

DATED

COLLABORATION AGREEMENT

**RELATING TO THE PROVISION OF A FIELD/SURGE HOSPITAL AT THE ELBA
BUILDING, BAY STUDIOS, FABIAN WAY, SWANSEA**

Between

Swansea Bay University Health Board

And

The Council of the City and County of Swansea

THIS AGREEMENT is made on the

2020 (“Commencement Date”)

PARTIES

- (1) The SWANSEA BAY UNIVERSITY HEALTH BOARD of 1 Talbot Gateway, Baglan Energy Park, Baglan, Port Talbot SA12 7BR (“SBUHB”) and
- (2) THE COUNCIL OF THE CITY AND THE COUNTY OF SWANSEA of Civic Centre, Oystermouth Road, Swansea, SA1 3SN (“CCS”)

Hereinafter, in addition to the defined names detailed above, may be referred to as the **Parties** as appropriate.

BACKGROUND

- (A) The Parties have agreed to collaborate to deliver the development of a field/surge hospital at the Elba Building, Bay Studios, Fabian Way in the geographical area covered by SBUHB (“the Project”).
- (B) This Agreement sets out the roles and responsibilities of each Party in delivering the Project.

IT IS AGREED

1. WARRANTY

- 1.1 Each Party warrants and represents to the other that, at the Commencement Date it has the necessary power, authority and respective organisation’s approval to enter into this Agreement and the signatories are authorised to execute this Agreement on that Party’s behalf.

2. ROLE AND RESPONSIBILITIES OF SBUHB

- 2.1 To be responsible for the selection of suitable sites for the development of temporary hospitals and in particular the site at the Elba Building, Bay Studios, Fabian Way, to include obtaining all necessary approvals from UK or Welsh Government, HM Armed Forces or other military body and all other relevant consents and approvals.

- 2.2 To be responsible for devising the design and specification of the temporary hospital at Bay Studios and for any amendments to the design and specification. The works include arranging new incoming electrical and water supplies, improved drainage infrastructure, roof repairs and external works. Internally the Hospital is constructed with a “waterproof” box within the existing structure allowing up to 1100 bed spaces to be adequately lit and heated. Electrical and mechanical heating and cooling systems are also being installed along with new flooring and structural false ceilings.
- 2.3 To provide adequate and timely instructions to CCS and its contractors to enable them to deliver the Project to the required design and specification.
- 2.4 To be responsible for the cost of the Project. This is currently estimated as up to £15m but SBUHB will assume responsibility for the final cost irrespective of the value of any current or previous estimates. The costs of the Project will include all costs incurred by CCS in delivering the Project for and on behalf of SBUHB.
- 2.5 On completion of the works to be responsible for arranging appropriate insurances to be in place for the site to include contents, public liability/third party and employer’s liability as occupier and operator of the hospital.

3. ROLE AND RESPONSIBILITIES OF CCS

- 3.1 To secure the delivery of the alteration and conversion of the Elba Building, Bay Studios site into a field/surge hospital on behalf of SBUHB in line with the designs provided by SBUHB and set out in clause 2.2.
- 3.2 To liaise with Neath Port Talbot County Borough Council as the local planning authority as required by relevant legislation.
- 3.3 To undertake the role of Principal Contractor for the works and to comply with the Construction (Design & Management) Regulations 2015 as appropriate.
- 3.4 To manage the works and procure the appointment of such subcontractors with the requisite skills and experience to complete the works in accordance with the agreed design and specification.
- 3.5 Together with its subcontractors to use all reasonable endeavours to ensure the completion of the works in phases or sections as appropriate in accordance with the instructions and timelines provided by SBUHB.
- 3.6 To take out appropriate insurance for the duration of the works and recover the costs from SBUHB in accordance with clause 2.4.

4. PROJECT GOVERNANCE

The Project Board

4.1 The Project Board is responsible for overseeing the delivery of the Project. The Project Board will comprise of such officers and members as the Parties shall agree and shall meet at a frequency to be determined by the Parties.

5. INDEMNITIES AND LIMITATION OF LIABILITY

5.1 SBUHB shall indemnify CCS in respect of all actions, proceedings, costs, claims, demands, liabilities, losses and expenses howsoever arising whether in tort, default or breach of contract or breach of law arising directly or indirectly out of or in connection with or in any way related to

- i) the acts or omissions of SBUHB in fulfilling its obligations under this Agreement.
- ii) the role of CCS or its subcontractors in delivering the Project on behalf of SBUHB.

5.2 The indemnity given in clause 5.1 shall not apply where the liability arises from any fraud, dishonesty, unlawful expenditure, libel or slander on the part of the CCS and/or where CCS has acted outside the scope of its authority or in contravention of procurement legislation or where such action has not been agreed by SBUHB.

6. CONFIDENTIALITY

6.1 The Parties shall keep confidential all matters relating to the Agreement and shall use all reasonable endeavours to prevent their employees from making any disclosure to any person of any matter relating to the Agreement.

6.2 Clause 6.1 shall not apply to:

- (a) any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under the Agreement;
- (b) any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause 6;
- (c) any disclosure which is required by law (including any order of a Court of competent jurisdiction).
- (d) any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party; or

- (e) any disclosure by any Party of any document related to the procurement of any subcontractors or suppliers related to the Project where the Parties have agreed that the document contains no commercially sensitive information.

6.3 Where disclosure is permitted the recipient of the information shall be made aware of the confidential nature of the information and shall be subject to appropriate obligations of confidentiality.

7. DATA PROTECTION AND FREEDOM OF INFORMATION

For the purposes of this clause 7 the following definitions apply:

Data Protection Legislation : (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Loss Event : any event that results, or may result, in unauthorised access to Personal Data held by a Party under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach (as defined in the GDPR).

DPA 2018 : Data Protection Act 2018

GDPR : the General Data Protection Regulation (Regulation (EU) 2016/679)

LED : Law Enforcement Directive (Directive (EU) 2016/680)

Personal Data : takes the meaning given in the GDPR

Data Protection

7.1 Both Parties shall comply with the notification requirements under the Data Protection Legislation (DPL).

Both Parties shall duly observe their obligations under the DPL which arise in connection with this Agreement and each Party will ensure that Personal Data is processed only in accordance with its own policies on data protection, information security and retention of Personal Data to comply with its obligations under the Data Protection Legislation.

- 7.2 Neither Party shall perform its obligations under this Agreement in such a way as to cause the other Party to breach any of its applicable obligations under the Data Protection Legislation. Each Party shall notify the other without undue delay in the event of a Data Loss Event.
- 7.3 The Parties shall collaborate to ensure compliance with their statutory obligations under the DPL, in particular, by providing five working days' notice to the other if it Party receives a request from a Data Subject to have access to that person's Personal Data; or a complaint or request relating to the other Party's obligations under the Data Protection Legislation;
- 7.4 Each Party will provide full co-operation and assistance in relation to any complaint or request made, including by providing the other Party with full details of the complaint or request; providing any Personal Data it holds in relation to a Data Subject (within the timescales required); and providing any information requested.

Freedom of Information

- 7.5 Each Party acknowledges that they are subject to the requirements of the Freedom of Information Act 2000 ("**FOIA**") and the Environmental Information Regulations 2004 ("**EIR**") and, should the request relate to the Project, shall assist and co-operate with each other to enable the Party, by whom the request has been received, to comply with disclosure requirements under the FOIA.

8. TERM AND TERMINATION

- 8.1 This Agreement shall take effect on the Commencement Date and shall continue until terminated by the Parties by mutual agreement.

9. VARIATION

- 9.1 This Agreement may only be varied by written agreement of each Party.

10. GOVERNING LAW AND JURISDICTION

- 10.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales as they apply in Wales and the Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.

11. FAIR DEALINGS

- 11.1 The Parties recognise that it is impracticable to make provision for every contingency which may arise during the life of this Agreement and they declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interests of either of them and that if in the course of the performance of this Agreement, unfairness to either of them does or may result then the other shall use their reasonable endeavours to agree upon such action as may be necessary to remove the cause or causes of such unfairness.

12. COUNTERPARTS

- 12.1 This Agreement may be executed in two or more counterparts each one of which shall constitute an original but which, when taken together, shall constitute one instrument.

13. FORCE MAJEURE

- 13.1 In this Agreement "force majeure" shall mean any cause preventing a Party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order rule regulation or direction, accident, epidemic or pandemic, fire, flood or storm.
- 13.2 If either Party is prevented or delayed in the performance of any or all of its obligations under this Agreement by force majeure, that Party shall forthwith serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to force majeure and shall, subject to service of such notice, have no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events.
- 13.3 The Party affected by force majeure shall use all reasonable endeavors to bring the force majeure event to a close or to find a solution by which the Agreement may be performed, despite the continuance of the force majeure event.

14. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 14.1 The Contracts (Rights of Third Parties) Act 1999 is hereby excluded.

15. SEVERABILITY

15.1 If at any time any part of this Agreement (including any one or more of the clauses of this Agreement or any sub-clause or paragraph or any part of one or more of these clauses) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

16. WAIVER

16.1 The rights and remedies of any Party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such Party to the other nor by failure of, or delay by the said Party in ascertaining or exercising of any such rights or remedies. The waiver by any Party of any breach of this Agreement shall not prevent the subsequent enforcement of any subsequent breach of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

17. NOTICES

17.1 All notices under this Agreement shall only be validly given, if given in writing, addressed to the Chief Executive of each Party at the address set out at the beginning of this Agreement.

17.2 Any notices required to be given under this Agreement must be in writing and may be served by personal delivery, post (special or recorded delivery or first class post) or email at the address set out at the beginning of this Agreement or at such other address as each Party may give to the other for the purpose of service of notices under this Agreement.

17.3 Notices shall be deemed to be served at the time when the notice is handed to or left at the address of the Party to be served (in the case of personal delivery) or the day (not being a Saturday, Sunday or public holiday) next following the day of posting (in the case of notices served by post) or at 10 a.m. on the next day (not being a Saturday, Sunday or public holiday) following delivery if sent by email.

17.4 To prove service of any notice, it shall be sufficient to show in the case of a notice delivered by hand that the same was duly addressed and delivered by hand and in the

case of a notice served by post that the same was duly addressed prepaid and posted special or recorded delivery or by first class post. In the case of a notice sent by email, it shall be sufficient to show that it was addressed to the correct email address without any error message on the delivery receipt.

18. EXCLUSION OF PARTNERSHIP AND AGENCY

18.1 The Parties expressly agree that nothing in this Agreement in any way creates a legal partnership between them.

18.2 No Party or any of its employees or agents will in any circumstances hold itself out to be the servant or agent of the other Party, except where expressly permitted by this Agreement.

19 ASSIGNMENT AND SUB AGREEMENTS

19.1 Neither Party shall assign or transfer the whole or any part of this Agreement, without the prior written consent of the other Party except where expressly permitted by the Agreement.

This Agreement has been entered into as a Deed on the date stated at the beginning of it.

THE COMMON SEAL of THE COUNCIL OF)
THE CITY AND COUNTY OF SWANSEA)
was hereunto affixed in the presence of:-)

Authorised Signatory:

[add execution clause of the Swansea Bay University Health Board]

Authorised Officer: