgement thereon.

**4 RESTRICTIONS ON DEALING**

**4.1 Security**

The Chargor shall not create or have outstanding any Security on or over its Charged Assets (present or future or any part thereof) except for:-

4.1.1 the Charges; and

4.1.2 any other Security permitted by Clause 11.4.5 of the Loan Facilities Agreement and not prohibited by any other Finance Document.

**4.2 Disposal**

The Chargor shall not assign or transfer (save as provided for under this Security Agreement or under any other Finance Document) to any person all or part of the benefit of the Assigned Contract or any interest therein or any of the revenues or proceeds thereof.

**4.3 Assigned Contract**

4.3.1 The Chargor shall not amend, vary, waive or modify (or agree to amend, vary, waive or modify) or exercise any right to rescind or terminate any of the Assigned Contract or any provision thereof except as contemplated by and in the manner provided for in the Financing Documents.

4.3.2 Notwithstanding anything to the contrary, the Chargor shall remain liable under the Assigned Contract to perform all the obligations assumed by it thereunder and neither the Security Trustee nor any Finance Party shall be under any obligation or liability to the Chargor or any other person under or in respect of the Assigned Contract, whether by reason of this Security Agreement or otherwise.

**5 CHARGOR UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES**

**5.1 Undertakings**

The Chargor undertakes to the Security Trustee as set out in Schedule 3.1.

**5.2 Representations and Warranties**

The Chargor represents and warrants to the Security Trustee as set out in Schedule 3.2.

**6 WHEN SECURITY BECOMES ENFORCEABLE**

At any time after the occurrence of an Enforcement Event and during the continuance thereof the security hereby conferred by this Security Agreement (whether or not such Enforcement Event is continuing at the relevant time) shall become immediately enforceable. After this security has become enforceable, the Security Trustee may in its discretion enforce all or any part of this Security in any manner it sees fit or as the Finance Parties direct.

**7 ENFORCEMENT**

**7.1 Powers**

At any time after the Security shall have become enforceable in accordance with Clause 6 the Security Trustee shall be entitled, on giving to the counterparty or counterparties to the Assigned Contract without any requirement to give notice to the Chargor, either in its own name or in the name of the Chargor, or otherwise and in such manner and upon such terms and conditions as it thinks fit:

- (a) to sell, transfer, assign or otherwise dispose of the Secured Rights by public or private sale with or without advertisement in such manner and on such terms and conditions as the Security Trustee may consider expedient, and apply the proceeds in or towards payment or satisfaction of the Liabilities; and
- (b) generally, without prejudice to the other provisions of this Clause, to exercise all the rights powers and discretions and fulfil all the obligations in respect of the Secured Rights it would be entitled to exercise if it were the absolute owner of the Secured Rights, and to do all acts and things it may consider necessary or expedient for the realisation of the Secured Rights and the application of the proceeds in or towards payment or satisfaction of the Liabilities, or as may be incidental to the exercise of any of the rights, powers and discretions conferred on the Security Trustee under this Security.

**8 SECURITY TRUSTEE'S RIGHTS**

**8.1 Delegation**

The Security Trustee may delegate in any manner to any person any of the rights which are for the time being exercisable by the Security Trustee under this Security Agreement. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Security Trustee may in its absolute discretion think fit.

**8.2 Continuation of Accounts**

At any time following:-

- 8.2.1 any Finance Party receiving notice (either actual or otherwise) of any subsequent Security affecting the Charged Assets or
- 8.2.2 the presentation of a petition or the passing of a resolution for or with a view to the winding-up of the Chargor

any Finance Party may open a new account in the name of the Chargor with that Finance Party (whether or not it permits any existing account to continue). If that Finance Party does not open such a new account, it shall nevertheless be treated as if it had done so at the



time, as the case may be, when the notice was received or was deemed to have been received of the subsequent Security or such petition was presented or such resolution was passed. No moneys thereafter paid into any account, whether new or continuing, shall discharge or reduce the amount recoverable pursuant to this Security Agreement unless and until so applied.

### **8.3 Set-Off**

The Chargor authorises the Security Trustee to apply and agrees with the Security Trustee to permit each Finance Party to apply (without prior notice) any credit balance (whether or not then due) to which the Chargor is at any time beneficially entitled on any account at, any sum held to its order by and/or any liability to it of, any office of the Security Trustee, or, as the case may be, that Finance Party in or towards satisfaction of all or any part of the Liabilities which are then due and payable to that party under the Financing Documents and unpaid and, for that purpose, to convert one currency into another at such party's then prevailing spot rate of exchange. Neither the Security Trustee nor any Finance Party shall be obliged to exercise any of its rights under this Clause, which shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which it is at any time otherwise entitled (whether by operation of law, contract or otherwise).

## **9 LIABILITY OF SECURITY TRUSTEE**

### **9.1 Security Trustee's Liability**

The Security Trustee shall not in any circumstances:

- 9.1.1 be liable to account to the Chargor, any Finance Party, or any other person for anything except for sums actually received by the Security Trustee and not distributed or paid to the Chargor, the Finance Parties or other persons entitled or at the time of payment honestly and reasonably believed by the Security Trustee to be entitled thereto; or
- 9.1.2 be liable to the Chargor, any Finance Party, or any other person for any costs, charges, losses, damages, liabilities or expenses arising from or connected with any realisation or enforcement of the Charged Assets or from any act, default, omission or misconduct of the Security Trustee or its officers, employees or agents in relation to the Charged Assets or in connection with the Financing Documents except to the extent that they shall be caused by the Security Trustee's own fraud, gross negligence or wilful misconduct or that of their own officers or employees.

The Security Trustee shall not by virtue of this Clause 9.1 owe any duty of care or other duty to any person which it would not owe in the absence of this Clause 9.1.

### **9.2 Other's Liability to Account**

All the provisions of Clause 9.1 shall apply, mutatis mutandis, in respect of the liability of any officer, employee or agent of the Security Trustee.

## **10 POWER OF ATTORNEY**

### **10.1 Appointment**

The Chargor, by way of security, irrevocably and severally appoints the Security Trustee to be its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney may think fit:

- 10.1.1 to do anything which the Chargor is obliged to do under this Security Agreement including to create charges over and execute dispositions, transfers, conveyances, assignments, assignments and assurances of, and other instruments, notices, orders and directions relating to, the Charged Assets and

- 10.1.2 generally to exercise all or any of the rights conferred on the Security Trustee in relation to the Charged Assets or under this Security Agreement or the Act.

**10.2 Ratification**

The Chargor hereby ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do or purport to do in the exercise or purported exercise of the power of attorney in Clause 10.1.

**10.3 Exercise of Power**

The appointment referred to in Clause 10.1 shall take effect immediately but the powers conferred thereby shall only be exercisable after the occurrence of an Enforcement Event.

**11 PROTECTION OF THIRD PARTIES**

No person (including a purchaser) dealing with the Security Trustee shall be concerned to enquire:

- 11.1 whether the Liabilities have become payable;
- 11.2 whether any power which the Security Trustee is purporting to exercise has become exercisable or is being properly exercised;
- 11.3 whether any money remains due under the Financing Documents; or
- 11.4 how any money paid to the Security Trustee is to be applied and the receipt of the Security Trustee shall be an absolute discharge to any such person.

**12 DEMANDS AND PAYMENTS**

**12.1 Demands**

Subject to the terms of the Loan Facilities Agreement, any demand for payment made by the Security Trustee (in its capacity as such), or any Finance Party (in its capacity as such) shall be valid and effective for all purposes of this Security Agreement notwithstanding that the demand contains no statement of the relevant Liabilities or that it inadvertently contains an inaccurate or incomplete statement of them.

**12.2 Payments**

All payments under or pursuant to this Security Agreement (including damages for its breach) shall be made in the Currency of Account and in such funds, to such account, with such financial institution and in such other manner as may be agreed between the parties and, if not so agreed, as the Security Trustee may direct.

**12.3 Receipts by the Security Trustee**

All amounts from time to time received or recovered by the Security Trustee in exercise of their rights under or in respect of this Security Agreement shall, subject to the discharge of any liabilities having priority to the Liabilities, be applied as follows:

- 12.3.1 in or towards the payment of the Liabilities in accordance with the Financing Documents, and
- 12.3.2 in payment of any surplus to the Chargor or other person entitled to it.

#### **12.4 Avoidance of Payments**

The Chargor shall on demand indemnify each Finance Party against any funding or other cost, charge, loss, liability or expense (including loss of profit) expended, paid, incurred or debited in account by that Finance Party as a result of that Finance Party being required for any reason (including, without limitation, any bankruptcy, insolvency, winding-up or similar law of any jurisdiction) to refund all or part of any amount received or recovered by it in respect of any of the Liabilities or any liability the discharge of which is, directly or indirectly, guaranteed or otherwise secured by the Chargor and shall in any event pay to the Security Trustee for the account of the relevant Finance Party on demand the amount so refunded by that Finance Party.

#### **12.5 Subrogation**

So long as any of the Charges remain outstanding:

- 12.5.1 any rights of the Chargor, by reason of the performance of any of its obligations under this Security Agreement, the enforcement of any of the Charges or any action taken pursuant to any rights conferred by or in connection with this Security Agreement, to be indemnified by any person, to prove in respect of any liability in the winding-up of any person or to take the benefit of or enforce any Security, guarantees or indemnities or to seek contribution from any person, shall be exercised and enforced only in such manner and on such terms, as the Security Trustee may require and
- 12.5.2 any amount received or recovered by the Chargor (a) as a result of any exercise of any such rights or (b) in the winding-up of any person shall be held in trust for and immediately paid to the Security Trustee.

#### **13 DISCHARGE OF SECURITY**

##### **13.1 Continuing Security**

Subject to this Clause 13, the Charges shall remain in full force and effect by way of continuing security and shall not be affected in any way by any settlement of account (whether or not any Liabilities remain outstanding thereafter) or other matter or thing whatsoever and shall be in addition to any other Security, guarantee or indemnity now or hereafter held by the Security Trustee or any other person in respect of the Liabilities.

##### **13.2 Security Unaffected**

Without prejudice to the generality of Clause 13.1, neither the Charges nor the Liabilities shall be affected in any way by:

- 13.2.1 any time, indulgence, concession, waiver or consent given to the Chargor or any other person, whether by the Security Trustee (in its capacity as such), any Finance Party (in its capacity as such) or any other person
- 13.2.2 (except to the extent of the relevant amendment or change) any amendment to or change in any Security, guarantee or indemnity (including this Security Agreement), the terms of any Liability or liability the discharge of which is, directly or indirectly, guaranteed or otherwise secured by the Chargor or any agreement or document relating to any of the foregoing
- 13.2.3 the making or absence of any demand for payment of any Liabilities on the Chargor or any other person, whether by the Security Trustee (in its capacity as such), any Finance Party (in its capacity as such) or any other person
- 13.2.4 the enforcement or absence of enforcement of any Security, guarantee or indemnity (including this Security Agreement)

- 13.2.5 any other Security, guarantee or indemnity now or hereafter held by the Security Trustee (in its capacity as such), any Finance Party (in its capacity as such) or any other person;
- 13.2.6 (except to the extent of the relevant release) the release of any Security, guarantee or indemnity (including this Security Agreement);
- 13.2.7 the administration or winding-up of the Chargor or any other person, or any step being taken for any such administration or winding-up; or
- 13.2.8 the illegality, invalidity or unenforceability of, or any defect in, any provision of any agreement or document relating to the Liabilities or any Security, guarantee or indemnity (including this Security Agreement) or any of the rights or obligations of any of the parties under or in connection with any such document or any Security, guarantee or indemnity (including this Security Agreement), whether on the grounds of ultra vires, not being in the interests of the Chargor or any other person, not having been duly authorised, executed or delivered by the Chargor or any other person or for any other reason whatsoever.

### 13.3 Final Redemption

Subject and without prejudice to Clause 13.4, upon proof being given to the satisfaction of the Security Trustee (i) that all the Liabilities have been discharged in full or (ii) that provision acceptable to the Security Trustee for such discharge has been made, and in either case that all facilities which might give rise to Liabilities have terminated, the Security Trustee shall at the request and cost of the Chargor execute and do all such deeds, acts and things as may be necessary to release the Charged Assets from the Charges or to re-assign them to the Chargor, as the case may be.

### 13.4 No Assurance etc.

No assurance, Security, Guarantee or payment which may be avoided under any law relating to bankruptcy, insolvency, administration or winding-up (including Section 238, 239, 242, 243 or 245 of the Act) and no release, settlement, discharge or arrangement given or made by any Finance Party (other than the Security Trustee acting in its capacity as such) on the faith of any such assurance, Security, Guarantee or payment, shall prejudice or affect the right of the Security Trustee to enforce the Charges to the full extent of the Liabilities or any other rights which any Finance Party may have in respect of the Liabilities or any part thereof. The Chargor agrees that in such circumstances the Charges and this Security Agreement shall be deemed to have remained in full force and effect notwithstanding any such assurance, Security, Guarantee, payment, release, settlement, discharge or arrangement. Without prejudice to the foregoing (and subject to Clause 13.3), the Security Trustee shall be entitled to retain this Security Agreement and shall not be obliged to release the Charged Assets from the Charges until the expiry of a period of one month plus such statutory period within which any assurance, Security, Guarantee or payment can be avoided or invalidated after the Liabilities shall have been discharged in full, and after any facility which might give rise to Liabilities has terminated. If at any time within such period:

- 13.4.1 a petition shall be presented to a competent court for an order for the administration or winding-up of the Chargor or of any party which has given the relevant assurance, Security, Guarantee or payment; or
  - 13.4.2 the Chargor or any such party shall pass a resolution for or with a view to its winding-up,
- the Security Trustee may continue to retain this Security Agreement and not to release the Charged Assets from the Charges for and during such further period as the Security Trustee in its absolute discretion shall determine.

**14 RIGHTS, AMENDMENTS, WAIVERS, CONSENTS AND DETERMINATIONS**

**14.1 Rights Additional**

The rights conferred by or pursuant to this Security Agreement shall be in addition to and not in substitution for the rights conferred by law, which shall apply to the Charges except in so far (if at all) as they are expressly excluded. Where there is any ambiguity or conflict between the rights conferred by law and those conferred by or pursuant to this Security Agreement, the terms of this Security Agreement shall prevail.

**14.2 Exercise of Rights**

Except as otherwise provided in this Security Agreement, all rights of the Security Trustee hereunder may be exercised at any time and from time to time at the absolute discretion of the Security Trustee. No failure on the part of the Security Trustee to exercise, and no delay on its part in exercising, any right under this Security Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right.

**14.3 Amendments, Waivers and Consents**

Any provision of this Security Agreement may be amended, supplemented or novated only if the Chargor and the Security Trustee (acting on the instructions of the Finance Parties) so agree in writing. Any waiver of, and any consent or approval by the Security Trustee under, any provision of this Security Agreement shall not be effective unless it is in writing, and may be given subject to any conditions thought fit by the Security Trustee, may be withdrawn or modified at any time and shall be effective only in the instance and for the purpose for which it is given.

**14.4 Determinations**

Any determination by the Security Trustee pursuant to this Security Agreement shall be conclusive in the absence of manifest error.

**15 PARTIAL INVALIDITY**

The illegality, invalidity or unenforceability of any provision of any Security Document under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision of that or any other Security Document.

**16 COMMUNICATIONS**

**16.1 Addresses**

Each communication under this Security Agreement shall be made by fax or otherwise in writing. Each communication or document to be delivered to a party under this Security Agreement shall be sent to it at the fax number or address, and marked for the attention of such person, if any, from time to time designated by it to the Security Trustee (or, in the case of the Security Trustee, by it to each party) for the purpose of this Security Agreement. The initial fax number, address and marking (if any) so designated by each party to this Security Agreement are set out under its name on the execution page of this Security Agreement. Any communication or document from or to the Chargor under this Security Agreement will be sent to, by or through the Security Trustee.

**16.2 Deemed Delivery**

Any communication from the Chargor shall be irrevocable, and shall not be effective until received by the Security Trustee. Any other communication to any person shall be deemed to be received by that person

- 16.2.1 If sent by fax between 9am and 5pm (local time in the place to which it is sent) or a working day in that place, when sent or, if sent by fax at any other time, at 9am (local time in the place to which it is sent) on the next working day in that place; or
- 16.2.2 In any other case, when left at the address for the Chargor or the Security Trustee as set out on the signing pages of this Agreement or within two (2) such Business Days after being put in the post postage prepaid and addressed to it at that address.

**17 GOVERNING LAW**

This Security Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of Scotland.

**18 WITHHOLDING**

The terms of Clause 8 of the Loan Facilities Agreement shall apply, mutatis mutandis, to any sums payable by the Chargor under this Security Agreement.

**19 CURRENCY INDEMNITY**

**19.1 Currency of Account**

The Currency of Account is the sole currency of account and payment for all sums payable by the Chargor under or in connection with this Security Agreement, including damages.

**19.2 Extent of Discharge**

Any amount received or recovered in a currency other than the Currency of Account (whether as a result of, or of the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up of the Chargor or otherwise) by the Security Trustee in respect of any Liability shall only constitute a discharge to the Chargor to the extent of the amount in the Currency of Account which the Security Trustee is able, in accordance with its usual practice, to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so).

**19.3 Indemnity**

If that amount in the Currency of Account is less than the amount of the Liability in the Currency of Account the Chargor shall indemnify the Security Trustee against any loss sustained by it as a result.

In any event, the Chargor shall indemnify the Security Trustee against the cost of making any such purchase. For the purpose of this Clause 19.3, it will be sufficient for the Security Trustee to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

**19.4 Indemnity Separate**

The above indemnity constitutes a separate and independent obligation from the other obligations in this Security Agreement, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Security Trustee and shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any Liability or any other judgement or order.

**19.5 Counterparts and Delivery**

19.5.1 This Security Agreement may be executed in any number of counterparts and by each of the parties on separate counterparts.

19.5.2 Where executed in counterparts;

- (a) this Security Agreement shall not take effect until both of the counterparts have been delivered; and
- (b) delivery will take place when the date of delivery is agreed between the parties after execution of this Security Agreement as evidenced by the date inserted on page 1 of this Agreement.

19.5.3 Where not executed in counterparts, this Agreement shall become effective on the date agreed between the parties as evidenced by the date of delivery inserted on page 1 of this Agreement.

**IN WITNESS WHEREOF** this Security Agreement consisting of this and the 12 preceding pages together with the Schedules hereto, has been executed as follows:

Executed for and on behalf of **ELGIN HEALTH (EASTER ROSS) HOLDINGS LIMITED**

by ..... Director

..... Full Name

before this witness

..... Witness

..... Full Name

..... Address

.....

at ..... EDINBURGH

on ..... 16 DECEMBER ..... 2019

Address for notices: Infrastructure Managers Limited, 11 Thistle Street, Edinburgh EH2 1DF  
Attention: The Chief Executive  
Fax number: +44 (0)131 240 5051

Executed for and on behalf of **BANK OF SCOTLAND PLC**

..... Authorised signatory

before this witness

..... Witness  
..... Full Name  
..... Address  
.....

at .....  
on ..... 2019

Address for notices: 4th Floor, New Uberior House, 11 Earl Grey Street, Edinburgh EH3 9BN  
Attention: Nicky Hall  
Fax number: 0131 659 0591



This is Schedule 1 to the Security Agreement created by Elgin Health (Easter Ross) Holdings Limited in favour of Bank of Scotland plc (as Security Trustee) and delivered on *24 FEBRUARY 2019 1020*

## SCHEDULES

### SCHEDULE 1

#### Form of Notice of Assignment of Assigned Contract

To: [Party to Assigned Contract]  
Address:

[Date]

- 1 Bank of Scotland plc (in its capacity as Security Trustee (the "Security Trustee") and the Chargor GIVE NOTICE that:-
  - 1.1 by an assignment contained in a Security Agreement dated [ ] 2019 made between the Chargor and the Security Trustee, the Chargor assigned to the Security Trustee by way of security all its present and future right, title and interest in and to [describe subject matter of assignment] (the "Assigned Contract[s]"), including all moneys which at any time may be or become payable to the Chargor pursuant to the Assigned Contract[s] and the net proceeds of any claims, awards and judgments which may at any time be receivable or received by the Chargor pursuant to the Assigned Contract[s];
  - 1.2 all moneys payable by you to the Chargor pursuant to the Assigned Contract[s] shall be paid to the Proceeds Account (Account No. [00900016]) held with Bank of Scotland plc (sort code: 80-26-43) unless and until you receive written notice from the Security Trustee to the contrary, in which event you should make all future payments as then directed by the Security Trustee;
  - 1.3 this authority and instruction is irrevocable without the prior written consent of the Security Trustee;
  - 1.4 notwithstanding the assignment referred to above or the making of any payment by you to the Security Trustee pursuant to it, the Chargor shall remain liable under the Assigned Contract[s] to perform all the obligations assumed by it under the Assigned Contract[s] and neither the Security Trustee nor any receiver, delegate or sub-delegate appointed by it shall at any time be under any obligation or liability to you under or in respect of the Assigned Contract[s];
  - 1.5 the Chargor shall not and you agree that the Chargor shall not vary or waive (or agree to vary or waive) any provision of the Assigned Contract[s] or exercise any right to rescind or terminate the Assigned Contract[s] without the prior written consent of the Security Trustee but otherwise the Chargor shall be entitled to exercise all its rights, powers and discretions under the Assigned Contract[s] unless and until you receive written notice from the Security Trustee to the contrary, in which event all such rights, powers and discretions shall be exercisable by the Security Trustee or as it directs; and
  - 1.6 you should continue to give notices under the Assigned Contract[s] to the Chargor unless and until you receive written notice from the Security Trustee to the contrary, in which event all such notices shall be given to the Security Trustee or as it directs.
- 2 Please acknowledge receipt of this Notice of Assignment and confirm that:-
  - 2.1 you will pay all sums due under the Assigned Contract as directed by or pursuant to this Notice of Assignment;

- 2.2 you will not claim or exercise any set-off or counterclaim in respect of the Assigned Contract[s];
- 2.3 you have not received any other notice of any assignment, assignation or charge of the Assigned Contract[s] or of any other interest of any third party in the Assigned Contract[s];
- 2.4 you agree to and comply with the other provisions of this Notice of Assignment,  
by signing the acknowledgement on the attached copy of this Notice of Assignment and  
returning that copy to the Security Trustee at [ ] marked for the attention of  
[ ].

.....  
For and on behalf of  
ELGIN HEALTH (EASTER ROSS) HOLDINGS LIMITED as the Chargor

[On duplicate]

We acknowledge receipt of the Notice of Assignment of which this is a copy and confirm each of the matters referred to in paragraph 2 of the Notice of Assignment.

.....  
For and on behalf of  
[Party to Assigned Contract]

This is Schedule 2 to the Security Agreement created by Elgin Health (Easter Ross) Holdings Limited in favour of Bank of Scotland plc (as Security Trustee) and delivered on 04 FEBRUARY 2018 2020

## **SCHEDULE 2**

### **Contracts**

- 1 Support services agreement dated on or about the date hereof between the Borrower, Holdings and Infrastructure Managers Limited.

This is Schedule 3.1 to the Security Agreement created by Elgin Health (Easter Ross) Holdings Limited in favour of Bank of Scotland plc (as Security Trustee) and delivered on *04 FEBRUARY 2020* ~~2019~~.

### **SCHEDULE 3.1**

#### **Undertakings**

The Chargor undertakes to the Security Trustee that, subject to the provisions of the Project Documents listed in paragraph (a) of the definition of that term and the Financing Documents listed in paragraph (a) of the definition of that term of the Loan Facilities Agreement and the permissions and exceptions given therein in favour of the Chargor and provided that the Chargor shall not be obliged to satisfy any of these undertakings if by doing so it would be in breach of any of its obligations under any of the Financing Documents:-

#### **1 BUSINESS**

- 1.1 It will carry on and conduct its affairs and business in a proper and efficient manner and will ensure that, save as permitted by the Financing Documents, there is no material change in the nature of its business (whether by a single transaction or a number of related or unrelated transactions, whether at one time or over a period of time and whether by disposal, acquisition or otherwise);
- 1.2 it will not do, or suffer to be done, anything which could be expected to prejudice the validity of the Charges.

This is Schedule 3.2 to the Security Agreement created by Elgin Health (Easter Ross) Holdings Limited in favour of Bank of Scotland plc (as Security Trustee) and delivered on *04 FEBRUARY 2020* ~~2019~~.

## **SCHEDULE 3.2**

### **Representations and Warranties**

The Chargor represents and warrants to the Security Trustee that:

#### **1 POWERS**

- 1.1 It is duly incorporated and validly existing under the law of Scotland.
- 1.2 It has the power to enter into, exercise its rights under and perform and comply with its obligations under this Security Agreement, and to create the security and rights expressed to be created by this Security Agreement.

#### **2 AUTHORISATIONS AND CONSENTS**

All actions, conditions and things required to be taken, fulfilled and done in order:-

- 2.1 to enable it lawfully to enter into, exercise its rights and perform and comply with its obligations under this Security Agreement;
  - 2.2 to ensure that those obligations are valid and legally binding;
  - 2.3 to make this Security Agreement admissible in evidence in the courts of Scotland;
  - 2.4 to create and perfect the Security created under or pursuant to this Security Agreement;
- have been taken, fulfilled and done or shall be taken, fulfilled and done prior to the time when so legally required.

#### **3 NON-VIOLATION OF OTHER AGREEMENTS**

The Chargor's entry into, exercise of its rights and/or performance of or compliance with its obligations under this Security Agreement and/or creation of the Charges under this Security Agreement do not and will not:-

- 3.1 violate any agreement to which the Chargor is a party or which is binding on the Chargor or the Charged Assets; or
- 3.2 except for any Security permitted pursuant to clause 11.4.5 of the Loan Facilities Agreement result in the existence of, or oblige the Chargor to create, any Security over the Charged Assets.

#### **4 NO EXISTING SECURITY**

- 4.1 Except for the Charges, any Security created by any other Security Document and the Junior Security Document, no Security exists on or over the Charged Assets at the date of this Security Agreement.

#### **5 REPETITION**

- 5.1 Each of the representations and warranties in paragraphs 1 to 4 above will be correct and complied with in all respects at the times referred to in clause 10.2 of the Loan Facilities

Agreement during the continuance of this Security as if repeated then by reference to the then existing circumstances.

5.2 The information contained in this Schedule is complete and accurate in all respects.