

SCHEDULE PART 2

COMPLETION DOCUMENTS

SECTION 1

DOCUMENTS TO BE DELIVERED BY SUB-HUBCO

Unless an original document is specifically requested, a copy (certified by an officer of Sub-hubco as being a true copy) of each of the following documents is to be delivered by Sub-hubco to the Authority in accordance with Clause 2.1 (*Execution and Delivery of Documents*) of this Agreement:

- 1 The Consents and other authorisations, licences, permits, and approvals listed below:
the Planning Approval.
- 2 The Initial Funding Agreements and certification from Sub-hubco that (1) the Initial Funding Agreements have become unconditional (other than any condition relating to the conditionality of this Agreement) and (2) that all conditions to the availability of funds to Sub-hubco under the Initial Funding Agreements have been satisfied or waived, accompanied by evidence of the same.
- 3 The Construction Contract, the Services Contract and the Performance Guarantees, executed by the parties to such agreements.
- 4 An original of the Funders' Direct Agreement, the Independent Tester Contract, the Insurance Proceeds Account Agreement, the Collateral Agreements and the brokers letters of undertaking relating to the Insurances referred to in paragraph 10 below in the Agreed Form, executed by the parties to such agreements (other than the Authority).
- 5 Extracts from the minutes of the meeting of the board of directors (certified as true and accurate) of each of Sub-hubco, hubco, the Contractor, the Service Provider and the guarantors under the Performance Guarantees, at which resolutions were passed approving the execution, delivery and performance of each relevant document to which such person is expressed to be a party and in each case authorising a named person or persons to execute and deliver each such document and any other documents to be delivered by it pursuant to it. For the avoidance of doubt, this requirement shall not extend to the Senior Funders or the Account Bank or the surety under any performance bond issued in respect of the obligations of the Contractor under the Construction Contract.
- 6 The director's certificates addressed to the Senior Funders pursuant to the Loan Agreement.
- 7 An extract of the register of members of Sub-hubco.
- 8 Sub-hubco's Certificate of Incorporation and of any Certificate of Incorporation on Change of Name.
- 9 The Articles of Association of Sub-hubco.
- 10 The insurance broker's letter of undertaking, evidence of the insurances required in accordance with Clause 53 (*Insurances*) having been taken out by Sub-hubco and that the policies comply with the requirements of this Agreement, and an estimate by the insurance broker of the premiums for the Operational Insurances for the first year of the Operational Term.
- 11 Two computer disk copies of the Financial Model audited by BDO LLP.
- 12 Evidence that an election has been made for Sub-hubco to act as "client" for the Project for the purposes of the CDM Regulations.

- 13 Evidence that the Insurance Proceeds Account has been opened.
- 14 An original duly executed copy of this Agreement.
- 15 An original of the Design and Build Development Agreements Discharge signed by the Contractor and hubco.

SECTION 2

DOCUMENTS TO BE DELIVERED BY THE AUTHORITY

The Authority shall deliver to Sub-hubco the following documents:

- 1 An original copy of the Funders' Direct Agreement, the Collateral Agreements, the Independent Tester Contract, the Insurance Proceeds Account Agreement and this Agreement, duly executed by the Authority.
- 2 A certified copy of the resolution of the Authority approving the execution, delivery and performance of the documents referred to in paragraph 1 above and in each case authorising a named person or persons to execute and deliver each such document and any documents to be delivered by it pursuant thereto.
- 3 A certificate of the relevant officer of the Authority setting out the names and specimen signatures of the person or persons named in the resolution of the Authority referred to in paragraph 2 above.
- 4 Local Government (Contracts) Act 1997 Certificate in respect of this Agreement and the Funders' Direct Agreement.
- 5 An original of the Design and Build Development Agreements Discharge signed by the Authority.
- 6 A certified copy of the letter from the Scottish Government to the Authority confirming the initial terms of the revenue grant funding to be provided to the Authority in respect of the Project.
- 7 A certified copy of the resolution of (i) the Authority confirming approval of the report to the meeting of the Authority in respect of the Project on 26 June 2014 and (ii) the briefing paper as circulated and confirmation emails received from two of the four parties authorised to approve entry to the documents.
- 8 A certified copy of the Authority's Standing Orders.
- 9 A certified copy of each Authority's Scheme of Delegation.
- 10 The principal copy of the letter of consent from Telereal in the Agreed Form, duly executed by or on behalf of Telereal.

SCHEDULE PART 3

KEY WORKS PERSONNEL

ACP: North hub limited	Hubco Project Director	Linda Shearer	Summerfield House 2 Eday Road Aberdeen AB15 6RE	07867 556135
CDMC	CDM Co-ordinator	Bob Heald	Parsons Brinkerhoff The Athenaem 8 Nelson Mandela Place Glasgow G2 1BT	0141 341 5600
Tier 1 Contractor	Area Director	Scott Alexander	Morrison Construction Building Division PO Box 17452 2 Lochside View Edinburgh EH12 1LB	0870 336 5000
	Project Director	Cameron Stewart		
	Commercial Lead	Neil Grant		
	Planner	Barbara McAslam		
	Health and Safety	John Morrison		

SCHEDULE PART 4

FUNDERS' DIRECT AGREEMENT

Funders' Direct Agreement

among:

- (1) **THE HIGHLAND COUNCIL** a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 having its principal offices at Glenurquhart Road, Inverness IV3 5NX (the "Authority");
- (2) **AVIVA PUBLIC PRIVATE FINANCE LIMITED** company registered number 02334210) whose registered office is at 2 Rougier Street, York YO90 1UU (the "Security Trustee" for the Senior Funders) on behalf of itself and the Senior Funders; and
- (3) **HUB NORTH SCOTLAND (WICK) LIMITED** (company registered number SC469278) whose registered office is at Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE ("Sub-hubco").

It is agreed as follows:

1 Interpretations

1.1 Definitions

In this Agreement, unless the context otherwise requires:

"Appointed Representative" means a Representative that has been notified to the Authority pursuant to a Step-In Notice;

"Assets" means all assets and rights to enable the Authority or a successor contractor to own, operate and maintain Wick Community Campus in accordance with the Design Build Finance and Maintain Agreement, including:

- (a) any land or buildings;
- (b) any equipment;
- (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how);
- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (e) any revenues and any other contractual rights; and
- (f) any Intellectual Property Rights (subject to and in accordance with Clause 55 (Intellectual Property) of the Design Build Finance and Maintain Agreement),

but excluding any assets and rights in respect of which the Authority is full legal and beneficial owner;

"Authority Project Documents" means the Design Build Finance and Maintain Agreement, the Leases and all other documents to which the Authority and Sub-hubco are parties pursuant to the Design Build Finance and Maintain Agreement;

"Collateral Agreements" means (i) the collateral agreement dated on or around the date of this Agreement among the Authority, Sub-hubco, the Contractor and the Security Trustee; and (ii) the collateral agreement dated on or around the date of this Agreement among the Authority, Sub-hubco, the Service Provider and the Security Trustee;

"Design Build Finance and Maintain Agreement" means an agreement dated on or around the date of this Agreement between Sub-hubco and the Authority relating to the Wick Community Campus Project;

"Enforcement Event" means an Event of Default has occurred and the Security Trustee has given notice to Sub-hubco under clause 23.3 of the Loan Agreement and/or that any enforcement procedure has been commenced by the Security Trustee under any of the Security Documents;

"Event of Default" shall have the meaning given to it in the Loan Agreement;

"Final Payment Date" means the date upon which all the indebtedness of Sub-hubco under the Senior Funding Agreements has been fully and irrevocably paid or discharged and no such further indebtedness is capable of becoming outstanding;

"Proceeds Account" has the meaning given to it in the Loan Agreement;

"Representative" means: (a) the Security Trustee, any Senior Funder and/or any of their Affiliates; (b) an administrator, administrative receiver, receiver or receiver and manager of Sub-hubco appointed under the Security Documents; (c) a person directly or indirectly owned or controlled by the Security Trustee and/or any Senior Funders; or (d) any other person approved by the Authority (such approval not to be unreasonably withheld or delayed);

"Required Period" means subject to paragraph 4 (No Liquid Market) the period starting on the date of a Termination Notice and: (a) prior to the Payment Commencement Date, ending eighty (80) Business Days later; and (b) on or following the Payment Commencement Date, ending sixty (60) Business Days later;

"Security Documents" shall have the meaning given to it in the Loan Agreement;

"Senior Debt Discharge Date" means the date on which all amounts owing by the Contractor to the Senior Funders under the Senior Funding Agreements have been irrevocably paid in full;

"Senior Funders" means Aviva Public Private Finance Limited (registered number 02334210) with its registered office at 2 Rougier Street, York YO90 1UU;

"Step-In Date" means the date on which the Security Trustee gives the Authority a Step-In Notice;

"Step-In Notice" means the notice given by Sub-hubco to the Authority pursuant to paragraph 5 (Representative) stating that the Security Trustee is exercising the step-in rights under this Agreement and identifying the Appointed Representative;

"Step-In Period" means the period from the Step-In Date up to and including the earlier of: (i) the Step-Out Date; (ii) the date of any transfer under paragraph 8 (Novation); (iii) the date of any termination for breach under paragraph 6 (Step-In Period); and (iv) the date of expiry of the Design Build Finance and Maintain Agreement;

"Step-Out Date" means the date falling twenty (20) Business Days after the date of a Step-Out Notice;

"Step-Out Notice" means a notice from the Security Trustee or Appointed Representative to the Authority pursuant to paragraph 7 (Step-Out);

"Sub-hubco Event of Default" shall have the meaning given to it in the Design Build Finance and Maintain Agreement;

"Suitable Substitute Contractor" means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as: (a) having the legal capacity, power and authority to become a party to and perform the obligations of Sub-hubco under the Authority Project Documents; and (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of Sub-hubco under the Authority Project Documents;

"Termination Notice" means a notice given by the Authority to the Security Trustee under paragraph 3.2; and

"Unrestricted Assets" means those Assets, excluding any revenues or cash balances or claims outstanding at the date of transfer under any Sub-Contract, which are required by the Authority or its nominee or any replacement of Sub-hubco for the purposes of the construction, operation or maintenance of the Facilities following termination, assuming such construction, operation or maintenance is carried out on terms substantially the same as the terms of the Design Build Finance and Maintain Agreement.

1.2 Interpretation

1.2.1 Capitalised terms defined in the Design Build Finance and Maintain Agreement shall have the same meaning in this Agreement.

1.2.2 The clause and paragraph headings in this Agreement are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.

1.2.3 Unless the context otherwise requires:

1.2.3.1 a reference in this Agreement to any clause, sub-clause, paragraph, schedule or annex is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule or annex of this Agreement;

1.2.3.2 references to this Agreement or to any other such document shall include any permitted variation, amendment or supplements to such document;

1.2.3.3 references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended or re-enacted;

1.2.3.4 references to a person includes firms and corporations and their successors and permitted assignees or transferees;

1.2.3.5 words in this Agreement importing any one gender include both other genders and may be used interchangeably; and

1.2.3.6 words in this Agreement importing the singular meaning include the plural meaning and vice versa.

2 Consent To Security

2.1 The Authority acknowledges notice of, and consents to, the security interest granted over Sub-hubco's rights under the Authority Project Documents effected by Sub-hubco in favour of the Senior Funders under the Security Documents.

- 2.2 The Authority confirms that it has not received notice of any other security interest granted over Sub-hubco's rights under the Authority Project Documents.
- 2.3 Except as specifically provided for in this Agreement the Authority has no obligations (whether express, implied, collateral or otherwise) to the Security Trustee and/or the Senior Funders in connection with this Agreement or the Authority Project Documents or the Project.
- 2.4 The Authority acknowledges notice of and consents to the security interest granted by hubco in favour of the Security Trustee over the entire issued share capital of Sub-hubco.
- 2.5 For the purposes of Clause 34.3 of the Design Build Finance and Maintain Agreement, Sub-hubco and the Security Trustee hereby authorise and instruct the Authority (and the Authority agrees) to pay all sums payable to Sub-hubco under the Authority Project Documents to the Proceeds Account and Sub-hubco and the Authority agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Security Trustee upon giving reasonable notice, the Authority shall pay any sum which it is obliged to pay to Sub-hubco under the Authority Project Documents to a bank account specified by the Security Trustee.
- 2.6 The Authority shall not be obliged to make any enquiry as to the authority of the Security Trustee in doing any act or entering into any document or making any agreement under or in connection with this Agreement and the Authority shall be entitled to assume that the Security Trustee is duly authorised by each of the Senior Funders to assume the obligations expressed to be assumed by it under this Agreement and to undertake on behalf of each Senior Funder in the terms of this Agreement so as to bind each Senior Funder as if it were a party hereto.
- 2.7 The rights of the Security Trustee under this Agreement shall be extinguished upon the Final Payment Date.
- 3 No Termination Without Notice**
- 3.1 Subject only to paragraph 3.2, the Authority may serve notice terminating the Design Build Finance and Maintain Agreement at any time if it is entitled to do so under the terms of the Design Build Finance and Maintain Agreement.
- 3.2 The Authority shall not terminate or serve notice terminating the Design Build Finance and Maintain Agreement in respect of a Sub-hubco Event of Default without giving to the Security Trustee:
- 3.2.1 at least the Required Period of prior written notice (a "Termination Notice") stating:
- 3.2.1.1 that a Sub-hubco Event of Default has occurred and the proposed Termination Date; and
- 3.2.1.2 the grounds for termination in reasonable detail, and
- 3.2.2 not later than the date falling twenty (20) Business Days after the date of a Termination Notice a notice containing details of any amount owed by Sub-hubco to the Authority, and any other liabilities or obligations of Sub-hubco of which the Authority is aware (having made proper enquiry) which are:
- 3.2.2.1 accrued and outstanding at the time of the Termination Notice; and/or
- 3.2.2.2 which will fall due on or prior to the end of the Required Period, under the Design Build Finance and Maintain Agreement.
- 3.3 On becoming aware of an Enforcement Event the Security Trustee shall give notice thereof to the Authority stating that an Enforcement Event has occurred and giving reasonable

details thereof (an "Enforcement Event Notice") whereupon, subject to payment by the Security Trustee of the Authority's reasonable costs and expenses in respect thereof (being such costs and expenses as would not have been incurred in respect of the provision of such information had an Enforcement Event Notice not been served) the provisions of paragraph 3.2.2 shall apply as if references therein to a Termination Notice were to an Enforcement Event Notice.

4 No Liquid Market

4.1 At any time during the Required Period the Security Trustee may issue a written notice (the "No Liquid Market Notice") to the Authority setting out the reasons why the Security Trustee does not believe that a Liquid Market exists.

4.2 On or before the date falling fourteen (14) Business Days after the date on which a No Liquid Market Notice is received by the Authority, the Authority shall notify the Security Trustee of its opinion as to whether or not a Liquid Market exists. Where the Authority believes that a Liquid Market does exist, such notice shall set out the reasons for the Authority's belief. If the parties do not agree whether or not a Liquid Market exists, then either party may refer the dispute to be determined in accordance with paragraph 17 (Disputes) below.

4.3 If the parties agree or it is determined in accordance with Clause 57 (Dispute Resolution Procedure) of the Design Build Finance and Maintain Agreement that no Liquid Market exists, the Design Build Finance and Maintain Agreement shall automatically terminate and the provisions of paragraph 4 (No Retendering Procedure) of Section 2 (Compensation for Sub-hubco Default) of Schedule Part 17 (Compensation on Termination) to the Design Build Finance and Maintain Agreement (No Retendering) shall apply.

4.4 If any dispute relating to this paragraph 4 (No Liquid Market) is determined pursuant to paragraph 17, the Required Period shall be extended by the period of time spent determining such dispute pursuant to paragraph 17.

5 Representative

5.1 Subject to paragraph 5.2 and without prejudice to the Security Trustee's rights under the Security Documents, the Security Trustee may give the Authority a Step-In Notice at any time:

5.1.1 during which a Sub-hubco Event of Default or an Enforcement Event is subsisting (whether or not a Termination Notice has been served); or

5.1.2 during the Required Period.

5.2 The Security Trustee shall give the Authority not less than 5 Business Days prior notice of:

5.2.1 its intention to issue a Step-In Notice; and

5.2.2 the identity of the proposed Appointed Representative.

5.3 On the issue of the Step-In Notice, the Appointed Representative shall assume jointly with Sub-hubco the rights of Sub-hubco under the Authority Project Documents and thereafter, until the end of the Step-In Period the Authority shall deal with the Appointed Representative and not Sub-hubco.

6 Step-In Period

6.1 Notwithstanding paragraph 3 (No Termination Without Notice) above, the Authority may terminate the Design Build Finance and Maintain Agreement if:

- 6.1.1 any amount referred to in paragraph 3.2.2.1 above has not been paid to the Authority on or before the Step-In Date; or
 - 6.1.2 any amount referred to in paragraph 3.2.2.2 above has not been paid on or before the last day of the Required Period;
 - 6.1.3 amounts, of which the Authority was not aware (having made proper enquiry) at the time of the Termination Notice, subsequently become payable and are not discharged on or before the date falling twenty (20) Business Days after the date on which the liability of Sub-hubco for these amounts is notified to the Security Trustee or if later the Step-In Date; or
 - 6.1.4 grounds arise after the Step-In Date in accordance with the terms of the Design Build Finance and Maintain Agreement provided that Deductions and/or Warning Notices that arose pursuant to Schedule Part 14 (Payment Mechanism) to the Design Build Finance and Maintain Agreement prior to the Step-In Date shall not be taken into account during the Step-In Period but such Deductions and/or Warning Notices (to the extent applicable under the terms of the Design Build Finance and Maintain Agreement) shall be taken into account after the Step-Out Date.
- 6.2 The Authority shall not terminate the Design Build Finance and Maintain Agreement during the Step-In Period on grounds:
- 6.2.1 that the Security Trustee has served a Step-In Notice or enforced any Security Document; or
 - 6.2.2 arising prior to the Step-In Date of which the Authority was aware (having made proper enquiry) and whether or not continuing at the Step-In Date unless:
 - 6.2.2.1 the grounds arose prior to the final Phase Actual Completion Date, and the final Phase Actual Completion Date does not occur on or before the date twelve (12) months after the date on which the Authority would have been entitled to terminate the Design Build Finance and Maintain Agreement for non-completion of the Works under Clause 40.1.2 (Long stop) of the Design Build Finance and Maintain Agreement; or
 - 6.2.2.2 the grounds arose after the final Phase Actual Completion Date, and neither the Appointed Representative nor Sub-hubco is using all reasonable endeavours (including implementation of any remedial programme) to remedy any breach of the Design Build Finance and Maintain Agreement which:
 - 6.2.2.2.1 arose prior to the Step-In Date; and
 - 6.2.2.2.2 is continuing (and capable of remedy); and
 - 6.2.2.2.3 would have entitled the Authority to terminate the Design Build Finance and Maintain Agreement; or
 - 6.2.2.3 the grounds (whenever they first arose) did not give rise to any right to terminate until after the Step-In Notice; or
 - 6.2.3 arising solely in relation to Sub-hubco

7 Step-Out

- 7.1 The Appointed Representative may at any time during the Step-In Period deliver to the Authority a Step-Out Notice which shall specify the Step-Out Date.

- 7.2 On expiry of the Step-In Period:
- 7.2.1 the Appointed Representative will be released from all of its obligations and liabilities to the Authority under the Authority Project Documents arising prior to the end of the Step-In Period and rights of the Appointed Representative against the Authority will be cancelled; and
 - 7.2.2 the Authority shall no longer deal with the Appointed Representative and shall deal with Sub-hubco in connection with the Authority Project Documents.
- 7.3 Sub-hubco shall continue to be bound by the terms of the Design Build Finance and Maintain Agreement, notwithstanding the occurrence of a Step-In Notice, a Step-In Period, a Step-Out Notice, Step-Out Date, any action by the Security Trustee or Appointed Representative or the Senior Funders and/or any provision of this Agreement.

8 Novation

- 8.1 Subject to paragraph 8.2, at any time:
- 8.1.1 after an Enforcement Event has occurred; or
 - 8.1.2 during the Step-In Period,
- the Security Trustee may, subject to paragraph 8.2, on not less than twenty (20) Business Days' prior notice to the Authority and any Appointed Representative, procure the transfer of Sub-hubco's rights and liabilities under the Authority Project Documents to a Suitable Substitute Contractor in accordance with the provisions of paragraph 8.4.
- 8.2 The Authority shall notify the Security Trustee as to whether any person to whom the Security Trustee proposes to transfer Sub-hubco's rights and liabilities under the Authority Project Documents is a Suitable Substitute Contractor, on or before the date falling twenty (20) Business Days after the date of receipt from the Security Trustee of all information reasonably required by the Authority to decide whether the proposed transferee is a Suitable Substitute Contractor.
- 8.3 The Authority shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Contractor and it shall, without limitation, be reasonable for the Authority to withhold its consent if there are unremedied breaches under the Authority Project Documents and there is no rectification plan reasonably acceptable to the Authority in respect of the breaches.
- 8.4 Upon the transfer referred to in paragraph 8.1 becoming effective:
- 8.4.1 Sub-hubco and the Authority will be released from their obligations under the Authority Project Documents to each other (the "discharged obligations");
 - 8.4.2 the Suitable Substitute Contractor and the Authority will assume obligations towards each other which differ from the discharged obligations only insofar as they are owed to or assumed by the Suitable Substitute Contractor instead of Sub-hubco;
 - 8.4.3 the rights of Sub-hubco against the Authority under the Authority Project Documents and vice versa (the "discharged rights") will be cancelled;
 - 8.4.4 the Suitable Substitute Contractor and the Authority will acquire rights against each other which differ from the discharged rights only insofar as they are exercisable by or against the Suitable Substitute Contractor instead of Sub-hubco;

- 8.4.5 any then subsisting ground for termination of the Design Build Finance and Maintain Agreement by the Authority shall be deemed to have no effect and any subsisting Termination Notice shall be automatically revoked;
- 8.4.6 the Authority shall enter into a direct agreement with the Suitable Substitute Contractor and a representative of Senior Funders lending to the Suitable Substitute Contractor on substantially the same terms as this Agreement; and
- 8.4.7 any Deductions and/or Warning Notices that arose pursuant to Schedule Part 14 (Payment Mechanism) to the Design Build Finance and Maintain Agreement prior to that time shall, without prejudice to the rights of the Authority to make financial deductions, not be taken into account in determining whether a Sub-hubco Event of Default has occurred.

9 Miscellaneous

- 9.1 The Authority shall at Sub-hubco's expense, take whatever action the Security Trustee, an Appointed Representative or a Suitable Substitute Contractor taking a transfer in accordance with paragraph 8.1 may require for perfecting any transfer or release under paragraph 5 (Representative) above, paragraph 7 (Step-Out) above and paragraph 8 (Novation) above including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Security Trustee or Appointed Representative or Suitable Substitute Contractor reasonably requires.
- 9.2 The Authority shall not take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to Sub-hubco.
- 9.3 This Agreement shall remain in effect until the earlier of:
 - 9.3.1 the Final Payment Date;
 - 9.3.2 the date of termination of the Design Build Finance and Maintain Agreement; or
 - 9.3.3 the date of transfer of Sub-hubco's rights and liabilities under the Authority Project Documents to a Suitable Substitute Contractor pursuant to paragraph 9.1 above.
- 9.4 The Security Trustee, in respect of paragraphs 9.4.1, 9.4.2 and 9.4.3, and Sub-hubco, in respect of paragraph 9.4.4 shall promptly notify the Authority of:
 - 9.4.1 any Enforcement Event and any action taken in connection with such Enforcement Event, any decisions to accelerate the maturity of any amounts owing by Sub-hubco to the Senior Funders under the Senior Funders Agreement and/or any decisions to demand repayment;
 - 9.4.2 the date referred to in paragraph 9.3.1 above on or before the date falling twenty (20) Business Days after its occurrence;
 - 9.4.3 the details and amount of any proposed Additional Permitted Borrowing including:
 - 9.4.3.1 the circumstances giving rise to it and reasons for it; and
 - 9.4.3.2 the terms on which it will be borrowed;
 - 9.4.4 on the first Business Day of each calendar month during which any Additional Permitted Borrowing is, or may be, subsisting, the amount outstanding under the Senior Funding Agreements (as the same may be amended (whether or not with the approval of the Authority))and, to the extent it is aware (having made reasonable and proper enquiry);

- 9.4.4.1 the amount of any Distribution made by Sub-hubco; and
 - 9.4.4.2 the amount of any credit balance on any account of Sub-hubco.
- 9.5 Sub-hubco joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not knowingly to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.
- 9.6 For the avoidance of doubt, if there is any conflict or inconsistency between the provisions of this Agreement and the Design Build Finance and Maintain Agreement, the provisions of this Agreement shall prevail.
- 9.7 Notwithstanding any provision in the Collateral Agreements to the contrary, the Authority agrees that, subject to paragraphs 9.8 and 9.9, it will not, in respect of any particular Collateral Agreement, exercise or seek to exercise any of its step-in rights or other rights (other than design, intellectual property or similar rights) under such Collateral Agreement until the earliest of:
- 9.7.1 the Senior Debt Discharge Date; or
 - 9.7.2 the date on which the Security Trustee has given its written consent to such exercise; or
 - 9.7.3 the time when in respect of any such Collateral Agreement either:
 - 9.7.3.1 the Senior Funders have failed to exercise any corresponding right to such Collateral Agreement under their own Security Documents and the time for exercising such right has ended in accordance with the terms thereof; or
 - 9.7.3.2 the Security Trustee has confirmed in writing to the Authority (following any request from the Authority for such confirmation, to which the Security Trustee shall be obliged to respond promptly) that it does not intend to exercise any of its rights under the relevant Security Document or that it has no further claim thereunder; or
 - 9.7.3.3 the Senior Funders have stepped in to or otherwise directly or indirectly taken control over the rights of Sub-hubco under the relevant Sub-Contract (in accordance with their rights under their Security Documents) and then stepped out from, or otherwise relinquished control of such rights under or in connection with such Sub-Contract; or
 - 9.7.4 the date on which the Design Build Finance and Maintain Agreement has been terminated in accordance with its terms and the terms of this Agreement.
- 9.8 In addition to its rights under paragraph 9.7, where the Design Build Finance and Maintain Agreement has not been terminated but a counterparty has a right to terminate its Sub-Contract for breach by Sub-hubco of the terms of such Sub-Contract the Authority may pay directly, or undertake to make a payment directly to the counterparty concerned, amounts due pursuant to the Sub-Contract and may set off any such sums against any payments payable by the Authority to Sub-hubco under the Design Build Finance and Maintain Agreement so as to satisfy them pro tanto, provided always that the Authority shall not exercise its rights under this paragraph 9.8 in respect of any particular Sub-Contract:
- 9.8.1 in circumstances where the Senior Funders have stepped in to or otherwise directly or indirectly taken control over the relevant Sub-Contract and have not stepped out of it or otherwise relinquished such control; or
 - 9.8.2 unless the Authority reasonably believes that the Senior Funders are not seeking to preserve continuity of the service or build obligation (as relevant) under the

relevant Sub-Contract with reasonable diligence (or under any equivalent service or build obligation under the Design Build Finance and Maintain Agreement).

- 9.9 In addition to its rights under paragraph 9.7, where the Design Build Finance and Maintain Agreement has been terminated, the Authority shall from the Termination Date be able to exercise any of its step-in rights or other rights under or in respect of any of the Collateral Agreements; however notwithstanding the terms of the Collateral Agreements or any other provisions of this paragraph 9.9, each of the relevant Sub-Contractors (and any guarantors thereof as relevant) shall remain responsible, and be liable, to Sub-hubco in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the relevant Sub-Contracts in respect of the period prior to the Termination Date in relation to which the Security Trustee acting on behalf of Sub-hubco and the Senior Funders shall retain the benefit of all and any rights to all such costs, claims, damages, losses and liabilities.
- 9.10 Except in accordance with the provisions of paragraphs 9.7 to 9.9 (inclusive) the Authority shall not, prior to the Senior Debt Discharge Date:
- 9.10.1 claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Collateral Agreements;
- 9.10.2 take any action to wind-up, appoint an administrator, seek an interim order appointee (under paragraph 3(b) of the Insolvency Act 1986 (as amended)) or sanction a voluntary arrangement (or similar) in relation to any Sub-Contractors; or
- 9.10.3 save with the prior written consent of the Security Trustee, compete on grounds (whether in whole or in part) relating to the Project (by virtue of a claim under any of the Collateral Agreements, the Design Build Finance and Maintain Agreement or any other Project Document or otherwise) with the rights of the Senior Funders on any formal insolvency of any Sub-Contractor or Sub-hubco, nor claim to be subrogated to the rights of any Senior Funders.
- 9.11 The Authority agrees and undertakes that if it receives any amount in contravention of the provisions of paragraph 9.10 above it will promptly turn the same over to the Security Trustee and pending such payment hold the same on trust for the Security Trustee and the Senior Funders.
- 9.12 Notwithstanding the terms of the Design Build Finance and Maintain Agreement and Security Documents, the Security Trustee agrees that the Authority may exercise its rights to have transferred to it or its nominee any Unrestricted Assets following the Termination Date and the Security Trustee will not exercise or seek to exercise any enforcement rights and shall on or before the date any Unrestricted Assets are transferred to the Authority or its nominee, as the case may be, release its security over them provided however that this paragraph 9.1.2 shall not apply in respect of the rights of the Security Trustee's security interest that applies to the Head Lease.
- 9.13 Notwithstanding the terms of any Senior Funding Agreements, the parties agree and shall, to the extent it is within their power, direct that all insurance proceeds receivable or received by Sub-hubco under the insurances referred to in Clause 53 (Insurance) of the Design Build Finance and Maintain Agreement shall be paid directly into the Insurance Proceeds Account and applied in accordance with the Design Build Finance and Maintain Agreement.
- 9.14 The Parties hereby acknowledge the provisions of paragraph 10 (Project Restructuring) of Schedule Part 23 of the Design Build Finance and Maintain Agreement and further agree that to the extent any Restructuring Transfer is contemplated or undertaken, then the same shall be conducted solely in accordance with the provisions of paragraph 10 (Project Restructuring) of Schedule Part 23 of the Design Build Finance and Maintain Agreement accordingly and, in such circumstances, the Security Trustee shall comply with the obligations expressed to be obligations of the Senior Funder pursuant to paragraphs 10.2 and 10.9 of Schedule Part 23 of the Design Build Finance and Maintain Agreement.

10 Assignment

- 10.1 No party to this Agreement may assign or transfer any part of its rights or obligations under this Agreement save as provided in this paragraph 10 (Assignment).
- 10.2 The Security Trustee may assign, novate or transfer its rights and obligations under this Agreement and in respect of the Security Documents to a successor Security Trustee in accordance with the Senior Funding Agreements without the consent of the Authority and any such assignment novation or transfer shall not constitute a Change of Control for the purposes of Clause 58.6 of the Design Build Finance and Maintain Agreement. The Authority also agrees that any enforcement by the Security Trustee of the security referred to in paragraph 2.5 above (and any subsequent transfer of share capital in Sub-hubco) following an Enforcement Event shall not constitute a Sub-hubco Event of Default under Clause 40.1.6 (Change in Control) of the Design Build Finance and Maintain Agreement.
- 10.3 Any Senior Funder may assign or transfer its rights under the Senior Funding Agreements in accordance with the terms of the Senior Funding Agreements.
- 10.4 The Authority may transfer its rights and obligations under this Agreement to any permitted assignee of its interest in the Design Build Finance and Maintain Agreement and the Security Trustee and the Senior Funders shall co-operate with the Authority in completing the formalities of any transfer or assignment including by executing any additional documents as may be required by the Authority.
- 10.5 If paragraph 10.2 applies in relation to the Security Trustee, the Authority shall enter into a new direct Agreement with the new Security Trustee on substantially the same terms as this Agreement.

11 Entire Agreement

Unless otherwise stated in this Agreement, this Agreement and the Authority Project Documents constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

12 Waiver

- 12.1 The failure of any party to exercise any contractual right or remedy shall not constitute a waiver thereof until communication in writing under paragraph 12.2
- 12.2 No waiver shall be effective unless it is communicated in writing to the other party.
- 12.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

13 Severability

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

14 Confidentiality

The Security Trustee shall be bound to comply with the obligations on the part of Sub-hubco contained in Clause 61 (Confidentiality) of the Design Build Finance and Maintain Agreement in relation to all information and matters obtained from any other party under or in connection with the Project.

15 Notices Consents and Approvals

15.1 Any notice served under or in connection with this Agreement is to be in writing and shall be deemed to have been served:

15.1.1 if delivered at the time of delivery; or

15.1.2 if posted at noon (Greenwich mean time) one Business Day after posting; or

15.1.3 if sent by email:

15.1.3.1 at the time the e-mail enters the Information System of the intended recipient designated by them to receive electronic notices pursuant to this Agreement (as identified by the e-mail address specified beside the relevant party's execution or notified from time to time under paragraph 15.2 or 15.3 as the case may be) if on a Business Day between the hours of 9am and 4pm; or

15.1.3.2 by 11am on the next following Business Day, if the time the email enters the intended recipient's relevant Information System after 4pm, on a Business Day but before 9am on that next following Business Day;

and provided that no error message indicating failure to deliver has been received by the sender and provided further that within 24 hours of transmission a hard copy of the e-mail signed by or on behalf of the person giving it is sent by post or delivered by hand to the intended recipient; or

15.1.4 provided that a notice or other communication received on a non-Business Day or after 5p.m. in the place of receipt shall be deemed to be received at 9a.m. on the next following Business Day in such place.

15.2 Any notice to be given to the Authority should be marked for the attention of Head of Resources, Care and Learning Service and delivered to The Highland Council, Council Buildings, Glenurquhart Road, Inverness IV3 5NX and copied to The Chief Executive, The Highland Council, Council Buildings, Glenurquhart Road, Inverness IV3 5NX or emailed to brian.porter@highland.gov.uk or such other party or address or fax number as notified in writing to the Security Trustee by the Authority.

15.3 Any notice to be given to the Security Trustee should be marked for the attention of Underwriting and New Business Team and delivered to Sentinel House, 37 Surrey Street, Norwich, NR1 3NJ or emailed to kelly.shannon@aviva.co.uk (copied to toby.stokes@aviva.co.uk) or such other party address or fax number as notified in writing to the Authority by the Security Trustee.

15.4 Any consent or approval under this Agreement is required to be obtained before the act or event to which it applies is carried out or done and is to be treated as effective only if the consent or approval is given in writing.

16 Survivorship

Notwithstanding the provisions of paragraph 9.3.2 and paragraphs 9.7 to 9.13 (inclusive) (Miscellaneous) shall survive termination of this Agreement.

17 Disputes

17.1 All disputes shall be resolved in accordance with terms equivalent (*mutatis mutandis*) to the Dispute Resolution Procedure set out in the Design Build Finance and Maintain Agreement.

17.2 Sub-hubco, the Authority and the Security Trustee shall co-operate to facilitate the proper,

just, economical and expeditious resolution of any and all such disputes which arise under this Agreement.

18 Governing Law

18.1 Subject to paragraph 17 (Disputes) above, this Agreement is governed by the laws of Scotland.

18.2 The parties agree that the courts of Scotland shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrevocably submit to the jurisdiction of those courts.

IN WITNESS WHEREOF these presents typewritten on this and the preceding 14 pages are executed by the parties hereto as follows:

SUBSCRIBED for and on behalf of HUB NORTH SCOTLAND (WICK) LIMITED

at

on the day of 2014

by

..... Director/Attorney/Authorised Signatory

..... Full Name

in the presence of this witness

..... Witness

..... Full name

..... Address

SUBSCRIBED for and on behalf of AVIVA PUBLIC PRIVATE FINANCE LIMITED

at

on the day of 2014

by

..... Attorney

..... Full Name

in the presence of this witness

..... Witness

..... Full name

..... Address

SUBSCRIBED for and on behalf of **THE HIGHLAND COUNCIL**

at

on the day of 2014

by

..... Authorised Signatory

..... Full Name

in the presence of this witness

..... Witness

..... Full name

..... Address

SCHEDULE PART 5

LAND MATTERS

SECTION 1 - TITLE CONDITIONS

1. An obligation to maintain in good order and repair a 2.4 metre high galvanised fence along the boundary marked A to B on the Site Title Conditions and Reserved Rights Plan.
2. An obligation to:
 - 2.1 maintain in good order and repair and in a stockproof condition a 2.4 metre high galvanised fence along the boundary marked C to D on the Site Title Conditions and Reserved Rights Plan; and
 - 2.2 make good any damage caused to Banyards Farm shown by a broken purple line on the Site Title Conditions and Reserved Rights Plan through the interruption of the natural or existing man made drainage on the Site caused by Sub-hubco's operations on the Site.
3. Neither Sub-hubco nor any Sub-hubco Party shall be permitted to use any part of the Site except (a) as otherwise provided for in this Agreement, or (b) with the express permission of the Authority.
4. All conditions contained in any wayleaves, deeds of servitude or other similar agreements entered into pursuant to Clause 9.27.

SECTION 2 – RESERVED RIGHTS

1. Subject to the provisions of Clause 9.3A, a servitude right of access to the existing substation lying to the south east of West Banks Terrace, Wick shown on the Site Title Conditions and Reserved Rights Plan for traffic of all kinds in favour of North of Scotland Hydro Electric Board and their successors over the route shown partly coloured yellow and partly hatched blue on the Site Title Conditions and Reserved Rights Plan.
2. In respect of the existing electricity substation lying to the west of Seaforth Avenue, Wick shown on the Site Title Conditions and Reserved Rights Plan a servitude right in favour of North of Scotland Hydro Electric Board and their successors:
 - 2.1 subject to the provisions of Clause 9.3A, of access to the said substation for traffic of all kinds from Seaforth Avenue/Queen's Square over the route shown coloured yellow on the Site Title Conditions and Reserved Rights Plan; and
 - 2.2 of entering the land adjacent to the said substation for the purposes of inspection, maintenance and renewal of the said substation.
3. There is reserved in favour of the Authority and any Community Service Provider and those authorised by them (including pupils, staff, community users and emergency services) from the Commencement Date until the Phase 1 Actual Completion Date or (if earlier) the Termination Date rights of access and egress at all times to and from (a) Newton Road, Wick over the route shown by the broken black line on the Phase 1 Site plan in the Agreed Form and (2) the existing Wick High School, Wick over the routes shown by the broken blue lines for the purpose of access to and from the Existing All Weather Pitch. The access routes shall be within the Phase 1 Site perimeter and Sub-hubco shall provide secondary fencing to ensure that the access routes are safe for use.

4. Rights for the Authority all third parties (or their successors and assignees) having equipment, apparatus, structures, cables or service media (including public water, sewerage, drainage, electricity, gas, telephone or telecommunications) within the Site as at the Commencement Date; or which is to be installed and used in connection with the carrying out of the Project Operations to: (i) access the Site for purposes of inspecting, removing, maintaining, operating, replacing, enlarging, connecting or renewing such equipment, apparatus, structures, cables or service media and (ii) use, inspect, remove, maintain, operate, replace, repair, enlarge, connect or renew such equipment, structures, cables or service media.
5. All rights granted or to be granted in any wayleaves, deeds of servitude or other similar agreements entered into pursuant to Clause 9.27 and 9.3A.

SECTION 3 – ANCILLARY RIGHTS

A non-exclusive right of access from the Execution Date to the Phase 1 Actual Completion Date or (if earlier) the Termination Date for pedestrian and vehicular access with equipment over the area known as “the Boulevard” shown outlined by the broken blue line and coloured orange on the Phase 1 Site plan in the Agreed Form for the purpose of making a combined sewer connection at such times as shall be agreed between the parties (both parties acting reasonably) taking account of the requirement to ensure that access is available over the said area when required by the Authority during school term times for minibus access to and from the Existing All Weather Pitch.

SCHEDULE PART 6
CONSTRUCTION MATTERS
SECTION 1
PLANNING/CONSENTS

Planning Permission reference number 13/02238/FUL issued on 12 August 2013

Variation No.1 to Planning Permission reference number 13/02238/FUL issued 12 February 2014

Building Warrant reference number 13/01780/ERC issued 17 January 2014

SECTION 2

SAFETY DURING CONSTRUCTION

1 In this Section 2 (*Safety During Construction*) of Schedule Part 6 (*Construction Matters*) and wherever used elsewhere in this Agreement:

1.1 "**CDM Regulations**" means the Construction (Design and Management) Regulations 2007 (and "**CDM Regulation**" shall be construed accordingly); and

1.2 "**the client**", "**the CDM Co-ordinator**" and "**the Executive**" shall have the same meanings as are ascribed to them in the CDM Regulations.

2 In so far as not already done, within ten (10) Business Days of the date of execution of this Agreement, Sub-hubco shall make and serve on the Authority a declaration pursuant to and in the form (if any) required by CDM Regulation 8 that Sub-hubco will act as the client in relation to the Works for all the purposes of the CDM Regulations. Notwithstanding the election made by Sub-hubco in relation to CDM Regulation 8, the Authority will comply with its remaining obligations as set out in CDM Regulation 8. During the Project Term, Sub-hubco shall not, and shall not seek to, withdraw, terminate or in any manner derogate from its declaration that it will act as, and its acceptance of its responsibilities as, the client in relation to the Works for all the purposes of the CDM Regulations. The Authority will endorse its consent, in writing, to such election on the said election and return it to Sub-hubco within ten (10) Business Days of receipt.

3 Sub-hubco warrants that it has the competence, resources and capacity to, and shall, observe, perform and discharge or shall procure the observance, performance and discharge of:

3.1 all the obligations, requirements and duties of the client arising under the CDM Regulations in connection with the Works and, where necessary, the provision of the Services; and

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

4 Sub-hubco shall provide to the Authority's Representative:

4.1 in a substantially complete form on the relevant Phase Actual Completion Date; and

4.2 in final form within five (5) Business Days of the relevant Phase Actual Completion Date,

one electronic copy (on computer disk, tape or other format) of each and every health and safety file and construction phase plan prepared by the CDM Co-ordinator pursuant to the CDM Regulations in relation to the Works and the Services and electronic copies of every amendment or update made to such file during the Project Term.

SECTION 3

AUTHORITY'S CONSTRUCTION REQUIREMENTS

The Authority's Construction Requirements are the Authority's Construction Requirements in the Agreed Form.

SECTION 4

SUB-HUBCO'S PROPOSALS

The Sub-hubco's Proposals are the Sub-hubco's Proposals in the Agreed Form.

SECTION 5

REVIEWABLE DESIGN DATA

The Reviewable Design Data are the Reviewable Design Data in the Agreed Form

SECTION 6
ROOM DATA SHEETS

The Room Data Sheets are the Room Data Sheets in the Agreed Form.

SECTION 7

THERMAL AND ENERGY EFFICIENCY TESTING PROCEDURE

The Thermal and Energy Efficiency Testing Procedure is the Thermal and Energy Efficiency Testing Procedure in the Agreed Form.

SECTION 8

QUALITY PLANS (DESIGN AND CONSTRUCTION)

The Quality Plans (Design and Construction) are the Quality Plans (Design and Construction) in the Agreed Form.

SECTION 9

DESCRIPTION OF PHASES

Phase 1 – erection and commissioning of new school building, associated access and car parking to the north of the building and seeding of a grass area which will contain two pitches

Phase 1A – decant from existing Pulteneytown Academy by THC and transfer of site accommodation to Phase 2 Site

Phase 2 – demolition, including asbestos removal, of existing Pulteneytown Academy, construction of the primary car park and associated access, installation of a MUGA and seeding of a further pitch

Phase 3 – pitch establishment period (2 growing seasons)

SCHEDULE PART 7

THE PROGRAMME

The Programme is the Programme in the Agreed Form.

SCHEDULE PART 8

REVIEW PROCEDURE

1 REVIEW

1.1 The provisions of this Schedule Part 8 (*Review Procedure*) shall apply whenever any item, document or course of action is required to be reviewed, approved or otherwise processed in accordance with Schedule Part 8 (*Review Procedure*).

1.2 Subject to any express provision of this Agreement, the manner, form and timing of any submission to be made by Sub-hubco to the Authority's Representative for review under this Schedule Part 8 (*Review Procedure*) shall be a matter for Sub-hubco to determine. Each submission under this Schedule Part 8 (*Review Procedure*) shall be accompanied by a copy of the proposed document to be reviewed (including, where applicable, any Reviewable Design Data) or a statement of the proposed course of action (the entire contents of a submission being referred to in this Schedule Part 8 (*Review Procedure*) as a "**Submitted Item**"). In relation to each Submitted Item, the following procedure shall apply:

1.2.1 as soon as possible and, if the Submitted Item comprises:

- (a) an item of Reviewable Design Data;
- (b) a revised Programme submitted pursuant to Clause 14 (*Programme and Dates for Completion*); or
- (c) a document or proposed course of action submitted in the case of (an emergency),

within fifteen (15) Business Days of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item to the Authority's Representative (or such other period as the parties may agree), the Authority's Representative shall return one copy of the relevant Submitted Item to Sub-hubco endorsed "no comment" or (subject to and in accordance with paragraph 3 (*Grounds for Objection*)) "comments" as appropriate; and

1.2.2 subject to paragraph 1.4, if the Authority's Representative fails to return a copy of any Submitted Item (including any re submitted Submitted Item) duly endorsed in accordance with paragraph 1.2.1, within fifteen (15) Business Days (or within such other period as the parties may agree in writing) of the date of its submission to the Authority's Representative, then the Authority's Representative shall be deemed to have returned the Submitted Item to Sub-hubco endorsed "no comment" (and, in the case of Reviewable Design Data, endorsed "Level A - no comment"); and

1.2.3 in relation to the aspects of each Finish identified in the table below:

- (a) Sub-hubco shall submit to the Authority a range or selection of finishes ("**Range of Finishes**") no later than the relevant Finishes Proposal Date;
- (b) the Authority's Representative shall by the relevant Finishes Selection Date notify Sub-hubco of its selection for the relevant Finish; and

- (c) if no selection of a Finish has been made by the Authority's Representative and notified to Sub-hubco in accordance with paragraph 1.2.3(b) by the relevant Finish Selection Date, Sub-hubco shall be entitled to make a selection from the Range of Finishes submitted in accordance with paragraph 1.2.3(a). After the relevant Finish Selection Date, should the Authority wish to vary any selection previously made by Sub-hubco or by the Authority, such variation shall be effected as a Change in accordance with Schedule Part 16 (*Change Protocol*).

Table of Finishes

Finishes	NBS	Supporting Information	Aspects	Finishes Proposal Date	Finishes Selection Date
Internal wall finishes	M60 rev 01	335-00 rev02 Lower Floor Wall Finishes Plan 335-01 rev05 Ground Floor Wall Finishes Plan 335-02 rev06 First Floor Wall Finishes Plan 670-A-01 rev01 Block A Internal Finishes Schedule 670-B-01 rev01 Block B Internal Finishes Schedule 670-C-01 rev01 Block C Internal Finishes Schedule 670-D-01 rev01 Block D Internal Finishes Schedule 670-E-01 rev01 Block E Internal Finishes Schedule 670-F-01 rev01 Block F Internal Finishes Schedule	Colour from a standard range	09.01.15	01.02.15
Wet walls and splash back (incl hygienic wall lining)	M40 rev 02 M50 rev 03	670-A-01 rev01 Block A Internal Finishes Schedule 670-B-01 rev01 Block B Internal Finishes Schedule 670-C-01 rev01 Block C Internal Finishes Schedule 670-D-01 rev01 Block D Internal Finishes Schedule 670-E-01 rev01 Block E Internal Finishes Schedule 670-F-01 rev01 Block F Internal Finishes Schedule	Colour from a standard range	09.01.15	01.02.15
Tiling	M40 rev 02	670-A-01 rev01 Block A Internal Finishes Schedule 670-B-01 rev01 Block B Internal Finishes Schedule 670-C-01 rev01 Block C Internal Finishes Schedule 670-D-01 rev01 Block D Internal Finishes Schedule 670-E-01 rev01 Block E Internal Finishes Schedule 670-F-01 rev01 Block F Internal Finishes Schedule	Colour from a standard range	09.01.15	01.02.15
Floor finishes and skirting's	M50 rev 03	330-00 rev02 Lower Floor Floor Finishes Plan 330-01 rev03 Ground Floor Floor Finishes Plan 330-02 rev06 First Floor Floor Finishes Plan	Colour from a standard range	09.01.15	01.02.15

Finishes	NBS	Supporting Information	Aspects	Finishes Proposal Date	Finishes Selection Date
		670-A-01 rev01 Block A Internal Finishes Schedule 670-B-01 rev01 Block B Internal Finishes Schedule 670-C-01 rev01 Block C Internal Finishes Schedule 670-D-01 rev01 Block D Internal Finishes Schedule 670-E-01 rev01 Block E Internal Finishes Schedule 670-F-01 rev01 Block F Internal Finishes Schedule			
Ceiling Finishes	K10 rev 04 K40 rev 02	670-A-01 rev01 Block A Internal Finishes Schedule 670-B-01 rev01 Block B Internal Finishes Schedule 670-C-01 rev01 Block C Internal Finishes Schedule 670-D-01 rev01 Block D Internal Finishes Schedule 670-E-01 rev01 Block E Internal Finishes Schedule 670-F-01 rev01 Block F Internal Finishes Schedule 540-01 rev01 Ceiling Detail 01 540-02 rev01 Ceiling Detail 02 540-03 rev01 Ceiling Detail 03 540-04 rev01 Ceiling Detail 04 540-05 rev01 Ceiling Detail 05 540-06 rev01 Ceiling Detail 06 540-07 rev01 Ceiling Detail 07	Choice from a standard range	09.01.15	01.02.15
Ironmongery	P21 rev 01	610-01 rev01 External Door Schedule 615-01 rev02 Block A Internal Door Schedule 615-02 rev03 Block B Internal Door Schedule 615-03 rev03 Block C Internal Door Schedule 615-04 rev03 Block D Internal Door Schedule 615-05 rev03 Block E Internal Door Schedule 615-06 rev03 Block F Internal Door Schedule 625-01 rev01 Internal Ironmongery Sets 626-01 rev01 External Ironmongery Sets Proposal based	Finish from a standard range	09.01.15	01.02.15

Finishes	NBS	Supporting Information	Aspects	Finishes Proposal Date	Finishes Selection Date
		on Allgood Modric range or equal/approved			
Blinds	N10 rev 03	335-01 rev05 Ground Floor Wall Finishes Plan 335-02 rev06 First Floor Wall Finishes Plan	Style and colour from a standard range	09.01.15	01.02.15
Doors	L20 rev 03	610-01 rev01 External Door Schedule 615-01 rev02 Block A Internal Door Schedule 615-02 rev03 Block B Internal Door Schedule 615-03 rev03 Block C Internal Door Schedule 615-04 rev03 Block D Internal Door Schedule 615-05 rev03 Block E Internal Door Schedule 615-06 rev03 Block F Internal Door Schedule 465-01 rev01 Door Type Elevations – Sheet 1 465-02 rev01 Door Type Elevations – Sheet 2 466-01 rev01 External Door Type Elevations	Colour from a standard range	09.01.15	01.02.15
IPS panels	K32 rev 01	335-01 rev05 Ground Floor Wall Finishes Plan 335-02 rev06 First Floor Wall Finishes Plan 430-00-01 rev03 Indoor Changing Area 430-00-02 rev03 Indoor Changing Area 430-00-03 rev03 Outdoor Changing Area 430-00-04 rev03 Outdoor Changing Area 430-00-06 rev03 Accessible Changing Area 430-00-07 rev03 Staff Changing 430-00-08 rev03 Accessible Changing 430-00-09 rev03 Female Toilets 430-00-10 rev03 Changing Area 430-00-12 rev03 Accessible WC 430-00-13 rev03 Male Toilets/Female Toilets 430-00-14 rev03 Accessible WC	Colour from a standard laminate range	09.01.15	01.02.15

Finishes	NBS	Supporting Information	Aspects	Finishes Proposal Date	Finishes Selection Date
		430-00-15 rev03 Accessible WC 430-00-16 rev03 Male Toilets/Female Toilets 430-00-17 rev03 Accessible Toilet 430-00-18 rev03 Mobility Toilet 430-00-19 rev03 Male Changing Room 430-00-21 rev03 Assisted WC 430-00-22 rev03 Assisted WC 430-00-23 rev03 Male Toilet/Female Toilet 430-00-24 rev03 Disabled WC 430-00-25 rev03 Female Changing Room 430-01-01 rev03 Female Staff Toilets/Male Staff Toilets 430-01-02 rev03 Staff Accessible WC 430-01-03 rev03 Indoor Changing Room and WC 430-01-04 rev03 Indoor Changing Room and WC 430-01-05 rev03 Indoor Changing Room and WC 430-01-06 rev03 Indoor Changing Room and WC 430-01-07 rev03 Staff Changing 430-01-08 rev03 Staff Changing 430-01-09 rev03 Staff Changing 430-01-11 rev03 Staff Changing 430-01-12 rev03 Male Toilets/Female Toilets 430-01-13 rev03 Accessible WC 430-01-14 rev03 Male Toilets/Female Toilets 430-01-15 rev03 Accessible WC 430-01-16 rev03 Accessible WC 430-01-17 rev03 Male Toilets/Female Toilets 430-01-18 rev03 Accessible WC			

Finishes	NBS	Supporting Information	Aspects	Finishes Proposal Date	Finishes Selection Date
		430-01-19 rev03 Accessible WC 430-01-20 rev03 WC 430-01-21 rev03 Staff Toilets 430-01-22 rev03 Nursery Toilets 430-01-23 rev03 Male Toilet/Female Toilet 430-01-24 rev03 Disabled WC 430-01-25 rev03 Disabled WC 430-01-26 rev03 Accessible WC 430-01-27 rev03 Fitness Suite Changing Rooms			

1.3 If the Authority's Representative raises comments on any Submitted Item in accordance with paragraph 3 (*Grounds for Objection*) he shall state the ground upon which such comments are based and the evidence or other information necessary to substantiate that ground. To the extent that the Authority's Representative comments on a Submitted Item other than on the basis set out in this Schedule Part 8 (*Review Procedure*), or fails to comply with the provisions of this paragraph, Sub-hubco may, in its discretion, either:

1.3.1 request written clarification of the basis for such comments and, if clarification is not received within ten (10) Business Days of such request by Sub-hubco, refer the matter for determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*); or

1.3.2 in the case of a Submitted Item comprising Reviewable Design Data only, at its own risk, and without prejudice to Clause 12 (*The Design, Construction and Commissioning Process*), proceed with further design or construction disregarding such comments pending the outcome of any reference to the Dispute Resolution Procedure that may be made by either party.

1.4 In the case of any Submitted Item of the type referred to in paragraph 3.10, a failure by the Authority's Representative to endorse and return such Submitted Item within the period specified in paragraph 1.2.2 shall be deemed to constitute an objection by the Authority's Representative to such Submitted Item. If the parties fail to agree the form and content of such Submitted Item, within ten (10) Business Days following the expiry of the period specified in paragraph 1.2.2, the matter shall be determined in accordance with Schedule Part 20 (*Dispute Resolution Procedure*).

2 FURTHER INFORMATION

Sub-hubco shall submit any further or other information, data and documents that the Authority's Representative reasonably requires in order to determine whether he has a basis for raising comments or making objections to any Submitted Item in accordance with this Schedule Part 8 (*Review Procedure*). If Sub-hubco does not submit any such information, data and documents, the Authority's Representative shall be entitled to:

2.1 comment on the Submitted Item on the basis of the information, data and documents which have been provided; or

2.2 object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the Authority's Representative to determine whether he has a legitimate basis for commenting or objecting in accordance with this Schedule Part 8 (*Review Procedure*).

3 GROUNDS OF OBJECTION

The expression "raise comments" in this paragraph shall be construed to mean "raise comments or make objections" unless the contrary appears from the context. The Authority's Representative may raise comments in relation to any Submitted Item on the grounds set out in paragraph 2 (*Further Information*) above or on the ground that the Submitted Item would (on the balance of probabilities) breach any Law but otherwise may raise comments in relation to a Submitted Item only as follows:

3.1 in relation to any Submitted Item if:

- 3.1.1 Sub-hubco's ability to perform its obligations under this Agreement would (on the balance of probabilities) be adversely affected by the implementation of the Submitted Item; or
- 3.1.2 the implementation of the Submitted Item would (on the balance of probabilities) adversely affect any right of the Authority under this Agreement or its ability to enforce any such right;
- 3.2 in relation to any Submitted Item submitted pursuant to Clause 4.1 (*Ancillary Documents*) if:
 - 3.2.1 the Authority's ability to perform its obligations under this Agreement would be adversely affected by the proposed course of action;
 - 3.2.2 the Authority's or a Community Services Provider's ability to provide the relevant Community Services or to carry out any of its statutory functions would (on the balance of probabilities) be adversely affected by the proposed course of action;
 - 3.2.3 the proposed course of action would be likely to result in an increase to the Authority's liabilities or potential or contingent liabilities under this Agreement;
 - 3.2.4 the proposed course of action would adversely affect any right of the Authority under this Agreement or its ability to enforce any such right; or
 - 3.2.5 Sub-hubco's ability to perform its obligations under this Agreement would be materially adversely affected by the proposed course of action;
- 3.3 in relation to Reviewable Design Data submitted pursuant to Clause 12.6:
 - 3.3.1 which does not comprise 1:50 scale Room Layout Drawings the Authority's Representative may raise comments, subject to and in accordance with paragraph 4 (*Effect of Review*) on the ground that the Submitted Item is not in accordance with:
 - (a) the Authority's Construction Requirements; and/or
 - (b) Sub-hubco's Proposals;
 - 3.3.2 which comprises a 1:50 scale Room Layout Drawing in respect of which there is a corresponding generic 1:50 scale Room Layout Drawing for the relevant room type (which has previously been reviewed and commented upon by the Authority's Representative in accordance with this Schedule Part 8 (*Review Procedure*)), the Authority's Representative may raise comments, subject to and in accordance with paragraph 4 (*Effect of Review*), on the ground that the Submitted Item does not conform to the generic 1:50 scale Room Layout Drawing; and
 - 3.3.3 which comprises a 1:50 scale Room Layout Drawing in respect of which there is no corresponding generic 1:50 scale Room Layout Drawing for the relevant room type (which has previously been reviewed and commented upon by the Authority's Representative in accordance with this Schedule Part 8 (*Review Procedure*)), the Authority's Representative may raise comments, subject to and in accordance with paragraph 4 (*Effect of Review*), on the grounds that the Submitted Item:
 - (a) is not in accordance with the Authority's Construction Requirements and/or Sub-hubco's Proposals; or

- (b) not used;
- 3.4 in relation to a proposal to amend Sub-hubco's Proposals and rectify (part of) the Works submitted pursuant to Clause 12.8, on the grounds that, following the amendment and rectification proposed:
- 3.4.1 Sub-hubco's Proposals would not satisfy the Authority's Construction Requirements; and/or
- 3.4.2 the structural, mechanical and/or electrical performance of the Facilities would not be of an equivalent standard of performance to that set out in Sub-hubco's Proposals prior to their amendment or rectification (for the purpose of this comparison disregarding the fault which required the amendment or rectification to be made);
- 3.5 in relation to Finishes:
- 3.5.1 which have the effect of making a selection from the Range of Finishes (or any alternative range or selection of Finishes submitted by Sub-hubco to the Authority's Representative) pursuant to Clause 12.6.1; or
- 3.5.2 where the Submitted Item does not comply with the relevant provisions of the Authority's Construction Requirements and/or Sub-hubco's Proposals;
- 3.6 in relation to the submission of any revised Programme pursuant to Clause 14 (*Programme and Dates for Completion*) on the ground that the revised Programme would not (on the balance of probabilities) enable the Works to be completed by the Completion Date;
- 3.7 in relation to the submission of any Quality Plan or part of a Quality Plan or any changes to any Quality Plan pursuant to Clause 20.4 or Clause 20.7 or any quality manual or procedure in accordance with Clause 20.9 (*Quality Manuals and Procedures*), on the grounds that such Quality Plans, or parts of or changes to such Quality Plans, quality manuals or procedures, or the quality management systems which they reflect, would not comply with:
- 3.7.1 in the case of the Design Quality Plan and the Construction Quality Plan referred to in Clause 20.8, the requirements referred to in Section 8 (*Quality Plans (Design and Construction)*) of Schedule Part 6 (*Construction Matters*); and
- 3.7.2 in the case of the Services Quality Plan referred to in Clause 20 (*Quality Assurance*), the requirements referred to in Section 3 (*Services Quality Plan*) of Schedule Part 12 (*Service Requirements*);
- 3.8 in relation to the submission of any proposed revision or substitution for the Method Statements or any part of any Method Statement (as the case may be) pursuant to Clause 22.4, on the grounds that:
- 3.8.1 the proposed revision or substitution is not in accordance with Good Industry Practice;
- 3.8.2 the performance of the Services in accordance with the proposed revision or substitution would (on the balance of probabilities):
- (a) be materially different from the performance of the Services in accordance with the Method Statement prior to such proposed revision or substitution; or

- (b) be less likely to achieve compliance with the Service Level Specification; or
 - (c) have an adverse effect on the provision by the Authority or any Community Services Provider of the relevant Community Services at, or on the safety of any users of, the Facilities; or
- 3.8.3 the proposed revision or substitution would (on the balance of probabilities) result in an inferior standard of performance of the Services to the standard of performance in accordance with the Method Statement prior to such proposed revision or substitution; and
- 3.9 in relation to the submission of any Schedule of Programmed Maintenance pursuant to Clause 23.1, any revision to any Schedule of Programmed Maintenance pursuant to Clause 23.4 or any submission of Unprogrammed Maintenance Works pursuant to Clause 23.8, on the grounds that:
 - 3.9.1 carrying out the Programmed Maintenance or the Unprogrammed Maintenance Works in the period or at the times suggested would (on the balance of probabilities) interfere with the operations of the Authority and/or any Community Services Provider and such interference could be avoided or mitigated by Sub-hubco rescheduling the Programmed Maintenance or the Unprogrammed Maintenance Works; or
 - 3.9.2 in relation to the Schedule of Programmed Maintenance the proposed hours for carrying out the Programmed Maintenance are not consistent with the principles set out in Appendix 2, Table B to this Schedule Part 8 (*Review Procedure*); or
 - 3.9.3 the proposed method of performance of the Programmed Maintenance or the Unprogrammed Maintenance Works would not be in accordance with the Service Level Specification; or
 - 3.9.4 the safety of users of the Facilities would (on the balance of probabilities) be adversely affected; or
 - 3.9.5 the period for carrying out the Programmed Maintenance or the Unprogrammed Maintenance Works would (on the balance of probabilities) exceed the period reasonably required for the relevant works.
- 3.10 In relation to the submission of Sub-hubco's proposals for the Handback Works, the Handback Programme and the Handback Amount pursuant to Schedule Part 18 (*Handback Procedure*), on the grounds that:
 - 3.10.1 in the case of the Handback Works, Sub-hubco's proposals will not (on the balance of probabilities) ensure that the Handback Requirements are achieved by the Expiry Date;
 - 3.10.2 in the case of the Handback Programme, performance of the Handback Works in accordance with the programme is not (on the balance of probabilities) capable of achieving satisfaction of the Handback Requirements by the Expiry Date; and
 - 3.10.3 in the case of the Handback Amount, it does not represent the cost of carrying out the Handback Works according to the Handback Programme and the provisions of Schedule Part 18 (*Handback Procedure*).

- 4.1 Any Submitted Item which is returned or deemed to have been returned by the Authority's Representative endorsed "no comment" (and in the case of Reviewable Design Data, endorsed "Level A - no comment") shall be complied with or implemented (as the case may be) by Sub-hubco.
- 4.2 In the case of any Submitted Item other than Reviewable Design Data, if the Authority's Representative returns the Submitted Item to Sub-hubco endorsed "comments", Sub-hubco shall comply with such Submitted Item after amendment in accordance with the comments unless Sub-hubco disputes that any such comment is on grounds permitted by this Agreement, in which case Sub-hubco or the Authority's Representative may refer the matter for determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*) and Sub-hubco shall not act on the Submitted Item until such matter is so determined or otherwise agreed.
- 4.3 In the case of a Submitted Item comprising Reviewable Design Data, if the Authority's Representative returns the Submitted Item endorsed other than "Level A - no comment", Sub-hubco shall:
- 4.3.1 where the Authority's Representative has endorsed the Submitted Item "Level B - proceed subject to amendment as noted", either proceed to construct or proceed to the next level of design of the part of the Works to which the Submitted Item relates but take into account any amendments required by the Authority's Representative in his comments;
- 4.3.2 where the Authority's Representative has endorsed the Submitted Item "Level C - subject to amendment as noted" not act upon the Submitted Item, amend the Submitted Item in accordance with the Authority's Representative's comments and re-submit the same to the Authority's Representative in accordance with paragraph 4.4; and
- 4.3.3 where the Authority's Representative has endorsed the Submitted Item "Level D - rejected" not act upon the Submitted Item, amend the Submitted Item and re-submit the Submitted Item to the Authority's Representative in accordance with paragraph 4.4,
- unless Sub-hubco disputes that any such comment or proposed amendment is on grounds permitted by this Agreement, in which case Sub-hubco or the Authority's Representative may refer the matter for determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*) and Sub-hubco shall not act on the Submitted Item until such matter is so determined or otherwise agreed except at its own risk in accordance with paragraph 1.3.2.
- 4.4 Within ten (10) Business Days of receiving the comments of the Authority's Representative on any Submitted Item comprising Reviewable Design Data, Sub-hubco shall (except in the case contemplated in paragraph 4.3.1) send a copy of the Submitted Item as amended to the Authority's Representative pursuant to paragraph 4.3 and the provisions of paragraphs 1.2.1, 4.1 and 4.3 shall apply (changed according to context) to such re-submission.
- 4.5 The return or deemed return of any Submitted Item endorsed "no comment" (or in the case of Reviewable Design Data endorsed "Level A - no comment" or otherwise endorsed in accordance with paragraph 4.3.1 or 4.3.2) shall mean that the relevant Submitted Item may be used or implemented for the purposes for which it is intended but, save to the extent expressly stated in this Agreement including, without limitation, as specified in Appendix 1 Table A to this Schedule Part 8 (*Review Procedure*), such return or deemed return of any Submitted Item shall not otherwise relieve Sub-hubco of its obligations under this Agreement nor

is it an acknowledgement by the Authority that Sub-hubco has complied with such obligations.

5 DOCUMENTATION MANAGEMENT

- 5.1 Sub-hubco shall issue one (1) electronic and two (2) paper copies of all Submitted Items to the Authority and compile and maintain a register of the date and contents of the submission of all Submitted Items.
- 5.2 Sub-hubco shall compile and maintain a register of the date of receipt and content of all Submitted Items that are returned or deemed to be returned by the Authority's Representative.
- 5.3 Save to the extent set out in Appendix 1, Table A to this Schedule Part 8 (*Review Procedure*) or elsewhere in this Schedule Part 8 (*Review Procedure*), no review, comment or approval by the Authority shall operate to exclude or limit Sub-hubco's obligations or liabilities under this Agreement (or the Authority's rights under this Agreement).

6 CHANGES

- 6.1 No approval or comment or any failure to give or make an approval or comment under this Schedule Part 8 shall constitute a Change save to the extent provided in this Schedule Part 8 (*Review Procedure*).
- 6.2 If, having received comments from the Authority's Representative, Sub-hubco considers that compliance with those comments would amount to a Change, Sub-hubco shall, before complying with the comments, notify the Authority of the same and, if it is agreed by the parties or determined pursuant to Schedule Part 20 (*Dispute Resolution Procedure*) that a Change would arise if the comments were complied with, the Authority may, if it wishes, implement the Change and it shall be dealt with in accordance with Schedule Part 16 (*Change Protocol*). Any failure by Sub-hubco to notify the Authority that it considers compliance with any comments of the Authority's Representative would amount to a Change shall constitute an irrevocable acceptance by Sub-hubco that any compliance with the Authority's comments shall be without cost to the Authority and without any extension of time.
- 6.3 No alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design shall be construed or regarded as a Change.

APPENDIX 1

TABLE A

Approved RDD Item (by category)	Scale	Meaning of "Level A - no comment" and "Level B – proceed subject to amendment as noted" endorsement of Reviewable Design Data under Schedule Part 8 (Review Procedure) (including both the actual and deemed endorsement).
Room Data Sheets	n/a	A "Level A - no comment" endorsement or a "Level B - proceed subject to amendment as noted" endorsement of any room data sheet means that Sub-hubco may proceed to construct in accordance with the Submitted Item and that the Authority is satisfied that the design and other information in the relevant room data sheet satisfies Operational Functionality.
Drawings – Development Control Plan	1:1250	A "Level A - no comment" endorsement or a "Level B - proceed subject to amendment as noted" endorsement of any 1:1250 scale development control plan means that Sub-hubco may proceed to construct in accordance with the Submitted Item and that the Authority is satisfied that the design and other information contained in the relevant drawing satisfies Operational Functionality.
Drawings – Site Plan	1:500	A "Level A - no comment" endorsement or a "Level B - proceed subject to amendment as noted" endorsement of any 1:500 scale site plan means that Sub-hubco may proceed to construct in accordance with the Submitted Item and that the Authority is satisfied that the design and other information contained in the relevant drawing satisfies Operational Functionality.
Drawings – Floor Plans	1:200	A "Level A - no comment" endorsement or a "Level B - proceed subject to amendment as noted" endorsement of any 1:200 scale floor plan means that Sub-hubco may proceed to construct in accordance with the Submitted Item and that the Authority is satisfied that the design and other information contained in the relevant drawing satisfies the Operational Functionality.
Drawings – Room Layouts (including room elevations) & Reflected ceiling plans plans	1:50	A "Level A - no comment" endorsement or a "Level B - proceed subject to amendment as noted" endorsement of any 1:50 scale room layout and/or reflected ceiling drawing means that Sub-hubco may proceed to construct in accordance with the Submitted Item and that the Authority is satisfied (to the extent of the design and other information contained in the relevant drawing) that the design and other information in the relevant drawing satisfies Operational Functionality.
Drawings – Departmental plans	1:50	A "Level A - no comment" endorsement or a "Level B – proceed subject to amendment as noted" endorsement of any 1:50 scale departmental plan means that Sub-hubco may proceed to construct in accordance with the Submitted Item and that the Authority is satisfied (to the extent of the design and other information contained in the relevant drawing) that the design and other information in the relevant drawing satisfies Operational Functionality.

APPENDIX 2

HOURS FOR PROGRAMMED MAINTENANCE

- 7 Subject to paragraphs 9 to 7 below, Sub-hubco shall carry out Programmed Maintenance at the Facilities outside Core Times (as defined in Schedule Part 12 Section D) ("**Hours for Programmed Maintenance**")
- 8 Sub-hubco may, with the consent of the Authority (which consent shall not be unreasonably withheld) carry out Maintenance Works outside the Hours for Programmed Maintenance provided always that it shall take into account:
 - 8.1 the likely disturbance to the Authority and/or any Community Service Provider and/or their staff and users within the immediate area where the Maintenance Works are to be undertaken;
 - 8.2 the likely disturbance to adjacent areas, the Authority and/or any Community Service Provider and/or their staff and users in those adjacent areas that may be affected by the Maintenance Works to be undertaken in the area(s) identified in (i) above; and
 - 8.3 compliance with the Law.
- 9 Not Used
- 10 Where Sub-hubco requires access to an area of the Facilities during the Hours of Operation, Sub-hubco will consult with and obtain the consent of the Authority's Representative, concerning dates, times and periods during which Programmed Maintenance is to be undertaken in those areas so as to minimise disruption to those areas.
- 11 The Authority may request Sub-hubco to carry out Programmed Maintenance outside the Hours for Programmed Maintenance in the event that the carrying out of such Programmed Maintenance during the Hours for Programmed Maintenance would adversely affect the use of the department or area.

SCHEDULE PART 9
COLLATERAL AGREEMENTS

SECTION 1

CONTRACTOR'S COLLATERAL AGREEMENT

COLLATERAL WARRANTY

AMONG:

- (1) **The Highland Council**, a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 having its principal offices at Glenurquhart Road, Inverness IV3 5NX (the "**Authority**");
- (2) **Galliford Try Building Limited (trading as Morrison Construction)** (registered under number 02472080) whose registered office is at Cowley Business Park, Cowley, Uxbridge, Middlesex, UB8 2AL (the "**Contractor**");
- (3) **hub North Scotland (Wick) Limited**, a company incorporated in Scotland (registered number SC469278) having its registered office at Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE ("**Sub-hubco**"); and
- (4) **Aviva Public Private Finance Limited**, (registered number 02334210) having its registered office at 2 Rougier Street, York, YO90 1UU, as security trustee for and on behalf of the Finance Parties ("**Security Trustee**").

WHEREAS:

- (A) The Authority and Sub-hubco have agreed the terms on which Sub-hubco will design, develop and construct and provide certain services in connection with the new Wick High School and East Caithness Community Facilities (the "**Development**") at the Site (as that expression is defined in the Design Build Finance and Maintain Agreement) and, accordingly, have entered into the Design Build Finance and Maintain Agreement and the Project Documents.
- (B) The Contractor and Sub-hubco have entered into the Construction Contract (as defined below) of even date herewith relating to the provision of the Works (as defined in the Design Build Finance and Maintain Agreement) by the Contractor to enable Sub-hubco to discharge its obligations to the Authority regarding such Works under the Design Build Finance and Maintain Agreement and the Project Documents.
- (C) This Contractor's Collateral Agreement (the "**Agreement**") is the Contractor's Collateral Agreement contemplated by the Design Build Finance and Maintain Agreement.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following terms shall, unless the context otherwise requires, have the following meanings:

"Ancillary Documents"	has the meaning given in the Design Build Finance and Maintain Agreement;
"Business Day"	means a day other than a Saturday, Sunday or a bank holiday in Scotland;
"Construction Contract"	has the meaning given in the Design Build Finance and Maintain Agreement;

"Design Build Finance and Maintain Agreement"	means the design build finance and maintain agreement dated on or around the date of this Agreement between (1) the Authority and (2) Sub-hubco;
"Event of Sub-hubco Default"	means an Employer Event of Default as such term is defined in the Construction Contract;
"Finance Parties"	has the meaning given in the Funding Agreements;
"Funders"	means Aviva Public Private Finance Limited (registered number 02334210), whose registered office is at 2 Rougier Street, York, YO90 1UU;
"Funders' Contractor Direct Agreement"	means the agreement dated on or around the date of this Agreement among the Security Trustee, the Contractor, Sub-hubco, and the Guarantor;
"Funding Agreements"	has the meaning given in the Design, Build, Finance and Maintain Agreement;
"Guarantor"	<p>means as applicable:</p> <p>(i) from Financial Close (as defined in the Design Build Finance and Maintain Agreement) until 12 months after the Phase 1 Actual Completion Date (as defined in the Construction Contract): Galliford Try plc (registered number 00836539) whose registered office is at Cowley Business Park, Cowley, Uxbridge, Middlesex UB8 2AL; or</p> <p>(ii) from 12 months after the Phase 1 Actual Completion Date (as defined in the Construction Contract) for a period of 12 years: Galliford Try Construction & Investments Holdings Limited (registered number 04530735) whose registered office is at Cowley Business Park, Cowley, Uxbridge, Middlesex UB8 2AL</p>
"Novation Agreement"	has the meaning given in Clause 4.5.2(a);
"Novation Effective Date"	means the date of performance of the obligations set out in Clause 4 (<i>Novation</i>);
"Performance Guarantee"	has the meaning given in the Construction Contract;
"Proposed Novation Date"	has the meaning given in Clause 4.1 (<i>Proposed Substitute</i>);

“Proposed Novation Notice”	has the meaning given in Clause 4.1 (<i>Proposed Substitute</i>);
“Proposed Step-in Date”	has the meaning given in Clause 3.1 (<i>Step-in Notice</i>);
“Proposed Substitute”	has the meaning given in Clause 4.1 (<i>Proposed Substitute</i>);
“Security Documents”	has the meaning given in the Loan Agreement;
“Step-in Date”	means the date of issue of the Step-in Undertaking;
“Step-in Notice”	has the meaning given in Clause 3.1 (<i>Step-in Notice</i>);
“Step-in Period”	means the period commencing on the Step-in Date and ending on the earliest of: <ul style="list-style-type: none"> (a) the date of the first anniversary of the Step-in Date (but subject always to Clause 4.7 (<i>Extension of Step-in Period</i>)); (b) the Step-out Date; (c) the Novation Effective Date; and (d) termination of the Construction Contract under Clause 3.3 (<i>Restriction of Right of Termination</i>);
“Step-in Undertaking”	has the meaning given in Clause 3.2.4;
“Step-out Date”	has the meaning given in Clause 3.4.1; and
“Termination Notice”	has the meaning given in Clause 2.3 (<i>Termination Notice</i>).

1.2 Interpretation

Save to the extent that the context or the express provisions of this Agreement otherwise require:

- 1.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.2 all references to Clauses are references to Clauses of this Agreement;
- 1.2.3 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement,

document or instrument as amended, supplemented, substituted, novated or assigned from time to time;

- 1.2.4 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.2.5 any reference to time of day shall be a reference to Edinburgh time;
- 1.2.6 the words "herein", "hereto" and "hereunder" refer to this Agreement as a whole and not to the particular Clause in which such word may be used;
- 1.2.7 words importing the singular include the plural and vice versa;
- 1.2.8 words importing a particular gender include all genders;
- 1.2.9 "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;
- 1.2.10 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- 1.2.11 references to "Party" means a party to this Agreement and references to "Parties" shall be construed accordingly;
- 1.2.12 all monetary amounts are expressed in pounds sterling;
- 1.2.13 references to the word "includes" or "including" are to be construed without limitation;
- 1.2.14 the obligations of any Party under this Agreement are to be performed at that Party's own cost and expense;
- 1.2.15 terms used in this Agreement that are defined in the Design Build Finance and Maintain Agreement or the Ancillary Documents shall have the meanings given to them in the Design Build Finance and Maintain Agreement or the Ancillary Documents, as appropriate.

2 TERMINATION NOTICE AND AUTHORITY TERMINATION

2.1 Contractor's Warranties and Undertakings

The Contractor warrants and undertakes to the Authority that it has complied with and fulfilled and shall continue to comply with and fulfil its duties and obligations arising under or by virtue of the Construction Contract, provided that the Authority shall only be entitled to make a claim against the Contractor under this Clause 2.1 (*Contractor's Warranties and Undertakings*) if the Design Build Finance and Maintain Agreement has terminated and shall not be entitled to do so during the Step-in Period or after the Construction Contract has been novated under Clause 4 (*Novation*).

2.2 Liability of Contractor

Any liability arising from any claim for breach of the warranty under or pursuant to Clause 2.1 (*Contractor's Warranties and Undertakings*) shall be in addition to and without prejudice to any other present or future liability of the Contractor to the Authority (including, without prejudice to the generality of the foregoing, any liability in negligence) and shall not be released, diminished or in any other way be affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Authority by any person nor by any action or omission of any person whether or not such action or omission might give rise to an independent liability of such person to the Authority provided always that the Contractor shall owe no greater duties or obligations to the Authority under this Agreement than it owes or would have owed to Sub-hubco under the Construction Contract. Without prejudice to Clause 12 (*Aggregate Liability*), the Contractor shall be entitled in any action or proceedings brought by the Authority under this Agreement to rely on any limitation or exclusion of liability in the Construction Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against Sub-hubco under the Construction Contract.

2.3 **Not Used**

2.4 **Termination Notice**

2.4.1 The Contractor undertakes not to terminate the Construction Contract on account of an Event of Sub-hubco Default without first giving the Authority not less than thirty (30) Business Days' prior written notice specifying the grounds for that termination. Subject to Clause 2.4.2 below any such notice shall be a "**Termination Notice**".

2.4.2 Where the Contractor's right to terminate is subject to the terms of the Funders' Contractor Direct Agreement then the Contractor shall notify the Authority of the same as soon as reasonably practicable upon becoming aware of the provisions of the Funders' Contractor Direct Agreement applying. Thereafter as soon as the Contractor becomes entitled to terminate the Construction Contract free from the constraints contained in the Funders' Contractor Direct Agreement, whether upon the expiry of the Step-in Period (as such term is defined in the Funders' Contractor Direct Agreement) or otherwise, then the Contractor undertakes to the Authority not to terminate the Construction Contract on account of an Event of Sub-hubco Default (whether occurring before or after the Contractor's right to terminate the Construction Contract was free from the constraints of the Funders' Contractor Direct Agreement) without first giving the Authority not less than thirty (30) Business Days' prior notice specifying the grounds for that termination and noting that the Contractor's right of termination is not subject to the Funders' Contractor Direct Agreement. Any such notice, other than one given in circumstances where there is no default under the Construction Contract by Sub-hubco or the Contractor, shall for the purposes of this Agreement also be a Termination Notice and the provisions of this Agreement shall apply accordingly.

2.4.3 Notwithstanding any provision of the Construction Contract to the contrary, on termination of the Design Build Finance and Maintain Agreement by the Authority, the Parties agree that the Construction Contract shall not come to an end except in accordance with the terms of this Agreement.

2.4.4 The Authority acknowledges that it shall not be entitled to exercise its rights under Clauses 3 (Step-in and Step-out) and 4 (*Novation*) where the event giving rise to termination of the Design Build Finance and Maintain Agreement is a Contractor Event of Default (as that term is

defined in the Construction Contract) whether or not at the relevant time there has been notice to terminate the Construction Contract for such Contractor Event of Default:

- (a) until the Security Trustee has released its security over the Construction Contract; or
- (b) until the Security Trustee has confirmed to the Authority in writing that it has no further claims or interest in the claims of Sub-hubco or any Suitable Substitute Contractor (as such term is defined in the Funders' Contractor Direct Agreement) against the Contractor whether pursuant to the Security Documents, the Construction Contract or the enforcement of any rights under the Security Documents or the Funders' Contractor Direct Agreement.

3 STEP-IN AND STEP-OUT

3.1 Step-in Notice

3.1.1 If the Authority has terminated the Design Build Finance and Maintain Agreement in accordance with the terms of the Design Build Finance and Maintain Agreement or if the Authority has received a Termination Notice, then subject to the provisions of this Agreement, the Authority may give written notice to the Contractor (copied to the Security Trustee) (a "**Step-in Notice**") of the intention of the Authority to issue a Step-in Undertaking on a specified date (the "**Proposed Step-in Date**") provided that such Proposed Step-in Date shall be:

- (a) no later than five (5) Business Days after termination of the Design Build Finance and Maintain Agreement where this has been terminated by the Authority; and
- (b) no earlier than the date falling five (5) Business Days prior to the date of expiry of the Termination Notice and no later than the date of expiry of the Termination Notice where a Termination Notice has been given by the Contractor.

3.1.2 Subject to Clause 3.2.7, unless the Contractor otherwise consents, only one Step-in Notice may be given during the period of this Agreement. Subject to Clause 5.1 (*Rights of Termination*) below, the Contractor shall not be entitled to terminate the Construction Contract until after the Proposed Step-in Date.

3.2 Notice of Obligations and Step-in Undertaking

3.2.1 Within five (5) Business Days of receipt of any Step-in Notice, the Contractor shall give written notice to the Authority of any sums of which the Contractor has actual knowledge which are due and payable but unpaid by Sub-hubco and of any other material obligations or liabilities, of which the Contractor has actual knowledge, which should have been performed or discharged by Sub-hubco under the Construction Contract, in each case, as at the date of the Step-in Notice.

3.2.2 The Contractor shall inform the Authority in writing as soon as reasonably practicable of:

- (a) any change in such sums, obligations or liabilities referred to in Clause 3.2.1; and

- (b) any further sums, obligations or liabilities thereafter falling due and payable but unpaid or falling due for performance or discharge and unperformed or undischarged (as the case may be);

in each case of which the Contractor has actual knowledge, before the Step-in Date.

3.2.3 The Contractor shall give the Authority the information referred to in Clauses 3.2.1 and 3.2.2 in good faith and may not give any further notifications pursuant to Clause 3.2.2 less than three (3) Business Days prior to the Proposed Step-in Date. The Authority shall not be required to assume any liability under a Step-in Undertaking for any outstanding obligations or liabilities of Sub-hubco to the Contractor which are not notified to the Authority pursuant to Clauses 3.2.1 or 3.2.2.

3.2.4 Not later than the Proposed Step-in Date the Authority shall decide if it is prepared to issue a Step-in Undertaking. If it does so decide, the Authority shall promptly give the Contractor written notification of such decision and, at the same time, provide a copy of such notification to the Security Trustee. The Authority shall deliver to the Contractor on the Proposed Step-in Date, a written undertaking in form and substance agreed with the Contractor (both the Authority and the Contractor acting reasonably) (the "**Step in Undertaking**"), incorporating a clause in terms similar to Clause 11 (but only to the extent that there will not be double counting of default interest accruing under the Construction Contract and this Agreement), and undertaking to the Contractor:

- (a) to pay or procure the payment to the Contractor, within twenty (20) Business Days of demand by the Contractor, of any sum due and payable but unpaid by Sub-hubco to the Contractor under the Construction Contract before the Step-in Date and which has been notified by the Contractor to the Authority in accordance with Clause 3.2.1 or 3.2.2;
- (b) to perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of Sub-hubco under the Construction Contract which shall have fallen due for performance or discharge before the Step-in Date and which have been notified by the Contractor to the Authority in accordance with Clause 3.2.1 or 3.2.2 within such period as the Contractor may reasonably require;
- (c) to pay or procure the payment of any sum due and payable by Sub-hubco under the Construction Contract as a result of any act or omission occurring during the Step-in Period which shall arise from any act or omission occurring after the Step-in Date (but subject to Clauses 3.4 and 4.5.3(b)) but not, to avoid doubt, any sum due in respect of any Works carried out before the Step-in Date; and
- (d) to perform or discharge or procure the performance or discharge of any obligations of Sub-hubco under the Construction Contract as a result of any act or omission occurring during the Step-in Period which shall arise from any act or omission occurring after the Step-in Date (but subject to Clauses 3.4 (*Step-Out*) and 4.5.3(b)) but not, to avoid doubt, to perform or discharge or to procure the performance or discharge of any obligations in respect of any Works carried before the Step-in Date.

- 3.2.5 Following notification of the Authority's decision pursuant to Clause 3.2.4, the Security Trustee shall, on or before the Proposed Step-in Date, take any action which is necessary unconditionally and irrevocably to release the Construction Contract and the Performance Guarantee from the security constituted by the Security Documents.
- 3.2.6 Upon release by the Security Trustee of its security over the Performance Guarantee in accordance with Clause 3.2.5, Sub-hubco shall immediately assign all its rights and powers under the Performance Guarantee to the Authority in accordance with clause 4 of the same.
- 3.2.7 If the Authority shall not have issued the Step-in Undertaking on or before the Proposed Step-in Date the Step-in Notice shall be deemed to have been withdrawn and the rights and obligations of the Parties shall be construed as if the Step-in Notice had not been given.

3.3 Restriction of Right of Termination

During or in respect of the Step-in Period, the Contractor confirms to the Authority that it shall continue to observe and perform its duties and obligations under the Construction Contract and shall, without prejudice to Clause 5.1 (*Rights of Termination*), only be entitled to exercise its rights of termination under the Construction Contract:

- 3.3.1 by reference to an Event of Sub-hubco Default arising during the Step-in Period provided that no event of default by Sub-hubco under the Design Build Finance and Maintain Agreement (whether resulting in termination of the Design Build Finance and Maintain Agreement or otherwise, and notwithstanding that it has occurred during the Step-in Period) shall entitle the Contractor to exercise such rights of termination during the Step-in Period; or
- 3.3.2 if the Authority, in breach of the terms of the Step-in Undertaking, fails to pay when due any amount owed to the Contractor or fails to perform or discharge when falling due for performance or discharge any obligation under the Step-in Undertaking or fails to procure such payment or performance or discharge; or
- 3.3.3 if such rights of termination arise in circumstances where there is no default under the Construction Contract by the Authority under the Step-in Undertaking or the Contractor under the Construction Contract.

3.4 Step-Out

- 3.4.1 the Authority may, at any time, give the Contractor at least ten (10) days' prior written notice to terminate the Step-in Period on a date specified in the notice (the "**Step-out Date**");
- 3.4.2 the Authority shall give the Contractor at least ten (10) days' prior written notice that (subject to Clause 4.4.2) the Step-in Period will end due to the occurrence (subject to Clause 4.7 (*Extension of Step-in Period*)) of the first anniversary of the Step-in Date;

provided that:

- (a) the Authority has performed and discharged in full or procured the performance and discharge in full of any obligations of Sub-hubco under the Construction Contract in relation to the maintenance of records and the provision of reports during the Step-in Period so as to permit the Contractor to monitor the

performance of Sub-hubco's other obligations under the Construction Contract; and

- (b) all liability under the Step-in Undertaking pursuant to any claims made up to the date specified in either Clause 3.4.1 or Clause 3.4.2 (as the case may be) shall have been fully and unconditionally discharged,

3.4.3 the Authority shall be released from the Step-in Undertaking on the expiry of the Step-in Period in accordance with Clauses 3.4.1 and 3.4.2. Such release shall not affect the continuation of Sub-hubco's obligations towards the Contractor under the Construction Contract.

4 NOVATION

4.1 Proposed Substitute

At any time that the Authority is entitled to give a Step-in Notice pursuant to Clause 3.1 (*Step-in Notice*) or at any time during the Step-in Period the Authority may give notice (copied to the Security Trustee) (a "**Proposed Novation Notice**") to the Contractor that it wishes itself or another person (a "**Proposed Substitute**") to assume, by way of sale, transfer or other disposal, the rights and obligations of Sub-hubco under the Construction Contract and specifying a date (the "**Proposed Novation Date**"):

- 4.1.1 falling not later than fifteen (15) Business Days after termination of the Design Build Finance and Maintain Agreement where this has been terminated by the Authority;
- 4.1.2 falling not later than the expiry of the Termination Notice where a Proposed Novation Notice is given by the Authority at a time when it is entitled to give a Step-in Notice pursuant to Clause 3.1 (*Step-in Notice*); and
- 4.1.3 falling not later than twenty eight (28) Business Days after the date of the Proposed Novation Notice, where a Proposed Novation Notice is given during a Step-in Period.

Save as provided in Clause 4.4 (*Consent Withheld*), only one Proposed Novation Notice may be given during the period of this Agreement. Without prejudice to Clauses 3.3 (*Restriction of Right of Termination*) and 5.1 (*Rights of Termination*), the Contractor shall not be entitled to terminate the Construction Contract during the notice period specified in a Proposed Novation Notice.

4.2 Information for Consent to Novation

If the Proposed Novation Notice specifies the Authority as the Proposed Substitute, the Contractor's consent to the novation shall be deemed to have been given automatically. Where the Proposed Substitute is not the Authority, a novation in accordance with a Proposed Novation Notice shall only be effective if the Contractor consents to that novation in writing in accordance with Clause 4.3 (*Grant of Consent*) and the Authority shall (as soon as practicable) supply the Contractor with the following information (copied to the Security Trustee):

- 4.2.1 the name and registered address of the Proposed Substitute;
- 4.2.2 the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- 4.2.3 the names of the directors and the secretary of the Proposed Substitute;

- 4.2.4 details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- 4.2.5 the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Construction Contract.

4.3 **Grant of Consent**

The Contractor may withhold or delay consent to a novation only where the Proposed Substitute is not the Authority and the Authority has failed to show to the Contractor's satisfaction (acting reasonably) that:

- 4.3.1 the Proposed Substitute has the legal capacity, power and authorisation to become a party to and perform the obligations of Sub-hubco under the Construction Contract; and
- 4.3.2 the technical competence and financial standing of and the technical and financial resources available to the Proposed Substitute are sufficient to perform the obligations of Sub-hubco under the Construction Contract.

The Contractor shall notify the Authority in writing, within ten (10) Business Days of the later of receipt of a Proposed Novation Notice and all information required under Clause 4.2 (*Information for Consent to Novation*), as to whether or not it has decided to grant such consent (together with an explanation of its reasons if it has decided to withhold its consent).

4.4 **Consent withheld**

If, in accordance with Clause 4.3 (*Grant of Consent*), the Contractor withholds its consent to a Proposed Novation Notice, the Authority shall be entitled to give one or more subsequent Proposed Novation Notices, pursuant to the provisions of Clause 4.1 (*Proposed Substitute*), containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which (where the replacement Proposed Substitute is not the Authority) the Authority has good cause to believe would fulfil the requirements of Clauses 4.3.1 and 4.3.2, provided that only one Proposed Novation Notice may be outstanding at any one time, and provided further that:

- 4.4.1 where a Step-in-Notice has not been issued, any revised Proposed Novation Date shall be a date falling no later than the date specified in Clause 4.1.1 or 4.1.2 as appropriate; and
- 4.4.2 if the Proposed Novation Notice was served during the Step-in Period, any revised Proposed Novation Date shall be a date falling not later than thirty (30) Business Days after the date of the revised Proposed Novation Notice.

4.5 **Implementation of Novation**

- 4.5.1 If the Contractor consents to a novation pursuant to a Proposed Novation Notice (whether automatically or otherwise), then on the Proposed Novation Date and without prejudice to Clause 5.1 (*Rights of Termination*),
 - (a) following notification pursuant to Clause 4.1 (*Proposed Substitute*) and in the absence of any prior release in accordance with Clause 3.2.5, the Security Trustee shall, on or before the Proposed Novation Date, take any action which is

necessary unconditionally and irrevocably to release the Construction Contract and the Performance Guarantee from the security constituted by the Security Documents; and

- (b) Sub-hubco shall immediately assign all its rights and powers under the Performance Guarantee to the Authority in accordance with clause 4 of the same and on the Proposed Novation Date and without prejudice to Clause 5.1 (*Rights of Termination*).

4.5.2 Subject to the prior performance by the Security Trustee and Sub-hubco of their respective obligations under Clause 4.5.1(a) and Clause 4.5.1(b) the Proposed Substitute shall become a party to the Construction Contract in place of Sub-hubco and, thereafter, shall be treated as if it was and had always been named as a party to the Construction Contract in place of Sub-hubco; and

- (a) the Contractor, Sub-hubco and the Proposed Substitute shall enter into a novation agreement (the "**Novation Agreement**") and any other requisite agreements, in form and substance satisfactory to the Contractor (acting reasonably), pursuant to which:
 - (i) the Proposed Substitute shall be granted all of the rights of Sub-hubco under the Construction Contract (including those arising prior to the end of the Step-in Period);
 - (ii) subject to the Contractor giving to the Proposed Substitute within three (3) Business Days of receipt of the Proposed Novation Notice such notice as is referred to in Clause 3.2.1 and to the provisions of Clauses 3.2.2 and 3.2.3, mutatis mutandis, the Proposed Substitute shall assume all of the obligations and liabilities of Sub-hubco under the Construction Contract (including those arising prior to the end of any Step-in Period and those arising during the period of the Proposed Novation Notice);

provided that the Contractor will not be in breach of any of its obligations under this Agreement if the Proposed Substitute does not enter into one or other of such agreements.

4.5.3 On and after the Novation Effective Date:

- (a) the Contractor shall owe its obligations under the Construction Contract (whether arising before, on or after such date) to the Proposed Substitute and the receipt, acknowledgement or acquiescence of the Proposed Substitute shall be a good discharge; and
- (b) if the Authority shall have entered into a Step-in Undertaking, the Authority will be released from the Step-in Undertaking, provided that:
 - (i) all obligations of the Authority under the Step-in Undertaking which have accrued up to the Novation Effective Date and are identifiable as at that date shall have been fully and unconditionally discharged; and

- (ii) the Authority has performed and discharged in full or procured the performance and discharge in full of the obligations of Sub-hubco under the Construction Contract in relation to the maintenance of records and the provision of reports during the Step-in Period up to the Novation Effective Date so as to permit the Contractor to monitor the performance of Sub-hubco's other obligations under the Construction Contract.

4.5.4 the Authority and the Contractor shall use all reasonable endeavours to agree and the Authority shall use reasonable endeavours to procure that the Proposed Substitute agrees any amendments to the Construction Contract necessary to reflect Clause 3.2.2 and the fact that the Design Build Finance and Maintain Agreement may have terminated at the time of the Novation Effective Date.

4.6 Termination After Novation

After the Novation Effective Date the Contractor shall only be entitled to exercise its rights of termination under the Construction Contract:

- 4.6.1 in respect of any Event of Sub-hubco Default arising after that date in accordance with the Construction Contract; or
- 4.6.2 if the Proposed Substitute does not discharge the obligations and liabilities assumed by it under Clause 4.5.2(a) which relate to matters arising prior to the end of the Step-in Period within thirty (30) Business Days following the Novation Effective Date.

4.7 Extension of Step-In Period

As at the date of the first anniversary of the Step-in Date, if the Step-in Period has not previously ended, and:

- 4.7.1 the Authority is in the course of conducting discussions in good faith with a Proposed Substitute (the novation to whom has been approved by the Contractor whether automatically or otherwise in accordance with Clause 4.3 (*Grant of Consent*)), the Step-in Period shall be extended and shall continue until such date as is proposed by the Authority and agreed by the Contractor; or
- 4.7.2 a contract has been entered into between the Authority and a Proposed Substitute (which has been approved by the Contractor in accordance with Clause 4.3 (*Grant of Consent*)) as at such date,

the Step-in Period shall be extended and shall continue until the date such contract comes into force, provided that such date shall not be later than twenty (20) Business Days after the last date of execution of such contract.

5 RIGHTS AND OBLIGATIONS UNDER THE CONSTRUCTION CONTRACT

5.1 Rights of Termination

If:

- 5.1.1 no Step-in Notice or Proposed Novation Notice is given before a Termination Notice expires or within twenty (20) Business Days after termination of the Design Build Finance and Maintain Agreement by the Authority; or

- 5.1.2 a Step-in Undertaking is not issued on the Proposed Step-in Date; or
 - 5.1.3 the Step-in Notice is withdrawn or, pursuant to Clause 3.2.7, deemed to have been withdrawn; or
 - 5.1.4 the Step-in Period ends before the occurrence of the Novation Effective Date; or
 - 5.1.5 in the absence of a Step-in Undertaking, the Contractor withholds its consent to a novation pursuant to a Proposed Novation Notice, in accordance with Clause 4.3 (*Grant of Consent*), and does not subsequently grant consent to a novation in accordance with Clause 4.4 (*Consent Withheld*) on or before the Proposed Novation Date; or
 - 5.1.6 in the absence of a Step-in Undertaking, the obligations of the Proposed Substitute set out in Clause 4.5 (*Implementation of Novation*) are not performed on the Proposed Novation Date; or
 - 5.1.7 the Contractor is entitled to terminate the Construction Contract under Clause 3.3 (*Restriction of Right of Termination*) or 4.6 (*Termination after Novation*); or
 - 5.1.8 the Authority exercises its right to Step-out under Clause 3.4.1,
- the Contractor shall, on and from the Step-out Date, be entitled to:
- 5.1.9 exercise all of its rights under the Construction Contract and act upon any and all grounds for termination available to it in relation to the Construction Contract whenever occurring; and/or
 - 5.1.10 pursue any and all claims and exercise any and all rights and remedies against Sub-hubco.

5.2 Sub-hubco's Obligations to Continue

Until completion of a novation pursuant to Clause 4.5 (*Implementation of Novation*) (unless the terms of such novation expressly preserve an obligation or liability of Sub-hubco), Sub-hubco shall continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Construction Contract notwithstanding:

- 5.2.1 the service of a Step-in Notice or the issue of a Step-in Undertaking or the expiry of the Step-in Period or the release of a Step-in Undertaking; or
- 5.2.2 the service of a Proposed Novation Notice; or
- 5.2.3 any other provision of this Agreement.

6 REVOCATION OF NOTICES

A Termination Notice and a Step-in Notice may each be revoked (in writing to the recipient) by the Party giving them before the expiry of their respective notice periods. Upon any such revocation, the rights and obligations of the Parties shall be construed as if the relevant notice had not been given.

7 ASSIGNATION

7.1 Binding on Successors and Assignees

This Agreement shall be binding on and shall enure to the benefit of the Parties and their respective successors and permitted assignees. In the case of the Authority, its successors shall include any person to which the Scottish Ministers, in exercising their statutory powers to transfer property, rights and liabilities of the Authority upon the Authority ceasing to exist, transfers the rights and obligations of the Authority under this Agreement.

7.2 **Restriction on Assignment**

No Party shall assign or transfer any part of its respective rights or obligations under this Agreement without the prior consent of the others (such consent not to be unreasonably withheld or delayed), provided that:

7.2.1 Sub-hubco shall not assign this Agreement to any party other than a party to whom Sub-hubco's interests in the Design Build Finance and Maintain Agreement and Construction Contract are assigned in accordance with the terms of the Design Build Finance and Maintain Agreement and Construction Contract respectively;

7.2.2 the Authority shall be entitled, without the consent of any other Party, to transfer all its rights and obligations hereunder, to any person to whom it assigns or otherwise disposes of the benefit of the Design Build Finance and Maintain Agreement in accordance with clause 57 (*Assignment and Sub-Contracting*) of the Design Build Finance and Maintain Agreement and, otherwise, with Sub-hubco's and the Contractor's consent (not to be unreasonably withheld or delayed);

7.2.3 nothing in this sub-clause shall restrict the rights of the Scottish Ministers to effect a statutory transfer;

7.2.4 the Contractor shall assign this Agreement to any party to whom it assigns the Construction Contract (in accordance with the terms of that agreement).

7.2.5 the Security Trustee may assign or transfer its rights and obligations to a successor trustee of the Funders under the Funding Agreement without the consent of any other Party and this Clause 7.2 shall not prevent any Funder assigning or transferring its rights under the Funding Agreements and the Security Documents in accordance with the terms of the Funding Agreements.

7.3 **No Loss**

The Contractor agrees that it shall not at any time assert that any permitted assignee in terms of this Agreement is precluded from recovering any loss resulting from any breach of this Agreement by reason that such assignee is not an original party to this Agreement or that no loss or a different loss has been suffered by such assignee.

8 **CONFIDENTIALITY**

8.1 The parties shall be bound to observe, mutatis mutandis, the terms of clause 61 of the Construction Contract with respect to any information or document referred to in clause 61 of the Construction Contract which shall come into its possession pursuant to this Agreement.

8.2 The Contractor agrees that the Authority shall be entitled to disclose the terms of this Agreement in accordance with clause 61 (*Confidentiality*) of the Design Build Finance and Maintain Agreement.

9 **NOTICES**

Any notice given under this Agreement shall be deemed to be duly given if it is delivered by hand or sent by recorded delivery to the party named therein at the address of such party shown in this Agreement or such other address as such party may by notice in writing nominate for the purpose of service and if sent by recorded delivery shall be deemed (subject to proof to the contrary) to have been received forty eight (48) hours after being posted.

10 **PAYMENTS AND TAXES**

10.1 **Payments**

All payments under this Agreement to any Party shall be made in pounds sterling by electronic transfer of funds for value on the day in question to the bank account of the recipient (located in the United Kingdom) specified to the other Parties from time to time.

10.2 **VAT**

10.2.1 All amounts stated to be payable by any Party under this Agreement shall be exclusive of any VAT properly payable in respect of the supplies to which they relate.

10.2.2 Each Party shall pay any VAT properly payable hereunder in respect of any supply made to it under this Agreement, provided that it shall first have received a valid tax invoice in respect of that supply which complies with the requirements of Part III VAT Regulations 1995.

10.3 **Deductions from payments**

All sums payable by a Party to any other Party under this Agreement shall be paid free and clear of all deductions or withholdings whatsoever in respect of taxation, save as may be required by Law.

11 **DEFAULT INTEREST**

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

12 **AGGREGATE LIABILITY**

Notwithstanding any other provision of this Agreement, the Contractor's aggregate liability from time to time under this Agreement and the Construction Contract shall not at any time exceed its maximum liability as stated in the Construction Contract.

13 **PROFESSIONAL INDEMNITY INSURANCE**

13.1 The Contractor by this Agreement covenants with the Authority that it has at its own cost taken out, or procured the taking out of, professional indemnity insurance with reputable insurers carrying on business in the European Union with a limit of indemnity of not less than £10,000,000 (ten million pounds) for any one claim or series of claims arising out of one single incident and in all plus one reinstatement on an annually renewable¹ basis during the carrying out of the Works, provided always that:

¹ To confirm against the Construction Contract when received for review

- 13.2 such insurance shall be in place from the commencement of the Works until no less than 12 years after the final Phase Actual Completion Date or, if earlier, after the date of termination of the Construction Contract;
- 13.3 the insurance premiums in respect of the insurance shall at all times be the responsibility of the Contractor;
- 13.4 if such insurance is not available to the Contractor (and/or design and build contractors engaged in projects of a similar scope, size, nature and complexity as the Contractor) at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Contractor), the Contractor and the Authority will meet and the Contractor will outline the steps it intends to take to manage such risks. If the steps proposed by the Contractor are not acceptable to the Authority (acting reasonably), the Contractor and the Authority shall agree an alternative method of managing such risk.
- 13.5 The Contractor will, upon request, provide the Authority with reasonable evidence that the policy referred to in this Clause 13 (*Professional Indemnity Insurance*) is in full force and effect in accordance with the requirements of this Clause 13 (*Professional Indemnity Insurance*).

14 **THIRD PARTY RIGHTS**

It is agreed that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained herein except for any person to whom the benefit of this Agreement is assigned or transferred in accordance with Clause 7 (*Assignment*).

15 **AGENCY**

15.1 **No Delegation**

No provision of this Agreement shall be construed as a delegation by the Authority of any of its statutory authority to any other Party.

15.2 **No Agency**

Save as otherwise provided in this Agreement, no other Party shall be or be deemed to be an agent of the other Parties nor shall any party hold itself out as having authority or power to bind the other parties in any way.

15.3 **Independent Contractor**

The Parties shall, at all times, be independent contractors and nothing in this Agreement shall be construed as creating any partnership between the Parties or any relationship of employer and employee between the Parties.

16 **WHOLE AGREEMENT**

- 16.1 This Agreement (when read together with the Design Build Finance and Maintain Agreement, the Construction Contract and the Performance Guarantee) contains or expressly refers to the entire agreement between the Parties with respect to the specific subject matter of this Agreement and expressly excludes any warranty, condition or other undertaking implied at Law or by custom and supersedes all previous agreements and understandings between the Parties with respect thereto and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this Agreement.

16.2 Nothing in this Agreement is intended to or shall operate so as to exclude or limit any liability for fraud or fraudulent misrepresentation.

17 **WAIVER**

Failure by any Party at any time to enforce any provision of this Agreement or to require performance by the other Parties of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part of it or the right of the relevant Party to enforce any provision in accordance with its terms.

18 **SEVERABILITY**

If any condition, Clause or provision of this Agreement not being of a fundamental nature, is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected thereby.

19 **COSTS AND EXPENSES**

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

20 **AMENDMENTS**

No amendment to this Agreement shall be binding unless in writing and signed by the duly authorised representatives of the Parties.

21 **GOVERNING LAW AND JURISDICTION**

21.1 **Law**

This Agreement shall be governed by and construed in all respects in accordance with Scots law.

21.2 **Jurisdiction**

The Parties each submit to the jurisdiction of the Scottish Courts as regards any claim or matter arising in relation to this Agreement.

IN WITNESS WHEREOF these presents consisting of this and the 17 preceding pages are executed as follows:-

SUBSCRIBED for and on behalf of **THE HIGHLAND COUNCIL**

At

on the day of 2014

by

..... Authorised Signatory

.....Print name

in the presence of this witness

.....Witness

.....Full name

.....Address

SUBSCRIBED for and on behalf of **GALLIFORD TRY BUILDING LIMITED (TRADING AS MORRISON CONSTRUCTION)**

at

on the day of 2014

by

.....Director/Attorney

in the presence of this witness

.....Witness

.....Full name

.....Address

SUBSCRIBED for and on behalf of **AVIVA PUBLIC PRIVATE FINANCE LIMITED**

at

on the day of 2014

by

.....Director

in the presence of this witness

.....Witness

.....Full name

.....Address

SUBSCRIBED for and on behalf of **HUB NORTH SCOTLAND (WICK) LIMITED**

at

on the day of 2014

by

.....Director/Attorney

in the presence of this witness

.....Witness

.....Full name

.....Address

SECTION 2

SERVICE PROVIDER COLLATERAL AGREEMENT

COLLATERAL WARRANTY

AMONG:

- (1) **THE HIGHLAND COUNCIL**, a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 having its principal office at Glenurquhart Road, Inverness, IV3 5NX (the "**Authority**");
- (2) **GALLIFORD TRY BUILDING LIMITED (TRADING AS GALLIFORD TRY FACILITIES MANAGEMENT)**, incorporated under the Companies Acts (with registered number 2472080) whose registered office is at Cowley Business Park, Cowley, Uxbridge, Middlesex, UB8 2AL (the "**Service Provider**");
- (3) **HUB NORTH SCOTLAND (WICK) LIMITED** (Registered Number SC469278), having its registered office at Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE ("**Sub-hubco**"); and
- (4) **AVIVA PUBLIC PRIVATE FINANCE LIMITED** (Registered Number 2334210) having its registered office at 2 Rougier Street, York, YO90 1UU as security trustee for and on behalf of the Finance Parties ("**Security Trustee**").

WHEREAS:

- (A) The Authority and Sub-hubco have agreed the terms on which Sub-hubco will design, develop and construct and provide certain services in connection with the redevelopment of the new Wick High School and East Caithness Community Facilities (the "**Development**") at the Site (as that expression is defined in the Design Build Finance and Maintain Agreement) and, accordingly, have entered into the Design Build Finance and Maintain Agreement and the Project Documents.
- (B) The Service Provider and Sub-hubco have entered into an agreement of even date herewith relating to the provision of certain of the Services (as defined in the Design Build Finance and Maintain Agreement) by the Service Provider to enable Sub-hubco to discharge its obligations to the Authority regarding such Services under the Design Build Finance and Maintain Agreement and the Project Documents (the "**Service Contract**").
- (C) This Service Provider's Collateral Agreement (the "**Agreement**") is one of the Service Providers' Collateral Agreements contemplated by the Design Build Finance and Maintain Agreement.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following terms shall, unless the context otherwise requires, have the following meanings:

- | | |
|--------------------------------|---|
| " Ancillary Documents " | has the meaning given in the Design Build Finance and Maintain Agreement; |
| " Business Day " | means a day other than a Saturday, Sunday or a bank holiday in Scotland; |

"Design Build Finance and Maintain Agreement"	means the design build finance and maintain Agreement dated on or around the date of this Agreement between (1) the Authority and (2) Sub-hubco;
"Finance Parties"	has the meaning given in the Funding Agreements;
"Funders"	means Aviva Public Private Finance Limited (registered number 02334210), whose registered office is at 2 Rougier Street, York, YO90 1UU;
"Funders' Service Provider Direct Agreement"	means the agreement dated on or around the date of this Agreement among the Security Trustee, the Service Provider, Sub-hubco and the Guarantor;
"Funding Agreements"	has the meaning given in the Design Build Finance and Maintain Agreement;
"Guarantor"	means Galliford Try Construction & Investment Holdings Limited (registered number 04530735 whose registered office is at Cowley Business Park, Cowley, Uxbridge, Middlesex UB8 2AL;
"Novation Agreement"	has the meaning given in Clause 4.5.2(a);
"Novation Effective Date"	means the date of performance of the obligations set out in Clause 4 (<i>Novation</i>);
"Performance Guarantee"	has the meaning given in the Service Contract;
"Proposed Novation Date"	has the meaning given in Clause 4.1 (<i>Proposed Substitute</i>);
"Proposed Novation Notice"	has the meaning given in Clause 4.1 (<i>Proposed Substitute</i>);
"Proposed Step-in Date"	has the meaning given in Clause 3.1 (<i>Step-in Notice</i>);
"Proposed Substitute"	has the meaning given in Clause 4.1 (<i>Proposed Substitute</i>);
"Security Documents"	has the meaning given in the Loan Agreement;
"Step-in Date"	means the date of issue of the Step-in Undertaking;
"Step-in Notice"	has the meaning given in Clause 3.1 (<i>Step-in Notice</i>);
"Step-in Period"	means the period commencing on the Step-in Date and ending on the earliest of:

- (a) the date of the first anniversary of the Step-in Date (but subject always to Clause 4.7 (*Extension of Step-in Period*));
- (b) the Step-out Date;
- (c) the Novation Effective Date; and
- (d) termination of the Service Contract under Clause 3.3 (*Restriction of Right of Termination*);

"Step-in Undertaking"	has the meaning given in Clause 3.2.4;
"Step-out Date"	has the meaning given in Clause 3.4.1;
"Sub-hubco Event of Default"	has the meaning given in the Service Contract; and
"Termination Notice"	has the meaning given in Clause 2.3 (<i>Termination Notice</i>).

1.2 Interpretation

Save to the extent that the context or the express provisions of this Agreement otherwise require:

- 1.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.2 all references to Clauses are references to Clauses of this Agreement;
- 1.2.3 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.2.4 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.2.5 any reference to time of day shall be a reference to Edinburgh time;
- 1.2.6 the words "herein", "hereto" and "hereunder" refer to this Agreement as a whole and not to the particular Clause in which such word may be used;
- 1.2.7 words importing the singular include the plural and vice versa;
- 1.2.8 words importing a particular gender include all genders;
- 1.2.9 "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;

- 1.2.10 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- 1.2.11 references to "Party" means a party to this Agreement and references to "Parties" shall be construed accordingly;
- 1.2.12 all monetary amounts are expressed in pounds sterling;
- 1.2.13 references to the word "includes" or "including" are to be construed without limitation;
- 1.2.14 the obligations of any Party under this Agreement are to be performed at that Party's own cost and expense;
- 1.2.15 terms used in this Agreement that are defined in the Design Build Finance and Maintain Agreement or the Ancillary Documents shall have the meanings given to them in the Design Build Finance and Maintain Agreement or the Ancillary Documents, as appropriate.

2 **TERMINATION NOTICE AND AUTHORITY TERMINATION**

2.1 **Service Provider's Warranties and Undertakings**

The Service Provider warrants and undertakes to the Authority that it has complied with and fulfilled and shall continue to comply with and fulfil its duties and obligations arising under or by virtue of the Service Contract, provided that the Authority shall only be entitled to make a claim against the Service Provider under this Clause 2.1 (*Service Provider's Warranties and Undertakings*) if the Design Build Finance and Maintain Agreement has terminated and shall not be entitled to do so during the Step-in Period or after the Service Contract has been novated under Clause 4 (*Novation*).

2.2 **Liability of Service Provider**

Any liability arising from any claim for breach of the warranty under or pursuant to Clause 2.1 (*Service Provider's Warranties and Undertakings*) shall be in addition to and without prejudice to any other present or future liability of the Service Provider to the Authority (including, without prejudice to the generality of the foregoing, any liability in negligence) and shall not be released, diminished or in any other way be affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Authority by any person nor by any action or omission of any person whether or not such action or omission might give rise to an independent liability of such person to the Authority provided always that the Service Provider shall owe no greater duties or obligations to the Authority under this Agreement than it owes or would have owed to Sub-hubco under the Service Contract. Without prejudice to Clause 12 (*Aggregate Liability*), the Service Provider shall be entitled in any action or proceedings brought by the Authority under this Agreement to rely on any limitation or exclusion of liability in the Service Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against Sub-hubco under the Service Contract.

2.3 **Not Used**

2.4 **Termination Notice**

- 2.4.1 The Service Provider undertakes not to terminate the Service Contract on account of a Sub-hubco Event of Default without first giving the

Authority not less than fifteen (15) Business Days' prior written notice specifying the grounds for that termination. Subject to Clause 2.4.2 below any such notice shall be a "**Termination Notice**".

- 2.4.2 Where the Service Provider's right to terminate is subject to the terms of the Funders' Service Provider Direct Agreement then the Service Provider shall notify the Authority of the same as soon as reasonably practicable upon becoming aware of the provisions of the Funders' Service Provider Direct Agreement applying. Thereafter as soon as the Service Provider becomes entitled to terminate the Service Contract free from the constraints contained in the Funders' Service Provider Direct Agreement, whether upon the expiry of the Step-in Period (as such term is defined in the Funders' Service Provider Direct Agreement) or otherwise, then the Service Provider undertakes to the Authority not to terminate the Service Contract on account of a Sub-hubco Event of Default (whether occurring before or after the Service Provider's right to terminate the Service Contract was free from the constraints of the Funders' Service Provider Direct Agreement) without first giving the Authority not less than fifteen (15) Business Days' prior notice specifying the grounds for that termination and noting that the Service Provider's right of termination is not subject to the Funders' Service Provider Direct Agreement. Any such notice, other than one given in circumstances where there is no default under the Service Contract by Sub-hubco or the Service Provider, shall for the purposes of this Agreement also be a Termination Notice and the provisions of this Agreement shall apply accordingly.
- 2.4.3 Notwithstanding any provision of the Service Contract to the contrary, on termination of the Design Build Finance and Maintain Agreement by the Authority, the Parties agree that the Service Contract shall not come to an end except in accordance with the terms of this Agreement.
- 2.4.4 The Authority acknowledges that it shall not be entitled to exercise its rights under Clauses 3 (*Step-in and Step-out*) and 4 (*Novation*) where the event giving rise to termination of the Design Build Finance and Maintain Agreement is a Service Provider Event of Default (as that term is defined in the Service Contract) whether or not at the relevant time there has been notice to terminate the Service Contract for such Service Provider Event of Default:
- (a) until the Security Trustee has released its security over the Service Contract; or
 - (b) until the Security Trustee has confirmed to the Authority in writing that it has no further claims or interest in the claims of Sub-hubco or any Suitable Substitute Contractor (as such term is defined in the Funders' Service Provider Direct Agreement) against the Contractor whether pursuant to the Security Documents, the Service Contract or the enforcement of any rights under the Security Documents or the Funders' Service Provider Direct Agreement.

3 STEP-IN AND STEP-OUT

3.1 Step-in Notice

- 3.1.1 If the Authority has terminated the Design Build Finance and Maintain Agreement in accordance with the terms of the Design Build Finance and Maintain Agreement or if the Authority has received a Termination Notice, then subject to the provisions of this Agreement, the Authority may give written notice to the Service Provider (copied to the Security

Trustee) (a "**Step-in Notice**") of the intention of the Authority to issue a Step-in Undertaking on a specified date (the "**Proposed Step-in Date**") provided that such Proposed Step-in Date shall be:

- (a) no later than five (5) Business Days after termination of the Design Build Finance and Maintain Agreement where this has been terminated by the Authority; and
- (b) no earlier than the date falling five (5) Business Days prior to the date of expiry of the Termination Notice and no later than the date of expiry of the Termination Notice where a Termination Notice has been given by the Service Provider.

3.1.2 Unless the Service Provider otherwise consents, only one Step-in Notice may be given during the period of this Agreement. Subject to Clause 5.1 (*Rights of Termination*) below, the Service Provider shall not be entitled to terminate the Service Contract until after the Proposed Step-in Date.

3.2 **Notice of Obligations and Step-in Undertaking**

3.2.1 Within three (3) Business Days of receipt of any Step-in Notice, the Service Provider shall give written notice to the Authority of any sums of which the Service Provider has actual knowledge which are due and payable but unpaid by Sub-hubco and of any other material obligations or liabilities, of which the Service Provider has actual knowledge, which should have been performed or discharged by Sub-hubco under the Service Contract, in each case, as at the date of the Step-in Notice.

3.2.2 The Service Provider shall inform the Authority in writing as soon as reasonably practicable of:

- (a) any change in such sums, obligations or liabilities referred to in Clause 3.2.1; and
- (b) any further sums, obligations or liabilities thereafter falling due and payable but unpaid or falling due for performance or discharge and unperformed or undischarged (as the case may be);

in each case of which the Service Provider has actual knowledge, before the Step-in Date.

3.2.3 The Service Provider shall give the Authority the information referred to in Clauses 3.2.1 and 3.2.2 in good faith and may not give any further notifications pursuant to Clause 3.2.2 less than two (2) Business Days prior to the Proposed Step-in Date. The Authority shall not be required to assume any liability under a Step-in Undertaking for any outstanding obligations or liabilities of Sub-hubco to the Service Provider which are not notified to the Authority pursuant to Clauses 3.2.1 or 3.2.2.

3.2.4 Not later than the Proposed Step-in Date the Authority shall decide if it is prepared to issue a Step-in Undertaking. If it does so decide, the Authority shall promptly give the Service Provider written notification of such decision and, at the same time, provide a copy of such notification to the Security Trustee. The Authority shall deliver to the Service Provider on the Proposed Step-in Date, a written undertaking in form and substance agreed with the Service Provider (both the Authority and the Service Provider acting reasonably) (the "**Step in Undertaking**"), incorporating a clause in terms similar to Clause 11 (*Default Interest*) (but only to the extent that there will not be double counting of default

interest accruing under the Service Contract and this Agreement), and undertaking to the Service Provider:

- (a) to pay or procure the payment to the Service Provider, within fifteen (15) Business Days of demand by the Service Provider, of any sum due and payable but unpaid by Sub-hubco to the Service Provider under the Service Contract before the Step-in Date and which has been notified by the Service Provider to the Authority in accordance with Clause 3.2.1 or 3.2.2;
- (b) to perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of Sub-hubco under the Service Contract which shall have fallen due for performance or discharge before the Step-in Date and which have been notified by the Service Provider to the Authority in accordance with Clause 3.2.1 or 3.2.2 within such period as the Service Provider may reasonably require;
- (c) to pay or procure the payment of any sum due and payable by Sub-hubco under the Service Contract as a result of any act or omission occurring during the Step-in Period which shall arise from any act or omission occurring after the Step-in Date (but subject to Clauses 3.4 (*Step-Out*) and 4.5.3(b)) but not, to avoid doubt, any sum due in respect of any Services provided before the Step-in Date; and
- (d) to perform or discharge or procure the performance or discharge of any obligations of Sub-hubco under the Service Contract as a result of any act or omission occurring during the Step-in Period which shall arise from any act or omission occurring after the Step-in Date (but subject to Clauses 3.4 (*Step-Out*) and 4.5.3(b)) but not, to avoid doubt, to perform or discharge or to procure the performance or discharge of any obligations in respect of any Services provided before the Step-in Date.

3.2.5 Following notification of the Authority's decision pursuant to Clause 3.2.4, the Security Trustee shall, on or before the Proposed Step-in Date, take any action which is necessary unconditionally and irrevocably to release the Service Contract and the Performance Guarantee from the security constituted by the Security Documents.

3.2.6 Upon release by the Security Trustee of its security over the Performance Guarantee in accordance with Clause 3.2.5 Sub-hubco shall immediately assign all its rights and powers under the Performance Guarantee to the Authority in accordance with clause 8 of the same.

3.2.7 If the Authority shall not have issued the Step-in Undertaking on or before the Proposed Step-in Date the Step-in Notice shall be deemed to have been withdrawn and the rights and obligations of the Parties shall be construed as if the Step-in Notice had not been given.

3.3 Restriction of Right of Termination

During or in respect of the Step-in Period, the Service Provider confirms to the Authority that it shall continue to observe and perform its duties and obligations under the Service Contract and shall, without prejudice to Clause 5.1 (*Rights of Termination*), only be entitled to exercise its rights of termination under the Service Contract:

- 3.3.1 by reference to a Sub-hubco Event of Default arising during the Step-in Period provided that no event of default by Sub-hubco under the Design Build Finance and Maintain Agreement (whether resulting in termination of the Design Build Finance and Maintain Agreement or otherwise, and notwithstanding that it has occurred during the Step-in Period) shall entitle the Service Provider to exercise such rights of termination during the Step-in Period; or
- 3.3.2 if the Authority, in breach of the terms of the Step-in Undertaking, fails to pay when due any amount owed to the Service Provider or fails to perform or discharge when falling due for performance or discharge any obligation under the Step-in Undertaking or fails to procure such payment or performance or discharge; or
- 3.3.3 if such rights of termination arise in circumstances where there is no default by the Authority under the Step-in Undertaking or the Service Provider under the Service Contract.

3.4 Step-Out

- 3.4.1 the Authority may, at any time, give the Service Provider at least thirty (30) days' prior written notice to terminate the Step-in Period on a date specified in the notice (the "**Step-out Date**");
- 3.4.2 the Authority shall give the Service Provider at least thirty (30) days' prior written notice that (subject to Clause 4.4.2) the Step-in Period will end due to the occurrence (subject to Clause 4.7 (*Extension of Step-In Period*)) of the first anniversary of the Step-in Date;

provided that:

- (a) the Authority has performed and discharged in full or procured the performance and discharge in full of any obligations of Sub-hubco under the Service Contract in relation to the maintenance of records and the provision of reports during the Step-in Period so as to permit the Service Provider to monitor the performance of Sub-hubco's other obligations under the Service Contract; and
- (b) all liability under the Step-in Undertaking pursuant to any claims made up to the date specified in either Clause 3.4.1 or Clause 3.4.2 (as the case may be) shall have been fully and unconditionally discharged,

the Authority shall be released from the Step-in Undertaking on the expiry of the Step-in Period in accordance with Clauses 3.4.1 and 3.4.2. Such release shall not affect the continuation of Sub-hubco's obligations towards the Service Provider under the Service Contract.

4 NOVATION

4.1 Proposed Substitute

At any time that the Authority is entitled to give a Step-in Notice pursuant to Clause 3.1 (*Step-in Notice*) or at any time during the Step-in Period the Authority may give notice (copied to the Security Trustee) (a "**Proposed Novation Notice**") to the Service Provider that it wishes itself or another person (a "**Proposed Substitute**") to assume, by way of sale, transfer or other disposal, the rights and obligations of Sub-hubco under the Service Contract and specifying a date (the "**Proposed Novation Date**");

- 4.1.1 falling not later than fifteen (15) Business Days after termination of the Design Build Finance and Maintain Agreement where this has been terminated by the Authority;
- 4.1.2 falling not later than the expiry of the Termination Notice where a Proposed Novation Notice is given by the Authority at a time when it is entitled to give a Step-in Notice pursuant to Clause 3.1 (*Step-in Notice*); and
- 4.1.3 falling not later than twenty-eight (28) Business Days after the date of the Proposed Novation Notice, where a Proposed Novation Notice is given during a Step-in Period.

Save as provided in Clause 4.4 (*Consent withheld*), only one Proposed Novation Notice may be given during the period of this Agreement. Without prejudice to Clauses 3.3 (*Restriction of Right of Termination*) and 5.1 (*Rights of Termination*), the Service Provider shall not be entitled to terminate the Service Contract during the notice period specified in a Proposed Novation Notice.

4.2 **Information for Consent to Novation**

If the Proposed Novation Notice specifies the Authority as the Proposed Substitute, the Service Provider's consent to the novation shall be deemed to have been given automatically. Where the Proposed Substitute is not the Authority, a novation in accordance with a Proposed Novation Notice shall only be effective if the Service Provider consents to that novation in writing in accordance with Clause 4.3 (*Grant of Consent*) and the Authority shall (as soon as practicable) supply the Service Provider with the following information (copied to the Security Trustee):

- 4.2.1 the name and registered address of the Proposed Substitute;
- 4.2.2 the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- 4.2.3 the names of the directors and the secretary of the Proposed Substitute;
- 4.2.4 details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- 4.2.5 the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Service Contract.

4.3 **Grant of Consent**

The Service Provider may withhold or delay consent to a novation only where the Proposed Substitute is not the Authority and the Authority has failed to show to the Service Provider's satisfaction (acting reasonably) that:

- 4.3.1 the Proposed Substitute has the legal capacity, power and authorisation to become a party to and perform the obligations of Sub-hubco under the Service Contract; and
- 4.3.2 the technical competence and financial standing of and the technical and financial resources available to the Proposed Substitute are sufficient to perform the obligations of Sub-hubco under the Service Contract.

The Service Provider shall notify the Authority in writing, within five (5) Business Days of the later of receipt of a Proposed Novation Notice and all information required under Clause 4.2 (*Information for Consent to Novation*), as to whether or not it has decided to grant such consent (together with an explanation of its reasons if it has decided to withhold its consent).

4.4 Consent withheld

If, in accordance with Clause 4.3 (*Grant of Consent*), the Service Provider withholds its consent to a Proposed Novation Notice, the Authority shall be entitled to give one or more subsequent Proposed Novation Notices, pursuant to the provisions of Clause 4.1 (*Proposed Substitute*), containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which (where the replacement Proposed Substitute is not the Authority) the Authority has good cause to believe would fulfil the requirements of Clauses 4.3.1 and 4.3.2, provided that only one Proposed Novation Notice may be outstanding at any one time, and provided further that:

- 4.4.1 where a Step-in-Notice has not been issued, any revised Proposed Novation Date shall be a date falling no later than the date specified in Clause 4.1.1 or 4.1.2 as appropriate; and
- 4.4.2 if the Proposed Novation Notice was served during the Step-in Period, any revised Proposed Novation Date shall be a date falling not later than twenty-eight (28) Business Days after the date of the revised Proposed Novation Notice.

4.5 Implementation of Novation

4.5.1 If the Service Provider consents to a novation pursuant to a Proposed Novation Notice (whether automatically or otherwise), then on the Proposed Novation Date and without prejudice to Clause 5.1 (*Rights of Termination*):

- (a) following notification pursuant to Clause 4.1 (*Proposed Substitute*) and in the absence of any prior release in accordance with Clause 3.2.5, the Security Trustee shall, on or before the Proposed Novation Date, take any action which is necessary unconditionally and irrevocably to release the Service Contract and the Performance Guarantee from the security constituted by the Security Documents; and
- (b) Sub-hubco shall immediately assign all its rights and powers under the Performance Guarantee to the Authority in accordance with clause 8 of the same, and on the Proposed Novation Date and without prejudice to Clause 5.1 (*Rights of Termination*).

4.5.2 Subject to the prior performance by the Security Trustee and Sub-hubco of their respective obligations under Clause 4.5.1(a) and Clause 4.5.1(b) the Proposed Substitute shall become a party to the Service Contract in place of Sub-hubco and, thereafter, shall be treated as if it was and had always been named as a party to the Service Contract in place of Sub-hubco; and

- (a) the Service Provider, Sub-hubco and the Proposed Substitute shall enter into a novation agreement (the "**Novation Agreement**") and any other requisite agreements, in form and substance satisfactory to the Service Provider (acting reasonably), pursuant to which:

- (i) the Proposed Substitute shall be granted all of the rights of Sub-hubco under the Service Contract (including those arising prior to the end of the Step-in Period);
- (ii) subject to the Service Provider giving to the Proposed Substitute within three (3) Business Days of receipt of the Proposed Novation Notice such notice as is referred to in Clause 3.2.1 and to the provisions of Clauses 3.2.2 and 3.2.3 mutatis mutandis, the Proposed Substitute shall assume all of the obligations and liabilities of Sub-hubco under the Service Contract (including those arising prior to the end of any Step-in Period and those arising during the period of the Proposed Novation Notice);

provided that the Service Provider will not be in breach of any of its obligations under this Agreement if the Proposed Substitute does not enter into one or other of such agreements.

4.5.3 On and after the Novation Effective Date:

- (a) the Service Provider shall owe its obligations under the Service Contract (whether arising before, on or after such date) to the Proposed Substitute and the receipt, acknowledgement or acquiescence of the Proposed Substitute shall be a good discharge; and
- (b) if the Authority shall have entered into a Step-in Undertaking, the Authority will be released from the Step-in Undertaking, provided that:
 - (i) all obligations of the Authority under the Step-in Undertaking which have accrued up to the Novation Effective Date and are identifiable as at that date shall have been fully and unconditionally discharged; and
 - (ii) the Authority has performed and discharged in full or procured the performance and discharge in full of the obligations of Sub-hubco under the Service Contract in relation to the maintenance of records and the provision of reports during the Step-in Period up to the Novation Effective Date so as to permit the Service Provider to monitor the performance of Sub-hubco's other obligations under the Service Contract.

4.5.4 the Authority and the Service Provider shall use all reasonable endeavours to agree and the Authority shall use reasonable endeavours to procure that the Proposed Substitute agrees any amendments to the Service Contract necessary to reflect Clause 3.2.2 and the fact that the Design Build Finance and Maintain Agreement may have terminated at the time of the Novation Effective Date.

4.6 Termination After Novation

After the Novation Effective Date the Service Provider shall only be entitled to exercise its rights of termination under the Service Contract:

- 4.6.1 in respect of any Sub-hubco Event of Default arising after that date in accordance with the Service Contract; or
- 4.6.2 if the Proposed Substitute does not discharge the obligations and liabilities assumed by it under Clause 4.5.2(a) which relate to matters arising prior to the end of the Step-in Period within fifteen (15) Business Days following the Novation Effective Date.

4.7 Extension of Step-In Period

As at the date of the first anniversary of the Step-in Date, if the Step-in Period has not previously ended, and:

- 4.7.1 the Authority is in the course of conducting discussions in good faith with a Proposed Substitute (the novation to whom has been approved by the Service Provider whether automatically or otherwise in accordance with Clause 4.3 (*Grant of Consent*)), the Step-in Period shall be extended and shall continue until such date as is proposed by the Authority and agreed by the Service Provider; or
- 4.7.2 a contract has been entered into between the Authority and a Proposed Substitute (which has been approved by the Service Provider in accordance with Clause 4.3 (*Grant of Consent*)) as at such date,

the Step-in Period shall be extended and shall continue until the date such contract comes into force, provided that such date shall not be later than thirty (30) Business Days after the last date of execution of such contract.

5 RIGHTS AND OBLIGATIONS UNDER THE SERVICE CONTRACT

5.1 Rights of Termination

If:

- 5.1.1 no Step-in Notice or Proposed Novation Notice is given before a Termination Notice expires or within fifteen (15) Business Days after termination of the Design Build Finance and Maintain Agreement by the Authority; or
- 5.1.2 a Step-in Undertaking is not issued on the Proposed Step-in Date; or
- 5.1.3 the Step-in Notice is withdrawn or, pursuant to Clause 3.2.7, deemed to have been withdrawn; or
- 5.1.4 the Step-in Period ends before the occurrence of the Novation Effective Date; or
- 5.1.5 in the absence of a Step-in Undertaking, the Service Provider withholds its consent to a novation pursuant to a Proposed Novation Notice, in accordance with Clause 4.3 (*Grant of Consent*), and does not subsequently grant consent to a novation in accordance with Clause 4.4 (*Consent Withheld*) on or before the Proposed Novation Date; or
- 5.1.6 in the absence of a Step-in Undertaking, the obligations of the Proposed Substitute set out in Clause 4.5 (*Implementation of Novation*) are not performed on the Proposed Novation Date; or

5.1.7 the Service Provider is entitled to terminate the Service Contract under Clause 3.3 (*Restriction of Right of Termination*) or 4.6 (*Termination after Novation*); or

5.1.8 the Authority exercises its right to Step-out under Clause 3.4.1, the Service Provider shall, on and from the Step-out Date, be entitled to:

5.1.9 exercise all of its rights under the Service Contract and act upon any and all grounds for termination available to it in relation to the Service Contract whenever occurring; and/or

5.1.10 pursue any and all claims and exercise any and all rights and remedies against Sub-hubco.

5.2 **Sub-hubco's Obligations to Continue**

Until completion of a novation pursuant to Clause 4.5 (*Implementation of Novation*) (unless the terms of such novation expressly preserve an obligation or liability of Sub-hubco), Sub-hubco shall continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Service Contract notwithstanding:

5.2.1 the service of a Step-in Notice or the issue of a Step-in Undertaking or the expiry of the Step-in Period or the release of a Step-in Undertaking; or

5.2.2 the service of a Proposed Novation Notice; or

5.2.3 any other provision of this Agreement.

6 **REVOCAION OF NOTICES**

A Termination Notice and a Step-in Notice may each be revoked (in writing to the recipient) by the Party giving them before the expiry of their respective notice periods. Upon any such revocation, the rights and obligations of the Parties shall be construed as if the relevant notice had not been given.

7 **ASSIGNATION**

7.1 **Binding on Successors and Assignees**

This Agreement shall be binding on and shall enure to the benefit of the Parties and their respective successors and permitted assignees. In the case of the Authority, its successors shall include any person to which the Scottish Ministers, in exercising their statutory powers to transfer property, rights and liabilities of the Authority upon the Authority ceasing to exist, transfers the rights and obligations of the Authority under this Agreement.

7.2 **Restriction on Assignment**

No Party shall assign or transfer any part of its respective rights or obligations under this Agreement without the prior consent of the others (such consent not to be unreasonably withheld or delayed), provided that:

7.2.1 Sub-hubco shall not assign this Agreement to any party other than a party to whom Sub-hubco's interests in the Design Build Finance and Maintain Agreement and Service Contract are assigned in accordance

with the terms of the Design Build Finance and Maintain Agreement and Service Contract respectively;

- 7.2.2 the Authority shall be entitled, without the consent of any other Party, to transfer all its rights and obligations hereunder, to any person to whom it assigns or otherwise disposes of the benefit of the Design Build Finance and Maintain Agreement in accordance with Clause 57 (*Assignment and Sub-Contracting*) of the Design Build Finance and Maintain Agreement and, otherwise, with Sub-hubco's and the Service Provider's consent (not to be unreasonably withheld or delayed);
- 7.2.3 nothing in this sub-clause shall restrict the rights of the Scottish Ministers to effect a statutory transfer;
- 7.2.4 the Service Provider shall assign this Agreement to any party to whom it assigns the Service Contract (in accordance with the terms of that agreement).
- 7.2.5 the Security Trustee may assign or transfer its rights and obligations to a successor trustee of the Funders under the Funding Agreement without the consent of any other Party and this Clause 7.2 (*Restriction on Assignment*) shall not prevent any Funder assigning or transferring its rights under the Funding Agreements and the Security Documents in accordance with the terms of the Funding Agreements.

7.3 **No Loss**

The Services Provider agrees that it shall not at any time assert that any permitted assignee in terms of this Agreement is precluded from recovering any loss resulting from any breach of this Agreement by reason that such assignee is not an original party to this Agreement or that no loss or a different loss has been suffered by such assignee.

8 **CONFIDENTIALITY**

- 8.1 The parties shall be bound to observe, mutatis mutandis, the terms of clause 61 of the Service Contract with respect to any information or document referred to in clause 61 of the Service Contract which shall come into its possession pursuant to this Agreement.
- 8.2 The Service Provider agrees that the Authority shall be entitled to disclose the terms of this Agreement in accordance with clause 61 (*Confidentiality*) of the Design Build, Finance and Maintain Agreement.

9 **NOTICES**

Any notice given under this Agreement shall be deemed to be duly given if it is delivered by hand or sent by recorded delivery to the party named therein at the address of such party shown in this Agreement or such other address as such party may by notice in writing nominate for the purpose of service and if sent by recorded delivery shall be deemed (subject to proof to the contrary) to have been received forty eight (48) hours after being posted.

10 **PAYMENTS AND TAXES**

10.1 **Payments**

All payments under this Agreement to any Party shall be made in pounds sterling by electronic transfer of funds for value on the day in question to the bank account

of the recipient (located in the United Kingdom) specified to the other Parties from time to time.

10.2 **VAT**

10.2.1 All amounts stated to be payable by any Party under this Agreement shall be exclusive of any VAT properly payable in respect of the supplies to which they relate.

10.2.2 Each Party shall pay any VAT properly payable hereunder in respect of any supply made to it under this Agreement, provided that it shall first have received a valid tax invoice in respect of that supply which complies with the requirements of Part III VAT Regulations 1995.

10.3 **Deductions from payments**

All sums payable by a Party to any other Party under this Agreement shall be paid free and clear of all deductions or withholdings whatsoever in respect of taxation, save as may be required by Law.

11 **DEFAULT INTEREST**

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

12 **AGGREGATE LIABILITY**

Notwithstanding any other provision of this Agreement, the Service Provider's aggregate liability from time to time under this Agreement and the Service Contract shall not at any time exceed its maximum liability as stated in the Service Contract.

13 **THIRD PARTY RIGHTS**

It is agreed that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained herein except for any person to whom the benefit of this Agreement is assigned or transferred in accordance with Clause 7 (*Assignment*).

14 **AGENCY**

14.1 **No Delegation**

No provision of this Agreement shall be construed as a delegation by the Authority of any of its statutory authority to any other Party.

14.2 **No Agency**

Save as otherwise provided in this Agreement, no other Party shall be or be deemed to be an agent of the other Parties nor shall any party hold itself out as having authority or power to bind the other parties in any way.

14.3 **Independent Contractor**

The Parties shall, at all times, be independent contractors and nothing in this Agreement shall be construed as creating any partnership between the Parties or any relationship of employer and employee between the Parties.

15 **WHOLE AGREEMENT**

15.1 This Agreement (when read together with the Design Build Finance and Maintain Agreement, the Service Contract and the Performance Guarantee) contains or expressly refers to the entire agreement between the Parties with respect to the specific subject matter of this Agreement and expressly excludes any warranty, condition or other undertaking implied at Law or by custom and supersedes all previous agreements and understandings between the Parties with respect thereto and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this Agreement.

15.2 Nothing in this Agreement is intended to or shall operate so as to exclude or limit any liability for fraud or fraudulent misrepresentation.

16 **WAIVER**

Failure by any Party at any time to enforce any provision of this Agreement or to require performance by the other Parties of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part of it or the right of the relevant Party to enforce any provision in accordance with its terms.

17 **SEVERABILITY**

If any condition, Clause or provision of this Agreement not being of a fundamental nature, is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected thereby.

18 **COSTS AND EXPENSES**

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

19 **AMENDMENTS**

No amendment to this Agreement shall be binding unless in writing and signed by the duly authorised representatives of the Parties.

20 **GOVERNING LAW AND JURISDICTION**

20.1 **Law**

This Agreement shall be governed by and construed in all respects in accordance with Scots law.

20.2 **Jurisdiction**

The Parties each submit to the jurisdiction of the Scottish Courts as regards any claim or matter arising in relation to this Agreement.

IN WITNESS WHEREOF these presents consisting of this and the 16 preceding pages are executed as follows:-

SUBSCRIBED for and on behalf of **THE HIGHLAND COUNCIL**

at

on the day of 2014

by

..... Authorised Signatory

.....Print name

in the presence of this witness

.....Witness

.....Full name

.....Address

SUBSCRIBED for and on behalf of GALLIFORD TRY BUILDING LIMITED (TRADING AS GALLIFORD TRY FACILITIES MANAGEMENT)

at

on the day of 2014

by

.....Director/Attorney

in the presence of this witness

.....Witness

.....Full name

.....Address

SUBSCRIBED for and on behalf of AVIVA PUBLIC PRIVATE FINANCE LIMITED

at

on the day of 2014

by

.....Director

in the presence of this witness

.....Witness

.....Full name

.....Address

SUBSCRIBED for and on behalf of **HUB NORTH SCOTLAND (WICK) LIMITED**

at

on the day of 2014

by

.....Director/Attorney

in the presence of this witness

.....Witness

.....Full name

.....Address

SECTION 3

KEY SUB-CONTRACTOR COLLATERAL AGREEMENT

COLLATERAL WARRANTY

AMONG:

THE HIGHLAND COUNCIL a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 having its principal offices at Council Buildings Glenurquart Road, Inverness IV3 5NX (the "**Beneficiary**" which expression shall include its successors in title or permitted assignees under this Agreement and/or the Beneficiary's appointee);

and

BURO HAPPOLD LIMITED, a company incorporated in England and Wales under the Companies Acts (Registered Number 02049511) and having its Registered Office at Camden Mill, Lower Bristol Road, Bath, Somerset, BA2 3DQ (the "**Consultant**").

WHEREAS:

- (A) The Beneficiary and Hub North Scotland (Wick) Limited, a company incorporated in Scotland under the Companies Acts (Registered Number SC469278) and having its Registered Office at Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE ("**Sub-hubco**") have entered into an agreement for the design, build, finance and maintenance of a new high school, primary school and community facilities in Wick (the "**Project**") on or about the date hereof (the "**DBFM Agreement**").
- (B) Sub-hubco and Galliford Try Building Limited, incorporated under the Companies Acts (with registered number 02472080) whose registered office is at Cowley Business Park, Cowley, Uxbridge, Middlesex, UB8 2AL (the "**Contractor**") have entered into a contract (the "**Construction Contract**") on or about the date hereof for the design and construction of the Project (the "**Contract Works**").
- (C) The Contractor has entered or intends to enter into an agreement with the Consultant whereby the Consultant will provide certain design services (including mechanical and electrical engineering services) (the "**Services**") in connection with the Project ("**the Appointment**") as more particularly described in the Appointment.
- (D) It is a condition of the Appointment that the Consultant enters this Agreement with the Beneficiary.
- (E) The Beneficiary shall be entitled to rely and is deemed to have relied on the Consultant's reasonable skill, care and diligence in respect of all matters covered by this Agreement insofar as they relate to the Services provided by the Consultant under the Appointment.

NOW IT IS AGREED as follows:

1 WARRANTY AND UNDERTAKING

- 1.1 The Consultant warrants and undertakes to the Beneficiary that it has complied and will continue to comply with all the terms and obligations under or arising out of the Appointment on the Consultant's part to be performed and observed and shall complete the Services in accordance with the Appointment.
- 1.2 Without prejudice to Clause 1.1 of this Agreement, the Consultant further warrants and undertakes to the Beneficiary that:

1.2.1 it has exercised and will continue to exercise all the due skill, care and diligence to be expected from a properly qualified and competent consultant experienced in providing design services on projects similar in nature, size and complexity to the Project in:

- (a) the design of the Contract Works;
- (b) the specification of goods and materials for the Contract Works, and in particular in ensuring that it has not and will not specify for use in relation to the Contract Works any products or materials not in conformity with relevant British or European standards or Codes of Practice or which are at the time of specification generally known within the United Kingdom to an experienced designer of such as the Contract Works to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used; and
- (c) the performance of the Services to the Contractor under the Appointment;

1.2.2 [not used];

1.2.3 the final design will at practical completion or its equivalent under the Construction Contract, as the case may be, comply with all relevant legislation and Good Industry Practice;

2 INSURANCE

2.1 The Consultant shall maintain throughout the duration of provision of the Services and for a period of 12 years after the date of practical completion or its equivalent under the Construction Contract, or if earlier the date of termination of the Appointment, professional indemnity insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) sterling on an each and every claim basis except for: (i) claims relating to pollution and contamination where the cover will be in the annual aggregate; (ii) claims relating to asbestos, in respect of which cover will be for £1,000,000 in the annual aggregate; and (iii) claims relating to terrorism, in respect of which no cover is maintained by the Consultant with insurer of good repute carrying on business in the European Union provided always that such insurance is available at rates which are commercially reasonable to consultants.

2.2 In determining whether or not insurance is available as aforesaid, the financial characteristics and claims' record of the Consultant shall be ignored.

2.3 The Consultant shall immediately inform the Beneficiary if such insurance ceases to be available at rates which are commercially reasonable in order that the Consultant and the Beneficiary can consider alternative means of best protecting their respective positions in respect of the Project in the absence of such insurance provided that the Beneficiary shall be entitled to require the Consultant to maintain such lesser amount of professional indemnity insurance as is available to the Consultant at rates which are commercially reasonable.

2.4 As and when it is reasonably requested to do so by the Beneficiary the Consultant shall produce for inspection documentary evidence satisfactory to the Beneficiary (acting reasonably) that its professional indemnity insurance is being maintained.

2.5 The Consultant confirms that this Agreement has been disclosed to and has been approved by the Consultant's professional indemnity insurers or underwriters.

- 2.6 Should the Consultant be in breach of any of its obligations under this Clause 2 (*Insurance*), the Beneficiary may itself insure against any risk with respect to which the breach shall have occurred and may recover such sum or sums from the Consultant as a debt.

3 **COPYRIGHT**

- 3.1 The Consultant hereby grants to the Beneficiary or its appointee and all those authorised by the Beneficiary an irrevocable, transferable, non-exclusive and royalty-free licence (which shall be capable of assignation) to use and reproduce all information (whether or not stored in computer systems), drawings, models, bills of quantities, specifications, schedules, details, plans, programmes, budgets, reports, calculations or other documents, work or things including all applicable passwords or access codes whatsoever provided or to be provided by the Consultant in connection with the Services (the "**Documents**") for such purposes as the Beneficiary may at its sole discretion require.
- 3.2 Such licence shall carry the right to grant sub-licences and shall subsist notwithstanding that the Appointment is terminated or the obligations and duties there under have been completed. For the avoidance of doubt, the grant of such licence or sub-licences shall not impose any additional liability on the Consultant.
- 3.3 The Consultant shall on reasonable demand provide to the Beneficiary or its appointee and those authorised by the Beneficiary additional copies of any documents on receipt of reasonable copying costs. The Consultant will not be liable for any use by the Beneficiary or any appointee or sub-licensee of any of the Documents for any purpose other than that for which the same were prepared and provided by the Consultant or for any improper or negligent use by the Beneficiary or any appointee or sub-licensee.
- 3.4 The Consultant agrees to indemnify and keep indemnified the Beneficiary from and against all loss, damage, cost, expense, liability or claim in respect of breach of the copyright or other intellectual property rights of any third party caused by or arising out of the carrying out of the Services or the use of the licence.

4 **ASSIGNATION**

- 4.1 This Agreement may be assigned in whole or in part by the Beneficiary to any successor to the Beneficiary's interest in the Project or any part thereof without the consent of the Consultant being required and such assignation shall be effective upon written notice thereof being given to the Consultant. No assignation of this Agreement by any other party shall be permitted.
- 4.2 The Consultant agrees that it shall not at any time assert that any permitted assignee in terms of this Agreement is precluded from recovering any loss resulting from any breach of this Agreement by reason that such assignee is not an original party to this Agreement or that no less or a different loss has been suffered by such assignee.

5 **NO WAIVER OR VARIATION**

- 5.1 No failure, approval, act or forbearance on the part of the Beneficiary in respect of any right of the Beneficiary pursuant to this Agreement shall constitute any waiver of any right of the Beneficiary under or arising out of this Agreement nor relieve the Consultant of any of its duties or obligations under or arising out of this Agreement.
- 5.2 The Consultant will not seek to modify or vary any of the obligations for which it is responsible under the Appointment in any respect if that modification or variation will be detrimental to the Beneficiary or affects the Beneficiary's rights or

obligations under the DBFM Agreement or affects the Consultant's obligations under this Agreement.

6 EQUIVALENT RIGHTS

The obligations of the Consultant under this Agreement shall be no greater in extent or quantity than if the Beneficiary had been named as joint employer with the Contractor under the Appointment. The Consultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as it would have against the Contractor under the Appointment (other than counterclaim, set-off or to state a defence of no loss or a different loss has been suffered by the Contractor).

7 NOTICES

7.1 Any notice, consent or demand to be given or made by any party under this Agreement (hereinafter called a "Notice") shall only be validly served if in writing and delivered personally or sent by pre-paid first class recorded delivery post or sent by e-mail to the following address and marked for the attention of the following person in the case of each party:

Party	Address	E-mail address	Person
The Beneficiary	The Highland Council, Council Buildings, Glenurquhart Road, Inverness IV3 5NX	brian.porter@highland.gov.uk	Brian Porter
The Consultant	57-59 Bread Street, Edinburgh EH3 9AH	stuart.munro@burohappold.com	Stuart Munro

Any party may by Notice to the other party/parties change its address, e-mail address or the title of the person for whose attention Notices are to be given or made pursuant to this Clause. Any such Notice shall be deemed to have been received:

- 7.1.1 if delivered personally, at the time of delivery;
- 7.1.2 in the case of pre-paid first class recorded delivery post, on the first Business Day after the date of posting; and
- 7.1.3 in the case of an e-mail, at the time the e-mail enters the Information System of the intended recipient designated by them to receive electronic notices pursuant to this Agreement (as identified by the e-mail address specified in the table above or notified from time to time under this Clause 7.1) if on a Business Day between the hours of 9am and 4pm or by 11am on the next following Business Day, if the time the email enters the intended recipient's relevant Information System is after 4pm, on a Business Day but before 9am on that next following Business Day, and provided that no error message indicating failure to deliver has been received by the sender and provided further that within 24 hours of transmission a hard copy of the e-mail signed by or on behalf of the person giving it is sent by post or delivered by hand to the intended recipient in accordance with the provisions of Clause 7.1.1 or Clause 7.1.2.

7.2 If any Notice is delivered after 5 p.m. on a Business Day, or at any time during a day which is not a Business Day, that Notice shall be deemed to have been received at 9 a.m. on the next Business Day.

7.3 For the purposes of this Clause 7 (*Notices*), "**Business Day**" means any day which is not a Saturday, a Sunday or a public holiday in Scotland and "Information System" means a system for generating, sending, receiving, storing or otherwise processing electronic communications. In proving service under either Clause 7.1.2 or Clause 7.1.3, it shall be sufficient to prove that the envelope containing such Notice was properly addressed to the relevant party and either delivered personally to that address or delivered into the custody of the postal authorities as a pre-paid first class recorded delivery letter.

8 The definitions of words and phrases used in this Agreement shall be those set out in the Construction Contract and Appointment except where expressly defined in this Agreement.

9 This Agreement shall be governed by and construed in accordance with Scots Law and the parties hereto submit to the exclusive jurisdiction of the Scottish Courts.

Save to the extent expressly provided in this Agreement no provision of this Agreement is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party or any liability whatsoever to any third party, and without prejudice to the generality of the foregoing, there shall not in any circumstances be created by this Agreement a *jus quaesitum tertio* in favour of any person whatsoever.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding 6 pages is executed as follows:

SUBSCRIBED for and on behalf of the said **THE HIGHLAND COUNCIL** at

on the day of 2014 by:

..... Proper Officer

..... Full Name

before this witness

..... Witness

..... Full Name

..... Address

.....

SUBSCRIBED for and on behalf of the said **BURO HAPPOLD LIMITED** at

on the day of 2014 by:

..... Director

..... Full Name

before this witness

..... Witness

..... Full Name

..... Address

.....

COLLATERAL WARRANTY

AMONG:

THE HIGHLAND COUNCIL a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 having its principal offices at Council Buildings Glenurquart Road, Inverness IV3 5NX (the "**Beneficiary**" which expression shall include its successors in title or permitted assignees under this Agreement and/or the Beneficiary's appointee);

and

BURO HAPPOLD LIMITED, a company incorporated in England and Wales under the Companies Acts (Registered Number 02049511) and having its Registered Office at Camden Mill, Lower Bristol Road, Bath, Somerset, BA2 3DQ (the "**Consultant**").

WHEREAS:

- (A) The Beneficiary and Hub North Scotland (Wick) Limited, a company incorporated in Scotland under the Companies Acts (Registered Number SC469278) and having its Registered Office at Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE ("**Sub-hubco**") have entered into an agreement for the design, build, finance and maintenance of a new high school, primary school and community facilities in Wick (the "**Project**") on or about the date hereof (the "**DBFM Agreement**").
- (B) Sub-hubco and Galliford Try Building Limited, incorporated under the Companies Acts (with registered number 02472080) whose registered office is at Cowley Business Park, Cowley, Uxbridge, Middlesex, UB8 2AL (the "**Contractor**") have entered into a contract (the "**Construction Contract**") on or about the date hereof for the design and construction of the Project (the "**Contract Works**").
- (C) The Contractor has entered or intends to enter into an agreement with the Consultant whereby the Consultant will provide certain design services (including structural engineering services) (the "**Services**") in connection with the Project ("**the Appointment**") as more particularly described in the Appointment.
- (D) It is a condition of the Appointment that the Consultant enters this Agreement with the Beneficiary.
- (E) The Beneficiary shall be entitled to rely and is deemed to have relied on the Consultant's reasonable skill, care and diligence in respect of all matters covered by this Agreement insofar as they relate to the Services provided by the Consultant under the Appointment.

NOW IT IS AGREED as follows:

1 WARRANTY AND UNDERTAKING

- 1.1 The Consultant warrants and undertakes to the Beneficiary that it has complied and will continue to comply with all the terms and obligations under or arising out of the Appointment on the Consultant's part to be performed and observed and shall complete the Services in accordance with the Appointment.
- 1.2 Without prejudice to Clause 1.1 of this Agreement, the Consultant further warrants and undertakes to the Beneficiary that:
 - 1.2.1 it has exercised and will continue to exercise all the due skill, care and diligence to be expected from a properly qualified and competent consultant experienced in providing design services on projects similar in nature, size and complexity to the Project in:
 - (a) the design of the Contract Works;

- (b) the specification of goods and materials for the Contract Works, and in particular in ensuring that it has not and will not specify for use in relation to the Contract Works any products or materials not in conformity with relevant British or European standards or Codes of Practice or which are at the time of specification generally known within the United Kingdom to an experienced designer of such as the Contract Works to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used; and
- (c) the performance of the Services to the Contractor under the Appointment;

1.2.2 [not used];

1.2.3 the final design will at practical completion or its equivalent under the Construction Contract, as the case may be, comply with all relevant legislation and Good Industry Practice;

2 INSURANCE

- 2.1 The Consultant shall maintain throughout the duration of provision of the Services and for a period of 12 years after the date of practical completion or its equivalent under the Construction Contract, or if earlier the date of termination of the Appointment, professional indemnity insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) sterling on an each and every claim basis except for: (i) claims relating to pollution and contamination where the cover will be in the annual aggregate; (ii) claims relating to asbestos, in respect of which cover will be for £1,000,000 in the annual aggregate; and (iii) claims relating to terrorism, in respect of which no cover is maintained by the Consultant with insurer of good repute carrying on business in the European Union provided always that such insurance is available at rates which are commercially reasonable to consultants.
- 2.2 In determining whether or not insurance is available as aforesaid, the financial characteristics and claims' record of the Consultant shall be ignored.
- 2.3 The Consultant shall immediately inform the Beneficiary if such insurance ceases to be available at rates which are commercially reasonable in order that the Consultant and the Beneficiary can consider alternative means of best protecting their respective positions in respect of the Project in the absence of such insurance provided that the Beneficiary shall be entitled to require the Consultant to maintain such lesser amount of professional indemnity insurance as is available to the Consultant at rates which are commercially reasonable.
- 2.4 As and when it is reasonably requested to do so by the Beneficiary the Consultant shall produce for inspection documentary evidence satisfactory to the Beneficiary (acting reasonably) that its professional indemnity insurance is being maintained.
- 2.5 The Consultant confirms that this Agreement has been disclosed to and has been approved by the Consultant's professional indemnity insurers or underwriters.
- 2.6 Should the Consultant be in breach of any of its obligations under this Clause 2 (*Insurance*), the Beneficiary may itself insure against any risk with respect to which the breach shall have occurred and may recover such sum or sums from the Consultant as a debt.

3 **COPYRIGHT**

- 3.1 The Consultant hereby grants to the Beneficiary or its appointee and all those authorised by the Beneficiary an irrevocable, transferable, non-exclusive and royalty-free licence (which shall be capable of assignation) to use and reproduce all information (whether or not stored in computer systems), drawings, models, bills of quantities, specifications, schedules, details, plans, programmes, budgets, reports, calculations or other documents, work or things including all applicable passwords or access codes whatsoever provided or to be provided by the Consultant in connection with the Services (the "**Documents**") for such purposes as the Beneficiary may at its sole discretion require.
- 3.2 Such licence shall carry the right to grant sub-licences and shall subsist notwithstanding that the Appointment is terminated or the obligations and duties there under have been completed. For the avoidance of doubt, the grant of such licence or sub-licences shall not impose any additional liability on the Consultant.
- 3.3 The Consultant shall on reasonable demand provide to the Beneficiary or its appointee and those authorised by the Beneficiary additional copies of any documents on receipt of reasonable copying costs. The Consultant will not be liable for any use by the Beneficiary or any appointee or sub-licensee of any of the Documents for any purpose other than that for which the same were prepared and provided by the Consultant or for any improper or negligent use by the Beneficiary or any appointee or sub-licensee.
- 3.4 The Consultant agrees to indemnify and keep indemnified the Beneficiary from and against all loss, damage, cost, expense, liability or claim in respect of breach of the copyright or other intellectual property rights of any third party caused by or arising out of the carrying out of the Services or the use of the licence.

4 **ASSIGNATION**

- 4.1 This Agreement may be assigned in whole or in part by the Beneficiary to any successor to the Beneficiary's interest in the Project or any part thereof without the consent of the Consultant being required and such assignation shall be effective upon written notice thereof being given to the Consultant. No assignation of this Agreement by any other party shall be permitted.
- 4.2 The Consultant agrees that it shall not at any time assert that any permitted assignee in terms of this Agreement is precluded from recovering any loss resulting from any breach of this Agreement by reason that such assignee is not an original party to this Agreement or that no less or a different loss has been suffered by such assignee.

5 **NO WAIVER OR VARIATION**

- 5.1 No failure, approval, act or forbearance on the part of the Beneficiary in respect of any right of the Beneficiary pursuant to this Agreement shall constitute any waiver of any right of the Beneficiary under or arising out of this Agreement nor relieve the Consultant of any of its duties or obligations under or arising out of this Agreement.
- 5.2 The Consultant will not seek to modify or vary any of the obligations for which it is responsible under the Appointment in any respect if that modification or variation will be detrimental to the Beneficiary or affects the Beneficiary's rights or obligations under the DBFM Agreement or affects the Consultant's obligations under this Agreement.

6 **EQUIVALENT RIGHTS**

The obligations of the Consultant under this Agreement shall be no greater in extent or quantity than if the Beneficiary had been named as joint employer with the Contractor under the Appointment. The Consultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as it would have against the Contractor under the Appointment (other than counterclaim, set-off or to state a defence of no loss or a different loss has been suffered by the Contractor).

7 NOTICES

7.1 Any notice, consent or demand to be given or made by any party under this Agreement (hereinafter called a "Notice") shall only be validly served if in writing and delivered personally or sent by pre-paid first class recorded delivery post or sent by e-mail to the following address and marked for the attention of the following person in the case of each party:

Party	Address	E-mail address	Person
The Beneficiary	The Highland Council, Council Buildings, Glenurquhart Road, Inverness IV3 5NX	brian.porter@highland.gov.uk	Brian Porter
The Consultant	57-59 Bread Street, Edinburgh EH3 9AH	stuart.munro@burohappold.com	Stuart Munro

Any party may by Notice to the other party/parties change its address, e-mail address or the title of the person for whose attention Notices are to be given or made pursuant to this Clause. Any such Notice shall be deemed to have been received:

- 7.1.1 if delivered personally, at the time of delivery;
- 7.1.2 in the case of pre-paid first class recorded delivery post, on the first Business Day after the date of posting; and
- 7.1.3 in the case of an e-mail, at the time the e-mail enters the Information System of the intended recipient designated by them to receive electronic notices pursuant to this Agreement (as identified by the e-mail address specified in the table above or notified from time to time under this Clause 7.1) if on a Business Day between the hours of 9am and 4pm or by 11am on the next following Business Day, if the time the email enters the intended recipient's relevant Information System is after 4pm, on a Business Day but before 9am on that next following Business Day, and provided that no error message indicating failure to deliver has been received by the sender and provided further that within 24 hours of transmission a hard copy of the e-mail signed by or on behalf of the person giving it is sent by post or delivered by hand to the intended recipient in accordance with the provisions of Clause 7.1.1 or Clause 7.1.2.

7.2 If any Notice is delivered after 5 p.m. on a Business Day, or at any time during a day which is not a Business Day, that Notice shall be deemed to have been received at 9 a.m. on the next Business Day.

7.3 For the purposes of this Clause 7 (*Notices*), "**Business Day**" means any day which is not a Saturday, a Sunday or a public holiday in Scotland and "Information System" means a system for generating, sending, receiving, storing or otherwise processing electronic communications. In proving service under either Clause 7.1.2 or Clause 7.1.3, it shall be sufficient to prove that the envelope containing such Notice was properly addressed to the relevant party and either delivered personally to that address or delivered into the custody of the postal authorities as a pre-paid first class recorded delivery letter.

8 The definitions of words and phrases used in this Agreement shall be those set out in the Construction Contract and Appointment except where expressly defined in this Agreement.

9 This Agreement shall be governed by and construed in accordance with Scots Law and the parties hereto submit to the exclusive jurisdiction of the Scottish Courts.

10 Save to the extent expressly provided in this Agreement no provision of this Agreement is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party or any liability whatsoever to any third party, and without prejudice to the generality of the foregoing, there shall not in any circumstances be created by this Agreement a *jus quaesitum tertio* in favour of any person whatsoever.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding 6 pages is executed as follows:

SUBSCRIBED for and on behalf of the said **THE HIGHLAND COUNCIL** at

on the day of 2014 by:

..... Proper Officer

..... Full Name

before this witness

..... Witness

..... Full Name

..... Address

.....

SUBSCRIBED for and on behalf of the said **BURO HAPPOLD LIMITED** at

on the day of 2014 by:

..... Director

..... Full Name

before this witness

..... Witness

..... Full Name

..... Address

.....

COLLATERAL WARRANTY

AMONG:

THE HIGHLAND COUNCIL a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 having its principal offices at Council Buildings Glenurquart Road, Inverness IV3 5NX (the "**Beneficiary**" which expression shall include its successors in title or permitted assignees under this Agreement and/or the Beneficiary's appointee);

and

RYDER ARCHITECTURE LIMITED, a company incorporated in England and Wales under the Companies Acts (Registered Number 01852938) and having its Registered Office at Cooper's Studios, 14-18 Westgate Road, Newcastle Upon Tyne, NE1 3NN (the "**Consultant**").

WHEREAS:

- (A) The Beneficiary and Hub North Scotland (Wick) Limited, a company incorporated in Scotland under the Companies Acts (Registered Number SC469278) and having its Registered Office at Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE ("**Sub-hubco**") have entered into an agreement for the design, build, finance and maintenance of a new high school, primary school and community facilities in Wick (the "**Project**") on or about the date hereof (the "**DBFM Agreement**").
- (B) Sub-hubco and Galliford Try Building Limited, incorporated under the Companies Acts (with registered number 02472080) whose registered office is at Cowley Business Park, Cowley, Uxbridge, Middlesex, UB8 2AL (the "**Contractor**") have entered into a contract (the "**Construction Contract**") on or about the date hereof for the design and construction of the Project (the "**Contract Works**").
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- (E) The Beneficiary shall be entitled to rely and is deemed to have relied on the Consultant's reasonable skill, care and diligence in respect of all matters covered by this Agreement insofar as they relate to the Services provided by the Consultant under the Appointment.

NOW IT IS AGREED as follows:

1 WARRANTY AND UNDERTAKING

- 1.1 The Consultant warrants and undertakes to the Beneficiary that it has complied and will continue to comply with all the terms and obligations under or arising out of the Appointment on the Consultant's part to be performed and observed and shall complete the Services in accordance with the Appointment.
- 1.2 Without prejudice to Clause 1.1 of this Agreement, the Consultant further warrants and undertakes to the Beneficiary that:
 - 1.2.1 it has exercised and will continue to exercise all the due skill, care and diligence to be expected from a properly qualified and competent consultant experienced in providing design services on projects similar in nature, size and complexity to the Project in:
 - (a) the design of the Contract Works;

- (b) the specification of goods and materials for the Contract Works, and in particular in ensuring that it has not and will not specify for use in relation to the Contract Works any products or materials not in conformity with relevant British or European standards or Codes of Practice or which are at the time of specification generally known within the United Kingdom to an experienced designer of such as the Contract Works to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used; and
- (c) the performance of the Services to the Contractor under the Appointment;

1.2.2 [not used];

1.2.3 the final design will at practical completion or its equivalent under the Construction Contract, as the case may be, comply with all relevant legislation and Good Industry Practice;

2 INSURANCE

- 2.1 The Consultant shall maintain throughout the duration of provision of the Services and for a period of 12 years after the date of practical completion or its equivalent under the Construction Contract or if earlier the date of termination of the Appointment, professional indemnity insurance in an amount of not less than ten million pounds (£10,000,000) sterling on an each and every claim basis and for any one occurrence or series of occurrences arising out of any one event with insurer of good repute carrying on business in the European Union provided always that such insurance is available at rates which are commercially reasonable to consultants.
- 2.2 In determining whether or not insurance is available as aforesaid, the financial characteristics and claims' record of the Consultant shall be ignored.
- 2.3 The Consultant shall immediately inform the Beneficiary if such insurance ceases to be available at rates which are commercially reasonable in order that the Consultant and the Beneficiary can consider alternative means of best protecting their respective positions in respect of the Project in the absence of such insurance provided that the Beneficiary shall be entitled to require the Consultant to maintain such lesser amount of professional indemnity insurance as is available to the Consultant at rates which are commercially reasonable.
- 2.4 As and when it is reasonably requested to do so by the Beneficiary the Consultant shall produce for inspection documentary evidence satisfactory to the Beneficiary (acting reasonably) that its professional indemnity insurance is being maintained.
- 2.5 The Consultant confirms that this Agreement has been disclosed to and has been approved by the Consultant's professional indemnity insurers or underwriters.
- 2.6 Should the Consultant be in breach of any of its obligations under this Clause 2 (*Insurance*), the Beneficiary may itself insure against any risk with respect to which the breach shall have occurred and may recover such sum or sums from the Consultant as a debt.

3 COPYRIGHT

- 3.1 The Consultant hereby grants to the Beneficiary or its appointee and all those authorised by the Beneficiary an irrevocable, transferable, non-exclusive and

royalty-free licence (which shall be capable of assignation) to use and reproduce all information (whether or not stored in computer systems), drawings, models, bills of quantities, specifications, schedules, details, plans, programmes, budgets, reports, calculations or other documents, work or things including all applicable passwords or access codes whatsoever provided or to be provided by the Consultant in connection with the Services (the "**Documents**") for such purposes as the Beneficiary may at its sole discretion require.

- 3.2 Such licence shall carry the right to grant sub-licences and shall subsist notwithstanding that the Appointment is terminated or the obligations and duties there under have been completed. For the avoidance of doubt, the grant of such licence or sub-licences shall not impose any additional liability on the Consultant.
- 3.3 The Consultant shall on reasonable demand provide to the Beneficiary or its appointee and those authorised by the Beneficiary additional copies of any documents on receipt of reasonable copying costs. The Consultant will not be liable for any use by the Beneficiary or any appointee or sub-licensee of any of the Documents for any purpose other than that for which the same were prepared and provided by the Consultant or for any improper or negligent use by the Beneficiary or any appointee or sub-licensee.
- 3.4 The Consultant agrees to indemnify and keep indemnified the Beneficiary from and against all loss, damage, cost, expense, liability or claim in respect of breach of the copyright or other intellectual property rights of any third party caused by or arising out of the carrying out of the Services or the use of the licence.

4 **ASSIGNATION**

- 4.1 This Agreement may be assigned in whole or in part by the Beneficiary to any successor to the Beneficiary's interest in the Project or any part thereof without the consent of the Consultant being required and such assignation shall be effective upon written notice thereof being given to the Consultant. No assignation of this Agreement by any other party shall be permitted.
- 4.2 The Consultant agrees that it shall not at any time assert that any permitted assignee in terms of this Agreement is precluded from recovering any loss resulting from any breach of this Agreement by reason that such assignee is not an original party to this Agreement or that no less or a different loss has been suffered by such assignee.

5 **NO WAIVER OR VARIATION**

- 5.1 No failure, approval, act or forbearance on the part of the Beneficiary in respect of any right of the Beneficiary pursuant to this Agreement shall constitute any waiver of any right of the Beneficiary under or arising out of this Agreement nor relieve the Consultant of any of its duties or obligations under or arising out of this Agreement.
- 5.2 The Consultant will not seek to modify or vary any of the obligations for which it is responsible under the Appointment in any respect if that modification or variation will be detrimental to the Beneficiary or affects the Beneficiary's rights or obligations under the DBFM Agreement or affects the Consultant's obligations under this Agreement.

6 **EQUIVALENT RIGHTS**

The obligations of the Consultant under this Agreement shall be no greater in extent or quantity than if the Beneficiary had been named as joint employer with the Contractor under the Appointment. The Consultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in

defence of liability as it would have against the Contractor under the Appointment (other than counterclaim, set-off or to state a defence of no loss or a different loss has been suffered by the Contractor).

7 **NOTICES**

7.1 Any notice, consent or demand to be given or made by any party under this Agreement (hereinafter called a “**Notice**”) shall only be validly served if in writing and delivered personally or sent by pre-paid first class recorded delivery post or sent by e-mail to the following address and marked for the attention of the following person in the case of each party:

Party	Address	E-mail address	Person
The Beneficiary	The Highland Council, Council Buildings, Glenurquhart Road, Inverness IV3 5NX	brian.porter@highland.gov.uk	Brian Porter
The Consultant	Cooper’s Studios, 14-18 Westgate Road, Newcastle Upon Tyne, NE1 3NN	gmurray@ryderarchitecture.com	Gordon Murray

Any party may by Notice to the other party/parties change its address, e-mail address or the title of the person for whose attention Notices are to be given or made pursuant to this Clause. Any such Notice shall be deemed to have been received:

- 7.1.1 if delivered personally, at the time of delivery;
 - 7.1.2 in the case of pre-paid first class recorded delivery post, on the first Business Day after the date of posting; and
 - 7.1.3 in the case of an e-mail, at the time the e-mail enters the Information System of the intended recipient designated by them to receive electronic notices pursuant to this Agreement (as identified by the e-mail address specified in the table above or notified from time to time under this Clause 7.1) if on a Business Day between the hours of 9am and 4pm or by 11am on the next following Business Day, if the time the email enters the intended recipient's relevant Information System is after 4pm, on a Business Day but before 9am on that next following Business Day, and provided that no error message indicating failure to deliver has been received by the sender and provided further that within 24 hours of transmission a hard copy of the e-mail signed by or on behalf of the person giving it is sent by post or delivered by hand to the intended recipient in accordance with the provisions of Clause 7.1.1 or Clause 7.1.2.
- 7.2 If any Notice is delivered after 5 p.m. on a Business Day, or at any time during a day which is not a Business Day, that Notice shall be deemed to have been received at 9 a.m. on the next Business Day.
- 7.3 For the purposes of this Clause 7 (*Notices*), “**Business Day**” means any day which is not a Saturday, a Sunday or a public holiday in Scotland and “Information

System" means a system for generating, sending, receiving, storing or otherwise processing electronic communications. In proving service under either Clause 7.1.2 or Clause 7.1.3, it shall be sufficient to prove that the envelope containing such Notice was properly addressed to the relevant party and either delivered personally to that address or delivered into the custody of the postal authorities as a pre-paid first class recorded delivery letter.

- 8 The definitions of words and phrases used in this Agreement shall be those set out in the Construction Contract and Appointment except where expressly defined in this Agreement.
- 9 This Agreement shall be governed by and construed in accordance with Scots Law and the parties hereto submit to the exclusive jurisdiction of the Scottish Courts.
- 10 Save to the extent expressly provided in this Agreement no provision of this Agreement is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party or any liability whatsoever to any third party, and without prejudice to the generality of the foregoing, there shall not in any circumstances be created by this Agreement a jus quaesitum tertio in favour of any person whatsoever.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding 6 pages is executed as follows:

SUBSCRIBED for and on behalf of the said **THE HIGHLAND COUNCIL** at _____ on the _____ day of _____ 2014 by:

..... Proper Officer

..... Full Name

before this witness

..... Witness

..... Full Name

..... Address

.....

SUBSCRIBED for and on behalf of the said **RYDER ARCHITECTURE LIMITED** at _____

on the _____ day of _____ 2014 by:

..... Director

..... Full Name

before this witness

..... Witness

..... Full Name

..... Address

.....

SCHEDULE PART 10

OUTLINE COMMISSIONING PROGRAMME

The Outline Commissioning Programme is the Outline Commissioning Programme in the Agreed Form.

SCHEDULE PART 11

EQUIPMENT

DEFINITIONS

For the purposes of this Schedule Part 11 (Equipment), unless the context otherwise requires:

"Equipment"	means the Group 1 Equipment, the Group 2 Equipment, the Group 3 Equipment, and the Group 4 Equipment;
"Equipment Installation Table"	means the equipment installation table contained in Appendix 1 to this Schedule Part 11 (Equipment);
"Equipment Responsibilities Matrix"	means the equipment responsibilities matrix contained in Appendix 2 to this Schedule Part 11 (Equipment);
"Group 1 Equipment"	means Equipment indicated as X in the Group 1 column in the Equipment Responsibilities Matrix;
"Group 2 Equipment"	means Equipment indicated as X in the Group 2 column in the Equipment Responsibilities Matrix;
"Group 3 Equipment"	means Equipment indicated as X in the Group 3 column in the Equipment Responsibilities Matrix;
"Group 4 Equipment"	means Equipment indicated as X in the Group 4 column in the Equipment Responsibilities Matrix.

1 Design and Installation Information

1.1 In respect of the Group 3 Equipment and the Group 4 Equipment, the Authority shall:

1.1.1 in respect of those items where "Design Information Required" is specified in the Equipment Responsibilities Matrix provide to Sub-hubco key dimensions, service supplies, loads, heat output, commissioning Information (in the case of those items where "Design Information Required" is specified in the Equipment Responsibilities Matrix only), fixing details, loads as appropriate to install structure, partitions and services adjacent to and/or serving those items of Equipment by the date identified in the Equipment Responsibilities Matrix, as appropriate;

1.1.2 notify sub-hubco of the precise locations within the relevant rooms and the nature of all wall, ceiling and/ or floor fixings required by the date identified in Equipment Responsibilities Matrix.

2 Group 1 Equipment

2.1 Sub-hubco shall at its own cost procure, install and commission the Group 1 Equipment at the Facilities as part of the Works in accordance with the Authority's Construction Requirements, the relevant Final Commissioning Programme and Sub-hubco's Proposals.

- 2.2 Sub-hubco shall at its own cost repair, maintain and replace the Group 1 Equipment in accordance with the Service Level Specification and the Method Statements.

3 Group 2 Equipment

- 3.1 Sub-hubco shall at its own cost procure, install and commission the Group 2 Equipment at the Facilities as part of the Works in accordance with the Authority's Construction Requirements, the relevant Final Commissioning Programme and Sub-hubco's Proposals.
- 3.2 The Authority shall be responsible for the maintenance, replacement and disposal of the Group 2 Equipment and Sub-hubco shall have no responsibility to maintain or replace or dispose of the Group 2 Equipment.

4 Group 3 Equipment

- 4.1 The Authority shall at its own cost:
- 4.1.1 procure and make available to Sub-hubco the Group 3 Equipment for installation by Sub-hubco at the Facilities in accordance with the relevant Final Commissioning Programme and the Equipment Installation Table;
 - 4.1.2 without prejudice to paragraph 4.1.1, procure that the relevant items of Group 3 Equipment are delivered to the Facilities during the relevant periods set out in the relevant Final Commissioning Programme and the Equipment Installation Table and in accordance with paragraph 4.6;
- 4.2 Sub-hubco shall install the Group 3 Equipment at the Facilities in accordance with the relevant Final Commissioning Programme, the Authority's Construction Requirements and Sub-hubco's Proposals.
- 4.3 The Authority shall be responsible for the maintenance, replacement and disposal of the Group 3 Equipment and Sub-hubco shall have no responsibility to maintain or replace or dispose of the Group 3 Equipment.
- 4.4 Sub-hubco shall give the Authority not less than twenty five (25) Business Days prior written notice of the date upon which Sub-hubco requires the Authority to procure the delivery (which date shall be within any relevant period stated in the Equipment Installation Table) of each item of Group 3 Equipment to be installed and commissioned by Sub-hubco in accordance with paragraph 4.2.
- 4.5 Each notice given pursuant to paragraph 4.4 shall specify;
- (a) the item or items of Group 3 Equipment be delivered
 - (b) the location on the Site to which that Group 3 Equipment is to be delivered; and
 - (c) the date upon which Sub-hubco requires the Authority to deliver the relevant item or items of Group 3 Equipment.
- 4.6 Without prejudice to paragraph 4.1, the Authority shall deliver and unload, or shall procure delivery and unloading of the relevant item or items of and/or pertaining to the new Group 3 Equipment (as specified in Column B of the Equipment Installation Table) on the date specified in the relevant notice issued pursuant to paragraph 4.4 to a central location as is agreed between the parties (which for the avoidance of doubt, must be safely accessible by those persons delivering the relevant item or items of Equipment).

- 4.6A Without prejudice to paragraph 4.1, the Authority shall deliver and unload, or shall procure delivery and unloading of the relevant items of and/or pertaining to the Group 3 Equipment transferring from other Authority locations (as specified in Column F of the Equipment Installation Table) on the date specified in the relevant notice issued pursuant to paragraph 4.4 to a location as is agreed between the parties (which for the avoidance of doubt, must be safely accessible by those persons delivering the relevant item or items of Equipment).
- 4.7 Following delivery of the Group 3 Equipment pursuant to paragraph 4.6, paragraph 4.6A or paragraph 4.8 Sub-hubco shall procure the safe and appropriate storage of the same until the completion of installation by Sub-hubco.
- 4.8 If at the time of installing or commissioning the Group 3 Equipment, such Group 3 Equipment is found to be damaged, does not properly function or otherwise does not correspond with the items to be procured by the Authority pursuant to paragraph 4.1 to allow successful completion of commissioning to occur, then the Authority shall procure the repair or replacement of such Group 3 Equipment as soon as reasonably practicable, having regard to the length of time generally taken to procure such Group 3 Equipment or procure repairs to such Group 3 Equipment provided that, to avoid doubt, where such Group 3 Equipment is damaged or does not function properly to allow commissioning to occur due to the acts or omissions of Sub-hubco or any Sub-hubco Party, then Sub-hubco shall reimburse the Authority for any costs reasonably and properly incurred by the Authority in procuring the repair of a replacement item of Group 3 Equipment within 20 Business Days of receipt of a demand thereof together with supporting information.
- 4.9 If at the time of installing or commissioning the Group 3 Equipment, such Group 3 Equipment is found to be damaged, does not properly function or otherwise does not correspond with the items to be procured by the Authority pursuant to paragraph 4.1 to allow successful completion of commissioning to occur, then the relevant Group 3 Equipment shall be disregarded for the purposes of assessing whether a relevant Phase is complete in accordance with the Completion Criteria save where such Group 3 Equipment is damaged or does not function properly to allow commissioning to occur due to the acts or omissions of Sub-hubco or any Sub-hubco Party.

5 Group 4 Equipment

- 5.1 The Authority shall at its own cost procure, install and commission the Group 4 Equipment at the Facilities.
- 5.2 The Authority shall be responsible for the maintenance, replacement and disposal of the Group 4 Equipment and Sub-hubco shall have no responsibility to maintain or replace or dispose of the Group 4 Equipment.
- 5.3 Sub-hubco will provide the Authority and procure that the Authority is provided with (i) all necessary access to the Sites and (ii) all reasonably required cooperation, at least 6 weeks in advance of the anticipated Phase 1 Actual Completion Date, to allow it to carry out such installation and commissioning referred to in paragraph 5.1 and any other reasonable and related activities.
- 5.4 The Authority shall procure that the Authority or any Authority Party to whom access is granted in accordance with paragraph 5.3 shall:
 - 5.4.1 carry out such installation and commissioning referred to in paragraph 5.1 in such a manner as to cause the minimum practicable interference with and/or disruption to the carrying out of the Works and in a manner in compliance with all Law and consents relating to the same;

- 5.4.2 comply with all relevant safety procedures, which shall include any relevant construction phase plans and health and safety plans for the construction of the Facilities, the Contractor's Site Rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Site Manager from time to time;
 - 5.4.3 make good any damage caused to the Works and/or the Facilities by the Authority or any Authority Party in the course of carrying out such installation and commissioning referred to in paragraph 5.1; and
 - 5.4.4 clean up and remove from the Site any packaging or other surplus materials left by the Authority or any Authority Party in the course of carrying out such installation and commissioning referred to in paragraph 5.1 and not incorporated into the Works following completion of such installation and commissioning referred to in paragraph 5.1.
- 5.5 Subject to Sub-hubco complying with its obligations under paragraph 5.3, then the installation and commissioning of the Group 4 Equipment shall be disregarded for the purposes of assessing whether a relevant Phase is complete in accordance with the Completion Criteria.

6 General

- 6.1 Each Party shall at its own expense perform its obligations described in this Schedule Part 11 (Equipment).
- 6.2 Subject always to compliance with the relevant Final Commissioning Programme by the Authority and all Authority Parties, Sub-hubco shall provide all reasonable access to the Works and/or the Facilities to the Authority and the Authority Parties for the purposes performing its obligations pursuant to this Schedule Part 11 (Equipment).

APPENDIX 1

EQUIPMENT INSTALLATION TABLE

A Group	B Item Description	C Number	D Date to be available	E Installation Dates	F Notes
3	<p>Technical Equipment as detailed in Appendix 2:</p> <p>New technical equipment</p> <p>Transferred technical equipment</p>	<p>As AES Schedule</p> <p>As AES Schedule</p>	<p>Information available to inform the design to be provided 10 weeks from signing of this agreement</p> <p>Equipment available 8 weeks prior to handover</p> <p>C-VAC 12 weeks prior to handover</p> <p>Equipment available 6 weeks prior to handover</p>	<p>C-VAC equipment 9 weeks prior to handover</p> <p>Installation 8 weeks prior to handover</p> <p>C-VAC 9 weeks prior to handover</p> <p>Equipment following Pultneytown Academy decant</p>	<p>Equipment (as in Group 3 Matrix) to be procured by Authority from/ supplied by/ refurbished by AES</p>
3	<p>Soap Dispensers, Paper Towel Holders, Toilet Roll Holders</p>	<p>As required for the toilet accommodation.</p>	<p>Dimensions, weights and locations to be provided 10 weeks from signing of this agreement</p> <p>Equipment available 6 weeks prior to handover</p>	<p>6 weeks prior to Handover Date</p>	<p>Authority supplied to site together with any associated brackets and fixing guidance.</p>
3	<p>Artefacts as follows: From High School:</p> <ol style="list-style-type: none"> 1. 3no Dux Boards, to a space with room for 4. 2. 1no Board with Rectors names 3. 2no War Memorials (currently in school hall) 4. Awards (currently in reception) – space for hanging to be identified 5. Plan drawing of current school 		<p>Information available to inform the design to be provided 10 weeks from signing of this agreement.</p> <p>Information to inform the design of any associated bases to be provided 10 weeks from signing of this agreement</p>	<p>Minimum 4 weeks before Handover, or as agreed by the Authority Representative</p>	<p>Authority to remove from existing school and supply to site together with details of any associated fixing requirements</p>

A	B	C	D	E	F
Group	Item Description	Number	Date to be available	Installation Dates	Notes
	<p>(currently in entrance to reception)</p> <p>6. Externally – boat currently at front of school.</p> <p>7. Externally in current courtyard – 3no Caithness slab Pictish standing stones, plus other stone artefacts</p>				
4	Interactive Whiteboards	per Room Data Sheets	Information available to inform the design to be provided 26 weeks from signing of this agreement	Patresses to be installed during construction phase where whiteboards are located outwith the learning walls (4 no locations).	Authority installing at Phase 1 Handover Date
4	Locations of Fire Extinguishers	As per Fire Risk Assessment	Location of extinguishers to be made available 10 weeks after signing of this agreement	Patresses installed during construction	Authority install extinguishers following Phase 1 Handover
4	Wind Turbine	1	Authority to confirm proposed specification 26 weeks from signing of this agreement to allow the base to be installed as part of the substructure package	Authority to obtain building warrant (if required). Sub Hubco to design (from Authority supplied specification) and install foundation and run a cable from foundation to Energy Centre	Authority to install wind turbine. Final connection to be jointly coordinated between Authority and SubHuco
4	Revalidation units 3 no (cashless catering) and 1 no point of sale unit	4	Location and M&E requirements to be made available 10 weeks after signing of this agreement	Patresses installed during construction	Authority installing following Phase 1 Handover

APPENDIX 2
EQUIPMENT RESPONSIBILITY MATRIX

The Equipment Responsibility Matrix is the Equipment Responsibility Matrix in the Agreed Form.

SCHEDULE PART 12
SERVICE REQUIREMENTS

SECTION 1
SERVICE LEVEL SPECIFICATION

The Service Level Specification is the Service Level Specification in the Agreed Form.

SECTION 2

METHOD STATEMENTS

The Method Statements are the Method Statements in the Agreed Form.

SECTION 3

SERVICES QUALITY PLAN

The Services Quality Plan is the Services Quality Plan in the Agreed Form.

SECTION 4

INTERFACE MATRIX

This Section identifies services relevant to the operation of the Facilities that the parties have agreed, notwithstanding the terms of Section 1 and Section 2 of this Schedule Part 12, will not fall within the responsibility of Sub-hubco. The parties have also agreed that references within Part F (Availability Standards) of Section 1 of this Schedule Part 12 to any Functional Area being "maintained" shall be construed by reference to Sub-hubco's responsibility for such maintenance as set out in this Schedule Part 12.

Operational procedures and working practices shall be developed after Financial Close.

Sub-hubco shall not be responsible for the provision of the following services:

- Cleaning and associated services
- Reactive cleaning
- Periodic Cleaning
- Feminine Hygiene
- Pest Control
- Caretaking Services
- Physical Security Services (i.e. manned guarding)
- Caretaking
- Grounds Maintenance (Soft & Hard Landscaping) (other than where expressly the responsibility of Sub-hubco in terms of the Service Quality Standards)

FM Interface Matrix

The undernoted tables are intended to facilitate clarification around Sub-hubco's responsibility for performance of the Services.

Item	Service Element	Sub-hubco responsible	Sub-hubco not responsible	Notes/Comments
A.	Grounds			
1.	Keep exterior areas free from litter and debris		•	
2.	Salt/grit paths to maintain access within the boundaries to facilities.		•	
B.	Building Maintenance & Handyman Duties			
1.	Carry out PAT/FIT testing	•	•	Sub-hubco responsible for its own equipment only.
C.	Heating/Plant operation			
1.	Monitor, test & maintain hot & cold water supply	•	•	Sub-hubco not responsible for checking the water quality within the swimming pool. Sub-hubco shall not be responsible for log books within Community Facility. Sub-hubco will adjust temperature controls to all hot water outlets at the Authority's request through the Helpdesk or as planned in advance.
D.	Pool Systems			
1.	Carry out daily PH & Chlorination and micro-biological		•	

Item	Service Element	Sub-hubco responsible	Sub-hubco not responsible	Notes/Comments
	levels and general monitoring of water quality and system operation			
2.	Monitor Pool temperatures	•	•	Sub-hubco shall be responsible for monitoring pool temperature via BMS only.
3.	Maintain & repair Pool plant and filtration systems	•		Sub-hubco responsibility, excluding anything considered part of daily operations (ie change a filter basket at the side of the pool).

GROUNDS MAINTENANCE INTERFACE MATRIX

Item	Service Element	Sub-hubco responsible	Sub-hubco not responsible	
A	Hard Landscaping			
1	Supply of Grit & Salt		•	
2	Snow and Ice clearance		•	
3	Pitches (maintenance and lifecycle)		•	Sub-hubco responsible for floodlights only

SCHEDULE PART 13

INDEPENDENT TESTER CONTRACT

among:

- (1) **THE HIGHLAND COUNCIL** a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 having its principal offices at Glenurquhart Road, Inverness IV3 5NX (the "Authority");
- (2) **HUB NORTH SCOTLAND (WICK) LIMITED** (registered number SC469278) whose registered office is at Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE ("Sub-hubco");
- (3) **FAITHFUL + GOULD LIMITED** (registered number 02236832) whose registered office is at Woodcote Grove, Ashley Road, Epsom, Surrey, KT18 5BW (the "Independent Tester");
- (4) **AVIVA PUBLIC PRIVATE FINANCE LIMITED** (registered number 02334210) whose registered office is at 2 Rougier Street, York YO90 1UU (the "Funder" being one of the Funders); and
- (5) **GALLIFORD TRY BUILDING LIMITED** (registered number 2472080) whose registered office is at Cowley Business Park, Cowley, Uxbridge, Middlesex, UB8 2AL (the "Contractor").

whereas:

- A Sub-hubco and the Authority have entered into or are about to enter into an agreement for the financing, design and construction of and the provision of certain services in connection with the new Wick High School and East Caithness Community Campus at the Site (the "Project") pursuant to the Government's private finance initiative (the "Design Build Finance and Maintain Agreement") under the terms of which they have jointly agreed to appoint an independent tester.
- B Sub-hubco has entered into the Construction Contract with the Contractor for the development of the Works at the Site.
- C Sub-hubco has entered into the Senior Funding Agreements with the Funders.
- D The Independent Tester is an independent adviser willing to provide services to Sub-hubco and the Authority and for the benefit of the Funders.
- E Sub-hubco and the Authority have jointly agreed to engage the Independent Tester to carry out the duties and obligations ascribed to the Independent Tester in the Design Build Finance and Maintain Agreement upon the terms of this Agreement.

It is agreed as follows:

19 Interpretation

- 19.1 Unless the context otherwise requires, words and expressions defined in the Design Build Finance and Maintain Agreement have the same meanings in this Agreement as in the Design Build Finance and Maintain Agreement.
- 19.2 The headings in this Agreement do not affect its interpretation.
- 19.3 Unless the context otherwise requires, all references to Clauses and Appendices are references to clauses of and appendices to this Agreement.

20 Appointment

- 20.1 Sub-hubco and the Authority jointly appoint the Independent Tester to perform the obligations and tasks which are ascribed to the Independent Tester under the Design Build Finance and Maintain Agreement and which are set out in Appendix 1 upon the terms and conditions set out below. The Contractor is a party to this Agreement solely to make the commitments on its part as expressly made in this Agreement. The Independent Tester shall execute in a self proving form and deliver to Sub-hubco at the same time as this Agreement a collateral warranty in favour of the Contractor in the form set out in Appendix 3.
- 20.2 The Independent Tester shall provide the services under Clause 2.1 above (the "Services") independently, fairly and impartially to and as between Sub-hubco and the Authority in relation to the Design Build Finance and Maintain Agreement at such times and at such locations as the parties shall agree from time to time. In performing the Services, the Independent Tester shall have regard to the interest of the Funders. Whilst the Independent Tester shall take account of any representations made by Sub-hubco and the Authority and the Contractor (as appropriate) and any technical adviser appointed by the Funders from time to time (as appropriate) the Independent Tester shall not be bound to comply with any representations made by any of them in connection with any matter on which the Independent Tester is required to exercise his professional judgement.

21 Varied Services

- 21.1 The Independent Tester shall carry out and perform any additional and/or varied services required for the implementation of the Project reasonably required by the Authority and Sub-hubco which are not included in, or which are omitted from, the Services (the "Varied Services"), subject to prior agreement by the Authority and Sub-hubco to the costs thereof. The written agreement by the Authority and Sub-hubco pursuant to this Clause 3.1 shall state whether (and where applicable in what proportions) the Authority and/or Sub-hubco will be responsible for the payment of the fee agreed for the Varied Services. The Independent Tester acknowledges that the liability of Sub-hubco and the Authority to pay the Independent Tester for the Varied Services shall be several and not joint.
- 21.2 If the Independent Tester shall at any time be required to perform Varied Services, it shall give to the Authority and Sub-hubco a written estimate of the cost thereof (taking into account any reduction in work or other expense which might also occur as a result of the circumstances giving rise to the Varied Services).
- 21.3 Where a change to the Project occurs pursuant to the terms of the Design Build Finance and Maintain Agreement (whether by virtue of a Delay Event, Change, change to the Programme or otherwise) which may materially impact on the Services or otherwise on the Independent Tester, the Authority and Sub-hubco shall promptly notify the Independent Tester of such change. The Independent Tester shall within five (5) Business Days of receiving such notification, notify the Authority and Sub-hubco of the impact of such change, if any, on the Services, including whether such change gives rise to any Varied Services and the provisions of this Clause 3.3 shall apply accordingly.
- 21.4 The Independent Tester shall promptly and efficiently provide the Services and the Varied Services:
- 21.4.1 with the reasonable care, skill and diligence to be expected of a properly qualified and competent professional adviser who has held itself out as competent and experienced in rendering such services for projects of a similar size, nature, scope and complexity to the Project; and
- 21.4.2 in accordance with all applicable Law.
- 21.5 All instructions to the Independent Tester must be given signed and given jointly by the Authority's Representative and Sub-hubco's Representative or such other person appointed pursuant to Clause 12 of the Design Build Finance and Maintain Agreement

(Representatives) and, for the avoidance of doubt, the Independent Tester shall not act in accordance with any instructions given to him by either the Authority or Sub-hubco (or any other person) not given in accordance with the provisions of this Clause 3.5.

- 21.6 The Independent Tester shall comply with all reasonable instructions given to it by Sub-hubco and the Authority pursuant to Clause 3.5 except and to the extent that the Independent Tester reasonably considers that any such instructions vary or might vary the Services or its authority or responsibilities under this Agreement or prejudices or might prejudice the exercise by the Independent Tester of its professional judgement in accordance with Clauses 2.2 and 3.4 above. The Independent Tester shall promptly confirm in writing to Sub-hubco and the Authority whether or not it shall comply with any such instruction setting out the grounds upon which the decision is made.
- 21.7 The Authority, Sub-hubco and the Contractor agree to co-operate with and provide reasonable assistance to the Independent Tester to familiarise the Independent Tester with all necessary aspects of the Project to enable the Independent Tester to carry out its obligations under this Agreement.
- 21.8 The Independent Tester shall be deemed to have full knowledge of the provisions of the Design Build Finance and Maintain Agreement, the Construction Contract, the Service Contract and the Funding Agreements such as relates to the Services and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of Sub-hubco and the Authority which are set out in the Design Build Finance and Maintain Agreement provided always that true and accurate copies have been delivered to the Independent Tester.
- 21.9 Subject to Clause 3.10, the Independent Tester shall use the following partners, directors or employees: Keith Willins, Kevin Laing, Nigel Fyffe, Nick Boyce, Iain MacGregor, Mark Finlayson, Steve Clarges, Phil Brady and Ross Stupart in connection with the performance of the Services and such persons' services shall be available when necessary and for so long as may be necessary to ensure the proper performance by the Independent Tester of the Services. Such persons shall have full authority to act on behalf of the Independent Tester for all purposes in connection with the Services.
- 21.10 The Independent Tester may by written notice to the Authority and Sub-hubco replace the staff identified in Clause 3.9 taking into account the need for liaison, continuity, level of qualification and availability of personnel in respect of the Project. Such replacement shall be subject to approval in writing by Sub-hubco and the Authority (not to be unreasonably withheld or delayed).

22 Duration

- 22.1 The Services shall commence on the date of this Agreement.
- 22.2 The parties hereby agree that this Agreement governs all of the Services (including the Varied Services, if any) provided by the Independent Tester in relation to the Project whether before or after the date hereof.

23 Fee

- 23.1 Sub-hubco shall pay to the Independent Tester a fee of £77,600 for the Services provided in relation to this Agreement. The fee is exclusive of value added tax and inclusive of disbursements. The Independent Tester shall issue an invoice to Sub-hubco on a monthly basis in accordance with Appendix 2 Section 1 (Schedule of Drawdown of Fees) (the "Application for Payment"). Five (5) days after the date on which the invoice is received by Sub-hubco shall constitute the due date (the "Due Date"). The final date for payment by Sub-hubco shall be thirty (30) days after receipt of the Independent Tester's invoice (the "Final Date"). If Varied Services are provided then they shall be paid for in accordance with the agreement between the Independent Tester and the Authority and Sub-hubco pursuant to Clause 3.1.

- 23.2 Not later than five (5) days after the Due Date ascertained in accordance with Clause 5.1, Sub-hubco shall give written notice to the Independent Tester stating the amount which Sub-hubco considers to be or have been due at the Due Date and the basis on which the amount is calculated (the "Payment Notice"). It is immaterial that the sum referred to in this notice may be zero. If Sub-hubco fails to give a Payment Notice in accordance with this Clause 5.2 and the Independent Tester has given an Application for Payment in accordance with Clause 5.1, subject to any Pay Less Notice given under Clause 5.3, the sum to be paid to the Independent Tester shall be the sum specified in the Application for Payment.
- 23.3 Where Sub-hubco intends to pay less than the sum stated as due pursuant to this Agreement, Sub-hubco shall, not later than two (2) days before the relevant Final Date, give a written notice to the Independent Tester (a "Pay Less Notice"). Such Pay Less Notice shall specify both the sum that Sub-hubco considers to be due to the Independent Tester at the date the notice is given and the basis on which that sum is calculated. It is immaterial that the sum referred to in this Clause 5.3 may be zero. Where any Pay Less Notice is given, the payment to be made on or before the relevant Final Date shall be not less than the amount stated as due in such notice.
- 23.4 If Sub-hubco fails to pay a sum, or any part of it, due to the Independent Tester under this Agreement by the relevant Final Date, Sub-hubco shall, in addition to any unpaid amount that should properly have been paid, pay the Independent Tester simple interest on that amount from the Final Date until the actual date of payment at the Default Interest Rate.
- 23.5 If Sub-hubco fails to pay any amount properly due pursuant to this Agreement by the relevant Final Date and the failure continues for twenty one (21) days after the Independent Tester has given notice to Sub-hubco of its intention to suspend performance of all or any of the Services and the ground or grounds on which it is intended to suspend performance, the Independent Tester may suspend performance of any or all of its obligations until payment is made in full. Any period of suspension of the Services in accordance with this Clause 5.5 shall be disregarded in computing any contractual time limit to complete work directly or indirectly affected by the exercise of the rights conferred by this Clause 5.5 or as the case may be, the time for completion of such work shall be extended by a period equal to the period of suspension.

Where the Independent Tester exercises its right of suspension under this Clause 5.5, it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of the exercise of that right. Any such costs and expenses shall be included in the Independent Tester's next Application for Payment and the Independent Tester shall, with its application, submit such details of the costs and expenses as are reasonably necessary to enable the Independent Tester's entitlement to be ascertained.

- 23.6 Without prejudice to Clause 3.5 neither the Authority nor Sub-hubco shall issue instructions or do anything which does or is reasonably likely materially to increase the fees payable to the Independent Tester without the prior approval of the other (such approval not to be unreasonably withheld or delayed).
- 23.7 As soon as the Independent Tester becomes aware of the same and before acting on the same the Independent Tester shall inform the Authority and Sub-hubco of any instructions given to him pursuant to Clause 3.5 which will or could reasonably be expected to increase the fees payable to the Independent Tester under the terms of this Agreement. The Independent Tester shall if requested by either Sub-hubco or the Authority provide both the Authority and Sub-hubco with as detailed an estimate as is reasonably practicable of the increase to the fees payable to it if it carries out such instructions. The estimate of increased fees shall be based upon the rates contained in Appendix 2, Section 2 (Schedule of Daily and Hourly Rates).

24 Limitations on Authority

- 24.1 The Independent Tester shall not:

- 24.1.1 make or purport to make any alteration or addition to or omission from the design of the Facilities (including, without limitation, the setting of performance standards) or issue any instruction or direction to any contractor or professional consultant employed or engaged in connection with the Project; or
- 24.1.2 (unless both Sub-hubco and the Authority consent in writing) consent or agree to any waiver or release of any obligation of Sub-hubco or the Authority under the Design Build Finance and Maintain Agreement or of any contractor or professional consultant employed or engaged in connection with the Project.
- 24.2 For the avoidance of doubt, the Independent Tester shall not express an opinion on and shall not interfere with or give any advice, opinion or make any representation in relation to any matters which are beyond its role and responsibilities under this Agreement.

25 Termination

- 25.1 Sub-hubco and the Authority may by joint notice in writing (a "Joint Notice") immediately terminate this Agreement if the Independent Tester:
 - 25.1.1 is in breach of any of the terms of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Tester within twenty one (21) days of receipt by the Independent Tester of a Joint Notice specifying the breach and requiring its remedy;
 - 25.1.2 is incompetent, guilty of gross misconduct and/or any material failure, negligence or delay in the provision of the Services and/or its other duties under this Agreement;
 - 25.1.3 fails or refuses after written warning to provide the Services and/or its other duties under this Agreement reasonably and as properly required of him; or
 - 25.1.4 is subject to an event analogous to any of the events set out in Clause 40.1.1 (Insolvency) of the Design Build Finance and Maintain Agreement.
- 25.2 If the Design Build Finance and Maintain Agreement is rescinded, terminated or repudiated for any reason and, notwithstanding that the validity of such rescission, termination or repudiation may be disputed, this Agreement may be terminated by Joint Notice and with immediate effect.
- 25.3 Following any termination of this Agreement, but subject to any set-off or deductions which Sub-hubco or the Authority may be entitled properly to make as a result of any breach of this Agreement by the Independent Tester, the Independent Tester shall be entitled to be paid in full and final settlement of any valid claim which the Independent Tester may have in consequence thereof, any fees due under Clause 5 (Fee) above in respect of the Services carried out in accordance with this Agreement prior to the date of termination.
- 25.4 Termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination (including the right of Sub-hubco and the Authority to recover damages from the Independent Tester).
- 25.5 If this Agreement is terminated in accordance with Clause 7.1, Sub-hubco and the Authority shall use reasonable endeavours to engage an alternative Independent Tester within thirty (30) days, subject to Law and public procurement rules. If within such period Sub-hubco and the Authority are unable to procure the appointment of an alternative Independent Tester on reasonable commercial terms, the Independent Tester shall pay to Sub-hubco and/or the Authority, as the case may be, any reasonable incremental loss, damage or extra costs suffered by each of them.
- 25.6 If Sub-hubco fails to make a payment of any undisputed sum to the Independent Tester within ten (10) Business Days of the expiry of any notice issued pursuant to Clause 5.5. in

respect of such sum, the Independent Tester may issue a further written notice to the Authority and Sub-hubco specifying that the payment remains outstanding (the "Second Notice") and if payment is not made within fifteen (15) Business Days of receipt of the Second Notice the Independent Tester may issue a further written notice terminating this Agreement with immediate effect. Failure by Sub-hubco to pay, following receipt of a Second Notice pursuant to this Clause 7.6, shall be the Independent Tester's sole ground for terminating this Agreement by reason of breach of this Agreement by the Authority and/or Sub-hubco.

- 25.7 Termination of this Agreement shall not affect the continuing rights and obligations of Sub-hubco, the Authority and the Independent Tester under Clauses 6 (Limitations on Authority), 8 (Confidential Information and Copyright), 9 (Professional Indemnity Insurance), 18 (Dispute Resolution Procedure) and this Clause or under any other Clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

26 Confidential Information and Copyright

- 26.1 The Independent Tester shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to Sub-hubco's or the Authority's or the Contractor's (if appropriate) technology or other know-how business plans or finances or any such information relating to a subsidiary, supplier, customer or client of Sub-hubco or the Authority or the Contractor (if appropriate) where the information was received during the period of this Agreement except as may be reasonably necessary in the performance of the Services. Upon termination of this Agreement for whatever reasons the Independent Tester shall offer to deliver up to Sub-hubco or the Authority (as appropriate) all working papers, computer disks and tapes or other material and copies provided to or prepared by him pursuant either to this Agreement or to any previous obligation owed to Sub-hubco or the Authority provided always that the Independent Tester shall be entitled to retain copies of all such items where such offer is accepted.
- 26.2 The obligation to maintain confidentiality does not apply to any information or material to the extent that the Independent Tester is compelled to disclose any such information or material by law or any regulatory or Government authority.
- 26.3 The copyright in all reports, and other documents produced by the Independent Tester in connection with the Project shall remain vested in the Independent Tester but the Independent Tester grants to Sub-hubco and Authority and their nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such reports, and other documents and to reproduce the information contained in them for any purpose related to the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.
- 26.4 The Independent Tester shall not be liable for use by any person of the documents, (including reports, details, plans, specifications, schedules, computer programs, software, consents and any other papers, works, reports and inventions produced by the Independent Tester) for any purpose other than that for which the same were prepared by or on behalf of the Independent Tester.

27 Professional Indemnity Insurance

- 27.1 Without prejudice to its obligations under this Agreement, or otherwise at law, the Independent Tester shall maintain professional indemnity insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) for any one claim in respect of any neglect, error or omission on the Independent Tester's part in the performance of its obligations under this Agreement for the period commencing on the date of this Agreement and expiring twelve (12) years after:

27.1.1 the date of final certification of the Works; or

27.1.2 the termination of this Agreement,

whichever is the earlier, provided that such insurance is available in the market place at commercially reasonable rates.

27.2 The Independent Tester shall maintain such insurance with reputable insurers carrying on business in the United Kingdom.

27.3 Any increased or additional premium required by insurers by reason of the Independent Tester's own claims record or other acts, omissions, matters or things particular to the Independent Tester shall be deemed to be within commercially reasonable rates.

27.4 The Independent Tester shall as soon as reasonably practicable inform Sub-hubco and the Authority if such insurance ceases to be available at commercially reasonable rates in order that the Independent Tester and Sub-hubco and the Authority can discuss means of best protecting the respective positions of Sub-hubco and the Authority and the Independent Tester in respect of the Project in the absence of such insurance.

27.5 The Independent Tester shall fully co-operate with any measures reasonably required by Sub-hubco and the Authority including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if Sub-hubco and the Authority undertake in writing to reimburse the Independent Tester in respect of the net cost of such insurance to the Independent Tester above commercially reasonable rates.

27.6 The Independent Tester shall, prior to commencing the provision of the Services and as soon as reasonably practicable following renewal dates, produce for inspection by Sub-hubco and the Authority documentary evidence that such insurance is being properly maintained.

27.7 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Agreement for any reason whatsoever, including (without limitation) breach by Sub-hubco and the Authority.

28 Limitation Of Liability

28.1 With the exception of liability for death, personal injury and/or any other liability that cannot lawfully be excluded or limited, the Independent Tester's maximum aggregate liability to all parties, under or in connection with this Agreement, whether in contract or in delict, or for breach of statutory duty is limited to £5,000,000 (five million pounds sterling).

28.2 Notwithstanding anything to the contrary stated elsewhere in this Agreement, the parties hereby expressly agree that the Independent Tester shall have no liability to any party under or in connection with this Agreement for any claim or claims related to terrorism, asbestos or toxic mould.

28.3 No action or proceedings under or in connection with this Agreement shall be commenced against the Independent Tester after the expiry of twelve (12) years from the earlier of: (a) the completion of the Services; and (b) the termination of this Agreement.

29 Sub-Contractor Losses and No Loss Avoidance

29.1 Without prejudice to Clause 10 (Limitation of Liability) the Independent Tester hereby acknowledges and accepts (a) that a breach or failure on the part of the Independent Tester could have adverse financial consequences for the Sub-Contractors (or any of them) and (b) any losses, damages, costs and/or other liabilities suffered or incurred by the Sub-Contractors (or any of them) (as the case may be) arising from or in connection with any breach or failure on the part of the Independent Tester under this Agreement shall, for the

purposes of this Agreement and notwithstanding the provisions of any Sub-Contract, be deemed to be losses, damages, costs and/or liabilities suffered or incurred by Sub-hubco arising from or in connection with such breach or failure.

- 29.2 Where the Independent Tester would otherwise be liable to make a payment by way of compensation to Sub-hubco including amounts which, in turn, comprise compensation to any Sub-Contractor which is payable by Sub-hubco and/or which would be payable by way of compensation to any Sub-Contractor by Sub-hubco the Independent Tester shall not be entitled to withhold, reduce or avoid any such payment to Sub-hubco in reliance (in whole or in part) on the fact that payment of the amount which is or would be due from Sub-hubco to the Sub-Contractor or the entitlement of the Sub-Contractor to receive payment of such amount (as a result of the circumstances giving rise to the Independent Tester's obligation to pay such compensation) is conditional on receipt by Sub-hubco of such amount from the Independent Tester.

30 Notices

All notices or other communications required in connection with this Agreement shall be in writing and sent by hand, by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number set out in the Design Build Finance and Maintain Agreement or in the case of the Independent Tester to its registered office for the attention of the company secretary or to such other address or facsimile number as a party to this Agreement may notify to another party to this Agreement in writing.

31 Assignment

- 31.1 The Independent Tester shall not assign or transfer any of its rights or obligations under this Agreement or sub-contract the whole or any part of the Services.
- 31.2 Neither Sub-hubco nor the Authority shall be entitled to assign or transfer any of their respective rights or obligations under this Agreement save that the parties hereby consent to any such assignment or transfer which is contemporaneous to the assignment or transfer of the Design Build Finance and Maintain Agreement and is made to the same assignee or transferee. In the event that the Design Build Finance and Maintain Agreement is novated to a third party, the term "Design Build Finance and Maintain Agreement" shall include any replacement contract arising from such novation.
- 31.3 The Independent Tester shall not be entitled to contend that any person to whom this Agreement is assigned in accordance with Clause 13.2 is precluded from recovering under this Agreement any loss incurred by such assignee resulting from any breach of this Agreement (whenever happening) by reason that such person is an assignee and not a named promisee under this Agreement.

32 Cumulative Rights and Enforcement

- 32.1 Any rights and remedies provided for in this Agreement whether in favour of Sub-hubco or the Authority or the Independent Tester are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.
- 32.2 The duties and obligations of the Independent Tester arising under or in connection with this Agreement are owed to Sub-hubco and the Authority both jointly and severally and Sub-hubco and the Authority may accordingly enforce the provisions hereof and pursue their respective rights hereunder in their own name, whether separately or with each other.
- 32.3 Sub-hubco and the Authority covenant with each other that they shall not waive any rights, remedies or entitlements or take any other action under this Agreement which would or might reasonably be expected to adversely affect the rights, remedies or entitlements of the other without the other's prior written consent, such consent not to be unreasonably withheld or delayed.

33 Waiver

The failure of any party at any one time to enforce any provision of this Agreement shall in no way affect its right thereafter to require complete performance by any other party, nor shall the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

34 Severability

In the event that any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall, to that extent, be omitted from this Agreement and the rest of this Agreement shall stand, without affecting the remaining clauses.

35 Variation

A variation of this Agreement is valid only if it is in writing and signed by or on behalf of each party.

36 Dispute Resolution Procedure

36.1 All disputes shall be resolved in accordance with terms equivalent (*mutatis mutandis*) to the Dispute Resolution Procedure as set out in the Design Build Finance and Maintain Agreement.

36.2 Sub-hubco, the Authority and the Independent Tester shall co-operate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this Agreement.

37 Governing Law and Jurisdiction

Subject to Clause 18 (Dispute Resolution Procedure) above, this Agreement shall be governed by and construed in accordance with the laws of Scotland, and (subject as aforesaid) the parties hereby submit to the non-exclusive jurisdiction of the courts of Scotland.

38 Third Party Rights

Save as expressly set out herein, no provision of this Agreement is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party against any party to this Agreement.

IN WITNESS WHEREOF these presents consisting of this and the 10 preceding pages together with the 3 Appendices are executed as follows:

SUBSCRIBED for and on behalf of **HUB NORTH SCOTLAND (WICK) LIMITED**

at

on the day of 2014

by

..... Director/Attorney

..... Full Name

in the presence of this witness

..... Witness

..... Full name

..... Address

SUBSCRIBED for and on behalf of GALLIFORD TRY BUILDING LIMITED

at

on the day of 2014

by

..... Director/Attorney

..... Full Name

in the presence of this witness

..... Witness

..... Full name

..... Address

SUBSCRIBED for and on behalf of FAITHFUL + GOULD LIMITED

at

on the day of 2014

by

..... Director

..... Full Name

in the presence of this witness

..... Witness

..... Full name

..... Address

SUBSCRIBED for and on behalf of **AVIVA PUBLIC PRIVATE FINANCE LIMITED**

at

on the day of 2014

by

..... Attorney

..... Full Name

in the presence of this witness

..... Witness

..... Full name

..... Address

SUBSCRIBED for and on behalf of **THE HIGHLAND COUNCIL**

at

on the day of 2014

by

..... Authorised Signatory

in the presence of this witness

..... Witness

..... Full name

..... Address

This is Appendix 1 as referred to in the foregoing Independent Tester Contract among The Highland Council, hub North Scotland (Wick) Limited, Faithful + Gould Limited, Galliford Try Building Limited and Aviva Public Private Finance Limited

Appendix 1

Scope Of Services - Independent Tester Contract

The Independent Tester shall perform the role of Independent Tester as referred to in Clauses 17 (Pre-Completion Commissioning and Completion), 18 (Post Completion Commissioning) and 19 (Fossils and Antiquities) (including complying with any time limits specified in such Clauses) and Schedule Part 6 (Construction Matters), Schedule Part 7 (The Programme), Schedule Part 8 (Review Procedure), Schedule Part 10 (Outlining Commissioning Programme) and Schedule Part 17 (Compensation on Termination) of the Design Build Finance and Maintain Agreement, by providing the following scope of Services:

1 Monthly Report and Completion Certification

The Independent Tester shall:

- 1.1 During the Works, attend monthly site progress meetings and provide the Authority and Sub-hubco with a monthly report on the activities carried out by the Independent Tester.
- 1.2 Undertake regular inspections during the Works as necessary and not less frequently than on a monthly basis. Report on the completion status of the Project, identifying any work that is not compliant with the Authority's Construction Requirements, Sub-hubco's Proposals, the Approved Reviewable Design Data (Approved RDD) and/or the Completion Criteria.
- 1.3 Determine whether any relevant Phase is finished or complete in accordance with the Completion Criteria and advise Sub-hubco and the Authority of the need for any re-testing which may be necessary to demonstrate whether a relevant Phase of the Project is finished or complete.
- 1.4 Certify the Phase Actual Completion Date and issue a Certificate of Practical Completion in relation to that Phase in accordance with the Design Build Finance and Maintain Agreement.
- 1.5 Within five (5) Business Days of issue of the relevant Certificate of Practical Completion, issue a Snagging Notice specifying any Snagging Matters. Monitor and review rectification of such Snagging Matters in accordance with the Design Build Finance and Maintain Agreement.
- 1.6 Review the programme for the rectification of all Snagging Matters to be carried out and advise Sub-hubco and the Authority as appropriate.
- 1.7 And in order to enable the Independent Tester to discharge these primary functions which are to be performed independently, fairly and impartially to and as between Sub-hubco and the Authority and having regard to the interests of Funders, the Independent Tester shall discharge the further duties described below.

2 General

The Independent Tester shall:

- 2.1 Familiarise itself with the Design Build Finance and Maintain Agreement (including the Design Data, the Design Quality Plan, the Construction Quality Plan and any Changes issued from time to time and any other relevant documentation or information referred to in the Design Build Finance and Maintain Agreement, relevant Service Level Specification and Method Statements) and the Construction Contract to the extent necessary to enable it to provide a report to the Authority and Sub-hubco on any contradictory requirements contained within the same and to be in a position to carry out the Services in accordance

with the terms of the Design Build Finance and Maintain Agreement and this Agreement.

- 2.2 Following notification by Sub-hubco, pursuant to Clauses 17.8 and 17.10 (Pre-Completion inspection) of the Design Build Finance and Maintain Agreement, inspect and comment as required on each relevant Phase as required by the Design Build Finance and Maintain Agreement.

3 Design Review

The Independent Tester shall:

- 3.1 Monitor and report upon the implementation of the Design Quality Plan for the construction, structural and engineering services design for the Project.
- 3.2 Monitor the detailed working drawings and specifications for a sample number and type of rooms which in his professional judgment is appropriate to be selected by the Independent Tester to verify that they comply with the Approved RDD as described in the Design Build Finance and Maintain Agreement. The Independent Tester has indicated that in normal circumstances twenty five percent (25%) of rooms should be sampled. If in the professional judgment of the Independent Tester, because of the results of its sample or other circumstances a different sampling percentage is appropriate, he shall provide a detailed report in respect of that and, if so agreed (or determined as between Sub-hubco and the Authority by the Dispute Resolution Procedure) any change in the percentage sampling resulting in a change in fees will be borne by Sub-hubco and the Authority as they shall agree or as determined by the Dispute Resolution Procedure.
- 3.3 Review the detailed design information for any approved design or specification variations for compliance with the performance and quality standards of the Design Build Finance and Maintain Agreement, and quality standards as set out in the Contractor's Quality Plan.

4 Procedure Review

The Independent Tester shall:

- 4.1 Monitor the operation of the quality assurance procedures of the Contractor at regular intervals (maximum three (3) months) during the execution of the Works.
- 4.2 The Independent Tester shall familiarise itself with the proposed procedures and programmes for the testing and commissioning of the Mechanical and Electrical engineering services prior to the Authority's occupation.
- 4.3 Monitor the procedures for the identification, approval and recording of agreed Changes to the Works in accordance with the Design Build Finance and Maintain Agreement.
- 4.4 Review any samples or mock ups as required and check that they have been approved in accordance with the Design Build Finance and Maintain Agreement.

5 Construction Review

The Independent Tester shall:

- 5.1 Visit the Site and monitor the Works for their compliance with the Authority's Construction Requirements, Sub-hubco's Proposals and the Approved RDD. The frequency and timing of the Independent Tester's visits are dependent on the progress of construction on Site. The Contractor shall agree a programme with the Independent Tester for the inspection of key construction processes and the completed Phases of the Works and shall give the Independent Tester advance notice of these Works being carried out on Site. The Independent Tester shall identify any aspect of the Works which needs to be inspected before being covered over by subsequent activity so that he may satisfy himself that these have been constructed in accordance with the Contractor's Quality Plan without the need for

opening up.

- 5.2 Randomly check that the Works are being undertaken in accordance with the Construction Quality Plan that has been agreed by the Authority and Sub-hubco.
- 5.3 Review the written Mechanical and Electrical engineering services testing and commissioning procedure. Undertake selective witnessing of the Mechanical and Electrical services testing and commissioning. The Independent Tester has indicated that these sampling proportions should amount to approximately twenty five percent (25%). The Independent Tester shall review one hundred percent (100%) of all test results. If in the professional judgment of the Independent Tester, because of the results of witnessing (or because of other circumstances) a different sampling percentage is appropriate he shall provide a detailed report in respect of that and any change in the percentage sampling resulting in a change of fees will be borne by Sub-hubco, the Authority or the Contractor as they shall agree, failing such agreement, as determined by the Dispute Resolution Procedure.
- 5.4 Inspect rectification works which have previously prevented the Independent Tester from certifying the Project as complete. Concurrent with the issue of the Certificate of Practical Completion, agree a list of Snagging Matters with the Authority and Sub-hubco together with its programme for implementation and issue a Snagging Notice in accordance with Clause 17 of the Design Build Finance and Maintain Agreement.
- 5.5 Check the production of the relevant operating manuals, relevant approvals, test results, inspection records and as built drawings and monitor the timely handover of this documentation.

6 Participation In Dispute Resolution

As and when required by the Authority or Sub-hubco, the Independent Tester shall participate in the Dispute Resolution Procedure of the Design Build Finance and Maintain Agreement (as such term is defined in the Design Build Finance and Maintain Agreement) to the extent that issues under the Design Build Finance and Maintain Agreement which have been referred to the said Dispute Resolution Procedure relate to the Independent Tester's other obligations and tasks as set out in this Appendix 1 and this Agreement.

This is Appendix 2 as referred to in the foregoing Independent Tester Contract among The Highland Council, hub North Scotland (Wick) Limited, Faithful + Gould Limited, Galliford Try Building Limited and Aviva Public Private Finance Limited

Appendix 2

Section 1

Schedule of Drawdown of Fees

Wick Campus		
2014	December	£3537.50
2015	January	£3387.50
	February	£3050.00
	March	£3050.00
	April	£2000.00
	May	£2000.00
	June	£2000.00
	July	£2000.00
	August	£2450.00
	September	£2600.00
	October	£4366.67
	November	£2750.00
	December	£2000.00
2016	January	£2000.00
	February	£2000.00
	March	£2000.00
	April	£2000.00
	May	£2450.00
	June	£4366.67
	July	£4483.34
	August	£5154.17
	September	£10,004.17
2017	January	£2,150.00
	April	£2,900.00
2018	October	£2,900.00

Section 2

Schedule of Daily and Hourly Rates

Schedule Rates	Hourly Rates	Daily Rates
Director	£110.00	£825.00
Associate Director	£75.00	£562.50
Associate	£70.00	£525.00
Surveyor	£60.00	£450.00
Engineer	£70.00	£525.00
Assistant Surveyor/Engineer	£55.00	£412.50
Graduate/Technician	£40.00	£300.00

Notes

Additional services are charged as either full or part days thereof,
priced on the rates identified above up to a maximum 7.5 hours per day

This is Appendix 3 as referred to in the foregoing Independent Tester Contract among The Highland Council, hub North Scotland (Wick) Limited, Faithful + Gould Limited, Galliford Try Building Limited and Aviva Public Private Finance Limited

Appendix 3

Form of Collateral Warranty

COLLATERAL WARRANTY AGREEMENT

between

FAITHFUL+GOULD LIMITED, incorporated under the Companies Acts (with registered number 02236832) whose registered office is at whose registered office is at Woodcote Grove, Ashley Road, Epsom, Surrey, KT18 5BW (hereinafter referred to as "**the Independent Tester**" which expression shall include its successors and permitted assignees);

and

GALLIFORD TRY BUILDING LIMITED a company incorporated under the Companies Acts (with registered number 2472080) whose registered office is at Cowley Business Park, Cowley, Uxbridge, Middlesex, UB8 2AL (hereinafter referred to as "**the Contractor**" which expression shall include its successors and permitted assignees).

WHEREAS

- (A) Sub-hubco and the Authority (together and severally called "the Appointors") have entered into an agreement (hereinafter referred to as "**the Appointment**") with the Independent Tester to perform the Services in relation to the financing, design and construction of and the provision of certain services in connection with the Project.
- (B) It is a condition of the Appointment that the Independent Tester enters into this Agreement with the Contractor.
- (C) The Contractor has relied and will continue to rely upon the Independent Tester's reasonable skill, care and diligence as set out in Clause 2.1 in respect of all matters covered by this Agreement in so far as they relate to the Services provided by the Independent Tester under the Appointment.

NOW IT IS AGREED:

1 Definitions and Interpretation

Capitalised terms in this Agreement shall have the same meanings as those given in the Appointment and the provisions of Clause 1 of the Appointment regarding interpretation and construction shall be repeated therein.

2 Independent Tester's Obligations

- 2.1 The Independent Tester warrants and undertakes to the Contractor that it has exercised and shall continue to exercise the reasonable care, skill and diligence to be expected of a properly qualified and competent professional adviser who has held itself out as competent and experienced in rendering the Services for projects of a similar size, nature scope and complexity to the Project.
- 2.2 The Independent Tester further warrants and undertakes to the Contractor that it has exercised and shall continue to exercise such reasonable care, skill and diligence all to the same effect as if the Independent Tester had been appointed by the Contractor. Provided that the Independent Tester shall have no greater responsibility to the Contractor than it would have been had if the Contractor had been named as joint employer under the Appointment.

3 Limitation of Liability

- 3.1 The Independent Tester shall be entitled in any action or proceedings by the Contractor to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as it would have against the Appointors under the Appointment (other than

counterclaim, set-off or to state a defence of no loss or a different loss has been suffered by the Appointers (or any one of them) than that loss suffered by the Contractor).

- 3.2 No action or proceedings under or in connection with this Agreement shall be commenced against the Independent Tester after the expiry of twelve (12) years from the earlier of: (a) date of completion of the Services; and (b) the termination of the Appointment.

4 Inspection

The obligations and liabilities of the Independent Tester under this Agreement shall not be limited or excluded or in any other way affected by any enquiry or inspection into any matter which may be made or carried out by or for the Contractor nor by any failure or omission to carry out such enquiry or inspection by the Contractor (or failure to so appoint) and whether or not any independent liability of any such person, firm or other entity to the Contractor arises in connection therewith.

5 Copyright

- 5.1 The copyright in all reports and other similar documents produced by the Independent Tester in connection with the Project (the "Documents") shall remain vested in the Independent Tester.

- 5.2 The Independent Tester grants to the Contractor and the Contractor's nominees with full title guarantee a non-exclusive, irrevocable and royalty-free licence to copy and use such reports and other documents and to reproduce the information contained in them for any purpose relating to the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.

- 5.3 The Independent Tester shall on reasonable demand provide to the Contractor and those authorised by the Contractor copies of any Documents on receipt of reasonable copying costs.

- 5.4 The Independent Tester shall not be liable for use by any person of the documents, (including reports, details, plans, specifications, schedules, computer programs, software, consents and any other papers, works, reports and inventions produced by the Independent Tester) for any purpose other than that for which the same were originally prepared by or on behalf of the Independent Tester.

6 Professional Indemnity Insurance

- 6.1 Without prejudice to its obligations under this Agreement, or otherwise at law, the Independent Tester shall maintain professional indemnity insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) for any one claim in respect of any neglect, error or omission on the Independent Tester's part in the performance of its obligations under this Agreement for the period commencing on the date of this Agreement and expiring 12 years after:

6.1.1 the date of final certification of the Works; or

6.1.2 the termination of this Agreement,

whichever is the earlier, provided that such insurance is available in the market place at commercially reasonable rates.

- 6.2 The Independent Tester shall maintain such insurance with reputable insurers carrying on business in the United Kingdom.

- 6.3 Any increased or additional premium required by insurers by reason of the Independent Tester's own claims record or other acts, omissions, matters or things particular to the Independent Tester shall be deemed to be within commercially reasonable rates.
- 6.4 The Independent Tester shall as soon as reasonably practicable inform the Contractor if such insurance ceases to be available at commercially reasonable rates in order that the Independent Tester and the Contractor can discuss means of best protecting the respective positions of the Contractor and the Independent Tester in respect of the Project in the absence of such insurance.
- 6.5 The Independent Tester shall fully co-operate with any measures reasonably required by the Contractor including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Contractor undertakes in writing to reimburse the Independent Tester in respect of the net cost of such insurance to the Independent Tester above commercially reasonable rates.
- 6.6 The Independent Tester shall, prior to commencing the provision of the Services and as soon as reasonably practicable following renewal dates, produce for inspection by the Contractor documentary evidence that such insurance is being properly maintained.
- 6.7 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Agreement for any reason whatsoever, including (without limitation) breach by the Contractor.

7 Assignment of Agreement

- 7.1 The Contractor shall upon providing notification to the Independent Testers be entitled to assign or transfer in whole or in part the benefit of or any rights arising under this Agreement on one occasion without the consent of the Independent Tester to any party to whom the Contractor's interest under the Construction Contract entered into relative to the Project is assigned or novated. No further or other assignment shall be permitted.
- 7.2 The Independent Tester agrees that it shall not at any time assert that any permitted assignee in terms of this Agreement is precluded from recovering any loss resulting from any breach of this Agreement by reason that such assignee is not an original party to this Agreement or that no loss has been suffered by the original party or a different loss has been suffered by such assignee from that suffered by the original party.

8 Independent Tester's Remuneration

The Independent Tester acknowledges that Sub-hubco has paid all fees and expenses properly due and owing to it under or arising out of the Appointment up to the date of this Agreement. The Contractor has no liability to the Independent Tester in respect of fees and expenses under the Appointment.

9 Extraneous Rights

The parties hereto acknowledge and accept that the provisions of this Agreement shall not in any way whatsoever and notwithstanding any rule of law to the contrary prejudice the rights and remedies which may be available to the parties against each other in delict at common law.

10 Third Party Rights

Nothing in this Agreement shall confer or purport to confer on any third party any benefit or right to enforce any term of this Agreement.

11 Notices

11.1 Any notice to be given hereunder shall only be validly served if in writing and delivered personally or sent by pre-paid first class recorded delivery post or sent by fax to the Contractor or the Independent Tester at the address specified in the preamble to this Agreement.

11.2 In proving service it shall be sufficient to prove that the envelope containing the notice was properly addressed and either delivered personally or posted as a pre-paid first class registered post, or that the notice was faxed to the correct fax number (as demonstrated by the transmission slip).

12 Governing Law

This Agreement shall be governed by and construed according to Scots Law and the parties submit to the exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHERE OF these presents consisting of this and the preceding four pages are executed as follows:

SUBSCRIBED for and on behalf of the said **FAITHFUL+GOULD LIMITED**

at
on

.....
Director / Attorney / Authorised Signatory

.....
Full Name

before this Witness:

Witness Full Name:

Witness Address:

.....
.....

SUBSCRIBED for and on behalf of the said **GALLIFORD TRY BUILDING LIMITED**

at
on

.....
Director / Attorney / Authorised Signatory

.....
Full Name

before this Witness:

Witness Full Name:

Witness Address:

.....
.....

SCHEDULE PART 14

PAYMENT MECHANISM

SECTION 1

INTERPRETATION

In this Schedule Part 14 (*Payment Mechanism*) and elsewhere in this Agreement (save where Schedule Part 1 (*Definitions and Interpretation*) provides to the contrary) the following words shall have the following meanings:

- “Annual Service Payment”** means the sum in pounds sterling calculated in accordance with paragraph 2 (*Annual Service Payment*) of Section 2 (*Calculation of Service Payments*) of this Schedule Part 14 (*Payment Mechanism*);
- “Availability Failure”** subject to Section 4 (*Temporary Repairs*) of this Schedule Part 14 (*Payment Mechanism*), means a Service Event which has not been Rectified within the relevant Rectification Period and which causes a Functional Area to be Unavailable;
- “Availability Standards”** means the service requirements identified as such, set out in the Service Level Specification;
- “Core Times”** has the meaning given in the Service Level Specification and “Core Time” means a time within Core Times;
- “Daily SUF”** means, on a Day, the aggregate GSUs for all of the Functional Areas that have Core Time on that Day;
- “Day”** means a period of 24 hours, beginning at 00:00 hours, during which there are Core Times;
- “Deduction Period” or “DP”**
- (a) where the relevant Performance Failure or Availability Failure arises following a Service Event in respect of which a Rectification Period is specified in the Availability Standards or the Performance Standards, as applicable,
 - (i) if the Service Failure Time occurs before or during Core Time for the relevant Functional Area on a Day, means the number of Days that elapse from and including that Day to, and including, the Day on which the Logged Rectification Time occurs, but excludes the Day on which the Logged Rectification Time occurs if the Logged Rectification Time is before the commencement of Core Time for the relevant Functional Area on that Day; and
 - (ii) if the Service Failure Time occurs after the expiry of Core Times for the relevant Functional Area on a Day, means the number of Days that elapse from and including the next Day to, and including, the Day on which the Logged Rectification Time occurs, but excludes the Day on which the Logged Rectification Time occurs if this occurs before

commencement of Core Time for the relevant Functional Area on that Day; and

- (b) where the relevant Performance Failure arises following a Service Event in respect of which no Rectification Period is specified in the Performance Standards, as applicable, means 1;

“External Utility Failure”

means a failure in:

- (a) the supply of gas, electricity, water, telephone or telecommunications services to the Site;
- (b) the service and facility of discharging water and sewerage from the Site; or
- (c) the supply or availability of fuel biomass in the Scottish market for the Facilities provided that such failure has not arisen as a result of an act or omission of Sub-hubco or a Sub-hubco Party,

where such failure originates on the side of the relevant Utility Point that is owned or controlled by the relevant utility provider and provided that such failure has not arise as a result of an act or omission of Sub-hubco or a Sub-hubco Party;

“Gross Monthly Availability Deduction”

means, for Contract Month "n", the amount in pounds sterling calculated by the formula:

$$\text{SUR} \times \text{TMGSUF}$$

where:

TMGSUF means, for Contract Month "n", the aggregate of the Daily SUF of all the Days in that Contract Month;

“Gross Service Units” or “GSUs”

means the number of service units attributed to each Functional Area as set out in Appendix 2 to this Schedule Part 14 (*Payment Mechanism*);

"Helpdesk"

means the helpdesk facilities established by Sub-hubco pursuant to the Service Level Specification;

“Logged Rectification Time”

means the time which is shown in the Helpdesk records maintained by Sub-hubco in accordance with the Service Level Specification as being the time when a Service Event was Rectified or Remedied, as the case may be, or, in the event that a failure affecting the Helpdesk occurs, as shown on the manual Helpdesk records maintained by Sub-hubco;

“Logged Report Time”

means the date and time which is shown in the Helpdesk records maintained by Sub-hubco in accordance with the Service Level Specification as being the date and time at which a Service Report was received by the Helpdesk or, if a failure affecting the Helpdesk occurs, as shown on the manual Helpdesk records maintained by Sub-hubco;

“Major Performance Failure”

means a Performance Failure which has been designated as such in the Service Level Specification or in this Schedule Part

14 (*Payment Mechanism*);

“Medium Performance Failure” means a Performance Failure which has been designated as such in the Service Level Specification or in this Schedule Part 14 (*Payment Mechanism*);

“Minimum Agreed Availability Standards” means the minimum standards with which a Functional Area must comply, as agreed between the Authority and Sub-hubco, for the period until a Permanent Repair can be undertaken;

“Minimum Availability Deduction” means, in any Contract Year "n", an amount in pounds sterling calculated using the following formula:

$$MAD_n = MAD_o \times (1 - IF) + \left((MAD_o \times IF) \times \left(1 + \frac{(RPI_n - RPI_o)}{RPI_o} \right) \right)$$

where

MAD_n is the Minimum Availability Deduction applicable for the relevant Contract Year;

MAD_o is £65, or, where the relevant Functional Area is Unavailable but Used, is £32.50;

IF is the indexation factor being 0.18;

RPI_n is the value of the Retail Price Index published or determined with respect to the month of February which most recently precedes the relevant Contract Year; and

RPI_o is the value of the Retail Price Index published or determined with respect to the Base Date;

“Minor Performance Failure” means a Performance Failure which has been designated as such in the Service Level Specification or in this Schedule Part 14 (*Payment Mechanism*);

“Monthly Service Payment” means the sum in pounds sterling calculated in accordance with paragraph 1 of Section 2 (*Calculation of Service Payments*) of this Schedule Part 14 (*Payment Mechanism*);

“Pass Through Costs” means costs payable to Sub-hubco pursuant to Section 6 (*Pass Through Costs*) of this Schedule Part 14 (*Payment Mechanism*);

“Performance Failure” subject to Section 4 (*Temporary Repairs*) of this Schedule Part 14 (*Payment Mechanism*), means a Service Event relating to a Performance Standard which has not been Rectified within the relevant Rectification Period (if any);

“Performance Standards” means the service requirements identified as such, set out in the Service Level Specification;

“Permanent Repair” means Rectification following the agreement of a Temporary Repair;

“Permanent Repair Deadline” has the meaning given in paragraph 1.2 of Section 4 (*Temporary Repairs*) of this Schedule Part 14 (*Payment Mechanism*);

“Rectification”

means, following the occurrence of a Service Event, making good the Service Event so that the subject matter of the Service Event complies with the levels of Service required pursuant to this Agreement which shall, without prejudice to the generality of the foregoing, include (a) restoring all functional capability and (b) ensuring that any Functional Area which has been affected by the relevant Service Event complies with the Availability Standards and the Performance Standards, as applicable, and “Rectify” and “Rectifying” shall be construed accordingly;

“Rectification Period”

means, where applicable, the period of time specified in the Availability Standards or the Performance Standards, as the case may be, allowed for the Rectification of the relevant Service Event, which period:

- (a) shall commence at the Logged Report Time (if the Logged Report Time occurs during Core Time for the relevant Functional Area); or
- (b) if the Logged Report Time occurs outwith Core Time for the relevant Functional Area, shall commence at the commencement of the immediately following Core Time for the relevant Functional Area;

provided that:

- i. subject to Sub-hubco having promptly notified the Authority’s Representative of the fact and having recorded the same on the Helpdesk system, the Rectification Period shall be extended by any period during which Sub-hubco was prevented or interrupted by the Authority and any Authority Party from Rectifying any failure to meet the Availability Standards or Performance Standards; and
- ii. if the Rectification Period would otherwise expire outside Core Time for the relevant Functional Area, it shall be extended so as to expire immediately prior to the start of the next Core Time for the relevant Functional Area;

“Remedial Period”

means, where applicable, the period of time specified in the Performance Standards within which Sub-hubco must Remedy a Service Event;

“Remedy”

means the actions or tasks, detailed in the column headed Remedial Period/Remedy in the Performance Standards, required to remedy a Performance Failure and “Remedied” shall be construed accordingly;

“Service Event”

means an incident or state of affairs which does not meet or comply with the Performance Standards and/or does not satisfy the Availability Standards;

“Service Failure Time”

means the date and time when a Service Event becomes a Performance Failure or an Availability Failure, as the case may be;

“Service Report” has the meaning given in Section 1 (*Service Level Specification*) of Schedule Part 12 (*Service Requirements*);

“Service Unit Rate” or “SUR” means, for Contract Year “n”, the amount in pounds sterling calculated by the formula:

$$SUR = \left(\frac{ASP_n}{TAGSUF} \right)$$

where:

ASP_n is the Annual Service Payment for Contract Year “n” calculated in accordance with paragraph 2 of Section 2 (*Calculation of Service Payments*) of this Schedule Part 14 (*Payment Mechanism*) and

TAGSUF means, for Contract Year “n”, the aggregate of the Daily SUF in respect of all of the Days in that Contract Year;

“Service Units Affected” or “SUA” means the total Gross Service Units of the Functional Areas affected by an Availability Failure;

“Service Units of the Facilities” or “SUF” means the total number of Gross Service Units attributable to the Facilities as set out in Appendix 2 of this Schedule Part 14 (*Payment Mechanism*);

“Temporary Repair” means, in respect of the occurrence of a Service Event, works of a temporary nature that do not constitute Rectification but satisfy the Minimum Agreed Availability Standards and substantially make good the relevant Service Event for the period until a Permanent Repair can be undertaken;

“Unavailable” means in relation to a Functional Area that such Functional Area is in a state or condition which does not comply with any one or more of the Availability Standards;

“Unavailable but Used” means in relation to any Functional Area that it is Unavailable but is used by the Authority for its normal purpose at any time (apart from the purposes of evacuating the Functional Areas and the time taken for such evacuation) during the Core Times including for the avoidance of doubt, for the provision of Community Services during which it would otherwise be Unavailable;

“Utility Point” means for each of the Utilities excluding fuel biomass, the point of connection to the Utility Providers Network or the Utility Providers Meter as appropriate and for fuel biomass means the point of entry of the biomass plant where the supplier deposits the fuel biomass;

“Whole Facilities Unavailability Threshold” means that Functional Areas having aggregate Gross Service Units equal to or greater than 20% of the Service Units of the Facilities are Unavailable or Unavailable but Used;

“Whole Facilities Unavailability Conditions” means any of the following conditions:

- (a) the Whole Facilities Unavailability Threshold is exceeded;

- (b) if during School Hours toilet provision in terms of number of operating toilets and associated toilet facilities in a School breaches Legislation or any requirement of a Relevant Authority;
- (c) for Wick Community Facility, during School Hours, more than 30% per cent of the total toilet provision for either sex is Unavailable;
- (d) for Wick Community Facility, during Non School Hours, for the Functional Areas identified in Core Times, more than 30% per cent of the total toilet provision for either sex is Unavailable.

SECTION 2

CALCULATION OF SERVICE PAYMENTS

1 MONTHLY SERVICE PAYMENT

- 1.1 Calculate the Monthly Service Payment payable in respect of a Contract Month "n" using the following formula:

$$MSP_n = \left(\frac{ASP_n}{12} \right) - \sum D_{n-2} + PTC$$

where:

MSP is the Monthly Service Payment for the Contract Month n;

ASP_n is the Annual Service Payment for the Contract Year in which Contract Month n occurs, calculated in accordance with paragraph 1.2 below;

ΣD is the sum of Deductions in respect of performance of the Services during the Contract Month that was 2 months prior to Contract Month n as shown in the Monthly Service Report for that Contract Month and calculated in accordance with the provisions set out in Section 3 (*Deductions from Monthly Service Payments*) of this Schedule Part 14 (*Payment Mechanism*);

PTC means any Pass Through Costs due for which supporting uncontested invoices from Sub-hubco's suppliers are available;

- 1.2 In the Contract Month in which the Payment Commencement Date falls, unless the Payment Commencement Date is the first day of that Contract Month, and in the last Contract Month of the Project Term, unless the last day of the Project Term is the last day of that Contract Month, adjust **ASP_n** for the purposes of paragraph 1.1 above pro rata to reflect the actual number of days in the relevant Contract Month from and including the Payment Commencement Date (for the first month) and (for the last month) up to and including the last day of the Project Term (for the last month).

2 ANNUAL SERVICE PAYMENT

Calculate the Annual Service Payment for any Contract Year "n" using the following formula:

$$ASP_n = ASP_0 \times (1 - IF) + \left[(ASP_0 \times IF) \times \left[1 + \frac{(RPI_n - RPI_0)}{RPI_0} \right] \right]$$

where:

ASP_n is the Annual Service Payment for the relevant Contract Year;

ASP₀ is the value for ASP₀ stated in Appendix 1 to this Schedule Part 14 (*Payment Mechanism*) (being the Annual Service Payment at the Base Date), subject to any adjustments made from time to time in accordance with any express provision of this Agreement;

IF is the indexation factor being 0.18;

RPI_n is the value of the Retail Prices Index published or determined with respect to the month of February which most recently precedes the relevant Contract Year; and

RPI₀ is the value of the Retail Prices Index published or determined with respect to the Base Date.

SECTION 3

DEDUCTIONS FROM MONTHLY SERVICE PAYMENTS

1 ENTITLEMENT TO MAKE DEDUCTIONS

- 1.1 If at any time after the Payment Commencement Date an Availability Failure or a Performance Failure occurs the Authority will be entitled, subject to paragraphs 1.2 and 1.4 of this Section 3 (*Deductions from Monthly Service Payments*) and paragraph 1 of Section 4 (*Temporary Repairs and Alternative Accommodation*), to make Deductions in calculating the Monthly Service Payment in respect of that Availability Failure or Performance Failure, calculated in accordance with this Section 3 (*Deductions from Monthly Service Payments*) of Schedule Part 14 (*Payment Mechanism*).
- 1.2 In calculating the Monthly Service Payment for Contract Month "n", the maximum aggregate of all Deductions that the Authority may make in respect of Contract Month "n-2" is the Gross Monthly Availability Deduction for Contract Month "n-2".
- 1.3 In any Contract Month where the value of $\sum D_{n-2}$ exceeds the value of $ASP_{n/12}$, the Monthly Service Payment due by the Authority shall be an amount equal to PTC for that Contract Month but the Authority shall, in calculating the Monthly Service Payment in respect of the following and (to the extent necessary) any subsequent Contract Months, be entitled to carry forward and set off the amount of such excess against the amount by which the value of $ASP_{n/12}$ exceeds the value of $\sum D_{n-2}$ (as such values are calculated in the following Contract Month and (to the extent necessary) any subsequent Contract Months) until the amount of such excess has been set-off in full. To the extent that any such excess has not been set off as at the earlier to occur of the Expiry Date and the Termination Date, then an amount equal to such excess shall be immediately due and payable by Subhubco to the Authority.
- 1.4 To the extent that an Availability Failure or a Performance Failure:
- 1.4.1 is the result of an Excusing Cause; or
- 1.4.2 is the result of an External Utility Failure,
- the Authority shall not be entitled to make Deductions.
- 1.5 To the extent that an Availability Failure or a Performance Failure is the result of:
- 1.5.1 a Relief Event; or
- 1.5.2 an event of Force Majeure,
- the Authority shall be entitled to make Deductions but any such Deductions shall be disregarded for the purposes of Clause 24.3 and Clause 40.1.8.

2 DEDUCTIONS FOR PERFORMANCE FAILURES

- 2.1 Subject to paragraphs 1 (*Entitlement to make Deductions*) and 5 (*Repeated Failures*) of this Section 3 (*Deductions from Monthly Service Payments*), the amount of the Deduction in respect of a Performance Failure is calculated using the following formula:

$$D = PFD \times DP$$

where:

D means the amount (in pounds sterling) of the Deduction in respect of the Performance Failure; and

PFD means:

- (a) in the case of a Minor Performance Failure, the sum of £30, index linked;
- (b) in the case of a Medium Performance Failure, the sum of £50, index linked; and
- (c) in the case of a Major Performance Failure, the sum of £100, index linked.

2.2 In the case of a Service Event for which no Rectification Period is specified in the Performance Standard, a Performance Failure occurs immediately upon the occurrence of the Service Event and, if it is not Remedied within the relevant Remedial Period, it will reoccur at the expiry of the Remedial Period and the Remedial Period shall recommence and so on until such time as the Performance Failure has been Remedied.

2.3 No Deduction may be made by the Authority from the Monthly Service Payment for the relevant Contract Month in respect of any Minor Performance Failure if the total number of Minor Performance Failures which have occurred in the relevant Contract Month is not more than two (2).

Where two or more Performance Failures occur in a Functional Area during a Day, only the Performance Failure that results in the highest Deduction will apply.

3 DEEMED PERFORMANCE FAILURES

If Sub-hubco fails to monitor or accurately report a Service Event, a Performance Failure or an Availability Failure then, without prejudice to the Deduction to be made in respect of the relevant Performance Failure or Availability Failure (if any), the failure to monitor or report the Service Event, Performance Failure or Availability Failure will be deemed to be a new Medium Performance Failure unless the circumstances set out in paragraph 6 of Section 5 (*Failure by Sub-hubco to Monitor or Report*) apply, in which case there shall be deemed to be a new Major Performance Failure.

4 DEDUCTIONS FOR AVAILABILITY FAILURES

4.1 Subject to paragraphs 1 (*Entitlement to make Deductions*) and 5 (*Repeated Failures*) of this Section 3 (*Deductions from Monthly Service Payments*), and subject also to paragraph 4.2 and paragraph 4.3 below where applicable, the amount of the Deduction in respect of an Availability Failure is the higher of:

4.1.1 the Minimum Availability Deduction; and

4.1.2 an amount calculated in accordance with the following formula:

$$D = SUA \times SUR \times DP$$

where:

D means the amount (in pounds sterling) of the Deduction in respect of the Availability Failure

- 4.2 Where the relevant Functional Area is Unavailable but Used the Deduction for the Availability Failure shall be reduced by 50%.
- 4.3 If on the relevant day any of the Whole Facilities Unavailability Conditions are met then, for the purpose of the formula in paragraph 4.1 above the SUA will be deemed to be equal to SUF.
- 4.4 If an Availability Failure in respect of rooms A.00.04 and A.00.07 which results in School Meals unable to be provided on a School Day occurs then the Deduction calculated pursuant to paragraph 4 (Deductions for Availability Failures) above shall be multiplied by 3.

5 REPEATED FAILURES

Subject to paragraph 1 (*Entitlement to make Deductions*) of this Section 3 (*Deductions from Monthly Service Payments*) if:

- 5.1 a Performance Failure in respect of the same Performance Standard; or
- 5.2 an Availability Failure in respect of the same Availability Standard,

occurs four (4) or more times in a rolling period of three (3) consecutive Contract Months, then the Deduction calculated pursuant to paragraph 2 (*Deductions for Performance Failures*) or paragraph 4 (*Deductions for Availability Failures*) of this Section 3 (*Deductions from Monthly Service Payments*) for the fourth and each subsequent such Performance Failure and/or the fourth and each subsequent such Availability Failure during the relevant period of three (3) consecutive Contract Months shall be multiplied by 1.5.

6 REPEATED RECTIFICATION

If four or more Service Events occur in any rolling seven day period and:

- 6.1 each such Service Event is in connection with the same Performance Standard or Availability Standard;
- 6.2 each such Service Event affects the same Functional Area; and
- 6.3 there is good reason to believe that the root cause of each such Service Event is the same

then, notwithstanding paragraph 2.3 and notwithstanding that Sub-hubco achieves Rectification of the Service Events within the relevant Rectification Period, there will be deemed to be a Major Performance Failure.

7 EFFECT OF UNAVAILABILITY ON OTHER DEDUCTIONS

- 7.1 Subject to paragraphs 7.2 and 7.3, if a Performance Failure occurs affecting a Functional Area and the Service Event giving rise to the Performance Failure also gives rise to an Availability Failure affecting that Functional Area, only the deductions for the Availability Failure apply.
- 7.2 If an Availability Failure affects a Functional Area and the Authority does not continue to use that Functional Area, the Authority shall not, until Rectification of that Availability Failure, be entitled to make further Deductions in respect of that Functional Area other than in respect of the Availability Failure.

7.3 If a Functional Area is Unavailable but Used, the Authority will be entitled to make Deductions in respect of any Performance Failures affecting that Functional Area.

SECTION 4
TEMPORARY REPAIRS

- 1 If Sub-hubco informs the Authority that it is unable to Rectify a Service Event within the specified Rectification Period due to the need for specialised materials or personnel that are not, and cannot reasonably be expected to be, immediately available at the Facilities but that a Temporary Repair can be effected:
 - 1.1 Sub-hubco may carry out the Temporary Repair proposed by Sub-hubco unless the Authority, acting reasonably, considers that, if the Temporary Repair proposed by Sub-hubco is carried out, the relevant Functional Area will not be fit for use for the Community Services for which it is normally used; and
 - 1.2 where a Temporary Repair is permitted pursuant to paragraph 1.1, the Authority and Sub-hubco must act reasonably to agree a date and time (the “**Permanent Repair Deadline**”) by which a Permanent Repair must be made, giving Sub-hubco a reasonable period within which to carry out the Permanent Repair.
- 2 During any period beginning at the time when a Temporary Repair has been approved by the Authority and ending at the earlier of:
 - 2.1 the time at which a Permanent Repair is successfully completed; and
 - 2.2 the Permanent Repair Deadline,the Availability Standards will be replaced by the Minimum Agreed Availability Standards.
- 3 If an agreed Temporary Repair is completed by Sub-hubco before the Permanent Repair Deadline and results in the Functional Area affected by the relevant Service Event satisfying the Minimum Agreed Availability Standards, the date and time shown in the Helpdesk records maintained by Sub-hubco in accordance with the Service Level Specification as being the date and time when the Temporary Repair was completed (or, in the event that a failure affecting the Helpdesk occurs, as shown on the manual Helpdesk records maintained by Sub-hubco as being the date and time when the Temporary Repair was completed) shall be deemed to be the Logged Rectification Time for that Service Event for the purpose of determining the value of DP in the formula in paragraph 4 (*Deductions for Availability Failures*) in Section 3 (*Deductions from Monthly Service Payments*) of this Schedule Part 14 (*Payment Mechanism*).
- 4 If the Permanent Repair is not carried out by the Permanent Repair Deadline, a Performance Failure or, as the case may be, an Availability Failure, will occur at that date and time and the provisions of paragraph 2 (*Deductions for Performance Failures*), paragraph 4 (*Deductions for Availability Failures*) and, if applicable, paragraph 5 (*Repeated Failures*) of Section 3 (*Deductions from Monthly Service Payments*) of this Schedule Part 14 (*Payment Mechanism*) shall apply.

SECTION 5

FAILURE BY SUB-HUBCO TO MONITOR OR REPORT

- 1 Subject to paragraphs 2 to 4 inclusive of this Section 5 (*Failure by Sub-hubco to Monitor or Report*), the Performance Monitoring Report produced by Sub-hubco for any Contract Month shall be the source of the factual information regarding the performance of the Services for the relevant Contract Month for the purposes of calculating the Deductions pursuant to Section 3 (*Deductions from Monthly Service Payments*) of this Schedule Part 14 (*Payment Mechanism*).
- 2 Either party may give written notice to the other if it believes there is an error or omission in a Monthly Service Report provided that, save in the circumstances referred to in paragraph 6 below, such notice must be given before the end of the Contract Month that falls two Contract Months after the Contract Month in which the relevant Monthly Service Report was submitted by Sub-hubco. The parties shall endeavour to agree the amendments required to rectify the error or omission (if any) within 10 Business Days of notice being given in accordance with this paragraph 2, failing which either party may, on giving written notice to the other, refer the matter to the Dispute Resolution Procedure.
- 3 Where Sub-hubco fails to monitor or accurately to report a Performance Failure or an Availability Failure in the circumstances referred to in paragraph 6 of this Section 5 (*Failure by Sub-hubco to Monitor or Report*), for the purposes of paragraph 1 of Section 1 (*General Requirements*) of Schedule Part 19 (*Record Provisions*) the Authority shall be deemed to have reasonable cause to require that Sub-hubco shall make available to the Authority for inspection such of the records referred to in paragraphs 10 and 11 of Section 2 (*Records to be Kept*) of Schedule Part 19 (*Record Provisions*) as the Authority may specify.
- 4 Sub-hubco shall upon submission of a valid invoice pay to the Authority a sum equal to the costs reasonably incurred by the Authority in carrying out any inspection and investigation of records made available pursuant to paragraph 3 above.
- 5 If the Authority's inspection or investigation of records made available pursuant to paragraph 3 above reveals any further matters of the types referred to in paragraphs 2 and 3 above, those matters shall be dealt with in accordance with paragraph 2 or 3 as appropriate and the Authority shall, in addition, be entitled to make Deductions in respect of any Performance Failures or Availability Failures in the manner prescribed Section 3 (*Deductions from Monthly Service Payments*) of this Schedule Part 14 (*Payment Mechanism*). The Monthly Service Payment for the Contract Month in which any such Deduction would (but for the error or omission in the Performance Monitoring Report) have been made shall be re-calculated to take account of such Deduction and the amount of such Deduction shall be immediately due and payable by Sub-hubco to the Authority together with interest at the Default Interest Rate from the date on which the Authority paid the Monthly Invoice for the relevant Contract Month until the date on which payment is made by Sub-hubco.
- 6 For the purposes of paragraphs 2 and 3 of this Section 5 (*Failure by Sub-hubco to Monitor or Report*) the relevant circumstances are:
 - 6.1 fraudulent action or inaction; or
 - 6.2 deliberate misrepresentation; or
 - 6.3 gross misconduct or gross incompetence,in each case on the part of Sub-hubco or a Sub-hubco Party.

The provisions of this Section 5 (*Failure by Sub-hubco to Monitor or Report*) shall be without prejudice to any rights of the Authority in this Agreement pursuant to Clause 24 (*Monitoring of Performance*), Clause 40 (*Sub-hubco Events of Default*) and Clause 44 (*Corrupt Gifts and Payments*).

SECTION 6

PASS THROUGH COSTS

1. UTILITY CHARGES

1.1 Sub-hubco may include charges for Utilities in the Monthly Service Payment in accordance with paragraph 1 of Section 2 (*Calculation of Service Payments*) of this Schedule Part 14 (*Payment Mechanism*) on the basis of costs reasonably incurred by Sub-hubco and supported by an appropriate invoice from Sub-hubco's suppliers, to the extent such charges are incurred after the relevant Phase Actual Completion Date, relate to the Facilities and are not paid or otherwise discharged by the Authority directly.

1.2 The Authority is responsible for all connection, line rental and usage telephone charges.

2. RATES

Sub-hubco may include local authority rates in the Monthly Service Payment in accordance with paragraph 1 of Section 2 (*Calculation of Service Payments*) of this Schedule Part 14 (*Payment Mechanism*) on the basis of the cost reasonably incurred by Sub-hubco and supported by an appropriate invoice from the relevant local authority, to the extent such rates relate to the Facilities after the Phase 1 Actual Completion Date and are not paid or otherwise discharged by the Authority directly

3. OPERATIONAL INSURANCE PREMIUMS

3.1 Subject to paragraph 1, Sub-hubco may include the premiums paid by Sub-hubco to take out and maintain the Operational Insurances in accordance with Clause 53 in the Monthly Service Payment in accordance with paragraph 1 (*Monthly Service Payment*) of Section 2 (*Calculation of Service Payments*) of this Schedule Part 14 (*Payment Mechanism*) on the basis of the cost incurred by Sub-hubco and supported by an appropriate premium notices from the relevant insurer.

3.2 There shall be excluded from the premiums referred to in paragraph 3.1, a sum equal to any portion of the premiums attributable to any issue or factor other than circumstances generally prevailing in the relevant insurance market and circumstances attributable to malicious damage to the Facilities or the claims history of the Authority or any Authority Party.

APPENDIX 1

ANNUAL SERVICE PAYMENTS AT BASE DATE

£4,563,054

APPENDIX 2

FUNCTIONAL AREAS AND GSUs

The Functional Areas and GSUs is the Functional Areas and GSUs in the Agreed Form.

SCHEDULE PART 15
INSURANCE REQUIREMENTS

SECTION 1

POLICIES TO BE TAKEN OUT BY SUB-HUBCO FROM THE DATE OF THIS AGREEMENT AND MAINTAINED DURING THE DESIGN AND CONSTRUCTION PHASE

Common to each policy in Section 1 (*Policies to be taken out by Sub-hubco from the date of this agreement and maintained during the design and construction phase*) (unless stated otherwise):

Insureds:

- 1 Authority.
- 2 Sub-hubco.
- 3 Contractor.
- 4 Service Provider.
- 5 Sub-contractors of any tier of insureds 2, 3 and 4.
- 6 Senior Funders.
- 7 Subordinated Funders.
- 8 Consultants - for their site activities only.

each for their respective rights and interests in the Project.

1 CONTRACTORS' 'ALL RISKS' INSURANCE (CAR)

1.1 Insured Property

The permanent and temporary works, materials (including but not limited to equipment supplied by the Authority, goods, plant and equipment for incorporation in the works (other than constructional plant, tools, accommodation, temporary buildings and equipment belonging to or the responsibility of the Contractor or the Contractor's sub-contractors) and all other property used or for use in connection with works associated with the Project.

1.2 Coverage

"All risks" of physical loss or damage to the Insured Property unless otherwise excluded.

1.3 Sum Insured

At all times an amount not less than the full reinstatement or replacement value of the Insured Property, but not less than the value specified in the Construction Contract plus provision to include Cover Features & Extensions as appropriate.

1.4 Maximum Deductible

Not to exceed £150,000 (DE5) each and every occurrence for defective design, materials and workmanship, and in respect of all other occurrences £10,000.

1.5 Territorial Limits

United Kingdom including offsite storage and during inland transit.

1.6 Period of Insurance

From the date of this Agreement until the Phase 3 Actual Completion Date and thereafter in respect of defects liability until expiry of the 12 months defects liability period.

1.7 Cover Features & Extensions

- 1.7.1 Terrorism.
- 1.7.2 Munitions of war clause.
- 1.7.3 Additional costs of completion clause.
- 1.7.4 Professional fees clause.
- 1.7.5 Debris removal clause.
- 1.7.6 72 hour clause.
- 1.7.7 European Union local authorities clause.
- 1.7.8 Free issue materials clause.
- 1.7.9 10% escalation clause.
- 1.7.10 Automatic reinstatement of sum insured clause.
- 1.7.11 Loss minimisation.
- 1.7.12 Plans and documents clause
- 1.7.13 Expediting clause
- 1.7.14 Payments on account
- 1.7.15 Repair/reinstatement basis of settlement with cash option for non-reinstatement
- 1.7.16 Subrogation waiver extended to Authority Party (other than contactors and sub-contractors).

1.8 Principal Exclusions

- 1.8.1 War and related perils (UK market agreed wording).
- 1.8.2 Nuclear/radioactive risks (UK market agreed wording).
- 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 1.8.4 Wear, tear and gradual deterioration.

- 1.8.5 Consequential financial losses.
- 1.8.6 Cyber risks.
- 1.8.7 Inventory losses
- 1.8.8 Fraud and employee dishonesty.
- 1.8.9 DE5/DE3 drop down option

2 DELAY IN START UP INSURANCE (DSU)

2.1 Insureds

- 2.1.1 Sub-hubco
- 2.1.2 Senior Funders
- 2.1.3 Subordinated Funders

each for their respective rights and interests in the Project.

2.2 Indemnity

In respect of:

- 2.2.1 loss of anticipated Revenue during at least the Minimum Indemnity Period (such period being not less than the Minimum Indemnity Period set out at paragraph 2.5 below) arising from a delay in completion of the Project as a result of loss or damage covered under the Contractors' All Risks' Insurance effected in accordance with Item 1 (*Contractors' All Risks' Insurance (CAR)*) of Schedule Part 15 (*Insurance Requirements*), including physical loss or damage which would be indemnifiable but for the application of any deductible;
- 2.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of Sub-hubco which without such expenditure would have taken place, during the Minimum Indemnity Period (such period being not less than the Minimum Indemnity Period set out at paragraph 2.5 below).

2.3 Sum Insured

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

2.4 Maximum Deductible

45 days in the aggregate.

2.5 Minimum Indemnity Period

28 months.

2.6 Period of Insurance

As per the Contractors' "All Risks" Insurance, excluding the defects liability period.

2.7 **Cover Features & Extensions**

2.7.1 Denial of access.

2.7.2 Utilities.

2.7.3 Terrorism.

2.7.4 Automatic Reinstatement of sum insured and indemnity period.

2.7.5 Professional Fees.

2.7.6 Subrogation waiver extended to the Authority and Authority Party (other than contactors and sub-contractors), the Contractor and the Service Provider.

2.8 **Principal Exclusions**

2.8.1 The exclusions under the Contractors' 'All Risks' Insurance, other than for consequential financial losses.

2.8.2 Delayed response by a public body or state authority.

3 **CONSTRUCTION THIRD PARTY LIABILITY INSURANCE**

3.1 **Interest**

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

3.1.1 death, or bodily injury, illness, disease contracted by any person;

3.1.2 loss or damage to property;

3.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause.

happening during the Period of Insurance and arising out of or in connection with the Project.

3.2 **Limit of Indemnity**

Not less than £50,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.

3.3 **Maximum Deductible**

£10,000 for each and every occurrence of property damage. (Personal injury claims will be paid in full).

3.4 **Territorial Limits**

UK and elsewhere in the world in respect of non manual visits.

3.5 Jurisdiction

Worldwide excluding USA, Canada and Australia.

3.6 Period of Insurance

As per the Contractors' "All Risks" Insurance, including the defects liability period.

3.7 Cover Features & Extensions

3.7.1 Munitions of war.

3.7.2 Cross liability clause.

3.7.3 Contingent motor.

3.7.4 Legal defence costs.

3.7.5 Indemnity to Authority Party (other than contractors and sub-contractors).

3.7.8 Corporate Manslaughter and Corporate Homicide Act 2007.

3.8 Principal Exclusions

3.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the insured.

3.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.

3.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

3.8.4 Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured.

3.8.5 Events more properly covered under a professional indemnity policy.

3.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

3.8.7 Liability arising from seepage and pollution unless caused by a sudden, identifiable, unintended and unexpected occurrence.

3.8.8 Losses indemnified under the CAR policy or DSU policy.

3.8.9 Asbestos liability.

3.8.10 Cyber risks.

SECTION 2

POLICIES TO BE TAKEN OUT BY SUB-HUBCO FROM THE PHASE 1 ACTUAL COMPLETION DATE AND MAINTAINED FROM THE ACTUAL COMPLETION DATE

Common to all policies in Section 2 (*Policies to be taken out by Sub-hubco and maintained from the Phase 1 Actual Completion Date*) (unless stated otherwise):

Insureds

- 1 Authority
- 2 Sub-hubco
- 3 Service Provider
- 4 Sub-contractors to Insured's 2 and 3 of any tier but only to the extent that their legal liabilities arising out of their project activities are required to be insured under the contract.
- 5 Senior Funders
- 6 Subordinated Funders

each for their respective rights and interests in the Project.

1 PROPERTY DAMAGE INSURANCE

1.1 Insured Property

The project assets which are the property of Sub-hubco or for which Sub-hubco may be responsible including but not limited to the Facilities.

1.2 Coverage

"All risks" of physical loss or damage to the Insured Property from any cause not excluded, including machinery breakdown in respect of appropriate equipment.

1.3 Sum Insured

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus provision to include other Cover Features & Extensions as appropriate.

1.4 Maximum Deductible

£10,000 each and every occurrence (escalated periodically as per clause 53.4.8 of this Agreement)

1.5 Territorial Limits

United Kingdom plus elsewhere whilst in inland transit.

1.6 Period of Insurance

From the Phase 1 Actual Completion Date or as otherwise specified in this Agreement for the duration of this Agreement and renewable on an annual basis unless agreed otherwise by the Parties.

- 1.7 Cover Features & Extensions
 - 1.7.1 Terrorism
 - 1.7.2 Automatic reinstatement of sum insured.
 - 1.7.3 Capital additions clause.
 - 1.7.4 72 hour clause.
 - 1.7.5 European Union local authorities clause.
 - 1.7.6 Professional fees.
 - 1.7.7 Debris removal.
 - 1.7.8 Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded.
 - 1.7.9 Repair / reinstatement basis of claims settlement with cash option for non-reinstatement.
 - 1.7.10 Expediting expenses
 - 1.7.11 Payments on account
 - 1.7.12 Subrogation waiver extended to
 - (a) Authority Party (other than contractors and sub-contractors), and;
 - (b) the Contractor and Contractor's sub-contractors of any tier until expiry of the defects liability period under Section 1 of Schedule Part 15 to the extent not recoverable under Section 1 of Schedule Part 15.
- 1.8 Principal Exclusions
 - 1.8.1 War and related perils (UK market agreed wording).
 - 1.8.2 Nuclear/radioactive risks (UK market agreed wording).
 - 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
 - 1.8.4 Wear, tear and gradual deterioration.
 - 1.8.5 Consequential financial losses.
 - 1.8.6 Cyber risks.
 - 1.8.7 Losses recovered under the CAR policy.

2 BUSINESS INTERRUPTION INSURANCE

- 2.1 Insureds
 - 2.1.1 Sub-hubco.

2.1.2 Senior Funders.

2.1.3 Subordinated Funders.

each for their respective rights and interests in the Project.

2.2 Indemnity

In respect of:

2.2.1 loss of Revenue during at least the Minimum Indemnity Period (such period being not less than the Minimum Indemnity Period set out in paragraph 2.5 below) arising from an interruption or interference in the operation of the Project as a result of loss or damage covered under Property Damage Insurance effected in accordance with paragraph 1 of Section 2 (*Policies to be taken out by Sub-hubco and maintained from the Actual Completion Date*) of this Schedule Part 15 (*Insurance Requirements*) including physical loss or damage which would be indemnifiable but for the application of any deductible;

2.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of Sub-hubco which without such expenditure would have taken place, during the Minimum Indemnity Period (such period being not less than the Minimum Indemnity Period set out at paragraph 2.5 below).

2.3 2.3 Sum Insured

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

2.4 Maximum Deductible

£10,000 for each and every occurrence (escalated periodically as per clause 53.4.8 of this Agreement).

2.5 Minimum Indemnity Period

28 months.

2.6 Period of Insurance

From the Phase 1 Actual Completion Date for the duration of this Agreement and renewable on an annual basis unless agreed otherwise.

2.7 Cover Features & Extensions

2.7.1 Denial of access.

2.7.2 Terrorism.

2.7.3 Utilities.

2.7.4 Accountants Clause.

2.7.5 Automatic reinstatement of sum insured.

2.7.6 Subrogation waiver extended to the

- (a) Authority and Authority Party (other than contractors and sub-contractors);
- (b) the Service Provider, and
- (c) the Contractor and Contractor's sub-contractor of any tier during the defects liability period under Section 1 Schedule of Part 15 to the extent not recoverable under Section 1 of Schedule Part 15.

2.8 Principal Exclusions

2.8.1 The exclusions under the Property Damage Insurance, other than for consequential financial losses.

2.8.2 Delayed response by a public body or state authority.

3 THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

3.1 Indemnity

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

3.1.1 death, or bodily injury, illness, disease contracted by any person;

3.1.2 loss or damage to property;

3.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause.

happening during the period of insurance and arising out of or in connection with the Project and the provision of the Services.

3.2 Limit of Indemnity

Not less than £50,000,000 (escalated periodically as per clause 53.4.8 of this Agreement) in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

3.3 Maximum Deductible

£10,000 for each and every occurrence of property damage (escalated periodically as per clause 53.4.8 of this Agreement). (Personal injury claims will be paid in full).

3.4 Territorial Limits

UK and elsewhere in the world in respect of non manual visits.

3.5 Jurisdiction

Worldwide excluding USA, Canada and Australia.

3.6 Period of Insurance

From the Phase 1 Actual Completion Date or as otherwise specified in this Agreement for the duration of this Agreement and renewable on an annual basis unless agreed otherwise.

3.7 Cover Features & Extensions

3.7.1 Munitions of war.

3.7.2 Cross liability clause.

3.7.3 Contingent motor.

3.7.4 Legal defence costs in addition to the Limit of Indemnity.

3.7.5 Legionellosis

3.7.6 Corporate Manslaughter and Corporate Homicide Act 2007

3.7.7 Indemnity to:-

(a) Authority Party (other than contractors and sub-contractors),

(b) the Contractor and Contractor's sub-contractors of any tier during the defects liability period under Section 1 of Schedule Part 15 to the extent not recoverable under Section 1 of Schedule Part 15.

3.8 Principal Exclusions

3.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the insured.

3.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.

3.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured.

3.8.4 Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured Party.

3.8.5 Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property.

3.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

3.8.7 Liability arising from seepage and pollution unless caused by a sudden, identifiable, unintended and unexpected occurrence.

3.8.8 Losses under the property damage policy or business interruption policy.

3.8.9 Asbestos liability

3.8.10 Cyber risks.

SECTION 3

ENDORSEMENTS

Endorsements having substantially similar effect to the following form will be incorporated into the insurances required to be put in place under Schedule Part 15, Sections 1 and 2

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Contract.

Endorsement 1

Cancellation

- 4 This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.
- 5 The insurer shall by written notice advise the Authority:
- 5.1 at least 30 days before any such cancellation or termination is to take effect;
 - 5.2 at least 30 days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
 - 5.3 of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

Endorsement 2

Multiple Insured/Non-Vitiation Clause

- 6 Each of the parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.
- 7 It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.
- 8 Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a "**Vitiating Act**") committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.
- 9 For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.
- 10 Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in

which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.

11 Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:

11.1.1 no party other than the Authority has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Authority;

11.1.2 where any warranty, disclosure or representation is required from the Authority in connection with this policy insurers will contact the Authority in writing (in accordance with Endorsement 3 to the Contract) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Authority (regarding itself); and

11.1.3 save as set out in a request from insurers to the Authority in accordance with (2) above, the Authority shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Authority not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

Endorsement 3

Communications

12 All notices or other communications under or in connection with this policy shall be given to each insured (and the Authority) in writing or by facsimile. Any such notice will be deemed to be given as follows:

12.1 if in writing, when delivered;

12.2 if by facsimile, when transmitted but only if, immediately after transmission, the sender's facsimile machine records a successful transmission has occurred.

13 The address and facsimile number of the Authority for all notices under or in connection with this policy are those notified from time to time by the Authority for this purpose to Sub-hubco at the relevant time. The initial address and facsimile number of the Authority are as follows:

The Authority: The Highland Council

Address: Glenurquhart Road

Inverness
IV3 5NX

Facsimile No: 01463 702161

Attention: The Chief Executive from time to time of the Authority

14 It is further agreed that a notice of claim given by the Authority or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds.

Endorsement 4

Loss Payee (applicable only to the Physical Damage Policies)

Subject to the provision of Clause 53.18 of this Agreement all proceeds of this policy shall be payable without deduction or set-off to the Insurance Proceeds Account.

Endorsement 5

Primary Insurance

It is expressly understood and agreed that this policy provides primary cover for the insured parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured parties the insurers will indemnify the insured parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

Endorsement 6

Ringfencing

The level of any indemnity available to an insured party under this policy in relation to any claim(s) concerning the Project shall not be affected and/or reduced by any claim(s) unrelated to the Project.

SECTION 4

INSURANCE ARRANGEMENTS

- 1 Sub-hubco must comply with the provisions of this Section 4 of Schedule Part 15 when placing or renewing the Operational Insurances.
- 2 Not less than forty (40) Business Days prior to the Phase 1 Actual Completion Date and each subsequent renewal date in respect of each of the Operational Insurances, Sub-hubco shall inform the Authority's Representative of the forthcoming requirement to place or renew an Operational Insurance and provide either;
 - a. confirmation that the existing long term agreement (entered into with the agreement of the Authority) is being maintained; Sub-hubco, having taken advice from reputable insurance brokers experienced in arranging insurances for similar risks, confirming that the renewal quotations represent best value; or
 - b. its proposals for obtaining competitive quotations from suitable insurers. Sub-hubco shall take advice from reputable insurance brokers experienced in arranging insurances for similar risks as to which insurers are most likely to provide quotations that will represent best value for money for the Authority as payer of the premiums for such insurance. In considering which insurers to approach, Sub-hubco shall consider whether the private sector partner in hubco enjoys any special relationship with any insurer and/or is otherwise able to procure the placing of the relevant insurance in any particular manner consistent with the requirements of this Agreement that may result in lower premiums and shall include such insurers in its proposal under this paragraph 2.
- 3 Within ten (10) Business Days of receiving a notice from Sub-hubco pursuant to paragraph 2, the Authority may provide Sub-hubco with details of up to two (2) other insurers that it wishes Sub-hubco to invite to quote for provision of the relevant Operational Insurance.
- 4 Not less than twenty (20) Business Days prior to the Phase 1 Actual Completion Date and each subsequent renewal date for any of the Operational Insurances, Sub-hubco shall forward to the Authority's Representative quotes from the proposed insurers (together with the principal terms and conditions of the relevant insurance policies), to include any insurer nominated by the Authority pursuant to paragraph 3, including a reasoned recommendation as to which quote Sub-hubco views as offering best value for money for the Authority, taking into account all relevant circumstances.
- 5 Within ten (10) Business Days of receiving a recommendation from Sub-hubco pursuant to paragraph 4, the Authority must notify Sub-hubco in writing which insurer it is to place the relevant Operational Insurance with, failing which Sub-hubco shall be entitled to place the relevant Operational Insurance with the insurer recommended by Sub-hubco.

SECTION 5

BROKER'S LETTER OF UNDERTAKING

To: The Authority

Dear Sirs

Agreement dated [] entered into between [] Limited ("Sub-hubco") and [] (the "Authority") (the "Agreement")

- 1 We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter.
- 2 We act as insurance broker to Sub-hubco in respect of the Insurances and in that capacity we confirm that the Insurances which are required to be procured pursuant to Clause 53 and Schedule Part 15 of the Agreement:
 - 2.1 where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
 - 2.2 are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect in respect of all the matters specified in the Agreement; and
 - 2.3 that all premiums due to date in respect of the Insurances are paid and the Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not, however, make any representations regarding such insurers' current or future solvency or ability to pay claims; and that
 - 2.4 the endorsements set out in Section 3 (*Endorsements*) of Schedule Part 15 (*Insurance Requirements*) of the Agreement are as at today's date in full force and effect in respect of the Insurances.
- 3 We further confirm that the attached cover notes confirm this position.
- 4 Pursuant to instructions received from Sub-hubco and in consideration of your approving our appointment [or continuing appointment] as brokers in connection with the Insurances, we hereby undertake in respect of the interests of the Authority in relation to the Insurances:
 - 4.1 **Notification Obligations**
 - 4.1.1 to notify you at least 30 (thirty) days prior to the expiry of any of the Insurances if we have not received instructions from Sub-hubco to negotiate renewal and in the event of our receiving instructions to renew, to advise you promptly of the details thereof;
 - 4.1.2 to notify you at least 30 (thirty) days prior to ceasing to act as brokers to Sub-hubco unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable; and
 - 4.1.3 to pay into the Insurance Proceeds Account without set off or deduction of any kind for any reason all payments in respect of claims received by us from insurers in relation to the Insurances specified in Clauses 30.1 to 30.3 of the Agreement.

4.2 **Advisory Obligations**

- 4.2.1 to notify you promptly of any default in the payment of any premium for any of the Insurances;
- 4.2.2 to notify you if any insurer cancels or gives notification of cancellation of any of the Insurances, at least 30 (thirty) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation takes place less than 30 (thirty) days before it is to take effect;
- 4.2.3 to notify you of any act or omission, breach or default of which we have knowledge which in our reasonable opinion may either invalidate or render unenforceable in whole or in part any of the Insurances or which may otherwise materially impact on the extent of cover provided under the Insurances; and
- 4.2.4 to advise Sub-hubco of its duties of disclosure to insurers and to specifically advise upon:
 - (a) the facts, circumstances and beliefs that should generally be disclosed to insurers; and
 - (b) the obligation not to misrepresent any facts, matters or beliefs to insurers.

4.3 **Disclosure Obligations**

- 4.3.1 to disclose to insurers all information made available to us from any source and any fact, change of circumstances or occurrence made known to us from any source which in our reasonable opinion is material to the risks insured against under the Insurances and which properly should be disclosed to insurers as soon as practicable after we become aware of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise; and
- 4.3.2 to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of Sub-hubco or the Authority and not to disclose such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Insurances in discharge of our obligation set out at Clause 4.3.1 of this letter. Our obligations of confidentiality shall not conflict with our duties owed to Sub-hubco and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.

4.4 **Administrative Obligations**

- 4.4.1 to hold copies of all documents relating to or evidencing the Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Insurances, payment of premiums and presentation and receipt of claims;
- 4.4.2 to supply to the Authority and/or its insurance advisers (or the Authority's or its insurance advisers' authorised representatives) promptly on written

request copies of the documents set out in Clause 4.4.1 of this letter, and to the extent available, to make available to such persons promptly upon the Authority's request the originals of such documents;

- 4.4.3 to administer the payment of premiums due pursuant to the Insurances such that, in so far as we hold appropriate funds, all such premiums shall be paid to insurers in accordance with the terms of the Insurances;
- 4.4.4 to administer the payment of claims from insurers in respect of the Insurances (the "Insurance Claims") including:
 - (a) negotiating settlement of Insurance Claims presented in respect of the Insurances;
 - (b) collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Insurances, and
 - (c) insofar as it is relevant and practicable, liaising with and reporting to each Authority throughout the settlement, payment and administration of such Insurance Claims.
- 4.4.5 to advise the Authority promptly upon receipt of notice of any material changes which we are instructed to make in the terms of the Insurances and which, if effected, in our opinion as Insurance Brokers would result in any material reduction in limits or coverage or in any increase in deductibles, exclusions or exceptions;
- 4.4.6 to advise the Authority in advance of any change to the terms of, or any lapse, non-renewal and/or cancellation of any policy maintained in respect of the Insurances;
- 4.4.7 to use our reasonable endeavours to have endorsed on each and every policy evidencing the Insurances (when the same is issued) endorsements substantially in the form set out in Section 3 (*Endorsements*) to Schedule Part 15 (*Required Insurances*) of the Agreement; and
- 4.4.8 to provide, prior to the Commencement of the Operational Insurances and prior to each renewal of any of them, a statement containing
 - b. the information required to satisfy the requirement of Section 4 of Schedule Part 15 (*Insurance Requirements*) to the Project Agreement; and
 - c. our opinion, supported by appropriate evidence, of the generally prevailing market for the relevant Insurance and of any other circumstances relevant to the application of paragraph 1 of Section 6 (*Pass Through Costs*) of Schedule Part 14 (*Payment Mechanism*) to the Project Agreement to the premiums for the relevant Insurance specifying the impact of each factor on the premium quotations obtained.

5 **NOTIFICATION DETAILS**

Our obligations at Clause 4 of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to: [Authority]

6 We shall supply further letters substantially in this form on renewal of each of the Insurances and shall supply copies of such letters to those parties identified to us by the Authority for such purposes.

Yours faithfully

For and on behalf of [Sub-hubco's broker]

SCHEDULE PART 16

CHANGE PROTOCOL

SECTION 1

DEFINITIONS

In this Schedule Part 16 (*Change Protocol*) and elsewhere in this Agreement (save where Schedule Part 1 provides to the contrary) the following words shall have the following meanings:

- “Adjustment Date”** means the date on which the adjustment to the Annual Service Payments takes effect in accordance with the provisions of this Agreement, or such other date as is agreed between the parties;
- “Affordable”** means within the revenue resource parameters determined by the Authority and notified in writing by it to Sub-hubco as available for a proposed High Value Change;
- “Approval Criteria”** has the meaning given in paragraph 7 (*Approval Criteria*) of Section 4 (*High Value Changes*) of this Schedule Part 16 (*Change Protocol*);
- “Approved Project”** has the meaning given in paragraph 8.2.1 of Section 4 (*High Value Changes*) of this Schedule Part 16 (*Change Protocol*);
- “Assumption Adjustment”** means an adjustment to any of the assumptions contained in the Financial Model;
- “Authority Change”** means, as the case may be, a Low Value Change, a Medium Value Change or a High Value Change;
- “Authority Change Notice”** means a notice issued in accordance with this Schedule Part 16 (*Change Protocol*) requiring an Authority Change;
- “Calculation Date”** means the relevant date for the purposes of calculating the Incurred Change Management Fee in accordance with Section 4 (*High Value Changes*) of this Schedule Part 16 (*Change Protocol*);
- “Capital Cost”** means in relation to any High Value Change the cost of carrying out the design, construction and commissioning of any construction works required to implement that High Value Change;
- “Catalogue of Small Works and Services” and “Catalogue”** means the list of prices and time periods for types of Low Value Changes set out in Appendix 1 Part 1 (*Catalogue*) to this Schedule Part 16 (*Change Protocol*), as amended from time to time in accordance with paragraph 3 (*Sub-hubco Response and Authority Confirmation*) of Section 2 (*Low Value Changes*) of this Schedule Part 16 (*Change Protocol*);
- “Catalogue Price”** means the total cost (excluding VAT) of carrying out a Low Value Change as set out in the Catalogue;
- “Catalogue Review Date”** means each third anniversary of the Commencement Date;

“Change”

means a change in the Works, the Facilities and/or Services or additional works and/or services or a change in the Authority's Policies that may be made under Clause 33 (*Change Protocol*) or this Schedule Part 16 (*Change Protocol*);

“Change in Costs”

means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of Sub-hubco and/or the Contractor and/or any Service Provider (without double counting), including, as relevant, the following:

- (a) the reasonable costs of complying with the requirements of Clauses 24.9, 29 (*Delay Events*), 32 (*Changes in Law*) and/or Sections 2 (*Low Value Changes*) to 4 (*High Value Changes*) of this Schedule Part 16 (*Change Protocol*), including the reasonable costs of preparation of design and estimates;
- (b) the costs of continued employment of, or making redundant, staff who are no longer required;
- (c) the costs of employing additional staff;
- (d) reasonable professional fees;
- (e) the costs to Sub-hubco of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of Sub-hubco's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Annual Service Payment;
- (f) the effects of costs on implementation of any insurance reinstatement in accordance with this Agreement, including any adverse effect on the insurance proceeds payable to Sub-hubco (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
- (g) operating costs, or lifecycle maintenance or replacement costs;
- (h) Capital Expenditure (or, in the case of a Relevant Event which is a Relevant Change in Law, Capital Expenditure for which the Authority is responsible);
- (i) the costs required to ensure continued compliance with the Funding Agreements;
- (j) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (k) Direct Losses or Indirect Losses, including reasonable legal expenses on an indemnity basis;

“Change in Revenue” means, in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of Sub-hubco and/or any Service Provider committed from third parties (without double counting);

“Change Management Fee” means the fee calculated in accordance with paragraph 10 (*Information and notifications by the Authority to Sub-hubco and cooperation of the Authority*) of Section 4 (*High Value Changes*);

“Cost” where used in the definitions of High Value Change and Low Value Change means the immediate cost that will be incurred by Sub-hubco to implement the relevant Change, disregarding any Whole Life Costs;

“Derogated Low Value Change” means:

- (a) changes to shelving, pin boarding, replacing blinds and/or screens, fitting wall protectors, fitting fixings such as hooks, brackets, replacing equipment that involves alterations to fixings/new fixings, brackets etc, fixing/replacing signs (internally), additional keys, pigeon hole units, additional worktops that are not adjoining to Group 1 Equipment, additional base and wall units if not adjoining to Group 1 Equipment, letter boxes (in wall); and
- (b) any other Low Value Change that:
 - i. consists of minor works;
 - ii. only affects the interior of the Facilities;
 - iii. does not affect any of the mechanical and electrical equipment of the Facilities;
 - iv. does not involve any interference with the service media in the Facilities;
 - v. will not conflict with any Programmed Maintenance; and
 - vi. will not prejudice any of the Operational Insurances;

“Derogated Low Value Change Notice” means a notice given by the Authority in accordance with paragraph 1.2 of Section 2 (*Low Value Changes*) of this Schedule Part 16 (*Change Protocol*);

“Estimate” has the meaning given in paragraph 3 of Section 3 (*Medium Value Changes*) of this Schedule Part 16 (*Change Protocol*);

“Estimated Change in Project Costs” means, in respect of any Relevant Event, the aggregate of any Change in Costs and/or (without double counting) Change in Revenue (as relevant);

“High Value Change” means:

- (a) a Change requested by the Authority that, in the reasonable opinion of the Authority, is likely either to Cost in excess of one hundred thousand pounds (£100,000)

(index linked) or to require an adjustment to the Annual Service Payment that on a full year basis is 2% or more of the Annual Service Payment in the relevant Contract Year provided that the parties may agree that such a Change should instead be processed as a Medium Value Change; or

- (b) any other Change that the parties agree is to be treated as a High Value Change;

“High Value Proposal” **Change** means a proposal satisfying the requirements of paragraph 3.4 of Section 4 (*High Value Changes*) of this Schedule Part 16 (*Change Protocol*);

“High Value Requirements” **Change** has the meaning given in paragraph 2.1.3 of Section 4 (*High Value Changes*) of this Schedule Part 16 (*Change Protocol*);

“High Value Change Stage 2 Submission” has the meaning given in paragraph 4.1.1 of Section 4 (*High Value Changes*) of this Schedule Part 16 (*Change Protocol*);

“Incurred Management Fee” **Change** means the amounts actually incurred or payable by or on behalf of Sub-hubco up to the Calculation Date in respect of matters identified by Sub-hubco pursuant to paragraphs 3.4.3 and/or 4.3.7 of Section 4 (*High Value Changes*) of this Schedule as falling within the Change Management Fee (and not already reimbursed by the Authority);

“Input Adjustment” means any adjustment to the Financial Model other than Assumption Adjustment and Logic Adjustments;

“Key Ratios” means the following ratios:

- (a) the Loan Life Cover Ratio (as defined under the Senior Funding Agreements);
- (b) the Projected Debt Service Cover Ratio (as defined in the Senior Funding Agreements);
- (c) the Threshold Equity IRR (as defined under Schedule Part 23 (Refinancing)); and
- (d) the Interest Rate (as defined in the borrower loan note instrument by Sub-hubco dated on or around the date of this Agreement);

“Logic Adjustment” means an adjustment to the logic or formulae contained in the Financial Model;

“Low Value Change” means a Change which is either:

- (a) of a type listed in the Catalogue of Small Works and Services; or
- (b) is not so listed, but has an individual Cost not exceeding ten thousand pounds (£10,000) (index linked), or as otherwise agreed from time to time, except for any request that would (if implemented) increase the likelihood of Sub-hubco failing to meet the Authority’s Construction Requirements and/or the Service Level Specification or

materially and adversely affect Sub-hubco's ability to perform its obligations under this Agreement;

"Medium Value Change"		means a Change requested by the Authority which is not a Low Value Change or a High Value Change;
"Post-Adjustment Model"	Financial	means the Financial Model in effect immediately following the making of the relevant Adjustments;
"Pre-Adjustment Model"	Financial	means the Financial Model in effect immediately prior to the making of the relevant Adjustments;
"Relevant Event"		means an event or circumstance in which this Agreement expressly provides for an adjustment to the Annual Service Payments to be made;
"Review Procedure"		means the procedure set out in Schedule Part 8 (<i>Review Procedure</i>);
"Small Works and Services Rates"		means the rates to be applied in respect of any request from the Authority for a Low Value Change set out in Appendix 1 Part 2 (<i>Small Works and Services Rates</i>) to this Schedule Part 16 (<i>Change Protocol</i>), as amended from time to time in accordance with paragraph 8 of Section 2 (<i>Low Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>);
"Stage 1 Approval"		has the meaning given in paragraph 3.7 of Section 4 (<i>High Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>);
"Stage 1 Approved Project"		has the meaning given in paragraph 3.7 of Section 4 (<i>High Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>);
"Stage 2 Approval"		has the meaning given in paragraph 8.2.1 of Section 4 (<i>High Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>);
"Sub-hubco Change"		means a Change that is initiated by Sub-hubco by submitting a Sub-hubco Notice of Change to the Authority pursuant to Section 5 (<i>Sub-hubco Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>);
"Sub-hubco Change"	Notice of	has the meaning given in paragraph 1 of Section 5 (<i>Sub-hubco Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>);
"Target Cost"		has the meaning given in paragraph 2.1.2 of Section 4 (<i>High Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>);
"Third Party Costs"		means the costs incurred by Sub-hubco with third parties in responding to an Authority Change Notice for a Medium Value Change or a High Value Change, including, but not limited to, the Sub-Contractors, consultants and advisers; and
"Whole Life Cost"		means the estimated and (to the extent that such information is available) the actual cost of operating and maintaining that High Value Change over its intended design life (consistent with Sub-hubco's Proposals).

SECTION 2

LOW VALUE CHANGES

1 **Low Value Change Notice**

- 1.1 Subject to paragraph 1.2 of this Section 2 (Low Value Changes), where a Low Value Change is required by the Authority, it must submit an Authority Change Notice to Sub-hubco.
- 1.2 The Authority may carry out Derogated Low Value Changes during the Operational Term. If the Authority wishes to carry out a Derogated Low Value Change it shall send Sub-hubco a notice at least five (5) Business Days prior to the date on which it proposes to start to implement the Change setting out the nature of the proposed Change in sufficient detail to enable Sub-hubco to satisfy itself that the proposed Change constitutes a Derogated Low Value Change. Sub-hubco may notify the Authority within three (3) Business Days of receipt of a Derogated Low Value Change Notice that it does not agree that the proposed Change constitutes a Derogated Low Value Change and, unless the parties otherwise agree, the Authority must not take any steps to carry out the proposed Change unless it has referred the dispute to the Dispute Resolution Procedure and it has been determined that the proposed Change is a Derogated Low Value Change.
- 1.3 If it carries out a Derogated Low Value Change, the Authority must use Good Industry Practice to the standards that would have applied to Sub-hubco if it had carried it out as a Low Value Change.

2 **Authority Change Notice**

An Authority Change Notice for a Low Value Change must:

- 2.1 state that it relates to a Low Value Change;
- 2.2 contain a description of the works and/or the change to the Works and/or the Services that the Authority requires including, if relevant, the applicable type of Low Value Change listed in the Catalogue; and
- 2.3 if there is no applicable type of change listed in the Catalogue, specify the time period within which the Authority requires the Change to be implemented.

3 **Sub-hubco Response and Authority Confirmation**

Within five (5) Business Days of receipt of an Authority Change Notice for a Low Value Change, Sub-hubco must notify the Authority of:

- 3.1 the cost of implementing the required Low Value Change; and
- 3.2 the time period for implementing the Low Value Change,

in each case in accordance with paragraph 4 of this Section 2 (*Low Value Changes*).

4 **Cost and Timing**

- 4.1 If the Low Value Change is of a type listed in the Catalogue, the cost of carrying out that Low Value Change shall not exceed the relevant Catalogue Price and the time period for implementing the Low Value Change shall not exceed the relevant time specified in the Catalogue.

- 4.2 If the Low Value Change is not of a type that is listed in the Catalogue, the cost of carrying out that Low Value Change shall be calculated on the basis that:
- 4.2.1 wherever practicable during the Operational Term the Low Value Change will be carried out by an existing on-site and suitably qualified employee of Sub-hubco or a Sub-hubco Party and in that case Sub-hubco may not charge for labour. In respect of Low Value Changes to be implemented during:
 - 4.2.1.1 the Construction Phase; and
 - 4.2.1.2 thereafter, where there is no such suitably qualified on-site employee reasonably available to carry out the Low Value Change,

the cost of the labour element will be calculated in accordance with the Small Works and Services Rates or, where such rates are not applicable, in accordance with rates which are fair and reasonable; and
 - 4.2.2 the materials element will be charged at the cost of materials to Sub-hubco or to the Sub-hubco Party carrying out the work (net of all discounts) and there shall be no management fee, margin, overhead, contingency or other cost applied in relation thereto; and
 - 4.2.3 in respect of Low Value Changes being implemented during the Construction Phase, in addition to labour and materials, Sub-hubco shall be entitled to:
 - 4.2.3.1 make a fair and reasonable charge for the additional cost (if any) of related plant to the Sub-hubco Party carrying out the work (net of all discount);
 - 4.2.3.2 include a charge (not to exceed 4% of the direct cost of labour, plant and materials (as aforesaid) to the Sub-hubco Party carrying out the work in aggregate) to represent any reasonable charge for prelims properly applied in relation to the carrying out of the Low Value Change by such Sub-hubco Party; and
 - 4.2.3.3 include a charge of 4.5% of the direct cost of labour, plant and materials and prelims (as aforesaid) to the Sub-hubco Party carrying out the work in aggregate in respect of all management fees, margin, overhead, contingency or other costs applied in relation to the carrying out of the Low Value Change by such Sub-hubco Party.
- 4.3 Other than the costs referred to in paragraphs 4.1 and 4.2 of this Section 2 (*Low Value Changes*) Sub-hubco may not charge the Authority for processing, implementing or managing a Low Value Change.

5 **Authority objection**

The Authority may object in writing within five (5) Business Days of receipt of Sub-hubco's notice pursuant to paragraph 3 of this Section 2 (*Low Value Changes*), to any part of that notice and in that event the parties shall act reasonably to endeavour to agree as soon as practicable how the Low Value Change is to be implemented, which may include the Authority withdrawing the Authority Notice of Change.

6 Implementation

- 6.1 Sub-hubco must implement a required Low Value Change so as to minimise any inconvenience to the Authority and, subject to paragraph 10.2 of this Section 2 (*Low Value Changes*), within the timescale specified in the notice given by Sub-hubco pursuant to paragraph 3 of this Section 2 (*Low Value Changes*) (or agreed by the parties pursuant to paragraph 5 of this Section 2 (*Low Value Changes*)).
- 6.2 Sub-hubco shall notify the Authority when it considers that the Low Value Change has been completed.
- 6.3 If Sub-hubco:
- 6.3.1 fails to give a notice to the Authority in accordance with paragraph 3 of this Section 2 (*Low Value Changes*) within fifteen (15) Business Days of the date of the Authority Change Notice; or
 - 6.3.2 gives a notice pursuant to paragraph 3 of this Section 2 (*Low Value Changes*) to which the Authority has objected pursuant to paragraph 5 of this Section 2 (*Low Value Changes*) on any ground other than the cost of the Low Value Change, the parties have not reached agreement as to how the Low Value Change is to be implemented and the objection has not been referred to the Dispute Resolution Procedure; or
 - 6.3.3 gives a notice pursuant to paragraph 3 of this Section 2 (*Low Value Changes*) to which the Authority does not object pursuant to paragraph 5 but then fails to fully implement the Low Value Change within ten (10) Business Days after the timescale specified in that notice or agreed in accordance with paragraph 5 of this Section 2 (*Low Value Changes*),

then, subject to paragraph 10.3 of this Section 2 (*Low Value Changes*), the Authority may notify Sub-hubco that the Low Value Change Notice is withdrawn and, following such notification, may procure the implementation of the Low Value Change without further recourse to Sub-hubco, but the Authority must ensure that the Low Value Change is carried out in accordance with Good Industry Practice and to the standards that would have applied to Sub-hubco if it had implemented the Low Value Change.

7 Payment

Unless the Authority notifies Sub-hubco within five (5) Business Days of receipt of a notice from Sub-hubco pursuant to paragraph 6.2 above that the Low Value Change has not been implemented to its reasonable satisfaction:

- 7.1 Sub-hubco shall, where the Low Value Change is implemented prior to the Operational Term, issue an invoice in respect of the costs of the Low Value Change, which the Authority must pay within 20 Business Days of receipt; or
- 7.2 Sub-hubco shall, where the Low Value Change is implemented during the Operational Term, include the costs of the Low Value Change in the next Monthly Invoice submitted pursuant to Clause 34.2 of this Agreement following completion or implementation of the relevant Low Value Change and the amounts payable for the Low Value Changes shall be invoiced and paid in accordance with the procedure described in Clause 34 of this Agreement.

8 Update of Catalogue and Small Works and Services Rates

- 8.1 From the Commencement Date the Catalogue shall be that set out in Part 1 of Appendix 1 to this Schedule Part 16 (*Change Protocol*) and the Small Works and Services Rates shall be those set out in Part 2 of Appendix 1 to this Schedule Part 16 (*Change Protocol*).

8.2 Subject to paragraph 8.3 of this Section 2 (*Low Value Changes*), the unit prices and the Small Works and Services Rates set out in the Catalogue and the Small Works and Services Rates shall be indexed on each anniversary of the Commencement Date for the change in RPI since the Commencement Date or, after the first Catalogue Review Date, since the most recent Catalogue Review Date.

8.3 On the date which is twenty (20) Business Days before each Catalogue Review Date, Sub-hubco must provide the Authority with:

8.3.1 a revised and updated Catalogue which:

(a) includes in the Catalogue unit prices for any types of Low Value Changes which have occurred and which the parties consider are reasonably likely to reoccur during the life of the Project and any other types of Low Value Changes as the parties may agree; and

(b) includes time periods for the carrying out of each listed type of Low Value Change; and

8.3.2 updated Small Works and Services Rates.

The unit prices and Small Works and Services Rates will be for the ensuing three-year period following the Catalogue Review Date. The unit prices must represent good value for money having regard to:

(a) prices prevailing for similar items in the market at the time; and

(b) paragraph 4.2 of this Section 2 (*Low Value Changes*).

The Small Works and Services Rates must provide value for money with reference to rates prevailing for similar services in the market at the time.

8.4 Within ten (10) Business Days of the submission by Sub-hubco of the revised and updated Catalogue and Small Works and Services Rates pursuant to paragraph 8.3 of this Section 2 (*Low Value Changes*), the Authority shall confirm in writing whether or not it agrees that the revised and the updated Catalogue shall constitute the Catalogue and the updated Small Works and Services Rates shall constitute the Small Works and Services Rates for the purposes of this Agreement from the relevant Catalogue Review Date;

8.5 If the Authority does not confirm to Sub-hubco that it agrees with the revised and updated Catalogue and/or Small Works and Services Rates provided by Sub-hubco pursuant to paragraph 8.3 of this Section 2 (*Low Value Changes*), the parties shall meet and endeavour, in good faith, to agree any amendments to the Catalogue and/or Small Works and Services Rates. Any dispute in relation to this paragraph 8 may be referred by either party to the Dispute Resolution Procedure. The revised and updated Catalogue and revised and updated Small Works and Services Rates with such amendments as are agreed by the parties or determined under the Dispute Resolution Procedure shall constitute the Catalogue and the Small Works and Services Rates for the purposes of this Agreement from the relevant Catalogue Review Date.

9 Documentation and Monitoring

9.1 No due diligence (whether funder, legal, technical, insurance or financial) shall be required in relation to Low Value Changes unless otherwise agreed between the parties.

- 9.2 No changes shall be made to this Agreement or any Project Document as a result of a Low Value Change, unless otherwise agreed between the parties.
- 9.3 Where it is agreed that an adjustment of the Annual Service Payment is required in respect of a Low Value Change, the Financial Model shall be adjusted to give effect to such Low Value Changes once each Contract Year on a date to be agreed between the parties and all relevant Low Value Changes that have occurred since the preceding such adjustment shall be aggregated together into a single cumulative adjustment in accordance with Section 4 (*Changing the Financial Model*) of this Schedule Part 16 (*Change Protocol*).
- 9.4 Sub-hubco shall keep a record of all Low Value Changes processed, completed and outstanding and shall provide the Authority with a copy of that record whenever reasonably required by the Authority.

10 **Disputes**

- 10.1 Any dispute concerning any matter referred to in this Section 2 (*Low Value Changes*) may be referred by either party to the Dispute Resolution Procedure.
- 10.2 Sub-hubco shall not be obliged to implement the Low Value Change until any dispute has been determined except that where such dispute concerns only the cost of a Low Value Change, unless the Authority otherwise directs, Sub-hubco must continue to carry out or implement the Low Value Change within the prescribed timescale notwithstanding the dispute.
- 10.3 The Authority is not entitled to withdraw an Authority Change Notice and procure implementation of a Low Value Change in respect of which there is a dispute that has been referred to the Dispute Resolution Procedure, unless that dispute has been determined in its favour and Sub-hubco has not confirmed to the Authority in writing within five (5) Business Days of the date of the determination that it will implement and carry out the Low Value Change in accordance with the determination.

SECTION 3

MEDIUM VALUE CHANGES

1 Medium Value Changes

- 1.1 If the Authority requires a Medium Value Change, it must serve an Authority Change Notice on Sub-hubco in accordance with paragraph 2 (*Medium Value Change Notice*) of this Section 3 (*Medium Value Changes*).
- 1.2 Sub-hubco shall be entitled to refuse a Medium Value Change that:
- 1.2.1 requires the Works and/or Services to be performed in a way that infringes any law or is inconsistent with Good Industry Practice;
 - 1.2.2 would cause any Consent to be revoked (or would require a new consent to be obtained or any existing Consent to be amended which, after using reasonable efforts, Sub-hubco has been unable to obtain);
 - 1.2.3 would materially and adversely affect Sub-hubco's ability to deliver the Works and/or Services (except those Works and/or Services which have been specified as requiring to be amended in the Authority Change Notice) in a manner not compensated for pursuant to this Section 3 (*Medium Value Changes*);
 - 1.2.4 would materially and adversely affect the health and safety of any person;
 - 1.2.5 would, if implemented, materially and adversely change the nature of the Project (including its risk profile); or
 - 1.2.6 the Authority does not have the legal power or capacity to require implementation of.

2 Medium Value Change Notice

- 2.1 An Authority Change Notice for a Medium Value Change must:
- 2.1.1 state that it refers to a Medium Value Change;
 - 2.1.2 set out the change in the Works or Services or the additional works or services required in sufficient detail to enable Sub-hubco to calculate and provide the Estimated Change in Project Costs in accordance with paragraph 3 (*Contractor's Estimate*) of this Section 3 (*Medium Value Changes*);
 - 2.1.3 set out whether, in respect of any additional facilities, Sub-hubco is expected to provide facilities management services and lifecycle maintenance services in respect of such additional facilities; and
 - 2.1.4 set out the timing of the additional works or services required by the Authority.
- 2.2 Within fifteen (15) Business Days of receipt of the Medium Value Change Notice, Sub-hubco must notify the Authority in writing:

- 2.2.1 whether it considers that it is entitled to refuse the Medium Value Change on any of the grounds set out in paragraphs 1.2.1 to 1.2.6 of this Section 3;
 - 2.2.2 when it will provide the Estimate to the Authority bearing in mind the requirement in paragraph 7.2.2 of this Section 3; and
 - 2.2.3 its estimate of the Third Party Costs that it will incur to prepare the Estimate.
- 2.3 If Sub-hubco notifies the Authority that it considers that it is entitled to refuse the Medium Value Change on one or more of the grounds set out in paragraphs 1.2.1 to 1.2.6 of this Section 3, then unless the parties otherwise agree, the Authority shall be deemed to have withdrawn the Authority Notice of Change if it has not referred the matter to the Dispute Resolution Procedure within twenty (20) Business Days of receipt of Sub-hubco's notice.
- 2.4 If the Authority considers that Sub-hubco's proposed time for providing the Estimate is not reasonable, the parties shall endeavour to agree the time, failing which the matter may be referred to the Dispute Resolution Procedure.
- 2.5 If the Authority considers that the Sub-hubco's estimate of Third Party Costs to prepare the Estimate is not reasonable, the parties shall endeavour to agree the same, failing which the matter may be referred to the Dispute Resolution Procedure.
- 2.6 If any matter is referred to the Dispute Resolution Procedure pursuant to paragraph 2 (*Medium Value Change Notice*) of this Section 3 (*Medium Value Changes*), the time for Sub-hubco to provide the Estimate shall be counted from the date of determination of that dispute if the dispute is determined in Sub-hubco's favour.

3 **Contractor's Estimate**

As soon as reasonably practicable and in any event within the time period agreed or determined pursuant to paragraph 2.4 of this Section 3, Sub-hubco shall deliver to the Authority the Estimate.

The Estimate must contain:

- 3.1 a detailed timetable for implementation of the Medium Value Change;
- 3.2 any requirement for relief from compliance with obligations, including the obligations of Sub-hubco to achieve a Phase Actual Completion Date by the relevant Phase Completion Date and to meet the requirements set out in the Authority's Construction Requirements and/or the Service Level Specification during the implementation of the Medium Value Change;
- 3.3 an outline of the proposed design solution and design, including an appropriate analysis/risk appraisal and, to the extent relevant, the impact on whole life costings;
- 3.4 any impact on the provision of the Works and/or the Services;
- 3.5 a value for money justification for any proposed change to the quality of the works or the services comprised in the Medium Value Change as compared to the Works and the Services;
- 3.6 any amendment required to this Agreement and/or any Project Document as a result of the Medium Value Change;

- 3.7 any Estimated Change in Project Costs that results from the Medium Value Change;
- 3.8 any Capital Expenditure that is required or no longer required as a result of the Medium Value Change;
- 3.9 amendments to existing Consents that are required;
- 3.10 a payment schedule for any Capital Expenditure required to implement the Change, based on milestones where relevant;
- 3.11 costs and details of (i) any other approvals required and/or due diligence permitted pursuant to paragraph 12 of this Section 3 (*Medium Value Changes*); and (ii) any Third Party Costs;
- 3.12 the method of implementation and the proposed method of certification of any construction aspects of the Medium Value Change, if not covered by the procedures specified in Clause 14 (*Programme and Dates for Completion*); and
- 3.13 any other information requested by the Authority in the Authority Change Notice.

together the "Estimate"

4 **Costing of the Estimate**

In calculating the Estimated Change in Project Costs and/or the Capital Expenditure for the purposes of the Estimate, Sub-hubco shall apply the following principles wherever applicable:

- 4.1 unless the Authority's requirements for the Medium Value Change specify a different quality as compared to the Works:
 - 4.1.1 the unit cost of any construction or installation works or associated preliminaries (excluding any temporary or demolition works, professional fees, contingencies, overheads and profit margins) required to implement the Medium Value Change is the equivalent unit rate set out in Part 1 (*Unit Cost for Construction or Installation Costs*) of Appendix 2 of this Schedule Part 16 (*Change Protocol*), uplifted using the DTI Pubsec index for construction cost inflation in the period between the Commencement Date and the date the Medium Value Change is to be commenced;
 - 4.1.2 any lifecycle replacement and maintenance associated with additional works (or changes to the Works) are consistent with the lifecycle and maintenance profile of the Facilities envisaged in Section 4 (*Sub-hubco's Proposals*) of Schedule Part 6 (*Construction Matters*) including (without limitation) in terms of the replacement cycles for equipment, provided that Sub-hubco must reflect improvements in technology that can optimise Whole Life Costs for the Authority; and
 - 4.1.3 the unit costs to be applied to the pricing of lifecycle replacement and maintenance is the equivalent unit rate set out in Part 2 (*Unit Costs of Lifecycle Maintenance*) of Appendix 2 of this Schedule Part 16 (*Change Protocol*) (index linked);
- 4.2 any professional fees, contingencies, overheads and/or profit margins to be charged by any consultant, sub-contractor or supplier in respect of construction and/or installation and/or lifecycle and/or service provision for the Medium Value Change are the equivalent rates set out in Part 3 (*Consultant, Sub-contractor or Supplier Fees*) of Appendix 2 of this Schedule Part 16 (*Change Protocol*), or if the professional fees, contingencies, overheads and profit margins being charged by

consultants, sub-contractors and/or suppliers in current market conditions have changed significantly from those set out in Part 3 (*Consultant, Sub-contractor or Supplier Fees*) of Appendix 2 of this Schedule Part 16 (*Change Protocol*), such other rates as the parties agree or failing agreement as may be determined under the Dispute Resolution Procedure as being consistent with those charged in current market conditions;

- 4.3 unless the Authority's requirements for the Medium Value Change specify a different quality than required by the Service Level Specification, the unit cost of any extension of, or change to, any Service (either in scope or area), taking into account the capacity of existing labour resources, is consistent with the equivalent unit rate set out in Part 4 of Appendix 2 to this Schedule Part 16 (*Change Protocol*);
- 4.4 other than as referred to in paragraphs 4.1 to 4.3 of this Section 3 (*Medium Value Changes*) no charge shall be made in respect of Sub-hubco's time, or that of any Sub-hubco Party spent processing, managing or monitoring the Medium Value Change (and no additional mark up or management fee shall be applied by Sub-hubco); and
- 4.5 where aspects of the Medium Value Change are not addressed by paragraphs 4.1 to 4.4 of this Section 3 (*Medium Value Changes*), they shall be costed on a fair and reasonable basis reflecting the then current market rates.

5 Standards of provision of the Estimate

In providing the Estimate Sub-hubco must:

- 5.1 use reasonable endeavours to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
- 5.2 demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, reasonably foreseeable Changes in Law at that time have been taken into account; and
- 5.3 demonstrate that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Medium Value Change concerned, has been taken into account in the amount which in its opinion has resulted or is required under paragraphs 3.7 and/or 3.8 of this Section 3; and
- 5.4 provide written evidence of Sub-hubco's compliance with paragraphs 5.1 to 5.3 of this Section 3.

6 Determination of the Estimate

As soon as practicable after the Authority receives the Estimate, the parties shall discuss and endeavour to agree the contents of the Estimate. If the parties cannot agree on the contents of the Estimate, the matter may be referred by either party to the Dispute Resolution Procedure to determine if the Estimate represents a fair and reasonable approach to implementing the Medium Value Change in all respects.

7 Confirmation or Withdrawal of the Medium Value Change Notice

- 7.1 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to paragraph 6 of this Section 3, the Authority shall:
 - 7.1.1 confirm in writing to Sub-hubco the Estimate (as modified); or

7.1.2 withdraw the Authority Change Notice.

7.2 If, in any Contract Year, the Authority has either not confirmed an Estimate (as modified, if applicable) within twenty (20) Business Days of the contents of the Estimate having been agreed or determined in accordance with the foregoing provisions of this Section 3 or has withdrawn an Authority Change Notice for a Medium Value Change on three or more occasions, then the Authority shall pay to Sub-hubco on the third and each subsequent such occasion in that Contract Year the reasonable additional Third Party Costs incurred by Sub-hubco in preparing the Estimate provided that:

7.2.1 Sub-hubco has used all reasonable endeavours to submit a reasonably priced Estimate; and

7.2.2 Sub-hubco made available to the Authority, with the Estimate, a cost break down of Third Party Costs incurred by Sub-hubco to prepare the Estimate, which shall be consistent with the estimate of such costs approved by the Authority pursuant to paragraph 2.5 of this Section 3.

8 Implementation of the Medium Value Change

8.1 When the Authority has confirmed the Estimate in accordance with paragraph 7.1 of this Section 3, Sub-hubco shall, subject to Sub-hubco obtaining all new or amended Consents that are required and have not already been obtained, implement the required Medium Value Change in accordance with the Estimate. Where an extension of time has been agreed as part of the Estimate the Phase Completion Date(s) shall be extended as agreed in the Estimate.

8.2 Sub-hubco shall notify the Authority when it considers that the Medium Value Change has been completed.

8.3 If:

8.3.1 Sub-hubco fails to provide a response pursuant to paragraph 2.2 of this Section 3 within fifteen (15) Business Days of the date of the Medium Value Change Notice; or

8.3.2 Sub-hubco fails to provide an Estimate in accordance with paragraph 3 of this Section 3; or

8.3.3 the Authority has confirmed an Estimate but Sub-hubco fails to fully implement the Medium Value Change within ten (10) Business Days after the expiry of the time for implementing the Medium Value Change set out in the Estimate Low Value Change (as such time may be extended for any delay that is, or is equivalent to, a Delay Event);

then, subject to paragraph 14.3 of this Section 3, the Authority may notify Sub-hubco that the Medium Value Change Notice is withdrawn and, following such notification, may procure the implementation of the Medium Value Change without further recourse to Sub-hubco, but the Authority must ensure that the Medium Value Change is carried out in accordance with Good Industry Practice and to the standards that would have applied to Sub-hubco if it had implemented the Medium Value Change.

9 Certification of the Medium Value Change

9.1 Where the Medium Value Change is implemented at the Facilities before the relevant Phase Actual Completion Date, the procedure set out at Clause 17 (*Pre-Completion Commissioning and Completion*) shall apply to the Medium Value Change at the same time as it applies to the original Works.

- 9.2 Where the Medium Value Change is implemented at the Facilities after the relevant Phase Actual Completion Date, and constitutes additional works, the procedure set out and agreed in the Estimate for certifying the completion of the Medium Value Change shall apply to determine whether the Medium Value Change has been completed appropriately.

10 Method of Payment of Authority Contribution

- 10.1 Sub-hubco shall invoice the Authority for Capital Expenditure incurred by Sub-hubco to implement a Medium Value Change according to the payment schedule set out in the Estimate as referred to in paragraph 3.10.
- 10.2 The Authority shall make a payment to Sub-hubco within fifteen (15) Business Days of receipt by the Authority of invoices presented to the Authority (complete in all material respects) in accordance with paragraph 10.1 of this Section 3 accompanied by the relevant evidence (where applicable) that the relevant part of the Medium Value Change has been carried out.

11 Adjustment to Annual Service Payment

Any adjustment to the Annual Service Payment that is necessary due to the implementation of a Medium Value Change shall be calculated in accordance with Section 6 of this Schedule Part 16 (*Change Protocol*).

12 Due Diligence

- 12.1 Sub-hubco shall procure that the Senior Lenders shall not:
- 12.1.1 (in any event) withhold or delay any consents that are required pursuant to the Senior Financing Agreements to a Medium Value Change other than on the basis that the Senior Lenders, acting pursuant to the terms of the Senior Financing Agreements, reasonably believe that one or more of the circumstances set out in paragraphs 1.2.1 to 1.2.6 of this Section 3 apply; or
- 12.1.2 carry out any due diligence (whether funder, legal, technical, insurance or financial) in relation to the carrying out of any Medium Value Change unless either (i) the Medium Value Change in question would result in an adjustment to the Annual Service Payment that, on a full year basis, is in excess of one percent (1%) of the Annual Service Payment in the relevant Contract Year or (ii) the Senior Lenders, acting pursuant to the terms of the Senior Financing Agreements, reasonably believe that one or more of the circumstances set out in paragraphs 1.2.1 to 1.2.6 of this Section 3 apply.
- 12.2 Where not prohibited by paragraph 12.1 of this Section 3, the Senior Lenders may carry out legal, financial, insurance and/or technical due diligence on any proposal for a Medium Value Change. In the event that such due diligence is permitted and required, the parties shall agree a budget for the due diligence not exceeding 5% of the overall value of the Medium Value Change in question unless the parties (acting reasonably) agree otherwise. Any costs incurred by Sub-hubco as a result of the Senior Lenders due diligence shall be reimbursed by the Authority following agreement or determination of the contents of the Estimate within ten (10) Business Days of Sub-hubco submitting an invoice for and evidence of such costs, subject to the invoices being in accordance with the agreed budget.
- 12.3 It is acknowledged that Changes (particularly where they involve a change to the Works or the Facilities) may require authorisation from the insurers under the Required Insurances. Sub-hubco shall notify the relevant insurance broker immediately upon any material Medium Value Change being agreed (materiality

being judged in relation to the size and nature of the scope of the Medium Value Change).

13 Project Documentation

- 13.1 Unless the parties otherwise agree, no changes to the Project Documents shall be made as a result of a Medium Value Change.
- 13.2 Sub-hubco shall, no later than one (1) month following completion of a Medium Value Change, update the as-built drawings and the operating and maintenance manuals as necessary to reflect the Medium Value Change.

14 Disputes

- 14.1 Any dispute concerning any matter referred to in this Section 3 may be referred by either party to the Dispute Resolution Procedure.
- 14.2 Sub-hubco shall not be obliged to implement the Medium Value Change until the dispute has been determined.
- 14.3 The Authority is not entitled to withdraw an Authority Change Notice and procure implementation of a Medium Value Change in respect of which there is a dispute that has been referred to the Dispute Resolution Procedure, unless that dispute has been determined in its favour and Sub-hubco has not confirmed to the Authority in writing within five (5) Business Days of the date of the determination that it will implement and carry out the Medium Value Change in accordance with the determination.

SECTION 4
HIGH VALUE CHANGES

1 High Value Changes

- 1.1 If the Authority requires a High Value Change it must serve an Authority Change Notice on Sub-hubco in accordance with paragraph 2 of this Section 4 (*High Value Changes*).
- 1.2 Sub-hubco shall be entitled to refuse a High Value Change that:
 - 1.2.1 requires the Works and/or the Services to be performed in a way that infringes any law or is inconsistent with Good Industry Practice;
 - 1.2.2 would cause any Consent to be revoked (or would require a new consent to be obtained to implement the relevant change in the Works and/or the Services which, after using reasonable efforts, Sub-hubco has been unable to obtain);
 - 1.2.3 would materially and adversely affect Sub-hubco's ability to deliver the Works and/or the Services (except those Works and/or Services which have been specified as requiring to be amended in the High Value Change Notice) in a manner not compensated pursuant to this Section 4 (*High Value Changes*);
 - 1.2.4 would materially and adversely affect the health and safety of any person;
 - 1.2.5 would, if implemented, materially and adversely change the nature of the Project (including its risk profile);
 - 1.2.6 is the subject of a High Value Change Notice that cannot reasonably be complied with;
 - 1.2.7 the Authority does not have the legal power or capacity to require implementation of; or
 - 1.2.8 would if implemented adversely affect the enforceability or priority of the security held by or on behalf of the existing Senior Lenders.

2 High Value Change Notice

- 2.1 An Authority Change Notice for a High Value Change must:
 - 2.1.1 state that it refers to a High Value Change;
 - 2.1.2 set out the maximum available capital and/or revenue the Authority is able to commit to that High Value Change (the "**Target Cost**");
 - 2.1.3 identify any requirements of the Authority that must be satisfied as part of the High Value Change Proposal (the "**High Value Change Requirements**"); and
 - 2.1.4 identify how the Authority will assess whether the High Value Change Stage 2 Submission offers it value for money.

- 2.2 The parties may agree written protocols with express reference to this Section 4 (*High Value Changes*) which explain or clarify any aspects of the High Value Change approval procedure set out in this Section 4 (*High Value Changes*) and such protocols shall be read as if incorporated into this Section 4 (*High Value Changes*) (including accelerated procedures with reduced requirements for High Value Changes of relatively low values).
- 2.3 The parties must:
- 2.3.1 within five (5) Business Days of receipt by Sub-hubco of any High Value Change Notice, discuss and review the nature of the High Value Change, including a discussion as to which of the items set out in paragraph 3.4 of this Section 4 (*High Value Changes*) are appropriate to be included within the High Value Change Proposal; and
- 2.3.2 within five (5) Business Days of a High Value Change Proposal becoming a Stage 1 Approved Project, discuss and review the nature of the Stage 1 Approved Project, including a discussion as to which of the items set out in paragraph 4.3 of this Section 4 (*High Value Changes*) are appropriate to be included within the High Value Change Stage 2 Submission.

3 High Value Change Proposal

- 3.1 Sub-hubco must notify the Authority in writing as soon as practicable and in any event within fifteen (15) Business Days after having received the Authority Change Notice for a High Value Change if it considers that any of the circumstances set out in paragraphs 1.2.1 to 1.2.8 of this Section 4 (*High Value Changes*) apply. If no such notice is served, Sub-hubco must (within thirty (30) Business Days after having received the Authority Change Notice) either:
- 3.1.1 submit a High Value Change Proposal to the Authority; or
- 3.1.2 notify the Authority as to when the High Value Change Proposal will be provided to it (provided that Sub-hubco shall use all reasonable endeavours to obtain all the information that it requires, expeditiously).
- 3.2 If Sub-hubco notifies the Authority that it considers that one or more of the grounds set out in paragraphs 1.2.1 to 1.2.8 of this Section 4 (*High Value Changes*) apply, then unless the parties otherwise agree, the Authority shall be deemed to have withdrawn the Authority Notice of Change if it has not referred the matter to the Dispute Resolution Procedure within twenty (20) Business Days of receipt of Sub-hubco's notice. If the matter is referred to the Dispute Resolution Procedure the time for Sub-hubco to provide the High Value Change Proposal shall be counted from the date of determination of that dispute if the dispute is determined in Sub-hubco's favour.
- 3.3 If the Authority considers that Sub-hubco's proposed time for providing the High Value Change Proposal is not reasonable, the parties shall endeavour to agree the time, failing which the matter may be referred to the Dispute Resolution Procedure.
- 3.4 Unless Sub-hubco has submitted a High Value Change Proposal in accordance with paragraph 3.1.1 of this Section 4 (*High Value Changes*), Sub-hubco must deliver to the Authority the High Value Change Proposal as soon as reasonably practicable and in any event within the time period agreed or determined pursuant to paragraph 3.3 of this Section 4 (*High Value Changes*). Unless the parties agree otherwise, a High Value Change Proposal will contain at least the following information in sufficient detail to enable the Authority to make an informed decision under paragraph 3.6 of this Section 4 (*High Value Changes*):

- 3.4.1 a description of the High Value Change, with evidence of how the High Value Change meets the High Value Change Requirements;
- 3.4.2 an outline of the proposed building solution and design including an appropriate analysis/risk appraisal of, in each case to the extent relevant (if at all), the preferred investment solution contemplated in terms of new build, refurbishment, whole life costings;
- 3.4.3 the Change Management Fee for the High Value Change, which shall be a capped fee calculated in accordance with paragraph 10 of this Section 4 (*High Value Changes*);
- 3.4.4 details of the third party activity likely to be required by Sub-hubco in developing a High Value Change Stage 2 Submission together with a budget (or budgets) for relative Third Party Costs;
- 3.4.5 an estimated programme for submission of the High Value Change Stage 2 Submission and for the implementation of the High Value Change;
- 3.4.6 any requirement for relief from compliance with obligations, including the obligations of Sub-hubco to achieve a Phase Actual Completion Date by the relevant Phase Completion Date and meet the requirements set out in the Authority's Construction Requirements and/or the Service Level Specification during the implementation of the High Value Change;
- 3.4.7 any impact on the provision of the Works and/or the Services;
- 3.4.8 any amendment required to this Agreement and/or any Project Document as a result of the High Value Change;
- 3.4.9 any Estimated Change in Project Costs that results from the High Value Change;
- 3.4.10 an outline of how Sub-hubco proposes to finance any Capital Expenditure required for the High Value Change;
- 3.4.11 Sub-hubco's suggested payment schedule for any Capital Expenditure to be incurred in implementing the Change that is to be borne by the Authority, based on milestones where relevant;
- 3.4.12 any new Consents and/or any amendments to existing Consents which are required;
- 3.4.13 costs and details of any other approvals required or due diligence permitted pursuant to paragraph 14 of this Section 4 (*High Value Changes*);
- 3.4.14 the proposed method of certification of any construction or operational aspects of the Works or the Services required by the proposed High Value Change if not covered by the procedures specified in Clause 17 (*Pre-Completion Commissioning and Completion*); and
- 3.4.15 a value for money assessment explaining why Sub-hubco's proposals represent value for money taking into account both the proposed Capital Cost and Whole Life Cost.

3.5 **Liaison between Sub-hubco, the Authority and relevant end users**

In developing a High Value Change Proposal Sub-hubco must liaise with the Authority and relevant end users (being such persons or organisations as Sub-hubco in consultation with the Authority considers appropriate). The Authority must provide Sub-hubco with such information about its requirements as Sub-hubco reasonably requires and must assist Sub-hubco in the review of any draft designs in relation to the High Value Change Proposal. Any and all information and other input or feedback provided by the Authority to Sub-hubco, unless expressly stated otherwise by the Authority, will be without warranty and will be provided without prejudice to the Authority's rights under this Section 4 (*High Value Changes*).

3.6 **Consideration of a High Value Change Proposal by the Authority**

The Authority will consider in good faith each High Value Change Proposal put forward by Sub-hubco and the Authority will not unreasonably withhold or delay its consent to a High Value Change Proposal. If, acting reasonably, the Authority finds that any material aspects of the High Value Change Proposal are unsatisfactory to it, it shall notify Sub-hubco of the same and offer reasonable assistance to Sub-hubco to enable it to revise and resubmit the High Value Change Proposal as soon as reasonably practicable.

3.7 **Authority response to a High Value Change Proposal**

If the Authority approves a High Value Change Proposal (including any revised High Value Change Proposal resubmitted pursuant to paragraph 3.5 of this Section 4 (*High Value Changes*)), then it shall be a "**Stage 1 Approved Project**" or be referred to as having received "**Stage 1 Approval**", as the context requires.

3.8 **Sub-hubco not entitled to dispute non-approval**

Sub-hubco shall not be entitled to refer any dispute concerning the Authority's failure to approve a High Value Change Proposal to the Dispute Resolution Procedure.

4 **Stage 2 Submission**

4.1 **Development of a High Value Change Stage 2 Submission**

4.1.1 Within ten (10) Business Days of a High Value Change Proposal having become a Stage 1 Approved Project, the parties shall seek to agree the time period within which Sub-hubco must develop the Stage 1 Approved Project into a detailed submission (the "**High Value Change Stage 2 Submission**"). If the parties are unable to agree a reasonable time period for such submission any dispute may be referred to the Dispute Resolution Procedure.

4.1.2 Following agreement or determination of what is an appropriate time period for submission by Sub-hubco of the High Value Change Stage 2 Submission pursuant to paragraph 4.1.1 of this Section 4 (*High Value Changes*), Sub-hubco shall proceed regularly and diligently to produce and submit the same to the Authority within the agreed or determined time period.

4.2 **Liaison between Sub-hubco, the Authority and relevant end users**

In developing a High Value Change Stage 2 Submission Sub-hubco must continue to liaise with the Authority and relevant end users (being such persons or organisations as the Authority in consultation with Sub-hubco considers

appropriate). The Authority must provide Sub-hubco with such information as to its requirements as is reasonably necessary to enable Sub-hubco to submit a full and complete High Value Change Stage 2 Submission and any such other information as Sub-hubco may reasonably require and must assist Sub-hubco in the review of any draft designs in relation to the Stage 1 Approved Project and in the development of other aspects of the High Value Change Stage 2 Submission (but not where this would involve the Authority incurring additional material expense). Any and all information and other input or feedback provided by the Authority to Sub-hubco will be without warranty and will be provided without prejudice to the Authority's rights under this Section 4 (*High Value Changes*).

4.3 **Content requirements in relation to a High Value Change Stage 2 Submission**

Save where the parties agree otherwise, in relation to the relevant Stage 1 Approved Project, Sub-hubco shall procure that a High Value Change Stage 2 Submission includes (but not be limited to):

- 4.3.1 draft(s) of the relevant Project Document(s) identifying (if relevant) any material changes or amendments proposed in respect of the relevant Stage 1 Approved Project, together with the reasons for any such changes or amendments proposed and including full details of which provisions of the relevant Project Documents will apply to the High Value Change so that it is implemented in equivalent manner and to an equivalent standard as required in respect of the Works and/or Services as appropriate;
- 4.3.2 detailed design solutions (to RIBA Level D);
- 4.3.3 appropriate plans and drawings;
- 4.3.4 relevant detailed planning permissions and any other relevant planning approvals and Consents (or such lesser confirmation or information in relation to planning as may be agreed with the Authority);
- 4.3.5 a proposed revised Financial Model including the detailed price estimates for the Stage 1 Approved Project;
- 4.3.6 an explanation (together with appropriate supporting evidence) as to why the High Value Change Stage 2 Submission meets the Approval Criteria (as defined in paragraph 7 of this Section 4 (*High Value Changes*));
- 4.3.7 confirmation (or details of any requested variations to (with supporting justification)) of the Change Management Fee referred in paragraph 3.4.3 of this Section 4 (*High Value Changes*);
- 4.3.8 the proposed method of certification of any construction aspects of the High Value Change, if not covered by the procedures specified in Clause 17 (*Pre-Completion Commissioning & Completion*);
- 4.3.9 a value for money assessment explaining why Sub-hubco's proposals represent value for money taking into account both the proposed Capital Cost and Whole Life Cost;
- 4.3.10 a timetable and method statement setting out how the relevant High Value Change will be delivered, which shall include (but not be limited to) in so far as relevant:
 - (a) proposals for the effective management of the building programme;

- (b) not used;
 - (c) an assessment as to the savings to be generated by the High Value Change, particularly on staff costs and lifecycle replacement and maintenance and operation of Services;
 - (d) details of the Sub-Contractors together with evidence and explanation of the value testing undertaken by Sub-hubco in relation to the High Value Change;
 - (e) a completed risk register showing the potential risks identified in relation to the delivery of the High Value Change the occurrence of which are capable of adversely affecting the time for completion, cost and/or quality of the project, the probability of such risks occurring and a financial estimate of the most likely consequences of each risk occurring together with the prioritisation of all continuing risks and an action plan in respect of, and risk owners for, all risks prioritised as serious risks;
- 4.3.11 any surveys and investigations and associated reports that are reasonably necessary to ascertain (in relation to Changes involving the construction of additional buildings) information as to the nature, location and condition of the relevant land (including hydrological, geological, geotechnical and sub-surface conditions) together with information relating to archaeological finds, areas of archaeological, scientific or natural interest and (in relation to the refurbishment of any existing buildings) information on the condition and quality of existing structures and, in particular, the presence of any latent defects.

Co-operation of the Authority

- 4.4 The Authority will co-operate with Sub-hubco in relation to any High Value Change Stage 2 Submission being developed by Sub-hubco, including (without limitation) promptly providing:
- 4.4.1 written confirmation of the Target Cost and/or High Value Change Requirements and any change to such Target Cost and/or High Value Change Requirements; and
 - 4.4.2 any information reasonably required by Sub-hubco to enable it to satisfy the requirements of paragraph 4.3 of this Section 4 (*High Value Changes*).

5 Time periods for approval

- 5.1 Each High Value Change Proposal and each High Value Change Stage 2 Submission shall be valid for a period of three (3) months from the date of its submission by Sub-hubco.
- 5.2 If by the end of the three (3) month period referred to in paragraph 5.1 of this Section 4 (*High Value Changes*) the Authority has not:
- 5.2.1 in relation to a High Value Change Proposal, approved or rejected that High Value Change Proposal in accordance with the procedures set out in this Section 4 (*High Value Changes*):
 - (a) Sub-hubco shall be entitled to withdraw the High Value Change Proposal; and

- (b) Sub-hubco shall not be entitled to any costs relating to the High Value Change Proposal unless the Authority has either not responded to the High Value Change Proposal and/or is in material breach of its obligations in paragraph 3 and/or paragraph 4.4 of this Section 4 in which case paragraph 8.5 of this Section 4 (*High Value Changes*) shall apply

5.2.2 in relation to a High Value Change Stage 2 Submission, approved or rejected that High Value Change Stage 2 Submission in accordance with the procedures set out in this Section 4 (*High Value Changes*) (or has not given any notification of the Authority's response to the High Value Change Stage 2 Submission or has given written notice to Sub-hubco withdrawing or cancelling the High Value Change to which the High Value Change Stage 2 Submission relates) then the High Value Change Stage 2 Submission shall be deemed to have been improperly rejected by the Authority and paragraph 8.5 shall apply.

6 **Changes to the High Value Change Requirements or Approval Criteria**

6.1 If the High Value Change Requirements or Approval Criteria are subject to any material variation in relation to a High Value Change by the Authority after the High Value Change Proposal has been submitted then:

6.1.1 Sub-hubco and the Authority shall negotiate in good faith as to the implications on the High Value Change Proposal or High Value Change Stage 2 Submission (as the case may be) and shall seek to agree changes thereto to accommodate the variation (including any change to the Target Cost and/or to the Change Management Fee);

6.1.2 if agreement has not been reached pursuant to paragraph 6.1.1 of this Section 4 (*High Value Changes*) within twenty (20) Business Days (or such longer period as the parties may agree) then:

(a) Sub-hubco shall be entitled by notice in writing to the Authority to withdraw the High Value Change Proposal or the High Value Change Stage 2 Submission (as the case may be) and to be paid the Incurred Change Management Fee with the Calculation Date being the date of the variation notified by the Authority; and

(b) the Authority shall not be entitled to procure the High Value Change without issuing a new Authority Change Notice for the High Value Change and complying with the procedure in this Section 4 (*High Value Changes*) in relation to that High Value Change.

6.1.3 The Authority may, at any time, give notice in writing to Sub-hubco that it proposes to cancel a High Value Change without completing the process set out in this Section 4 (*High Value Changes*) in which case the Authority must pay Sub-hubco the Incurred Change Management Fee in respect of the cancelled High Value Change with the Calculation Date being the date of such notice.

7 **Approval Criteria**

7.1 For the purposes of this Section 4 (*High Value Changes*), Approval Criteria means the criteria against which any Stage 1 Approved Project is to be judged by the Authority in determining whether it achieves Stage 2 Approval. The criteria are:

- 7.1.1 whether the costs of the Stage 1 Approved Project are within the Target Cost notified to Sub-hubco by the Authority;
- 7.1.2 whether it has been demonstrated that the Stage 1 Approved Project provides value for money assessed in accordance with the measures identified by the Authority in accordance with paragraph 2.1.4 of this Section 4 (*High Value Changes*);
- 7.1.3 whether the Authority, acting reasonably, is satisfied that the High Value Change Stage 2 Submission meets the High Value Change Requirements;
- 7.1.4 whether any material changes or amendments to the relevant Project Document(s) as detailed pursuant to paragraph 4.3.1 of this Section 4 (*High Value Changes*) are acceptable to the Authority, acting reasonably; and
- 7.1.5 whether the High Value Change Stage 2 Submission contains all the information required pursuant to paragraph 4.3 of this Section 4 (*High Value Changes*) (or as otherwise agreed by the parties).

8 Submission of the High Value Change Stage 2 Submission to the Authority and consideration of that submission by the Authority

- 8.1 The Authority will consider in good faith High Value Change Stage 2 Submissions submitted by Sub-hubco and the Authority will not unreasonably withhold or delay its consent to a High Value Change Stage 2 Submission. The Authority is entitled to call for such reasonable information and assistance as it considers appropriate to enable it to decide whether the High Value Change Stage 2 Submission meets the Approval Criteria. Sub-hubco must reply promptly to all such requests for further information and assistance.
- 8.2 As soon as reasonably practicable after the submission to it of a High Value Change Stage 2 Submission (including any revised High Value Change Stage 2 Submission re-submitted by Sub-hubco) the Authority must give written notice of whether it:
 - 8.2.1 approves the relevant Stage 1 Approved Project (in which case the Stage 1 Approved Project will be referred to as having received "**Stage 2 Approval**" or as being a "**Stage 2 Approved Project**" or an "**Approved Project**" as the context requires); or
 - 8.2.2 rejects the Stage 1 Approved Project:
 - (a) on the ground that the High Value Change Stage 2 Submission in relation to the relevant Stage 1 Approved Project has failed to meet one or more of the Approval Criteria (except as referred to in paragraph 8.2.2(b)(i) or paragraph 8.2.2(b)(ii)), in which case (subject to resubmission under paragraph 8.2.3) paragraph 8.3 shall apply;
 - (b)
 - (i) because, as a result of any change to the Target Cost referred to in paragraph 2.1.2, the Stage 1 Approved Project is not in fact Affordable despite the High Value Change Stage 2 Submission being within the Target Cost notified by the Authority pursuant to paragraph 2.1.2 of this Section 4 (*High Value Changes*); or

- (ii) because Sub-hubco has failed to meet one or more of the Approval Criteria and the sole reason for that failure is that any Consent identified by Sub-hubco (in compliance with paragraph 3.4.12 of this Section 4 (*High Value Changes*)) has not been obtained; or
- (iii) otherwise on grounds other than those set out in paragraphs 8.2.2(a), 8.2.2(b)(i) and 8.2.2(b)(ii) of this Section 4 (*High Value Changes*),

in which case paragraph 8.5 shall apply.

8.2.3 If the Authority rejects the High Value Change Stage 2 Submission on the grounds set out in paragraph 8.2.2(a) the Authority and Sub-hubco will work together to address the reasons for such failure and attempt in good faith to produce a revised High Value Change Stage 2 Submission for Sub-hubco to re-submit to the Authority.

8.2.4 If:

- (a) a resubmitted High Value Change Stage 2 Submission is rejected by the Authority on the ground set out in paragraph 8.2.2(a) (subject to paragraphs 16.3 to 16.4 (if applicable) of this Section 4 (*High Value Changes*)); or
- (b) no resubmission of the High Value Change Stage 2 Submission is made within 30 Business Days of the date of the notice of rejection (or such longer period as the parties may agree),

then the relevant Stage 1 Approved Project shall be treated as having been properly rejected, the provisions of paragraph 8.3 of this Section 4 (*High Value Changes*) shall apply and neither the Authority nor Sub-hubco will have any further obligations in relation to the relevant High Value Change referred to in the High Value Change Stage 2 Submission.

If a High Value Change Stage 2 Submission is properly rejected by the Authority

8.3 Where this paragraph 8.3 applies (as set out in paragraph 8.2.2(a), paragraph 8.2.4 and paragraph 16.4.2 of this Section 4 (*High Value Changes*)) the Authority shall not be required to reimburse or compensate Sub-hubco in respect of any costs relating to the High Value Change including the Change Management Fee.

8.4 If:

- 8.4.1 Sub-hubco fails to provide a response to an Authority Change Notice in accordance with paragraph 3.1 of this Section 4 (*High Value Changes*); or
- 8.4.2 (where applicable) Sub-hubco fails to provide a High Value Change Proposal in accordance with paragraph 3.4 of this Section 4 (*High Value Changes*); or
- 8.4.3 Sub-hubco fails to submit a High Value Change Stage 2 Submission in accordance with paragraph 4.1.2 of Section 4 (*High Value Changes*); or
- 8.4.4 the Authority has validly rejected a High Value Change Stage 2 Submission in accordance with paragraph 8.2 and the matter has not been referred to the Dispute Resolution Procedure or any such dispute

has been determined as described in paragraph 16.4.2 of this Section 4 (*High Value Changes*),

then, subject to paragraph 17 of this Section 4 (*High Value Changes*) the Authority may notify Sub-hubco that the High Value Change Notice is withdrawn and, following such notification, may procure the implementation of the High Value Change without further recourse to Sub-hubco, but the Authority must ensure that the High Value Change is carried out in accordance with Good Industry Practice and to the standards that would have applied to Sub-hubco if it had implemented the High Value Change.

If a High Value Change Stage 2 Submission is improperly rejected by the Authority

8.5 Where this paragraph 8.5 applies (as set out in paragraph 5.2.1(b), paragraph 5.2.2 paragraph 8.2.2(b) and paragraph 16.4.1)), the Incurred Change Management Fee and Third Party Costs incurred by Sub-hubco to prepare the High Value Change Proposal and Stage 2 Submission, which shall be in accordance with the activities and budget referred to in paragraph 3.4.4 of this Section 4 (*High Value Changes*), in relation to the relevant High Value Change will be paid by the Authority within ten (10) Business Days of the date on which Sub-hubco receives written notice of the rejection or the date of the deemed rejection (as the case may be) with the date of the rejection or the deemed rejection (as the case may be) being the Calculation Date for the purposes of calculating the amount of the Incurred Change Management Fee (unless a different Calculation Date is expressly stated in this Section 4 (*High Value Changes*) in relation to the circumstances giving rise to the entitlement of Sub-hubco to be paid the Incurred Change Management Fee).

9 Information and notifications by the Authority to Sub-hubco and cooperation of the Authority

9.1 The Authority must notify Sub-hubco as soon as it becomes aware of any matter which may have a reasonably foreseeable material adverse effect on the viability of any High Value Change including any:

9.1.1 planning issues likely to cause a material delay in the anticipated programme for the High Value Change or material cost increases; and

9.1.2 changes to funding which the Authority receives or to the way in which funding may be applied, either or both of which may affect whether a High Value Change is Affordable.

9.2 The Authority shall provide reasonable assistance to Sub-hubco in relation to the procurement by Sub-hubco of all relevant Consents.

10 Change Management Fee

The Change Management Fee is to reimburse Sub-hubco for the time spent by its employees in project managing the development, procurement and implementation of the High Value Change and shall:

10.1 be based on actual time spent (validated by time sheets);

10.2 be calculated at the daily rates as set out in Appendix 2 Part 3 to this Schedule Part 16 (*Change Protocol*), but capped at the sum set out in the High Value Change Proposal;

10.3 not include the time of any person who is not employed by Sub-hubco;

10.4 not include any mark-up or profit or additional overheads;

- 10.5 be paid in three stages as follows:
- 10.5.1 on Stage 1 Approval;
 - 10.5.2 on Stage 2 Approval; and
 - 10.5.3 when any works involved in the High Value Change have been completed,

and at each stage Sub-hubco shall charge the Authority (subject to the applicable cap) only for the time incurred by its staff up to completion of that stage.

11 **Implementation of the High Value Change**

Sub-hubco must implement any High Value Change approved by the Authority so as to minimise any inconvenience to the Authority and to the provision of Community Services and in accordance with the Approved Project. Where an extension of time has been agreed as part of the Stage 2 Approval the Phase Completion Date(s) shall be extended as agreed in the Approved Project.

12 **Method of Payment of Authority Contribution**

- 12.1 This paragraph 12 shall apply where Capital Expenditure for an Approved Project is to be funded in whole or part by the Authority.
- 12.2 Sub-hubco shall invoice the Authority for Capital Expenditure incurred by Sub-hubco to implement a High Value Change that is to be borne by the Authority according to the payment schedule set out in the High Value Change Stage 2 Submission as referred to in paragraph 3.4.11 of this Section 4.
- 12.3 The Authority shall make a payment to Sub-hubco within fifteen (15) Business Days of receipt by the Authority of invoices presented to the Authority (complete in all material respects) in accordance with paragraph 12.2 of this Section 4, accompanied by the relevant evidence (where applicable) that the relevant part of the High Value Change has been carried out.

13 **Adjustment to Annual Service Payment**

Any adjustment to the Annual Service Payment which is necessary as a result of the implementation of a High Value Change shall be calculated in accordance with Section 6 of this Schedule Part 16 (*Change Protocol*).

14 **Due Diligence**

- 14.1 Where the Authority is funding the High Value Change, Sub-hubco shall procure that the Senior Lenders shall not withhold or delay any consents which are required pursuant to the Senior Financing Agreements to such High Value Change other than on the basis that the Senior Lenders, acting pursuant to the terms of the Senior Financing Agreements, reasonably believe that one or more of the circumstances set out in paragraphs 1.2.1 to 1.2.8 of this Section 4 (*High Value Changes*) apply.
- 14.2 Where the Authority is not funding the High Value Change, Sub-hubco shall procure that the Senior Lenders do not unreasonably withhold or delay any consents which are required pursuant to the Senior Financing Agreements to such High Value Change other than on the basis that the Senior Lenders, acting pursuant to the terms of the Senior Financing Agreements, reasonably believe that one or more of the circumstances set out in paragraphs 1.2.1 to 1.2.8 of this Section 4 (*High Value Changes*) apply.

- 14.3 The parties agree that the Senior Lenders may carry out legal, financial, insurance and technical due diligence on any proposal for a High Value Change. The parties shall agree a budget for the due diligence provided that the costs may not exceed the lower of (i) 3% of the overall value of the High Value Change in question or (ii) fifty thousand pounds (£50,000) unless, in either case, the parties (acting reasonably) agree otherwise. Any costs incurred by Sub-hubco as a result of the Senior Lenders due diligence will be reimbursed by the Authority following the conclusion of the process in this Section 4 (*High Value Changes*) within ten (10) Business Days of Sub-hubco submitting an invoice for and evidence of such costs, subject to the invoices being in accordance with the agreed budget.
- 14.4 It is acknowledged that High Value Changes (particularly where they involve a change to the Works or the Facilities) may require authorisation from the insurers under the Required Insurances. Sub-hubco shall notify the relevant insurance broker immediately upon any material High Value Change being agreed (materiality being judged in relation to the size and nature of the scope of the High Value Change).
- 14.5 The parties agree that paragraph 14.2 of this Section 4 (*High Value Changes*) of this Schedule Part 16 (*Change Protocol*) does not oblige the Senior Lenders to provide any additional funding for the relevant High Value Change, which shall be in their absolute discretion.

15 Project Documentation

- 15.1 The only changes to the Project Documents or Ancillary Documents to be made as a result of a High Value Change shall be those identified in the Approved Project (subject to any amendments to it agreed by the parties).
- 15.2 Sub-hubco shall, on completion of the Change, update the as-built drawings and the operating and maintenance manuals as necessary to reflect the High Value Change.

16 Disputes

- 16.1 Except as otherwise expressly provided, any dispute concerning any matter referred to in this Section 4 (*High Value Changes*) may be referred by either party to the Dispute Resolution Procedure.
- 16.2 The Authority shall not be entitled to approve a High Value Change Proposal or a High Value Change Stage 2 Submission that is the subject of a dispute until the dispute has been determined.
- 16.3 If the Authority rejects a High Value Change Stage 2 Submission pursuant to the provisions of paragraph 8.2.2(a) of this Section 4, Sub-hubco shall be entitled to refer the matter for consideration under the Dispute Resolution Procedure within ten (10) Business Days after receiving written notice of the Authority's decision.
- 16.4 If, following a referral to the Dispute Resolution Procedure, it is agreed or determined:
- 16.4.1 that the High Value Change rejected by the Authority pursuant to paragraph 8.2.2(a) of this Section 4 met the Approval Criteria the Authority shall either:
- (a) declare that the relevant High Value Change has received Stage 2 Approval and that High Value Change shall proceed; or
 - (b) declare that its rejection of the relevant High Value Change be treated as an improper rejection and that the provisions of

paragraph 8.5 of this Section 4 (*High Value Changes*) shall apply

16.4.2 the High Value Change did not meet the Approval Criteria, save in one of the respects referred to in paragraphs 8.2.2(b)(i) or 8.2.2(b)(ii) the provisions of paragraph 8.3 of this Section 4 (*High Value Changes*) shall apply.

17 The Authority is not entitled to withdraw an Authority Change Notice and procure implementation of a High Value Change in respect of which there is a dispute that has been referred to the Dispute Resolution Procedure, unless that dispute has been determined in its favour and Sub-hubco has not confirmed to the Authority in writing within five (5) Business Days of the date of the determination that it will comply with its obligations under this Section 4 in accordance with the determination.

SECTION 5

SUB-HUBCO CHANGES

- 1 If Sub-hubco wishes to introduce a Sub-hubco Change, it shall serve a notice containing the information required pursuant to paragraph 2 of this Section 5 (*Sub-hubco Changes*) (a "*Sub-hubco Notice of Change*") on the Authority.
- 2 A Sub-hubco Notice of Change shall:
 - 2.1 set out the proposed Sub-hubco Change in sufficient detail to enable the Authority to evaluate it in full;
 - 2.2 specify Sub-hubco's reasons for proposing Sub-hubco Change;
 - 2.3 indicate any implications of Sub-hubco Change;
 - 2.4 indicate what savings, if any, will be generated by Sub-hubco Change, including:
 - 2.4.1 whether a reduction of the Annual Service Payment is; or
 - 2.4.2 whether such savings will be paid to the Authority in a lump sum,in each case giving details in accordance with paragraph 8 of this Section 5 (*Sub-hubco Changes*);
 - 2.5 indicate whether there are any critical dates by which a decision by the Authority is required; and
 - 2.6 request the Authority to consult with Sub-hubco with a view to deciding whether to agree to Sub-hubco Change and, if so, what consequential changes the Authority requires as a result.
- 3 The Authority shall evaluate Sub-hubco Notice of Change in good faith, taking into account all relevant issues, including whether:
 - 3.1 a revision of the Annual Service Payment will occur;
 - 3.2 the Sub-hubco Change may affect the quality of the Services and/or the Works or the likelihood of successful completion of the Works and/or delivery of the Services (or any of them);
 - 3.3 the Sub-hubco Change will interfere with the relationship of the Authority with third parties;
 - 3.4 the financial strength of Sub-hubco is sufficient to perform the Works and/or Services after implementation of Sub-hubco Change;
 - 3.5 the value and/or life expectancy of any of the Facilities will be reduced; or
 - 3.6 the Sub-hubco Change materially affects the risks or costs to which the Authority is exposed.
- 4 As soon as practicable after receiving Sub-hubco Notice of Change, the parties shall meet and discuss the matters referred to in it, including in the case of a Relevant Change in Law those matters referred to in Clause 32.4 of this Agreement. During discussions the Authority may propose modifications to, or accept or reject, Sub-hubco Notice of Change.

- 5 If the Authority accepts Sub-hubco Notice of Change (with or without modification) the parties shall consult and agree the remaining details as soon as practicable and upon agreement the Authority shall issue a notice confirming Sub-hubco Change which shall set out the agreed Sub-hubco Change and:
 - 5.1 shall enter into any documents to amend this Agreement or any relevant Ancillary Document which are necessary to give effect to Sub-hubco Change;
 - 5.2 subject to paragraph 7 of this Section 5 (*Sub-hubco Changes*), the Annual Service Payment shall be revised in accordance with Section 6 (*Changing the Financial Model*) of this Schedule Part 16 (*Change Protocol*); and
 - 5.3 Sub-hubco Change shall be implemented within the period specified by the Authority in its notice of acceptance.
- 6 If the Authority rejects Sub-hubco Notice of Change, it shall not be obliged to give its reasons for such a rejection and Sub-hubco shall not be entitled to reimbursement by the Authority of any of its costs involved in the preparation of Sub-hubco Notice of Change.
- 7 Unless the Authority's written acceptance expressly agrees to an increase in the Annual Service Payment or that Sub-hubco should be entitled to relief from any of its obligations, there shall be no increase in the Annual Service Payment or relief granted from any obligations as a result of a Sub-hubco Change.
- 8 If a Sub-hubco Change causes, or will cause, Sub-hubco's costs or those of a sub-contractor to decrease, there shall be a decrease in the Annual Service Payment such that any cost savings (following deduction of costs reasonably incurred by Sub-hubco in implementing such Sub-hubco Change) will be shared on the basis of fifty per cent (50%) of the saving being retained by Sub-hubco and fifty per cent (50%) of the saving being paid to the Authority as a lump sum within ten (10) Business Days of agreement or determination or by way of revision of the Annual Service Payment pursuant to Section 6 (*Changing the Financial Model*) of this Schedule Part 16 (*Change Protocol*).

SECTION 6

CHANGING THE FINANCIAL MODEL

Procedure

- 1 If a Relevant Event occurs, the Financial Model shall be adjusted in accordance with this Section 6 (*Changing the Financial Model*) of this Schedule Part 16 (*Change Protocol*).

Adjusting the Logic or Formulae

- 2 If it is necessary to make a Logic Adjustment to permit an Input Adjustment or Assumption Adjustment to be made, Sub-hubco shall make such Logic Adjustment only:
 - 2.1 to the extent necessary;
 - 2.2 in accordance with generally accepted accounting principles in the United Kingdom; and
 - 2.3 so as to leave Sub-hubco in no better and no worse a position.
- 3 In order to demonstrate that the conditions in paragraph 2 are met, Sub-hubco shall prepare:
 - 3.1 a run of the Financial Model before making any Assumption Adjustment or Input Adjustment and immediately prior to making the Logic Adjustment; and
 - 3.2 a run of the Financial Model immediately following the Logic Adjustment which shows that Sub-hubco is in no worse and no better a position following the making of the Logic Adjustment.

Adjusting the Assumptions

- 4 Subject to paragraph 5, Sub-hubco may make an Assumption Adjustment so that the Assumptions in the Financial Model reflect:
 - 4.1 reasonable economic assumptions prevailing at the Adjustment Date; and
 - 4.2 reasonably foreseeable changes in the prospective technical performance of the Project arising as a result of the Relevant Event.
- 5 In making Assumption Adjustments, Sub-hubco may make such adjustments only insofar as they relate to the Relevant Event, and such adjustments shall not have effect in relation to any period prior to the Adjustment Date, nor in relation to any aspect of the Project other than the Relevant Event in the period following the Adjustment Date.

Adjusting the Inputs

- 6 Sub-hubco may make Input Adjustments to the extent required to reflect the Estimated Change in Project Costs arising out of the Relevant Event.

Adjusting the Annual Service Payments

- 7 In order to calculate the adjustment to be made to the Annual Service Payments, Sub-hubco shall run the Financial Model after making the Logic Adjustments, the Assumption Adjustments and the Input Adjustments relating to the Relevant Event and permitted by this Section 6 (*Changing the Financial Model*) of this Schedule Part 16 (*Change Protocol*).

so that, following the Relevant Event, it is in no better and no worse a position than it would have been if no Relevant Event had occurred.

- 8 The Annual Service Payments shall be adjusted by such amount as leaves Sub-hubco, following the Relevant Event, in no better and no worse a position than it would have been if no Relevant Event had occurred.

No better and no worse

- 9 Any reference in this Agreement to “no better and no worse” or to leaving Sub-hubco in “no better and no worse a position” shall be construed by reference to Sub-hubco’s:

9.1 rights, duties and liabilities under or arising pursuant to performance of this Agreement, the Funding Agreements, the Construction Contract and Service Contracts; and

9.2 ability to perform its obligations and exercise its rights under this Agreement, the Funding Agreements, the Construction Contract and Service Contracts,

so as to ensure that:

9.3 Sub-hubco is left in a position in relation to the Key Ratios which is no better and no worse in the Post-Adjustment Financial Model than it is in the Pre-Adjustment Financial Model; and

9.4 following the making of the Adjustments, the ability of Sub-hubco to comply with this Agreement is not adversely affected or improved as a consequence of the Relevant Event.

APPENDIX 1

Part 1

Catalogue

The Catalogue is the Catalogue in the Agreed Form.

APPENDIX 1

Part 2

Small Works and Services Rates

The Small Works and Services Rates are the Small Works and Services Rates in the Agreed Form.

APPENDIX 2

Part 1

Unit Cost for Construction or Installation Costs

The Unit Cost for Construction or Installation Costs are the Unit Cost for Construction or Installation Costs in the Agreed Form.

APPENDIX 2

Part 2

Unit Costs for Lifecycle Maintenance

The Unit Costs for Lifecycle Maintenance are the Unit Costs for Lifecycle Maintenance in the Agreed Form.

APPENDIX 2

Part 3

Consultant, Sub-Contractor or Supplier Fees

The Consultant, Sub-Contractor or Supplier Fees are the Consultant, Sub-Contractor or Supplier Fees in the Agreed Form.

APPENDIX 2

Part 4

Unit Costs for Labour Rates

The Unit Costs for Labour Rates are the Unit Costs for Labour Rates in the Agreed Form.

SCHEDULE PART 17

COMPENSATION ON TERMINATION

SECTION 1

COMPENSATION ON TERMINATION FOR AUTHORITY DEFAULT AND VOLUNTARY TERMINATION

1 Compensation on Termination for the Authority Default and Voluntary Termination

1.1 If Sub-hubco terminates this Agreement pursuant to Clause 39 (*Authority Events of Default*) or the Authority terminates this Agreement pursuant to Clause 42.1 the Authority shall pay to Sub-hubco the "**Authority Default Termination Sum**" as set out in paragraph 1.2.

1.2 Subject to paragraphs 1.4 to 1.6 below the Authority Default Termination Sum shall be an amount equal to the aggregate of:

1.2.1 the Base Senior Debt Termination Amount;

1.2.2 Redundancy Payments and Sub-Contractor Losses;

1.2.3 the amount for which the share capital of Sub-hubco and the Subordinated Debt could have been sold on an open market basis based on the Relevant Assumptions;

LESS, to the extent it is a positive amount, the aggregate of without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below:

1.2.4 the value of any right of Sub-hubco to receive insurance proceeds (save where such insurance proceeds are held in the Insurance Proceeds Account and are to be applied in accordance with Clause 53.19 of this Agreement in reinstatement, restoration or replacement or, in the case of any third party legal liability or employer's liability, in satisfaction of the claim, demand, proceeding or liability) or sums due and payable from third parties (but only when received from third parties) but excluding any claims under any Sub-Contracts or claims against other third parties which have not been determined or have been determined but not yet paid provided that in such case Sub-hubco shall assign any such rights and claims under the Sub-Contracts or claims against other third parties to the Authority and give the Authority reasonable assistance in prosecuting such claims;

1.2.5 to the extent realised before the Invoice Date the market value of any other assets and rights of Sub-hubco (other than those transferred to the Authority pursuant to this Agreement) less liabilities of Sub-hubco properly incurred in carrying out its obligations under this Agreement as at the Termination Date provided that no account should be taken of any liabilities and obligations of Sub-hubco arising out of:

(a) agreements or arrangements entered into by Sub-hubco to the extent that such agreements or arrangements were not entered into in connection with Sub-hubco's obligations in relation to the Project; or

(b) agreements or arrangements entered into by Sub-hubco to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms; and

- 1.2.6 amounts which the Authority is entitled to set off pursuant to Clause 46.12 of this Agreement.
- 1.3 To the extent that such assets and rights referred to in paragraph 1.2.5 above are not realised and applied by the Invoice Date, Sub-hubco shall on payment of the Authority Default Termination Sum assign such assets and rights to the Authority.
- 1.4 If the aggregate of the amounts referred to in paragraphs 1.2.1 and 1.2.3 is less than the Revised Senior Debt Termination Amount, then the Authority Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.2.2 LESS the amounts referred to in paragraphs 1.2.4 to 1.2.6 above; provided always that (a) the amount referred to in paragraph 1.2.2 shall only be paid to the extent that Sub-hubco has demonstrated to the reasonable satisfaction of the Authority that the amount will not be applied (in whole or in part) in payment of any Distribution and (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Losses shall be paid in respect of any Sub Contract in circumstances where there is an event of default under such Sub-Contract which would entitle Sub-hubco to terminate such Sub-Contract.
- 1.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and Sub-hubco has wilfully, or through gross negligence failed to comply with its obligations under clause 9.4.4(a) of the Funders' Direct Agreement then in addition to the deduction of the Distribution made pursuant to paragraph v of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Authority Default Termination Sum, provided that the amount of the Authority Default Termination Sum shall never be less than the Revised Senior Debt Termination Amount.
- 1.6 If Sub-hubco has wilfully or through gross negligence failed to comply with its obligations under clause 9.4.4(b) of the Funders' Direct Agreement and there has been an overstatement of the cash balances by Sub-hubco as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Section 1 (Compensation on Termination for Authority Default and Voluntary Termination), then the Authority Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 1.7 The Authority Default Termination Sum shall be payable in accordance with Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*).

SECTION 2

COMPENSATION FOR SUB-HUBCO DEFAULT

- 1 If the Authority terminates this Agreement pursuant to Clause 40 (*Sub-hubco Events of Default*), with the exception of termination pursuant to Clause 40.1.3(b), the Authority shall pay to Sub-hubco such sum as is calculated according to this Section 2 (*Compensation for Sub-hubco Default*) of this Schedule Part 17 (*Compensation on Termination*).

2 RETENDERING ELECTION

- 2.1 The Authority shall be entitled to retender the provision of the Project Operations in accordance with paragraph 3 (*Retendering Procedure*) and the provisions of paragraph 3 (*Retendering Procedure*) shall apply if:

2.1.1 the Authority notifies Sub-hubco on or before the date falling twenty (20) Business Days after the Termination Date that it intends to retender; and

2.1.2 there is a Liquid Market; and either

(a) the Senior Funders have not exercised their rights to step-in under clause 5 (*Representative*) of the Funders' Direct Agreement; or

(b) Sub-hubco or the Senior Funders have not procured the transfer of Sub-hubco's rights and liabilities under this Agreement to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so,

but otherwise the Authority shall not be entitled to re-tender the provision of the Project Operations and paragraph 4 (*No Retendering Procedure*) shall apply.

3 RETENDERING PROCEDURE

- 3.1 The objective of the Tender Process shall be to enter into a New Agreement with a Compliant Tenderer.

- 3.2 The Authority shall (subject to any legal requirements preventing it from doing so) use all reasonable endeavours to complete the Tender Process as soon as practicable.

- 3.3 The Authority shall as soon as reasonably practicable notify Sub-hubco of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, and shall act reasonably in setting such requirements and terms.

- 3.4 Sub-hubco authorises the release of any information by the Authority under the Tender Process which would otherwise be prevented under Clause 61 (*Confidentiality*) that is reasonably required as part of the Tender Process.

- 3.5 For all or any part of a month, falling within the period from the Termination Date to the Compensation Date, the Authority shall pay to Sub-hubco:

3.5.1 the Post Termination Service Amount for each completed month, on or before the date falling ten (10) Business Days after the end of that month; and

- 3.5.2 the Post Termination Service Amount for the period from the end of the last completed month until the Compensation Date, on or before the date falling twenty (20) Business Days after the Compensation Date.
- 3.6 Sub-hubco may, at its own cost, appoint a person to monitor the Tender Process for the purpose of monitoring and reporting to Sub-hubco and the Senior Funders on the Authority's compliance with the Tender Process.
- 3.7 The Tender Process Monitor shall enter into a confidentiality agreement with the Authority in a form acceptable to the Authority and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to the Authority as to compliance with the Tender Process. The Authority shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by Sub-hubco in the event that Sub-hubco refers a dispute as to the Adjusted Highest Compliant Tender Price to the Dispute Resolution Procedure. The Tender Process Monitor will not disclose confidential information to Sub-hubco or the Senior Funders or any other person (and shall provide an undertaking to the Authority to such effect as a condition of his appointment) but shall be entitled to advise Sub-hubco and the Senior Funders on whether it considers that the Authority has acted in accordance with the Tender Process and correctly determined the Adjusted Highest Compliant Tender Price.
- 3.8 If any Post Termination Service Amount is less than zero then it may be carried forward and may be set off against any future positive Post Termination Service Amounts.
- 3.9 The Authority shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under material damage insurance policies and the amount (if any) standing to the credit of the Insurance Proceeds Account on the date that the New Agreement is entered into.
- 3.10 As soon as practicable after tenders have been received, the Authority shall (acting reasonably) review and assess the Compliant Tenders and shall notify Sub-hubco of:
- 3.10.1 the highest Compliant Tender price;
- 3.10.2 the Tender Costs; and
- 3.10.3 its calculation of the Adjusted Highest Compliant Tender Price.
- 3.11 If Sub-hubco refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with Clause 56 (Dispute Resolution), the Authority shall irrespective of such dispute be entitled to enter into a New Agreement.
- 3.12 The Adjusted Highest Compliant Tender Price shall be paid in accordance with Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*).
- 3.13 Subject to paragraphs 1.6 and 1.8 of Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*), if the Authority has not paid an amount equal to the Adjusted Highest Compliant Tender Price to Sub-hubco on or before the date falling two years after the Termination Date then the following provisions of this paragraph 3 shall not apply to that termination and the provisions of paragraph 4 (*No Retendering Procedure*) shall apply instead.
- 3.14 The Authority may elect at any time prior to the receipt of a Compliant Tender, to follow the no retendering procedure under paragraph 4 (*No Retendering Procedure*) by notifying Sub-hubco that this election has been made.

4 NO RETENDERING PROCEDURE

- 4.1 Subject to paragraph 4.2, if the provisions of this paragraph 4 (*No Retendering Procedure*) apply Sub-hubco shall not be entitled to receive any Post Termination Service Amount.
- 4.2 If the Authority elects to follow the no retendering procedure in accordance with this paragraph 4 (*No Retendering Procedure*) after it has elected to follow the procedure under paragraph 3 (*Retendering Procedure*), then the Authority shall continue to pay to Sub-hubco each Post Termination Service Amount until the Compensation Date, in accordance with paragraph 3 (*Retendering Procedure*).
- 4.3 In agreeing or determining the Estimated Fair Value of the Agreement the parties shall be obliged to follow the principles set out below:
- 4.3.1 all forecast amounts of revenues and costs should be calculated in nominal terms at current prices, recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Agreement;
- 4.3.2 the total of all payments of the full Service Payments forecast to be made from the Termination Date to the Expiry Date shall be calculated and discounted at the Discount Rate;
- 4.3.3 the total of all costs reasonably forecast to be incurred by the Authority as a result of termination shall be calculated and discounted at the Discount Rate and deducted from the payment calculated pursuant to paragraph 4.3.2 above, such costs to include (without double counting):
- (a) a reasonable risk assessment of any cost overruns that will arise whether or not forecast in the relevant base case;
 - (b) the costs of providing the Services reasonably forecast to be incurred by the Authority from the Termination Date to the Expiry Date in providing the Project Operations to the standard required; and
 - (c) any rectification costs required to deliver the Project Operations to the standard required (including any costs reasonably forecast to be incurred by the Authority to complete the Works) and additional operating costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs for the purposes of this paragraph) the aggregate of:
 - i. any insurance proceeds received (or held in the Insurance Proceeds Account) or which will be received pursuant to policies maintained in accordance with Clause 53 (*Insurance*); and
 - ii. amounts payable by the Authority in respect of Capital Expenditure under this Agreement which have not been paid,
- in each case such costs to be forecast at a level that will deliver the Services to the standards required by this Agreement.
- 4.4 If the parties cannot agree on the Estimated Fair Value of the Agreement on or before the date falling twenty (20) Business Days after the date on which the Authority elected or was required pursuant to paragraph 2 (*Retendering Election*)

or paragraph 3 (*Retendering Procedure*) to follow the no retendering procedure in accordance with this paragraph 4 (*No Retendering Procedure*), then the Adjusted Estimated Fair Value of the Agreement shall be determined in accordance with Clause 56 (*Dispute Resolution*).

- 4.5 The Adjusted Estimated Fair Value of the Agreement shall be paid in accordance with Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*).

SECTION 3

CONSEQUENCES OF TERMINATION FOR FORCE MAJEURE

1 CONSEQUENCES OF TERMINATION FOR FORCE MAJEURE

- 1.1 If Sub-hubco or the Authority terminates this Agreement pursuant to Clause 31.1 (*Force Majeure*) or Clause 53.14.2, the Authority shall pay to Sub-hubco the "**Force Majeure Termination Sum**" as set out in paragraph 1.2.
- 1.2 Subject to paragraphs 1.4 to 1.6 below the Force Majeure Termination Sum shall be an amount equal to the aggregate of:
- 1.2.1 the Base Senior Debt Termination Amount;
 - 1.2.2 Redundancy Payments and Sub-Contractor Losses (but excluding therefrom any claims for loss of profit);
 - 1.2.3 an amount equal to the Subordinated Debt less an amount equal to the aggregate of payments of interest paid on the Subordinated Debt provided that where such figure is a negative number it shall be instead fixed at zero; and
 - 1.2.4 an amount equal to all amounts paid to Sub-hubco by way of subscription for shares in the capital of Sub-hubco less dividends and other distributions paid to the shareholders of Sub-hubco provided that where such figure is a negative number it shall be instead fixed at zero;

LESS, to the extent it is a positive amount, the aggregate of (without double counting) in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below:

- 1.2.5 the value of any right of Sub-hubco to receive insurance proceeds (save where such insurance proceeds are held in the Insurance Proceeds Account and are to be applied in accordance with Clause 53.19 of this Agreement in reinstatement, restoration or replacement, or in the case of third party legal liability or employer's liability, in satisfaction of the claim, demand, proceeding or liability) or sums due and payable from third parties (but only when received from third parties) but excluding any claims under any Sub-Contracts or claims against other third parties which have not been determined or have been determined but not yet paid provided that in such case Sub-hubco shall assign any such rights and claims under the Sub-Contracts or claims against other third parties to the Authority and give the Authority reasonable assistance in prosecuting such claims;
- 1.2.6 to the extent realised before the Invoice Date, the market value of any other assets and rights of Sub-hubco (other than those transferred to the Authority pursuant to this Agreement) less liabilities of Sub-hubco properly incurred in carrying out its obligations under this Agreement as at the Termination Date provided that no account should be taken of any liabilities and obligations of Sub-hubco arising out of:
 - (a) agreements or arrangements entered into by Sub-hubco to the extent that such agreements or arrangements were not entered into in connection with Sub-hubco's obligations in relation to the Project; and
 - (b) agreements or arrangements entered into by Sub-hubco to the extent that such agreements or arrangements were not entered

into in the ordinary course of business and on commercial arm's length terms; and

- 1.2.7 amounts which the Authority is entitled to set off pursuant to Clause 46.12 of this Agreement.
- 1.3 To the extent that such assets and rights referred to in paragraph 1.2.5 above are not realised and applied pursuant to that paragraph Sub-hubco shall on payment of the Force Majeure Termination Sum assign such assets and rights to the Authority.
- 1.4 If the aggregate of the amounts referred to in paragraphs 1.2.1, 1.2.3 and 1.2.4 is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.2.2 LESS the amounts referred to at paragraphs 1.2.5 to 1.2.7 above; provided always that (a) the amount referred to in paragraph 1.2.2 LESS the amounts referred to at paragraphs 1.2.5 to 1.2.7 above shall only be paid to the extent that Sub-hubco has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid (in whole or in part) in payment of any Distribution and (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Losses shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle Sub-hubco to terminate such Sub-Contract.
- 1.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and Sub-hubco has wilfully, or through gross negligence failed to comply with its obligations under clause 9.4.4(a) of the Funders' Direct Agreement then in addition to the deduction of the Distribution made pursuant to paragraph v of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum shall never be less than the Revised Senior Debt Termination Amount.
- 1.6 If Sub-hubco has wilfully or through gross negligence failed to comply with its obligations under clause 9.4.4(b) of the Funders' Direct Agreement and there has been an overstatement of the cash balances by Sub-hubco as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Section 3 (*Compensation on Termination for Force Majeure*), then the Force Majeure Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 1.7 The Force Majeure Termination Sum shall be paid in accordance with Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*).

SECTION 4

CORRUPT GIFTS AND FRAUD, BREACH OF REFINANCING OR BREACH OF IRR SHARING AND CAP PROVISIONS

1 CONSEQUENCES OF TERMINATION FOR CORRUPT GIFTS AND FRAUD, BREACH OF REFINANCING OR BREACH OF IRR SHARING AND CAP PROVISIONS

1.1 If the Authority terminates this Agreement pursuant to Clause 40.1.3, Clause 44.3 or Clause 45 (*Breach of IRR Sharing and Cap Provisions*) the Authority shall pay to Sub-hubco an amount equal to the Revised Senior Debt Termination Amount;

LESS, to the extent it is a positive number, the aggregate of (without double counting):

1.1.1 the value of any right to receive insurance proceeds (save where such insurance proceeds are held in the Insurance Proceeds Account and are to be applied in accordance with Clause 53.19 of this Agreement in reinstatement, restoration or replacement or, in the case of third party legal liability or employer's liability, in satisfaction of the claim, demand, proceeding or liability) or sums due and payable from third parties (but only when received from third parties) but excluding any claims under any Sub-Contracts or claims against other third parties which have not been determined or which have been determined but not paid provided that in such case Sub-hubco shall assign any such rights and claims under the Sub-Contracts or claims against other third parties to the Authority and give the Authority reasonable assistance in prosecuting such claims; and

1.1.2 to the extent realised before the Invoice Date, the market value of any other assets and rights of Sub-hubco (other than those transferred to the Authority pursuant to this Agreement) less liabilities of Sub-hubco properly incurred in carrying out its obligations under this Agreement as at the Termination Date provided that no account should be taken of any liabilities and obligations of Sub-hubco arising out of:

(a) agreements or arrangements entered into by Sub-hubco to the extent that such agreements or arrangements were not entered into in connection with Sub-hubco's obligations in relation to the Project; and

(b) agreements or arrangements entered into by Sub-hubco to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms.

1.2 To the extent that such assets and rights referred to in paragraph 1.1.2 above are not realised and applied pursuant to that paragraph, Sub-hubco shall, on payment of the sum referred to in paragraph 1.1 above, assign such assets and rights to the Authority.

1.3 The sum referred to in paragraph 1.1 above shall be paid in accordance with Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*).

SECTION 5

GENERAL

1 PAYMENT AND INTEREST

Following termination for Authority Default, Force Majeure, Corrupt Gifts and Fraud, Breach of Refinancing or Breach of IRR Sharing and Cap.

- 1.1 In respect of the termination payments to be made pursuant to any of Section 1 (*Compensation on Termination for Authority Default and Voluntary Termination*), Section 3 (*Compensation on Termination for Force Majeure*), or Section 4 (*Corrupt Gifts and Fraud or Breach of Refinancing or Breach of IRR Sharing and Cap Provisions*) of this Schedule Part 17 (*Compensation on Termination*) as soon as practicable after, and in any event within twenty (20) Business Days of, the Termination Date, Sub-hubco shall give to the Authority an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to the Authority, justifying the amount of the relevant termination sum including a breakdown of each of the individual elements of such sum.
- 1.2 Subject to paragraph 1.3 below, the Authority shall pay to Sub-hubco:
- 1.2.1 the relevant termination amount within forty (40) Business Days of the Invoice Date; and
- 1.2.2 interest on the relevant termination amount (or any part of such amount that remains outstanding) from the Termination Date until the date of payment:
- (a) at the No Default Interest Rate for the period from (but excluding) the Termination Date to (and including) the date which is forty (40) Business Days after the Invoice Date; and
- (b) thereafter, at the Default Interest Rate.
- 1.3 The Authority shall be entitled to pay the amount payable pursuant to Section 3 or Section 4 (as the case may be) of this Schedule Part 17 (*Compensation on Termination*) ("**Termination Sum**") in 4 equal instalments by serving notice on Sub-hubco within thirty (30) Business Days of the Invoice Date, in which case the provisions of paragraph 1.4 shall apply.
- 1.4 In the event that the Authority elects to pay the Termination Sum in instalments pursuant to paragraph 1.3 then:
- 1.4.1 the first such instalment (together with interest thereon calculated pursuant to paragraph 1.4.2 below) shall be due on the first Business Day occurring six (6) months after the date of the Authority's notice served pursuant to paragraph 1.3 above and the remaining instalments (together with interest thereon calculated pursuant to paragraph 1.4.2 below) shall be due, respectively, on the first Business Day occurring twelve (12), eighteen (18) and twenty-four (24) months after the date of such notice; and
- 1.4.2 the Authority shall pay interest on the Termination Sum (or any part of such sum that remains outstanding) from the Termination Date until the date of payment at the No Default Interest Rate.

If the Authority fails to make a payment under paragraph 1.4.1 or 1.4.2 above in full within ten (10) Business Days of the due date for payment, or an Adverse Law

or a Proposal for an Adverse Law is made then the outstanding amount of the Termination Sum shall be immediately due and payable and, thereafter, the Authority shall pay interest on such sum at the Default Interest Rate.

Following Retendering

1.5 Subject to paragraphs 1.6 and 1.8, following a retendering exercise under Section 2 (*Compensation for Sub-hubco Default*) of this Schedule Part 17 the Authority shall pay to Sub-hubco an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling twenty (20) Business Days after the later of:

1.5.1 the date on which the Authority receives the Market Value of the New Agreement from the New Sub-hubco; and

1.5.2 if Sub-hubco has referred a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution pursuant to paragraph 3.11 of Section 2 (*Compensation for Sub-hubco Default*) of this Schedule Part 17, the date on which the dispute is finally determined in accordance with Clause 56 (*Dispute Resolution*),

provided that, to avoid doubt, if the dispute referred by Sub-hubco to dispute resolution (pursuant to paragraph 1.5.2 above) concerns only a proportion of the Adjusted Highest Compliant Tender Price then the Authority shall pay the undisputed proportion of such sum no later than 20 Business Days after the date referred to in paragraph 1.5.1 above (the "**Undisputed Payment Date**") and the Authority shall pay interest to Sub-hubco on any amount of the Adjusted Highest Compliant Tender Price which has been withheld, from the Undisputed Payment Date until the date on which payment is due under paragraph 1.5.2 above at the No Default Interest Rate.

1.6 If the Authority has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify Sub-hubco of this decision and (if the Adjusted Highest Compliant Tender Price is a positive number) pay to Sub-hubco an amount equal to the Adjusted Highest Compliant Tender Price within 20 Business Days of such notification.

1.7 If the Authority fails to pay the Adjusted Highest Compliant Tender Price (or any proportion thereof) by the date on which payment is due in accordance with paragraph 1.5 or paragraph 1.6 above, the Authority shall pay to Sub-hubco interest on such unpaid amount, which shall accrue on such amount at the Default Interest Rate from (but not including) the date on which payment is due in accordance with paragraph 1.5 or paragraph 1.6 above until such amount is paid.

1.8 If the Adjusted Highest Compliant Tender Price is zero or a negative number then, on entering into the New Agreement with the New Sub-hubco, the Authority shall have no obligation to make any payment to Sub-hubco and (if a negative number) an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by Sub-hubco to the Authority on the date of the New Agreement or (where paragraph 1.6 applies) within 20 Business Days of notification from the Authority pursuant to that paragraph.

Following no retendering

1.9 If the Authority follows the no retendering procedure set out in paragraph 4 of Section 2 (*Compensation for Sub-hubco Default*) of this Schedule Part 17 (*Compensation on Termination*) then, subject to paragraph 1.10, the Authority shall pay to Sub-hubco an amount equal to the Adjusted Estimated Fair Value of the Agreement no later than the date falling twenty (20) Business Days after the

Compensation Date together with interest on such amount calculated in accordance with paragraph 1.2.2 above unless the Authority has paid Post Termination Service Amounts pursuant to paragraph 3.5 of Section 2 (*Compensation for Sub-hubco Default*) of this Schedule Part 17 (*Compensation on Termination*).

- 1.10 To the extent that the Adjusted Estimated Fair Value of the Agreement is less than zero, then an amount equal to the Adjusted Estimated Fair Value of the Agreement shall be due and payable by Sub-hubco to the Authority on the Compensation Date.

2 Full and Final Settlement

- 2.1 Any and all sums irrevocably paid by the Authority to Sub-hubco under this Schedule Part 17 (*Compensation on Termination*) will be in full and final settlement of each party's rights and claims against the other for breaches and/or termination of this Agreement and any other Project Document whether under contract, delict, restitution or otherwise but without prejudice to:

2.1.1 any antecedent liability of Sub-hubco to the Authority which the Authority has been unable to set off pursuant to Clause 46.12 of this Agreement;

2.1.2 any antecedent liability of either party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the Authority Default Termination Sum, Adjusted Highest Compliant Tender Price, or Adjusted Estimated Fair Value of the Agreement, the Force Majeure Termination Sum or the Corrupt Gifts Termination Sum as the case may be; and

2.1.3 any liabilities arising in respect of any breach by either party of their obligations under Clause 47.6 of this Agreement which arises or continues after the Termination Date.

- 2.2 If either the Adjusted Highest Compliant Tender Price or (as the case may be) the Adjusted Estimated Fair Value of the Agreement is zero or a negative number the Authority shall be released from all liability to Sub-hubco for breaches and/or termination of this Agreement and any other Project Document whether under contract, delict, restitution or otherwise save for:

2.2.1 any antecedent liability of the Authority which arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining the Adjusted Highest Compliant Tender Price or the Adjusted Estimated Fair Value of the Agreement (as the case may be); and

2.2.2 any liabilities arising in respect of any breach by either party of their obligations under Clause 47.6 of the Agreement which continues after the Termination Date.

3 Costs

The costs and/or expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule Part 17 (*Compensation on Termination*) shall only be such costs and/or expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred and shall only be counted once.

4 Undisputed Amounts

If the calculation of any termination amount is disputed then any undisputed element of that amount shall be paid in accordance with this Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*) and the disputed element shall be dealt with in accordance with Schedule Part 20 (*Dispute Resolution Procedure*).

5 Outstanding Senior Debt Amount

- 5.1 The Authority shall be entitled to rely on the certificate of the Security Trustee as conclusive as to the amount of the Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount (as the case may be) outstanding at any relevant time.
- 5.2 The receipt by the Security Trustee of the Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount or elements thereof (as appropriate) (as the case may be) (and where appropriate any accrued interest or breakage costs as certified in accordance with paragraph 5.1 above) shall discharge the Authority's obligations to pay such sums to Sub-hubco.

SECTION 6

DEFINITIONS

“Adjusted Estimated Fair Value of the Agreement” means the Estimated Fair Value of the Agreement adjusted as follows:

- (a) where in respect of any month or part of a month from the Termination Date to the Compensation Date the Post Termination Service Amount is a negative number, the aggregate of all such negative Post Termination Service Amounts shall be set against and shall reduce the Estimated Fair Value of the Agreement (whether or not such amounts have been set-off by the Authority pursuant to paragraph 3.8 of Section 2 (*Compensation for Sub-hubco Default*) of this Schedule Part 17 (*Compensation on Termination*));

and the aggregate of the following amounts shall be deducted from the Estimated Fair Value of the Agreement:

- (b) the Post Termination Service Amounts actually paid by the Authority to Sub-hubco prior to the Compensation Date;
- (c) the Tender Costs; and
- (d) amounts that the Authority is entitled to set off or deduct;

and the aggregate of the following amounts shall be added to the Estimated Fair Value of the Agreement:

- (e) all credit balances on any bank accounts held by or on behalf of Sub-hubco on the date that the Estimated Fair Value of the Agreement is calculated; and
- (f) any insurance proceeds and other amounts owing to Sub-hubco (and which Sub-hubco is entitled to retain), to the extent not included in (e);

to the extent that:

- i. (e) and (f) have not been directly taken into account in calculating the Estimated Fair Value of the Agreement; and
- ii. the Authority has received such amounts in accordance with this Agreement or such amounts are standing to the credit of the Insurance Proceeds Account;

“Adjusted Highest Compliant Tender Price” means the price offered by the Compliant Tenderer (if any) with the highest tender price, and if no Compliant Tenders are received zero, adjusted as follows:

- (a) where in respect of any month or part of a month from the Termination Date to the Compensation Date the Post Termination Service Amount is a negative number, the aggregate of all such negative Post Termination Service Amounts shall be set against and shall reduce

such highest tender price (whether or not such amounts have been set-off by the Authority pursuant to paragraph 3.8 of Section 2 (*Compensation for Sub-hubco Default*) of this Schedule Part 17 (*Compensation on Termination*));

and the aggregate of the following amounts shall be deducted from such highest tender price:

- (b) the Post Termination Service Amounts actually paid by the Authority to Sub-hubco prior to the Compensation Date;
- (c) the Tender Costs; and
- (d) amounts that the Authority is entitled to set off or deduct,

and the aggregate of the following amounts shall be added to such highest tender price:

- (e) all credit balances on any bank accounts held by or on behalf of Sub-hubco on the date that the highest priced Compliant Tender is received; and
- (f) any insurance proceeds and other amounts owing to Sub-hubco (and which Sub-hubco is entitled to retain), to the extent not included in (e);

to the extent that:

- i. (e) and (f) have not been directly taken into account in that Compliant Tender; and
- ii. the Authority has received such amounts in accordance with this Agreement;

"APB Distribution"

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

"Aviva Breakage Costs"

means:

- (a) on termination of this Agreement pursuant to Clause 39 (Authority Events of Default), the Early Repayment Fee 1;
- (b) on termination of this Agreement pursuant to Clause 42 (Authority Voluntary Termination) the Early Repayment Fee 2; and
- (c) on termination of this Agreement in any other circumstance, zero;

"Base Senior Debt Termination Amount"

means, subject to Clause 4.3:

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that

date, from Sub-hubco to the Senior Funders in respect of Permitted Borrowings (other than in respect of Additional Permitted Borrowing); and

- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs (including the Aviva Breakage Costs), payable by Sub-hubco to the Senior Funders as a result of a prepayment in respect of Permitted Borrowings (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements and the Aviva Breakage Costs only, as a result of termination of this Agreement, subject to Sub-hubco and the Senior Funders mitigating all such costs (other than the Aviva Breakage Costs) to the extent reasonably possible;

less, to the extent it is a positive amount the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below)

- i. any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- ii. all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Funders to Sub-hubco as a result of prepayment of amounts outstanding in respect of Permitted Borrowings (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement;
- iii. all other amounts received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the Authority to Sub-hubco as a result of enforcing any other rights they may have; and
- iv. all credit balances on any bank accounts (but excluding the Insurance Proceeds Account) held by or on behalf of Sub-hubco on the Termination Date;

“Compensation Date”

means either:

- (a) if paragraph 3 (*Retendering Procedure*) of Section 2 (*Compensation for Sub-hubco Default*) of this Schedule Part 17 (*Compensation on Termination*) applies, the earlier of:
 - i. the date that the New Agreement is entered into; and
 - ii. the date on which the Authority pays the Adjusted Highest Compliant Tender Price to Sub-hubco; or
- (b) if paragraph 4 (*No Retendering Procedure*) of Section 2 (*Compensation for Sub-hubco Default*) of this Schedule Part 17 (*Compensation on Termination*) applies, the

date that the Adjusted Estimated Fair Value of the Agreement has been agreed or determined;

- “Compliant Tender”** means a tender that meets all of the Qualification Criteria;
- “Compliant Tenderer”** means a Suitable Substitute Contractor who submits a Compliant Tender;
- “Contingent Liabilities”** **Funding** means any contingent liabilities of the Shareholders in respect of financial obligations owed to Sub-hubco and/or the Senior Funders under the Funding Agreements in relation to the Project which are triggered as a result of or in relation to the termination of the Agreement, including (without limitation) guarantees or letters of credit in respect of Subordinated Debt but excluding any guarantees or letters of credit issued in support of Sub-Contractors' obligations under the relevant Sub-Contracts;
- “Deemed New Agreement”** means an agreement on the same terms and conditions as this Agreement, as at the Termination Date, but with the following amendments:
- a) if this Agreement is terminated prior to the Phase 1 Actual Completion Date, then the period referred to in Clause 40.1.2 shall be extended by a period to allow a New Sub-hubco (had one been appointed) to achieve the Phase 1 Actual Completion Date prior to the Longstop Date;
 - b) any accrued Deductions and/or Warning Notices shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions, be cancelled; and
 - c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date;
- “Discount Rate”** means a discount rate expressed as $[(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A}) * (1 + i) - 1]$
- where:
- “real base case project IRR”** is the real pre-tax real base case period IRR as set out in the Financial Model at Financial Close;
- “i”** is the agreed assumed forecast rate of increase in RPI set out in the Agreement, for the remaining term of the Agreement;
- “Gilt A”** is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Financial Model at Financial Close; and
- “Gilt B”** is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Financial Model as on the Termination Date;
- “Early Repayment Fee”** has the meaning given in the Loan Agreement;

"Early Repayment Fee 1"	means the Early Repayment Fee save that the value of i_m in the relevant formula shall be the gross redemption yield on the Treasury stock having an expiry date as close as possible to the final Repayment Date under the Loan Agreement;
"Early Repayment Fee 2"	means the Early Repayment Fee save that the value of i_m in the relevant formula shall be the gross redemption yield on the Treasury stock having an expiry date as close as possible to the final Repayment Date under the Loan Agreement plus 0.95% per annum being half of the Margin under the Loan Agreement;
"Estimated Fair Value of the Agreement"	means the amount determined in accordance with paragraph 4 (<i>No Retendering Procedure</i>) of Section 2 (<i>Compensation for Sub-hubco Default</i>) of this Schedule Part 17 (<i>Compensation on Termination</i>) that a third party would pay to the Authority as the market value of the Deemed New Agreement;
"Fair Value"	means the amount at which an asset or liability could be exchanged in an arms length transaction between informed and willing parties, other than in a forced or liquidated sale;
"Invoice Date"	means, in respect of the Authority Default Termination Sum, the Force Majeure Termination Sum or the Corrupt Gifts Termination Sum (as appropriate), the date that is the later of: <ul style="list-style-type: none"> (a) the date on which the Authority receives an invoice from Sub-hubco for the relevant termination sum; and (b) the date on which the Authority receives the supporting evidence required pursuant to paragraph 1.1 of Section 5 (<i>General</i>) of this Schedule Part 17 (<i>Compensation on Termination</i>);
"Liquid Market"	means that there are sufficient willing parties (being at least two parties, each of whom is capable of being a Suitable Substitute Contractor) in the market for design, build, finance and maintain contracts or similar contracts for the provision of services (in each case the same as or similar to this Agreement) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Senior Funders specifically for the purposes of the Project and to which this Agreement may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;
"Market Value Availability Deduction Amount"	means for any month or part of a month, an amount equal to the availability deduction that was made to the Monthly Service Payment under paragraph 4 of Section 3 (<i>Deductions from Monthly Service Payment</i>) of Schedule Part 14 (<i>Payment Mechanism</i>) in the month immediately preceding the Termination Date, less an amount equal to any availability deduction that was made for a Functional Area which was unavailable at the Termination Date but which has subsequently become available whether as a result of the Authority incurring Rectification Costs or otherwise;
"Market Value of the Agreement"	means the value of the consideration payable by the New Sub-hubco to the Authority in consideration for the entering into of the New Agreement;

- “Maximum Service Payment”** means one twelfth of the Annual Service Payment payable at any time before any deductions under Section 3 (*Deductions from Monthly Service Payment*) of Schedule Part 14 (*Payment Mechanism*) but allowing for indexation under Section 2 (*Calculations of Service Payment*) of Schedule Part 14 (*Payment Mechanism*);
- “New Agreement”** means an agreement on the same terms and conditions as this Agreement at the Termination Date, but with the following amendments:
- (a) if this Agreement is terminated prior to the Phase 1 Actual Completion Date, then the period referred to in Clause 40.1.2 shall be extended by a period to allow a New Sub-hubco to achieve the Phase 1 Actual Completion Date prior to such date;
 - (b) any accrued Deductions and/or Warning Notices shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions, be cancelled;
 - (c) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
 - (d) any other amendments which do not adversely affect the Sub-hubco;
- “New Sub-hubco”** means the person who has entered or who will enter into the New Agreement with the Authority;
- “No Default Interest Rate”** means the non-default interest rate (from time to time) applicable pursuant to clause 8.1.2 of the Loan Agreement;
- “Post Termination Service Amount”** means for the purposes of paragraph 3 (*Retendering Process*) of Section 2 (*Compensation for Sub-hubco Default*) of this Schedule Part 17 (*Compensation on Termination*), for the whole or any part of a month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Service Payment (pro rata for part of a month) which would have been payable under this Agreement had this Agreement not been terminated, less an amount equal to the aggregate of (without double counting):
- (a) (where relevant) the amount by which the Post Termination Service Amounts for the previous month was less than zero;
 - (b) the Market Value Availability Deduction Amount for that month; and
 - (c) the Rectification Costs incurred by the Authority in that month;
- “Qualification Criteria”** means the criteria that the Authority requires tenderers to meet as part of the Tender Process, which (subject to compliance with procurement regulations) shall be:
- (a) the New Agreement terms;

- (b) tenderers should have the financial ability to pay the capital sum tendered for the New Agreement and the financial ability to deliver the Works and/or the Services (as appropriate) for the price tendered;
- (c) the tenderers may only bid on the basis of a single capital payment to be made on the date of the New Agreement;
- (d) the tenderer is experienced in providing the Services or similar services;
- (e) the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Services; and
- (f) any other tender criteria agreed by the Authority and the Sub-hubco;

“Rectification Costs”

means, for the purposes of any Termination Date that occurs after a Phase Actual Completion Date, an amount equal to the reasonable and proper costs incurred by the Authority in a particular month or part of a month in ensuring that the Services are available;

“Redundancy Payments”

means redundancy payments and other termination payments which are required under Law to be made to employees of Sub-hubco reasonably and properly incurred by Sub-hubco arising as a direct result of terminating this Agreement (provided that Sub-hubco shall use all reasonable endeavours to mitigate its loss) and provided that in calculating such amount no account should be taken of any liabilities and obligations of Sub-hubco arising out of:

- (a) contracts of employment or other agreements or arrangements entered into by Sub-hubco to the extent that such contracts of employment agreements or arrangements were not entered into in connection with the Project; and/or
- (b) contracts of employment or other agreements or arrangements entered into by Sub-hubco to the extent that such contracts of employment agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms;

“Relevant Assumptions”

means the assumptions that the sale of Sub-hubco is on the basis that there is no default by the Authority, that the sale is on a going concern basis, that no restrictions exist on the transfer of share capital, that no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded but that otherwise the actual state of affairs of Sub-hubco and the Project is taken into account;

“Revised Senior Termination Amount”

Debt means, subject to Clause 4.3 and Refinancing:

- (a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional

Permitted Borrowing) Default Interest accrued as at that date, from Sub-hubco to the Senior Funders in respect of Permitted Borrowing; and

- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs (including Aviva Breakage Costs), payable by Sub-hubco to the Senior Funders as a result of a prepayment in respect of Permitted Borrowing, or, in the case of early termination or interest rate hedging arrangements and Aviva Breakage Costs only, as a result of termination of this Agreement subject to Sub-hubco and the Senior Funders mitigating all such costs (other than Aviva Breakage Costs) to the extent reasonably possible;

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):

- i. all credit balances on any bank accounts (but excluding the Insurance Proceeds Account) held by or on behalf of Sub-hubco on the Termination Date;
- ii. any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- iii. all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Funders to Sub-hubco as a result of prepayment of amounts outstanding in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement;
- iv. all other amounts received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the Authority to Sub-hubco as a result of enforcing any other rights they may have; and
- v. all APB Distributions;

“Senior Debt” means the financing provided by the Senior Funders under the Senior Funding Agreements;

“Senior Funding Agreements” has the meaning given in Schedule Part 1 (*Definitions and Interpretation*);

“Sub-Contractor Losses” means:

- (a) the amount reasonably and properly payable by Sub-hubco to the Contractor under the terms of the Construction Contract as a direct result of the termination of this Agreement provided that such amount shall be reduced to the extent that Sub-hubco fails to use all reasonable endeavours to mitigate such amount; and

- (b) the amount reasonably and properly payable by Sub-hubco to the Service Provider under the Service Contract as a direct result of the termination of this Agreement provided that such amount shall be reduced to the extent that Sub-hubco fails to use all reasonable endeavours to mitigate such amount;

provided that in both cases no account should be taken of any liabilities and obligation of Sub-hubco to the Sub-Contractors arising out of:

- i. agreements or arrangements entered into by Sub-hubco and/or the Sub-Contractors to the extent that such agreements or arrangements were not entered into in connection with those parties obligations in relation to the Project; and/or
- ii. agreements or arrangements entered into by Sub-hubco and/or the Sub-Contractors to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms;

“Suitable Contractor”	Substitute	has the meaning given in the Funders' Direct Agreement;
“Subordinated Debt”		means all amounts from time to time outstanding under the Subscription Agreement and the Borrower Loan Notes (each as defined under the Loan Agreement) each forming part of the Initial Funding Agreements;
“Tender Costs”		means the reasonable and proper costs of the Authority incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Agreement;
“Tender Process”		means the process by which the Authority requests tenders from any parties interested in entering into a New Agreement, evaluates the responses from those interested parties and enters into a New Agreement with a new service provider, in accordance with paragraph 3 (<i>Retendering Process</i>) of Section 2 (<i>Compensation for Sub-hubco Default</i>) of this Schedule Part 17 (<i>Compensation on Termination</i>);
“Tender Process Monitor”		means the person appointed under paragraph 3.6 of Section 2 (<i>Compensation for Sub-hubco Default</i>) of this Schedule Part 17 (<i>Compensation on Termination</i>);
“Termination Sum”		has the meaning given in paragraph 1.3 of Section 5 (<i>General</i>) of this Schedule Part 17 (<i>Compensation on Termination</i>).

SCHEDULE PART 18
HANDBACK PROCEDURE

1 DEFINITIONS

In this Schedule Part 18 (*Handback Procedure*) and elsewhere in this Agreement (save where Schedule Part 1 (*Definitions and Interpretations*) provides to the contrary) the following words shall have the following meanings:

- “Handback Works”** means the maintenance works (if any) required to be carried out in respect of the Facilities in order to procure that they will, on the Expiry Date, satisfy the Handback Requirements;
- “Handback Programme”** means the programme for carrying out the Handback Works over the remainder of the Project Term describing the total works to be carried out and the method of carrying out such works during the overall period in which the Handback Works are to be executed;
- “Handback Amount”** means the estimated cost of carrying out the Handback Works.

2 On the Expiry Date, each element of the Facilities shall be in a condition which is:

- 2.1 consistent with due performance by Sub-hubco of the Service Level Specification and the Method Statements; and
- 2.2 consistent with the Facilities and each of the elements of them having been designed and constructed in accordance with the applicable design life requirements set out in the document titled "Schedule Part 18 (Handback Procedure) Paragraph 2.2: Cross references to Design Life specifications" within the Authority's Construction Requirements,

together referred to as (the "**Handback Requirements**").

3 Not less than twenty four (24) months prior to the Expiry Date, Sub-hubco and the Authority's Representative shall conduct a joint inspection of the Facilities.

4 Within twenty (20) Business Days after the completion of the inspection, if it is found that any element of the Facilities is not in a condition consistent with the Handback Requirements, Sub-hubco shall forthwith provide to the Authority's Representative in accordance with Schedule Part 8 (*Review Procedure*):

- 4.1 Sub-hubco's proposal as to the Handback Works;
- 4.2 Sub-hubco's proposal as to the Handback Programme; and
- 4.3 Sub-hubco's estimate of the cost of the Handback Amount.

5 The Authority's Representative may, within twenty (20) Business Days after receipt of the details set out in paragraph 4 from Sub-hubco, raise comments in accordance with paragraph 3 of Schedule Part 8 (*Review Procedure*) on Sub-hubco's proposals and estimate referred to in paragraph 1 above.

- 6 On agreement, or determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*), of the Handback Works, the Handback Programme and/or the Handback Amount (as the case may be), Sub-hubco shall procure that the Handback Works are carried out in accordance with the Handback Programme so as to meet the Handback Requirements. Sub-hubco shall carry out the Handback Works at its own cost notwithstanding that the actual cost of the Handback Works may be higher than the Handback Amount.
- 7 From the date of the agreement (or determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*)) of the matters identified in paragraph 6, the Authority shall be entitled to withhold 15% of each subsequent Monthly Service Payment up to the amount of the Handback Amount (the "**Withheld Amount**") and the provisions of paragraph 11 shall apply. The Authority shall pay such amounts into an interest bearing account in its own name (the "**Retention Fund**").
- 8 Sub-hubco may elect by notice in writing to the Authority within ten (10) Business Days of the agreement (or determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*)) of the matters identified in paragraph 6 to procure the provision of a bond (the "**Handback Bond**") in favour of the Authority (and in a form acceptable to the Authority (acting in its sole discretion)) for an amount equal to the Handback Amount and from a bank or insurance company authorised to carry out business in the United Kingdom, and upon delivery of the same to the Authority, the provisions of paragraph 7 shall not apply.
- 9 Sub-hubco shall carry out the Handback Works to the satisfaction of the Authority's Representative in accordance with Good Industry Practice and in accordance with the Handback Programme so as to meet the Handback Requirements.
- 10 Notwithstanding:
- 10.1 the agreement of the Authority's Representative to any Handback Works, the Handback Programme or the Handback Amount;
- 10.2 the participation of the Authority's Representative in any inspection under this Schedule; and/or
- 10.3 the complete or partial carrying out of the Handback Works,
- Sub-hubco shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works in accordance with the Service Level Specification and Method Statements.
- 11 Where this paragraph 11 applies, if and to the extent that Sub-hubco carries out any material part of the Handback Works in accordance with paragraph 6, Sub-hubco may make a claim for payment for the work carried out. Any such claim shall be accompanied by a certificate by Sub-hubco setting out the works performed and the value of such works. The Authority shall be entitled to require any reasonable further evidence in respect of the valuation of the works. The Authority shall make payment of the amount of a valid claim within twenty (20) Business Days of the date of the claim and shall be entitled to withdraw that amount from the Retention Fund. If at any time the amount in the Retention Fund is insufficient to cover the costs claimed by Sub-hubco, the Authority shall pay the unpaid portion of such valid claim from any amounts which subsequently stand to the credit of the Retention Fund. In the event that the amount remaining in the Retention Fund on the Expiry Date is insufficient to cover Sub-hubco's costs which have not been paid, Sub-hubco shall bear the balance of such costs itself.
- 12 Not later than sixty (60) Business Days before the Expiry Date, Sub-hubco and the Authority's Representative shall conduct a joint inspection of the Facilities. Such inspection shall confirm whether or not the condition of the Facilities is in accordance with paragraph 1 above.

- 13 On, or within ten (10) Business Days after, the Expiry Date, the Authority's Representative shall either:
 - 13.1 issue to Sub-hubco a Handback Certificate and return the Handback Bond or pay any balance standing to the credit of the Retention Fund (as appropriate), to Sub-hubco; or
 - 13.2 notify Sub-hubco of its decision not to issue the Handback Certificate stating the reasons for such decision.
- 14 Any notice given by the Authority's Representative in accordance with paragraph 13.2 shall set out each respect in which the Handback Works have not been completed or the Facilities do not comply with the Handback Requirements and shall state the Authority Representative's estimate of the cost of procuring that the Facilities comply in all respects with the Handback Requirements.
- 15 Sub-hubco may, within ten (10) Business Days after receipt of the notice given in accordance with paragraph 13.2 by notice to the Authority's Representative, object to any matter set out in the Authority's Representative's notice. The notice from Sub-hubco shall give details of the grounds of such objection and shall set out Sub-hubco's proposals in respect of such matters.
- 16 If no agreement is reached between Sub-hubco and the Authority's Representative as to any matter referred to in Sub-hubco's notice given in accordance with paragraph 15 within fifteen (15) Business Days of receipt of that notice by the Authority's Representative, then either Sub-hubco or the Authority's Representative may refer the matter for determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*) as to:
 - 16.1 whether the Facilities comply in all respects with the Handback Requirements; and
 - 16.2 the estimated cost of procuring that the Facilities comply in all respects with the Handback Requirements, where the Facilities do not comply in all respects with the Handback Requirements.
- 17 If it is agreed or determined in accordance with Schedule Part 20 (*Dispute Resolution Procedure*) that the Facilities did not, at the Expiry Date, comply in all respects with the Handback Requirements, Sub-hubco shall pay to the Authority an amount equal to the estimated cost of completing such Handback Works (less, where applicable, any amounts standing to the credit of the Retention Fund at that time) or procuring that the Facilities comply in all respects with the Handback Requirements. Such payment shall be made not later than fifteen (15) Business Days after the estimated cost has been agreed or determined and, upon such payment being received by the Authority, the Authority's Representative shall issue the Handback Certificate and return (where applicable) the Handback Bond to Sub-hubco.

SCHEDULE PART 19

RECORD PROVISIONS

SECTION 1

GENERAL REQUIREMENTS

- 1 Sub-hubco shall retain and maintain all the records (including superseded records) referred to in Section 2 (*Records to be Kept*) of this Schedule Part 19 (*Record Provisions*) in accordance with this Section 1 (*General Requirements*) of this Schedule Part 19 (*Record Provisions*), the requirements of Good Industry Practice, in chronological order, in a form that is capable of audit and at its own expense. Sub-hubco shall make such records available for inspection to the Authority where it has reasonable cause for requiring such records, on giving reasonable notice shall provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Schedule Part 19 (*Record Provisions*).
- 2 Wherever practical, original records shall be retained and maintained in hard copy form. True copies of the original records may be kept by Sub-hubco where it is not practicable to retain original records.
- 3 Those records relating to the Project Operations (including the design, construction, development, enhancement and maintenance of the Facilities) shall be retained for the duration of the Agreement.
- 4 Financial and other records (including without limitation all information provided in support of any Change) shall be retained and maintained by Sub-hubco for a period of at least six (6) years after the end of the Project Term in sufficient detail, in appropriate categories and generally in such a manner to enable Sub-hubco to comply with its obligations under Clause 63.1 and where appropriate to enable the data in such records to be entered into the Financial Model so that the output from the Financial Model (on the basis of such data) can be directly compared with the actual financial cashflow and performance of Sub-hubco.
- 5 Where Sub-hubco wishes to dispose of any records maintained as provided in this Schedule Part 19 (*Record Provisions*) which are more than fifteen (15) years old, or in respect of which the required period for their retention has expired, then Sub-hubco shall notify the Authority and if, within forty (40) Business Days of such notice, the Authority elects to receive certain of those records, then Sub-hubco shall deliver up such records to the Authority in the manner and at the location as the Authority shall reasonably specify, and the costs of retaining those records in safe storage and delivering up the same shall be borne by Sub-hubco.
- 6 Subject to paragraph 5, for a period of not more than six (6) years following the termination for whatever reason of this Agreement, Sub-hubco shall retain in safe storage all such records as are referred to in Section 2 (*Records to be Kept*) of this Schedule Part 19 (*Record Provisions*) which were in existence at the date of termination of this Agreement. On the expiry of such period or at the earlier request of the Authority (and the Parties acknowledge that such a request shall be deemed to have been issued by the Authority upon the occurrence of any of the events set out in Clause 40.1.1 whether prior to or following termination of this Agreement), Sub-hubco shall deliver up all those records (or where those records are required by statute to remain with Sub-hubco or a Contracting Associate of Sub-hubco, copies thereof) to the Authority in the manner and at the location as the Authority shall reasonably specify. The Authority shall make available to Sub-hubco all the records Sub-hubco delivers up pursuant to this paragraph subject to reasonable notice. The costs of retaining those records in safe storage and delivering up the same shall be borne:

- 6.1 by Sub-hubco where the termination arises as a result of a Sub-hubco Event of Default; and
 - 6.2 by the Authority where the termination arises for any other cause.
- 7 Without prejudice to the foregoing, Sub-hubco shall provide the Authority:
 - 7.1 as soon as they may be available and in any event within sixty (60) Business Days after the end of the first six (6) months of each financial year of Sub-hubco which falls during the Project Term, a copy, certified as a true copy by an officer of Sub-hubco, of its unaudited interim accounts and, if appropriate, of consolidated unaudited interim accounts of Sub-hubco, its Subsidiaries and Holding Company (if any) which would (if Sub-hubco were listed on the London Stock Exchange whether or not it is) be required to be sent to shareholders as at the end of and for each such six (6) month period; and
 - 7.2 as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of Sub-hubco but not later than one hundred and thirty (130) Business Days after the end of each accounting reference period of Sub-hubco part or all of which falls in a Contract Year, a copy of Sub-hubco's audited accounts and if appropriate, of the consolidated audited accounts of Sub-hubco and, its Associated Companies (if any), in respect of that period, prepared in accordance with the Companies Act 1985 and generally accepted accounting principles and bases in Scotland, consistently applied together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.
- 8 Sub-hubco shall provide to the Authority on 31 March, 30 June, 30 September and 31 December each year a document listing all information provided by it to the Senior Funders during the preceding three month period and, at the request of the Authority, provide to the Authority any information provided by it to the Senior Funders during the Project Term and any other information relating to the Project that the Authority may reasonably require.
- 9 Any drawings required to be made or supplied pursuant to this Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids and shall conform to British Standards 1192 or 308 or equivalent as appropriate. Where by prior agreement the Authority has agreed to accept microfilm, microfiche or other storage media (which must include secure back up facilities), drawings and other documents shall be made or supplied in such form as has been agreed.
- 10 Upon termination or expiry of this Agreement, and in the event that the Authority wishes to enter into another contract for the operation and management of the Project, Sub-hubco shall (and shall ensure that the sub-contractors will) comply with all reasonable requests of the Authority to provide information relating to Sub-hubco's costs of operating and maintaining the Project.
- 11 Sub-hubco shall use all reasonable endeavours to assist the Authority in its preparation of any report and/or return required pursuant to regulations, directions or guidance applicable to the Authority (in each case as amended, replaced or consolidated from time to time) or as required by external agencies including without limitation, reports and returns regarding the physical condition of the Facilities, health and safety, under the Fire (Scotland) Regulations 2005 and the Fire Safety (Scotland) Regulations 2006, relating to environmental health or required by the Scottish Government or the Scottish Futures Trust from time to time.

SECTION 2

RECORDS TO BE KEPT

- 1 This Agreement, its Schedule and the Project Documents including all amendments to such agreements.
- 2 Sub-hubco shall at all times maintain a full record of particulars of the costs of performing the Project Operations, including those relating to the design, construction, maintenance, operation and finance of the Facilities. This shall require Sub-hubco to keep (and where appropriate to procure that the sub-contractors shall keep) books of account in accordance with best accountancy practice with respect to the Agreement showing in detail:
 - 2.1 administrative overheads;
 - 2.2 payments to Sub-Contractors and to sub-contractors;
 - 2.3 capital and revenue expenditure;
 - 2.4 such other items as the Authority may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of Clause 29.11, Schedule Part 16 (*Change Protocol*) and Clause 32 (*Changes in Law*),and Sub-hubco shall have (and procure that the sub-contractors shall have) the books of account evidencing the items listed in paragraphs 2.1 to 2.4 available for inspection by the Authority (and any expert) upon reasonable notice, and shall present a report of these to the Authority as and when requested.
- 3 All other documents, software or other information expressly referred to in this Agreement.
- 4 Records relating to the appointment and supersession of the Authority's Representative and Sub-hubco's Representative.
- 5 Project Data.
- 6 Documents, drawings, design data or submissions raised in accordance with Schedule Part 8 (*Review Procedure*).
- 7 Documents relating to planning applications, consents, refusals and appeals.
- 8 Records relating to any specialist or statutory inspections of the Facilities, including any roadways.
- 9 Notices, reports, results and certificates relating to completion of the Works and completion of the commissioning activities.
- 10 All operation and maintenance manuals and a full record of all maintenance procedures carried out during the Project Term.
- 11 Documents relating to events of Force Majeure, Delay Events and Relief Events and the consequences of the same.
- 12 All formal notices, reports or submissions made to or received from the Authority's Representative in connection with the provision of Services, the Monitoring of Performance or the availability of the Facilities.
- 13 All certificates, licences, registrations or warranties related to the provision of Services.

- 14 Documents in support of claims for Services Payments.
- 15 Documents submitted in accordance with Schedule Part 16 (*Change Protocol*) and all documents provided in support.
- 16 Documents related to referrals to the Dispute Resolution Procedure.
- 17 Documents related to change in ownership or any interest in any or all of the shares in Sub-hubco and/or hubco.
- 18 Documents relating to the rescheduling of the indebtedness of Sub-hubco or refinancing of the Project.
- 19 Tax invoices and records related to Value Added Tax.
- 20 Financial records, including audited and unaudited accounts of hubco and Sub-hubco and related reports
- 21 Records required by Law (including in relation to Health and Safety matters and health and safety files prepared pursuant to CDM Regulations) and all Consents.
- 22 Documents relating to insurance and insurance claims.
- 23 All other records, notices or certificates required to be produced and/or maintained by Sub-hubco pursuant to this Agreement or any Project Document.
- 24 Records of all persons employed by Sub-hubco or its sub-contractors and who are wholly or mainly engaged in the delivery of Services.

SCHEDULE PART 20

DISPUTE RESOLUTION PROCEDURE

1 The procedure set out in this Schedule Part 20 (*Dispute Resolution Procedure*) shall apply to any dispute, claim or difference arising out of or relating to this Agreement ("**Dispute**") except where it has been excluded from this procedure by an express term of this Agreement.

2 This Dispute Resolution Procedure shall not impose any pre-condition on either party or otherwise prevent or delay either party from commencing proceedings in any court of competent jurisdiction in relation to any Dispute in which that party requires either:

2.1 an order (whether interlocutory or final) restraining the other party from doing any act or compelling the other party to do any act; or

2.2 a decree for a liquidated sum to which there is no stateable defence.

3 MEDIATION

3.1 If the parties have been unable to resolve the Dispute within twenty (20) Business Days of the Dispute arising, they may (if both parties so agree) refer the Dispute to mediation on such conditions as may be agreed between the parties. Any mediation shall be completed within thirty (30) Business Days of such referral and any agreement arising therefrom shall be recorded in writing and signed by the parties and shall be binding and final to the extent set out in such agreement unless otherwise agreed.

3.2 For the avoidance of doubt, mediation shall not be a precondition to the commencement of Adjudication or court proceedings.

4 ADJUDICATION

4.1 Either party may at any time (notwithstanding that other dispute resolution procedures are running concurrently) give the other party to the Dispute notice of its intention to refer the Dispute to adjudication (the "**Notice of Adjudication**"). The party giving the Notice of Adjudication (the "**Referring Party**") shall by the same means of communication send a copy of the Notice of Adjudication to an adjudicator selected in accordance with paragraph 4.2 below or paragraph 4.11 (*Related Adjudicator*) below (the "**Adjudicator**").

4.2 The Adjudicator nominated to consider a Dispute referred to him shall, subject to paragraph 4.11, be selected on a strictly rotational basis from the relevant panel of adjudicators appointed in accordance with the following:

4.2.1 there shall be two (2) panels of adjudicators, one in respect of construction matters (the "**Construction Panel**") and one in respect of operational and maintenance matters (the "**Operational Panel**"). All the adjudicators on each panel shall be wholly independent of Sub-hubco, the Authority, the relevant Sub-Contractor and any of the major competitors of Sub-hubco or the relevant Sub-Contractor;

4.2.2 the Construction Panel shall be comprised of three (3) adjudicators as identified in paragraph 7 (*Panel Members*);

4.2.3 the Operational Panel shall be comprised of three (3) adjudicators as identified in paragraph 7 (*Panel Members*);

- 4.2.4 if any member of either panel resigns during the term of the Agreement, a replacement adjudicator shall be appointed by Sub-hubco and the Authority as soon as practicable;
- 4.2.5 if Sub-hubco and the Authority are unable to agree on the identity of any replacement adjudicator, the Chairman (or Vice Chairman) for the time being of the Chartered Institute of Arbitrators Scottish Branch shall appoint such adjudicator(s) within seven (7) days of any application for such appointment by either party;
- 4.2.6 in the event that the first panel member is unable or unwilling to confirm acceptance of his appointment as Adjudicator or where he fails to respond within two (2) days of the date of the Notice of Adjudication, then the Referring Party shall invite the person next in line to act as Adjudicator. In the event that the second panel member is unwilling or unable to confirm acceptance of his appointment as Adjudicator within four (4) days of the date of the Notice of Adjudication or if the parties disagree as to the relevant panel of adjudicators to be used, then the Referring Party may apply to the Chairman (or Vice Chairman) for the time being of the Chartered Institute of Arbitrators Scottish Branch who shall within seven (7) days of the date of the Notice of Adjudication, nominate an Adjudicator (who shall also within the same period, confirm acceptance of his appointment as Adjudicator) to determine the Dispute described in the Notice of Adjudication;
- 4.2.7 no member of either panel shall be entitled to accept an appointment to act as Adjudicator unless he is willing also to be appointed as the adjudicator to adjudicate any dispute which:
- (a) may arise between Sub-hubco and the Contractor and raises issues which, in the opinion of Sub-hubco, are substantially the same as or connected with the Dispute in relation to which he has been appointed; and/or
 - (b) may arise between Sub-hubco and the Service Provider and raises issues which, in the opinion of Sub-hubco, are substantially the same as or connected with the Dispute in relation to which he has been appointed; and/or
 - (c) may arise between Sub-hubco and the Independent Tester and raises issues which, in the opinion of Sub-hubco, are substantially the same as or connected with the Dispute in relation to which he has been appointed.
- 4.3 The Referring Party shall, within 7 days of the date of the Notice of Adjudication, serve its statement of case (the "**Referral Notice**") on the Adjudicator (appointed pursuant to paragraph 4.2) and the other party to the Dispute (the "**Responding Party**"). The Referral Notice shall set out each element of the Referring Party's claim and the relief or remedy sought in sufficient detail so as to enable the Responding Party to understand and, where appropriate, respond to the claim and the Referral Notice shall be accompanied by copies of, or relevant extracts from, this Agreement and such other documents as the Referring Party intends to rely upon. The date of the referral of the Dispute (the "**Referral**") shall be the date of the Referral Notice.
- 4.4 Within seven (7) days of appointment in relation to a particular Dispute, the Adjudicator shall establish the procedure and timetable for the adjudication. The Adjudicator shall have absolute discretion as to how to conduct the adjudication, including whether a meeting is necessary. He shall establish the procedure and

timetable subject to any limitation within this Agreement. The parties shall comply with any request or direction of the Adjudicator in relation to the adjudication.

- 4.5 The Adjudicator shall reach a decision on the Dispute within twenty-eight (28) days of the date of the Referral (or such other period as the parties may agree). The Adjudicator may extend the period of 28 days by up to 14 days with the consent of the Referring Party. Unless the parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until the Dispute is finally determined by Court proceedings or by an agreement in writing between the parties, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.
- 4.6 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the adjudication, including legal costs and the costs and expenses of any witnesses.
- 4.7 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an adjudicator and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.
- 4.8 The Adjudicator shall act fairly and impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.
- 4.9 All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by Clause 61 (*Confidentiality*), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.
- 4.10 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.
- 4.10A.1 The Adjudicator may on his own initiative or on the request of the Referring Party or Responding Party correct his decision so as to remove a clerical or typographical error arising by accident or omission.
- 4.10A.2 Any correction of a decision shall be made within 5 days of the date upon which the Adjudicator's decision was delivered to the parties.
- 4.10A.3 Any correction of a decision shall form part of the decision.
- 4.11 If any Dispute raises issues which, in the opinion of Sub-hubco, are substantially the same as or connected with issues raised in a dispute or difference arising out of or relating to any other agreement (all such agreements being referred to as the "Related Agreements") between:
- 4.11.1 Sub-hubco and the Contractor;
- 4.11.2 Sub-hubco and the Service Provider; and/or,

4.11.3 Sub-hubco and the Independent Tester,

which was or has been referred to adjudication (the "**Related Adjudication**") and an adjudicator has already been appointed (the "**Related Adjudicator**") then Sub-hubco may request that the Dispute be referred to the Related Adjudicator and paragraphs 4.12 to 4.14 shall apply.

4.12 Subject to paragraphs 4.13 and 4.14 below, in the event that a Related Adjudicator orders that a Dispute under this Agreement be consolidated with a Related Adjudication with which he is dealing under the Related Agreement, then:

4.12.1 with effect from the time of such order, the Dispute shall be determined by the Related Adjudicator, who shall become the Adjudicator; and

4.12.2 such order shall be binding on Sub-hubco and the Authority and both of them shall acknowledge the appointment of the Related Adjudicator as the adjudicator of the Dispute, with Sub-hubco or the Authority (as the case may be) using its best endeavours to procure that the third party who is a party to the Related Agreement shall with effect from the time of such order comply with the requirements of the Related Agreement (including if applicable any requirement or direction of the Related Adjudicator appointed under such Related Agreement) as to the future conduct of the determination of the Dispute and the Related Adjudication; and

4.12.3 notwithstanding paragraph 4.6, Sub-hubco and the Authority shall be jointly responsible with the third party who is a party to the Related Agreement for the Related Adjudicator's fees and expenses including those of any specialist consultant appointed under the adjudication procedure in the Related Agreement, in respect of the period in which the Dispute is consolidated with the Related Adjudication pursuant to an order of the Related Adjudicator ("**Consolidated Adjudication Costs**"). Sub-hubco and the Authority agree that the Related Adjudicator shall have the discretion to make directions to require Sub-hubco, the Authority and the third party who is a party to the Related Agreement to pay or make contribution to the Consolidated Adjudication Costs in different proportions. If no such directions are made, Sub-hubco, the Authority and the third party who is a party to the Related Agreement shall bear the Consolidated Adjudication Costs in equal shares, and if Sub-hubco, the Authority or the third party has paid more than such equal share, that party or third party shall be entitled to a contribution from the other party, parties or third party, as the case may be.

4.13 Notwithstanding anything to the contrary a Dispute under this Agreement may only be consolidated with a Related Adjudication, if the Related Adjudicator receives particulars of the Dispute within ten (10) days of the referral of the Related Adjudication to the Related Adjudicator under the Related Agreement.

4.14 Where Sub-hubco requests that a Dispute under this Agreement be consolidated (in terms of paragraph 4.11) with a Related Adjudication and heard by the Related Adjudicator, the Dispute may only be consolidated where the Authority has previously consented in writing to the identity of the Related Adjudicator appointed in respect of the Related Adjudication. The Authority's consent to such request shall not be unreasonably withheld and if the Authority refuses to consent, it must give reasons in writing for its refusal. Should the Authority fail to respond within two (2) days of receipt of such a request it shall be deemed to have consented to the appointment of the Related Adjudicator. Where the Related Adjudicator is on the Construction Panel or Operational Panel at the time of the Referral then the Authority shall be deemed to have consented to the appointment of the Related Adjudicator.

5 **COURT PROCEEDINGS**

Subject to paragraph 4 (*Adjudication*) all Disputes, to the extent not finally resolved pursuant to the procedures set out in the foregoing provisions of this Schedule Part 20 (*Dispute Resolution Procedure*), shall be referred to the Court of Session in Edinburgh.

6 **SUBMISSIONS IN RELATION TO ADJUDICATION**

6.1 If any Dispute raises issues which relate to:

6.1.1 any dispute between Sub-hubco and the Contractor arising under the Construction Contract or otherwise affects the relationship or rights of Sub-hubco and/or the Contractor under the Construction Contract (the "**Construction Contract Dispute**"); or

6.1.2 any dispute between Sub-hubco and the Service Provider arising under the Service Contract or otherwise affects the relationship or rights of Sub-hubco and/or the Service Provider under the Service Contract (the "**Service Contract Dispute**"); or

6.1.3 any dispute between Sub-hubco and the Independent Tester arising under the Independent Tester Contract or otherwise affects the relationship or rights of Sub-hubco and/or the Independent Tester under the Independent Tester Contract (the "**Independent Tester Contract Dispute**"),

then Sub-hubco may include as part of its submissions made to the Adjudicator submissions made by the Contractor or by the Service Provider or the Independent Tester as appropriate.

6.2 Any submissions made by the Contractor or the Service Provider or the Independent Tester shall:

6.2.1 be made within the time limits applicable to the delivery of submissions by Sub-hubco to the Adjudicator; and

6.2.2 concern only those matters which relate to the Dispute between the Authority and Sub-hubco arising out of this Agreement or in connection therewith.

6.3 Where the Contractor or the Service Provider or the Independent Tester makes submissions in any reference before the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third by the Authority and two-thirds by Sub-hubco.

6.4 The Authority shall have no liability to the Contractor or the Service Provider or the Independent Tester arising out of or in connection with any decision of the Adjudicator or in respect of the costs of the Contractor or the Service Provider or the Independent Tester in participating in the resolution of any Dispute under this Agreement.

6.5 Sub-hubco shall not allow the Contractor or the Service Provider or the Independent Tester access to any Confidential Information relevant to the issues in dispute between the Authority and Sub-hubco save where:

6.5.1 the Confidential Information is relevant also to the issues relating to the Construction Contract Dispute or the Service Contract Dispute or the Independent Tester Contract Dispute as the case may be; and

6.5.2 Sub-hubco has first delivered to the Authority a written undertaking from the Contractor and/or the Service Provider and/or the Independent Tester (as appropriate) addressed to the Authority that they shall not use any such Confidential Information otherwise than for the purpose of the dispute resolution proceedings under this Agreement and that they shall not disclose such Confidential Information to any third party other than the Adjudicator or the courts or any professional adviser engaged by the Contractor or the Service Provider or Independent Tester (as appropriate) to advise in connection with the Dispute.

7 **PANEL MEMBERS**

The panel members referred to in paragraph 4 are as follows:

Construction Panel John Hunter, Hunter Consulting

Alex Warrander, FTI Brewer Consulting

Bryan Porter, The Strone, Blairgowrie Road, Dunkeld PH8 0EP

Operational Panel Herriot Currie QC

Gordon Reid QC

James McNeil QC

8 **NO LOSS**

Where the Authority would otherwise be expressly liable to make payment to Sub-hubco of sums which include amounts payable in turn by Sub-hubco to any Sub-Contractor, the Authority shall not be entitled to withhold, reduce or avoid any such payment to Sub-hubco in reliance only on the fact that the amount which is due from Sub-hubco to the Sub-Contractor or the entitlement of the Sub-Contractor to payment of such amount as a result of the circumstances giving rise to the Authority's obligation to pay, is conditional on the entitlement of, or receipt of payment by Sub-hubco from the Authority.

9 **CONTINUING OBLIGATIONS**

Unless this Agreement has already been repudiated or terminated, the parties shall, (notwithstanding that any Dispute is subject to the Dispute Resolution Procedure set out in this Schedule Part 20 (*Dispute Resolution Procedure*)), continue to carry out their obligations in accordance with this Agreement.

SCHEDULE PART 21

SUB-HUBCO INFORMATION

SECTION 1

SUB-HUBCO INFORMATION

Name : hub North Scotland (Wick) Limited
Date of Incorporation : 6 February 2014
Registered number : SC469278
Registered office : Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE

Directors :

Name	Address
Mark Baxter (C Director)	18 Galachlaw Shot, Edinburgh, EH10 7JF
Gavin MacKinlay (C Director)	22 Lakeside, Irthlingborough, Northamptonshire NN9 5SW
Paul McGirk (C Director)	2 Blair Place, Kirkcaldy, KY2 5SQ
Andrew Bruce (A Director)	147 Constitution Street, Midlothian, EH6 7AD
Gerald Donald (B Director)	4 Craiglea Mews, Aberdeen, Aberdeenshire, AB15 7XZ
John Hope (alternate A Director)	17 Craigielaw Park, Aberlady, Longniddry, East Lothian, EH22 0PR
Hugh Murdoch (alternate B Director)	43 Beaconfields Place, Aberdeen, AB15 4AB

Secretary : None

Subsidiary undertakings at
the date of this Agreement : None

Authorised and issued share
capital at the date of this
Agreement :

Name and address of registered holder	Number and class held	Amount paid up
Hub North Scotland Limited	1000 ordinary shares of £1.00 each	£1,000

Loan Stock at the date of this Agreement issued as follows:

Name and address of registered holder	Nominal value of Loan stock
Scottish Futures Trust Investments Limited	£1,568,509
GT (North Hub) Investments Limited	£ 1,176,382
Sweett Equitix Limited	£1,176,382

Loan Stock Provisions : As per the relevant Initial Funding Agreement

SECTION 2

HUBCO INFORMATION

Name : Hub North Scotland Limited

Date of Incorporation : 21 December 2010

Registered number : SC390666

Registered office : Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE

Directors :

Name	Address
Mark Baxter (C Director)	18 Galachlaw Shot, Edinburgh, EH10 7JF
Gavin MacKinlay (C Director)	22 Lakeside, Irthlingborough, Northamptonshire NN9 5SW
Paul McGirk (C Director)	2 Blair Place, Kirkcaldy, KY2 5SQ
Andrew Bruce (A Director)	147 Constitution Street, Midlothian, EH6 7AD
Gerald Donald (B Director)	4 Craiglea Mews, Aberdeen, Aberdeenshire, AB15 7XZ
John Hope (alternate A Director)	17 Craigielaw Park, Aberlady, Longniddry, East Lothian, EH22 0PR
Hugh Murdoch (alternate B Director)	43 Beaconfields Place, Aberdeen, AB15 4AB

Secretary : ACP: North Hub Limited

Subsidiary undertakings at the date of this Agreement : Aberdeen Community Health Care Village Limited
hub North Scotland (FWT) Limited
hub North Scotland (Alford) Limited
hub North Scotland (Wick) Limited

Authorised and issued share capital at the date of this Agreement : 170 shares

Name and address of registered holder	Number and class held	Amount paid up
Scottish Futures Trust Investments Limited	17 Ordinary A shares	£1.00
Aberdeen City Council	3 Ordinary B shares	£1.00

Aberdeenshire Council	3 Ordinary B shares	£1.00
Argyll and Bute Council	3 Ordinary B shares	£1.00
Comhairle nan Eilean Siar	3 Ordinary B shares	£1.00
Grampian Health Board	3 Ordinary B shares	£1.00
Scottish Police Authority	6 Ordinary B shares	£1.00
Scottish Fire and Rescue Service	6 Ordinary B shares	£1.00
Highland Health Board	3 Ordinary B shares	£1.00
The Moray Council	3 Ordinary B shares	£1.00
Orkney Health Board	3 Ordinary B shares	£1.00
Orkney Islands Council	3 Ordinary B shares	£1.00
Shetland Health Board	3 Ordinary B shares	£1.00
The Highland Council	3 Ordinary B shares	£1.00
Western Isles Health Board	3 Ordinary B shares	£1.00
Shetland Islands Council	3 Ordinary B shares	£1.00
ACP: North Hub Limited	102 Ordinary C shares	£1.00

Loan Stock at the date of this Agreement issued as follows:

Name and address of registered holder	Nominal value of Loan stock
N/A	

Loan Stock Provisions : N/A

SCHEDULE PART 22

CERTIFICATES

Handback Certificate

Issued by: Authority's Representative

Address: []

Authority: The Highland Council

Address: Glenurquhart Road, Inverness IV3 5NX

Sub-hubco: [SUB-HUBCO]

Address: []

Issue date:

Works :

Situated at :

Design Build Finance and Maintain Agreement dated:

I/we certify that the condition of the Facilities is in accordance with paragraph 1 of Schedule Part 18 (*Handback Procedure*) of above mentioned Design Build Finance and Maintain Agreement.

To be signed by or for the issuer named above.

Signed.....

The Highland

Council

***Certificate of Practical Completion in respect of a Phase**

Issued by: Independent Tester – []

Address: []

Sub-hubco: **[SUB-HUBCO]**

Address: []

Authority: The Highland Council

Address: Glenurquhart Road, Inverness IV3 5NX

Contractor: **[CONTRACTOR]**

Address: []

Issue date:

Phase:

Situated at:

Design Build Finance and Maintain Agreement dated:

Under the terms of the above-mentioned Design Build Finance and Maintain Agreement,
I/we certify that the Phase Actual Completion Date of the Works relating to Phase [] was achieved on
[].

To be signed by or for the issuer named above.

Signed.....

[INDEPENDENT TESTER]

***Commissioning Completion Certificate in respect of a Phase**

Issued by: Independent Tester – []

Address: []

Sub-hubco: **[SUB-HUBCO]**

Address: []

Authority: The Highland Council

Address: Glenurquhart Road, Inverness IV3 5NX

Contractor: **[CONTRACTOR]**

Address: []

Issue date:

Phase:

Situated at:

Design Build Finance and Maintain Agreement dated:

Under the terms of the above-mentioned Design Build Finance and Maintain Agreement,

I/we certify that the Phase Actual Commissioning End Date relating to Phase [] was achieved on [].

To be signed by or for the issuer named above.

Signed.....
[INDEPENDENT TESTER]

SCHEDULE PART 23

REFINANCING

Requirement for Authority Consent

- 1 Sub-hubco shall obtain the Authority's prior written consent to any Qualifying Refinancing and both the Authority and Sub-hubco shall at all times act in good faith with respect to any Refinancing.
- 2 The Authority shall be entitled to receive:
 - 2.1 a 90% share of the Margin Gain arising from any Qualifying Refinancing which gives rise to a reduction in the Margin from the Margin as shown in the Senior Funding Agreements as at Financial Close (or, in the case of a second or subsequent Qualifying Refinancing, from the Margin as shown in the Senior Funding Agreements as updated at the immediately preceding Qualifying Refinancing); and;
 - 2.2 a share of any Refinancing Gain (arising otherwise than from a reduction in Margin) from a Qualifying Refinancing in respect of any Refinancing Gain (when considered in aggregate with all previous Qualifying Refinancings) as follows:
 - 2.2.1 for a Refinancing Gain from £1 up to £1 million, a 50% share;
 - 2.2.2 for a Refinancing Gain from £1 million up to £3 million, a 60% share; and
 - 2.2.3 for a Refinancing Gain in excess of £3 million, a 70% share.
- 3 The Authority shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater share of the Refinancing Gain than that specified in paragraph 2 above.

Sub-hubco Details

- 4 Sub-hubco shall promptly provide the Authority with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. The Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with the Refinancing whether that Refinancing is a Qualifying Refinancing or not.

Receipt of Gain

- 5 The Authority shall have the right to elect to receive its share of any Refinancing Gain (including any Margin Gain) as:
 - 5.1 a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;
 - 5.2 a reduction in the Annual Service Payments over the remaining term of this Agreement; or
 - 5.3 a combination of the above.

Method of Calculation

- 6 The Authority and Sub-hubco will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain (including any Margin Gain) and payment of the

Authority's share of the Refinancing Gain (taking into account how the Authority has elected to receive its share of the Refinancing Gain under paragraph 5 (*Receipt of Gain*) above). If the parties fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Authority's share, the dispute shall be determined in accordance with Schedule Part 20 (*Dispute Resolution Procedure*).

Costs

- 7 The Refinancing Gain (including any Margin Gain) shall be calculated after taking into account any breakage costs necessary to facilitate the Qualifying Refinancing together with the reasonable and proper professional costs that each party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Authority will be paid to the Authority by Sub-hubco within twenty eight (28) days of any Qualifying Refinancing. Such costs shall be allocated pro rata between the Margin Gain (if any) and the remaining Refinancing Gain.
- 8 Without prejudice to the other provisions of this Schedule Part 23 (*Refinancing*), Sub-hubco shall:
 - 8.1 notify the Authority of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same; and
 - 8.2 include a provision in the Funding Agreements (other than the Subordinated Funding Agreements) whereby it is entitled to be informed of any proposals which the Senior Funders may have to refinance the Funding Agreements (other than the Subordinated Funding Agreements).
- 9 In relation to a Qualifying Refinancing:
 - 9.1 which is not a Restructuring Transfer under paragraph 10 (*Project Restructuring*) of this Schedule Part 23; and
 - 9.2 where as part of that Qualifying Refinancing, Sub-hubco's leasehold interest in the Site is no longer required as security to fund the Project, such leasehold interest is surrendered by Sub-hubco,

the Authority's share of any Margin Gain and/or Refinancing Gain shall be increased by an amount equal to the Net Tax Adjustment provided that the Authority's share shall not exceed the Margin Gain and/or Refinancing Gain (as the case may be), where the "Net Tax Adjustment" is the net amount of any increased or reduced tax payable by Sub-hubco and the Authority arising from any change in the tax treatment of the Project, including but not limited to increased corporation tax deductions which may be available, and the surrender of Sub-hubco's leasehold interest in the Site, in each case occurring as a result of or in consequence of the Qualifying Refinancing.

10 Initial Approval Stage

- 10.1 If at any time during the Project Term, Sub-hubco becomes aware that the Senior Funder is able to offer loan facilities for PFI, PPP, NPD and/or hub accommodation projects the same or substantially similar to this Project on a basis which does not require security over any heritable or leasehold interest in real property of the Project, Sub-hubco shall promptly notify the Authority of the same. Where Sub-hubco notifies the Authority as set out in this paragraph 10.1, or the Authority becomes aware without notice from Sub-hubco, the Authority may issue a Restructuring Notice. Following the issue of a Restructuring Notice, Sub-hubco shall (subject to the terms of this paragraph 10) provide the Senior Funder with a copy of such Restructuring Notice and consult with the Senior Funder with a view to assessing whether a Restructuring Transfer has a reasonable prospect of being approved by the Senior Funder.

- 10.2 Following receipt of a Restructuring Notice and the consultation described in paragraph 10.1, Sub-hubco shall procure that the Senior Funder shall consider in good faith the Restructuring Notice and, at its discretion (acting reasonably), shall:
- 10.2.1 issue to Sub-hubco a Senior Funder Initial Approval Notice; or
 - 10.2.2 notify Sub-hubco in writing that it does not consider a Restructuring Transfer to be suitable in the circumstances and does not intend to provide a Senior Funder Initial Approval Notice, and in such instance Sub-hubco shall procure that the Senior Funder shall:
 - (a) provide Sub-hubco with a brief summary of the reason(s) for not providing a Senior Funder Initial Approval Notice; and
 - (b) the Senior Funder shall be under no obligation to consider any further representations from either Sub-hubco or the Authority in relation to such Restructuring Notice,
- provided always that the Senior Funder may (acting reasonably) withdraw such Senior Funder Initial Approval Notice at any time prior to the submission to the Senior Funder of a Restructuring Proposal, providing reasons for the withdrawal, without incurring any liability to either Sub-hubco or the Authority, and following such withdrawal Sub-hubco and the Authority shall immediately discontinue any action resulting from such Senior Funder Initial Approval Notice.
- 10.3 Subject to the Senior Funder providing Sub-hubco with a Senior Funder Initial Approval Notice, Sub-hubco shall:
- 10.3.1 liaise with the Senior Funder to discuss the potential terms of a Restructuring Transfer;
 - 10.3.2 consider any impact (including any tax implications) such a Restructuring Transfer may have on the Senior Funder and notify the Senior Funder if it believes (acting reasonably) that such a Restructuring Transfer has or may have an adverse effect on the Senior Funder's rights and obligations under the Credit Agreement; and
 - 10.3.3 use reasonable endeavours to seek from HMRC any consents or clearance in relation to both Sub-hubco and the Senior Funder's taxation position arising from Sub-hubco or the Senior Funder giving effect to the Restructuring Transfer.
- 10.4 The Authority and Sub-hubco jointly shall in consultation with the Senior Funder carry out and agree an initial assessment as to viability, benefits and likely costs of undertaking a Restructuring Transfer (the "Initial Assessment") and Sub-hubco shall procure that the Senior Funder shall use reasonable endeavours to provide such information as is reasonably requested to enable the Authority and Sub-hubco to consider fully the Initial Assessment.
- 10.5 The Authority shall:
- 10.5.1 consider any impact such a Restructuring Transfer has on the Authority and notify Sub-hubco if it believes (acting reasonably) that such a Restructuring Transfer has or would have a material adverse effect on the Authority's rights and obligations under this Agreement; and
 - 10.5.2 as a result of an Initial Assessment, notify Sub-hubco as to whether it wishes to either proceed with the Restructuring Transfer in accordance with paragraph 10.6 or withdraw the Restructuring Notice.

Restructuring Proposal Stage

- 10.6 If the Authority approves the Initial Assessment, Sub-hubco and the Authority shall together in good faith seek to agree terms by which a Restructuring Transfer can be implemented (the "Restructuring Proposal").
- 10.7 The Restructuring Proposal shall include the following conditions as a minimum:
- 10.7.1 maintain a post-tax nominal blended equity IRR equal to the higher of the Threshold Equity IRR and the projected post-tax nominal blended equity IRR immediately prior to the Restructuring Transfer;
 - 10.7.2 input any amendments to funding terms into a new financial model which shall also take account of:
 - (a) the resulting revised tax and accounting treatment;
 - (b) any costs which it is agreed pursuant to paragraph 10.12 shall be included within the financial model; and
 - (c) any Funder break costs (including for the avoidance of doubt any early repayment fee) arising out of or in connection with the Restructuring Transfer;
 - 10.7.3 acknowledge the requirement to terminate the Leases and identify any required amendment to or replacement of the Project Agreement, the Funders' Direct Agreement or existing Project Documents;
 - 10.7.4 leave Sub-hubco, any relevant Sub-hubco Party and the Senior Funder in a no better and no worse position had the Restructuring Transfer not occurred; and
 - 10.7.5 ensure that 100% (one hundred per cent) of any reduction to the Annual Service Payment shall be for the benefit of the Authority.
- 10.8 Sub-hubco shall submit the Restructuring Proposal to the Senior Funder, for its review within five(5) Business Days of agreeing the Restructuring Proposal with the Authority.
- 10.9 Following consideration of the Restructuring Proposal, Sub-hubco shall procure that the Senior Funder shall, at its discretion (acting reasonably), notify Sub-hubco in writing that:
- 10.9.1 the Restructuring Proposal is agreed; or
 - 10.9.2 it requires certain amendment(s) to be made to the Restructuring Proposal and, in such event, Sub-hubco shall consider the amendments and resubmit a revised Restructuring Proposal to the Senior Funder in accordance with this paragraph 10; or
 - 10.9.3 the Restructuring Proposal is not agreed, giving reasons for the same (including any additional information the Authority might reasonably require),

provided that the Senior Funder may (acting reasonably) at any time notify Sub-hubco that it does not wish to proceed with a Restructuring Proposal, providing reasons for not proceeding and after such notification Sub-hubco and the Authority shall immediately discontinue all action in relation to such Restructuring Proposal.

Implementation of the Restructuring Transfer

- 10.10 Subject to paragraph 10.11 and provided always that the Senior Funder has approved the Restructuring Proposal in accordance with paragraph 10, the Authority and Sub-hubco shall in good faith negotiate any amendments to or the replacement of the Project Agreement, the Funders' Direct Agreement or existing Project Documents as contained in the Restructuring Proposal and do all other things so necessary to give effect to the Restructuring Proposal.
- 10.11 The Authority and Sub-hubco:
- 10.11.1 shall provide the Senior Funder with a mark-up of the proposed amendments to the Project Agreement, the Funders' Direct Agreement and any other Project Document which are to be amended and shall negotiate in good faith with the Senior Funder to reach an agreed form for each document; and
- 10.11.2 acknowledge that the formal binding implementation of the Restructuring Proposal shall be subject to the Senior Funder, (in its discretion acting reasonably) giving its prior written approval to the final form of the Project Agreement, the Funders' Direct Agreement and any other Project Documents as amended in relation to the Restructuring Transfer.
- 10.12 All external costs reasonably and properly incurred by Sub-hubco (including those of any relevant Sub-hubco Party and the Senior Funder) to implement the Restructuring Transfer shall be payable by the Authority either by way of an adjustment to the revised financial model (in accordance with paragraph 10.7.2) or as a one-off payment, at the Authority's discretion.
- 10.13 The Parties may, acting in good faith, decide not to proceed with any Restructuring Transfer at any time.
- 10.14 If the Restructuring Transfer is not completed because:
- 10.14.1 the Authority does not give its approval in accordance with paragraph 10.5, and/or
- 10.14.2 the Senior Funder does not give its approval in accordance with paragraphs 10.2.2 or 10.9.3,
- then all external costs reasonably and properly incurred by Sub-hubco (including those of a Sub-hubco Party and the Senior Funder) shall be payable by the Authority provided that such external costs shall be as confirmed by Sub-hubco to the Authority in writing and approved by the Authority before being incurred.
- 10.15 The Senior Funder shall be deemed to be "acting reasonably" pursuant to this paragraph 10 where it withholds consent, exercises its discretion or otherwise withdraws a Senior Funder Initial Approval Notice because the Restructuring Notice may have an adverse effect on the Senior Funder (including, but not limited to, adverse financial consequences or adverse consequences on the Senior Funder's operations and normal course of business) and references to "acting reasonably" in this paragraph 10 shall be construed accordingly.

11 Tax Restructuring

- 11.1 Sub-hubco undertakes to carry out, in consultation with the Authority, an assessment as to the viability of adopting a composite trader tax treatment for the Project (a "**Tax Restructuring**") and the likely benefits to be derived therefrom and undertakes to use its reasonable endeavours to obtain clearance from HMRC that supports a Tax Restructuring.

11.2 If Sub-hubco obtains clearance from HMRC that supports a Tax Restructuring or otherwise determines (having considered in good faith the assessment carried out pursuant to paragraph 11.1) that a Tax Restructuring is viable, the parties shall together in good faith seek to agree the basis on which to implement the Tax Restructuring such that 100% of the Net Tax Adjustment is passed to the Authority. For the purposes of this paragraph 11.2 "Net Tax Adjustment" means the net amount of any reduced tax payable by Sub-hubco and the Authority arising from a change in the tax treatment of the Project including but not limited to increased corporation tax deductions which may be available.

11.3 The Authority undertakes to pay to Sub-hubco all external costs reasonably and properly incurred by it (including those of any Sub-hubco Party and the Senior Funder) pursuant to paragraphs 11.1 and 11.2 above provided that such costs have been confirmed by Sub-hubco to the Authority in writing, and approved by the Authority in writing, before being incurred.

12 Not used.

13 Not used.

Definitions

In this Schedule Part 23 (*Refinancing*) and elsewhere in this Agreement (save where Schedule Part 1 (*Definitions and Interpretation*) provides to the contrary) the following words and expressions shall have the following meanings:

"Availability Period" has the meaning given in the Loan Agreement;

"Distribution" means:

(a) whether in cash or in kind, any:

- i. dividend or other distribution in respect of share capital;
- ii. reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
- iii. payments under the Subordinated Funding Agreements (whether of principal, interest, breakage costs or otherwise);
- iv. payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms;
- v. the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or

(b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

“EEA”

means from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;

“Equity IRR”

means the projected blended rate of return to the Relevant Persons over the full term of this Agreement, having regard to Distributions made and projected to be made;

“Exempt Refinancing”

means:

- (a) any Refinancing that was fully taken into account in the calculation of the Annual Service Payments;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
 - i. breach of representations and warranties or undertakings;
 - ii. movement of monies between the Project Accounts in accordance with the terms of the Senior Funding Agreements as at Financial Close;
 - iii. late or non-provision of information, consents or licences;
 - iv. amendments to Sub-Contracts;
 - v. approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Funding Agreements);
 - vi. restrictions imposed by Senior Funders on the dates at which the Senior Debt can be advanced to Sub-hubco and/or amounts released from Proceeds Account under the Senior Funding Agreements during the Availability Period, each as defined in the Senior Funding Agreements and which are given as a result of any failure by Sub-hubco to ensure that the construction work is performed in accordance with the agreed construction programme and which is notified in writing by Sub-hubco or the Senior Funders to the Authority prior to being given;
 - vii. changes to milestones for drawdown and/or amounts released from the Proceeds Account during the Availability Period set

out in the Senior Funding Agreements and which are given as a result of any failure by Sub-hubco to ensure that construction work is performed in accordance with the agreed construction programme and which is notified in writing by Sub-hubco or the Senior Funders to the Authority prior to being given;

- viii. failure by Sub-hubco to obtain any consent by statutory bodies required by the Senior Funding Agreements; or
 - ix. voting by Senior Funders and the voting arrangements between the Senior Funders in respect of the levels of approval required by them under the Senior Funding Agreements;
- (d) any amendment, variation or supplement of any agreement approved by the Authority as part of any Qualifying Change under this Agreement;
 - (e) any sale of shares in Sub-hubco or hubco by the shareholders or securitisation of the existing rights and/or interests attaching to shares in Sub-hubco or hubco provided that this paragraph (e) shall, in respect of shares in hubco, only apply for so long as hubco holds 100% of the issued share capital of Sub-hubco;
 - (f) any sale or transfer of the Subordinated Funders' existing rights and/or interests under the Subordinated Funding Agreements or securitisation of the Subordinated Funders' existing rights and/or interests under the Subordinated Funding Agreements; or
 - (g) any Qualifying Bank Transaction;

“Insurance Undertaking”

has the meaning given in the rules from time to time of the Prudential Regulation Authority or the Financial Conduct Authority;

“Margin”

has the meaning given to it in the Senior Funding Agreements as at the date immediately prior to the relevant Qualifying Refinancing;

“Margin Gain”

means an amount equal to the lower of:

- (a) the Refinancing Gain; and
- (b) the higher of:
 - i. zero; and
 - ii. $D - E$;

where:

D = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the change in Margin only in relation to the Refinancing and the senior debt repayment profile immediately prior to the Qualifying Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing; and

E = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing;

"Net Present Value"

means the aggregate of the discounted values, calculated as at the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

"Notifiable Financings"

means any Refinancing described in paragraphs (a) or (c) of the definition of Refinancing and any other arrangement which has or would have a similar effect or which has or would have the effect of limiting Sub-hubco's or any Associated Company's ability to carry out any such refinancing or other arrangements that would have a similar effect;

"Pre-Refinancing Equity IRR"

means the nominal post-tax (i.e. post-tax with respect to Sub-hubco, pre-tax with respect to Shareholders) Equity IRR calculated immediately prior to the Refinancing;

"Proceeds Account"

means the account with such name established under the Funding Agreements;

"Project Accounts"

means accounts referred to in and required to be established under the Senior Funding Agreements;

"Qualifying Bank Transaction"

means:

- (a) the syndication by a Senior Funder, in the ordinary course of its business, of any of its rights or interests in the Senior Funding Agreements;
- (b) the grant by a Senior Funder of any rights of participation, or the disposition by Senior Funder of any of its rights or interests (other than as specified in paragraph (a) above in respect of the Senior Funding Agreements in favour of:
 - i. any other Senior Funder;
 - ii. any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of

- a credit institution pursuant to Council Directive 2006/48/EC relating to the taking up and pursuit of business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
 - iii. a local authority or public authority;
 - iv. a trustee of a charitable trust which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time);
 - v. a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two years) at least 50 members and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);
 - vi. an EEA or Swiss Insurance Undertaking;
 - vii. a Regulated Collective Investment Scheme;
 - viii. any Qualifying Institution; or
 - ix. any other institution in respect of which the prior written consent of the Authority has been given; and/or
- (c) the grant by a Senior Funder of any other form of benefit or interest in either the Senior Funding Agreements or the revenues or assets of Sub-hubco, whether by way of security or otherwise, in favour of:
 - i. any other Senior Funder;
 - ii. any institution specified in paragraphs (b)ii to (b)vii above;
 - iii. any Qualifying Institution; or
 - iv. any other institution in respect of which the prior written consent of the Authority has been given;

“Qualifying Institution”

means a bank that is authorized by the Financial Services Authority to accept deposits in the United Kingdom;

“Qualifying Refinancing”

means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

“Refinancing”

means:

- (a) any amendment, variation, novation, supplement

- or replacement of any Funding Agreement (other than any Subordinated Funding Agreement);
- (b) the exercise of any right, or the grant of any waiver or consent, under any Funding Agreement (other than any Subordinated Funding Agreement);
 - (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Funding Agreements (other than the Subordinated Funding Agreements) or the creation or granting of any other form of benefit or interest in either the Funders' Agreements (other than the Subordinated Funding Agreements) or the contracts, revenues or assets of Sub-hubco whether by way of security or otherwise; or
 - (d) any other arrangement put in place by Sub-hubco or another person which has an effect which is similar to any of (a)-(c) above or which has the effect of limiting Sub-hubco's or any Associated Company's ability to carry out any of (a)-(c) above;

“Refinancing Gain”

means an amount equal to the greater of zero and $(A - B) - C$, where:

- A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing;
- B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing; and
- C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR;

“Regulated Collective Investment Scheme”

has the meaning given in the rules from time to time of the Financial Services Authority;

“Relevant Person”

means a Shareholder and any of its Associated Companies;

“Restructuring Notice”

means a notice issued by the Authority to Sub-hubco in accordance with paragraph 10.1 of this Schedule Part 23

informing Sub-hubco that the Authority wishes Sub-hubco to consider making a Restructuring Transfer;

"Restructuring Transfer"

means the proposed restructuring of the Senior Funding Agreements and this Agreement to reflect the revised loan facilities for the Project offered by the Senior Funder which do not require security over any heritable or leasehold interest in real property of the Project;

"Senior Funder Initial Approval Notice"

means a notice issued by the Senior Funder to Sub-hubco substantially in the form provided at the Appendix of this Schedule Part 23 (Form of Senior Funder Initial Approval Notice);

"Shareholder"

means any person from time to time holding share capital in Sub-hubco.

"Subordinated Funder"

means a person providing finance under a Subordinated Funding Agreement;

"Subordinated Funding Agreements"

means the Borrower Loan Note Instrument and the Subscription Agreement as described in Attachment E as at the date of this Agreement;

"Threshold Equity IRR"

means 10.5%

APPENDIX

FORM OF SENIOR FUNDER INITIAL APPROVAL NOTICE

[Contractor address]

[date]

To [name of relevant director]

Senior Funder Initial Approval Notice

We [Senior Funder] refer to the Restructuring Notice issued to us by [Sub-hubco] (the "**Company**") on [INSERT DATE] and hereby provide our consent to the Company in accordance with paragraph 10.2.1 of Schedule Part 23 (Project Restructuring) to the project agreement made between (1) the Company and (2) The Highland Council on [INSERT DATE] (the "**Project Agreement**").

This Senior Funder Initial Approval Notice is not, and should not be considered to be, final or irrevocable approval of any Restructuring Transfer and further consent must be sought from us in relation to the final terms of any Restructuring Transfer and any amendments proposed to the Project Documents.

Unless otherwise stated, capitalised terms used but not defined in this letter shall have the same meaning as in the Project Agreement.

Yours faithfully

SCHEDULE PART 24

NOT USED

SCHEDULE PART 25

INSURANCE PROCEEDS ACCOUNT AGREEMENT

Insurance Proceeds Account Agreement

among:

- 1 **HUB NORTH SCOTLAND (WICK) LIMITED** (company registered number SC469278) whose registered office is at Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE (the "Issuer");
- 2 **THE HIGHLAND COUNCIL** a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 having its principal office at Glenurquhart Road, Inverness, IV3 5NX (the "Authority");
- 3 **CLYDESDALE BANK PLC** (company registered number SC001111) whose registered office is at 30 St, Vincent Place, Glasgow G1 2HL (the "Account Bank"); and
- 4 **AVIVA PUBLIC PRIVATE FINANCE LIMITED** company registered number 02334210) whose registered office is at 2 Rougier Street, York YO90, 1UU (the "Security Trustee").

whereas

- A The Issuer and the Authority have agreed to open an insurance proceeds account in their joint names.
- B The parties hereto have agreed to set out the terms on which payments may be made to or from that account in this Agreement.

It is agreed as follows:

1 Definitions And Interpretation

"Account Mandate" means the mandate for the operation of the joint account in the form agreed among the Account Bank, the Security Trustee, the Authority and the Issuer;

"Credit Provider" means the Senior Funders as defined in the Design Build Finance and Maintain Agreement;

"Design Build Finance and Maintain Agreement" means the agreement dated on or around the date hereof between Sub-hubco and the Authority in relation to the Wick Community Campus Project;

"Event of Default" has the meaning given in the Senior Funding Agreements;

"Intercreditor Deed" means the intercreditor deed dated on or around the date of this Agreement among the Security Trustee, the Issuer, Scottish Futures Trust Investments Limited, Hub North Scotland Limited, GT (North Hub) Investments Limited and Sweett Equitix Limited;

"Qualifying Bank" means any institutions which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2006/48EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EU member state;

"Senior Funding Agreements" has the meaning given to it in the Design Build Finance and Maintain Agreement; and

"Security Documents" has the meaning given to it in the Loan Agreement.

1.1 Capitalised terms defined in the Design Build Finance and Maintain Agreement shall have the same meaning in this Agreement.

1.2 European Economic and Monetary Union

In the event that the United Kingdom joins EMU any figures expressed in "£" and "sterling" under this Agreement shall be converted into Euro at the rate for conversion of sterling into Euro established by the Council of the European Union pursuant to the Treaty (including compliance with rules relating to rounding in accordance with European Community regulations) and any reference to a figure in "£" or "Sterling" shall mean that figure adjusted into Euro.

2 Insurance Proceeds Account

2.1 Each of the Issuer and the Authority (together the "Account Holders") hereby appoint Clydesdale Bank plc as the Account Bank.

2.1.1 The Account Bank has opened on its books, at its office at Picadilly Branch, 35 Regent Street, London, SW1Y 4ND, an account in the joint names of the Account Holders designated the Insurance Proceeds Account (the "Account").

2.1.2 Notwithstanding anything else in this Agreement, no person shall request or require that any withdrawal be made from the Account if it would cause the Account to become overdrawn and to the extent that any withdrawal (if made in full) would cause the Account to become so overdrawn, such withdrawal shall be made in part in as great an amount as possible as will not result in such Account becoming overdrawn.

2.1.3 Where any withdrawal required under this Agreement cannot be made in its entirety, the Account Bank shall promptly notify both of the Account Holders of that fact and provide details of the payment not made, the date on which it should have been made and the amount unpaid.

2.1.4 Each amount from time to time standing to the credit of the Account shall bear interest at the rate agreed between the Account Bank and the Account Holders from time to time, such interest to be credited to the Account in respect of which such interest has accrued in accordance with the relevant mandate.

2.1.5 Subject to and in accordance with the provisions of this Agreement, including without limitation Clause 4 (General Provisions for the Account) of this Agreement, the Account Bank agrees that it shall make such payments out of the amount standing to the credit of the Account as may from time to time be requested by the Account Holders jointly subject to the restrictions as contained in this Agreement. Save as otherwise provided in this Agreement, no party shall be entitled to require the Account Bank to make, and the Account Bank shall not make, any payment out of the amount standing to the credit of the Account.

2.1.6 Subject to Clause 8.6 of this Agreement, the Account Holders shall maintain the Account with the Account Bank until the termination of the Design Build Finance and Maintain Agreement. If so instructed after the termination of the Design Build Finance and Maintain Agreement, the Account Bank shall, at the sole cost and expense of the Issuer, terminate the Account in accordance with the relevant instructions and pay any amount standing to the credit of such accounts as the Account Holders may elect in accordance with the Account Mandate.

3 Receipts And Payments

3.1 The Account may only be used in accordance with the terms of and for the purposes set out

in this Clause 3 (Receipts and Payments).

- 3.2 The Account shall be used for receiving, to the extent required by Clause 53 (Insurance) of the Design Build Finance and Maintain Agreement, the proceeds of all Insurances.
- 3.3 Subject to restrictions set out in this Agreement, the Account shall only be used for applying the proceeds of the Insurances in accordance with Clause 53 (Insurance) of the Design Build Finance and Maintain Agreement either directly or indirectly by way of the reimbursement to the Issuer of costs or expenses incurred or monies paid by it (or on its behalf) in or towards satisfaction of the reinstatement restoration or replacement requirements of that Clause 53 (Insurance). In the event that any amount standing to the credit of the Account is not so required to be applied, such amount shall (subject to Clause 4.4 below) be paid by the Account Bank to the Receipts Account, or as otherwise instructed by the Security Trustee pursuant to Clause 4.6 below.

4 General Provisions For The Account

- 4.1 The Account Bank agrees that it shall only make payments or transfers from the Account in accordance with the terms of the Account Mandate.
- 4.2 The Authority undertakes to provide notice to the Account Bank for the purposes of applying any part of the balance standing to the credit of the Account in accordance with Clause 3.3 of this Agreement.
- 4.3 Each of the Account Bank and the Issuer shall be entitled to treat any act of the authorised signatory of the Authority as being expressly authorised by the Authority and neither the Account Bank nor the Issuer shall be required to determine whether an express authority has in fact been given.
- 4.4 No payments or transfers from the Account shall be made after an Event of Default which is continuing until the Credit Provider has confirmed to the Account Bank that such payment or transfer may be made except as expressly permitted under this Agreement. The Account Bank shall not be under any obligation to investigate the compliance of any payment with this Agreement.
- 4.5 All amounts withdrawn from the Account for transfer to another account or for application in or towards making a specific payment or meeting a specific liability shall be transferred to that account or applied in or towards making that payment or meeting that liability, and for no other purpose.
- 4.6 In establishing the balance standing to the credit of the Account at any time, the Account Bank may take into account credits to and withdrawals from such Account which are to be made on such day.

5 Qualifying Bank

If at any time the Account Bank ceases to be a Qualifying Bank, the Account Holders shall promptly open or cause to be opened a new account with a Qualifying Bank on the same terms as the Account and the Account Holders shall take all such action as may be required to open the new account.

6 Charges

The charges of the Account Bank (if any) for the operation of the Account shall be for the account of the Account Holders in equal amounts and shall be debited from the balance standing to the credit of the Account as from time to time agreed between the Account Bank, the Authority and the Issuer.

7 Mandates

Each of the Account Holders will deliver to the Account Bank on or prior to the date hereof the applicable mandate together with authorised signature lists for both the Issuer and the Authority.

8 The Account Bank

8.1 The Account Bank may:

8.1.1 engage and pay reasonable fees for the advice or services of any lawyers, accountants or other experts whose advice or services may to it seem necessary, expedient or desirable and rely upon any advice so obtained;

8.1.2 rely upon any communication or document believed by it to be genuine and, in particular, rely upon any notice, request or other communication of the Account Holders for the purposes of this Agreement if such notice, request or other communication purports to be signed or sent by or on behalf of an authorised signatory of the Account Holders;

8.1.3 assume that no Event of Default has occurred unless it has actual notice to the contrary; and

8.1.4 assume that all conditions for the making of any payment out of the amount standing to the credit of the Account which is specified in the Design Build Finance and Maintain Agreement or any of the Senior Funding Agreements has been satisfied, unless it has actual notice to the contrary.

8.2 Notwithstanding anything to the contrary expressed or implied herein and subject to Clause 2 (Insurance Proceeds Account) of this Agreement, the Account Bank shall not:

8.2.1 be bound to enquire as to the occurrence or otherwise of an Event of Default or be affected by notice of any of the same except by reason of and to the extent expressly provided in this Agreement;

8.2.2 be bound to account to any other party hereto for any sum or the profit element of any sum received by it for its own account;

8.2.3 save as provided in this Agreement be bound to disclose to any other person any information relating to any other party hereto;

8.2.4 be under any fiduciary duty towards any other party hereto or under any obligations other than those for which express provision is made in this Agreement;

8.2.5 have any responsibility to ensure that the information set out in any instructions received by it hereunder are correct or to check or enquire as to or otherwise be affected by whether any condition has been or will be met or fulfilled or any instruction is properly given on behalf of the person from whom it purports to be given or any instruction is given properly other than to exercise the bankers duty of care; or

8.2.6 have any responsibility to any party if any instruction which should be given by the Account Holders to the Account Bank under or in connection with this Agreement is for any reason not received by the Account Bank or is not made at the time it should be made.

8.3 The Account Bank does not have and does not accept any responsibility for the accuracy and/or completeness of any information (other than statements provided in accordance with Clause 9.2 of this Agreement (Acknowledgements by the Account Bank)) and the Account

Bank shall not be under any liability as a result of taking or omitting to take any action in relation to the Account, save in the case of negligence or wilful misconduct or breach of its obligations under this Agreement.

- 8.4 Each of the other parties hereto agrees that it will not assert or seek to assert against any director, officer or employee of the Account Bank any claim it might have against the Account Bank in respect of the matters referred to in Clause 8.3 above.
- 8.5 The Account Bank may accept deposits from, lend money to, invest in and generally engage in any kind of banking or other business with the Account Holders, the Shareholders and any other party to any of the Project Documents.
- 8.6 The Account Bank may, at any time, (without assigning any reason therefor) notify the Account Holders in writing that it wishes to cease to be a party hereto as Account Bank (a "cessation notice"). Upon receipt of a cessation notice the Account Holders may nominate a Qualifying Bank as a successor to the Account Bank (a "successor Account Bank"). If no such nomination is made before the date specified in the cessation notice as being the date on which the Account Bank wishes to cease to be a party hereto (the "cessation date") (which date shall be a Business Day falling not less than thirty (30) days after the date of delivery of the cessation notice to the Account Holders) then the Account Bank may nominate a Qualifying Bank as successor Account Bank itself.
- 8.7 If a successor Account Bank is nominated under the provisions of Clause 8.6 above, then on the cessation date, provided the successor Account Bank has executed and delivered to the Account Holders a deed of novation in such form as the Account Holders may require undertaking to become a party to and bound by the terms and conditions of this Agreement and to become a party to such other documents as may be required by the Security Trustee in order to perfect the security created by the Senior Funding Agreements:
- 8.7.1 the successor Account Bank shall open on its books at its principal office an account equivalent to that described in Clause 2 of this Agreement and any amounts standing to the credit of the Account shall be transferred to the corresponding one of such account;
- 8.7.2 any reference in the Design Build Finance and Maintain Agreement or any Senior Funding Agreement to the Account shall be deemed to refer to the corresponding account opened pursuant to Clause 8.7.1;
- 8.7.3 the Account Bank shall cease to be a party hereto as Account Bank and shall cease to have any obligation hereunder in such capacity (but without prejudice to any accrued liabilities under this Agreement and its obligations under this Clause 8 (The Account Bank)) (but shall remain entitled to the benefit of the provisions of this Clause 8 (The Account Bank)); and
- 8.7.4 the successor Account Bank and each of the other parties hereto shall have the same rights and obligations amongst themselves as they would have had if such successor Account Bank had been an original party hereto as Account Bank.

9 Acknowledgements By The Account Bank

- 9.1 Notwithstanding anything to the contrary in any applicable mandate, the Account Bank hereby waives so far as it may validly and lawfully do so any right it has or may hereafter acquire to combine, consolidate or merge the Account with any other account of the Account Bank, Account Holders or the Security Trustee or any other person or with any liabilities of Account Holders or the Security Trustee or any other person to the Account Bank. In addition, the Account Bank agrees so far as it may validly and lawfully do so that it may not set off, combine, withhold or transfer any sum standing to the credit of the Account in or towards satisfaction of any liabilities to the Account Bank of the Account Holders, the Security Trustee or any other person.

9.2 After the date hereof and until the Account Bank has been notified by the Account Holders of the termination of the Design Build Finance and Maintain Agreement or until the Account Bank ceases to be a party to this Agreement pursuant to the provisions of Clause 8.7 above, the Account Bank shall provide each of the Account Holders and the Security Trustee with statements in respect of the Account, such statement to be supplied in accordance with any reasonable request therefore by the Account Holders.

10 **Assignment**

The Account Holders may not assign any of their rights under this Agreement or in relation to the Account otherwise than pursuant to the Security Documents or as permitted under the Design Build Finance and Maintain Agreement. The Security Trustee may assign its rights under this Agreement to a successor Security Trustee appointed in accordance with the Intercreditor Deed and shall promptly give notice of any such assignment to the Account Bank. The Account Bank shall not be entitled to novate (except in accordance with Clause 8.7 above) or assign all or any part of its rights under this Agreement.

11 **Security Trustee**

The Security Trustee is party hereto solely for the purpose of receiving the benefits and exercising the rights specifically allocated to it under the terms of this Agreement.

12 **Further Assurance**

The parties hereto agree that they will co-operate fully to do all such further acts and things and execute any further documents as may be necessary or reasonably desirable to give full effect to the arrangements contemplated by this Agreement, subject to any such party being reimbursed to its satisfaction for any costs, expenses (including VAT) liabilities or fees reasonably incurred by it in the negotiation, preparation or execution of any such further documents.

13 **Amendments**

The provisions of this Agreement may not be amended (otherwise than in accordance with the terms hereof) except by written agreement between all the parties hereto.

14 **Notices**

14.1 Each communication to be made hereunder shall be made in writing and, unless otherwise stated, may be made by e-mail or letter delivered by registered post or courier.

14.2 Any communication or document to be made or delivered by one person to another pursuant to or in connection with this Agreement shall (unless that other person has by ten days' written notice to the other specified another address) be made or delivered to that other person at the address set out below identified with its signature below or identified with its signature in any deed of novation and shall be deemed to have been made or delivered:

14.2.1 (in the case of any communication made by letter) when delivered to that address;
or

14.2.2 (in the case of any communication by email):

14.2.2.1 the time the e-mail enters the Information System of the intended recipient designated by them to receive electronic notices pursuant to this Agreement (as identified by the e-mail address specified beside the relevant party's execution or notified from time to time under Clause 14.2) if on a Business Day between the hours of 9am and 4pm; or

14.2.2.2 by 11am on the next following Business Day, if the time the email enters the intended recipient's relevant Information System after 4pm, on a

Business Day but before 9am on that next following Business Day,

and provided that no error message indicating failure to deliver has been received by the sender and provided further that within 24 hours of transmission a hard copy of the e-mail signed by or on behalf of the person giving it is sent by post or delivered by hand to the intended recipient,

provided that (a) if such communication or document would otherwise be deemed to have been received on a day which is not a Business Day it shall be deemed to have been received on the next subsequent Business Day, (b) if any communication is made or document is delivered to the Security Trustee, such communication or document shall be effective only if the same is expressly marked for the attention of the officer identified the Security Trustee, as the case may be, below (or such other officer as the Credit Provider or the Security Trustee, as the case may be, shall from time to time specify for this purpose) and (c) if any communication or document is made or delivered to the Account Bank or the Security Trustee, such communication or document shall be effective only when received by the Account Bank, or the Security Trustee.

14.3 Notice to the Account Bank at any other office than the address shown beside its execution of this Agreement or such substitute address notified in accordance with Clause 14.2 above shall not constitute notice to the Account Bank unless agreed in writing by the Account Bank by reference to this Agreement.

15 Miscellaneous

The parties hereto each acknowledge that the Security Trustee when acting hereunder shall be acting in accordance with and subject to the terms of the Intercreditor Deed.

16 Governing Law And Jurisdiction

This Agreement is governed by, and shall be construed in accordance with, Scots law.

17 Third Party Rights

Save to the extent expressly provided in this Agreement, it is expressly declared that no rights shall be conferred under and arising out of this Agreement upon any person who is not a party to this Agreement and, without prejudice to the foregoing generality, there shall not be created by this Agreement a jus quaesitum tertio in favour of any person whatsoever.

IN WITNESS WHEREOF these presents consisting of this and the preceding 8 pages are executed as follows:

Subscribed for and on behalf of
HUB NORTH SCOTLAND (WICK) LIMITED

at

on

acting by

..... Director/Attorney/Authorised Signatory

..... Full Name

in the presence of

..... Witness

..... Full Name

..... Address

Notice Details:

Address: Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE

FAO: The Chief Executive

E-mail: angus.macfarlane@hubnorthscotland.co.uk

Subscribed for and on behalf of
CLYDESDALE BANK PLC

at

on

acting by

..... Authorised Signatory

..... Full Name

in the presence of

..... Witness

..... Full Name

..... Address

Notice Details:

Address: Edinburgh Business and Private Banking Centre, Commercial Banking,
Clydesdale Bank Plaza, Festival Square, 50 Lothian Road, Edinburgh, EH3 9BT

FAO: Michael Mackie

E-mail: michael.mackie@eu.nabgroup.com

Subscribed for and on behalf of
AVIVA PUBLIC PRIVATE FINANCE LIMITED

at

on

acting by

..... Attorney

..... Full Name

in the presence of

..... Witness

..... Full Name

..... Address

Notice Details:

Address: Sentinel House, 37 Surrey Street, Norwich, NR1 3NJ

FAO: Underwriting and New Business Team

E-mail: kelly.shannon@aviva.co.uk (copied to toby.stokes@aviva.co.uk)

Subscribed for and on behalf of
THE HIGHLAND COUNCIL

at

on

acting by

..... Authorised Signatory

..... Full Name

in the presence of

..... Witness

..... Full Name

..... Address

Notice Details:

Address: The Director of Finance

FAO: Finance Service, The Highland Council, Council Buildings, Glenurquhart Road,
Inverness IV3 5NX

E-mail: insurance.claims@highland.gov.uk

SCHEDULE PART 26

COMMERCIALLY SENSITIVE INFORMATION

Where information or material falls within more than one category identified in column 1 of the table below, it shall be deemed to fall within the category whose corresponding period of confidentiality identified in column 2 of the table below will expire the soonest.

Category of Information/Material	Period for which information is to be kept confidential
Financial Model (as at Financial Close)	From the Effective Date until the date falling 2 years after the Phase1 Actual Completion Date
Financial Model (amended from time to time in accordance with this Agreement)	From the date of the relevant Financial Model until the date falling 2 years after the later of: <ul style="list-style-type: none"> • the Phase 1 Actual Completion Date; and • the date on which the amendments to Financial Model are agreed in accordance with this Agreement
Prices within the Catalogue of Small Works and Services	Period during which the relevant prices are applicable
Small Works and Services Rates	Period during which the relevant Small Works and Services Rates are applicable
Sub-hubco bank account information	Project Term
IRR	In the case of the IRR contained in the Financial Model as at Financial Close from the Effective Date until the date falling 2 years after the Phase 1 Actual Completion Date In the case of the IRR contained in the Financial Model as amended from time to time in accordance with this Agreement, from the date of the relevant Financial Model until the date falling 2 years after the later of: <ul style="list-style-type: none"> • the Phase 1 Actual Completion Date; and • the date of the Financial Model containing the relevant information
Ancillary Documents	Project Term
Funding Agreements	Project Term
Information about Sub-hubco's processes, methodologies, working methods and information relating to the development of new processes and methodologies which amounts to a trade secret or which, if disclosed, could reasonably be considered to provide a commercial advantage to Sub-hubco's competitors	Trade secrets – Project Term All other cases – 5 years from the date on which the information is produced to the Authority

Breakdown of prices within the overall contract price (to the extent not disclosed within the Financial Model)	Project Term
Information on Sub-hubco's costing mechanisms including information obtained from Sub-hubco relating to project risks and pricing of the same and cost information relating to third party contractors and the Sub-Contractors	Project Term
Financial term sheets and related funding information including any funder pricing	2 years from the date on which the information is produced to the Authority
Information relating to the appointment of Sub-hubco as the preferred bidder to the Project (including the preferred bidder letter and correspondence and minutes relating to the same)	Until the date falling 2 years after the Phase 1 Actual Completion Date
Information contained within or relating to Sub-hubco's bid for the Project except as otherwise listed in this Schedule Part 26 (<i>Commercially Sensitive Information</i>) or otherwise provided in the Agreement	Until the date falling 2 years after the Phase 1 Actual Completion Date

SCHEDULE PART 27

RELEVANT DISCHARGE TERMS

1. The parties hereby acknowledge and agree that:
 - 1.1 **where following an application for judicial review or an audit review (within the meaning of the Local Government (Contracts) Act 1997), a court determines that the Authority did not have power to enter into this Agreement or to enter into this Agreement and the Funders' Direct Agreement and that this Agreement or that this Agreement and the Funders' Direct Agreement are unenforceable:**
 - 1.1.1 Sub-hubco shall be entitled to be paid by the Authority a sum equivalent to the amount calculated in accordance with Section 1 (*Compensation on Termination for Authority Default and Voluntary Termination*) of Schedule Part 17 (*Compensation on Termination*); and
 - 1.1.2 the relevant provisions of Clause 46 (*Compensation on Termination*) and Section 5 (*General*) of Schedule Part 17 (*Compensation on Termination*) shall apply mutatis mutandis, subject to compensation being deemed to be payable in a lump sum within 6 months of the order of the court; and
 - 1.2 **where following an application for judicial review or an audit review (within the meaning of the Local Government (Contracts) Act 1997) a court determines that the Authority did not have power to enter into the Funders' Direct Agreement and the Funders' Direct Agreement is unenforceable but this Agreement remains in full force and effect then, without prejudice to the application of paragraph 1.1.1 of this Schedule Part 27 (*Relevant Discharge Terms*) at any time thereafter:**
 - 1.2.1 the Monthly Service Payment shall be reduced by the amount payable by Sub-hubco in respect of the Senior Debt; and
 - 1.2.2 the Authority shall pay Sub-hubco a sum equal to the Revised Senior Debt Termination Amount (excluding, provided that the Senior Funders do not enforce any security over credit balances on any bank accounts held by or on behalf of Sub-hubco, limb (b)(i) of the definition set out in Section 6 (*Definitions*) of Schedule Part 17 (*Compensation on Termination*)) and the relevant provisions of Clause 46 (*Compensation on Termination*) and Section 5 (*General*) of Schedule Part 17 (*Compensation on Termination*) shall apply mutatis mutandis subject to any reference to the Termination Date in this Agreement shall be deemed to be the date on which the Funders' Direct Agreement was declared unenforceable in accordance with the provisions of this paragraph 1; and,

the parties agree that such provisions shall be deemed to be relevant discharge terms for the purposes of section 6(2) of the Local Government (Contracts) Act 1997 (the "**Relevant Discharge Terms**").
2. The parties acknowledge and agree that in the event that the circumstances envisaged by paragraph 1.2 occur prior to the circumstances envisaged by paragraph 1.1 then the amount calculated in accordance with Section 1 (*Compensation on Termination for Authority Default and Voluntary Termination*) of Schedule Part 17 (*Compensation on Termination*) shall be calculated to ensure no double counting between that amount and any sums paid to Sub-hubco pursuant to paragraph 1.2.2.

SCHEDULE PART 28
CONTRACTOR PROLONGATION COSTS

Staff	Rate (£)
Operations Director	2,979.00
Project Director	2,368.00
Construction Manager	1,842.00
Site Engineer	1,237.00
Managing Quantity Surveyor	1,923.00
Senior Quantity Surveyor	1,679.00
Quantity Surveyor	1,518.00
Security	
Security – Nights	1,200.00

Lesley Morse
