

**MASTER DEFINITIONS SCHEDULE
in relation to the Highland Schools PPP 2 Project**

This is the Master Definitions Schedule referred to in the Senior Finance Documents (as defined herein) and is initialled for identification by each:

McGRIGORS

(for and on behalf of the Senior Creditors, the Manager, the Paying Agents and the Bond Custodian)

McG

PINSENT MASONS

(for and on behalf of the Obligors, the Shareholders, the Noteholders and the Sponsors)

PM

MacROBERTS

(for and on behalf of the Authority)

MacR

BURNESS

**(for and on behalf of the Construction Contractor and Construction Contractor Guarantor
the FM Contractor and the FM Contractor Guarantor)**

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Date: 29 March 2006

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1 **DEFINITIONS**

1.1 Unless otherwise expressly defined or construed therein, or unless the context otherwise requires, the following terms shall have the meanings given to them below when used in the Senior Finance Documents (as defined herein):

"**3i Guarantee**" means the guarantee by 3i Group plc dated on or before the Issue Date in favour of the Security Trustee (in the form set out in schedule 2 of the Equity Subscription Agreement);

"**Accelerated Payment**" means any payment of any Guaranteed Amount in advance of the Scheduled Payment Date for such Guaranteed Amount (whether by way of prepayment of any Guaranteed Obligation or otherwise) made by Ambac to the Ambac Account at Ambac's sole option and in accordance with the Bond Guarantee;

"**Accelerated Payment Date**" means any date on which Ambac makes an Accelerated Payment;

"**Acceptable Letter of Credit**" means a letter of credit which:

- (a) shall be issued in favour of an Obligor (as applicable) and the Security Trustee by a bank which at all times shall be a Qualifying Bank;
- (b) has, from time to time, a residual maturity of not less than 1 month; and
- (c) is in full force and effect,

provided that, if at any time the issuer of any Acceptable Letter of Credit ceases to be a Qualifying Bank, such letter of credit shall not cease to be an Acceptable Letter of Credit until the date one month after the issuer ceased to be a Qualifying Bank;

"**Acceptable Security**" has the meaning given to it in the Equity Subscription Agreement;

"**Acceptable Surety**" means any of the providers of the Performance Bond or Replacement Security which has a long-term debt rating of at least AA- from S&P and Aa3 from Moody's;

"**Account Bank**" means at any time The Royal Bank of Scotland plc or such other bank or banks having a long-term debt rating of at least A from S&P and A2 from Moody's and agreed between the parties hereto which is or are a party to the Accounts Agreement holding any of the Accounts;

"**Accounts**" means each of the ProjectCo Accounts, the Issuer Account and the HoldCo Account (and any sub-accounts into which any such account may be sub-divided in accordance with the Accounts Agreement) and "**Account**" means any of them;

"**Accounts Agreement**" means the accounts agreement made on or about the Issue Date between the Obligors, the Security Trustee, the Bond Trustee, Ambac and EIB;

"**Accounts Agreements**" means the Accounts Agreement and the Accounts Mandate Agreement;

"Accounts Mandate Agreement" means the accounts mandate agreement made on or before the Issue Date between the Obligors, the Security Trustee, the Bond Trustee, Ambac, EIB and the Account Bank;

"Additional or Substitute Clearing System" means any additional or substitute (to Euroclear and Clearstream) clearing system from time to time nominated by the Issuer or the Bond Trustee and approved by the Majority Creditor through which the Bonds are cleared;

"Additional Permitted Borrowing" has the meaning given to it in the Project Agreement;

"Affiliate" means, in relation to any person, a subsidiary or a holding company of that person or any other subsidiary of a holding company of that person;

"Ambac" means Ambac Assurance UK Limited, a company incorporated in England and Wales with registered number 3248674;

"Ambac Account" means in respect of any payment made by Ambac on:

- (a) a Scheduled Payment Date, the bank account specified in the relevant Notice of Demand; and
- (b) an Accelerated Payment Date, the bank account notified by the Beneficiary to Ambac in writing at least one Business Day prior to the Accelerated Payment Date;

"Ambac Event of Default" means any of the following events:

- (a) any amount guaranteed by Ambac under the Bond Guarantee falls due for payment in accordance with the terms of the Bond Guarantee and is not paid by Ambac on the date stipulated in the Bond Guarantee;
- (b) Ambac disclaims, disaffirms, repudiates and/or challenges the validity of any of its obligations under the Bond Guarantee or the EIB Ambac Guarantee or seeks to do so;
- (c) a court of competent jurisdiction enters a final and non-appealable order, judgment or decree for the winding-up, or the appointment of an administrator or receiver (including an administrative receiver or manager), of Ambac (or, as the case may be, of a material part of its property or assets);
- (d) Ambac:
 - (i) presents any petition or takes any proceedings for the winding-up, or the appointment of an administrator or receiver (including an administrative receiver or manager), of Ambac (or, as the case may be, of a material part of its property or assets);
 - (ii) makes or enters into any general assignment, composition, arrangement (including, without limitation, a voluntary arrangement under Part I of the Insolvency Act 1986) or compromise with or for the benefit of any of its creditors;
 - (iii) becomes unable to pay its debts within the meaning of section 123(2) or section 123(1)(e) of such Insolvency Act or admits in writing its inability, or fails generally, to pay its debts as they become due; or

- (e) at any time it is or becomes unlawful for Ambac to perform or comply with any part or all of its obligations under the Bond Guarantee or any of its obligations thereunder are not or cease to be legal, valid or binding;

"Ambac Fee" means the guarantee fees in respect of the Bond Guarantee and the EIB Guarantee payable by the Obligors to Ambac in accordance with the terms of the Ambac Fee Letter;

"Ambac Fee Letter" means the letter dated on or about the Issue Date between Ambac and the Obligors relating to the Ambac Fee;

"Ambac Information" means the information contained in the sections of each Prospectus entitled "Form of Financial Guarantee", "Description of Ambac Assurance UK Limited", "Ambac Assurance Corporation", "Relationship between Ambac Assurance UK Limited and Ambac Assurance Corporation", paragraphs 1.2, 5.2, 6.2 and 7.2 of the section entitled "General Information" and in the Financial Statements of Ambac appended to the Prospectuses;

"Ambac US" means Ambac Assurance Corporation, a Wisconsin Stock Insurance Company;

"Ancillary Rights" has the meaning given to it in the Project Agreement;

"Annual Debt Service Cover Ratio" means:

- (a) in respect of any Historic Test Period, the ratio of (i) Cash Flow Available for Senior Debt Service in respect of that Historic Test Period to (ii) Senior Debt Service in respect of that Historic Test Period (provided that if the relevant Historic Test Period is of less than twelve months duration, the amount of Senior Debt Service used in calculating such ratio shall be reduced pro rata); and
- (b) in respect of any Forward Test Period, the ratio of (i) Projected Cash Flow in respect of that Forward Test Period to (ii) Scheduled Senior Debt Service in respect of that Forward Test Period;

"Assigned Contracts" means agreements and documents assigned in security by ProjectCo to the Security Trustee pursuant to the ProjectCo Assignment in Security;

"Auditors" means Grant Thornton LLP or such other auditors as may be approved from time to time by the Majority Creditor and engaged on terms enabling the Obligors to perform their obligations under the Collateral Deed;

"Authorised Deposit Provider" means a bank with a medium term senior debt rating of at least AA issued by S&P or Aa2 by Moody's;

"Authorised Investments" means, at any time in respect of monies standing to the credit of any Investment Account, any of the following investments which has a scheduled maturity of less than 12 months (except in respect of monies standing to the credit of the Escrow Account, which investments must have a scheduled maturity of less than the greater of (i) 12 months and (ii) the day of any anticipated withdrawal of the proceeds of such investments from such Account):

- (a) gilt-edged securities and other freely transferable and marketable debt securities issued by the Government of the United Kingdom, denominated in sterling and which constitute direct, primary and unsubordinated obligations;

- (b) bonds or notes of or guaranteed by any supranational entity or sovereign, the unsecured, unguaranteed and unsubordinated medium term obligations of which have a medium term senior debt rating of AA- (or better) issued by S&P or Aa3 (or better) issued by Moody's;
- (c) commercial paper, denominated in sterling, constituting direct, primary and unsubordinated obligations, which has a short term senior debt rating of A1+ (or better) issued by S&P and P-1 (or better) issued by Moody's; and
- (d) call or fixed deposits, certificates of deposit of any building society (which is an authorised institution under the Building Societies Act 1986) or any bank (which is authorised under the Financial Services and Markets Act 2000) and which has (i) in the case of investments in respect of monies standing to the credit of the Escrow Account which investments have an outstanding maturity of 12 months or more, a long term debt rating of AA- (or better) issued by S&P and Aa3 (or better) issued by Moody's or (ii) in all other cases, a short term senior debt rating A1+ (or better) issued by S&P and P-1 issued by Moody's;

"Authorised Signatory" means:

- (a) in relation to ProjectCo, a director of ProjectCo or any person in respect of whom ProjectCo has supplied to the Bond Trustee a copy, certified by a director or the secretary of ProjectCo to be a true copy and in full force and effect, of a resolution or resolutions of the board of directors of ProjectCo authorising such person to sign on behalf of ProjectCo all such certificates and other documents as are referred to therein, together with a certified specimen signature of such person, and in respect of whom the Bond Trustee has not received written notification from ProjectCo that such person has ceased to be so authorised; and
- (b) in relation to Ambac, a director of Ambac or any person in respect of whom Ambac has supplied to the Bond Trustee a copy, certified by a director of Ambac to be a true copy and in full force and effect, of a resolution or resolutions of the board of directors of Ambac authorising such person to sign on behalf of Ambac all such certificates and other documents as are referred to therein, together with a certified specimen signature of such person, and in respect of whom the Bond Trustee has not received written notification from Ambac that such person has ceased to be so authorised;

"Authority" means the Highland Council, a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 acting in its capacity as both education authority under the Education (Scotland) Act 1980 and as authority responsible for recreational and social activities in terms of the Local Government and Planning (Scotland) Act 1982 and having its principal offices at Glenurquart Road, Inverness, IV3 5NX or any permitted transferee or novatee in accordance with the terms of the Project Agreement;

"Authority Change" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"Authority Default" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"Authority Direct Agreement" means the direct agreement dated on or before the Issue Date between ProjectCo, the Security Trustee and the Authority in respect of the Project Agreement;

"Authority Notice of Change" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"Authority Representative" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"Base Case Model" means the financial model as at the Issue Date, used to prepare the base case forecast and referred to paragraph 13.1 of schedule 1 to the Collateral Deed;

"Beneficiaries" means the Senior Beneficiaries and the Junior Beneficiaries;

"Bond Accountholder" means each person who is for the time being shown in the records of a Clearing System (other than another Clearing System in its capacity as an accountholder of another clearing system) as the holder of a particular principal amount of the Bonds;

"Bond Arrangement Fee" means the arrangement and underwriting fees in respect of the issue of the Bonds, payable by the Obligors to the Manager in accordance with the terms of each of (i) the Subscription Agreement and (ii) the Manager's Mandate Letter;

"Bond Creditor" has the meaning given to it in the Security Trust and Intercreditor Deed;

"Bond Custodian" means Royal Bank of Canada Europe Limited (a company incorporated in England and Wales with company number 00995939) or such other person from time to time appointed as bond custodian to hold the Variation Bonds under the Bond Custody Agreement;

"Bond Custody Account" means an account from time to time notified to the Bond Custodian by the Issuer (with the consent of the Majority Creditor);

"Bond Custody Agreement" means the bond custody agreement dated on or about the Issue Date relating to the Variation Bonds between the Issuer, the Security Trustee and the Bond Custodian;

"Bond Documents" means the Bonds, the Bond Trust Deed, the Bond Guarantee, the Paying Agency Agreement, the Bond Custody Agreement and the Subscription Agreement;

"Bond Guarantee" means the financial guarantee and the schedule thereto dated on or about the Issue Date issued by Ambac in respect of the Bonds pursuant to the Reimbursement and Indemnity Agreement;

"Bond Proceeds Onloan Agreement" means the intercompany loan agreement dated on or about the Issue Date between the Issuer (as lender), ProjectCo (as borrower) and the Security Trustee whereby the proceeds of the issue of the Bonds (including the proceeds from the sale of Variation Bonds occurring after the Issue Date) are on-lent;

"Bond Trust Deed" means the trust deed dated on or about the Issue Date between the Issuer, the Bond Trustee and Ambac pursuant to which the Bonds are issued;

"Bond Trustee" means Prudential Trustee Company Limited (a company incorporated in England and Wales with company number 01863305) and such other persons from time to time being the trustee or trustees under the Bond Trust Deed;

"Bond Trustee Fee Letter" means the letter dated on or about the Issue Date between the Bond Trustee and ProjectCo relating to the fees of the Bond Trustee;

"Common Depository" means such common depository as the Manager may nominate to act as a depository common for Euroclear and Clearstream in relation to the Bonds;

"Compensation Event" means a Works Compensation Event, a Services Compensation Event or a Title Compensation Event, each as defined in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"Conditions" means the terms and conditions to be endorsed on the Bonds in the form or substantially in the form set out in schedule 4 (*Terms and Conditions of the Bonds*) of the Bond Trust Deed, as the same may from time to time be modified in accordance with the Bond Trust Deed, and any reference in the Senior Finance Documents to a numbered Condition is to the correspondingly numbered provision thereof;

"Confirmatory Legal Opinion" means, in relation to any Deed of Accession, one or more legal opinions (given by legal counsel qualified in each of the jurisdiction of incorporation of the party to such Deed of Accession, England and Wales and such other jurisdictions as the Security Trustee may reasonably require) confirming (subject to assumptions, qualifications and reservations reasonably acceptable to the Security Trustee) that the obligations expressed to be assumed by the party to such Deed of Accession in the Deed of Accession and the Security Trust and Intercreditor Deed constitute legal, valid and binding obligations of such party.

"Construction Contract" means the agreement dated before the Issue Date between ProjectCo and the Construction Contractor relating to the design, construction and commissioning of serviced accommodation by the Construction Contractor and includes any other agreement entered into by ProjectCo in relation to the design construction and completion of the Works;

"Construction Contractor" means Morrison Construction Services Limited (a company incorporated in Scotland with registered number SC055775 and having its registered office at 51 Melville Street, Edinburgh, EH3 7HL) (or any of its permitted successors or assigns) or any person from time to time acting as a construction contractor to ProjectCo under a contract replacing the Construction Contract in accordance with the Collateral Deed;

"Construction Contractor Direct Agreement" means the direct agreement dated on or before the Issue Date between ProjectCo, the Construction Contractor, the Construction Contractor Guarantor and the Security Trustee in respect of the Construction Contract and includes any replacement direct agreement entered into by ProjectCo, the Construction Contractor and any Senior Creditor in relation to a Construction Contract;

"Construction Contractor Guarantee" means the guarantee dated on or before the Issue Date given by the Construction Contractor Guarantor in favour of ProjectCo, of the obligations of the Construction Contractor under the Construction Contract, or any other guarantee provided from time to time in respect of any Construction Contractor in accordance with the Collateral Deed;

"Construction Contractor Guarantor" means AWG Group Limited (a company incorporated in England and Wales with registered number 02366618 and having its registered office at Anglian House, Ambury Road, Huntingdon, Cambridgeshire, PE29 3NZ) or any other person or persons from time to time guaranteeing the obligations of the Construction Contractor under the Construction Contract in accordance with the Collateral Deed;

"Construction Costs" means any amounts payable by ProjectCo to the Construction Contractor pursuant to the terms of the Construction Contract;

"Construction Expenditure" means all amounts (without double counting) paid or, as the case may be, forecast in the relevant Operating Financial Model to be paid by ProjectCo on or prior to the occurrence of the Final Service Availability Date in respect of:

- (a) the Construction Costs;
- (b) ProjectCo Upfront Costs;
- (c) Senior Debt Expenses;
- (d) Senior Debt Service;
- (e) any taxes payable by ProjectCo;
- (f) premia, contributions or other sums payable by ProjectCo in insuring all or any part of the Project (including the fees, costs, and expenses of insurance brokers appointed for such purpose) and any deductibles payable by ProjectCo in respect of the Insurances;
- (g) insurance proceeds relating to a third-party insurance claim or a claim by the Construction Contractor which are received by ProjectCo and are payable by ProjectCo to the relevant third party or the Construction Contractor;
- (h) payments required to be made into the Reserve Accounts;
- (i) Construction Operating Costs; and
- (j) any other costs not included within (a) to (i) above, approved in writing by the Majority Creditor (such approval not to be unreasonably withheld).

"Construction Operating Costs" means the Operating Costs payable prior to the Final Service Availability Date;

"Construction Programme" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"Contractor Event of Default" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"Contractor Notice of Change" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"Contractor's Preliminary Response" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"Contractor's Share" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"Controls Matrix" means the controls matrix set out in schedule 6 (*Controls Matrix*) of the Collateral Deed;

"Couponholders" means the holders of coupons appertaining to the Bonds;

"Coupons" means the coupons appertaining to the Bonds;

"**Creditors**" means the Junior Creditors and the Senior Creditors and "**Creditor**" means any of them;

"**Cumulative Capital Expenditure**" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"**Deadline Date**" means the Deadline Date (as defined in the Project Agreement) in respect of the final New Project Facility;

"**Debenture Beneficiaries**" has the meaning given to it in the Security Trust and Intercreditor Deed;

"**Debentures**" means the HoldCo Debenture, the Issuer Debenture and the ProjectCo Debenture;

"**Debt Life Cover Ratio**" means, in respect of any Payment Date falling after the Final Service Availability Date, for the period from (and including) the day after that Payment Date up to and including the Final Payment Date, the ratio of A to B where:

A is the aggregate (without double counting) of:

- (a) the Net Present Value of Projected Cash Flow (less any Permitted Change in Law Reserve Release) in respect of the relevant Payment Date; and
- (b) the balance (if any) standing to the credit of the Senior Debt Service Reserve Account, the Change in Law Reserve Account and the Operating Account on such Payment Date;

and B is the aggregate (without double counting) of:

- (a) the principal amount of the Bonds outstanding; and
- (b) the principal outstanding (including any principal, interest, fees, costs and expenses which have fallen due but have not been paid) under the EIB Loan Agreement;

"**Debt Service Amount Payable**" in respect of any Payment Date means the Senior Debt Service due on that Payment Date;

"**Deductions**" has the meaning given to it in schedule 7 of the Project Agreement as amended, varied or supplemented in accordance with its terms;

"**Deed of Accession**" means a deed of accession duly executed by the relevant party thereto, in the form set out in schedule 1 to the Security Trust and Intercreditor Deed with such amendments as the Security Trustee may have authorised in writing.

"**Default Amount**" has the meaning given to it in the Conditions of the Bonds;

"**Default Debt Life Cover Ratio**" has the meaning given to Debt Life Cover Ratio other than in calculating A (as defined therein) there shall be deducted all amounts referred to in paragraph (b) of the definition of Gross Income;

"**Default Interest**" has the meaning given to it in the Conditions of the Bonds;

"**Default Rate**" means the rate of Default Interest (as such term is defined in the Conditions);

"Defects Liability Period" means in respect of each Project Facility the period of 12 months from the relevant Service Availability Date;

"Definitive Bonds" means Bonds in definitive form, each with Coupons and a Talon for further Coupons attached;

"Direct Agreements" means the Authority Direct Agreement, the Construction Contractor Direct Agreement and the FM Contractor Direct Agreement;

"Dispute" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"Dispute Resolution Procedure" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"Distributions Account" means the account opened and maintained by ProjectCo with the Account Bank in accordance with clause 13 of the Accounts Agreement;

"Early Redemption Amount" has the meaning given to it in the Conditions of the Bonds;

"Economic Assumptions" in relation to a Forecast means assumptions as to:

- (a) rates of inflation, RPIX or any similar measure, whether over a short term or long term;
- (b) LIBOR, the gilt rate or any other measure of the cost of borrowing, whether over a short term or a long term;
- (c) any rate of tax applicable to any person at any time or to VAT at any time;
- (d) any tax allowance applicable to any person or any asset at any time; and
- (e) the accounting policies of any person,

in each case as used in preparing such Forecast;

"EIB" means the European Investment Bank of 100 Boulevard Konrad Adenauer, L-2950 Luxembourg;

"EIB Advance" means the advance of the EIB Loan, made on or about the Issue Date;

"EIB Ambac Event of Default" has the meaning given to it in the Security Trust and Intercreditor Deed;

"EIB Ambac Guarantee" means the financial guarantee and schedule thereto dated on or around the Issue Date issued by Ambac in respect of the EIB Loan pursuant to the Reimbursement and Indemnity Agreement;

"EIB Ambac US Guarantee" means the financial guarantee and schedule thereto dated on or around the Issue Date issued by Ambac US in respect of the EIB Loan;

"EIB Costs" has the meaning given to it in the EIB Loan Agreement;

"EIB Guarantees" means the EIB Ambac Guarantee and the EIB Ambac US Guarantee and **"EIB Guarantee"** shall be construed accordingly;

"EIB Loan" means the loan to be made by EIB to the Issuer pursuant to the EIB Loan Agreement;

"EIB Loan Agreement" means the loan agreement between, *inter alia*, the Issuer and EIB dated on or about the Launch Date pursuant to which EIB has agreed to make available to the Issuer a term loan facility in an aggregate amount of up to £60,000,000;

"EIB Proceeds Onloan Agreement" means the intercompany loan agreement dated on or about the Issue Date between the Issuer (as lender), ProjectCo (as borrower) and the Security Trustee whereby the proceeds of the EIB Loan are on-lent;

"Emergency Major Maintenance Costs" means cost and expenses certified by ProjectCo to be costs resulting from an emergency which ProjectCo reasonably considers justify a withdrawal from the Major Maintenance Reserve Account in accordance with clause 5.8.2 (*Emergency Major Maintenance Costs*) of the Collateral Deed, in an amount not exceeding £30,000 (indexed) in aggregate in any six month period;

"EMU" means European Economic and Monetary Union;

"Enforcement" means any action taken by the Security Trustee, following the occurrence of an Enforcement Event, to enforce the terms of the Collateral Deed and/or to exercise the rights thereunder or any of the Security constituted by any of the Security Documents or the Direct Agreements or the Equity Subscription Agreement in accordance with their terms and pursuant to the Security Trust and Intercreditor Deed;

"Enforcement Event(s)" means the occurrence of an Event of Default which is continuing and has not been remedied or waived by the Majority Creditor in accordance with the Collateral Deed;

"Entrenched Rights" has the meaning given to it in the Security Trust and Intercreditor Deed;

"Entry" means any entry which is made in the securities account of any Bond Accountholder with a Clearing System in respect of Bonds held in such Clearing System;

"Environmental Authority" means a governmental agency or other regulatory body, court of law or tribunal with jurisdiction in relation to Environmental Matters and under Environmental Laws;

"Environmental Laws" means any and all laws, directives, rules, statutes, orders, regulations, ordinances, codes, decrees, requirements of any governmental authority (provided such requirements are normally complied with by the persons to whom they are intended to apply) and any and all common law requirements, rules and bases of liability regulating, relating to or imposing liability or standards (provided such standards are normally complied with by the persons to whom they are intended to apply) of conduct concerning pollution or protection of human health or the environment, as now or may at any time hereafter be in effect;

"Environmental Licences" means any permit, licence, authorisation, approval, consent or like matter required by any Environmental Law;

"Environmental Loss" means and includes all losses, damages, liabilities, and expenses, arising from Environmental Matters or the performance of any Environmental Work;

"Environmental Matters" means any of the following: nuisance, vibration, noise, emission, discharges and releases of any Hazardous Material into air, water (including underground water), sewage systems and land (or a combination of these), any deposit, disposal, keeping, treatment, importation, exportation, production, transportation, handling, processing, carrying, manufacture, use or presence of any Hazardous Material or matters relating to pollution or protection of the environment including, without limitation, human health or the health of animals and plants;

"Environmental Proceedings" means any criminal, civil, judicial, regulatory or administrative proceeding, suit, or claim of any Environmental Authority or third party or any notice, order, instruction or requirement of any Environmental Authority under any Environmental Law which:

- (a) has been commenced or threatened in writing against ProjectCo as at the date of the claim; or
- (b) would more likely than not be commenced against ProjectCo if an Environmental Authority or third party was aware of the circumstances giving rise to the claim at the date of the claim;

"Environmental Work" means:

- (a) any inspection, investigation, assessment, auditing, sampling or monitoring (other than in the ordinary course of construction and/or operation of the Schools); and
- (b) any Remedial Action (other than any action required pursuant to the Construction Contract as at this date),

in respect of any Environmental Matters;

"Equity Subscription Agreement" means the agreement made on or about the Issue Date between the Obligors, the Shareholders, Ambac, EIB, the Bond Trustee and the Security Trustee;

"Escrow Account" means the account opened and maintained by ProjectCo with the Account Bank in accordance with clause 3 of the Accounts Agreement;

"Euroclear" means Euroclear Bank S.A./N.V., as operator of the Euroclear System;

"Event of Default" means any circumstances described as such in clause 13 (*Events of Default*) of the Collateral Deed;

"Exchange Date" means, subject to compliance with the terms of the Temporary Global Bond, the first day following the expiry of 40 days after the Issue Date;

"Expenses" in respect of any period means (without double counting) the aggregate of:

- (a) Operating Costs paid or payable during that period;
- (b) any amounts required to be paid by ProjectCo during that period into the Routine Maintenance Reserve Account and the Major Maintenance Reserve Account; and
- (c) any other costs or expenditure (to the extent not reasonably expected to be recovered from any Insurances or covered by amounts standing to the order of the ProjectCo Insurance Proceeds Account or the Joint Insurance Account reasonably

expected to be applied towards meeting such costs or expenditure) paid or payable by ProjectCo during that period (excluding any Senior Debt Service);

"**Expiry Date**" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"**External Works Availability Date**" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"**Extraordinary Resolution**" has the meaning given to it in the Bond Trust Deed;

"**Fees Letters**" means together the Security Trustee Fee Letter and the Bond Trustee Fee Letter;

"**Final Payment Date**" means 31 January 2036;

"**Final Prospectus**" has the meaning given to it in the Subscription Agreement;

"**Final Service Availability Date**" means the Service Availability Date to occur in respect of the last of the Project Facilities to reach Service Availability;

"**Finance Documents**" means the Senior Finance Documents and the Junior Finance Documents;

"**Financial Close**" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"**Financial Indebtedness**" means (without double counting) any indebtedness of any Obligor, in respect of or arising under or in connection with:

- (a) moneys borrowed (including overdrafts); or
- (b) any debenture, bond, note or loan stock or other similar instrument or note purchase facility; or
- (c) any acceptance or documentary credit; or
- (d) receivables sold or discounted; or
- (e) the purchase price of any asset to the extent payable after the time of sale or delivery where the deferred payment is arranged primarily as a method of raising finance or financing or refinancing the purchase of the asset acquired; or
- (f) the sale price of any asset to the extent paid before the time of sale or delivery where the advance payment is arranged primarily as a method of raising finance or financing or refinancing the manufacture, assembly, acquisition or holding of the asset to be sold; or
- (g) finance leases, capital leases, credit sale or conditional sale agreements (whether in respect of land, buildings, plant, machinery, equipment or otherwise) entered into primarily as a method of raising finance or financing or refinancing the acquisition of the relevant asset (but not including liabilities under operating leases); or
- (h) agreements entered into for the purpose of managing or hedging currency and/or interest rate and/or RPI risk whether by way of forward exchange, cap, collateral, swap, forward rate agreement or otherwise; or

- (i) the amount payable under any put option or other arrangement whereby any Obligor is liable to purchase share capital or other securities issued by it; or
- (j) the amount payable in respect of the redemption of any share capital or other securities issued by any Obligor; or
- (k) any guarantee, indemnity or other assurance against any liability or financial loss (whether actual or contingent, future or present); or
- (l) amounts raised under any other transaction having the commercial effect of a borrowing;

"Financial Quarter" means each period of three months in a Financial Year beginning on 1 January, 1 April, 1 July and 1 October;

"Financial Statements" means, in relation to any company for any financial year, its annual audited statements and related directors and auditors reports (if produced or required by applicable law) for such financial year prepared in accordance with clause 5.4 (*Requirements as to Financial Statements*) of the Collateral Deed;

"Financial Year" means the period of 12 months ending on 31 January in each year or such other period as may be approved by the Majority Creditor;

"Financing Rights" means, in respect of the Security Trustee or any Creditor, all rights which it has the benefit of pursuant to any Finance Document (other than any Reserved Right or any right to amend the provisions of the Security Trust and Intercreditor Deed) including, without limitation:

- (a) the right, or the right to direct the Security Trustee or Creditor, to consent to any amendment, waiver, modification and/or extension of any provision of any Finance Document;
- (b) the right, or the right to direct the Security Trustee or Creditor, to exercise any right, power and discretion of or under any of the provisions of the Finance Documents (including, without limitation, the right to refuse to advance sums upon non-satisfaction of, or to waive, any conditions precedent contained in any Finance Document); and
- (c) the right, or the right to direct the Security Trustee or another Creditor, to bring any litigation, arbitration, administrative or other proceedings arising from or in connection with the Finance Documents.

"Flow of Funds Statement" means the statement agreed between ProjectCo and the Majority Creditor on or prior to the Issue Date detailing the transfer of funds from the Escrow Account to the Operating Account, and certain other persons immediately following the proceeds of the EIB Loan and the issue of the Bonds being credited to the Escrow Account;

"FM Agreement" means the agreement dated on or before the Issue Date between ProjectCo and the FM Contractor and includes any other agreement entered into by ProjectCo for the provision of Services;

"FM Contractor Guarantee" means the guarantee dated on or before the date of this Agreement by the FM Contractor Guarantor in favour of ProjectCo of the obligations of the FM Contractor under the FM Agreement;

"FM Contractor" means Morrison Facilities Services Limited a company incorporated in Scotland with (registered number SC120550) whose registered office is at Ellismuir Way, Tannochside Park, Uddingston, Glasgow, G71 5QA;

"FM Contractor Guarantor" means AWG Group Limited, a company incorporated in England and Wales with registered number 02366618 and having its registered office at Anglian House, Ambury Road, Huntingdon, Cambridgeshire, PE29 3NZ or any other person from time to time acceptable to the Majority Creditor guaranteeing the obligations of the FM Contractor under the FM Agreement;

"FM Contractor Direct Agreement" means the direct agreement dated on or before the Issue Date between the FM Contractor, ProjectCo, the FM Contractor Guarantor and the Security Trustee in respect of the FM Agreement and includes any replacement direct agreement entered into in relation to a facilities management agreement;

"FM Costs" means those costs identified as, or as the case may be, falling within the category of "facilities management costs" in any Financing Case and any VAT thereon;

"Force Majeure Event" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"Force Majeure Termination" means either ProjectCo or the Authority terminating the Project Agreement pursuant to clause 39 of the Project Agreement;

"Forecast" means a forecast produced by running the Operating Financial Model (including for the avoidance of doubt the forecast produced by running the Base Case Model) in accordance with and pursuant to clause 5 and schedule 7 of the Collateral Deed;

"Forward Test Period" means, in respect of any Payment Date, the period of twelve months commencing on the day immediately following the relevant Payment Date (and including the Payment Date on which such twelve month period ends);

"FSA" means the Financial Services Authority;

"FSMA" means the Financial Services and Markets Act 2000;

"Funding Shortfall" means that, at any time in the period up to the projected Final Service Availability Date, the aggregate of:

- (a) the amount projected and estimated to be the maximum liability of ProjectCo to make payments in respect of Construction Costs (including any Construction Costs resulting from any Authority Change in respect of which a confirmation has been issued by the Authority pursuant to clause 56.1.9 of the Project Agreement or any event in respect of which proceeds of any Insurance have been, or are projected to be, received in either the ProjectCo Insurance Proceeds Account or the Joint Insurance Account) prior to or as a result of reaching the projected Final Service Availability Date;
- (b) the amount of all other liabilities of ProjectCo (including in respect of Operating Costs or sums due under the Senior Finance Documents or subject to clause 11.4 of the Collateral Deed sums due under the Junior Finance Documents and including any liabilities resulting from any Authority Change in respect of which a confirmation has been issued by the Authority pursuant to clause 56.1.9 of the Project Agreement) projected and estimated to accrue prior to the projected Final

Service Availability Date, in the case of Operating Costs taking into account the amounts set out in the most recent Operating Budget; and

- (c) the amount projected and estimated to be the aggregate additional amount which ProjectCo will need to transfer to the Senior Debt Service Reserve Account in order to ensure that on the projected Final Service Availability Date the balance standing to the credit of the Senior Debt Service Reserve Account is not less than the Required Senior Debt Service Reserve Balance, as at the projected Final Service Availability Date;

exceeds the aggregate (without double counting) of:

- (i) the amounts standing to the credit of the Escrow Account plus the aggregate amount due to be paid into the Escrow Account pursuant to the Guaranteed Investment Contract;
- (ii) the sum of all amounts standing to the credit of the Operating Account, the ProjectCo Insurance Proceeds Account and the Joint Insurance Account to the extent available for application towards the liabilities referred to in paragraphs (a) and (b) above or the Accounts referred to in paragraph (c) above;
- (iii) the net amount which is likely to be raised by the sale of Variation Bonds (x) to fund any Authority Change in respect of which a confirmation has been issued pursuant to clause 56.1.9 of the Project Agreement and (y) to the extent that a corresponding liability resulting from such Authority Change has been included in paragraphs (a) and (b) above;
- (iv) any other Gross Income (including any Insurance Proceeds received (or projected to be received) in respect of any physical damage) projected and estimated to be received by ProjectCo prior to the projected Final Service Availability Date;
- (v) any undrawn amount unconditionally and irrevocably due to ProjectCo pursuant to the Equity Subscription Agreement in respect of ProjectCo Loan Notes which corresponds to an amount due to HoldCo pursuant to the Equity Subscription Agreement in respect of HoldCo Loan Notes which is supported by Acceptable Security;
- (vi) any other committed source of finance available to ProjectCo for application towards the liabilities referred to in paragraphs (a) and (b) above;

"General Change in Law" has the meaning given to it in the Project Agreement;

"GIC Provider" means Royal Bank of Canada, London Branch or such other person or persons who may replace any of it as the provider of a Guaranteed Investment Contract;

"Global Bonds" means the Temporary Global Bond and the Permanent Global Bond;

"Gross Income" means, in respect of any period, (without double counting) the aggregate in that period of:

- (a) all amounts received or projected to be received in the most recent Operating Financial Model for its own account during such period by ProjectCo pursuant to and in accordance with the terms of the Project Documents including (without double counting) any amounts payable by the Authority pursuant to clause 56.1.15 of the Project Agreement;

- (b) interest received, or projected to be received in the most recent Operating Financial Model during such period by ProjectCo, together with any proceeds to be received by ProjectCo under the terms of the Guaranteed Investment Contract, but excluding interest received or projected to be received on amounts standing to the credit of the Distributions Account;
- (c) any Permitted Maintenance Reserve Release or Permitted Change in Law Reserve Release;
- (d) any rebates of tax, the proceeds of any disposal of current assets and any repayment of VAT, in each case, received or projected to be received;
- (e) proceeds received or projected to be received from business interruption or delay in completion insurance or in respect of advanced loss of profits, in each case, in respect of such period;
- (f) amounts received or projected to be received as the result of the payment of liquidated damages or any other claim under any Project Document;
- (g) any retail income received or projected to be received by ProjectCo for its own account, other than pursuant to and in accordance with the Project Documents; and
- (h) any other income which the Majority Creditor from time to time agrees to be part of Gross Income;

"Gross Redemption Yield" means a yield expressed as a percentage and calculated on a basis consistent with the basis used in the United Kingdom Debt Management Office publication *"Formulae for Calculating Gilt Prices from Yields"*, page 4, Section One: Price Yield Formulae *"Conventional Gilts: Double-dated and Undated Gilts and Assumed (or Actual) Redemption on a Quasi-Coupon Date"* published on 8 June 1998 and updated on 15 January 2002 (and as further updated, supplemented, amended or replaced from time to time);

"Guarantee Excluded Amounts" has the meaning given to it in the Bond Guarantee;

"Guaranteed Amount" has the meaning given to it in the Bond Guarantee;

"Guaranteed Investment Contract" means the investment contract with a guaranteed return dated on or about the Issue Date between the Issuer, ProjectCo, Ambac, the Bond Trustee, the Security Trustee and the GIC Provider;

"Guaranteed Obligations" means the Bonds, with the exception of the Variation Bonds and any other Bonds which have been purchased and are held by or for the account of the Issuer or a member of the Issuer Group, and shall include, where the context so requires, the Coupons relating to the Bonds but shall in all cases exclude all Policy Excluded Amounts;

"Guarantees" means the Construction Contractor Guarantee and the FM Contractor Guarantee;

"Hazardous Material" means anything whether in solid, liquid or gaseous form which alone or in combination with other things is capable of causing harm or damage to property or to human health or to the environment;

"Historic Test Period" means:

- (a) in respect of any Payment Date falling during the twelve month period immediately following the Final Service Availability Date, the period from the Final Service Availability Date up to and including such Payment Date; and
- (b) in respect of any Payment Date falling more than twelve months after the Final Service Availability Date, the period of twelve months ending on (and including) the relevant Payment Date;

"HoldCo" means Alpha Schools (Highland) Holdings Limited, a company incorporated in England and Wales with registered number 05508168 and having its registered office at Anglian House, Ambury Road, Huntingdon, PE29 3NZ;

"HoldCo Accounts" means the HoldCo Proceeds Account and the HoldCo Distributions Account;

"HoldCo Cash Collateral Account Security" means the Scots law cash collateral account security granted by HoldCo in favour of the Security Trustee dated on or before the Issue Date;

"HoldCo Debenture" means the first ranking debenture dated on or about the Issue Date granted by HoldCo in favour of the Security Trustee;

"HoldCo Debenture Beneficiary" has the meaning given to it in the Security Trust and Intercreditor Deed;

"HoldCo Distributions Account" means the account opened and maintained by HoldCo with the Account Bank in accordance with clause 15 of the Accounts Agreement;

"HoldCo Guarantee" means the obligations of HoldCo pursuant to the guarantee given by HoldCo in clause 16 (*Guarantee*) of the Collateral Deed;

"HoldCo Information" means the information in relation to HoldCo set out in the section of the Prospectus entitled "Description of the Issuer, ProjectCo, HoldCo, the Shareholders and Noteholders – HoldCo" section of the Prospectus;

"HoldCo Investment Arrangement Fee" means the fee payable by HoldCo to the Noteholders in accordance with clause 2.8.3 of the Shareholders Agreement;

"HoldCo Loan Notes" means the loan notes issued or to be issued by HoldCo and subscribed or to be subscribed for by the Noteholders pursuant to the Equity Subscription Agreement and the HoldCo Loan Note Instrument;

"HoldCo Loan Note Instrument" means the instrument dated on or about the Issue Date constituting the HoldCo Loan Notes;

"HoldCo Proceeds Account" means the account opened and maintained by HoldCo with the Account Bank in accordance with clause 14 of the Accounts Agreement;

"HoldCo Satisfaction Date" means the date on which HoldCo has satisfied in full its obligations to subscribe for the Issuer Loan Notes pursuant to the Equity Subscription Agreement;

"HoldCo Shares" means, at any time, fully paid, issued and allotted shares in HoldCo in existence at such time;

"Holder" means (i) if and to the extent that the Guaranteed Obligations are represented by definitive bonds held outside of any Clearing System (together with any Additional or Substitute Clearing Systems), the bearers thereof and (ii) if and to the extent the Guaranteed Obligations are represented by a temporary or permanent global bond or definitive bonds held in a Clearing System, Bond Accountholders as being holders of Guaranteed Obligations in which regard any certificate or other document issued by the relevant Clearing System as to the principal amount of the Guaranteed Obligations standing to the account of any Bond Accountholder shall be conclusive and binding for all purposes hereof;

"ICTA" means the Income and Corporation Taxes Act 1988;

"Initial Ambac Fee" has the meaning given to it in the Ambac Fee Letter;

"Insolvency Act" means the Insolvency Act 1986;

"Insolvency Law" means any applicable United Kingdom bankruptcy or insolvency law, including the Enterprise Act 2002, the Insolvency Act 2000, the Insolvency Act 1986, the Insolvency Rules 1986, the Insolvency Regulations 1994 or any legislation passed in substitution or replacement thereof or amendment thereof;

"Insurance Adviser" means JLT Risk Solutions Limited acting on behalf of the Majority Creditor or such replacement insurance consultant as the Majority Creditor may nominate in writing with the agreement of ProjectCo, such agreement not to be unreasonably withheld or delayed;

"Insurance Broker" means JLT Risk Solutions Limited acting on behalf on ProjectCo or such replacement insurance broker as ProjectCo may nominate in writing within the agreement of the Majority Creditor, such agreement not to be unreasonably withheld or delayed;

"Insurance Proceeds" means the proceeds from any Insurances received by ProjectCo;

"Insurances" means all insurances effected (or required to be effected) pursuant to schedule 3 of the Collateral Deed and all other insurances maintained by ProjectCo from time to time and **"Insurance"** shall be construed accordingly;

"Insurers" means the insurers of the Project;

"Intellectual Property" means all right, title and interest in trade marks, service marks, trade names, logos, get-up, patents, inventions, registered and unregistered designs, copyright, semi-conductor topography, databases and Know-how and all similar proprietary rights which may subsist in any part of the world now or in the future including, where such rights are obtained or enhanced by registration, any registration of such rights and applications in rights to apply for such registrations;

"Intercompany Onloan Agreements" means the Bond Proceeds Onloan Agreement and the EIB Proceeds Onloan Agreement;

"Interface Agreement" means the interface agreement dated on or before the Issue Date between ProjectCo, the Construction Contractor and the FM Contractor and includes any replacement thereof;

"Intragroup Loan Agreement" means the intragroup loan agreement dated on or around the Issue Date between the Issuer (as Lender) and ProjectCo (as borrower) whereby the proceeds of subscription for ordinary shares in the Issuer are on-lent;

"Investment Accounts" means the Major Maintenance Reserve Account, the Senior Debt Service Reserve Account, the Change of Law Reserve Account, the Proceeds Account, the Insurance Proceeds Account, the Routine Maintenance Reserve Account and the Surplus Routine Maintenance Reserve Account;

"Investment Management Agreement" means the agreement (if any) made or to be made between ProjectCo, the Security Trustee and the Investment Manager;

"Investment Manager" means any person who enters into an Investment Management Agreement and accedes to the Accounts Agreement as Investment Manager;

"Issue Amount" has the meaning given to it in a side letter dated the same date as the Subscription Agreement between the same parties;

"Issue Date" means 6 April 2006;

"Issue Documents" means the Bond Trust Deed and the Paying Agency Agreement;

"Issue Expenses" means:

- (a) the Bond Arrangement Fee;
- (b) the Initial Ambac Fee;
- (c) the fees of the Account Bank, the Security Trustee, the Bond Trustee and the Principal Paying Agent and their respective legal counsel, and the fees and disbursements of the legal counsel to the Obligors, the Manager, EIB and Ambac;

"Issue Price" has the meaning given to that term in the Subscription Agreement;

"Issuer" means Alpha Schools (Highland) Project plc, a company incorporated in England and Wales with registered number 05516176 and having its registered office at Anglian House, Ambury Road, Huntingdon, PE29 3NZ;

"Issuer Account" means the Issuer Debt Payment Account;

"Issuer Cash Collateral Account Security" means the Scots law cash collateral account security granted by ProjectCo in favour of the Security Trustee dated on or before the Issue Date;

"Issuer Debenture" means the first ranking debenture dated on or about the Issue Date granted by the Issuer in favour of the Security Trustee;

"Issuer Debenture Beneficiary" has the meaning given to it in the Security Trust and Intercreditor Deed;

"Issuer Debt Payment Account" means the account opened and maintained by the Issuer with the Account Bank in accordance with clause 10 of the Accounts Agreement;

"Issuer Group" means:

- (a) any Obligor or any subsidiary of an Obligor;
- (b) any Material Project Party; and

- (c) the Sponsors except that, in the case of Northern Infrastructure Investments LLP, references to Sponsor in this definition shall, for the avoidance of doubt, not include the limited partners in each of the several limited partnerships constituting the members of Northern Infrastructure Investments LLP;

"Issuer Guarantee" means the obligations of the Issuer pursuant to the guarantee given by the Issuer in clause 16 (*Guarantee*) of the Collateral Deed;

"Issuer Investment Arrangement Fee" means the fee payable by the Issuer to HoldCo in accordance with clause 2.8.2 of the Shareholders Agreement;

"Issuer Loan Notes" means the loan notes issued or to be issued by the Issuer and subscribed or to be subscribed for by HoldCo pursuant to the Equity Subscription Agreement and the Issuer Loan Note Instrument;

"Issuer Loan Note Instrument" means the instrument dated on or about the Issue Date constituting the Issuer Loan Notes;

"Issuer Shares" means, at any time, fully paid, issued and allotted shares in the Issuer in existence at such time;

"Joint Insurance Proceeds Account" or **"Joint Insurance Account"** means the account of that name opened in the joint names of ProjectCo and Authority and maintained by ProjectCo with the Account Bank in accordance with the Project Agreement and the Accounts Mandate Agreement;

"Junior Beneficiaries" has the meaning given to it in the Security Trust and Intercreditor Deed;

"Junior Creditors" means (i) the Shareholders (each in its capacity as holder of HoldCo Shares), (ii) the Noteholders (each in its capacity as holder of HoldCo Loan Notes), (iii) HoldCo (in its capacity as holder of (a) the ProjectCo shares, (b) the Issuer Shares and (c) the Issuer Loan Notes) and (iv) the Issuer (in its capacity as lender under the Intragroup Loan Agreement and holder of ProjectCo Loan Notes);

"Junior Finance Documents" means the HoldCo Loan Note Instrument, the ProjectCo Loan Note Instrument, the Issuer Loan Note Instrument, the HoldCo Loan Notes, the ProjectCo Loan Notes, the Issuer Loan Notes and the Intragroup Loan Agreement;

"Junior Finance Liabilities" means any indebtedness of any Obligor to (i) each and every Junior Creditor and (ii) any other Obligor under the Junior Finance Documents;

"Know-how" means confidential, proprietary, industrial and commercial information and techniques in any form (including paper, electronically stored data, magnetic media, film and microfilm) including without limitation drawings, formulae, test results, reports, project reports and testing procedures, instruction and training manuals, tables or operating conditions, market forecasts, lists and particulars of customers and suppliers, marketing methods and procedures;

"Launch Date" means 30 March 2006 or such other date as Ambac, EIB, the Manager and the Issuer shall agree;

"Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of the court;
- (b) the limitation of enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors;
- (c) the time barring of claims under the Limitation Acts;
- (d) the defences of set-off or counterclaim;
- (e) similar principles, rights and defences to those described under (a) to (d) above under the laws of any foreign jurisdictions in which relevant obligations may have to be performed;
- (f) the possibility that an undertaking to assume liability for or indemnify a person against non-payment of United Kingdom income tax may be void;
- (g) that there could be circumstances in which a court would not treat as conclusive certificates or determinations expressed to be so;
- (h) that default interest may, at least in part, amount to a penalty and, to that extent, may not be recoverable; and
- (i) that where a document provides that oral amendments to the document are permitted, then these may be treated as enforceable notwithstanding other provisions within the document to the contrary; and
- (j) any provisions dealing with the concept of equivalent project relief under the Project Documents may be unenforceable to the extent that they are not compliant with the Housing Grants and Regeneration Act 1996;

"Level 1 Rating" has the meaning given to it in the Security Trust and Intercreditor Deed;

"Level 2 Rating" has the meaning given to it in the Security Trust and Intercreditor Deed;

"Liability" means the Senior Finance Liabilities and the Junior Finance Liabilities or any of them.

"Lifecycle Plan" has the meaning given to "Lifecycle Plan" in the FM Agreement, being those aspects of the Original Lifecycle Plan as updated in accordance with the FM Agreement which the FM Contractor is responsible for and which ProjectCo pays for out of amounts standing to the credit of the Routine Maintenance Reserve Account;

"Listing Rules" means listing rules, disclosure rules and prospectus rules made pursuant to section 73A of FSMA;

"London Stock Exchange" means the London Stock Exchange plc;

"Maintenance Reserve Accounts" means the Major Maintenance Reserve Account, Routine Maintenance Reserve Account and the Surplus Routine Maintenance Reserve Account;

"Major Maintenance Costs" means those amounts in respect of major maintenance to be incurred by ProjectCo pursuant to the Project Documents and which are provided for in the ProjectCo Major Maintenance Plan;

"Major Maintenance Reserve Account" means the account opened and maintained by ProjectCo with the Account Bank in accordance with clause 7 of the Accounts Agreement;

"Majority Creditor" means:

- (a) where Ambac is the Bond Creditor and a Level 1 Rating applies, Ambac;
- (b) where Ambac is the Bond Creditor and a Level 2 Rating applies, Ambac and EIB acting together; or
- (c) where the Bond Trustee is the Bond Creditor, the Bond Trustee and EIB acting together or, if the Bond Trustee fails to act within a reasonable time (taking into account the facts and circumstances at the time), EIB;

"Majority Creditor's Technical Adviser" means such technical adviser acting on behalf of the Senior Creditors as the Majority Creditor may nominate in writing after agreement with ProjectCo (such agreement not to be unreasonably withheld or delayed);

"Majority Creditor's Technical Adviser's Deed of Appointment" means the deed of appointment of the Majority Creditor's Technical Adviser dated on or before the Issue Date;

"Management Services Agreement" means the management services agreement entered into between ProjectCo and Morrison Project Investments Limited (a company incorporated in England and Wales with company number SC218927);

"Manager" has the meaning given to it in the Subscription Agreement;

"Manager's Mandate Letter" means the mandate letter concerning the Manager's mandate in relation to the Bonds;

"Mandate" means, in respect of each Account, the mandate in relation to that Account in the form agreed between the Account Bank, the Security Trustee and, either (in the case of the ProjectCo Accounts) ProjectCo or (in the case of the HoldCo Accounts) HoldCo or (in the case of the Issuer Account) the Issuer;

"Master Definitions Schedule" means this Master Definitions Schedule;

"Material Adverse Effect" is to be construed as a reference to an event or matter having a material adverse effect on:

- (a) the present or future financial condition, assets or revenues of any Obligor; or
- (b) the present or future ability of any Obligor duly to perform all or any of its material obligations (which shall include, without limitation, its payment obligations) under the Relevant Documents; or
- (c) the Project; or
- (d) the validity or enforceability of any Relevant Document or of all or any part of the Security Documents;

"Material Project Documents" means the:

- (a) the Project Agreement;
- (b) the Construction Contract;
- (c) the Construction Contractor Guarantee;
- (d) the Retention Bond;
- (e) the Performance Bond;
- (f) the FM Agreement;
- (g) the FM Contractor Guarantee;
- (h) the Interface Agreement;
- (i) the Technical Adviser's Deed of Appointment;
- (j) the ProjectCo Collateral Warranties; and
- (k) the Planning Supervisor Appointments;

and such other documents as may from time to time be agreed between the Majority Creditor and ProjectCo (each acting reasonably) to be a Material Project Document and "**Material Project Document**" means any one of them;

"Material Project Parties" means:

- (a) ProjectCo;
- (b) HoldCo;
- (c) the Issuer;
- (d) each Shareholder (until such time as all its obligations to subscribe for HoldCo Shares have been fully and finally satisfied in accordance with the Equity Subscription Agreement);
- (e) each Noteholder (until such time as all its obligations to subscribe for HoldCo Loan Notes have been fully and finally satisfied in accordance with the Equity Subscription Agreement);
- (f) the Construction Contractor (until the end of the Defects Liability Period in respect of the last Project Facility to achieve Service Availability), the Construction Contractor Guarantor and the Surety (each until the end of the Defects Liability Period); and
- (g) the FM Contractor and the FM Contractor Guarantor;

and "**Material Project Party**" means any of them;

"Monthly Unitary Charge" has the meaning given to it in the Project Agreement;

"Moody's" means Moody's Investors Service, Inc.;

"**Morrison Guarantee**" means the guarantee by The Royal Bank of Scotland plc dated on or before the Issue Date in respect of the obligations of Morrisons Education (Highland) Limited in the form set out in schedule 1 of the Equity Subscription Agreement;

"**Necessary Consents**" has the meaning given to it in the Project Agreement;

"**Net Present Value of Projected Cash Flow**" means in respect of any Payment Date the Projected Cash Flow in each of the Semi-Annual Periods from and including the day after such Payment Date up to and including the Final Payment Date discounted back at a rate equal to the sum of (i) the weighted average rate of interest (expressed as a decimal) applicable to the Bonds and the EIB Loan and (ii) that element of the Ambac Fee which is paid over the life of the Bonds and the EIB Loan;

"**Nominee Share**" means the one ordinary share with a par value of £1 in the Issuer held by Morrison Education (Highland) Limited (registered number 05568098);

"**Nomineeship**" means the deed of nomination in favour of HoldCo in respect of the Nominee Share;

"**Noteholders**" means the persons subscribing (or to subscribe) for HoldCo Loan Notes being, as at the date of the Collateral Deed, the Shareholders and any person to which HoldCo Loan Notes or commitments in relation to the HoldCo Loan Notes is properly transferred in accordance with the Equity Subscription Agreement, the HoldCo Loan Note Instrument and the Shareholders' Agreement and "**Noteholder**" means any one of them;

"**Noteholder Support Documents**" means Acceptable Security being at the Issue Date the 3i Guarantee and the Morrison Guarantee as effected and maintained by the Noteholders pursuant to clause 4 of the Equity Subscription Agreement and shall include any Replacement Security meeting the requirements of clause 4 of the Equity Subscription Agreement;

"**Notice of Demand and Certificate**" has the meaning given to it in the Bond Guarantee;

"**Obligors**" means ProjectCo, the Issuer and HoldCo and "**Obligor**" means any of them;

"**Official List**" means the official list maintained by the FSA (or as may otherwise be referred to as the UK Listing Authority) (in its capacity as the competent authority for the purposes of Part VI of the FSMA);

"**Operating Account**" means the account opened and maintained by ProjectCo with the Account Bank in accordance with clause 4 of the Accounts Agreement;

"**Operating Budget**" means, at any time, the most recent operating budget prepared by ProjectCo in accordance with clause 5.3 (*Operating Budget*) of the Collateral Deed and approved (or otherwise agreed or determined) pursuant to the procedure set out in schedule 7, Part 1 of the Collateral Deed;

"**Operating Costs**" in any period means (without double counting and excluding any Construction Expenditure) the aggregate amount paid in that period in respect of:

- (a) amounts payable by ProjectCo under obligations contained in the Project Documents (other than the Construction Contract, Routine Maintenance Costs and amounts covered by paragraph (c) below);

- (b) administering ProjectCo, its business and the Project including, without limitation, staff costs, fees and expenses of consultants, advisers, managing or letting agents, and fees and expenses and other amounts owing to the Account Bank, the bank at which the Joint Insurance Account is held, the Investment Manager, the Security Trustee, the Bond Trustee, the Paying Agents, Ambac (but not including the Ambac Fee or any other amounts payable to Ambac under the Reimbursement and Indemnity Agreement), EIB and the Bond Custodian;
- (c) any Unanticipated Major Maintenance Costs and Major Maintenance Costs;
- (d) insurance premia and insurance excess;
- (e) tax;
- (f) the development costs set out in the Base Case Model;
- (g) subject to clause 11.4 of the Collateral Deed, the ProjectCo Investment Arrangement Fee and interest payable by ProjectCo to HoldCo in accordance with clause 2.8.1 of the Shareholders Agreement; and
- (h) any other amounts as agreed between ProjectCo and the Majority Creditor;

"Operating Financial Model" means:

- (a) as at the date of the Collateral Deed, the Base Case Model; and
- (b) thereafter, the Base Case Model as updated for historical data, Economic Assumptions and Technical Assumptions as agreed between the parties pursuant to schedule 7 of the Collateral Deed and as may be changed as to its structure or superseded by another model as provided in schedule 7 of the Collateral Deed;

"Original Major Maintenance Plan" has the meaning given to "Original Lifecycle Plan" in the FM Agreement;

"Participating Member State" means a Member State of the European Communities which adopts the euro as its lawful currency in accordance with the Treaty;

"Paying Agency Agreement" means the paying agency agreement dated on or about the Issue Date between the Issuer, the Bond Trustee, Royal Bank of Canada Europe Limited (as Principal Paying Agent) and Royal Bank of Canada (Suisse) (as Paying Agent);

"Paying Agent" means the Royal Bank of Canada (Suisse) as paying agent and any additional or successor paying agent appointed under the Paying Agency Agreement;

"Paying Agents" means together the Principal Paying Agent and the Paying Agent;

"Payment Date" has (a) the meaning given to Scheduled Payment Date in the Conditions and (b) the meaning given to that term in the EIB Loan Agreement;

"Payment Period" has the meaning given to it in the Project Agreement;

"Performance Bond" means the performance bond between ProjectCo, the Construction Contractor and the Surety dated on or before the Issue Date;

"Permanent Global Bond" means the permanent global bond representing the Bonds in the form set out in schedule 2 of the Bond Trust Deed;

"Permitted Change in Law Reserve Release" means any transfer from the Change in Law Reserve Account to the Operating Account permitted pursuant to clause 12.3.1 of the Accounts Agreement;

"Permitted Distributions" means:

- (a) in relation to ProjectCo, amounts transferred to the Distributions Account; and
- (b) in relation to HoldCo, any payment of any sort, whether in cash or in kind, to be made by or on behalf of HoldCo to any ProjectCo Related Party howsoever the same may arise and whether pursuant to the terms of an agreement or otherwise or by way of gift;

"Permitted Encumbrance" means:

- (a) an encumbrance arising under, created by or pursuant to the Senior Finance Documents or the Junior Finance Documents;
- (b) an encumbrance arising solely by operation of law;
- (c) an encumbrance consented to by the Majority Creditor;
- (d) in respect of ProjectCo only, all finance leases relating to equipment leased in accordance with the Operating Budget from time to time not exceeding £250,000 (indexed) in aggregate at any time;
- (e) in respect of ProjectCo only, any encumbrance existing at the date of the Collateral Deed and disclosed in the Certificate of Title;
- (f) in respect of ProjectCo only, any encumbrance arising out of title retention provisions in a supplier's standard conditions of supply of goods which conditions are entered into by ProjectCo in the ordinary course of its business;
- (g) in respect of ProjectCo only, any pledge of goods or documents of title to goods as security for indebtedness incurred in relation to the acquisition of those goods where such acquisition is entered into by ProjectCo in the ordinary course of its business; and
- (h) in respect of ProjectCo only, an encumbrance created over an asset acquired in accordance with the Operating Budget from time to time which secures only indebtedness incurred for the purposes of such acquisition;

"Permitted Indebtedness" means indebtedness which:

- (a) arises under the Project Documents;
- (b) arises under the Finance Documents or otherwise in accordance with the Senior Finance Documents;
- (c) arises in respect of trade creditors with a maximum term of 90 days where such terms arise in the ordinary course of business and on arm's length terms, provided that such indebtedness does not exceed £50,000 (indexed) in aggregate at any time;

- (d) arises in the ordinary course of business and from transactions entered into on arm's length terms, provided that such indebtedness does not exceed £150,000 (indexed) in aggregate at any time;
- (e) is previously approved by the Majority Creditor;
- (f) arises in respect of finance leases of the type referred to in paragraph (d) of the definition of Permitted Encumbrances; or
- (g) arises in respect of transactions which fall within paragraphs (f), (g) and (h) of the definition of Permitted Encumbrances and in addition to paragraph (c) of this definition of Permitted Indebtedness;

"Permitted Junior Payments" means the payments, receipts and set-offs permitted by clause 7.5 of the Security Trust and Intercreditor Deed.

"Permitted Maintenance Reserve Release" means any transfer from the Permitted Maintenance Reserve Release Account to the Operating Account permitted pursuant to clause 7.3.1 of the Accounts Agreement;

"Permitted Operating Costs" means, in any period and in relation to any category of proposed Operating Costs identified in the Operating Budget for that period, the amount of proposed expenditure in that period in respect of that category contained in the Operating Budget provided that:

- (a) subject to paragraph (b), at any time prior to the Senior Creditors Release Date (i) the amount of category (a) of the definition of Operating Costs may vary in any 6 months by up to 10% of the costs identified in the Operating Budget for that period and (ii) the amount of each of categories (b), (c), (d) and (e) of the definition of Operating Costs may vary in any 6 months by up to 10% of the costs identified in the Operating Budget for that period; and
- (b) the amount of category (b) of the definition of Operating Costs which is paid to any Senior Creditor may vary by any amount from the amount of such costs identified in the Operating Budget;

"Permitted Payments" means the Permitted Senior Payments and Permitted Junior Payments.

"Permitted Senior Payments" means the payments, receipts and set-offs permitted by clauses 7.1 and 7.2 of the Security Trust and Intercreditor Deed;

"Planning Supervisor Appointments" means the appointment by Construction Contractor of Armours & Partners and McLeod & Aitken by ProjectCo as planning supervisors dated 12 and 19 April 2005 and 25 March and 22 April 2005 each to be novated to ProjectCo at Financial Close;

"Potential Event of Default" means any event which would (with the passage of time, the giving of notice, the making of any determination or any combination thereof), if not remedied or waived, become an Event of Default, provided that the Majority Creditor may (at its discretion), following a request from ProjectCo, by written notice to ProjectCo, waive the consequences of a Potential Event of Default (or any of them), such waiver taking effect to the extent and for a period set out in such written notice, without prejudice to the ability of such an event subsequently to become an Event of Default (with the passage of time, the giving of notice or the making of any determination, as applicable);

"Preliminary Prospectus" has the meaning given to it in the Subscription Agreement;

"Principal Paying Agent" means Royal Bank of Canada Europe Limited and any additional or successor principal paying agent appointed under the Paying Agency Agreement;

"Proceeds Account" means the account opened and maintained by ProjectCo with the Account Bank in accordance with clause 5 of the Accounts Agreement;

"Professional Team" means the professional team employed by the Construction Contractor in connection with the Works being, at the date hereof, Keppie Design Limited as architect, AF Cruden Associates Limited as structural engineer and Wallace Whittle Limited as M & E engineer or such other parties as may be appointed from time to time in the carrying out of these roles;

"Project" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"Project Agreement" means the project agreement dated on or before the Issue Date between ProjectCo and the Authority in relation to the design, construction, refurbishment, finance, maintenance and operation of the Project Facilities as amended by the financial supplement between ProjectCo and the Authority dated on or about the Issue Date;

"Project Data" means the information issued at the Issue Date by ProjectCo containing project data for the Base Case Model;

"Project Documents" means each Material Project Document, the Insurances and such other documents as may from time to time be agreed between Majority Creditor and ProjectCo (each acting reasonably) to be a Project Document and **"Project Document"** means any of them;

"Project Facilities" has the meaning given to it in the Project Agreement as amended, varied or supplemented in accordance with its terms;

"ProjectCo Accounts" means:

- (a) the Proceeds Account;
- (b) the Senior Debt Service Reserve Account;
- (c) the Escrow Account;
- (d) the Major Maintenance Reserve Account;
- (e) Routine Maintenance Reserve Account;
- (f) the Surplus Routine Maintenance Reserve Account;
- (g) the Change of Law Reserve Account;
- (h) the ProjectCo Insurance Proceeds Account;
- (i) the Operating Account; and
- (j) the Distributions Account;

"ProjectCo Assignment in Security" means the Scots law assignment in security granted by ProjectCo in favour of the Security Trustee dated on or before the Issue Date;

"ProjectCo Cash Collateral Account Security" means the Scots law cash collateral account security granted by ProjectCo in favour of the Security Trustee dated on or before the Issue Date;

"ProjectCo Collateral Warranties" means the collateral warranties addressed to ProjectCo from each member of the Professional Team and Tulloch Construction Group Limited and the Planning Supervisor Appointments;

"ProjectCo Debenture" means the first ranking debenture dated on or about the Issue Date given by ProjectCo in favour of the Security Trustee;

"ProjectCo Debenture Beneficiary" has the meaning given to it in the Security Trust and Intercreditor Deed;

"ProjectCo Group" means the Obligors and any subsidiaries of any Obligor;

"ProjectCo Information" means the information in relation to ProjectCo set out in the section of the Prospectus entitled "*Description of the Issuer, ProjectCo, HoldCo, the Shareholders and Noteholders – ProjectCo*";

"ProjectCo Insurance Proceeds Account" means the account opened and maintained by ProjectCo with the Account Bank in accordance with clause 11 of the Accounts Agreement;

"ProjectCo Investment Arrangement Fee" means the fee payable by ProjectCo to the Issuer in accordance with clause 2.8.1 of the Shareholders Agreement;

"ProjectCo Loan Note Instrument" means the instrument dated on or about the Issue Date constituting the ProjectCo Loan Notes;

"ProjectCo Loan Notes" means the loan notes issued or to be issued by ProjectCo and subscribed or to be subscribed for by the Issuer pursuant to the Equity Subscription Agreement and the ProjectCo Loan Note Instrument;

"ProjectCo Major Maintenance Plan" has the meaning given to "ProjectCo Lifecycle Plan" in the FM Agreement, being the works to be funded by ProjectCo from amounts standing to the credit of the Major Maintenance Reserve Account;

"ProjectCo Related Party" means any of HoldCo, the Issuer, the Shareholders, the Noteholders, the Sponsors, and any subsidiary, holding company or subsidiary of a holding company of any Shareholder, Noteholder, Sponsor or Obligor;

"ProjectCo Shares" means, at any time, fully paid, issued and allotted shares in ProjectCo in existence at such time;

"ProjectCo Upfront Costs" means the upfront costs payable by ProjectCo in accordance with the Flow of Funds Statement;

"Projected Cash Flow" for any period means the aggregate projected Cash Flow Available for Senior Debt Service for that period, as shown in the most recently prepared Forecast, including any indexation assumed therein;

"Property" means all estates and other interests in heritable property, freehold property or leasehold property wheresoever situate now or hereafter belonging to ProjectCo and all buildings, trade and other fixtures, fixed plant and machinery from time to time on any such property save for the avoidance of doubt, any equipment owned by the Authority;

"Prospectuses" means the Preliminary Prospectus and the Final Prospectus and **"Prospectus"** means any one of them, as the context requires;

"Qualifying Bank" means any bank which is an authorised institution (for the purpose of FSMA) and whose short-term debt is rated at least A-1 by S&P and P-1 by Moody's and whose long-term debt is rated at least AA- by S&P and at least Aa3 by Moody's or, in the case of a bank whose long-term debt is not so rated, a bank of equivalent standing approved by the Majority Creditor;

"Rating Agency" means any of S&P, Moody's and such other agency from time to time appointed to act as a rating agency in respect of the Bonds and **"Ratings Agencies"** shall be construed accordingly;

"Reimbursement and Indemnity Agreement" means the reimbursement and indemnity agreement made on or about the Issue Date between the Obligors and Ambac;

"Relevant Bond Accountholder" means any Bond Accountholder with a Clearing System which at the relevant date has credited to its securities account with such Clearing System one or more Entries in respect of the Bonds, except for either Clearing System in its capacity as an Bond Accountholder of the other Clearing System;

"Relevant Date" means whichever is the later of (a) the date on which any Guaranteed Amount becomes Due for Payment (as defined in the Bond Guarantee) and (b) if the full amount payable has not been paid by Ambac on or prior to such date, the date on which the full amount payable has been paid by Ambac;

"Relevant Documents" means the Project Documents and the Finance Documents and a **"Relevant Document"** means any one of these;

"Relevant L/C" means an Acceptable Letter of Credit, in a form satisfactory to and approved by the Majority Creditor;

"Relevant Test Period" means the Historic Test Period or, as the case may be, the Forward Test Period;

"Remedial Action" means removal, treatment, remediation, containment, abatement, cleaning-up or ameliorating the presence of Hazardous Material or the carrying out of any works related to Environmental Matters whether or not to comply with any Environmental Laws;

"Required Change in Law Reserve Balance" means:

- (a) on the Issue Date, £2,019,000 and
- (b) on any date thereafter, £2,019,000 less any amounts withdrawn by ProjectCo in accordance with clause 12.3.1 of the Accounts Agreement and clause 10.1.6 of the Collateral Deed.

"Required Insurances" means the Insurances required to be effected pursuant to schedule 3 of the Collateral Deed;

"Required Major Maintenance Reserve Balance" means on the Issue Date and each Payment Date thereafter, an amount equal to the sum of:

M ₁	x	100%
M ₂	x	50%
M ₃	x	25%

(where M_x means the amount not less than zero provided for Major Maintenance Costs in the Operating Budget in relation to each of the three (or, if there are fewer than three such periods until the Final Payment Date, such number as remain) consecutive periods of twelve months following that Payment Date, M₁ being the amount for the first such period);

"Required Operating Account Balance" means £50,000 (indexed);

"Required Senior Debt Service Reserve Balance" means:

- (a) prior to 31 July 2009, zero; and
- (b) on 31 July 2009 and at any time thereafter, an amount equal to the amount of Scheduled Senior Debt Service payable within the immediately following six month period;

"Reserve Accounts" means the Change in Law Reserve Account, the Maintenance Reserve Accounts and the Senior Debt Service Reserve Account;

"Retention Bond" means any retention bond executed and delivered to ProjectCo in accordance with paragraph 2.5 of part 1 of the schedule to the Construction Contract or pursuant to clause 33.6.5 of the Construction Contract (as the case may be);

"Routine Maintenance Costs" means amounts payable in respect of the Lifecycle Fee (as defined in the FM Agreement) to the FM Contractor by ProjectCo under the FM Agreement;

"Routine Maintenance Reserve Account" means the account opened and maintained by ProjectCo with the Account Bank in accordance with clause 8 of the Accounts Agreement;

"RPIX" means the United Kingdom RPIX (for all items but excluding mortgage interest payments) published by the Office for National Statistics or any comparable index which may replace the index;

"S&P" means Standard & Poor's Ratings Services, a division of McGraw-Hill Companies, Inc.;

"Service Availability" has the meaning given to it in the Project Agreement;

"Scheduled Payment Date" has the meaning given to it in the Conditions of the Bonds;

"Scheduled Principal" has the meaning given to it in the Conditions of the Bonds;

"Scheduled Senior Debt Service" means, in respect of any period, the aggregate of:

- (a) amounts (without double counting) payable by the Obligors in respect of principal and interest (only) under the Bonds pursuant to the Conditions (other than Unpaid Senior Debt Service) during that period;

- (b) amounts payable by the Obligor in respect of principal and interest (only) in relation to the EIB Loan pursuant to the EIB Loan Agreement (other than Unpaid Senior Debt Service) during that period;
- (c) amounts payable by any Obligor to Ambac pursuant to the Ambac Fee Letter during that period and any amounts in relation to principal and interest owing to Ambac under the Reimbursement and Indemnity Agreement; and
- (d) amounts payable by any Obligor in respect of other Financial Indebtedness (excluding Permitted Operating Costs) which is Permitted Indebtedness and which ranks in point of priority at least pari passu with the Senior Finance Liabilities during that period;

"Secured Obligations" means all present or future, actual or contingent, obligations of each Obligor (whether entered into solely or jointly, or jointly or severally, with one or more persons and whether actual or contingent and whether as principal or as surety or otherwise) to:

- (a) in the case of ProjectCo, the ProjectCo Debenture Beneficiaries;
- (b) in the case of the Issuer, the Issuer Debenture Beneficiaries; and
- (c) in the case of HoldCo, the HoldCo Debenture Beneficiaries,

under the Finance Documents (other than the Guaranteed Investment Contract) which shall include, without limitation, any obligations of any Obligor which may from time to time arise by way of subrogation;

"Security" means the security created or contemplated by the Security Documents or otherwise in respect of the Secured Obligations;

"Security Documents" means:

- (a) the ProjectCo Debenture;
- (b) the HoldCo Debenture;
- (c) the Issuer Debenture;
- (d) the ProjectCo Assignment in Security;
- (e) the HoldCo Cash Collateral Account Security;
- (f) the Issuer Cash Collateral Account Security;
- (g) the ProjectCo Cash Collateral Account Security;
- (h) the Security Trust and Intercreditor Deed;
- (i) any other document from time to time executed in favour of the Security Trustee for the purpose of securing all or any of the Secured Obligations; and
- (j) any deed of accession entered into in respect of any of the above;

"Security Trust and Intercreditor Deed" means the security trust and intercreditor deed dated on or about the Issue Date between the Obligors, Ambac, EIB, the Bond Trustee, the Shareholders, the Noteholders and the Security Trustee;

"Security Trustee" means Prudential Trustee Company Limited (a company incorporated in England and Wales with company number 01863305) and such other persons from time to time being the trustee or trustees under the Security Trust and Intercreditor Deed;

"Security Trustee Fee Letter" means the letter dated on or about the Issue Date between the Security Trustee and ProjectCo relating to the fees of the Security Trustee;

"Semi-Annual Period" means each period of six months ending on (and including) a Payment Date up to and including the period of six months ending on (and including) the Final Service Availability Date;

"Senior Beneficiaries" has the meaning given to it in the Security Trust and Intercreditor Deed;

"Senior Beneficiary's Claim Certificate" means a duly completed certificate in the form set out in schedule 5 of the Security Trust and Intercreditor Deed with such amendments as the Security Trustee may have authorised in writing;

"Senior Creditors" means each of Ambac, EIB, the Bond Trustee, the Bondholders and the Security Trustee and **"Senior Creditor"** means each such person;

"Senior Creditors Release Date" means the date upon which all Senior Finance Liabilities have been fully and irrevocably paid or discharged and no further Senior Finance Liabilities are capable of becoming outstanding;

"Senior Debt Expenses" means, in respect of any period, any amount (other than Senior Debt Service) payable by the Obligors under the Senior Finance Documents;

"Senior Debt Service" means the aggregate of Scheduled Senior Debt Service and Unpaid Senior Debt Service;

"Senior Debt Service Reserve Account" means the account opened and maintained by ProjectCo with the Account Bank in accordance with clause 6 of the Accounts Agreement;

"Senior Debt Service Reserve Shortfall" means, at any time, any amount by which the balance standing to the credit of the Senior Debt Service Reserve Account is less than the Required Senior Debt Service Reserve Balance;

"Senior Debt Service Shortfall" means any amount by which the balance standing to the credit of the Senior Debt Service Account (if any) following the transfers pursuant to clause 16 of the Accounts Agreement is, or would be following such transfers, less than the Debt Service Amount Payable on the next occurring Payment Date;

"Senior Finance Documents" means:

- (a) the Bond Documents;
- (b) the Reimbursement and Indemnity Agreement;
- (c) the Accounts Agreement;
- (d) the Accounts Mandate Agreement;

- (e) the Direct Agreements;
- (f) the Collateral Deed;
- (g) the Master Definitions Schedule;
- (h) the EIB Loan Agreement;
- (i) the Guaranteed Investment Contract;
- (j) the Equity Subscription Agreement;
- (k) each Noteholder Support Document;
- (l) the Intercompany Onloan Agreements;
- (m) the Ambac Fee Letter;
- (n) each Security Document;
- (o) the Fees Letters;
- (p) the Collateral Warranties; and
- (q) any other agreements or documents between, *inter alia*, any Obligor and any Senior Creditor (other than individual Bondholders in such capacity) which the Majority Creditor may from time to time designate as a Senior Finance Document;

"Senior Finance Liabilities" means the indebtedness of ProjectCo, the Issuer and HoldCo to the Senior Creditors (and, in the case of ProjectCo, to the Issuer) under the Senior Finance Documents;

"Service Availability" has the meaning given to it in the Project Agreement;

"Service Availability Date" has the meaning given to it in the Project Agreement;

"Shadow Rating" means the confidential rating assigned to the Bonds by S&P and Moody's excluding any effect on such rating of the Bond Guarantee;

"Shareholders" means the persons having subscribed (or to subscribe) for HoldCo Shares in accordance with the Equity Subscription Agreement, being, at the date of the Collateral Deed, Morrison Education (Highland) Limited and Northern Infrastructure Investments LLP, and any person to which HoldCo Shares are properly transferred on or after the Release Date (as defined in the Equity Subscription Agreement) and in accordance with the Shareholders Agreement and **"Shareholder"** means any one of them;

"Shareholders' Agreement" means the shareholders agreement dated on or before the Issue Date between the Shareholders, ProjectCo, HoldCo and the Issuer;

"Significant Shareholder Transaction" means any contract (other than contracts which are at the date hereof Project Documents or Junior Finance Documents) on arm's length terms entered into by any Obligor with any Shareholder pursuant to which any Obligor is obliged to pay such Shareholder an amount where the amount payable thereunder, when aggregated with all the other such contracts with any Shareholder exceeds £50,000 (Indexed) in any six month period;

"Spens Acceleration Event" shall have the meaning given to it in Condition 9(e) of the Bonds;

"Sponsor Group" means the Shareholders, the Noteholders, the Sponsors and any subsidiary of a holding company of any Shareholder, Noteholder or Sponsor;

"Sponsors" means Morrison Education (Highland) Limited and Northern Infrastructure Investments LLP and **"Sponsor"** means any one of them;

"Sub-Bond Custodian" means any person within the Royal Bank of Canada group appointed by the Bond Custodian to act as a sub-custodian in respect of the Variation Bonds;

"Sub-Contractors" means together the Construction Contractor and the FM Contractor;

"Sub-Contracts" means the Construction Contract and the FM Agreement and **"Sub-Contract"** means any of them;

"Subscription Agreement" means the subscription agreement dated on or about the Launch Date relating to the Bonds between ProjectCo, the Issuer, HoldCo, Ambac and the Manager;

"Surety" means Euler Hermes Guarantee plc, a company incorporated in England and Wales (Company Number: 00956231) having its registered office at Surety House, Lyons Crescent, Tonbridge, Kent TN9 1EN or any other provider of the Performance Bond which is, at the date it becomes the provider of the Performance Bond, an Acceptable Surety and **"Surety"** means any one of them;

"Surplus Routine Maintenance Reserve Account" means the account opened and maintained by ProjectCo with the Account Bank in accordance with the Accounts Agreement;

"Talons" means the talons appertaining to the Bonds;

"Target External Works Availability Date" has the meaning given to it in the Project Agreement;

"Technical Adviser's Deed of Appointment" has the meaning given to it in the Project Agreement;

"Technical Adviser's Report" means the supplemental due diligence report of the Majority Creditor's Technical Adviser dated on or before the Issue Date;

"Technical Assumptions" in relation to a Forecast means assumptions as to:

- (a) forecast Operating Costs for any period;
- (b) forecasts of any other costs or liabilities for any period;
- (c) forecast revenue under the Project Agreement for any period;
- (d) forecasts of any other Gross Income for any period;
- (e) forecasts of any other revenue for any period;
- (f) forecast Permitted Distributions for any period,

in each case as used in preparing such Forecast;

"Temporary Global Bonds" means the temporary global bond initially representing the Bonds in the form set out in schedule 1 to the Bond Trust Deed;

"Transferee Letter of Credit" shall have the meaning given to it in the Equity Subscription Agreement;

"Treaty" means the Treaty establishing the European Communities, as amended by the Treaty on European Union;

"Trigger Event" means the occurrence of any of the events described in clause 12 (*Trigger Events*) of the Collateral Deed;

"Trust Corporation" means a corporation entitled by rules made under the Public Trustee Act 1906 or entitled pursuant to any other comparable legislation applicable to a trustee in any other jurisdiction to carry out the functions of a custodian trustee.

"UK Listing Authority" means the FSA (in its capacity as the competent authority for the purposes of Part VI of the FSMA);

"Unanticipated Major Maintenance Costs" means, in respect of any period, amounts certified by ProjectCo and agreed by the Majority Creditor or stipulated by the Majority Creditor in each case pursuant to clause 5.8.1 (*Unanticipated Major Maintenance Costs*) of the Collateral Deed, as being major maintenance costs which need to be incurred during such period but which were not identified as needing to be so incurred in the ProjectCo Major Maintenance Plan forming part of the Operating Budget (irrespective of whether such major maintenance costs were either (i) foreseen, but have arisen earlier than expected (ii) in part foreseen, but are higher than expected or (iii) totally unforeseen);

"Uninsurable" has the meaning given to it in the Project Agreement;

"Uninsurable Risk" means a risk which is Uninsurable;

"Unpaid Senior Debt Service" means amounts which have fallen due from any Obligor under the Senior Finance Documents and are unpaid (other than any such amount which falls under paragraph (c) of the definition of Operating Costs);

"Variation Bonds" means the £ _____ per cent. Senior Guaranteed Secured Bonds of ProjectCo due 2036 held by the Bond Custodian pending any sale in accordance with clause 17 (*Variation Bonds*) of the Collateral Deed.

1.2 Unless otherwise expressly defined or construed herein, or unless the context otherwise requires, any capitalised terms when used in the Senior Finance Documents and not expressly defined in Clause 1.1 above shall have the meaning given to them in the Project Agreement.

2 INTERPRETATION

Unless otherwise expressly defined or construed therein or unless the context otherwise requires, any reference in any Senior Finance Document to the following terms shall be interpreted as set out below:

"acting reasonably" means, in relation to the Bond Trustee, if acting reasonably in the interests of the Bondholders;

"**agreed form**" means the form of the document in question has been agreed between the proposed parties thereto and a copy thereof has been signed for the purpose of identification on behalf of such the parties;

an "**Agency**" means any agency, authority, central bank, department, government, legislature, minister, ministry, official, public utility, institution or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom, the European Union or any other relevant jurisdiction;

a "**business day**" shall be construed as a reference to a day (other than a Saturday or Sunday) on which banks and financial markets are open in London for the transaction of business of the nature required by the Senior Finance Documents;

an Event of Default or Potential Event of Default "**continuing**" or being "**outstanding**" or "**subsisting**" shall be construed and referenced to that Event of Default or Potential Event of Default continuing or, as the case may be, remaining outstanding, unremedied or unwaived;

"**control**" shall have the meaning given to that term in Section 416(2) of the Income and Corporation Taxes Act 1988;

"**Directives**" includes any present or future directive, regulation, request, requirement, code of practice, rule or credit restraint programme of any Agency or of any self-regulating organisation (but, if not having the force of law, only if compliance with the Directive is in accordance with the general practice of persons to whom the Directive is intended to apply);

an "**encumbrance**" shall be construed as a reference to (a) a mortgage, charge, pledge, lien or other encumbrance of any kind whatsoever securing any obligation of any person, (b) any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts so as to effect payment of sums owed or payable to any person or (c) any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect;

"**euro**" means the single currency that was introduced at the start of the third stage of EMU pursuant to the Treaty;

a "**holding company**" of a company or corporation shall be construed as a reference to any company or corporation of which the first-mentioned company or corporation is a subsidiary;

the term "**including**" shall be construed as meaning "**including without limitation**";

"**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

"**indexed**" in reference to a figure means that figure adjusted in direct proportion to the change in the RPIX (as published for the month of April 2006) to the published RPIX immediately prior to the relevant calculation hereunder;

"**outstanding**" has the meaning given to it under clause 1.3 of the Bond Trust Deed;

"**PD-x**" shall be construed for the purposes of the Collateral Deed, the Accounts Agreement and the Paying Agency Agreement as references to 'x' business days prior to the relevant Payment Date and references to "**PD+y**" shall be construed as references to 'y' business days after the relevant Payment Date;

a "**person**" shall be construed as a reference to any person, firm, company or body corporate, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;

where an act is required to be performed "**promptly**", it shall be performed within as short a period as reasonably possible from the moment when the act could reasonably be performed, taking into account all the circumstances;

"**reasonable**" or "**reasonably**" and similar expressions when used in any of the Relevant Documents relating to the Bond Trustee and any exercise of power, opinion, determination or other similar matter shall be construed as meaning reasonable or reasonably (as the case may be) having regard to, and taking into account the interests of the Bondholders only;

"**repay**" (or any derivative form thereof) shall, subject to any contrary indication, be construed to include "**prepay**" (or, as the case may be, the corresponding derivative form thereof);

"**subsidiary**" or a "**wholly owned subsidiary**" of any person shall mean any other person which is a "**subsidiary**" or a "**wholly owned subsidiary**" of such person as defined pursuant to Section 736 and 736(A) of the Companies Act 1985 and also includes a Subsidiary undertaking, which has the meaning given to it by Section 258 of the Companies Act 1985;

"**tax**" shall be construed so as to include any tax, levy, impost, duty, VAT or other charge of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) and "**taxes**" shall be construed accordingly;

save where expressed to the contrary herein, any statement qualified by the expression "**to the best knowledge of**" or "**to the best of its knowledge**" or "**becoming aware**" or "**awareness of**" or any similar expression shall be deemed to include an additional statement that it has been made after all reasonable enquiries;

"**VAT**" shall be construed as a reference to value added tax including any similar tax which may be imposed in place thereof from time to time; and

the "**winding-up**", "**dissolution**" or "**administration**" (or an application therefor) of a company or corporation shall be construed so as to include any proceedings having an equivalent or analogous effect under the law of any other jurisdiction.

3 MISCELLANEOUS

3.1 Currency Symbols

"**£**", "**sterling**" and "**Sterling**" denote the lawful currency from time to time of the United Kingdom, subject to any adjustment in accordance with Clause 6.6 below.

3.2 Statutes

Any reference in the Senior Finance Documents to a statute (other than those references in the definition of "subsidiary" in Clause 2 above) shall be construed as a reference to such statute as the same may have been, or may from time to time be, amended or re-enacted.

3.3 Headings

Clause and Schedule headings are for ease of reference only and references to Clauses and Schedules in any Senior Finance Document, unless otherwise stated, are to clauses of and schedules of that Senior Finance Document.

3.4 Documents

Any reference in the Senior Finance Documents to all or any documents or agreements shall be construed as a reference to those documents or agreements as the same may have been, or may be from time to time, amended, supplemented, restated, novated or replaced in accordance with their respective terms and the terms of the Senior Finance Documents.

3.5 Successors, Transferees and Assigns

Any reference in the Senior Finance Documents to the Security Trustee, Ambac, EIB, the Bond Trustee, Senior Creditor, and any other person shall be construed so as to include their respective successors, permitted transferees and assigns and (where applicable) any replacement or additional Security Trustee, Bond Trustee, trustee or agent as permitted by and in accordance with the document governing the rights and obligations of such person.

3.6 European Economic and Monetary Union

In the event that the United Kingdom joins EMU any figure expressed in "£" and "Sterling" under the Senior Finance Documents 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.

3.7 Consents from the Bond Trustee

No consent which is required by any Senior Finance Document not to be unreasonably withheld or delayed shall be deemed to have been unreasonably withheld or delayed by the Bond Trustee to the extent that, in the reasonable opinion of the Bond Trustee, such consent can only be given after obtaining the approval of an Extraordinary Resolution (as defined in the Bond Trust Deed) and the Bond Trustee is using all reasonable expedition to obtain such Extraordinary Resolution.

3.8 Singulars and Plurals

Words denoting the singular number only shall include the plural number also and *vice versa*.