

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING
AGREEMENT
BETWEEN
THE HIGHLAND COUNCIL
AND
COMMUNITY SCHOOLS (HIGHLANDS) LIMITED**

**PART 1 OF THE SCHEDULE: DEFINITIONS, INTERPRETATION AND
CONSTRUCTION**

1. Definitions

"Abandons" means a wilful failure to carry out the Building Works at the Project Sites for a period of sixty (60) Business Days in any period of ninety (90) consecutive Business Days other than as a result of a Compensation Event, a Force Majeure Event, a Relief Event, a Council Change, or a Relevant Change in Law;

"Access Control Systems" means any system employed by the Contractor to control access to the Project Facilities;

"Actual Financial Model" means the latest financial model revised from time to time to reflect the current financial position of the Contractor;

"Actual Rates Liability" means the costs incurred by the Contractor in the relevant Payment Year in respect of local authority non-domestic rates;

"Actual Unit Price " means the actual unit price for gas and electricity paid by the Contractor in the relevant Payment Year;

"Actual Water Adjustment" shall have the meaning given in paragraph 10.1.2 of Part 9 of the Schedule (*Payment Mechanism*);

"Actual Waste Water Adjustment" shall have the meaning given in paragraph 10.1.2 of Part 9 of the Schedule (*Payment Mechanism*);

"Actual Waste Water Cost" means the product of the Actual Waste Water Price and the Actual Waste Water Volume in the relevant Payment Year;

"Actual Waste Water Price" means the actual unit price for waste water paid by the Contractor in the relevant Payment Year;

"Actual Waste Water Volume" means the actual number of units of waste water produced at the Project Facilities in the relevant Payment Year;

"Actual Water Cost" means the product of the Actual Water Price and the Actual Water Volume in the relevant Payment Year;

"Actual Water Price" means the actual unit price for mains water paid by the Contractor in the relevant Payment Year;

"Actual Water Volume" means the actual number of units of water used at the Project Facilities in the relevant Payment Year;

"Additional Use" means use of the Project Facilities by the Council outwith Core Hours;

"Adjusted Estimated Fair Value of the Agreement" shall have the meaning given in paragraph 2.1.1 of Part 11 of the Schedule (*Termination Compensation*);

"Adjusted Financial Model" means the Base Case Financial Model and any subsequent financial model revised and updated to reflect the cumulative effect of all amendments agreed between the Parties pursuant to Part 10 of the Schedule (*Change Adjustment*);

"Adjusted Highest Compliant Tender Price" shall have the meaning given in paragraph 2.1.2 of Part 11 of the Schedule (*Termination Compensation*);

"Adjusted MSFD" means thirty per centum (30%) of the Monthly Services Fee for the relevant Period;

"Affiliate" means in relation to any person, any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company;

"Agreed Appraisal" shall have the meaning given in paragraph 3.5.2 of Part 14 of the Schedule (*Change Procedure*);

"Agreement" means this agreement together with the Schedule in 23 parts and the four annexures signed and annexed as relative hereto;

"Alternative Appropriate Accommodation" means Appropriate Accommodation within the Strontian area, which has been identified by the Contractor prior to 1 July in each Payment Year and approved by the Council as being suitable accommodation for Authorised Users of the Ardnamurchan Hostel;

"Annual Service Fee" is the annual service fee for the relevant Payment Year identified of Table 1 in Part 9 of the Schedule (*Payment Mechanism*) as adjusted from time to time pursuant to Part 10 of the Schedule (*Change Adjustment*);

"Applicable Rate" means a rate of interest expressed as a percentage, being the sum of:

- (a) 0.95 per centum per annum; and
- (b) LIBOR;

"Applicant" means the Party initiating a Dispute pursuant to the provisions as set out in paragraph 4.2 of Part 16 of the Schedule (*Dispute Resolution Procedure*);

"Appraisal" shall have the meaning given in paragraph 3.1 of Part 14 of the Schedule (*Change Procedure*);

"Appropriate Accommodation" means accommodation for Authorised Users of the Ardnamurchan Hostel assuming that:

- (a) the capacities of the individual rooms within the Ardnamurchan Hostel as designed shall not be exceeded for example a single room will be occupied only by one (1) child and a twin room by two (2) children;
- (b) appropriate segregation of male and female children can be achieved; and
- (c) the Council employee responsible for supervision of the Authorised Users of the Ardnamurchan Hostel shall have his or her own separate room.

"Aquatic Feature" means any pond, fountain, well, ornamental or any other water feature located at the Project Facilities;

"Ardnamurchan High School" means the buildings and other facilities to be built on the Ardnamurchan School Site to form a secondary school and the Ardnamurchan Hostel;

"Ardnamurchan Hostel" means the pupil hostel facility constructed by the Contractor as part of the Building Works on the Ardnamurchan School Site;

"Ardnamurchan Lease" means a lease of the Ardnamurchan School Site in the Agreed Form;

"Ardnamurchan School Site" means the area of ground as more particularly described in the Ardnamurchan Lease;

"Ardnamurchan Sublease" means a sublease of the Ardnamurchan School Site in the Agreed Form;

"Assumed Rates Liability" means one hundred and fifty two thousand seven hundred and sixty nine pounds (£152,769) sterling (Indexed);

"AUC" shall have the meaning given in paragraph 9.2(b) of Part 9 of the Schedule (*Payment Mechanism*);

"Authorised Contractors" shall mean in relation to the Project Facilities any sub-contractor authorised by the Council to have access to Sensitive Areas;

"Authorised Institution" shall have the meaning given in clause 17.11.5

"Authorised Use" means in relation to each of the Project Facilities, the use by the Council for its intended purpose;

"Authorised User" means in relation to the Project Facilities any;

- (a) employees of the Council;
- (b) pupils of the Project Facilities;
- (c) visitors to the Project Facilities who have been given access to the Project Facilities by the Council, its employees or agents; and
- (d) other users of the Project Facilities authorised to use the Project Facilities and who have been given access to the Project Facilities by the Council, its employees or agents;

"Available" means in relation to each of the Project Facilities that the Availability Standards are all satisfied or that an applicable event of Deemed

Availability is in existence and the expressions "**Availability**" and cognate expressions shall be construed accordingly;

"**Availability Standards**" means in respect of each Specific Requirement the service standard set out in Column 3 of each paragraph of the Service Specification;

"**Base Case Equity IRR**" shall have the meaning given in clause 17.11.3(f);

"**Base Case Financial Model**" means the financial model prepared by the Contractor such model setting out the basis on which the financing of the Contractor and/or the costs of and revenue from this Agreement have been calculated by the Contractor (including the assumptions used, the cell logic network for the financial model software and any accompanying documentation necessary to operate such financial model) and dated on or about the Contract Award Date;

"**Benchmark Date**" means each of the fifth, tenth, fifteenth and twentieth anniversaries of the Service Commencement Date;

"**Benchmark Price**" means the price for the Benchmark Services identified by the Benchmarking Exercise;

"**Benchmark Report**" shall have the meaning given in paragraph 5.1 of Part 12 of the Schedule (*Benchmarking*);

"**Benchmark Services**" means Specific Requirements 1.1, 2.1, 2.2, 2.3 and 3.1 identified in paragraph 4.3 (*FM Availability and Performance Requirements - Security Provisions*) and Major Requirements 1 to 16 identified in paragraph 4.7 (*FM Availability and Performance Requirements - Cleaning*) of Part 7 of the Schedule (*Service Specification*);

"Benchmarking Exercise" shall have the meaning given in paragraph 3.1 of Part 12 of the Schedule (*Benchmarking*);

"Breakage Costs" shall have the meaning given in paragraph 2.1.3 of Part 11 of the Schedule (*Termination Compensation*);

"Broadly Comparable Scheme" shall have the meaning given in clause 18.10.4 (*Pensions*);

"Building Contract" means the contract entered into for the Building Works between the Contractor and the Building Contractor;

"Building Contractor" means:

- (a) M J Gleeson Group plc, (a company incorporated in England and Wales with Registered Number 479529) having a place of business at Haredon House, London Road, 1 North Cheam, Surrey, SM3 9BS; and
- (b) all other contractors that may from time to time be appointed by the Contractor to carry out the Building Works in accordance with this Agreement.

"Building Contractor's Warranty Deed" means a collateral warranty and step-in agreement between the Council, the Contractor and the Building Contractor in substantially the same form as that set out in Annexure 1;

"Building Works" means the design, construction and commissioning of the Project Facilities and associated infrastructure and landscaping works as set out in the Building Works Specification (as adjusted by the operation of clause 20.3 (*Deemed Change*));

"Building Works Specification" means the specification set out in and forming Part 6 of the Schedule (*Building Works Specification*);

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for business in the City of Glasgow or the City of London;

"Calculation Period" shall have the meaning given in paragraph 2.1.4 of Part 11 of the Schedule (*Termination Compensation*);

"Capital Contribution" means a contribution by the Council to the Contractor for the bricks and mortar capital construction costs incurred by the Contractor but specifically not to include any element of the construction costs which could qualify as plant and machinery for the purposes of the Capital Allowances Act 1990;

"Capital Cost" means any expenditure of a capital (and not revenue) nature (as such terms are interpreted from time to time in accordance with generally accepted accounting principles in the United Kingdom) relating to the Project Sites, the Building Works or the Services or as the case may be any part of the Project Sites, Building Works or Services;

"Capital Cost Increase" means an increase in or additional Capital Cost identified by the Contractor during an Appraisal;

"Capital Cost Saving" means the amount if any by which any Capital Cost as detailed in the Adjusted Financial Model which would have been incurred by the Contractor in constructing the Project Facilities, carrying out the Building Works

or providing the Services without the Change under consideration exceeds any Capital Cost incurred and/or to be incurred by the Contractor in constructing the Project Facilities, carrying out the Building Works or providing the Services so as to incorporate such Change;

"Catering Service Provider" means the organisation, department of the Council or other party responsible for the provision of catering services at the Project Facilities;

"CDM Regulations" means the Construction (Design and Management) Regulations 1994 as amended from time to time;

"CEDR" shall have the meaning given in paragraph 3.1.1 of Part 16 of the Schedule (*Dispute Resolution Procedure*);

"Certified Copy " means a copy document certified by a solicitor as a true and complete copy of the original document;

"Cessation of Service" means the cessation by the Contractor, for whatever reason, (either directly or indirectly through the Service Provider or its sub-contractors) of the provision of the Service or any part of the Services;

"Change" means:

- (a) any change to the Council Requirements, the Building Works Specification or the Service Specification either by way of modification, addition, deletion or otherwise; and
- (b) a Deemed Change; and
- (c) a Council Financial Change;

"Change Adjustment" means an adjustment to the Unitary Charge and the Adjusted Financial Model in terms of Part 10 of the Schedule (*Change Adjustment*) following:-

- (a) a Change; or
- (b) where a Benchmarking Exercise, a Market Testing Exercise; or
- (c) any other provision of this Agreement expresses that an adjustment to the Unitary Charge or the Adjusted Financial Model is to be made;

"Change Adjustment Financial Model" means the Adjusted Financial Model updated and amended to demonstrate the effect of the relevant Change Adjustment in accordance with Part 10 of the Schedule (*Change Adjustment*);

"Change in Government Policy" shall have the meaning given in paragraph 2.1.5 of Part 11 of the Schedule (*Termination Compensation*);

"Change in Law" means the coming into effect after the Contract Award Date of

- (i) Legislation; or
- (ii) any applicable judgement of a relevant court of law which changes a binding precedent;

"Change of Control" means an event where any single person or group of persons acting in concert (within the meaning of the City Code on Take-overs and Mergers) acquires or ceases to have, in respect of such Shareholder or Holding Company of such Shareholder:

- (i) a majority of the voting rights in it; or
- (ii) the right to appoint or remove a majority of its board of directors; or
- (iii) control alone, or pursuant to an agreement with other shareholders or members, of a majority of the voting rights in it;

"Change Procedure" means the procedure for implementing a Change as set out in Part 14 of the Schedule;

"**Client**" shall have the meaning given in the CDM Regulations;

"**Compensation Amounts**" shall have the meaning given in clause 23.5.1 (*Consequences of termination or expiry*);

"**Compensation Date**" shall have the meaning given in paragraph 2.1.6 of Part 11 of the Schedule (*Termination Compensation*);

"**Compensation Event**" means:

- (1) a breach by the Council of any of its obligations under this Agreement or any other Project Document which prevents the performance of the obligations of the Contractor;
- (2) any act or omission of the Council, its officers, servants or agents (including the School Representatives) which prevents or hinders the performance by the Contractor of the obligations;
- (3) lack of access to any Project Site as a result of the actions of the Council;
- (4) the unjustified opening of works by the Council in terms of paragraph 7.2 of Part 4 of the Schedule (*Building Works Provisions*);
- (5) any breach of the warranties set out in clause 8 (*Property Matters*) and;
- (6) any action taken by the Council to comply with the Excluded Title Obligations or any lawful action taken by a third party to enforce the Excluded Title Obligations, which prevents or disrupts the performance of the Contractor's obligations under this Agreement;

"**Completion Project Documents**" means the Project Documents other than the Consultant's Warranty Deed and the Subcontractor's Warranty Deeds;

"**Compliant Tender**" shall have the meaning given in paragraph 2.1.7 of Part 11 of the Schedule (*Termination Compensation*);

"**Compliant Tenderer**" shall have the meaning given in paragraph 2.1.8 of Part 11 of the Schedule (*Termination Compensation*);

"**Confidential Information**" shall have the meaning given in clause 30.1;

"**Confidential Waste**" means any material or waste containing Confidential Information;

"**Confirmation Notice**" shall have the meaning given in paragraph 3.5.2 of Part 14 of the Schedule (*Change Procedure*);

"**Connected Load**" means the electrical load of the electrical equipment situated in the Project Facilities for the use of the Council in delivering the educational curriculum including the provision of school meals and welfare meals at the Project Facilities calculated by reference to the Council's asset register and PAT testing register;

"**Consent Notice**" shall have the meaning given in paragraph 1.4 of Part 14 of the Schedule (*Change Procedure*);

"**Consolidated Costs**" shall have the meaning given in paragraph 5.2.3 of Part 16 of the Schedule (*Dispute Resolution Procedure*);

"**Consolidated Dispute**" shall have the meaning given in paragraph 5.5 of Part 16 of the Schedule (*Dispute Resolution Procedure*);

"**Construction Period Insurance**" means those insurances listed in Section A of Part 19 of the Schedule (*Contractor Insurance*);

"**Consultant**" means:

- (a) Percy Johnston and Marshall Partners, Duddingston House, Edinburgh EH15 1RB as architects;
- (b) Scott Bennett, 35 High Street, South Queensferry, Edinburgh EH30 9HN as mechanical and electrical engineers;
- (c) Mott MacDonald, Mott MacDonald House, 111 St Mary's Road, Sheffield S2 4AP as civil and structural engineers; and
- (d) all other consultants and professionals that may from time to time be appointed by the Contractor or the Building Contractor to provide architectural or mechanical, electrical, civil and structural engineering services or have a significant design responsibility in respect of the Building Works or any part thereof;

"Consultant Appointment" means any agreement entered into by the Contractor or the Building Contractor and any Consultant in relation to the Building Works;

"Consultant's Warranty Deed" means a collateral warranty and step-in agreement between the Council, the Building Contractor or, as the case may be, the Contractor and any Consultant in substantially the same form as set out in Annexure 2;

"Contract Award Date" means the date of execution of this Agreement;

"Contract Expiry Date" means the twenty fifth anniversary of the Programmed Section 1 Completion Date;

"Contract Period" means the period commencing on the Contract Award Date and ending on the earlier of the Contract Expiry Date or the Termination Date;

"Contractor Breakage Costs" shall have the meaning given in paragraph 2.1.9 of Part 11 of the Schedule (*Termination Compensation*);

"Contractor Change" means a Change requested by the Contractor in a Contractor Change Notice;

"Contractor Change Notice" shall have the meaning given in paragraph 1.1 of Part 14 of the Schedule (*Change Procedure*);

"Contractor Default Event" shall mean any event set out in clause 22.1 (*Termination by the Council*);

"Contractor Default Termination Amount" shall have the meaning given in paragraph 2.1.10 of Part 11 of the Schedule (*Termination Compensation*);

"Contractor Insurances" means those insurances listed in Part 19 of the Schedule under exception of any insurances or insurance cover which the Contractor is not obliged to effect from time to time under clause 27.7;

"Contractor Remedy Notice" shall have the meaning given in clause 22.7 (*Remedial Action by the Council*);

"Contractor Representative" means a suitably qualified person appointed by the Contractor as such and amended from time to time as notified to the Council;

"Contractor Termination Notice" shall have the meaning given in clause 22.9 (*Contractor's right to terminate*);

"Contractor Warranties" means the warranties set out in Part 15 of the Schedule (*Contractor Warranties*);

"Contractor's Solicitors" means Dundas & Wilson CS, 191 West George Street, Glasgow;

"Core Hours" means

- (a) on School Days:
 - a) 8am to 10pm on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays;
 - (ii) 10am to 10pm on Saturdays; and
 - (iii) 10am to 5pm on Sundays;
- (b) on Non-School Days:
 - (i) 9am to 10pm Mondays, Tuesdays, Wednesdays, Thursdays and Fridays;
 - (ii) 10am to 10pm on Saturdays; and
 - (iii) 10am to 5pm on Sundays;

"Correction Plan" means a plan setting out the actions which the Contractor proposes to take in order to reduce the level of deductions from the Monthly Service Fee as set out in paragraph 8.3 of Part 8 of the Schedule (*Monitoring and Service Failure Procedure*);

"Corrupt Gifts Termination Amount" shall have the meaning given in paragraph 6 of Part 11 of the Schedule (*Termination Compensation*);

"Council Change" means a change requested by a Council Change Notice;

"Council Change Notice" shall have the meaning given in paragraph 2.1 of Part 14 of the Schedule (*Change Procedure*);

"Council Default Event" shall have the meaning given in clause 22.6 (*Council Default Events*);

"Council Financial Change" means a Capital Contribution paid by the Council to the Contractor pursuant to the Change Procedure;

"**Council Related Claim**" shall have the meaning given in clause 27.11.1 (*Premium Increases*);

"**Council Remedy Period**" shall have the meaning given in clause 22.7 (*Remedial Action by the Council*);

"**Council Representative**" means a suitably qualified the person appointed by the Council as such from time to time and notified to the Contractor;

"**Council Requirements**" means the statement of the Council's accommodation requirements which forms Part 5 of the Schedule (*Council Requirements*);

"**Council Termination Compensation Amount**" shall have the meaning given in paragraph 5 of Part 11 of the Schedule (*Termination Compensation*);

"**Council Voluntary Termination**" means termination of this Agreement by the Council pursuant to clause 22.5;

"**Council's Share**" means the percentage figure corresponding to the Cumulative Capital Expenditure at the relevant time, as shown in the column headed Column A in the table set out below:

Cumulative Capital Expenditure	Column A
£0 to £48,000 (inclusive)	0%
£48,001 to £96,000 (inclusive)	10%
£96,001 to £192,000 (inclusive)	20%
£192,001 to £288,000 (inclusive)	40%
£288,001 to £384,000 (inclusive)	60%
£384,001 to £480,000 (inclusive)	80%
£480,001 and above	100%

"Critical Systems" means any systems critical to the running of the Project Facilities, including emergency lighting, telephones, access control systems, other security systems and CCTV systems;

"Cumulative Capital Expenditure" means the aggregate of all Capital Costs (excluding all Capital Costs that have been incurred as a result of any Change in Law (a) prior to the Section 1 Service Commencement Date; and (b) which was reasonably foreseeable at the Contract Award Date or was published:

- (a) in a draft Bill as part of a Government Departmental Consultation Paper;
or
- (b) in a Bill; or
- (c) in a draft statutory instrument; or
- (d) as a proposal in the Official Journal of the European Communities at the Contract Award Date),

that have been incurred as a result of each Change in Law which creates an obligation on the Contractor to incur Capital Costs;

"Current Price" means the costs of providing the Benchmark Services set out in the Adjusted Financial Model;

"Curricular Equipment" means the equipment required by the Council to deliver the educational curriculum at the Project Facilities and identified after 31 January 2002 the total value of such equipment, and the cost of installing such equipment in the Project Facilities which when aggregated with the cost of procuring the installing the Initial Curricular Equipment shall not exceed in aggregate the Curricular Equipment Amount;

"Curricular Equipment Amount" means eight hundred and fifty thousand pounds (£850,000) sterling;

"Day" means a period of twenty four (24) hours;

"Debt Service Cover Ratio" shall have the meaning given in the Funding Agreement;

"Debt Service Reserve Account" shall have the meaning given in the Funding Agreement;

"Deductions" means Monthly Unavailability Deductions, Monthly Service Failure Deductions and/or Reporting Failure Deductions, as the case may be;

"Deemed Availability " shall have the meaning given in paragraph 4.5 of Part 9 of the Schedule (*Payment Mechanism*);

"Deemed Change" means a cost, liability or expenditure arising from a Discriminatory Change in Law or a Specific Change in Law or the provisions of clause 20.3.4 which results in Relevant Costs but does not require a change pursuant to paragraph (a) of the definition of a Change;

"Deemed Service Delivery" shall have the meaning given in paragraph 6.4 of Part 9 of the Schedule (*Payment Mechanism*);

"Delay Notice" shall have the meaning given in clause 12.2;

"Designated Areas" means any part of the Project Facilities to be used for community use, together with such other areas of the Project Facilities as may be incidental to the community use including toilets, storage areas, corridors and other public and common areas required to gain access thereto and egress therefrom;

"Design Data" means all calculations, designs, design information, specifications, plans, drawings, graphs, sketches, models and other materials,

including all eye readable or computer or other machine readable data, prepared or to be prepared by or on behalf of the Contractor relating to the design or construction of any aspect of the Building Works;

"Discriminatory Change in Law" means a Change in Law, the terms of which apply expressly to:

- a) the Project and not to similar projects procured under Her Majesty's Government's Private Finance Initiative; and/or
- b) the Contractor and not to other persons; and/or
- c) Private Finance Initiative contractors operating under Her Majesty's Government's Private Finance Initiative and not to other persons;

"Dispute" shall have the meaning given in clause 29 (*Dispute Resolution Procedure*);

"Dispute Resolution Procedure" means the procedure for resolving Disputes set out in Part 16 of the Schedule (*Dispute Resolution Procedure*);

"Distribution" shall have the meaning given in the Funding Agreement;

"DPA" means the Data Protection Act 1998;

"Due Date" means the date on which the Contractor Default Termination Amount, the Council Termination Compensation Amount, the Force Majeure Termination Amount or, as the case may be, the Corrupt Gifts Termination Amount is agreed or determined in accordance with the relevant provisions of clause 23 (*Consequences of Termination*);

"Education Acts" means the Education (Scotland) Act 1980, the Education (Scotland) Act 1981 and any other statute or instrument governing the responsibilities or obligations of the Council as education authority;

"Emergency Incidents" means any incident which presents a serious or immediate risk to the health and safety of persons;

"Emergency Procedures" means those services, procedures and responsive actions and/or sequences to be implemented in the event of and in preparation for an emergency event at the Project Facilities;

"Employer's Representative" means the individual appointed to act as employer's representative pursuant to the Building Contract;

"Environmental Conditions" means the heating, lighting and other environmental requirements set out in the Council Requirements;

"Equity" shall have the meaning given in paragraph 2.1.12 of Part 11 of the Schedule (*Termination Compensation*);

"Estimated Fair Value of the Agreement" shall have the meaning given in paragraph 2.1.13 of Part 11 of the Schedule (*Termination Compensation*);

"Excluded Title Obligations" means those title obligations affecting the Project Sites as listed in Part 4 of each of the Leases;

"Executive" shall have the meaning given in the CDM Regulations;

"Expert" means any person with the appropriate qualifications set out in Part 21 of the Schedule (*Nominating Bodies*) appointed pursuant to the Dispute Resolution Procedure for the purposes of concluding any determination by an Expert under this Agreement;

"External Utility Failure" means the failure of a Utility the cause of which lies outwith the curtilage of the relevant Project Site and has not been caused by the actions and/or omissions of the Contractor, the Building Contractor, any Service Provider and their respective subcontractors;

"Fair Value" means the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale;

"Fast Track Expert" means any person with the appropriate qualifications set out in Part 21 of the Schedule (*Nominating Bodies*) appointed pursuant to the Dispute Resolution Procedure for the purposes of concluding any determination by that person under this Agreement;

"Fast Track Notice" shall have the meaning given in paragraph 6.1 of Part 16 of the Schedule (*Dispute Resolution Procedure*);

"Final Maintenance Works" shall have the meaning given in clause 24.4 (*Handback Programme*);

"Final Maturity Date" shall have the meaning given in the Funding Agreement;

"Final Service Rectification Plan" means an action plan detailing how the delivery of the Services can be improved and the level of Deductions from the Monthly Service Fee reduced;

"Final Survey" shall have the meaning given in clause 24.4 (*Handback Programme*);

"Final Warning Notice" means a notice served on the Contractor by the Council on a date not less than twenty (20) Business Days after the date of service of the relevant Formal Warning Notice:

- (a) specifying that it is a final warning notice;
- (b) stating that the breach or breaches specified have been the subject of a Formal Warning Notice served within the twelve (12) month period prior to the date of service of the Final Warning Notice; and
- (c) stating that if such failure is not remedied or recurs frequently within a six (6) month period after the date of service of the Final Warning Notice a Persistent Breach will be deemed to have occurred and the Council shall be entitled to make a deduction in terms of paragraph 9.1.1 of Part 8 of the Schedule;

"Financing Documents" shall have the meaning given in the Funding Agreement;

"Finds" means all antiquities, fossils, other remains or items of archaeological or geological interest;

"Fire Procedures" means those services, procedures and responsive actions and/or sequences to be implemented in the event of and in preparation for the event of a fire at the Project Facilities;

"First Notice" shall have the meaning given in paragraph 4.2 of Part 16 of the Schedule (*Dispute Resolution Procedure*);

"Force Majeure Event" means the occurrence after the Contract Award Date of:

- (a) war, civil war or armed conflict; or
- (b) nuclear, chemical or biological contamination of the Project Sites unless the source or cause of the contamination is the result of the actions of the Contractor; or

(c) pressure waves caused by devices travelling at supersonic speeds, which adversely affects the performance by either Party of its obligations under this Agreement;

"Force Majeure Termination Amount" shall have the meaning given in paragraph 4 of Part 11 of the Schedule (*Termination Compensation*);

"Force Majeure Termination Event" shall have the meaning given in clause 23.3.1;

"Forecast Costs" shall have the meaning given in paragraph 2.1.15 of Part 11 of the Schedule (*Termination Compensation*);

"Forecast Index" shall have the meaning given in paragraph 2.1.17 of Part 11 of the Schedule (*Termination Compensation*);

"Forecast Period" shall have the meaning given in the Funding Agreement;

"Forecast Revenues" shall have the meaning given in paragraph 2.1.16 of Part 11 of the Schedule (*Termination Compensation*);

"Formal Warning Notice" means a notice served on the Contractor by the Council:

- (a) specifying that it is a formal warning notice;
- (b) giving reasonable details of a relevant breach or breaches of this Agreement; and
- (c) stating that each such breach is a breach which, if it recurs within, or continues for, a period of twenty (20) Business Days after the date of service of such notice, the Council shall be entitled to serve a Final Warning Notice which may result in the occurrence of a Service Failure Event in terms of paragraph 10 of Part 8 of the Schedule;

"Funder" shall have the meaning given in paragraph 2.1.18 of Part 11 of the Schedule (*Termination Compensation*);

"Funder's Direct Agreement" means the agreement to be entered into between the Council and the Funder pursuant to clause 6 (*Project Documents, Supplemental Project Documents and Supplemental Funding Documents*);

"Funding Agreement" shall have the meaning given in paragraph 2.1.19 of Part 11 of the Schedule (*Termination Compensation*);

"Furniture and Equipment" means all equipment and moveable furniture identified in the Council Requirements;

"Glen Urquhart High School" means the buildings and other facilities to be built on the Glen Urquhart School Site to form a secondary school facility;

"Glen Urquhart Lease" means a lease of the Glen Urquhart School Site in the Agreed Form;

"Glen Urquhart School Site" means the area of ground as more particularly described in the Glen Urquhart Lease;

"Glen Urquhart Sublease" means a sublease of the Glen Urquhart School Site in the Agreed Form;

"Good Industry Practice" means:

- (a) the standards, practices, methods and procedures as practised in the United Kingdom from time to time (at the relevant time) during the Service Period; and

- (b) the exercise of an appropriate degree of skill, diligence and foresight being that which would reasonably and ordinarily be expected from a skilled and experienced person engaged to comply with the same contractual obligations as the obligations of the Contractor under this Agreement;

"Handback Programme" shall have the meaning given in clause 24.10;

"Handback Requirements" means:

- (a) that each of the Project Facilities must be in a safe, good and substantial condition, and in good decorative order and that each of the building elements (as defined in Appendix III of the Standard Form of Cost Analysis published by the Building Cost Information Service of The Royal Institution of Chartered Surveyors, December 1969, September 1999 Reprint) of the Project Facilities identified in the Handback Table can reasonably be expected to have a minimum useful residual life span equal to or greater than five (5) years (assuming that routine maintenance obligations are carried out but that no lifecycle replacement for the period of 5 years beyond the Contract Expiry Date will be necessary); and
- (b) in respect of each item of Furniture and Equipment and each item of Plant and Equipment ("Relevant Item") for which a guarantee, warranty, or any other written guidance as to its useful working life ("Life Statement") was provided by its manufacturer, that the Relevant Item shall be in good order and repair, shall be efficient and can reasonably be expected to have a service life and be capable of being used or operated safely by the Council for a minimum period of 5 years after the Contract Expiry Date without cost, other than the cost of Routine Maintenance including the cost of consumables required by the manufacturer's written instructions provided that the Relevant Item is operated in accordance with those instructions; and

- (c) in respect of each item of Furniture and Equipment and each item of Plant and Equipment not falling within paragraph (b) above ("Other Items"), that each of those Other Items shall be in good order and repair, shall be efficient and can reasonably be expected to have a service life of 5 years and be capable of being used or operated safely by the Council for a minimum period of 5 years after the Contract Expiry Date without cost other than the cost of Routine Maintenance including the cost of consumables assuming that the maintenance and repair obligations incumbent upon the Contractor in regard thereto under this Agreement will be undertaken by the Council during that period of five years;

"Handback Table" means the table set out in Part 2 of the Schedule (*Handback Table*);

"Heavy Equipment" means everything required to service the Kitchen Facilities other than the Light Equipment;

"Hedging Agreement" shall have the meaning given in paragraph 2.1.20 of Part 11 of the Schedule (*Termination Compensation*);

"Helpdesk" means the Service described in paragraph 4.12 of Part 7 of the Schedule (*Service Specification*);

"HoldCo" means Community Schools Holdings Limited (a company incorporated in Scotland with registered number 210980) having its registered office at 191 West George Street, Glasgow G2 2LD;

"Holding Company" shall have the meaning given in the Companies Act 1985 (as amended);

"Incoming Service Provider" means any successor to the Contractor, Service Provider and/or any subcontractor in the provision of services which are equivalent or identifiably similar to the Services upon the Cessation of Service by the Contractor, Service Provider or any subcontractor or in the event of a partial cessation of the provision of the Services by the Contractor, Service Provider or any subcontractor, any successor to the Contractor, Service Provider or any subcontractor in the provision of services which are equivalent or identifiably similar to that part or those parts of the Services which are to cease to be provided by the Contractor, Service Provider or any subcontractor;

"Indemnified" shall have the meaning given in clause 26.4.1 (*Limit of Indemnity*);

"Indemnifier" shall have the meaning given in clause 26.4.1 (*Limit of Indemnity*);

"Indexation Factor" means:

- (a) in respect of the first Payment Year, the Annual Services Fee multiplied by:

$$1 + \frac{(RPI_m - RPI_a)}{RPI_a} \times X$$

Y

where:

"RPI_m" is the value of RPI for the month before the month in which the Section 1 Service Commencement Date occurs;

"RPI_a" is the value of RPI for the month of July 2002;

"X" is 0.10; and

"Y" is 1.85; and

(b) in respect of the second and subsequent Payment Years, the Annual Services Fee multiplied by:-

$$1 + \frac{(RPI_z - RPI_p)}{RPI_p} - X$$

Y

where:

"RPI_z" is the value of RPI for the month of January in the current Payment Year;

"RPI_p" is the value of RPI for the month of January 2002;

"X" is 0.10; and

"Y" is 1.85;

"Indexed" means increased in line with the RPI at the commencement of each Payment Year;

"Indexed Amount" means the Annual Service Fee multiplied by the Indexation Factor;

"Initial Curricular Equipment" means the equipment required by the Council to deliver the educational curriculum at the Project Facilities, the total value of such equipment and the cost of installing such equipment in the Project Facilities

which when aggregated with the cost of procuring and installing the equipment shall not exceed in aggregate the Curricular Equipment Amount;

"Insolvency Event" means the occurrence of any of the following acts of insolvency in respect of the Contractor, namely:

- (i) any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into by or in relation to the person in question except in the course of a corporate restructuring or amalgamation;
- (ii) a receiver, administrator, administrative receiver, judicial factor or other incumbrancer taking possession of or being appointed over, or any distress, execution, diligence (other than diligence on the dependence) or other process being levied or enforced (and not being discharged within twenty (20) Business Days) (other than the appointment of a receiver, administrator or administrative receiver by the Funder under the Funding Agreement or pursuant to Security Interests held by the Funder) upon the whole or any part of the Contractor's assets which are material in the context of the Contractor's obligations under this Agreement;
- (iii) the Contractor ceasing to carry on business, or being or becoming unable to pay its debts within the meaning of Section 123 (i) (a) of the Insolvency Act 1986 and such insolvency not being remedied within twenty (20) Business Days provided that in relation to Section 123 (i) (a) "£500,000" shall be substituted for "£750" and "3 months" for "3 weeks" for the purpose of this Agreement; or
- (iv) the winding-up, bankruptcy or dissolution of the Contractor;

"Insurance Report" shall have the meaning given in clause 27.6.2 (*Notification of Claims*);

"Intellectual Property" means all know-how, patents, trade marks, service marks, registrable and registered designs, applications for any of the foregoing,

trade names, business names, unregistered design rights, copyright, rights in relation to databases, rights in the nature of copyright or any other industrial, commercial or intellectual property rights;

"IRR Refinancing Share" shall have the meaning given in clause 17.11.3;

"K" shall have the meaning given in paragraph 3.2(b) of Part 9 of the Schedule (*Payment Mechanism*);

"Kitchen Facilities" means the cooking facilities and area in each of the Project Facilities used by the Council, the Catering Service Provider and/or Authorised Users for the preparation and service of school and welfare meals and which, for the avoidance of doubt, shall not include any space designated for teaching;

"Leases" means the Ardnamurchan Lease, the Glen Urquhart Lease, the Spean Bridge Lease and the Strathdearn Lease;

"Legislation" means any Act of Parliament or of the Scottish Parliament or subordinate legislation of either parliament, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom;

"LGPS Regulations" shall have the meaning given in clause 18.10.1 (*Pensions*);

"LIBOR" means:

- (a) the rate per annum for the required period (rounded up, if necessary, to four decimal places) which appears on the display designated as page "3705" on the Telerate Monitor (or such other page or service as may replace it for the purpose of displaying London Inter-bank sterling offered rates of major banks) as being the rate offered in the Inter-bank market for sterling deposits for the same period and amount as the relevant

Calculation Period at or about 11.00 am (London Time) on the first day of the relevant Calculation Period (or, if the periods are not the same, such period, if any, as the Funder determines to be substantially the same); or

- (b) if for any reason such offered rate does not so appear, or if the relevant page is unavailable, the arithmetic mean (rounded up, if necessary to four decimal places) of the respective rates (as quoted to the Funder at its request) at which The Royal Bank of Scotland plc is offering sterling deposits for that Calculation Period in an amount comparable to the amount of the Senior Debt to which that Calculation Period relates to prime banks in the Inter-bank market at or about 11.00 am on the first day of that Calculation Period;

"Lifecycle Maintenance Schedule" means the schedule of lifecycle maintenance referred to in Specific Requirement 1.1 of Section 4.5 of the Service Specification;

"Light Equipment" means crockery, cutlery, utensils and all plug in portable appliances;

"Liquid Market" means that there are sufficient willing bidders (meaning not less than two (2) provided each bidder is independent of each other bidder and in each case independent of the Council save to the extent that the Council is a subcontractor of a bidder) in the market for private finance or similar contracts (the same as or similar to this Agreement) who could reasonably be expected to purchase this Agreement by way of a Compliant Tender pursuant to the Tender Process for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value for the Unexpired Term;

"List of Re-transferring Employees" shall have the meaning given in clause 18.11.2 (*Cessation of Service*);

"Loan Life Cover Ratio" shall have the meaning given in the Funding Agreement;

"Local Government Pension Scheme" shall have the meaning given in clause 18.10.3;

"Longstop Date" means the date on which the Council will have a right to terminate this Agreement if the Building Works are not completed in accordance with this Agreement being 23 September 2003 or such later date as this programmed date may be postponed to from time to time by:

- (a) the Change Procedure; and
- (b) clause 12.5 (*Extensions to the Longstop Date*);

"Losses" means all losses, liabilities, claims, actions, damages, proceedings, demands, costs, charges, expenses (including reasonable legal expenses and interest) fines and penalties;

"Maintenance Reserve Account" shall have the meaning given in the Funding Agreement;

"Maintenance Works" shall have the meaning given in clause 24.1 (*Handback Programme*);

"Maintenance Works Amount" means an amount equal to ten percent (10%) of the Maximum Unitary Charge payable by the Council to the Contractor from the twenty second anniversary of the Section 1 Service Commencement Date;

"Major Requirement" means the major service requirements set out in column 1 of each paragraph of the Service Specification;

"Management Report" means a report prepared by the Contractor and delivered to the Council in the Agreed Form and reporting on the Contractor's monitoring of the Services by reference to volume and implementation of the Service Delivery Plan;

"Market Test Proposal" means a proposal by the Contractor to market test the provision of the Benchmark Services which proposal shall:

- (a) identify the form and content of any tender documents;
- (b) identify the subcontractors or service providers from whom the Contractor proposes to seek tenders which shall be not less than three (3);
- (c) set out the tender process which will be designed to maximise competition and produce a price representative of the current market conditions;
- (d) set out the timescales for the proposed market test exercise; and
- (e) identify the tender criteria;

"Market Testing Exercise" means the completion and implementation by the Contractor of a Market Test Proposal;

"Market Value of the Agreement" shall have the meaning given in paragraph 2.1.21 of Part 11 of the Schedule (*Termination Compensation*);

"Market Value Unavailability Deduction Amount" shall have the meaning given in paragraph 2.1.22 of Part 11 of the Schedule (*Termination Compensation*);

"Maximum Unitary Charge" shall have the meaning given in paragraph 2.1.23 of Part 11 of the Schedule (*Termination Compensation*);

"Mediation" shall have the meaning given in paragraph 3.1.1 of Part 16 of the Schedule (*Dispute Resolution Procedure*);

"Monitoring Outputs" means:

- (a) the determination of whether the Services are being delivered in accordance with the Service Specification;
- (b) the identification of Service Failures;
- (c) the identification of incidents of Non Availability;
- (d) the identification of potential changes to the Service Delivery Plan;
- (e) the substantiation of the Payment Report;
- (f) demonstrate that the Contractor is striving to improve the delivery of the Services; and
- (g) the provision of an audit trail to satisfy the Council's audit requirements (both internal and external) from time to time;

"Monthly Service Failure Deduction" or **"MSFD"** shall have the meaning given in paragraph 3.1(c) of Part 9 of the Schedule (*Payment Mechanism*);

"Monthly Service Fee" or **"MSF"** shall have the meaning given in paragraph 3.1(a) of Part 9 of the Schedule (*Payment Mechanism*);

"Monthly Unavailability Deduction" or **"MUD"** shall have the meaning given in paragraph 3.1(b) of Part 9 of the Schedule (*Payment Mechanism*);

"Neutral" shall have the meaning given in paragraph 3.1.2 of Part 16 of the Schedule (*Dispute Resolution Procedure*);

"New Contract" shall have the meaning given in paragraph 2.1.24 of Part 11 of the Schedule (*Termination Compensation*);

"New Contractor" shall have the meaning given in paragraph 2.1.25 of Part 11 of the Schedule (*Termination Compensation*);

"Nominal Equity IRR" means the post tax nominal blended internal rate of return as calculated by the Adjusted Financial Model;

"Nominal Non School Day Service Fee" or **"NNSF"** shall have the meaning given in paragraph 4.3.2 of Part 9 of the Schedule (*Payment Mechanism*);

"Nominal School Day Services Fee" or **"NSSF"** shall have the meaning given in paragraph 4.3.1 of Part 9 of the Schedule (*Payment Mechanism*);

"Non Available" means any failure to comply with the obligations of the Contractor under this Agreement so that the Project Facilities or any part thereof are Not Available (save to the extent that the Project Facilities are Deemed Available) and the expressions **"Not Available"**, **"Non Availability"**, **"Unavailable"** and cognate expressions shall be construed accordingly;

"Non School Day" means every day other than a School Day, Christmas Day or New Years Day;

"Non School Day Deduction Unit" or **"NSDU"** shall have the meaning given in paragraph 4.2.2 of Part 9 of the Schedule (*Payment Mechanism*);

"Non School Days Unavailability Deduction" or **"NSUD"** shall have the meaning given in paragraph 4.4.3 of Part 9 of the Schedule (*Payment Mechanism*);

"No Retendering Election" shall have the meaning given in clause 23.1.1 (ii);

"Notice" has the meaning given in clause 5.1;

"Notice to Mediate" shall have the meaning given in paragraph 3.1.4 of Part 16 of the Schedule (*Dispute Resolution Procedure*);

"**NSFP**" shall have the meaning given in paragraph 6.3(b) of Part 9 of the Schedule (*Payment Mechanism*);

"**NSUD**" shall have the meaning given in paragraph 4.1.1(d) of Part 9 of the Schedule (*Payment Mechanism*);

"**Organisation**" shall have the meaning given in clause 24.5 (*Handback Programme*);

"**Parties**" means the Council and the Contractor and their permitted successors and assignees and the expression "**Party**" shall be construed accordingly;

"**Payment Amount**" shall have the meaning given in clause 12.9;

"**Payment Report**" shall have the meaning given in clause 17.1.1 (*Invoicing*);

"**Payment Year**" shall have the meaning given in clause 16.2.2 (*Unitary Charge*);

"**Performance Report**" means the report prepared by the Contractor pursuant to Part 8 of the Schedule (*Monitoring and Service Failure Procedure*) and delivered to the Council in the Agreed Form;

"**Performance Standard**" means in respect of each Specific Requirement the service standard set out in column 4 of each paragraph of the Service Specification;

"**Period**" shall have the meaning given in clause 16.2.1 (*Unitary Charge*);

"**Permitted Purposes**" shall have the meaning given in clause 31.2 (iii);

"**Persistent Breach**" means a breach or breaches of any of the obligations of the Contractor under any Project Document to which the Council is a party;

- (a) not being a breach referred to in clause 22.1.1 (v);
- (b) which continues or recurs frequently within a six (6) month period after the date of service of the Final Warning Notice in relation to that breach;
- (c) which at the time of its continuation or recurrence referred to in paragraph (b) above is having or will have an adverse effect on the Council; and
- (d) which is not a breach of the obligations of the Contractor to provide the Services in accordance with clause 13 (*Service Period*), Part 8 of the Schedule (*Monitoring and Service Failure Procedure*) and Part 7 of the Schedule (*Service Specification*) or to make the Project Facilities Available;

"Persistent Breach Rectification Notice" means a Notice served on the Contractor by the Council pursuant to paragraph 10.2 of Part 8 of the Schedule (*Monitoring and Service Failure Deductions*);

"Personal Data" shall have the meaning set out in the DPA;

"Planned Maintenance Schedule" means the schedule of planned preventative maintenance detailing inspections required by Legislation and routine or annual maintenance works carried out on an annual basis and referred to in Specific Requirement 1.1 of Section 4.5 of the Service Specification;

"Planning Consents" means the grants of detailed planning permission for the construction of the:

- (a) Ardnamurchan High School;
- (b) Glen Urquhart High School;
- (c) Spean Bridge Primary School; and
- (d) Strathdearn Primary School,

by the Council under reference numbers and dated (a) 00/00463/FULLO - 25 January 2001; (b) 00/00969/FULIN - 18 January 2001; (c) 00/00464/FULLO - 12 February 2001; and (d) 00/00970/FULIN - 4 January 2001 respectively;

"Plant and Equipment" means the fixed and moveable plant and equipment to be installed and/or provided by the Contractor at the Project Sites for the purpose of providing the Services;

"Post Refinancing Equity IRR" shall have the meaning given in clause 17.11.3(e);

"Post Termination Service Amount" shall have the meaning given in paragraph 2.1.26 of Part 11 of the Schedule (*Termination Compensation*);

"Pre-Refinancing Equity IRR" shall have the meaning given in clause 17.11.3(d);

"Prescribed Rate" means a rate of interest expressed as a percentage, being the sum of :

- (a) 1.9 per cent per annum; and
- (b) LIBOR;

"Primary School Rectification Notice" means a Notice served by the Council on the Contractor pursuant to paragraph 10.1.2(ii) of Part 8 of the Schedule (*Monitoring and Service Failure Procedure*);

"Priority Level" means in respect of each Performance Standard the relevant level of priority identified in column 5 of the Service Specification;

"Programmed Building Works Completion Date" means the programmed date for the completion of the Building Works being 23 September 2002 or such later date as such programmed date may be postponed to from time to time by:

- (a) the Change Procedure;
- (b) clause 12.4 (*Completion of the Building Works*); or
- (c) clause 20.3 (*Deemed Change*) in respect of Section 5 only;

"Programmed Completion Dates" means the Programmed Section 1 Completion Date, the Programmed Section 2 Completion Date, the Programmed Section 3 Completion Date, the Programmed Section 5 Completion Date and the Programmed Building Works Completion Date and each one of these shall be a **"Programmed Completion Date"**;

"Programmed Section 1 Completion Date" means the programmed date for the completion of Section 1 being 12 August 2002 or such later date as such programmed date may be postponed to from time to time by:

- (a) the Change Procedure; or
- (b) clause 12.4 (*Completion of the Building Works*);

"Programmed Section 2 Completion Date" means the programmed date for the completion of Section 2 being 26 August 2002 or such later date as such programmed date may be postponed to from time to time by:

- (a) the Change Procedure; or
- (b) clause 12.4 (*Completion of the Building Works*);

"Programmed Section 3 Completion Date" means the programmed date for the completion of Section 3 being 9 September 2002 or such later date as such programmed date may be postponed to from time to time by:

- (a) the Change Procedure; or
- (b) clause 12.4 (*Completion of the Building Works*);

"Programmed Section 5 Completion Date" means the programmed date for the completion of Section 5 being 23 September 2002 or such later date as such programmed date may be postponed to from time to time by:

- (a) the Change Procedure; or
- (b) clause 12.4 (*Completion of the Building Works*); or
- (c) clause 20.3 (*Deemed Change*);

"Programmed Works" shall have the meaning given in paragraph 5.1.1 of Part 9 of the Schedule (*Payment Mechanism*);

"Prohibited Act" shall have the meaning given in clause 32.3 (*Corrupt Gifts*);

"Prohibited Person" means (a) any person directly engaged in the manufacture or sale of armaments, tobacco, drugs or alcohol or the gambling industry, the promotion or production of pornography; or (b) any other industry which, in the opinion of the Council (acting reasonably), is incompatible with the education instruction or guidance of children and which the Council notifies to the Contractor in advance of any proposed transfer referred to in clause 36.2;

"Project" means the financing, design, construction, commissioning and completion of the Building Works and the provision of the Services and the performance of all other obligations of the Contractor in terms of this Agreement;

"Project Documents" means:

- (a) the Funder's Direct Agreement;
- (b) the Leases; and
- (c) the Subleases; and
- (d) each of the Third Party Project Documents;

"Project Facilities" means:

- (a) Ardnamurchan High School;
- (b) Glen Urquhart High School;
- (c) Spean Bridge Primary School; and
- (d) Strathdearn Primary School;

"Project Liaison Committee" means the committee established by the Parties pursuant to clause 4.4;

"Project Rectification Notice" means a Notice served on the Contractor by the Council pursuant to paragraph 10.1.2(i) of Part 8 of the Schedule (*Monitoring and Service Failure Procedure*);

"Project Sites" means the Ardnamurchan School Site, the Glen Urquhart School Site, the Spean Bridge School Site and the Strathdearn School Site;

"Projected Senior Debt Service Cover Ratio" shall have the meaning given in the Funding Agreement;

"Projected Unit Price " means 4.42 pence per kWh (Indexed);

"Projected Utilities Volume" means the number of units of both gas and electricity consumed at the Project Facilities being two million four hundred and two thousand seven hundred and fifteen units;

"Projected Waste Water Price" means the unit price for waste water being two pounds twenty three pence (£2.23) sterling per cubic metre (Indexed);

"Projected Water Price" means the unit price for water being one pound nineteen pence (£1.19) sterling per cubic metre (Indexed);

"Projected Water Volume" means the number of units calculated in terms of paragraph 10.2.3 of Part 9 of the Schedule (*Payment Mechanism*);

"Proposed Handback Programme" shall have the meaning given in clause 24.8;

"Public Areas" means areas within the Project Facilities which are capable of use by Authorised Users and not under the direct supervision of the Council;

"PUC" shall have the meaning given in paragraph 9.2(a) of Part 9 of the Schedule (*Payment Mechanism*);

"Qualification Criteria" shall have the meaning given in paragraph 2.1.27 of Part 11 of the Schedule (*Termination Compensation*);

"Qualifying Costs" shall have the meaning given in paragraph 2.1.28 of Part 11 of the Schedule (*Termination Compensation*);

"Reasonable Commercial Terms" means terms which are commercially reasonable taking into account the Parties' obligations under this Agreement and the Project Documents and the price and terms upon which insurance has previously been available and the market practice of contractors operating contracts procured under Her Majesty's Government's Private Finance Initiative in the education sector;

"Receivables" shall have the meaning given in paragraph 2.1.29 of Part 11 of the Schedule (*Termination Compensation*);

"Rectification Amount" means a sum equal to ten (10) percent of the Monthly Services Fee;

"Rectification Costs" shall have the meaning given in paragraph 2.1.30 of Part 11 of the Schedule (*Termination Compensation*);

"Rectification Period" means the number of Core Hours, or where the Service Specification specifies a number of Days, the number of Days allowed for either a permanent or temporary repair in respect of any failure to meet an Availability Standard or Performance Standard which period shall:

- (a) commence from the time shown in the Helpdesk records as being the time which a failure to provide the Services in accordance with the Availability

Standard or Performance Standard as notified to the Helpdesk except where

- (i) the Helpdesk records show the time at which the failure was reported was after 8:00pm on Mondays, Tuesdays, Wednesdays, Thursdays, Fridays and Saturdays or after 5:00pm on Sundays; and
- (ii) the period of time shown in Column 6 of the Tables contained in Part 7 of the Schedule (*Service Specification*), in respect of Availability Standards, is less than 2 hours,

in which cases the time shall commence at the start of Core Hours on the next School Day or Non School Day as the case may be; and

- (b) be extended by any period of Core Hours during which, whether by restriction of access or otherwise, the Contractor is prevented by the Council or, the School Representative from having access to the relevant part of parts of the Project Facilities to rectify any failure to meet the Availability Standard or Performance Standard, such period being established and starting from the time shown in the Helpdesk records as when the Contractor, its agent, representative or sub-contractor made notification to the Helpdesk that such prevention or interruption commenced and ending at the time shown in the Helpdesk records as when the Contractor, its agent, representative or subcontractor made notification to the Helpdesk of cessation of any such prevention; and
- (c) end on the time shown in the Helpdesk records as being the time at which the failure was rectified,

which times will be as recorded by the Contractor unless the Council challenges such evidence on *bona fide* grounds;

"Rectification Reserve" means an account in the joint names of the Council and the Contractor established pursuant to clause 24.12 of this Agreement;

"Rectification Works" shall have the meaning given in paragraph 2.1.31 of Part 11 of the Schedule (*Termination Compensation*);

"Recurrent Cost" means any expenditure incurred in relation to the Project Facilities or in connection with or as a result of the carrying out of the Services which is not a Capital Cost;

"Recurrent Cost Increase" means any increased or additional Recurrent Cost identified by the Contractor during an Appraisal;

"Recurrent Cost Saving" means the amount if any by which the Recurrent Cost which would have been incurred by the Contractor in providing the Services without the Change under consideration exceeds any Recurrent Cost incurred and/or to be incurred by the Contractor in providing the Services so as to incorporate such Change;

"Referring Party" means a Party to a Related Dispute;

"Refinancing" means a rescheduling, replacement or other refinancing of the Contractor's obligations under the Supplemental Funding Documents other than a Rescue Refinancing;

"Reinstatement Plan" shall have the mean given in clause 27.9.3(i);

"Reinstatement Works" shall have the meaning given in clause 27.9.3(i);

"Related Adjudicator" means an adjudicator appointed to deal with a Related Dispute prior to conjoining or Consolidation of the Related Dispute with a Dispute;

"Related Dispute" means a dispute between the Contractor and any subcontractor to which the Contractor has subcontracted any of its obligations under this Agreement which raises issues which are substantially the same as or connected with issues raised in a Dispute;

"Related Procedure" means a procedure for the adjudication or determination of a Related Dispute under an adjudication procedure which meets the requirements set out in section 108 of the Housing Grants, Construction and Regeneration Act 1996 and is in all material respects equivalent to the adjudication procedure in paragraphs 3 and 4 of Part 16 of the Schedule (*Dispute Resolution Procedure*);

"Relevant Authority" means any agency, authority, department, ministry or statutory person having jurisdiction over both or either of the Parties;

"Relevant Change in Law" means:

- (a) a Discriminatory Change in Law; and/or
- (b) a VAT Change in Law; and/or
- (c) a Specific Change in Law; and/or
- (d) a Change in Law incurs Cumulative Capital Expenditure to the extent of the Council's Share;

but specifically excluding from paragraphs (a) to (c) any Change in Law which was reasonably foreseeable at the Contract Award Date or was published:

- (A) in a draft Bill as part of a Government Departmental Consultation Paper;
or
- (B) in a Bill; or
- (C) in a draft statutory instrument; or
- (D) as a proposal in the Official Journal of the European Communities,
at the Contract Award Date;

"Relevant Cost" means losses, costs, or expenses, or a reduction in revenues suffered or incurred by the Contractor after the date of the relevant Change as a

direct result of a Change including any Recurrent Costs Increase and Capital Cost Increase;

"Relevant Failure" means either an incident of Non Availability or a Service Failure;

"Relevant Incident" shall have the meaning given in clause 27.9.3 (*Reinstatement*);

"Relevant Proceeds" shall have the meaning given in clause 27.9.3(ii)(C) (*Reinstatement*);

"Relevant Saving" means any gain or saving or the earning of an increased revenue (other than one giving rise to a compensating adjustment under any provision of this Agreement) made by the Contractor after the date of the relevant Change as a direct result of a Change including any Recurrent Saving and Capital Cost Saving;

"Relief Amount" shall have the meaning given in clause 14.11;

"Relief Event" means:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent that it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;
- (b) failure by a statutory undertaker, utility company, local authority or other like body to carry out works or provide services;
- (c) any failure or shortage of power, fuel or transport (including the availability of ferry services);
- (d) any blockade or embargo which does not constitute a Force Majeure Event;

- (e) any official or unofficial strike, lockout, go-slow or other dispute generally affecting the construction industry, or building maintenance industry or facilities management industry or a significant proportion of it; or
- (f) any accidental loss or damage to any of the Project Sites or any of the roads servicing the Project Sites;
- (g) any protester activity affecting the Project Sites;
- (h) any wilful acts of third parties affecting the Project Sites during the Building Works;
- (i) any Finds discovered on or under any of the Project Sites; and
- (j) restrictions on movement of goods, vehicles or people arising from foot and mouth disease;

which adversely affects the performance by the Contractor of its obligations under this Agreement unless any of the events listed in paragraphs (a) to (j) inclusive arises (directly or indirectly) as a result of any wilful act or default of the Contractor;

"Relief Notice" shall have the meaning given in clause 14.4;

"Relief Period" shall have the meaning given in clause 14.4.3;

"Relief Request" shall have the meaning given in clause 14.1;

"Remedy Notice" shall have the meaning given in clause 22.2;

"Remedy Period" shall have the meaning given in clause 22.2;

"Reporting Failure Deduction" shall have the meaning given in paragraph 8.1 of Part 9 of the Schedule (*Payment Mechanism*);

"Required Action" shall have the meaning given in clause 21.3 (*Council Step-In*);

"Required Consent" means all consents, certificates, licences (other than software licences) approvals or permissions or other authorisations necessary for carrying out the Building Works and/or providing the Services;

"Rescue Refinancing" means any amendment to the Supplemental Funding Documents entered into by the Contractor or any increase in borrowing whose principal purpose is to avoid or cure as the case may be:

- (a) a default by the Contractor under this Agreement or any of the Supplemental Funding Documents; or
- (b) a prohibition pursuant to the Supplemental Funding Documents of the making of a Distribution; or
- (c) a shortfall in the Debt Service Reserve Account or the Maintenance Reserve Account;

"Respondent" means the party responding to a Dispute upon which the Applicant serves a First Notice pursuant to the Dispute Resolution Procedure;

"Retendering Election" shall have the meaning given in clause 23.1.1 (i);

"Re-transferring Employee" shall have the meaning set out in clause 18.11.2;

"Reviewable Documents" means those documents and design information in respect of the Project Facilities comprising:-

- (a) site layout plans;

- (b) 1:200 drawings;
- (c) 1:50 drawings;
- (d) typical room layouts;
- (e) ranges of finishes;
- (f) demolitions;
- (g) typical fittings and materials;
- (h) the construction timetable;
- (i) the health and safety plan; and
- (j) typical details;

"Review Procedure" means the procedure set out in paragraph 4.3 of Part 4 of the Schedule (*Building Works Provisions*);

"Revision Date" means the date from which the Change Adjustment will have effect;

"Routine Maintenance" means:

- (a) works of reactive maintenance required for the maintenance and repair of the Project Facilities but excluding substantial or wholesale or lifecycle replacement of any building element referred to in the definition of Handback Requirements; and
- (b) the regular maintenance activities including checks and services carried out in line with manufacturers specifications and Good Industry Practice but excluding substantial or wholesale or lifecycle replacement of any Plant and Equipment;

"RPI" means the general Retail Prices Index (all items) as published or determined by the office for National Statistics expressed as a percentage;

"School Day" means those days on which the Council requires to use the Project Facilities for the delivery of the education curriculum or for the training or preparation of teaching staff being those days notified by the Council to the Contractor by 31 March in each Payment Year and not being more than 195 in a 365 (or 366 in a leap year) day period;

"School Day Deduction Unit" or **"SDU"** shall have the meaning given in paragraph 4.2.1 of Part 9 of the Schedule (*Payment Mechanism*);

"School Days Unavailability Deduction" or **"SUD"** shall have the meaning given in paragraph 4.4.2 of Part 9 of the Schedule (*Payment Mechanism*);

"School Hours" means:

- (a) in respect of the Spean Bridge Primary School and the Tomatin Primary School between 8.30am and 3.30pm; and
- (b) in respect of Ardnamurchan High School and Glen Urquhart High School between 8.30am and 4.30pm,

on each School Day;

"School Representative" means for each of the Project Facilities the person appointed by the Council as such from time to time and notified to the Contractor;

"Second Notice" shall have the meaning given in paragraph 4.11 of Part 16 of the Schedule (*Dispute Resolution Procedure*);

"Section 1" means the Building Works under exception of Section 2, Section 3, Section 4 and Section 5;

"Section 2" means the nursery, out of school crèche, nursery office, nursery quiet room, nursery kitchen, nursery toilets, nursery play area, community rooms, community office, community toilets, multi purpose meeting room, library, staff

rooms, staff toilets at Ardnamurchan High School and Glen Urquhart High School;

"**Section 3**" means the hall (multi purpose hall) and fitness rooms at Ardnamurchan High School and Glen Urquhart High School;

"**Section 4**" means the showers (3 male and 3 female changing), music rooms, music practice room 1, music practice room 2, games hall and PE staff base at Ardnamurchan High School and Glen Urquhart High School;

"**Section 5**" means the shinty pitch at the Glen Urquhart School Site;

"**Section 5 Longstop Date**" means the date on which the Council will have the right to terminate this Agreement if the Building Works in respect of Section 5 are not completed in accordance with this Agreement being 23 September 2004 or such later date as the programmed date may be postponed to from time to time by:

- (a) the Change Procedure; and
- (b) clause 12.5 (*Extensions to the Longstop Date*);

"**Section 1 Service Commencement Date**" means the date on which the Council has notified the Contractor pursuant to clause 12.12.3 that Section 1 has satisfied the Service Commencement Requirements;

"**Section 2 Service Commencement Date**" means the date on which the Council has notified the Contractor pursuant to clause 12.12.3 that Section 2 has satisfied the Service Commencement Requirements;

"**Section 3 Service Commencement Date**" means the date on which the Council has notified the Contractor pursuant to clause 12.12.3 that Section 3 has satisfied the Service Commencement Requirements;

"Section 4 Service Commencement Date" means the date on which the Council has notified the Contractor pursuant to clause 12.12.3 that Section 4 and Section 5 has satisfied the Service Commencement Requirements (save where the provisions of clauses 20.3.2 or 20.3.3 apply);

"Section 5 Service Commencement Date" means the date on which the Council has notified the Contractor pursuant to clause 12.12.3 that Section 5 has satisfied the Service Commencement Requirements;

"Sections" means Section 1, Section 2, Section 3, Section 4 and Section 5;

"Section 5 Planning Permission" shall have the meaning given in clause 20.3.1 (*Deemed Change*);

"Security Interest" means any mortgage, charge, assignation or assignment by way of security, pledge, hypothecation, lien, (for the purpose of, or which has the effect of granting security) or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same, or any agreement to sell or otherwise dispose of any asset on terms whereby such asset is or may be leased to or re-acquired by the person selling or disposing of it;

"Senior Debt" shall have the meaning given in paragraph 2.1.32 of Part 11 of the Schedule (*Termination Compensation*);

"Senior Debt Obligations" means the aggregate of all amounts (including principal and interest), fees and expenses, due, owing or outstanding or payable to the Funder under the Funding Agreement and shown in the Adjusted Financial Model;

"Sensitive Area" means in relation to the Project Facilities areas which are used exclusively by Authorised Users and not supervised by the Council;

"Service Commencement Date " means the Section 1 Service Commencement Date, the Section 2 Service Commencement Date, the Section 3 Service Commencement Date, the Section 4 Service Commencement Date or as the case may be the Section 5 Service Commencement Date;

"Service Commencement Requirements" means:

- (a) the relevant Section is Available;
- (b) the Building Works Specification has been met in all respects save in respect of Snagging in respect of the relevant Section;
- (c) the Contractor has mobilised sufficient resources which are available to commence delivery of the Services in respect of the relevant Section and the Contractor has complied with its obligations under clause 13.5 (*Service Delivery Plan*); and
- (d) the Contractor has agreed with the Council a programme for the rectification of Snagging in respect of the relevant Section;

"Service Delivery Plan" means a document prepared by the Contractor which sets out in reasonable detail the manner in which it proposes to provide the Services and satisfy the Service Specification;

"Service Failure" means any failure to achieve a Performance Standard save where an applicable event of Deemed Service Delivery is in existence;

"Service Failure Event" means the failure of the Contractor to remedy Persistent Breach, a Service Failure or incident of Non Availability or a series of Service Failures or incidents of Non Availability in terms of paragraph 10 of Part 8 of the Schedule (*Monitoring and Service Failure Procedure*);

"Service Failure Points" means the number of points set out in column 2 of Table 1 to Part 8 of the Schedule in respect of the relevant Priority Level;

"Service Level Agreement" means each and any agreement entered into between the Contractor and a Service Provider;

"Service Period" means:

- (a) in respect of the Section 1 the period commencing on the Section 1 Service Commencement Date to the earlier of the Contract Expiry Date or the Termination Date; and
- (b) in respect of Section 2 the period commencing on the Section 2 Service Commencement Date to the earlier of the Contract Expiry Date or the Termination Date; and
- (c) in respect of Section 3 the period commencing on the Section 3 Service Commencement Date to the earlier of the Contract Expiry Date or the Termination Date; and
- (d) in respect of Section 4 the period commencing on the Section 4 Service Commencement Date to the earlier of the Contract Expiry Date or the Termination Date; and
- (e) in respect of Section 5 the period commencing on the Section 5 Service Commencement Date to the earlier of the Contract Expiry Date or the Termination Date;

"Service Period Compensation Event" means:

- (a) a breach by the Council of any of its obligations under this Agreement or any other Project Document which prevents the performance of the obligations of the Contractor;
- (b) a Council Change implemented by the Council pursuant to paragraph 3.3 of Part 14 of the Schedule (*Change Procedure*); and
- (c) any action taken by the Council to comply with the Excluded Title Obligations or any action by a third party to enforce the Excluded Title Obligations, which prevents or disrupts the Contractor in the performance of its obligations under this Agreement;

"Service Period Insurance" means those insurances listed in Section B of Part 19 of the Schedule (*Contractor Insurances*);

"Service Provider" means:

- (a) Mitie PFI Limited having its registered office at The Stable Block, Barley Wood, Wrington, Bristol, BS40 58A; and;
- (b) all other contractors that may from time to time be appointed by the Contractor in relation to the Services in accordance with this Agreement to perform elements of the Services set out in paragraphs 4.5 and 4.12 of the Service Specification;

"Service Provider Direct Agreement" means any agreement entered into by the Contractor, the Council and any Service Provider in substantially the same form as that set out in Annexure 3;

"Service Rectification Plan" means an action plan established by the Contractor in response to a Project Rectification Notice or a Primary School Rectification Notice;

"Service Specification" means the statement of the Council's service requirements set out in and forming Part 7 of the Schedule (*Service Specification*);

"Services" means the facilities management, lifecycle and reactive maintenance services described in the Service Specification and **"Service"** shall be construed accordingly;

"Shareholder" means the persons identified such in Part 20 of the Schedule (*Contractor Details*);

"Shareholders Agreement" means the shareholders agreement entered into between M J Gleeson Group plc and Royal Bank Project Investments Limited of even date with this Agreement;

"Snagging" means:-

- (a) such minor items of outstanding work which when either individually or when taken together are such that they would normally be contained in a snagging list under a building contract for a construction project of the same size and nature as the Building Works in accordance with Good Industry Practice; and/or
- (b) all works necessary to remedy and make good the same, provided that no matter identified as falling within (a) will affect the performance of the Services and/or prejudice to any extent the performance of the Council's day to day activities within the Project Facilities;

"Space Value" is the factor allocated to each area within the Project Facilities and identified in Table 2 of Part 9 of the Schedule (*Payment Mechanism*);

"Spean Bridge Lease" means a lease of the Spean Bridge School Site in the Agreed Form;

"Spean Bridge Primary School " means the buildings and other facilities to be built on the Spean Bridge School Site to form a primary school facility;

"Spean Bridge School Site" means the area of ground as more particularly described in the Spean Bridge Lease;

"Spean Bridge Sublease" means a sublease of the Spean Bridge School Site in the Agreed Form;

"Specific Change in Law" means a Change in Law which:

- (a) applies to the design, construction, financing or operation of schools and not of other buildings; and/or
- (b) applies to the provision of facilities management services in respect of such schools and not to other buildings;

"Specific Requirement" means the specific service requirements set out in Column 2 of each paragraph of the Service Specification;

"SSFP" shall have the meaning given in paragraph 6.3(a) of Part 9 of the Schedule (*Payment Mechanism*);

"Staff" means all persons employed by the Contractor, any Service Provider, subcontractor, agent or other person for whom the Contractor is responsible in delivering the Services;

"Step In Notice" shall have the meaning given in clause 21.2;

"Strathdearn Lease" means a lease of the Strathdearn School Site in the Agreed Form;

"Strathdearn Primary School " means the buildings and other facilities to be built on the Strathdearn School Site to form a primary school facility;

"Strathdearn School Site" means the area of ground as more particularly described in the Strathdearn Lease;

"Strathdearn Sublease" means a sublease of the Strathdearn School Site in the Agreed Form;

"Subcontract" means any contract entered into or, as the case may be, to be entered into by the Contractor and/or the Building Contractor with a Subcontractor in relation to the performance of the Building Works;

"Subcontractor" means any party (other than the Contractor and/or the Building Contractor) which is a party to a Subcontract and which has design responsibility in respect of the Building Works or any part thereof;

"Subcontractor's Warranty Deed" means a collateral warranty and step-in agreement between the Council, the Building Contractor or, as the case may be, the Contractor and any Subcontractor in substantially the same form as that set out in Annexure 4;

"Subleases" means the Ardnamurchan Sublease, the Glen Urquhart Sublease, the Spean Bridge Sublease and the Strathdearn Sublease;

"Subordinated Debt" shall have the meaning given in paragraph 2.1.33 of Part 11 of the Schedule (*Termination Compensation*);

"Subordinated Lenders" shall have the meaning given in paragraph 2.1.34 of Part 11 of the Schedule (*Termination Compensation*);

"Subordinated Loan Agreements" shall have the meaning given in paragraph 2.1.35 of Part 11 of the Schedule (*Termination Compensation*);

"Subsidiary" shall have the meaning given in the Companies Act 1985 (as amended);

"SUD" shall have the meaning given in paragraph 4.1.1(a) of Part 9 of the Schedule (*Payment Mechanism*);

"**Suitable Substitute Contractor**" shall have the meaning given in paragraph 2.1.36 of Part 11 of the Schedule (*Termination Compensation*);

"**Supplemental Funding Documents**" means the Financing Documents;

"**Supplemental Project Documents**" means:

- (a) any Building Contract;
- (b) any Consultant Appointment;
- (c) each of the Service Level Agreements; and
- (d) any Subcontract;

"**Supplied Data**" means the HAPM manual supplied to the Contractor, directly or indirectly, by the Council, its consultants, agents or advisers;

"**Survey**" shall have the meaning given in clause 24.1 (*Handback Programme*);

"**Table**" means a table as set out in or attached to any Part of the Schedule;

"**Tax**" or "**Taxation**" means all forms of tax, duty, levy, charge, impost and rate wherever and whenever imposed;

"**Teaching Spaces**" means the number of teaching spaces in a Project Facility required by the Council (which may include each classroom, the nursery classroom and the hall) notified to the Contractor in writing by the Council at the commencement of each academic year and/or varied from time to time on giving not less than one months notice and means:

- (a) in respect of the Spean Bridge Primary School, not more than six (6) teaching spaces; and
- (b) in respect of the Strathdearn Primary School, shall not more than five (5) teaching spaces;

"**Teaching Space Trigger**" means Teaching Spaces minus one;

"Temporary Alternative Accommodation" means reasonably suitable accommodation offered by the Contractor as an alternative to any part of the Project Facilities that are Not Available such accommodation being:

- (a) a temporary alternative having regard to the facts and circumstances then in existence;
- (b) available to the extent required by the Council; and
- (c) situated on the Project Sites but not forming part of the Project Facilities;

"Tender Costs" shall have the meaning given in paragraph 2.1.37 of Part 11 of the Schedule (*Termination Compensation*);

"Tender Price Long Stop Date" shall have the meaning given in paragraph 2.1.38 of Part 11 of the Schedule (*Termination Compensation*);

"Tender Process" shall have the meaning given in paragraph 2.1.39 of Part 11 of the Schedule (*Termination Compensation*);

"Tender Process Monitor" shall have the meaning given in paragraph 2.1.40 of Part 11 of the Schedule (*Termination Compensation*);

"Termination Date" means any date of early termination of this Agreement (prior to the Contract Expiry Date) in accordance with the provisions of clause 22 (*Termination*);

"Termination Date Project IRR" shall have the meaning given in paragraph 2.1.41 of Part 11 of the Schedule (*Termination Compensation*);

"Termination Margin" shall have the meaning given in paragraph 2.1.42 of Part 11 of the Schedule (*Termination Compensation*);

"Termination Senior Debt" shall have the meaning given in paragraph 2.1.43 of Part 11 of the Schedule (*Termination Compensation*);

"Termination Swap Rate" shall have the meaning given in paragraph 2.1.44 of Part 11 of the Schedule (*Termination Compensation*);

"Third Party" means Shepherd & Wedderburn WS, 155 St Vincent Street, Glasgow, G2 7NR or such other party nominated by the Council from time to time;

"Third Party Project Documents" means:

- (a) the Service Provider Direct Agreement; and
- (b) the Warranty Deeds;

"Threshold Load" means the Connected Load of the Project Schools agreed between the Parties (or failing agreement determined by the Expert pursuant to the Dispute Resolution Procedure) by reference to the electrical loading of all assets on the Council's asset register and PAT testing register (including any Heavy Equipment and/or Light Equipment) at the Section 1 Service Commencement Date increased by a factor sufficient to reflect the electrical load of such equipment on the assumption that the Project Schools are operating at full capacity;

"Title Deeds" means the title deeds for each of the Project Sites as set out in Part 22 of the Schedule (*Title Deeds*);

"Total Space Value" or "TSV" is twenty thousand three hundred and sixty (20,360);

"Transferred Employees" means those persons in the employment of the Council whose details are set out in Part 13 of the Schedule, subject to the provisions of Clause 18.3;

"Transferring Employees" means those employees of the Contractor, the Service Provider or any sub-contractor who are wholly or mainly assigned to the Services immediately prior to the Cessation of Services;

"TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) and the Acquired Rights Directive EC77/187;

"Unexpired Term" shall have the meaning given in paragraph 2.1.45 of Part 11 of the Schedule (*Termination Compensation*);

"Uninsurable Risk" means a risk previously included within a policy of insurance in the Contractor Insurances in relation to which the Contractor's insurers notify the Contractor that:

- (a) insurance with a reputable insurer is not available in the European and North American insurance markets in respect of that risk; or
 - (b) the insurance is not available on Reasonable Commercial Terms,
- and that a reasonable and prudent business faced with equivalent obligations as the Contractor has assumed in terms of this Agreement would have ceased to maintain insurance for such risk;

"Unitary Charge" means the payment made by the Council to the Contractor in consideration of the performance of the Services calculated in accordance with Part 9 of the Schedule (*Payment Mechanism*);

"Unsuitable Person" shall have the meaning given in clause 19.5.1;

"Utility" means any of mains electricity, mains gas, water, mains sewerage and/or telecommunication services;

"Utility Adjustment" shall have the meaning given in paragraph 9.2 of Part 9 of the Schedule (*Payment Mechanism*);

"VAT" means any value added taxes;

"VAT Change in Law" means a Change in Law which determines that supplies to be made by the Contractor to the Council under this Agreement are exempt from Value Added Tax and that input tax incurred and attributable to such supplies is not recoverable by the Contractor;

"Vires Certificate" means a certificate signed by the Council pursuant to section 3 of the Local Government (Contracts) Act 1997 dated on or before the Contract Award Date in the Agreed Form;

"Warning Notice" means a Notice served by the Council on the Contractor pursuant to paragraph 10.4 or paragraph 10.5 of Part 8 of the Schedule (*Monitoring and Service Failure Procedure*);

"Warranty Deed" means the Building Contractor's Warranty Deed, the Subcontractor's Warranty Deed or the Consultant's Warranty Deed as applicable;

"Waste Water Adjustment" shall have the meaning given in paragraph 11.2.2 of Part 9 of the Schedule (*Payment Mechanism*);

"Water Adjustment" shall have the meaning given in paragraph 10.2.2 of Part 9 on the Schedule (*Payment Mechanism*);

"Whole School Unavailability Trigger" means:

- (a) in respect of Ardnamurchan High School a Space Value of 1500;
- (b) in respect of Glen Urquhart High School a Space Value of 1500;
- (c) in respect of Spean Bridge Primary School a Space Value of 400; and

- (d) in respect of Strathdearn Primary School a Space Value of 400; and
- (e) in respect of Spean Bridge Primary School and/or the Strathdearn Primary School the number of Teaching Spaces Available is less than the Teaching Space Trigger for the relevant Project Facility; and
- (f) in respect of Ardnamurchan High School or Glen Urquhart High School there are six (6) or more classrooms with a Space Value of 100 Non Available at any one time in respect of the relevant Project Facility;

2. Interpretation

In this Agreement except where the context otherwise requires:-

- (1) references to "Project Facilities" in the absence of any provision to the contrary include any part thereof;
- (2) references to any right of the Contractor to occupy or use the Project Facilities shall be construed as extending to all persons authorised by the Contractor (including employees, agents, professional advisers, contractors, workmen and others);
- (3) any obligation by either Party not to do any act or thing shall be deemed to include an obligation not to permit and to seek to prevent such act or thing being done, and to use all reasonable endeavours to prevent such an act or thing being done by a third party for whom such Party is responsible in law;
- (4) a reference in this Agreement to any clause, sub-clause, paragraph, or Part of the Schedule is except where it is expressly stated to the contrary reference to any such clause, sub-clause, paragraph or Part of the Schedule to this Agreement;
- (5) headings in this Agreement are for convenience only and do not affect the interpretation of this Agreement;
- (6) the masculine includes the feminine;
- (7) the singular includes the plural;
- (8) A reference to:-

- (i) any reference to any enactment or regulation or any similar instrument shall be construed as a reference to the enactment, order regulation or instrument (including any EU instrument) as amended or re-enacted; and
 - (ii) Legislation or any applicable judgement of a relevant court of law shall include any subordinate legislation or codes of practice made thereunder; and
- (9) a Directive made by the European Council of ministers shall include primary or subordinate United Kingdom legislation made in implementation thereof
- (10) A reference to a person includes firms partnerships and corporations and their permitted successors and assignees or transferees.
- (11) Any reference to this Agreement or to any other document shall include any permitted variation amendment or supplements to such documents.
- (12) Any reference to a public organisation other than the Council shall be deemed to include any successor to that organisation or any person which has taken over the functions or responsibilities of that organisation.
- (13) Unless otherwise provided any notice, certificate, consent, approval, determination, agreement or waiver which requires to be issued, made or given in terms of this Agreement shall require to be issued, made or given in writing, and the words "notify", "certify", "consent", "approve", "determine", "agree" or "waive", or derivations therefrom, shall be construed accordingly.
- (14) Any reference to a document in the "**Agreed Form**" is reference to a document agreed or to be agreed between the Parties (each party to act reasonably) and initialled by them on the first page of the document for identification purposes.

- (15) Save in respect of clause 31.5 and 31.7 (*Intellectual Property*) this Agreement shall be construed and interpreted to exclude any rights in favour of third parties.
- (16) If a change in the currency of the United Kingdom occurs, this Agreement shall be amended as necessary to reflect the change in currency and put both Parties in the same position, so far as possible, that they would have been in if no change in currency had occurred.