NEW ZEALAND INFRASTRUCTURE COMMISSION
Te Waihanga

Standard Form Public Private Partnership (PPP) Project Agreement

Model Schedules

infracom.govt.nz

1: About this guidance

1.1 The Infrastructure Commission

The New Zealand Infrastructure Commission, Te Waihanga, was established on 25 September 2019. The Commission will help improve how New Zealand coordinates and plans its infrastructure, makes the most of the infrastructure it already has, and ensures that investment in infrastructure delivers what New Zealand needs.

One of the Commission's core functions is to support agencies and local authorities to procure and deliver major infrastructure projects; supplementing rather than replacing existing capability.

Another key function is to prepare research and best practice guidance on major infrastructure procurement and delivery, to provide guidance on specific issues, beyond the more general procurement guidance already available from other agencies.

As part of this function, the Commission is responsible for maintaining and developing the New Zealand Public Private Partnership (PPP) model. This function was previously undertaken by the former PPP Unit in the New Zealand Treasury (the Treasury). As part of this role, the Commission is responsible for:

- developing PPP policy and processes
- assisting agencies with PPP procurement
- maintaining the Standard Form PPP Project Agreement
- engaging with potential private sector participants, and
- monitoring the implementation of PPP projects.

1.2 Purpose

This document outlines the Schedules to the Standard Form Public Private Partnership (PPP) Project Agreement. There are 19 Schedules in total:

- **Schedule 1 Conditions Precedent:** available below
- **Schedule 2 Contractor Warranted Data:** template available below
- **Schedule 3 Project Documents:** template available below, including the following attachments
  - Annexure 1 **Financier Direct Deed:** available
  - Annexure 2 **Major Sub-contractor's Direct Deed:** available
  - Annexure 3 **Independent Reviewer's Agreement:** examples only
  - Annexure 4 **Facility Lease:** available
  - Annexure 5 **Third Party Interface Protocols:** available
- **Schedule 4 Financing:** template available below, including the following attachments
  - Annexure 1 **Financial Close Adjustment Protocol:** examples only
  - Annexure 2 **Swap Pricing Protocol:** available
  - Annexure 3 **Form of Quarterly Finance Summary:** available
- **Schedule 5 Property:** examples available on request from the Commission, summary document included below.
- **Schedule 6 Resource Management Act requirements:** examples available on request from the Commission, summary document included below.
- **Schedule 7 Governance and Service Management:** available below
- **Schedule 8 Review Procedures:** available below
- **Schedule 9 Operative Documents:** template available below
- **Schedule 10 Completion Requirements:** examples available on request from the Commission

- **Schedule 11 Works Requirements:** examples available on request from the Commission
- **Schedule 12 Service Requirements:** examples available on request from the Commission
- **Schedule 13 Performance regime:** examples available on request from the Commission, summary document included below.
- **Schedule 14 Payment Mechanism:** available below
- **Schedule 15 Insurance:** template available below
- **Schedule 16 Change notice:** available below
- **Schedule 17 Change Compensation Principles:** available below
- **Schedule 18 Calculation of Compensation on Termination:** available below
- **Schedule 19 Disengagement:** available below

The Guidance forms part of a suite of guidance documents issued by the New Zealand Infrastructure Commission relevant to the planning and delivery of major infrastructure projects in New Zealand, including of PPPs. It should be read in conjunction with other Commission guidance and requirements of the Treasury's Investment Management and Asset Performance team (IMAP). The Guidance assumes that the Commission's Standard Form PPP Project Agreement will form the basis of the contract to be signed with the Preferred Bidder. The Commission is planning further updates to its suite of PPP guidance.

1.3 The New Zealand PPP model

In the New Zealand context, a PPP is a long term contract for the delivery of a service, where provision of the service requires the construction of a new asset, or enhancement of an existing asset, that is financed from external sources on a non-recourse basis, and full legal ownership of the asset is retained by the Crown.

PPP procurement has been implemented in New Zealand for the primary purpose of improving the focus on, and delivery of, required service outcomes from major infrastructure assets by:

- integrating asset and service design
- incentivising whole of life design and asset management
- allocating risks to the parties who are best able to manage them, and
- only paying for services that meet pre-agreed performance standards.

Whole of life services are purchased under a single long-term contract with payments to the contractor based on availability and performance of the asset. The combination of assets and services required to be delivered by the private sector are referred to in this document as the 'Project'.

The PPP model seeks to improve outcomes by capturing best practice and innovation. Lessons learnt from PPP projects can be implemented across a broader portfolio of public assets to significantly leverage the benefits of single PPP transactions. The competitive procurement process, focus on outcomes, appropriate risk allocation and performance based Payment Mechanisms that put third party capital at risk optimise the incentives and flexibility for private sector participants to deliver innovative and effective solutions.

PPP procurement is only used where it offers value for money over the life of the project, relative to conventional procurement methods. This means achieving better outcomes from a project than if it were procured using conventional methods, for the same, or lower, net present cost.

1.4 Government Procurement Rules

Public sector staff responsible for procurement are required to comply with the Government Procurement Rules (the Rules) and the overarching principles that apply to all government procurement and provide the foundation of good practice for procurement planning, approaching and engaging the supplier market. These include being fair to all suppliers and getting the best deal for everyone.

Anyone can use the Rules to help drive good procurement practice. If a procurement is worth more than $100,000 (or $9 million for new construction works) they are mandatory for:

- Government departments
- New Zealand Police
- the New Zealand Defence Force, and
- most Crown entities.

All other government agencies are encouraged to follow the Rules.

The Chief Executive of the Ministry of Business Innovation and Employment (MBIE) is the Procurement Functional Leader, responsible for driving procurement performance across the State Services by helping government agencies to deliver better public value, and MBIE's New Zealand Government Procurement team supports the Chief Executive in that role.

Under the Rules, following the Commission's guidance is mandatory for infrastructure projects with a total cost of ownership of more than $50 million delivered by government departments as well as the Police and Defence Force and most Crown entities.

In addition to the Rules, Cabinet Office Circular (19) 6 requires agencies to evaluate all procurement options, including innovative and non-traditional approaches to procurement and alternative financing arrangements, such as PPP.[1]

Cabinet Office Circular (19) 6 notes that current government policy precludes initiating the use of new Public Private Partnerships (PPPs) in the education, health and corrections sectors. Under Cabinet Office Circular (19) 6, agencies also must consult early with the Commission, and follow any relevant guidance published by the Commission, if they are considering any significant innovative and non-traditional approaches to infrastructure procurement, alternative financing arrangements, or PPPs.

1.5 Definitions

Capitalised terms in this guidance, unless otherwise defined, have the meaning given to those terms in the Standard Form PPP Project Agreement.

1.6 Questions and further information

General enquiries about the information contained in this guidance can be sent to info@infracom.govt.nz . Other guidance documents and useful information can be found at www.infracom.govt.nz

1 https://dpmc.govt.nz/publications/co-19-6-investment-management-and-asset-performance-state-services

Schedule 1: Conditions Precedent

(Clause 10.4 (Conditions Precedent))

This Agreement is conditional on the Contractor delivering to the Crown all of the following in a form and substance reasonably satisfactory to the Crown:

(a) **Director's Certificate:** a duly completed Director's Certificate in respect of the Contractor in substantially the form set out in the Annexure to this Schedule 1;

(b) **Legal opinions:** a legal opinion from solicitors acting for:

(i) the Contractor; and

(ii) each Major Sub-contractor,

in relation to those persons entering into and performing their obligations under each of the Project Documents to which it is a party;

(c) **Project Documents:** original counterparts of all Project Documents and certified copies of all Ancillary Documents, all duly executed by all parties other than (if applicable) the Crown;

(d) Financing Agreements and shareholding agreements:

(i) certified copies of the Initial Financing Agreements and the shareholding agreements, equity subscription and subordinated debt documents duly executed by all parties to them; and

(ii) evidence that all conditions precedent to financing under the Initial Financing Agreements and the shareholding agreements have been satisfied (or waived in accordance with their terms) except for the giving of the notice by the Crown described in clause 10.4(c) (Conditions Precedent) of the Base Agreement;

(e) **Model Audit:** a copy of the final report of the model auditor in respect of its audit of the Base Case;

(f) **Revised Base Case:** the Base Case, as varied from the Base Case at the Execution Date in accordance with the Financial Close Adjustment Protocols with the approval of the Crown;

(g) **Copies of Insurance Policies:** copies of all Insurance Policies for the Required Insurances for the period from Financial Close to Works Completion;

(h) **Broker's Letter of Undertaking:** a letter of undertaking from the Contractor's insurance broker as to the currency of each policy under, and the compliance of each policy with, the requirements of clause 70 (Insurance) of the Base Agreement;

(i) **Outline Plans:** written confirmation from the Contractor that:

(i) each of the required Outline Plans has been submitted to the relevant territorial authority;

(ii) any changes to any Outline Plan required by the relevant territorial authority have been addressed to the satisfaction of the Contractor and the relevant territorial authority;

(iii) each relevant territorial authority has no further right, under section 176A of the Resource Management Act 1991, to request changes to the relevant Outline Plan; and

(iv) the terms and conditions of the Outline Plans enable it to complete the design of, and undertake the construction of, the Facility in accordance with this Agreement;

[Drafting Note – the preferred position is for (i) to (iv) above to be addressed prior to the Execution Date. If this is achieved, this condition precedent can be deleted.]

(j) **Binding ruling:** a copy of a binding taxation ruling from Inland Revenue in relation to specified aspects of the Contractor's tax treatment of the Project as follows:

[Drafting Note: Details of binding ruling requirements to be addressed with Preferred Bidder on a project-specific basis, where a binding ruling is required by the Crown.]

(k) **[Overseas Investment Act:** evidence that the Contractor has obtained such consents as are required under the Overseas Investment Act 2005.]

Annexure: Director's Certificate

TO: [Department/Ministry/Agency] (the **Crown**)

I am a [director] of [*insert*] (the **Company**) and am authorised to execute this certificate in the name of the Company.

I refer to the project agreement relating to [Project] between the Crown and the Company dated [ ] (**Project Agreement**).

Terms defined in the Project Agreement have the same meaning when used in this certificate.

THE COMPANY CERTIFIES as follows:

1. Attached to this certificate are true, complete and up to date certified or original copies of the following:

   (a) the constitution of the Company, certificate of registration or other constituent documents of the Company (marked “A”);

   (b) [a power of attorney granted by the Company for the purpose of permitting the execution on behalf of the Company of the relevant Project Documents (marked “B”), which power of attorney has not been revoked by the Company and remains in full force and effect;] and

   (c) [*insert others*].

2. The Company has passed resolutions authorising the Company to enter into, and perform and observe its obligations under, the Project Agreement, the Project Documents and the Ancillary Documents:

   (a) these resolutions have been duly passed [at a properly convened meeting of the duly appointed directors of the Company] OR [in accordance with the constitution of the Company by way of written resolution of the duly appointed directors] and have been approved and ratified by special resolution duly passed by the shareholders of the Company; [*to be deleted as applicable*]

   (b) all provisions contained in the Companies Act 1993 and the constitution of the Company relating to the declaration of interests and the powers of interested directors to vote were observed; [and]

   (c) the resolutions have not been amended or rescinded and are in full force and effect[.][; and

   (d) the power of attorney of the Company referred to in those resolutions has not been revoked.]

3. The following signatures are the true signatures of the authorised representatives of the Company and the persons who have been authorised to sign the relevant Project Documents and to give, on behalf of the Company, notices and communications under, or in connection with, the relevant Project Documents.

Authorised Representatives

Name	Position	Signature

Signatories

Name	Position	Signature

Signed ....

.... Date:

....
(Print Full Name of Director)

Schedule 2: Contractor Warranted Data

(Clause 54.2 (Information Warranties))

1. Registered name, registered office and incorporation number

1.1 Contractor

Registered name:	[*insert*]
Registered office:	[*insert*]
Incorporation number:	[*insert*]

1.2 HoldCo

Registered name:	[*insert*]
Registered office:	[*insert*]
Incorporation number:	[*insert*]

1.3 Major Sub-contractors

Construction Sub-contractor

Registered name:	[*insert*]
Registered office:	[*insert*]
Incorporation number:	[*insert*]

Major Sub-contractor undertaking the Operational Services

Registered name:	[*insert*]
Registered office:	[*insert*]
Incorporation number:	[*insert*]

2. Directors

2.1 Contractor

[*insert name*]	[*insert address*]

2.2 HoldCo

[*insert name*]	[*insert address*]

2.3 Major Sub-contractors

Construction Sub-contractor

[*insert name*] [*insert address*]

Major Sub-contractor undertaking the Operational Services

[*insert name*] [*insert address*]

3. Shareholders and shareholdings

3.1 Contractor

[*insert name and shareholding*] [*insert address*]

3.2 HoldCo

[*insert name and shareholding*] [*insert address*]

3.3 Major Sub-contractors

Construction Sub-contractor

[*insert name and shareholding*] [*insert address*]

Major Sub-contractor undertaking the Operational Services

[*insert name and shareholding*] [*insert address*]

Schedule 3: Project and Ancillary Documents

Part 1 – Overview of Project Documents and Ancillary Documents

1. Project Documents

The Project Documents are as follows:

(a) this Agreement between the Crown and the Contractor;

(b) the Major Sub-contractor Direct Deeds, being:

(i) the direct deed between the Crown, the Contractor and [*insert*] in relation to the Works Provisioning;

(ii) the direct deed between the Crown, the Contractor and [*insert*] in relation to the Operational Services; and

(iii) [*insert any other direct deeds*];

(c) the Financier Direct Deed between the Crown, the Contractor and [*insert*];

(d) the Independent Reviewer Agreement between the Crown, the Contractor and [*insert*];

(e) the Facility Lease (with effect from the Service Commencement Date); and

(f) [*insert any other Project Documents*].

2. Ancillary Documents

The Ancillary Documents are as follows:

(a) the Construction sub-contract between the Contractor and [*insert*];

(b) the Operational Services sub-contract between the Contractor and [*insert*];

(c) the Interface Agreement between the Contractor and [*insert Subcontractors*];

(d) the parent company guarantee from [*insert parent company*] in favour of the Contractor and [*insert*] in respect of the obligations of the Major Sub-contractor responsible for Works Provisioning;

(e) the parent company guarantee from [*insert parent company*] in favour of the Contractor and [*insert*] in respect of the obligations of the Major Sub-contractor responsible for Operational Services; and

(f) [*insert any other Ancillary Documents. Equity and asset management documentation to be included*].

Part 2 – Forms of certain Project Documents

Annexure 1: Financier Direct Deed

Annexure 2: Major Sub-contractor's Direct Deed

Annexure 3: Independent Reviewer Agreement

Annexure 4: Facility Lease

Annexure 5: Third Party Interface Protocols

Annexure 1: Financier Direct Deed

[*See separate document*]

Annexure 2: Major Sub-contractor's Direct Deed

[*See separate document*]

Annexure 3: Independent Reviewer Agreement

[Examples available on request from the Infrastructure Commission]

Annexure 4: Facility Lease

[*See separate document*]

Annexure 5: Third Party Interface Protocols

[*See separate document*]

Financier Direct Deed

relating to

the [ ] PPP Project

[Department/Ministry/Agency] (the **Crown**)

and

[ ]

Security Trustee

and

[ ]

Contractor

Date

Contents

This **Financier Direct Deed** is made on 20XX

between (1) [Department/Ministry/Agency] (the **Crown**)

and (2) **[ ]** (**Security Trustee**)

and (3) **[ ]** (**Contractor**)

Introduction

A. The background to the Project is set out in the Project Agreement.

B. The Contractor has granted Security Interests to the Security Trustee in relation to the Project.

C. The parties agree that the Security Trustee will have the option of exercising certain rights in relation to the Contractor, on the terms set out in this Deed.

It is agreed

1. Interpretation

1.1 Project Agreement

Definitions in the Project Agreement apply in this Deed unless the relevant term is defined in this Deed.

1.2 Definitions

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

Affiliate means any person that is a "related company" of the Security Trustee or any Senior Lender (as the case may be), as that term is defined in section 2(3) of the Companies Act 1993;

Appointed Representative means a Representative that has been notified to the Crown pursuant to a Step-in Notice;

D&C Direct Deed means the Major Sub-contractor's Direct Deed relating to the Project entered into between the Contractor, [ ] and the Crown and dated on or about the date of this Deed;

Deed means this financier direct deed;

Event of Default has the meaning given to that term in the Senior Financing Agreements;

FDD Termination Date means the date on which this Deed terminates or expires in accordance with clause 13.3 (Term);

Last Service Commencement Date Cure Period or **LSCD Cure Period** means the period ending on the earlier of:

(a) the date 6 months after the Last Service Commencement Date, as extended from time to time pursuant to clause 5 (Last Service Commencement Date Cure Period); and

(b) the date on which the Crown terminates this Deed under clause 4.1 (Grounds for termination);

O&M Direct Deed means the Major Sub-contractor's Direct Deed relating to the Project entered into between the Contractor, [ ] and the Crown and dated on or about the date of this Deed;

O&M Sub-contractor means the Major Sub-contractor responsible for all or any part of the Operational Services at any time;

Project Agreement means the agreement relating to the Project dated [*insert*] 20XX between the Crown and the Contractor;

Representative means:

(a) the Security Trustee, any Senior Lender and/or any of their Affiliates; or

(b) a receiver, a receiver and manager or an administrator of the Contractor appointed under the Security Documents, being:

  (i) partners, directors or the equivalent of PwC, KPMG, Deloitte, Ernst & Young, Grant Thornton, KordaMentha, McGrathNicol, BDO or any of their respective successor firms; and/or

  (ii) any other insolvency practitioners agreed by the Crown and the Security Trustee (acting reasonably) in writing to be pre-approved for the purposes of clause 6.3 (Appointed Representatives), provided that no party may withhold its agreement if the insolvency practitioner is of national or international repute and is not an Unsuitable Third Party; or

(c) a person directly or indirectly owned or controlled by the Security Trustee and/or any Senior Lender(s) and/or any of their Affiliates; or

(d) any other person approved by the Crown under clause 6.3 (Appointed Representatives);

Required Period means, in respect of any Termination Notice, the period starting on the date on which that Termination Notice is provided to the Security Trustee under clause 3.2 (Termination Notice) and ending 30 Business Days later;

Security Documents has the meaning given to that term in the Senior Financing Agreements;

Security Trust and Intercreditor Deed has the meaning given to that term in the Senior Financing Agreements;

Step-in Date means the date on which the Security Trustee serves a valid Step-in Notice on the Crown pursuant to clause 6.1 (Step-in Notice);

Step-in Notice means a notice served on the Crown by the Security Trustee, advising the Crown:

(a) of the appointment and identity of the Appointed Representative; and

(b) that the Appointed Representative is to exercise the rights specified in clause 6.4 (Assumption of Rights);

Step-in Period means the period from the Step-in Date up to and including the earlier of:

(a) the Step-out Date;

(b) the date of any novation under clause 9 (Novation);

(c) the date of any termination of the Project Agreement in accordance with clause 4.1 (Grounds for termination); and

(d) the date of expiry of the Project Agreement;

Step-out Date means the date specified in a Step-out Notice, being:

(a) no less than 7 days after the date that notice is served on the Crown if:

(i) on that date no Contractor Default is subsisting; or

(ii) that notice is issued in circumstances where the Crown has been requested to, but has not, given its consent to a novation under clause 9 (Novation); or

(b) in all other cases, the date falling 30 days after the date the Step-out Notice is served on the Crown;

Step-out Notice means a notice served on the Crown by the Appointed Representative pursuant to clause 7 (Step-out);

Suitable Substitute Contractor and **Suitable Substitute Sub-contractor** means a person approved by the Crown (such approval not to be unreasonably withheld or delayed) as:

(a) not being an Unsuitable Third Party;

(b) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under the Project Agreement, or of the Sub-contractor under the applicable Major Sub-contract (as the case may be); and

(c) employing persons or engaging sub-contractors having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Contractor under the Project Agreement or of the Sub-contractor under the applicable Major Sub-contract (as the case may be); and

Termination Notice has the meaning given to that term in the Project Agreement.

1.3 Interpretation

In this Deed, unless the context otherwise requires:

(a) a reference to a clause is a reference to a clause of this Deed;

(b) a gender includes each other gender;

(c) the singular includes the plural and vice versa;

(d) a reference to a person includes:

(i) a partnership and also a body of persons, whether corporate or unincorporated; and

(ii) reference to its respective successors in title and permitted assigns;

(e) a reference to documentation includes:

(i) a reference to that document as varied, supplemented, novated or substituted from time to time; and

(ii) a reference to that documentation in any form, whether paper based or in electronic form encoded on or as part of any form of media;

(f) any agreement that a party not do a thing also constitutes an agreement that, to the extent it is within the control of that party, it will not suffer or permit or cause that thing to be done;

(g) any reference to a consent or approval requires the prior written consent or approval of the party required to give that consent;

(h) whenever the words “includes” or “including” are used in this Deed, they are deemed to be followed by the words “without limitation”;

(i) a reference to any legislation includes a modification of that legislation or legislation enacted in substitution for that legislation and a regulation, order-in-council and other instrument from time to time issued or made under that legislation;

(j) the “Introduction” forms part of this Deed;

(k) headings and the table of contents are included for the purpose of ease of reference only and are not to have any effect on construction and interpretation;

(l) a reference to days, other than Business Days, is a reference to any calendar day of the year;

(m) a reference to currency is a reference to New Zealand currency;

(n) if an obligation falls to be performed or a right is to be exercised on or by a day that is not a Business Day then, unless otherwise specified, that obligation is due to be performed or that right may be exercised on the Business Day next following that day;

(o) none of the terms nor any of the parts of this Deed are to be construed against a party, by reason of the fact that that term or that part was first proposed or was drafted by that party; and

(p) a party who has an obligation is to perform that obligation at its own cost, unless a term of this Deed expressly provides otherwise.

1.4 Priority of documents

To the extent of any inconsistency between this Deed and any other Project Document, this Deed will prevail.

1.5 Restriction on exercise of rights under D&C Direct Deed and O&M Direct Deed

The Crown acknowledges and agrees that it will not exercise its rights under:

(a) clause [ ] (Crown's Cure Rights) or clause [ ] (Crown's Step-in rights) of the D&C Direct Deed (without prejudice to, and other than in circumstances described in, clause 67 of the Project Agreement) or clause [ ] (Crown's novation rights) of the D&C Direct Deed; or

(b) clause [ ] (Crown's Cure Rights) or clause [ ] (Crown's Step-in rights) of the O&M Direct Deed (without prejudice to, and other than in circumstances described in, clause 67 of the Project Agreement) or clause [ ] (Crown's novation rights) of the O&M Direct Deed,

during any Required Period, any Step-in Period and/or at any time during any notice period referred to in clause 6.2 (Details of Step-in Notice).

1.6 Restriction on exercise of rights under Parent Company Guarantees

The Crown acknowledges and agrees that it will not exercise its rights under:

(a) the Parent Company Guarantee given by the ultimate parent company of the D&C Sub-contractor, until the FDD Termination Date; or

(b) the Parent Company Guarantee given by the ultimate parent company of the O&M Sub-contractor, during any Required Period, any Step-in Period and/or at any time during any notice period referred to in clause 6.2 (Details of Step-in Notice).

1.7 Commencement

The rights and obligations of the parties under this Deed commence on Financial Close.

2. Consent to security

2.1 Security Interest

The Crown acknowledges notice of, and consents to, the Security Interests granted by the Contractor in favour of the Security Trustee under the Security Documents.

2.2 Other security interest

The Crown confirms that, as at the date of this Deed, it has not received notice of any other Security Interest granted over the Contractor's rights under the Project Agreement.

2.3 Turnover obligations

If the Crown receives any payment in cash or in kind or recovers any amount (including by way of set off) in excess of its entitlement under any Project Document following enforcement by the Security Trustee of any Security Document, the Crown shall, on demand, pay the amount of the receipt to the Security Trustee for distribution in accordance with the Security Documents.

2.4 No obligations

Except as specifically provided for in this Deed, the Crown has no obligations (whether express, implied, collateral or otherwise) to the Security Trustee or a Senior Lender in connection with the Project Agreement.

3. Exercise of the Crown's termination rights

3.1 Termination of Project Agreement

(a) The Crown may give a notice terminating the Project Agreement at any time, on the grounds of a Contractor Default, if:

(i) it complies with clause 3.2, clause 3.3 and clause 3.4; and

(ii) it is entitled to do so under clause 4.1 (Grounds for termination).

(b) The Crown may give a notice terminating the Project Agreement (on grounds other than Contractor Default) in accordance with the Project Agreement. This Deed will not apply to termination of the Project Agreement where this clause 3.1(b) applies.

3.2 Termination Notice

The Crown may only terminate the Project Agreement on the grounds of a Contractor Default if the Crown has provided to the Security Trustee:

(a) in the case of a Remediable Contractor Default:

(i) a copy of the Warning Notice that was served on the Contractor in accordance with clause 75.4 (Warning Notice) of the Project Agreement; and

(ii) a copy of the Termination Notice that was served on the Contractor in accordance with clause 75.5(b) (Termination Notice) of the Project Agreement; or

(b) in the case of an Immediate Termination Event, a copy of the Termination Notice that was served on the Contractor under clause 75.5(a) (Termination Notice) of the Project Agreement,

together with, in either case, written details of any other existing liabilities or unperformed obligations under any Project Document of which the Crown is aware at the time of the Termination Notice.

3.3 Timing of Termination Notices

The Crown may only exercise its termination rights under clause 3.2 if it has provided a copy of the Termination Notice to the Security Trustee no less than 30 Business Days prior to the Termination Date specified in that Termination Notice.

3.4 Restrictions on termination

The Crown shall not terminate the Project Agreement during any Step-in Period on grounds that the Security Trustee has taken any action referred to in clause 6 (Step-in) or enforced any Security Document(s).

4. Grounds for termination

4.1 Grounds for termination

The Crown may terminate the Project Agreement at any time if it is entitled to do so under the terms of the Project Agreement and this Deed:

(a) if no Step-in Notice is given by the Security Trustee during the Required Period;

(b) after service of a Step-out Notice, so long as the grounds constituting a Contractor Default:

(i) continue to subsist; and

(ii) are not subject to measures satisfactory to the Crown (acting reasonably) to prevent the recurrence of the Contractor Default;

(c) if amounts, of which the Crown was not aware (having made reasonable enquiry) at the time of the Termination Notice, subsequently become payable and are not discharged on or before the later of:

(i) the end of the Required Period;

(ii) the date 20 Business Days after such amounts have been notified to the Security Trustee; and

(iii) the end of any longer period set out in a payment plan which the Security Trustee may request the Crown to consent to having regard to the quantum of the amount payable (such consent not to be unreasonably withheld);

(d) on grounds arising or occurring during a Step-in Period in accordance with the terms of the Project Agreement provided that where a Remediable Contractor Default arises or occurs during a Step-in Period, the Appointed Representative (jointly and severally with the Contractor) shall be entitled to the right to seek to remedy or prevent recurrence of that Remediable Contractor Default in accordance with clause 75.4 (Warning Notice) of the Project Agreement, and for the duration of any Step-in Period the following modifications to the Project Agreement shall be deemed to apply;

(i) the Crown shall not be entitled to terminate the Project Agreement on the grounds of any Immediate Termination Event set out in clauses 75.2(a)(i), 75.2(a)(ii) or 75.2(a)(viii) of the Project Agreement;

(ii) the Crown shall not be entitled to terminate the Project Agreement on the grounds of any Remediable Contractor Default set out in clause 75.2(b)(vii) of the Project Agreement;

(iii) for the purposes of determining whether a Remediable Contractor Default arises or occurs under clause 75.2(b)(iii) of the Project Agreement after the Step-in Date, General Breaches that arose or occurred prior to the Step-in Date shall not be taken into account during the Step-in Period but, subject to clause 9.3 (Effect of Transfer), shall be taken into account at the Step-out Date;

(iv) for the purposes of determining whether a Remediable Contractor Default arises or occurs under clause 75.2(b)(v), clause 75.2(b)(xiv) or clause 75.2(b)(xv) of the Project Agreement during the Step-in Period or whether an Immediate Termination Event arises or occurs under clause 75.2(a)(ix) of the Project Agreement, no representation or warranty made (or deemed to have been made or repeated) prior to the Step-in Date shall be taken into account during the Step-in Period;

(v) the Crown shall not be entitled to terminate the Project Agreement on the grounds of a Remediable Contractor Default set out in clause 75.2(b)(xiii) unless the Security Trustee or an Appointed Representative procures or effects a transfer in breach of clause 9 (Novation); and

(vi) for the purposes of all applicable Immediate Termination Events and Remediable Contractor Defaults (and for the purposes of clause 75.6(b) of the Project Agreement as it relates to the Immediate Termination Events and Remediable Contractor Defaults), the references to 'not acting independently of the Contractor' shall be read as 'not acting independently of the Appointed Representative',

provided that sub-paragraph (i) above shall cease to apply from (but excluding) the last day of the LSCD Cure Period and sub-paragraphs (ii) to (vi) above shall cease to apply from (but excluding) the Step-out Date;

(e) on grounds arising or occurring prior to the Step-in Date in respect of that Step-in Period (whether or not continuing at the Step-in Date), if:

(i) the grounds arose during the Works Provisioning phase (including, for the avoidance of doubt, any failure to achieve Service Commencement on or prior to the Last Service Commencement Date), and Service Commencement is not achieved by the end of the LSCD Cure Period; or

(ii) the grounds arose during the Operating Term, and neither the Appointed Representative nor the Contractor is using all reasonable endeavours (including implementation of any rectification or prevention programme) to remedy any Contractor Default, or put in place measures satisfactory to the Crown (acting reasonably) to prevent the recurrence of the Contractor Default, or where that Contractor Default cannot be remedied, to address the circumstances which led to, or the event giving rise to or resulting from the Contractor Default that:

(A) arose prior to the Step-in Date;

(B) is continuing; and

(C) would have entitled the Crown to terminate the Project Agreement; or

(f) if the ground for termination arising prior to the Step-in Date was a failure to achieve Service Commencement on or prior to the Last Date for Service Commencement, at any time during the period commencing on the date which is 3 months after the Step-in Date until the end of the LSCD Cure Period if the Security Trustee or the Appointed Representative has not diligently pursued the achievement of Service Commencement on or prior to the end of the LSCD Cure Period.

5. Last Service Commencement Date Cure Period

5.1 Extension of LSCD Cure Period

(a) Where a Step-in Period commences prior to the Service Commencement Date:

(i) the definition of Relevant Service Commencement Date in the Project Agreement shall be read, for the duration of that Step-in Period, as follows:

Relevant Service Commencement Date means:

(a) as at any date on or prior to the Planned Service Commencement Date, the Planned Service Commencement Date; or

(b) as at any date after the Planned Service Commencement Date, the last day of the then current LSCD Cure Period (as defined in the Financier Direct Deed);

(ii) any relief to be provided in relation to a Compensation Extension Event will be limited to the relief that would be provided if that Compensation Extension Event was an Extension Event only;

(iii) clause 38.5(b)(i) of the Project Agreement shall not apply for the duration of that Step-in Period;

(iv) the LSCD Cure Period shall be extended by one day for each day of relief determined to be available (by the Independent Reviewer or the Crown, as applicable) as a result of any Extension Event that:

(A) occurs prior to the Step-In Date, but continues to have consequences for which relief is available under the Project Agreement following the Step-in Date; or

(B) occurs during the Step-in Period;

(v) if during the LSCD Cure Period an Event occurs in respect of which relief has yet to be finally determined in accordance with the Project Agreement prior to the end of the then current LSCD Cure Period:

(A) the LSCD Cure Period shall be extended until such time as such relief is finally determined; and

(B) if relief is determined to be available for such Event, paragraph (iv) shall apply in respect of such relief (with the number of days of relief to be reduced by the number of days of extension under (A) above).

(b) The Crown acknowledges and agrees that, if during a Step-in Period, the Crown exercises its step-in rights under Part 17 (Crown Step-in) of the Project Agreement:

(i) the LSCD Cure Period will be extended by the number of days of the Crown's Step-in Period (as defined in the Project Agreement); and

(ii) any requirement to diligently pursue Service Commencement, or to take the actions referred to in clause 4.1(e)(ii) (Restrictions on termination), shall be suspended for the period during which the Crown exercises its rights under Part 17 of the Project Agreement.

(c) Without limiting the other provisions of this clause, the Security Trustee or the Appointed Representative may request the Crown to consent to an extension to the LSCD Cure Period for a reasonable period, and such consent may not be unreasonably withheld or delayed if the Security Trustee or Appointed Representative demonstrates to the reasonable satisfaction of the Crown that the Security Trustee or Appointed Representative:

(i) has complied with the requirement to diligently pursue in accordance with clause 4.1(f) (Grounds of termination);

(ii) has provided the Crown with a plan (including reasonable particulars) setting out the steps that the Security Trustee or Appointed Representative will take during the extended LSCD Cure Period to remedy the relevant Contractor Default; and

(iii) Service Commencement is expected to occur during that reasonable period of extension.

5.2 Diligent Pursuit

For the purposes of this Deed, in assessing what can be achieved by diligent pursuit and in assessing whether there has been a failure to diligently pursue or assessing compliance with clause 4.1(e)(ii) (Restrictions on termination), regard must be had to the effect of any Event as well as to any time reasonably necessary to enforce any Major sub-contract, or to engage a substitute Major Sub-contractor in accordance with the terms of this Deed.

6. Step-in

6.1 Step-in Notice

Subject to clause 6.2 and clause 6.3 and without prejudice to the Security Trustee's rights under the Senior Financing Agreements, the Security Trustee may give the Crown a Step-in Notice at any time:

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

(b) during a Required Period.

6.2 Details of Step-in Notice

The Security Trustee shall give the Crown not less than 3 Business Days' prior written notice of:

(a) its intention to issue a Step-in Notice;

(b) the identity of the proposed Appointed Representative; and

(c) reasonable detail of any Event of Default leading to the intention to issue a Step-in Notice,

provided that where the proposed Appointed Representative is a Representative within paragraph (d) of the definition of Representative, the Security Trustee must give the Crown not less than 10 Business Days' prior written notice in accordance with this clause.

6.3 Appointed Representatives

(a) If the Security Trustee has issued a Step-in Notice in accordance with clauses 6.1 and 6.2, the appointment of a Representative within paragraphs (a) to (c) of the definition of Representative will be effective for all purposes under this Deed, and the Crown will not be entitled to challenge or dispute the effectiveness of any such appointment.

(b) Subject to paragraph (c) the Security Trustee shall not appoint a Representative within paragraph (d) of the definition of Representative unless it has obtained the prior written approval of the Crown, which approval may only be withheld if the Crown considers that the proposed Representative is an Unsuitable Third Party.

(c) If, where paragraph (b) above applies:

(i) the Crown notifies the Security Trustee within 5 Business Days after its receipt of a notice under clause 6.2 that the proposed Appointed Representative is an Unsuitable Third Party, the notice under clause 6.2 proposing that Appointed Representative will be deemed to be withdrawn; and

(ii) If the Crown does not notify the Security Trustee within 5 Business Days after its receipt of a notice under clause 6.2 that the proposed Appointed Representative is an Unsuitable Third Party, the proposed Appointed Representative will be deemed not to be an Unsuitable Third Party for the purpose of clause 6.3(a).

6.4 Assumption of rights

On and from the issue of the Step-in Notice:

(a) the Appointed Representative shall assume, jointly and severally with the Contractor, the rights (but not the obligations) of the Contractor under all Project Documents until the end of the Step-in Period; and

(b) the Contractor shall remain solely responsible for the performance of its obligations under the Project Documents until the end of the Step-in Period.

(c) For the avoidance of doubt, the Step-in Notice must relate to all rights of the Contractor under all Project Documents and cannot apply only to some of those rights.

(d) The Crown acknowledges that, without limiting the liability of the Contractor, no Representative is or will be, solely by reason of:

(i) the creation of the Security Interests under the Senior Financing Agreements;

(ii) the entry into this Deed or any other Senior Financing Agreement; or

(iii) the taking of enforcement action or the exercise of any powers under the Security Documents or this Deed,

liable for any obligation or liability of the Contractor under the Project Documents (or for any greater such obligation or liability) than it would have been liable for but for the relevant thing described in (i) to (iii) above (inclusive), but nothing in this sub-paragraph (d) affects the liability of the Security Trustee under this Deed.

6.5 Dealings with Appointed Representative

During the Step-in Period, the Crown shall deal with the Appointed Representative and not the Contractor (provided nothing in this clause shall preclude the Crown from continuing to communicate with Contractor Personnel to the extent it considers necessary in connection with the Services).

6.6 Operation of Project Agreement during Step-in Period

During the Step-in Period the Crown will be entitled to exercise its rights under the Project Agreement in accordance with its terms (except to the extent modified by this Deed) and, without limitation, will continue to be entitled to make Deductions or Charges in accordance with Schedule 13 (Performance Regime) of the Project Agreement.

7. Step-out

7.1 Step-out Notice

The Appointed Representative may at any time during the Step-in Period, serve a Step-out Notice on the Crown, specifying the Step-out Date.

7.2 Step-out Date

On the Step-out Date:

(a) the rights of the Appointed Representative against the Crown will be cancelled;

(b) the Crown will no longer deal with the Appointed Representative, and will instead deal with the Contractor in connection with the Project Documents; and

(c) without prejudice to the Crown's rights against the Contractor, the Appointed Representative will be released from any obligations and liabilities to the Crown in connection with that Step-in Period from that date on.

7.3 Continuing obligations

The Contractor shall continue to be bound by the terms of the Project Documents, notwithstanding the issue of a Step-in Notice, the occurrence of a Step-in Period, the passing of a Step-out Date, any action by the Security Trustee or the Appointed Representative or any Senior Lender and/or any provision of this Deed.

8. Replacement of Major Sub-contractors

8.1 Application

This clause 8 will apply if, during a Step-in Period, the Security Trustee or an Appointed Representative intends to replace a Major Sub-contractor, and any replacement of a Major Sub-contractor under this clause shall be deemed to be approved by the Crown for the purposes of clause 16 (Sub-contractors) of the Project Agreement. Any replacement of a Major Subcontractor in accordance with this clause 8 shall not constitute an Immediate Termination Event under clause 75.2(a)(iii) of the Project Agreement.

8.2 Replacement of Major Sub-contractor

If, during a Step-in Period, the Security Trustee or an Appointed Representative intends to replace a Major Sub-contractor:

(a) clause 16 (Sub-contractors) of the Project Agreement will apply; and

(b) for the purposes of clause 16(1)(i) of the Project Agreement, the only grounds on which the Crown may withhold its consent to the appointment of the proposed replacement Major Sub-contractor is if that person is not a Suitable Substitute Sub-contractor.

9. Novation

9.1 Transfer to Suitable Substitute Contractor

Subject to clause 9.2, at any time:

(a) during which an Event of Default is subsisting; or

(b) during a Step-in Period,

the Security Trustee may, on 20 Business Days' prior written notice to the Crown and the Appointed Representative, procure the transfer of the Contractor's rights and obligations under the applicable Project Documents to a Suitable Substitute Contractor. For the avoidance of doubt, the transfer must relate to all rights and obligations of the Contractor under those documents and cannot apply only to some of those rights and obligations.

9.2 Suitable Substitute Contractor

(a) At the time the Security Trustee notifies the Crown of a proposed transfer pursuant to clause 9.1, the Security Trustee must provide the Crown with details of the identity of the proposed transferee, a copy of the proposed contract pursuant to which such transfer will occur and any further information about the proposed transferee that the Crown may reasonably require to determine whether the proposed transferee is a Suitable Substitute Contractor.

(b) The Crown shall notify the Security Trustee whether any person to whom the Security Trustee proposes to transfer the Contractor's rights and liabilities under the Project Documents is a Suitable Substitute Contractor, on or before the date falling 20 Business Days after the date of receipt of all information reasonably required by the Crown to decide whether the proposed transferee is a Suitable Substitute Contractor.

(c) The Crown shall not withhold its consent to a proposed transferee under paragraph (b) unless:

(i) the proposed transferee is not, in the Crown's reasonable opinion, a Suitable Substitute Contractor; and/or

(ii) there are unremedied Contractor Defaults and no Rectification Programme or Prevention Plan required under the Project Agreement or this Deed has been proposed to the Crown's reasonable satisfaction in respect of the Contractor Defaults.

(d) Any consent by the Crown does not constitute a waiver of any unremedied Contractor Default.

9.3 Effect of transfer

(a) On any transfer to a Suitable Substitute Contractor becoming effective:

(i) the Contractor and the Appointed Representative shall be released from any obligations arising on and from that date under or in connection with this Deed and the Project Documents, and the Suitable Substitute Contractor shall become liable for obligations arising on and after that date;

(ii) any accrued Service Failure Points under the Project Agreement shall be cancelled;

(iii) any then-subsisting ground for termination of the Project Agreement by the Crown shall be deemed to have no effect and any subsisting Warning Notice or Termination Notice shall be automatically revoked; and

(iv) the Crown shall enter into a financier direct deed with the Suitable Substitute Contractor and the lenders (or agent or trustee acting on their behalf) to that Suitable Substitute Contractor, on substantially the same terms as this Deed.

(b) The Crown acknowledges and agrees that a novation in accordance with this clause 9 shall not constitute a breach of clause 90.3 (Assignment by Contractor) of the Project Agreement or an Immediate Termination Event under clause 75.2(a)(iv) of the Project Agreement.

9.4 Transfer of ownership of Contractor

(a) If:

(i) clause 9.1 applies; and

(ii) the Security Trustee wishes to procure the transfer of ownership or Control of the Contractor rather than procuring the transfer of the Contractor's rights and liabilities under the Project Agreement and the Facility Lease,

then:

(iii) subject to paragraphs (iv) and (v) below, this clause 9 shall apply (mutatis mutandis);

(iv) without prejudice to the Crown's rights under clause 9.2, it will be reasonable for the Crown to withhold its consent to any Change of Ownership on the same grounds on which it could withhold its consent under, or in circumstances that would otherwise breach, the Project Agreement; and

(v) if consent is given to the Change of Ownership, the Contractor shall be deemed to be a Suitable Substitute Contractor for the purposes of this Deed.

(b) The Crown acknowledges and agrees that a transfer in accordance with this clause 9.4 shall not constitute a Shareholder Breach or a breach of clause 75.2(b)(xiii) of the Project Agreement.

10. Amendment of Project Documents

10.1 No Alteration without consent

The Crown undertakes for the benefit of the Senior Lenders that:

(a) until the Senior Debt is repaid in full; or

(b) until termination of the Project Agreement,

(whichever is the first to occur) it will not make any modification, variation or amendment (each an **Alteration**) to the terms of any Project Document without the consent of the Security Trustee as set out in clause 10.2. For the purposes of this clause 10 **Project**

Documents includes the Project Agreement and all schedules to the Project Agreement, but excludes any Operative Documents.

10.2 Consent regime

(a) The Security Trustee undertakes for the benefit of the Crown that it will not unreasonably withhold or delay its consent to any proposed Alteration to any Project Document.

(b) The Crown:

(i) shall be entitled to rely for all purposes on any copy of the Security Trustee's written consent to any Alteration, where provided by the Contractor to the Crown; and

(ii) shall have no obligation to verify the substance or form of any such consent with the Security Trustee or to otherwise make any request directly to the Security Trustee for its consent to an Alteration.

(c) Where the Security Trustee does not respond to a written request for its consent to an Alteration within 10 Business Days after receipt of the same, it will be deemed to have given its consent and paragraph (d) will apply.

(d) For the purposes of paragraph (c), the Crown shall be entitled to rely for all purposes on:

(i) a copy of the written request for an Alteration as provided by the Contractor to the Security Trustee; and

(ii) written confirmation from the Contractor, provided at any time after the end of the 10 Business Day period referred to in paragraph (c), that the Security Trustee did not respond to the request for Alteration within this period,

and will be entitled to proceed with any Alteration on the basis of the Security Trustee's deemed consent.

11. Insurance proceeds

Notwithstanding the other provisions of this Deed and the terms and conditions of the Senior Financing Agreements, the Security Trustee shall only permit amounts to be released from the Joint Insurance Account in accordance with the requirements of clause 72.3 (Reinstatement processes) or 72.4 (Consequences of not rebuilding or repairing) of the Project Agreement and shall not exercise any rights under the Senior Financing Agreements or take any other steps to prevent amounts being released from the Joint Insurance Account other than in accordance with clause 72.3 or 72.4 of the Project Agreement.

12. Tender process

The Crown shall, in undertaking the Tender Process and establishing the Highest Compliant Tender Price under Part 3 of Schedule 18 (Calculation of Compensation on Termination) of the Project Agreement, owe a duty of reasonable care to the Security Trustee to obtain the best price reasonably obtainable at the time the Tender Process is undertaken.

13. Miscellaneous

13.1 Perfecting transfer or release

The Crown shall, at the Contractor's expense, take whatever action the Security Trustee, the Appointed Representative or a Suitable Substitute Contractor taking a transfer in accordance with clause 9.1 (Transfer to a Suitable Substitute Contractor) may reasonably require to perfect any transfer or release under clauses 8 (Replacement of Major Sub-contractors) or 9 (Novation), including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Security Trustee, Appointed Representative or Suitable Substitute Contractor reasonably requires.

13.2 No action to wind up Contractor

The Crown shall not take any action during the term of this Deed to wind up, appoint a receiver, a receiver and manager, an administrative receiver, a liquidator or an administrator or sanction a compromise (or similar arrangement) in relation to the Contractor.

13.3 Term

This Deed shall remain in effect until the earlier of:

(a) the date on which all amounts that may be or become owing by the Contractor to the Senior Lenders under the Senior Financing Agreements have been irrevocably paid in full and the Security Interests created under the Security Documents have been released by the Security Trustee, except where such repayment or release occurs in connection with a Refinancing permitted under the terms of the Project Agreement in circumstances where the benefit of this Deed continues to be held by the Security Trustee (or a replacement Security Trustee) under the security trust constituted under the existing Security Trust and Intercreditor Deed for the benefit of the new Senior Lenders and other finance parties providing the new Senior Debt; or

(b) the date of termination or expiry of the Project Agreement; or

(c) the date of transfer of the Contractor's rights and liabilities under the Project Documents to a Suitable Substitute Contractor pursuant to clause 9.1 (Transfer to Suitable Substitute Contractor), so long as the requirements of clause 9.3(a) (Effect of Transfer) have then been observed and performed.

13.4 Security Trustee to notify Crown

The Security Trustee shall promptly notify the Crown of:

(a) any decisions to accelerate the maturity of any amounts owing by the Contractor to a Senior Lender under the Senior Financing Agreements and/or any decisions to demand repayment; and

(b) the date referred to in clause 13.3(a) on or before the date falling two Business Days after its occurrence.

13.5 Contractor acknowledgment

The Contractor joins in this Deed to acknowledge and consent to the arrangements set out and agrees not knowingly to do or omit to do anything that may prevent any party from enforcing its rights under this Deed and shall do all such acts, matters and things as may be required of it to give effect to the provisions of this Deed, including clause 9 (Novation).

14. Notices

14.1 Method of giving notices

A notice, consent, approval or other communication (each a **Notice**) under this Deed must:

(a) be in writing addressed to the address of the recipient from time to time designated for the purpose by the addressee to the other parties. The initial address of each party is set out under its name on the execution pages of this Deed; and

(b) be signed by an authorised representative of the sender.

14.2 Notice effective

(a) No notice or other communication is to be effective until it is received.

(b) A communication will be deemed to be received:

(i) in the case of a letter, on the second Business Day after posting (with all postage paid);

(ii) in the case of a facsimile, on the Business Day on which it is dispatched or, if dispatched after 5.00pm (in the place of receipt) on the next Business Day after the date of dispatch;

(iii) in the case of an email, on the Business Day on which it arrives in the recipient's information system (provided that if it is received in that system after 5.00pm on a Business Day, then it will be deemed to be received on the next Business Day), provided that if there is any dispute as to whether an email has been received, the email shall only be deemed to have been received at that time where the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice; and

(iv) in the case of personal delivery, when delivered.

15. Capacity

(a) The Security Trustee enters into this Deed only in its capacity as trustee of the trust constituted under the Security Trust and Intercreditor Deed (the **Security Trust**).

(b) Each party other than the Security Trustee acknowledges that the Security Trustee holds the benefit of this Deed for the benefit of the Beneficiaries (as defined in the Security Trust and Intercreditor Deed) and:

(i) is bound to act on the instructions of those Beneficiaries pursuant to the terms of the Security Trust and Intercreditor Deed; and

(ii) in the absence of such instructions from those Beneficiaries, the Security Trustee is not bound to act.

(c) The Security Trustee's obligations, duties and responsibilities under this Deed are limited to those expressly set out in the Security Trust and Intercreditor Deed and this Deed.

(d) It is acknowledged that the Security Trustee is entitled to be indemnified for its actions under this Deed:

(i) out of the assets of the Security Trust; and

(ii) by those Beneficiaries,

except where the Security Trustee is not so entitled as a result of fraud, wilful misconduct or gross negligence.

(e) Notwithstanding any other provision of any Senior Financing Agreement, any liability incurred by the Security Trustee pursuant to this Deed can be enforced against the Security Trustee only to the extent to which it can be satisfied out of the assets of the Security Trust. This limitation of the Security Trustee's liability applies notwithstanding any other provision of any Senior Financing Agreement (other than paragraph (g) below) and extends to:

(i) all liabilities and obligations of the Security Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction relating to any Senior Financing Agreement; and

(ii) every receiver, receiver and manager, liquidator, delegate, attorney, agent or other similar person appointed by the Security Trustee.

(f) Subject to paragraph (g) below, the parties may not sue the Security Trustee personally or seek the appointment of a liquidator, administrator, receiver, manager or similar person to the Security Trustee or prove in any liquidation, winding up, dissolution, receivership, administration, statutory management, deed of arrangement or similar process of or affecting the Security Trustee.

(g) The limitation of liability set out in paragraphs (e) and (f) will not apply to any liability of the Security Trustee directly caused by the fraud, wilful misconduct or gross negligence of the Security Trustee.

(h) In addition to the rights and trusts conferred on the Security Trustee by the Senior Financing Agreements, the Security Trustee shall have all the rights, privileges and immunities which gratuitous trustees have or may have in New Zealand, even though it is entitled to remuneration.

[*To conform with form of Security Trust and Intercreditor Deed as needed.*]

16. Dispute Resolution

16.1 Interaction between termination and Dispute Resolution

(a) The parties acknowledge that the Crown is entitled to give a Termination Notice under the Project Agreement regardless of whether a Dispute has been referred to dispute resolution in accordance with Part 21 (Dispute Resolution) of the Project Agreement.

(b) Where, following the issue of a Termination Notice:

(i) the Crown seeks to exercise its rights to terminate the Project Agreement; and

(ii) the Security Trustee refers any such action to dispute resolution in accordance with clause 16.2, the parties agree that the Project Agreement shall not be terminated unless and until the dispute resolution procedures have been finally resolved and the outcome of the dispute resolution procedure is that the Crown is permitted to terminate the Project Agreement in accordance with its terms and this Deed.

16.2 Dispute resolution under this Deed

(a) If there is a dispute arising in relation to any aspect of this Deed or the subject matter of this Deed, then any party may refer the dispute to be determined in accordance with Part 21(Dispute Resolution) of the Project Agreement applied *mutatis mutandis*.

(b) Despite the existence of a Dispute or the referral of the Dispute for resolution under this clause 16.2:

(i) the Contractor must continue Works Provisioning, performing the Operational Services and performing its other obligations under the Project Agreement; and

(ii) the Crown will continue to perform its obligations under this Deed and the Project Agreement and may exercise its rights under this Deed and the Project Agreement without regard to the existence of the Dispute, while that Dispute has not been resolved pursuant to this clause 16.2.

17. General

17.1 Counterparts

This Deed may be signed in any number of counterparts all of which, when taken together, constitute one and the same instrument. A party may enter into this Deed by executing any counterpart.

17.2 Severability

If any provision of this Deed is or becomes unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity. If such modification is not possible, then such provision shall be severed from this Deed without affecting the enforceability, legality or validity of any other provision of this Deed.

17.3 Waiver

Any delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Deed shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any provisions of this Deed shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

17.4 Legal fees

If any legal action or other proceeding is brought for the enforcement of an obligation under this Deed, the prevailing party shall be entitled to legal fees and other costs incurred in that action or proceeding on a solicitor / client basis (subject to review under the Lawyers and Conveyancers Act 2006) in addition to any other relief to which it may be entitled.

17.5 Public disclosure

All public disclosure by the Contractor or the Security Trustee relating to this Deed, including promotional or marketing material (but not including any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements), shall be co-ordinated with and must first be approved in writing by the Crown prior to its release.

17.6 Entire agreement

This Deed and the other Project Documents (to which two or more parties are a party) constitute the entire agreement between the parties and together supersede and extinguish all prior agreements and understandings between the parties about their respective subject matters.

17.7 Amendments in writing

No amendment to this Deed will be effective unless it is in writing and signed by duly authorised signatories of all the parties.

17.8 Assignment and related matters

(a) No party to this Deed may assign or transfer any part of its rights or obligations under this Deed, unless permitted to do so pursuant to clause 17.8(b), clause 17.8(c) or clause 17.8(d).

(b) The Security Trustee may assign or transfer its rights and obligations under this Deed to a successor Security Trustee in accordance with the Senior Financing Agreements without the consent of the Crown.

(c) Any Senior Lender may assign or transfer its rights under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements.

(d) The Crown must assign, novate or otherwise transfer its rights and/or obligations under this Deed to any person that the Crown assigns, novates or otherwise transfers its rights and/or obligations under the Project Agreement in accordance with clause 90.2 (Assignment by Crown) of the Project Agreement and must procure that the transferee enters into a deed in favour of the Security Trustee, in a form acceptable to the Security Trustee (acting reasonably) binding itself to the terms of this Deed.

(e) If clause 17.8(b) applies, then the Crown shall enter into a direct agreement with the new Security Trustee on substantially the same terms as this Deed.

(f) If the Security Trustee resigns or is replaced pursuant to the terms of the Senior Financing Agreements, then such resignation or replacement shall not be effective until a new agent has acceded to and has agreed to become bound to the terms of this Deed.

(g) Notwithstanding the terms of this clause 17.8, the Contractor shall be permitted to assign its rights under this Deed by way of security as part of the Security Interests referred to in clause 2.1 (Consent to Security).

17.9 Governing Law and jurisdiction

This Deed is governed by, and is to be construed in accordance with, the Laws of New Zealand. Each party irrevocably submits to the non-exclusive jurisdiction of the New

Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Deed.

Execution

Executed as a Deed.

[*Execution blocks to be added*]

Major Sub-contractor's Direct Deed

relating to

[Project]

[Department/ Ministry/Agency]

Crown

and

[insert name of major sub-contractor] Limited

Major Sub-contractor

and

[PPP Contractor] Limited

Contractor

Date

Contents

This **Major Sub-contractor's Direct Deed** is made on 20XX

between (1) **[Department/Ministry/Agency]** (**Crown**)

and (2) **[insert name of major sub-contractor] Limited** (**Major Sub-contractor**)

and (3) **[PPP Contractor] Limited** (**Contractor**)

Introduction

A. The background to the Project is set out in the Project Agreement.

B. The Contractor has subcontracted its obligations under the Project Agreement to [*insert description of subcontracted obligations*] to the Major Sub-contractor, pursuant to the Major Sub-contract.

C. The parties agree that the Crown will have the option of exercising certain rights in relation to the Major Sub-contract, on the terms set out in this Deed.

It is agreed

Part 1 – Definitions and Interpretation

1. Definitions

1.1 Project Agreement

Definitions in the Project Agreement apply in this Deed unless the relevant term is defined in this Deed.

1.2 Definitions

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

Additional Obligor means an entity that is wholly owned by the Crown or a Successor Governmental Entity;

Additional Obligor Step-in Notice has the meaning given to it in clause 8.1(a)(iv);

Additional Obligor Step-out Date has the meaning given to it in clause 9(d);

Affiliate means in respect of the Major Sub-contractor or the Contractor (as applicable):

(a) any holding company or subsidiary of the Major Sub-contractor or the Contractor (as applicable) or another subsidiary of that holding company; or

(b) any company, body corporate or partnership (including a limited partnership) where 50% or more of the votes exercisable, directly or indirectly, at a meeting or partners meeting, or more than 50% of the profits of which, are controlled by such person;

Assumption Date has the meaning given to it in clause 9(a);

Consent Date has the meaning given to it in clause 11.4(a);

Contractor's Rights has the meaning given to it in clause 9(b)(i)(A);

Default Event means:

(a) any breach by the Contractor of its obligations under the Major Sub-contract; or

(b) any other event or circumstance,

that alone or with the giving of notices or passage of time or both, entitles the Major Sub-contractor to terminate, rescind, accept the repudiation of, or suspend any or all of the Major Sub-contractor's obligations under the Major Sub-contract but only where any such breach, event or circumstances has not been remedied within any relevant cure period set out in the Major Sub-contract or at Law;

Default Event Notice has the meaning given to it in clause 6.2(a);

Event of Contractor Default has the meaning given to it (or to the term "Event of Default" as that term relates to the default of the Contractor) in the Major Sub-contract;

Intervention Failure has the meaning given to it in clause 12.1 (Rights preserved);

Major Sub-contract means that agreement dated on or around the date of this Deed between the Contractor and the Major Sub-contractor, with respect to the Project;

Major Sub-contract Documentation means the Major Sub-contract and each other bank guarantee, performance bond, stand-by letter of credit or other guarantee or security held by the Contractor to secure the obligations of the Major Sub-contractor under the Major Sub-contract;

Major Sub-contractor Notice has the meaning given to it in clause 6.2(c);

MSDD Dispute has the meaning given to in clause 18 (Dispute resolution);

Notice of MSDD Dispute has the meaning given to it in clause 18 (Dispute resolution);

Novation Agreement has the meaning given to it in clause 11.4(b)(ii);

Novation Effective Date means the date of commencement of the performance of the obligations under the Novation Agreement, as set out in the Novation Agreement;

Parent Company means [*insert details*];

Parent Company Guarantee means the guarantee given by the Parent Company in respect of the obligations of the Major Sub-contractor in favour of, amongst others, the Contractor;

Power means any power, right, authority, discretion or remedy, whether express or implied;

Project Agreement means that agreement dated on or around the date of this Deed, between the Contractor and the Crown, with respect to the Project;

Proposed Novation Date has the meaning given to it in clause 11.1(b);

Proposed Novation Notice has the meaning given to it in clause 11.1(a);

Proposed Substitute has the meaning given to it in clause 11.1(a)(iii);

Related Loss has the meaning given to it in clause 21.10 (Related Loss);

Revised Proposed Novation Notice has the meaning given to it in clause 11.3(e)(i);

Services means the services required to be performed by the Major Sub-contractor, for the Contractor, pursuant to the terms of the Major Sub-contract;

Statement Beneficiary means the Crown or an Additional Obligor;

Step-in Date means the date on which the Major Sub-contractor receives notice from the Crown of the exercise of any Step-in Right;

Step-in Period has the meaning given to it in clause 8.1(b);

Step-in Right means each right exercisable by the Crown and/or an Additional Obligor pursuant to clause 8.1(a);

Step-out means the Crown ceasing to exercise its Step-in Rights;

Step-out Date means the date on which Step-out occurs;

Sub-contractor means a person engaged by the Major Sub-contractor to act as a sub-contractor for the purposes of the Project;

Successor Governmental Entity means any Governmental Entity that is the transferee or successor in title to the rights and obligations of the Crown under the Project Agreement; and

Termination Grounds has the meaning given to it in clause 6.3 (Termination Grounds).

2. Interpretation

2.1 Interpretation

In this Deed, unless the context otherwise requires:

(a) a reference to a clause is a reference to a clause of this Deed;

(b) a gender includes each other gender;

(c) the singular includes the plural and vice versa;

(d) a reference to a person includes:

   (i) a partnership and also a body of persons, whether corporate or unincorporated; and

   (ii) its respective successors in title and permitted assigns;

(e) a reference to documentation includes:

   (i) a reference to that document as varied, supplemented, novated or substituted from time to time; and

   (ii) a reference to that documentation in any form, whether paper based or in electronic form encoded on or as part of any form of media;

(f) a reference to materials means a reference to materials of any kind whether in the form of documentation, software, hardware, componentry or otherwise;

(g) any agreement not to do a thing also constitutes an agreement not to suffer or permit or cause that thing to be done;

(h) any reference to a consent requires the prior written consent of the party required to give that consent;

(i) whenever the words “includes” or “including” are used in this Deed, they are deemed to be followed by the words “without limitation”;

(j) a reference to any legislation includes a modification of that legislation or legislation enacted in substitution for that legislation and a regulation, order-in-council and other instrument from time to time issued or made under that legislation;

(k) headings and the table of contents are included for the purpose of ease of reference only and are not to have any effect on construction and interpretation;

(l) the “Introduction” forms part of this Deed;

(m) a reference to days, other than Business Days, is a reference to any calendar day of the year;

(n) a reference to currency is a reference to New Zealand currency;

(o) if an obligation falls to be performed or a right is to be exercised on or by a day that is not a Business Day then, unless otherwise specified, that obligation is due to be performed or that right may be exercised on the Business Day next following that day;

(p) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;

(q) none of the terms nor any of the parts of this Deed are to be construed against a party, by reason of the fact that that term or that part was first proposed or was drafted by that party; and

(r) a party who has an obligation is to perform that obligation at its own cost, unless a term of this Deed expressly provides otherwise.

2.2 Priority of documents

(a) To the extent of any inconsistency between this Deed and the Major Sub-contract, this Deed will prevail.

(b) To the extent of any inconsistency between this Deed and the Project Agreement, the Project Agreement will prevail.

2.3 Joint and several liability

If the Major Sub-contractor comprises more than one person:

(a) the obligations of those persons are joint and several;

(b) a reference to the Major Sub-contractor is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately; and

(c) the Contractor or the Crown may proceed against any or all of them for any failure of the Major Sub-contractor to comply with any obligation under this Deed or otherwise.

2.4 Construction Contracts Act 2002

If and to the extent that the Major Sub-contract comprises a construction contract as defined in the Construction Contracts Act 2002, this Deed will be subject to the Construction Contracts Act 2002.

2.5 Commencement

The rights and obligations of the parties under this Deed commence on Financial Close.

2.6 Contractor's role

The Contractor is bound by, and must co-operate in the implementation of, this Deed. It acknowledges that this Deed is intended to benefit the Major Sub-contractor and the Crown and does not in any way affect any obligation of the Contractor under the Major Sub-contract or under any Project Document.

Part 2 – Acknowledgements

3. Acknowledgements by Major Sub-contractor

(a) The Major Sub-contractor acknowledges the Crown's rights under the Project Agreement.

(b) The Major Sub-contractor agrees with the Crown that the Major Sub-contractor will exercise its rights under the Major Sub-contract in a way that facilitates the effective exercise by the Crown of the Crown's rights under the Project Agreement and will on reasonable notice permit one or more delegates of the Crown to have access to, and take copies of, the records, reports, documents and other papers to which the Crown is entitled to have access pursuant to the Project Agreement to the extent that:

(i) such items are in the possession of the Major Sub-contractor or any third party acting on its behalf; and

(ii) compliance with this clause 3(b) would not cause the Major Sub-contractor to breach any obligation of confidence that it owes to any other person or to infringe the Intellectual Property rights of any third party,

and subject always to the Crown entering into a confidentiality undertaking in a form reasonably acceptable to the Major Sub-contractor prior to the Major Sub-contractor being required to provide access to such records, reports, documents and other papers.

(c) During the period in which the Crown is exercising its Step-in Rights under Part 17 of the Project Agreement, the Crown may in accordance with the Project Agreement require the suspension or the continuation of performance by the Major Sub-contractor of its obligations under the Major Sub-contract subject to and in accordance with the terms of the Major Sub-contract and, if it does so, the Major Sub-contractor agrees that it will comply with this requirement and with all reasonable directions of the Crown in relation to the performance of the Major Sub-contract by the Major Sub-contractor during such period.

(d) The requirement of the Crown that the Major Sub-contractor either suspend or continue to perform its obligations under the Major Sub-contract and the giving of any direction under clause 3(c) by the Crown will not, except to the extent expressly acknowledged by the Crown in writing, be construed as an assumption by the Crown of any obligations of the Major Sub-contractor under or in relation to the Major Sub-contract and will not in itself constitute a breach by the Major Sub-contractor of the Major Sub-contract.

(e) The Major Sub-contractor will not subcontract any of its obligations under the Major Sub-contract without the prior written consent of the Crown where so required pursuant to clause 16 (Sub-contractors) of the Project Agreement.

(f) The Major Sub-contractor acknowledges and agrees that any payment by the Crown of a sum outstanding under the Major Sub-contract shall be deemed to constitute payment of such sum by the Contractor for the purposes of the Construction Contracts Act 2002.

4. Acknowledgements in relation to Major Sub-contract

The Contractor and the Major Sub-contractor acknowledge and agree that:

(a) any information, data and documents (including Crown Information) provided by the Crown:

(i) are provided for information purposes only (except any specific reports that the Crown may procure directly for the benefit of, and reliance on by, the Contractor, as may be advised by the Crown prior to the date of this Deed, and subject to any limitations specified by the Crown) and all of the Crown's or Crown Related Persons' Intellectual Property rights therein remain the property of the Crown or the Crown Related Person (as the case may be); and

(ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the Crown or any Crown Related Person;

(b) to the extent permitted by Law, neither the Crown nor any Crown Related Person will have any Liability to the Major Sub-contractor or any of its Affiliates, nor will the Major Sub-contractor or any of its Affiliates be entitled to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against or contribution to Liability from the Crown or any of the Crown Personnel arising out of or in respect of or in connection with:

(i) the provision of any information, data and documents (including the Crown Information) referred to in clause 4(a);

(ii) any reference to the Crown in the Major Sub-contract; or

(iii) any review of, comments on, or approval of the form or substance of the Major Sub-contract (or any associated documentation) by the Crown;

(c) where the Major Sub-contractor is expressed in the Major Sub-contract to have a right (or possible right) to compensation or relief that is dependent on or determined by reference to the Project Agreement:

(i) this does not of itself expand the Contractor's rights, or the Crown's Liability, under the Project Agreement to include the compensation or relief to which the Major Sub-contractor is or may become entitled under the Major Sub-contract; and

(ii) the Contractor's rights, and the Crown's Liability, under the Project Agreement will be determined solely in accordance with the terms of the Project Agreement;

(d) as between the Crown (on the one hand) and the Contractor and the Major Sub-contractor (on the other hand), the Contractor and the Major Sub-contractor accept and will bear the risk of any ambiguity, discrepancy or inconsistency between the terms of the Major Sub-contract and the Project Agreement; and

(e) notwithstanding anything to the contrary in the Major Sub-contract but except as expressly contemplated by this Deed, the Major Sub-contractor has no right to deal directly with the Crown or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:

(i) expressly provided to the contrary in the Project Agreement; or

(ii) the Crown consents.

5. Acknowledgements in relation to Parent Company Guarantee

The Contractor and the Major Sub-contractor acknowledge and agree:

(a) the Parent Company Guarantee must at all times comply with clause 4.2 (Parent Company Guarantees – mandatory terms) of the Project Agreement; and

(b) where and for so long as the Crown has exercised its Step-in Rights under this Deed, and subject to the Financier Direct Deed:

   (i) the Crown will be entitled to exercise the rights of the Contractor under the Parent Company Guarantee;

   (ii) the Crown exercising the rights of the Contractor under the Parent Company Guarantee will in no way prejudice or limit the Parent Company's Liability under the Parent Company Guarantee; and

   (iii) that they will not take any steps to prejudice, restrict or otherwise limit the Crown's rights, and the Parent Company's obligations, under and in connection with the Parent Company Guarantee.

Part 3 – Termination, suspension and Step-in

6. Restrictions on termination and suspension

6.1 Subject to the Crown's rights

The Major Sub-contractor's rights to exercise a Power to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Major Sub-contract are subject to the Crown's rights under this Deed.

6.2 Termination or suspension with cause

The Major Sub-contractor may only exercise a Power to terminate, rescind, accept the repudiation of, or (subject to clause 6.5) suspend the performance of any or all of its obligations under the Major Sub-contract if:

(a) the Major Sub-contractor has given to the Crown prior notice (a **Default Event Notice**) setting out details of the Default Event giving rise to that proposed exercise in accordance with clause 7.2 (Major Sub-contractor Statements);

(b) any remedy period available to the Senior Lenders in respect of the Default Event under any Financing Agreement has expired without a remedy being achieved;

(c) the Major Sub-contractor has given notice to the Crown (a **Major Sub-contractor Notice**) confirming that either:

(i) the requirements of clause 6.2(b) are satisfied; or

(ii) the Major Sub-contractor's Power to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Major Sub-contract is not subject to any right of the Senior Lenders to remedy the Default Event;

(d) one or more Termination Grounds exists; and

(e) where an MSDD Dispute existed in relation to the applicable Termination Event, the Major Sub-contractor is entitled to exercise the relevant Power under clause 6.4.

6.3 Termination Grounds

For the purposes of this Deed, each of the circumstances set out in clauses 6.3 (a) to (d) comprise **Termination Grounds**:

(a) where a Default Event:

(i) is capable of remedy within 20 Business Days after the date on which the Crown received the relevant Major Sub-contractor Notice (including by the payment of any sum); or

(ii) is not capable of remedy and the Default Event Notice contains a Claim for reasonable compensation for the Default Event,

and that Default Event has not been cured or remedied, or the compensation sum referred to in clause 6.3(a) paid, within 20 Business Days after the date on which the Crown received the Major Sub-contractor Notice;

(b) where a Default Event is not capable of remedy within 20 Business Days but is nevertheless reasonably capable of remedy, if the Crown (or an Additional Obligor appointed under clause 8 (Step-in by the Crown)) has not commenced remedying that Default Event within 20 Business Days after the date on which the Crown received the Major Sub-contractor Notice or has not continued to diligently pursue that remedy following the expiry of that 20 Business Day period;

(c) where:

(i) the Default Event is not reasonably capable of remedy; and

(ii) the Default Event Notice does not contain a Claim for reasonable compensation for the relevant Default Event,

the Crown (or an Additional Obligor) does not commence and continue to perform the Contractor's obligations under the Major Sub-contract within 20 Business Days (or such longer period as is permitted under the Major Sub-contract) after the date on which the Crown received the Major Sub-contractor Notice; or

(d) the Crown notifies the Major Sub-contractor in writing that it elects not to remedy (or procure the remedy of) the relevant Default Event and not to perform the Contractor's obligations under the Major Sub-contract.

6.4 MSDD Disputes

Where the Crown notifies the Major Sub-contractor of an MSDD Dispute in relation to a Termination Ground:

(a) where that MSDD Dispute relates to any aspect of the Termination Ground other than the payment of compensation or any other sum to remedy or otherwise resolve a Default Event:

(i) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Project Documents; and

(ii) the Major Sub-contractor must not exercise a Power to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Major Sub-contract unless the Crown fails to comply with the Independent Expert's determination within 10 Business Days after its delivery to the parties; and

(b) where that MSDD Dispute relates to the payment of compensation or any other sum to remedy or otherwise resolve a Default Event:

(i) the relevant Statement Beneficiary must pay the amount (if any) not in dispute;

(ii) upon resolution of the dispute under clause 18 (Dispute resolution), the parties must make payments as determined by the Independent Expert;

(iii) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Project Documents; and

(iv) the Major Sub-contractor must not exercise a Power to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Major Sub-contract unless the relevant Statement Beneficiary has not paid any sum determined as payable by the Independent Expert within 10 Business Days after the Expert's determination.

6.5 Termination or suspension without cause

If there is no Default Event, the Major Sub-contractor may only exercise a right to terminate, or suspend the performance of its obligations under, the Major Sub-contract to the extent that the Contractor is entitled to terminate the Project Agreement or suspend its corresponding obligations under the Project Agreement.

7. Notices by Major Sub-contractor

7.1 Crown's cure rights

(a) The Major Sub-contractor must give the Crown:

(i) Default Event Notices; and

(ii) Major Sub-contractor Notices,

as required by clause 6.2 (Termination or suspension with cause).

7.2 Major Sub-contractor Statements

As part of any Default Event Notice, the Major Sub-contractor must submit statements (**Major Sub-contractor Statements**) to the Crown (for the reliance of the Statement Beneficiaries) of:

(a) all amounts due and payable to the Major Sub-contractor under the Major Sub-contract on or before the date of the Default Event Notice but remaining unpaid at such date;

(b) the nature and, to the best of the Major Sub-contractor's knowledge and belief, the amount of any monetary Claim asserted by the Major Sub-contractor under or arising out of the Major Sub-contract against the Contractor; and

(c) where the Major Sub-contractor intends to terminate the Major Sub-contract due to a default or breach of condition of a non-financial nature or intends to claim damages or to seek some other form of relief from the Contractor under the Major Sub-contract:

(i) the provisions of the Major Sub-contract alleged to have been breached or not fulfilled;

(ii) sufficient information to enable the Crown to identify the material facts;

(iii) the steps reasonably required to remedy the Default Event (if reasonably capable of remedy);

(iv) the time within which the specified steps can reasonably be expected to be taken;

(v) if applicable, the amount of damages claimed and the manner in which the amount has been calculated; and

(vi) if applicable, the other relief to be sought.

7.3 Warranty of accuracy

The Major Sub-contractor warrants to each Statement Beneficiary that the Major Sub-contractor Statements submitted by it will be, subject to unintended error that the Major Sub-contractor agrees to rectify, true, complete and accurate statements of the amounts to which the Major Sub-contractor considers itself entitled.

7.4 Major Sub-contractor Statements to be conclusive evidence

(a) Each Statement Beneficiary is entitled to rely on the Major Sub-contractor Statements for the purpose of determining the extent of the matters occurring prior to a Default Event that are required to be cured or remedied and the requirements to effect the remedy of that Default Event by a Statement Beneficiary (if it elects to remedy).

(b) The Major Sub-contractor Statements will, to the extent provided in clauses 7.2 and 7.3, be conclusive evidence in favour of any Statement Beneficiary that the Major Sub-contractor has waived and abandoned all other Claims then known or that ought reasonably to have been known to the Major Sub-contractor arising out of or in connection with the Major Sub-contract prior to the date of the Default Event Notice (other than Claims set out in the Major Sub-contractor Statements).

(c) Clauses 7.4(a) and 7.4(b) are without prejudice to the rights of the Major Sub-contractor to pursue any Claims against the Contractor following the end of the Step-in Period.

(d) For the avoidance of doubt, a Major Sub-contractor Statement will not prevent any Statement Beneficiary from commencing a MSDD Dispute disputing the amount of any Claim by the Major Sub-contractor or the existence of any default by the Contractor under the Major Sub-contract.

8. Step-in by the Crown

8.1 Crown rights

(a) On or after receipt of a Major Sub-contractor Notice or at any time at or after which the Crown is permitted under any Project Document to do so, the Crown may, but is not obliged to:

(i) remedy, or procure the remedy of, the relevant Default Event;

(ii) if the Default Event is not capable of remedy, to commence and continue to perform the obligations of the Contractor under the Major Sub-contract;

(iii) take such other action permitted pursuant to Part 17 (Crown Step-in) of the Project Agreement or any similar action permitted under the Project Agreement (and the receipt of the Major Sub-contractor Notice will be deemed to be a ground for Step-In under clause 63 (When Step-in Applies) of the Project Agreement); or

(iv) by notice to the Major Sub-contractor (**Additional Obligor Step-in Notice**), procure that an Additional Obligor assumes jointly and severally with the Contractor all of the Contractor's rights and obligations under the Major Sub-contract and the Major Sub-contract Documentation.

(b) The **Step-in Period** is the period from the date on which Crown provides the Major Sub-contractor with notice of the exercise of any Step-in Right to the earliest of:

(i) the Additional Obligor Step-out Date;

(ii) the date on which the Major Sub-contractor validly terminates the Major Sub-contract;

(iii) the date of any novation under clause 11 (Crown's novation rights); and

(iv) the Step-out Date.

(c) The Major Sub-contractor acknowledges that the exercise by the Crown of a Step-in Right will not of itself contravene, or constitute a Default Event under, the Major Sub-contract or entitle the Major Sub-contractor to exercise any Power (including termination) under the Major Sub-Contract.

8.2 Step-in by Crown

(a) The Crown may (subject to the Financier Direct Deed), at any time after the Crown has given notice to the Major Sub-contractor notifying it of the Crown's exercise of its Step-in Rights, exercise all or any of the Contractor's Powers and perform all or any of the obligations of the Contractor under or in relation to the Major Sub-contract and the Major Sub-contract Documentation, as if it were the Contractor, to the exclusion of the Contractor. Where the Crown notifies the Major Sub-contractor that it is to exercise its Step-in Rights under this Deed, it will also notify the Major Sub-contractor of the Crown Personnel that are authorised to exercise such rights on its behalf.

(b) The Contractor and the Major Sub-contractor acknowledge and agree that, subject to clause 9(b) and the Project Agreement, neither the Crown, any Crown Personnel nor any Crown Related Persons will have any Liability, nor will the Contractor or the Major Sub-contractor be entitled to make, continue or enforce any Claim against the Crown, any Crown Personnel or any Crown Related Persons arising out or in respect of or in connection with, the Major Sub-contract, the Major Sub-contract Documentation or this Deed by reason only of exercise of any of the Contractor's Powers, or performing any of the Contractor's obligations in accordance with the Major Sub-contract or the Major Sub-contract Documentation (as permitted by the Project Documents) other than, and then only to the extent of, Liability for fraudulent, unlawful, negligent or wilful acts or omissions of the Crown, any Crown Personnel or any Crown Related Persons.

8.3 Crown Step-out

The Crown may Step-out at any time, in accordance with Part 17 (Crown Step-in) of the Project Agreement. The Crown shall provide not less than 10 Business Days prior written notice to the Major Sub-contractor informing it of the Step-out Date.

9. Step-in using Additional Obligor

(a) The Crown shall ensure that the Additional Obligor will become a party to the Major Sub-contract on the date on which the Additional Obligor Step-in Notice is given to the Major Sub-contractor, or such later date as the Major Sub-contractor and the Crown may agree (**Assumption Date**).

(b) During the Step-in Period:

(i) the Crown shall ensure that the Additional Obligor will be jointly and severally:

(A) entitled with the Contractor to exercise the rights, powers and discretions of the Contractor under the Major Sub-contract and the Major Sub-contract Documentation (excluding any accrued rights of the Contractor in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (the **Contractor's Rights**); and

(B) liable with the Contractor for the performance or non-performance of all the Contractor's obligations under the Major Sub-contract and the Major Sub-contract Documentation arising on or after the Assumption Date, except as released in accordance with clause 9(e);

(ii) as between the Contractor, the Major Sub-contractor and the Additional Obligor, only the Additional Obligor is authorised to deal with the Major Sub-contractor and to exercise the Contractor's Rights but for the avoidance of doubt, this shall not extend to any right to surrender, terminate or suspend the Major Sub-contract, except where the Project Agreement has been terminated or otherwise in accordance with the terms of the Major Sub-contract;

(iii) the Contractor acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the Major Sub-contractor and in exercising the Contractor's Rights;

(iv) the Crown shall ensure that the Additional Obligor will be bound by any earlier decision, directions, approvals or consents given or made prior to the Assumption Date;

(v) clause 20 (Notices) will apply to the Major Sub-contractor and the Additional Obligor as if the address, facsimile number and email address of the Additional Obligor were set out in addition to those of the Contractor; and

(vi) the Major Sub-contractor will owe its obligations under the Major Sub-contract to the Contractor and the Additional Obligor jointly but the performance by the Major Sub-contractor in favour of either the Contractor or the Additional Obligor will be a good discharge of the relevant obligations under the Major Sub-contract.

(c) The Additional Obligor will have no obligation to cure, and no Liability in respect of remedying, any default or breach of the Contractor under the Major Sub-contract arising prior to the Assumption Date.

(d) The Additional Obligor may at any time give the Major Sub-contractor notice terminating the Additional Obligor's rights and obligations under the Major Sub-contract and the Major Sub-contract Documentation (without affecting the continuation of the Contractor's obligations or Liabilities towards the Major Sub-contractor under the Major Sub-contract). The Crown shall ensure that such notice must specify the date on which it takes effect, which must be:

(i) a date not less than 30 days after the date of the notice; or

(ii) if a Proposed Novation Notice has been given, the Proposed Novation Date,

(being the **Additional Obligor Step-out Date**).

(e) On and from the Additional Obligor Step-out Date, between the Major Sub-contractor and the Additional Obligor, each of the Additional Obligor and the Major Sub-contractor will be released from all obligations under the Major Sub-contract and the Major Sub-contract Documentation (except for those obligations that have arisen during the Step-in Period, whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed).

10. Indemnity by Contractor

Subject to clause 58.4 (Limits on indemnity cover) of the Project Agreement, the Contractor indemnifies the Crown, all Crown Personnel and all Crown Related Persons against any Claim or Liability (including any Claim made by, or Liability to, a third party) the Crown, any Crown Personnel or any Crown Related Person suffers or incurs arising in connection with:

(a) taking any action under clause 8.2 (Step-in by Crown) or clause 8.3 (Crown Step-out) (except in respect of any action taken by the Crown under Part 17 of the Project Agreement, which action shall be subject to the rights and remedies of the Crown set out in Part 17 of the Project Agreement instead); and/or

(b) taking any action (including the payment of any sum) to prevent, or as a result of, the Major Sub-contractor suspending or, following the expiry of the requisite notice and/or remedy period, threatening to suspend the performance of its obligations under the Major Sub-contract where the Major Sub-contractor is entitled to do so under the Construction Contracts Act 2002.

11. Crown's novation rights

11.1 Proposed Novation Notice

(a) The Crown may at any time on or after the issue of a Major Sub-contractor Notice:

(i) while it is entitled to exercise its Step-in Rights; or

(ii) during the Step-in Period,

give notice (a **Proposed Novation Notice**) to the Major Sub-contractor that:

(iii) it wishes itself or another person (in either case, a **Proposed Substitute**) to assume, by way of sale, transfer or other disposal, the rights and obligations of the Contractor under the Major Sub-contract and the Major Sub-contract Documentation; and

(iv) it wishes full legal and equitable title to any retention account, or other guarantee or security or assurance constituting Major Sub-contract Documentation that is held by the Contractor to secure the obligations of the Major Sub-contractor under the Major Sub-contract to vest in the Proposed Substitute, subject to any rights or interests over the same held by or on behalf of the Senior Lenders.

(b) The Proposed Novation Notice shall specify a date on which the proposed novation is to take effect (the **Proposed Novation Date**). The Proposed Novation Date must fall not later than 30 Business Days after the date of the Proposed Novation Notice.

(c) Without prejudice to (and except as permitted by) clause 11.6 and/or clause 12 (Rights to terminate – Intervention Failure), the Major Sub-contractor will not exercise or seek to exercise any Power that may be or become available to it to terminate or treat as terminated or repudiated the Major Sub-contract or discontinue or suspend the performance of any obligations under the Major Sub-contract and that is the subject of a Major Sub-contractor Notice:

(i) during the notice period specified in a Proposed Novation Notice; or

(ii) against any Proposed Substitute that is party to a Novation Agreement.

(d) The Major Sub-contractor acknowledges that the exercise by the Crown of its rights under this clause 11 does not of itself contravene, or entitle the Major Sub-contractor to exercise any right or remedy (including any right to terminate) under the Major Sub-contract.

(e) Nothing in this clause 11 operates to require the Crown to assume any obligations or Liabilities arising, or which are required to be performed under the Major Sub-contract, except to the extent expressly provided in this clause 11.

11.2 Proposed Substitute

(a) Where the Proposed Substitute is not the Crown or a Successor Governmental Entity, the Crown shall (as soon as practicable) supply the Major Sub-contractor with the following information:

(i) the name and registered address of the Proposed Substitute;

(ii) the names of the directors of the Proposed Substitute; and

(iii) the technical competency and resources (including financial resources, key personnel and contractual arrangements) that are to be available to the Proposed Substitute to enable it to perform its obligations under the Major Sub-contract.

11.3 Consent to novation

(a) Where the Proposed Substitute is the Crown or a Successor Governmental Entity, the Major Sub-contractor will be deemed to have given its consent to the novation. In that case, the Major Sub-contractor irrevocably:

(i) appoints the Crown and the Crown's nominees from time to time, jointly and severally, as the Major Sub-contractor's attorney with full power and authority to sign on its behalf all documents the Crown requires to legally effect the novation of the Major Sub-contract Documentation to the Crown or the Successor Governmental Entity; and

(ii) agrees to ratify and confirm whatever action is taken by that attorney or those attorneys for the purposes of giving legal effect to that novation.

(b) Where the Proposed Substitute is not the Crown or a Successor Governmental Entity, the Major Sub-contractor must consent to the proposed novation, unless the Major Sub-contractor demonstrates to the Crown's reasonable satisfaction that:

(i) the Proposed Substitute does not have the legal capacity, power and authorisation to become a party to and perform the obligations of the Contractor under the Major Sub-contract;

(ii) the technical competence and financial standing of, and the technical and financial resources available to, the Proposed Substitute are not sufficient to perform the obligations of the Contractor under the Major Sub-contract; or

(iii) the Major Sub-contractor would be placed in breach of Law by the proposed novation.

(c) Where the Proposed Substitute is not the Crown or a Successor Governmental Entity, within 10 Business Days of the later of receipt of a Proposed Novation Notice and all information required under clause 11.2, the Major Sub-contractor must:

(i) notify the Crown in writing as to whether or not it consents to the novation of the Major Sub-contract Documentation; and

(ii) where that request for consent is not approved, provide an explanation of the reasons why.

(d) The Major Sub-contractor is deemed to have given its consent to the novation of the Major Sub-contract Documentation to the Proposed Substitute for the purposes of clause 11.3(c) if the Major Sub-contractor fails to serve notice in writing on the Crown within the period required by that sub-clause.

(e) If, in accordance with this clause 11.3, the Major Sub-contractor withholds its consent to a Proposed Novation Notice:

(i) the Crown shall be entitled to give one or more subsequent Proposed Novation Notices, pursuant to the provisions of clause 11.1 and clause 11.2, (a **Revised Proposed Novation Notice**) containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute, provided that:

(A) only one Proposed Novation Notice may be outstanding at any one time; and

(B) any revised Proposed Novation Date shall be a date falling not later than 15 Business Days after the date of the Revised Proposed Novation Notice;

(ii) the Major Sub-contractor will not:

(A) exercise or seek to exercise any right that may be or become available to it to terminate or treat as terminated or repudiated the Major Sub-contract; or

(B) discontinue or suspend the performance of any obligations under the Major Sub-contract,

during the notice period specified in a Revised Proposed Novation Notice; and

(iii) clauses 11.3(b), 11.3(c) and 11.3(d) will apply in relation to that Revised Proposed Novation Notice, as if that notice was a Proposed Novation Notice.

11.4 Implementation of novation

(a) Promptly following the date on which the Major Sub-contractor consents or is deemed to have consented to a novation of the Major Sub-contract pursuant to a Proposed Novation Notice or a Revised Proposed Novation Notice (the **Consent Date**), the Contractor must (subject to the Proposed Substitute first providing a confidentiality undertaking in a form reasonably acceptable to the Major Sub-contractor) give the Proposed Substitute an updated copy of all information in the possession of the Contractor in relation to the Major Sub-contract.

(b) Within three Business Days of the Consent Date:

(i) the Crown shall procure that the Proposed Substitute shall become a party to, or beneficiary of the Major Sub-contract Documentation in place of the Contractor and, thereafter, shall be treated as if it was and had always been named as a party or beneficiary of the Major Sub-contract Documentation in place of the Contractor; and

(ii) the Major Sub-contractor and the Contractor shall enter into a novation agreement (the **Novation Agreement**) and any other requisite agreements, in form and substance satisfactory to the Major Sub-contractor (acting reasonably) and the Crown (acting reasonably) and the Crown shall procure that the Proposed Substitute validly executes such Novation Agreement and any other requisite agreements, pursuant to which:

(A) the Proposed Substitute shall be granted all of the rights of the Contractor under the Major Sub-contract Documentation and this Deed (including those arising prior to the end of the Step-in Period); and

(B) the Proposed Substitute shall assume all of the obligations and Liabilities of the Contractor under the Major Sub-contract and this Deed.

(c) Unless otherwise agreed, the assumption by the Proposed Substitute of the obligations and Liabilities of the Contractor under the Major Sub-contract will:

(i) not include:

(A) any payment obligations of the Contractor that are in dispute as at the Consent Date, provided that the Crown shall, on the determination of such dispute, procure that the Proposed Substitute shall assume such obligation in accordance with that determination; and

(B) any payment for the performance of the Services that the Crown has already paid for under the terms of the Project Agreement; and

(ii) only include (in relation to any other obligation of the Contractor (not being an obligation to pay money which the Proposed Substitute must pay under clause 11.4(b)(ii)(B))) those obligations that fall due to be performed as at or following the Consent Date.

(d) On and after the Novation Effective Date, the Major Sub-contractor shall owe its obligations under the Major Sub-contract to the Proposed Substitute and will be bound by and must comply with the terms of the Major Sub-contract binding on it, for the benefit of the Proposed Substitute as if the Proposed Substitute were the Contractor.

(e) The Crown and the Major Sub-contractor shall use all reasonable endeavours to agree and the Crown shall use reasonable endeavours to procure that the Proposed Substitute agrees any amendments to the Major Sub-contract necessary to reflect this clause 11 and the fact that the Project Agreement may have terminated at the time of the Novation Effective Date.

(f) For the avoidance of any doubt the total Liability incurred by the Major Sub-contractor to the Proposed Substitute under the Major Sub-contract as at the Novation Effective Date shall be identical to the total Liability incurred by the Major Sub-contractor to the Contractor up to and immediately prior to the Novation Effective Date, and the entering into of the Novation Agreement shall not reduce, limit or otherwise affect the total aggregate Liability incurred by the Major Sub-contractor under the Major Sub-contract in any way.

11.5 Contractor's obligations to continue

Until completion of a novation pursuant to clause 11.4, the Contractor shall continue to be liable for all its obligations and Liabilities, whenever occurring, under or arising from the Major Sub-contract notwithstanding:

(a) the service of a Proposed Novation Notice or any Revised Proposed Novation Notice; or

(b) any other provision of this Deed.

11.6 Termination after Novation

After the Novation Effective Date, the Major Sub-contractor shall only be entitled to exercise its rights of termination under the Major Sub-contract:

(a) in respect of any Event of Contractor Default arising after that date in accordance with the Major Sub-contract; or

(b) if the Proposed Substitute does not discharge, within 20 Business Days following the Novation Effective Date, the obligations and Liabilities assumed by it under clause 11.4(b) (read subject to clause 11.4(c)) that relate to matters arising prior to the Novation Effective Date,

(in each case subject to the terms of this Deed as it applies after the Novation Effective Date).

12. Rights to terminate – Intervention Failure

12.1 Rights preserved

Notwithstanding the other terms of this Deed, the Major Sub-contractor shall be entitled:

(a) to exercise all of its rights under the Major Sub-contract and act upon any and all grounds for termination available to it in relation to the Major Sub-contract whenever occurring; and/or

(b) to pursue any and all Claims and exercise any and all rights and remedies against the Contractor,

in any of the circumstances described in clause 12.2 (an **Intervention Failure**).

12.2 Intervention Failures

An Intervention Failure constitutes circumstances where:

(a) no Proposed Novation Notice (including a Revised Proposed Novation Notice) is given before the date or by the expiry of the period in which the Crown is entitled to serve the same pursuant to clause 11.1(a) in accordance with the terms of this Deed;

(b) the Step-in Period ends before the occurrence of the Novation Effective Date;

(c) (in circumstances in which the Major Sub-contractor is entitled not to consent under this Deed), the Major Sub-contractor does not consent to a novation pursuant to a Proposed Novation Notice and to any Revised Proposed Novation Notice; or

(d) the Crown or an Additional Obligor exercises its right to Step-out (in which case, an Intervention Failure exists from the Step-out Date or the Additional Obligor Step-out Date (as applicable)), in each case where Termination Grounds continue to subsist at the relevant time.

Part 4 – Warranties and Undertakings

13. Warranties and acknowledgments

13.1 General warranties

The Major Sub-contractor warrants and represents to the Crown:

(a) it is properly constituted and incorporated under the Companies Act 1993 and has the corporate power to own its assets and to carry on its business as it is now being conducted;

(b) neither it nor any of its assets enjoys any immunity from set off, suit or execution;

(c) it has the corporate power to enter into and to exercise its rights and perform its obligations under this Deed and the other Project Documents to which it is party;

(d) all actions necessary on its part have been taken to authorise the execution of and the performance of its obligations under this Deed and the other Project Documents to which it is party;

(e) the obligations expressed to be assumed by it under this Deed and the other Project Documents to which it is party, are, or in the case of any Project Document executed after the date of this Deed, will be, on their execution, legal, valid, binding and, subject to laws affecting creditors' rights generally and equitable principles, enforceable;

(f) this Deed and each other Project Document to which it is party is in proper form for enforcement in New Zealand; and

(g) the execution, delivery and performance by it of this Deed and the other Project Documents to which it is party do not contravene any provision of:

   (i) any existing Laws either in force, or enacted but not yet in force, that are binding on it;

   (ii) its constitution;

   (iii) any order or decree of any court or arbitrator that is binding on it; or

   (iv) any obligation that is binding upon it or upon any of its assets or revenues.

13.2 Additional warranties

The Major Sub-contractor further warrants, represents and undertakes to the Crown that:

(a) the Major Sub-contract to which it and the Contractor are party, has been entered into on Arms Length Terms;

(b) it has complied with and fulfilled and shall continue to comply with and fulfil its duties and obligations arising under or by virtue of the Major Sub-contract;

(c) without limiting the other terms of this Deed:

   (i) it is aware of those terms of the Project Agreement that apply to it, in its capacity as a Major Sub-contractor or as a Contractor Related Person; and

(ii) it will ensure at all times that:

(A) it shall not by act, do or (to the extent of its obligations under the Major Sub-contract only), by omission fail to do anything that would result in the Contractor being in breach or being put in breach of its obligations under the Project Agreement; and

(B) it will co-operate and assist the Crown and/or the Contractor to facilitate (and will not impede or frustrate) the Contractor's compliance with its obligations under the Project Agreement;

(d) there are no documents or agreements in existence or contemplated as at the date of this Deed to which the Major Sub-contractor is or would be a party that have not been or will not be disclosed to the Crown that (in each case) is or would:

(i) be material in the context of this Deed and the other Project Documents to which it is a party;

(ii) be, or be likely to be, material in the context of the Project; or

(iii) have the effect of varying this Deed or any other Project Document,

and in respect of this Deed or the Project Documents, performance of which by the Major Sub-contractor would have a material adverse effect on the ability of the Major Sub-contractor to perform and observe its obligations under any this Deed or any other Project Document;

(e) all information provided to the Crown by the Major Sub-contractor under this Deed constitutes true, accurate and complete statements of the Major Sub-contractor; and

(f) in entering into this Deed and the other Project Documents to which it is a party, it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by:

(i) the Crown; or

(ii) the Contractor or any other person (unless otherwise expressly stated in the Major Sub-contract).

14. General Undertakings

The Major Sub-contractor undertakes to the Crown that it must:

(a) notify the Crown of any Event of Contractor Default promptly after it gives notice of that Event of Contractor Default pursuant to the Major Sub-contract;

(b) in relation to documents:

(i) promptly give the Crown a copy of all documents issued by the Major Sub-contractor to the Contractor in relation to an Event of Contractor Default; and

(ii) return a copy of all plans, drawings, specifications and other documents that come into its possession for the purpose of the Project to the Crown at the expiration or termination of the Major Sub-contract;

(c) not, without first obtaining the consent of the Crown:

(i) make or permit any material amendment, replacement of, or addition to;

(ii) subject to the terms of this Deed, terminate, surrender, rescind or accept repudiation of (provided that such consent will be deemed to have been given where the Major Sub-contractor is expressly permitted to do so under this Deed);

(iii) permit the novation, assignment or substitution of its rights, obligations or interest in; or

(iv) allow any express waiver of its material rights and obligations under,

the Major Sub-contract, provided that the Crown will not withhold its consent to an amendment that corresponds to an amendment to which it has consented in accordance with the Project Agreement;

(d) not novate, assign or substitute any of its rights, obligations or interest in the Major Sub-contract without first procuring that the proposed novatee, assignee or substitute executes a deed in favour of the Crown (in form and substance approved by the Crown) pursuant to which the novatee, assignee or substitute agrees to accept and be bound by this Deed as if it were the Major Sub-contractor;

(e) in relation to records and meetings:

(i) when reasonably requested by the Crown, attend meetings with the Crown or any Crown Related Person;

(ii) subject to the relevant persons entering into confidentiality undertakings with the Major Sub-contractor on terms reasonably acceptable to the Major Sub-contractor, when reasonably requested by the Crown, provide the Crown, or any Crown Related Person authorised by the Crown, with such information, records or documents that the Crown (acting reasonably) requires in relation to the carrying out of Services or compliance with the Major Sub-contract; or

(iii) subject to the relevant persons entering into confidentiality undertakings with the Major Sub-contractor on terms reasonably acceptable to the Major Sub-contractor, permit the Crown or any Crown Related Person authorised by the Crown to do so, to inspect all records, reports, plans, programmes, specifications and design documents prepared or kept by the Major Sub-contractor in relation to the Project and supply the Crown or any Crown Related Person with a copy of any such report or document they may require from time to time,

provided that nothing in this clause 14(e) shall require the Major Sub-contractor to breach any obligation of confidence which it owes to any other person or to infringe the Intellectual Property rights of any third party;

(f) to the extent provided in the Project Agreement, permit the Crown, any Crown Related Person and the Independent Reviewer to attend all tests and inspections to be carried out in connection with the Project in accordance with the terms of the Project Agreement and/or the Major Sub-contract;

(g) subject to the Independent Reviewer entering into confidentiality undertakings with the Major Sub-contractor on terms reasonably acceptable to the Major Sub-contractor, provide the Independent Reviewer with all such access to the Facility and to the Major Sub-contractor and its records as the Independent Reviewer may reasonably require to perform its obligations under the Project Agreement and the Independent Reviewer Agreement;

(h) take all steps reasonably practical to mitigate and minimise Sub-contractor Breakage Costs in respect of any Termination Date; and

(i) not contract with the Contractor otherwise than on Arms Length Terms.

Part 5 – General

15. Relationship of parties

15.1 Relationship of parties

Nothing in, or contemplated by, this Deed will be construed or interpreted as:

(a) constituting a relationship between the Crown and the Major Sub-contractor or the Contractor or any other person, as partners, joint venturers, fiduciaries, employer and employee or principal and agent;

(b) imposing any general duty of good faith on the Crown to the Major Sub-contractor or the Contractor or any Major Sub-contractor Affiliate or Contractor Affiliate in relation to or arising out of the Project, other than to comply with the obligations (if any) expressly stated to be assumed by the Crown under the Project Documents on a good faith basis; or

(c) unlawfully restricting or otherwise unlawfully affecting the unfettered discretion of the Crown to exercise any of its executive or statutory powers or functions under any Law.

15.2 Limitation of Crown's obligations

The Major Sub-contractor and the Contractor each acknowledge and agree that:

(a) anything that the Crown or any Governmental Entity does, fails to do or purports to do pursuant to its executive or statutory functions and powers will be deemed not to be or cause an act or omission by the Crown under this Deed and will not entitle the Contractor or the Major Sub-contractor to make any Claim against the Crown under this Deed;

(b) notwithstanding clause 4.2(a) (Parent Company Guarantees – mandatory terms) of the Project Agreement, the Crown is not relieved from any Claim that the Major Subcontractor may have against the Crown for exercising any of its executive or statutory functions or powers under any law in a manner contrary to an express obligation of the Crown under this Deed and the existence of such obligations, and the existence and the amount of such Claim is to be assessed in accordance with the terms of this Deed;

(c) notwithstanding anything else contained or implied in the Project Documents to the contrary, the Crown is not obliged, in performing any of the duties and obligations of the Crown under the Project Documents, to exercise a power, function or duty which is granted to or within the responsibility of any other Governmental Entity, or to influence, over-ride or direct any other Governmental Entity in the proper exercise and performance of its legal duties and functions;

(d) if there is any statement in this Deed that the Crown will use "reasonable endeavours" in relation to an outcome then it means that the Crown will take steps to bring about the relevant outcome so far as it is reasonably able to do so having regard to its resources and other responsibilities but the Crown cannot guarantee the relevant outcome; and

(e) nothing in or contemplated by this Deed or any other Project Document, including any reasonable "endeavours obligation" imposed on the Crown, will be construed or interpreted as restricting or otherwise affecting the unfettered discretion of the Crown or any other Governmental Entity to exercise any of its executive or statutory powers or functions under any Law, or to require the Crown or any Governmental Entityto:

(i) interfere with or influence the exercise of any statutory power or discretion by any body, including a Governmental Entity;

(ii) exercise a power or discretion in a manner that promotes the objectives and expected outcomes of this Deed if the Crown regards that exercise as not in the public interest;

(iii) develop or implement new policy in a manner that is only consistent with the objectives and expected outcomes of this Deed;

(iv) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of this Deed; or

(v) act in any other way that the Crown regards as not in the public interest.

16. Termination

(a) This Deed will terminate upon the performance and satisfaction of all of the obligations under the Major Sub-contract.

(b) The termination of this Deed does not affect the rights of any party that have accrued to that party before the date of termination.

17. Insurance

(a) The Major Sub-contractor must ensure that it does not do or omit to do anything or does not permit anything to be done or omitted to be done whereby any such insurance policy may be prejudiced.

(b) If any default is made by the Major Sub-contractor in effecting or maintaining such insurance policy or if any such insurance policy becomes void or voidable, the Crown may (but is not obliged to) effect or maintain that insurance policy at the cost of the Major Sub-contractor or, failing the Major Sub-contractor paying such costs, at the cost of the Contractor (but only to the extent that the relevant insurance policy required to be effected and maintained by the Major Subcontractor is also a Required Insurance as defined under the Project Agreement).

(c) If required by the Project Agreement, or, the Major Sub-contractor will ensure that the Crown is specified as a person to whom the insurance cover provided by any applicable insurance contract extends.

(d) Subject to the provisions of the Project Agreement in respect of the Contractor and the provisions of the Major Sub-contract in respect of the Major Sub-contractor, each will do all things reasonably necessary and (subject to the Crown providing a confidentiality undertaking in a form reasonably acceptable to the Major Sub-contractor) provide all documents, evidence and information reasonably necessary to enable the Crown to collect or recover any moneys due or to become due in respect of any insurance policy to which the Crown is an insured party at the cost of the Major Sub-contractor or, failing the Major Sub-contractor paying such costs, at the cost of the Contractor (but only to the extent that the relevant insurance policy required to be effected and maintained by the Major Subcontractor is also a Required Insurance as defined under the Project Agreement).

(e) Without prejudice to the above requirements, the Major Sub-contractor will not cause or take any steps to bring about the cancellation, lapse, material change, reduction or any rescinding of any such insurance policy unless it has first obtained the written consent of the Crown after giving 60 days' prior written notice to the Crown.

(f) The Major Sub-contractor will immediately notify the Crown of any cancellation, lapse, material change, reduction, or any rescinding of any such insurance policy, and of the occurrence of any event giving rise to any claim under any such insurance policy.

(g) Notwithstanding clause 17(f), but subject to the obligations of the Contractor under the terms of the Project Agreement, the obligations of the Contractor and the Major Sub-contractor in this clause 17 shall be several.

18. Dispute resolution

If there is a dispute arising in relation to this Deed between the Crown and the Major Sub-contractor (a **MSDD Dispute**), then:

(a) the party wishing to invoke this Deed's dispute resolution procedure provisions may serve a notice (a **Notice of MSDD Dispute**) on the other party, together with its submissions in relation to the MSDD Dispute;

(b) each such MSDD Dispute is be treated as a dispute to which the Accelerated Dispute Resolution Procedures will apply;

(c) the terms of clause 89 (Accelerated Dispute Resolution Procedures) of the Project Agreement are accordingly deemed incorporated by reference into this Deed, except that all references to a "party" or "parties" are deemed to be references to the Crown and/or the Major Sub-contractor and all references to the "Contractor" are deemed to be a reference to the Major Sub-contractor; and

(d) the parties shall keep confidential any information received by them pursuant to this clause 18 except to the extent that disclosure is permitted under clause 56 (Confidential Information) of the Project Agreement which clause shall be deemed incorporated by reference into this Deed for these purposes, except that all references to a "party" or "parties" shall be deemed to be reference to the parties to this Deed and all references to the "Contractor" shall be deemed to be references to the Contractor or the Major Sub-contractor as applicable.

19. Assignment

(a) Except as expressly contemplated by this Deed, neither the Contractor nor the Major Sub-contractor may assign or transfer any of its rights or obligations under this Deed or the Major Sub-contract without the Crown's consent.

(b) Clause 19(a) does not apply to any assignment by way of security under the Financing Agreements (in respect of the Contractor only) or any direct agreement entered into between the Contractor, the Senior Lenders, the Security Trustee and the Major Sub-contractor (in respect of the Contractor and the Major Sub-contractor).

(c) The Crown shall not assign or transfer its rights or obligations under this Deed except to a permitted assignee under and in accordance with clause 90.2 (Assignment by Crown) of the Project Agreement.

20. Notices

20.1 Method of giving notices

A notice, consent, approval or other communication (each a **Notice**) under this Deed must:

(a) be in writing addressed to the address of the recipient from time to time designated for the purpose by the addressee to the other parties. The initial address of each party is set out under its name on the execution pages of this Deed; and

(b) be signed by an authorised representative of the sender.

20.2 Notice effective

(a) No notice or other communication is to be effective until it is received.

(b) A communication will be deemed to be received:

(i) in the case of a letter, on the second Business Day after posting (with all postage paid);

(ii) in the case of an email, on the Business Day on which it arrives in the recipient's information system (provided that if it is received in that system after 5.00pm on a Business Day, then it will be deemed to be received on the next Business Day), provided that if there is any dispute as to whether an email has been received, the email shall only be deemed to have been received at that time where the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice; and

(iii) in the case of personal delivery, when delivered.

21. General

21.1 Limitation of Liability

(a) Subject to clause 21.1(b), but despite any other provision in this Deed, the maximum aggregate Liability of the Major Sub-contractor and the Parent Company to the Contractor, the Crown and any Additional Obligor in respect of any Claim or Loss:

(i) under, arising out of or in connection with the Services, the Works Provisioning, this Deed and the Major Sub-contract;

(ii) in tort (including negligence);

(iii) under any statute; and

(iv) otherwise at law,

and irrespective of how it arises, is limited to the Major Sub-contractor's cap on liability as set out in the Major Sub-contract.

(b) The maximum aggregate liability stated in clause 21.1(a) is subject to the same limitations set out in clause [●] of the Major Sub-contract.

(c) Without prejudice to clause 21.1(a), the Major Sub-contractor shall owe no duty, obligation or Liability to the Crown and/or the Contractor under this Deed which is greater or of longer duration than that which it would owe to the Crown and the Contractor under the Major Sub-contract had the Crown and the Contractor jointly appointed the Major Sub-contractor to perform the obligations of the Major Sub-contractor under the Major Sub-contract.

(d) Without prejudice to its rights under clause 18 (Dispute resolution), except to the extent necessary to enable the Crown to exercise its rights of cure and step-in under Part 3 of this Deed, the Crown shall only be entitled to make a Claim against the Major Sub-Contractor for breach of this Deed (including any warranty), if:

(i) the Project Agreement has terminated; or

(ii) the Claim is for specific performance and/or injunctive relief,

provided that:

(iii) this clause does not prejudice the Crown's rights to make any Claim under the Parent Company Guarantee where it is permitted to do so under this Deed and the other Project Documents; and

(iv) if and to the extent that the Crown has been compensated for any Losses under the Project Agreement, the Crown shall not be entitled to claim or recover Moneys Owing for a breach of this Deed from the Major Sub-contractor to the extent it has already been compensated for the same.

(e) The Major Sub-contractor shall be entitled to raise the same defences to any Claim made against it by the Contractor or the Crown under this Deed as it would be entitled to raise under the Major Sub-contract if the Contractor and the Crown had jointly appointed the Major Sub-contractor to perform its obligations under the Major Sub-contract.

21.2 Counterparts

This Deed may be signed in any number of counterparts all of which, when taken together, constitute one and the same instrument. A party may enter into this Deed by executing any counterpart.

21.3 Severability

If any provision of this Deed is or becomes unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity. If such modification is not possible, then such provision shall be severed from this Deed without affecting the enforceability, legality or validity of any other provision of this Deed.

21.4 Waiver

Any delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Deed shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Deed shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

21.5 Public disclosure

All public disclosure by the Contractor or the Major Sub-contractor relating to this Deed including promotional or marketing material (but not including any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements) shall be co-ordinated with and must first be approved in writing by the Crown prior to its release.

21.6 Entire agreement

This Deed and the other Project Documents constitute the entire agreement between the parties and together supersede and extinguish all prior agreements and understandings between the parties about their respective subject matters.

21.7 Amendments in writing

No amendment to this Deed will be effective unless it is in writing and signed by duly authorised signatories of the Crown, the Contractor and the Major Sub-contractor.

21.8 Governing Law and jurisdiction

This Deed is governed, and is to be construed in accordance with, the Laws of New Zealand. Each party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Deed.

21.9 Contracts (Privity) Act 1982

(a) This Deed is not intended to create any obligation enforceable at the suit of any person who is not a party to this Deed.

(b) A person who is not a party to this Deed shall have no right under the Contracts (Privity) Act 1982 to enforce any term of this Deed. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

21.10 Related Loss

Notwithstanding any other provision of this Deed or the Project Agreement, to the extent that the Crown is liable to the Contractor for any Claim arising under the Project Agreement, the Crown will not be entitled to avoid or reduce its Liability to the Contractor on the basis that the Contractor has not suffered all or part of the relevant loss or damage (**Related Loss**) solely because such Related Loss is incurred by a sub-contractor (of any tier) of the Contractor or because the sub-contractor's right to recover such Related Loss from the Contractor or any other sub-contractor is deferred, suspended or dependent upon recovery or entitlement from the Crown, the Contractor or any other sub-contractor or is dependent upon determination of any such entitlement.

Execution

[*Execution blocks to be added.*]

Facility Lease

(Clause 12.2 (Entry into Facility Lease))

DEED OF LEASE

[DepartmentMinistry/Agency] (the **Lessor**) **LEASES** to [Contractor] (the **Lessee**) all the Land for the Term, from the Commencement Date, at the rent and upon the other terms as set out in the First Schedule and the Lessor and the Lessee covenant as set out in the Second Schedule.

AND THE LESSEE ACCEPTS this lease of the Land to be held by the Lessee as tenant and subject to the conditions restrictions and covenants referred to above.

FIRST SCHEDULE

LAND:	*[insert]*
TERM:	[25] years, subject to the provisions of the Project Agreement and the Second Schedule.
COMMENCEMENT DATE:	[*Service Commencement Date*].
RENT:	The Rental Prepayment is provided for and is to be paid in the manner described in the Project Agreement.

SECOND SCHEDULE

1. Definitions and Interpretation

1.1 Definitions

In this lease, unless the context otherwise requires:

Actual Termination Date has the meaning set out in the Project Agreement;

Compensation Sum has the meaning set out in the Project Agreement;

Execution Date has the meaning set out in the Project Agreement;

Facility has the meaning set out in the Project Agreement;

First Schedule means the schedule described as such and forming part of the lease;

Land means that land described in the First Schedule, and includes the Facility;

lease means this instrument and the First Schedule and the Second Schedule;

Lease Expiry Date has the meaning set out in clause 2(b) of the Second Schedule;

Lease Term means the term described in the First Schedule;

Lessee includes the successors and where not repugnant to the context, includes the officers, employees, contractors, agents and invitees of the Lessee;

Lessor includes the successors and where not repugnant to the context, includes the officers, employees, contractors, agents and invitees of the Lessor;

Project has the meaning set out in the Project Agreement;

Project Agreement means the agreement relating to the Project entered into between the Lessor and the Lessee and dated [ ];

Rental Prepayment has the meaning set out in the Project Agreement; and

Second Schedule means the schedule described as such and forming part of this lease.

1.2 Interpretation

In this lease, unless the context otherwise requires:

(a) words importing the singular shall include the plural and vice versa;

(b) headings shall be ignored;

(c) references to clauses are references to clauses in the Second Schedule and references to parties are references to the parties of this lease unless expressly stated otherwise; and

(d) any reference in this lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute.

2. Term

(a) In consideration of the rent payable under this lease, and of the Lessee's covenants, terms and agreements, express and implied, contained in this lease and the Project Agreement, the Lessor leases to the Lessee all the Land for the Lease Term.

(b) The Lease Expiry Date shall be the earlier of:

(i) the last day of the Lease Term; and

(ii) the Actual Termination Date.

(c) For the avoidance of doubt, to the extent permitted by law this lease may only be terminated by way of termination of the Project Agreement in accordance with the express terms of the Project Agreement.

3. Rent

(a) The Lessee shall pay the rent specified in the First Schedule in the manner described in the First Schedule.

(b) For the avoidance of doubt, if this lease is terminated prior to the last day of the Lease Term, the Lessor will have no obligation to apportion or repay any rent paid in advance other than through payment of the Compensation Sum calculated in accordance with the Project Agreement.

4. Use of the Land

The Lessee shall use the Land only for the purposes set out in the Project Agreement.

5. Quiet enjoyment

Provided the Lessee complies with all of its obligations under this lease, the Lessee shall be entitled to quietly hold and enjoy possession the Land throughout the term without any interruption by the Lessor, subject to the rights of use, access and inspection the Lessor has under the Project Agreement.

6. Property Law Act 2007

To the extent permitted by law, the covenants and conditions set out in section 218 and 219 of the Property Law Act 2007 are excluded from this lease.

7. Project Agreement

The Lessee will comply with its obligations under the Project Agreement as if all such provisions were set out in full in this Lease and will, without limitation, allow the Lessor such access to and rights over the Land as are reserved under the Project Agreement. The Lessee may not assign and/or transfer the whole or any part of its rights and obligations under this Lease other than in accordance with the Project Agreement. If the Project Agreement is cancelled or terminated then this Lease is immediately terminated and of no further effect. To the extent of any inconsistency between the Project Agreement and this Lease, the Project Agreement will prevail.

Executed as a Deed

[Execution blocks to be added]

Third Party Interface Protocols

1. Definitions

In addition to the definitions set out in clause 1 (Definitions) of the Base Agreement:

ICA means each interface and co-ordination agreement;

Other Provider means any third party engaged by the Crown to provide works and/or services (including any Services) on the Crown Site; and

Site Safe Passport means a building construction passport issued by Site Safe New Zealand following successful completion of Site Safe New Zealand's building construction passport course.

2. Scope

(a) These Third Party Interface Protocols apply only where the Crown engages a third party to provide works and/or services on the Crown Site or, where permitted to under the Base Agreement, engages a third party to provide any Services.

(b) The Contractor will be responsible for any agreements required to facilitate interface and access requirements with any third party other than a third party to which paragraph (a) above applies, including the provider of any Utility Services.

3. General obligations when any Other Provider accesses Crown Site

3.1 General obligations of Other Provider and Contractor

(a) Where the Crown engages any Other Provider, the Contractor and the Other Provider shall co-operate to enable each party to provide its contracted works and/or services (including in relation to the provision of reasonable access, assistance and information).

(b) Where the Contractor and the Other Provider each require access to a part of the Crown Site, the Contractor and the Other Provider shall act reasonably to discuss and coordinate its access and other requirements with the other. Neither shall prevent or materially hinder or disrupt the other in the implementation of the Project, or adversely affect or prejudice the other’s performance of its works and/or services.

(c) Where the Contractor or the Other Provider unreasonably prevents or delays access by the other, that person shall be liable for any damage, costs, losses, liabilities, delays or similar suffered by the other person as a result.

3.2 Dispute about access

If a dispute arises between the Contractor and the Other Provider regarding access, the Contractor will first seek to address this directly with the Other Provider.

3.3 Relief for other party’s actions

The Other Provider and the Contractor will each be responsible for their own actions and any damage or loss caused by their actions in respect of the Crown Site. This responsibility shall extend at all times to the actions of its own personnel and invitees (excluding for the avoidance of doubt, the Crown and all Crown Personnel) on the Crown Site.

4. Obligations where any Other Provider accesses Crown Site

(a) Where the Crown engages any Other Provider:

(i) the parties will enter into an ICA that establishes interface and co-ordination procedures and processes in accordance with paragraph 5;

(ii) where the Contractor and the Crown agree in relation to a particular Other Provider that that party's work or service areas shall be considered a separate site (a work site within the Crown Site), the parties will agree (acting reasonably) to the specific work site within the Crown Site that will be used by the Other Provider (a **Work Site**);

(iii) to the extent reasonably practicable without the Contractor being prevented, materially hindered or disrupted in the implementation of the Project, or adversely affected or prejudiced in the performance of the Services, the Contractor will not enter the Work Site during the period the Other Provider is operating in that Work Site;

(iv) the Contractor must comply with all reasonable directions issued to the Contractor by the Other Provider in relation to its Work Site; and

(v) the Other Provider must comply with all reasonable directions issued to the Other Provider by the Contractor,

with the requirements in this regard to be set out in the relevant ICA.

(b) Before any Other Provider first accesses its designated Work Site, it must:

(i) delineate and secure its Work Site to ensure entry is restricted. This includes preventing the unauthorised movement of workers, materials and equipment;

(ii) comply with the Contractor's requirements when crossing the remainder of the Crown Site (including the requirement to possess Site Safe Passports and any general safety induction required by the Contractor);

(iii) have its own health and safety plan and procedures in place on its Work Site; and

(iv) be responsible for health and safety within its Work Site.

(c) The Contractor will not have any responsibility for health and safety within the specific and separated Work Site being utilised by the Other Provider while the Other Provider has been granted access to the Work Site by the Crown, except that where the Contractor or any Contractor Personnel access the Work Site, such persons must comply with the reasonable instructions of the Other Provider at all times while on that Work Site.

(d) While accessing the Crown Site, the Other Provider must strictly comply with the following requirements (and must ensure that its employees, agents, subcontractors and visitors comply with the following):

(i) observe and comply with all relevant Consent Conditions;

(ii) observe and comply with any third party rights (including public rights) that may exist from time to time in respect of land comprising and adjoining the Crown Site;

(iii) ensure that the works and/or services being provided are carried out in such a way as not to unnecessarily or unreasonably interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation, other than where such interference is permitted under any applicable regional plan or Consent;

(iv) not use or occupy the Crown Site for any purpose other than that for which it has been engaged by the Crown;

(v) not (without obtaining the Contractor's prior written consent and only to the extent reasonably required for the works and/or services):

(A) cause any damage to the Crown Site or any Utilities Infrastructure or any appurtenances, services, fittings, Fixtures or other items on the Crown Site;

(B) cause any disruption to any Utility Services that has not been agreed with the supplier of those Utility Services and the owner of any equipment or structures used in the delivery of those Utility Services; or

(C) dispose of any earth, clay, sand, gravel, chalk or other material from the Crown Site or allow the same to be removed;

(vi) at the Other Provider's cost, transport all surplus materials arising from the works and/or services and arrange for the recycling or tipping of the same at such places as may lawfully be used for recycling or tipping (as the case may be);

(vii) not use the Crown Site so that:

(A) any Industrial Waste or Hazardous Substances are abandoned or dumped on the Crown Site and/or any Adjoining Properties;

(B) any Industrial Waste or Hazardous Substances are handled in a manner that is likely to cause damage to the Environment; or

(C) except to the extent agreed by the Contractor in writing, any other substance is released, deposited or emanates from the Crown Site that results in Contamination affecting the Crown Site and/or any Adjoining Properties;

(viii) ensure that all of its vehicles leaving the Crown Site are adequately cleaned to prevent the deposit of waste materials and debris on any Adjoining Properties and if any such material or debris is so deposited, the Other Provider shall employ such measures as shall be necessary to remove the material and debris and to clean and reinstate the Adjoining Properties to the reasonable satisfaction of the owners or occupiers of the Adjoining Properties;

(ix) not allow the blockage of any rivers, ditches or Utilities Infrastructure by reason of anything done or omitted on the Crown Site by the Other Provider (or its employees, agents, subcontractors or visitors);

(x) comply, at the Other Provider's expense, with any legal, regulatory, or planning requirements so far as such requirements relate to, or affect the works and/or services being undertaken;

(xi) procure that those parts of the Crown Site that are from time to time occupied by the Other Provider and its employees, agents, subcontractors and visitors for the purpose of carrying out the works and/or services are, so far as practicable having regard to the nature of the works and/or services, maintained in a clean, orderly, safe and secure state;

(xii) on completion of the works and/or services being undertaken by the Other Provider, clear from the Crown Site, to the reasonable satisfaction of the Contractor, all temporary structures, rubbish and all building and surplus material and equipment of the Other Provider or any of its employees, agents, subcontractors or visitors and in default of that, the Contractor shall be entitled to employ an alternative contractor to clear them and shall be entitled to be reimbursed by the Other Provider for any costs reasonably incurred in clearing or procuring the clearing of them;

(xiii) not, without the written consent of the Contractor (not to be unreasonably withheld or delayed), erect any signage, advertising or temporary structure; and

(xiv) take all practicable steps in accordance with any Laws for ensuring that the health and safety of all:

(A) occupants of the Crown Site;

(B) individuals invited on to the Crown Site; and

(C) occupants of any Adjoining Properties,

is not adversely impacted upon by the works and/or services it is undertaking.

5. Interface and co-ordination between Contractor and any Other Provider

Prior to any Other Provider accessing the Crown Site, the Contractor and the Other Provider must establish procedures and processes under an ICA to be entered into pursuant to clause 14.4 (Co-ordination with other contractors) of the Base Agreement to provide for:

(a) any consents that may be required when urgent access to the Crown Site or the Work Site of the Other Provider is required;

(b) hours of work, including when noisy work can be carried out;

(c) agreed access points for Other Provider workers;

(d) the handling of material through public areas;

(e) accessing areas outside the designated Work Site;

(f) the key points of contact for day to day coordination;

(g) risk management strategies when accessing the Crown Site and the Work Site of any Other Provider; and

(h) all other requirements set out in these Third Party Interface Protocols.

Schedule 4: Financing

Part 1 – Financial Close Adjustment Protocol

1. Financial Close Adjustment Protocol

The parties must comply with the terms of the Financial Close Adjustment Protocol:

(a) for the setting of swaps at Financial Close; and

(b) to determine specific changes to be made to the Base Case to address any changes in [*specify description of rates to match FCAP*] from those included in the Proposal.

Part 2 – Swap Pricing Protocol

2. Swap Pricing Protocol

The parties must comply with the terms of the Swap Pricing Protocol for the setting of swaps after Financial Close.

Part 3 – Financing Agreements

3. Senior Financing Agreements

The Senior Financing Agreements are:

(a) [*to be confirmed*].

4. Subordinated Financing Agreements

The Subordinated Financing Agreements are:

(a) [*to be confirmed*].

Annexure 1: Form of Financial Close Adjustment Protocol

[Examples available on request from the Infrastructure Commission]

Annexure 2: Swap Pricing Protocol for after Financial Close

Introduction

A. The Contractor and the Crown have entered into the Project Agreement which sets out, inter alia:

(i) the Contractor's obligation to:

(A) design and construct the Works and the Facility for the Crown;

(B) provide the Operational Services; and

(C) procure finance sufficient to enable the provision of the above; and

(ii) the Crown's obligation to make payments to the Contractor in consideration of the Contractor undertaking the Project.

B. The Crown and the Contractor have agreed to set out in this Swap Pricing Protocol the procedures and principles that will apply to the setting of any swaps after Financial Close.

It is agreed

Part 1 – Definitions and Interpretation

1. Definitions

In this Swap Pricing Protocol, unless the context otherwise requires, capitalised terms shall have the same meaning as given to them in the Project Agreement. In addition, the following terms have the following meanings:

Base Swap Rate means the rate determined pursuant to paragraph 6 (The Base Swap Rate);

Dealers' Swap Margins has the meaning given in paragraph 8 (The Dealers' Swap Margins (DSM));

Project Agreement means the project agreement between the Crown and the Contractor to which this Swap Pricing Protocol forms an annexure;

Senior Debt has the meaning given to it in the Senior Financing Agreements;

Structural Adjustments means the structural adjustments set out in paragraph 7 (The Structural Adjustments (if applicable)); and

Swap Pricing Protocol means the swap pricing protocol set out in Part 2 (Swap Pricing Protocol).

Terms set out in this Swap Pricing Protocol shall have the same interpretations as set out in clause 2 (Interpretation of Agreement) of the Project Agreement, with all necessary variations for context.

Part 2 – Swap Pricing Protocol

2. Amendments to Swap Pricing Protocol to reflect Market Practice

(a) This Swap Pricing Protocol has been prepared before the Execution Date and includes references, extrapolation, adjustments, and other items that were determined based on market practice and conditions at that time.

(b) Following Financial Close, and from time to time, the relevant Hedge Counterparties and the Contractor will determine the contents of this Swap Pricing Protocol so as to reflect their understanding of market practice, conventions and conditions prevailing from time to time. Such changes to the Swap Pricing Protocol will be subject to the prior written consent of the Contractor and the Crown (which may not, in each case, be unreasonably withheld).

(c) Changes to this Swap Pricing Protocol may include (but not be limited to) changes in the reference rates and sources, extrapolation of reference rates, definitional differences and application of Structural Adjustments (including variability in the terms of their applicability), together with funding differences between non collateralised (Borrower) and collateralised (inter-bank market reference) counterparties.

3. Swap Schedule

Where the Contractor enters into a Permitted Hedging transaction, the interest rate hedging will be undertaken with the Hedge Counterparties by the execution of various hedging agreements.

Set out below are the commercial terms and conditions upon which each Hedge Counterparty will enter those hedging agreements with the Contractor.

Notional Amount:	To comply with Project Agreement requirements.
Effective Date:	Date of the Permitted Hedging transaction.
Maturity Date:	As selected by the Contractor in accordance with clause 52.5 (Permitted Hedging Conditions) of the Project Agreement.
Fixed Rate Payer:	Contractor.
Fixed Rate Payer Payment Dates:	As per the then-applicable Senior Financing Agreements.
Fixed Rate:	As defined in paragraph 5 of this Swap Pricing Protocol.
Fixed Rate Payment:	Fixed Rate as applied to the relevant notional amount for the relevant period.
Fixed Rate Day Count Fraction:	ACT/365 Fixed.
Floating Rate Payer:	Hedge Counterparty.

Floating Rate Payer Payment Dates:	Same as Fixed Rate Payer Payment Dates.
Floating Rate Option:	New Zealand Bank Bill Rate (Bid rate) as displayed at or about 10:45am on the beginning of each calculation period based on Reuters page “BKBM”.
Floating Rate Payment	Floating Rate as applied to the relevant notional amount for the relevant period.
Designated Maturity:	As selected by the Contractor in accordance with clause 52.5 (Permitted Hedging Conditions) of the Project Agreement.
Spread:	None.
Floating Rate Day Fraction Count:	ACT/365 Fixed.
Business Days:	Auckland and Wellington.
Business Days Convention:	Following.
Ranking	Ranking pari passu with Senior Debt at all times both pre and post enforcement, with Hedge Counterparties to share rateably with other senior creditors in allocations of proceeds.
Security, Voting, Amendments, Set-off, Pro-rata Cancellation of Swaps	As set out in the Security Trust and Intercreditor Deed as in force from time to time between the Contractor, the Hedge Counterparties, senior creditors and others.
Calculation Agent:	Hedge Counterparty.

4. Details to be agreed

Where it is indicated in this Swap Pricing Protocol that certain details are to be agreed in accordance with paragraph 4 of this Swap Pricing Protocol, the Crown and the Contractor agree that such details will be agreed at the time of the relevant Refinancing with both parties acting reasonably (taking into account reasonable market practice at the time of the relevant transaction) and in accordance with the permitted hedging parameters set out in clause 52 of the Project Agreement.

For the avoidance of doubt, agreement of the applicable Dealers’ Swap Margins will be a matter exclusively between the Contractor and the Hedge Counterparties and this paragraph 4 shall not apply in respect of Dealers’ Swap Margins.

5. Pricing Mechanism

This Swap Pricing Protocol is designed to facilitate the transparent pricing of the swap rate to apply to the required interest rate swap transaction(s) (the **Swap Rate**). The final Swap Rate payable by the Contractor will be equal to the sum of its component parts, which are:

(a) the Base Swap Rate;

(b) the Structural Adjustments; and

(c) the Dealers' Swap Margins.

6. The Base Swap Rate

The Hedge Counterparties will determine the Base Swap Rate by using the following independently derived inputs:

(a) The yield curve will be constructed on the following basis:

(i) The following market sources will be referenced for construction of the yield curve out to 1 year: Overnight cash (Reuters page NZCASH=RBNZ); Bank Bills (Reuters page FISBBILL); and the average of the bid and offer price of a number of bank bill futures contracts (where the Hedge Counterparties make a commercially reasonable determination of the number required), based on prevailing market conditions and liquidity of the first bank bill futures contracts (Reuters code NBB);

(ii) The swap reference rates will be the most recently published swap receive (offer) rates as published on Reuters page FISSWAP. This page is an interbank broker reference page, and illustrates current indicative market swap rates for tenors up to and including 20 years. Notwithstanding these reference rates, the Hedge Counterparties can use the mid of swap reference rates for individual tenors up to and around the Effective Date of the relevant hedge(s).

(b) The determination of swap reference rates for longer tenors will be based on the average of:

(i) the spread between the 10 year and 15 year swap offer rates from the FISSWAP swap yield curve; and

(ii) the spread between the 15 year and 20 year swap offer rates from the FISSWAP swap yield curve,

(the **Average Spread**).

(c) The Hedge Counterparties may need to apply an adjustment (taking into account reasonable market practice at the time of the relevant transaction and/or where required to do so for regulatory purposes) to account for the difference in basis between the contemplated hedge(s) and the basis on which the swap reference rates are quoted given that they are collateralised whereas the contemplated hedge(s) with the Borrower are not collateralised.

(d) In circumstances where the Hedge Counterparties reasonably determine that, in light of the particular debt instrument (or type of debt instrument) in connection with which swaps are being set, Reuters page FISSWAP is an inappropriate basis for determining the Base Swap Rate, the Hedge Counterparties will determine the Base Swap Rate by using standard market conventions (as they apply to that debt instrument (or type of debt instrument)) on a basis acceptable to the Contractor and the Crown (each acting reasonably).

7. The Structural Adjustments (if applicable)

Structural Adjustments refer to charges that will need to be added to the Base Swap Rate to compensate the Hedge Counterparties for any swap structures that do not conform to interbank market conventions. The following Structural Adjustments will apply to the transactions covered by this Swap Pricing Protocol.

(a) BKBM Bid versus BKBM FRA Floating Rate Indicator

The market standard Floating Rate Indicator for interest rate swaps is BKBM FRA. In some situations the loan under the Senior Financing Agreements is based off BKBM Bid, currently being 5 points higher than BKBM FRA (a definitional difference). If the Contractor requires the interest rate hedge to be transacted with the floating rate indicator being BKBM Bid, the Hedge Counterparties will make an adjustment for this. This adjustment will be reflected in the fixed rate on the interest rate swap.

(b) Rate Set Illiquidity (Month End and Mid Month rate sets)

Reflecting the illiquidity or oversupply of securities in the bank bill market at various times of the month, a margin will be applied to compensate the Hedge Counterparties for any costs associated with this oversupply effect. Currently the affected dates for this illiquidity or oversupply effect are the 15th day of each month and the last three Business Days of a month (adjusted accordingly for the Business Day Convention). Where floating rate reset dates occur on affected dates, the margin will be based on prevailing market conditions as determined by the Hedge Counterparties (acting reasonably).

(c) Additional adjustments under paragraph 13(e).

8. The Dealers' Swap Margins (DSM)

The Dealers' Swap Margins are calculated to cover the risks to which the Hedge Counterparties will be exposed plus a number of other determinable factors, which will affect the final margin over the aggregate of the Base Swap Rate and the Structural Adjustments.

The Dealers' Swap Margins are as set out below. Once the Dealers' Swap Margins are agreed between the Contractor and the Hedge Counterparties, the Contractor will as soon as practicable notify them to the Crown.

(a) Liquidity & Execution Risk Margin

This margin is required to cover the risk of price movement inherent in hedging the required volume of swaps. The Liquidity & Execution Risk Margin will be included in the total Dealers' Swap Margins.

(b) Credit Margin

A Credit Margin will be levied to cover the credit and capital costs of the swaps. The Credit Margin will be included in the total Dealers' Swap Margins.

9. Preparation and dry runs

If requested by the Crown, the Contractor will arrange for its representatives, and the representatives of any other parties to the Project Documents who will be involved in implementing the steps set out in this Swap Pricing Protocol, to meet the Crown's representatives to carry out the steps set out in this Swap Pricing Protocol at such times, and on such number of occasions, as may be reasonably requested by the Crown to facilitate the effective and efficient implementation of these steps at the time of any Permitted Hedging.

10. Crown observation and information

The Contractor must procure that the Crown is permitted to observe the execution of any Permitted Hedging, and is provided with such information as it may reasonably require, concerning the Contractor and other relevant parties undertaking and complying with this Swap Pricing Protocol.

11. Setting of fixed interest rates

The Crown and the Contractor, each acting reasonably, are to notify the other if and when it is satisfied that this Swap Pricing Protocol has been complied with and that the Swap Rate is able to be duly set in accordance with paragraph 5 above.

12. Inability to set fixed interest rates

Where, in connection with a Permitted Hedging, the fixed interest rates cannot be set in accordance with this Swap Pricing Protocol:

(a) the Crown will (from and including the first date on which the fixed interest rates cannot be set) meet the Contractor's floating or variable base interest rate liability (excluding margin) under the Senior Financing Agreements in accordance with Schedule 12 (Payment Mechanism) of the Project Agreement until but excluding the day on which such fixed interest rates are set in accordance with this Swap Pricing Protocol; and

(b) the parties will use all reasonable endeavours to set the relevant fixed interest rates in accordance with this Swap Pricing Protocol (including by undertaking a reasonable number of attempts to set the fixed interest rates within ten business days following the initial inability to set rates).

13. Other Terms and Conditions

(a) The Hedge Counterparties have the right to vary the specification of the Base Swap Rate where the Hedge Counterparties believe that the alternative specification provides a superior specification of market rates and the Contractor consents to the alternative specification (acting reasonably). On request, the Hedge Counterparties will provide supporting evidence of any superior specification.

(b) If the Base Swap Rate published on Reuters page FISSWAP is unavailable on the relevant date, the Hedge Counterparties and the Contractor will agree (acting reasonably) an alternative market standard independently published page to determine the Base Swap Rate.

(c) Subject to paragraphs 13(d) and (e) below, the Hedge Counterparties must consider the market to be liquid and free of market disruption at the time the Contractor requests to enter into the interest rate swaps. Illiquidity and market disruption, as determined solely by the Hedge Counterparties (acting reasonably), may be caused by factors including, but not limited to, dealing towards the end of day, at or after close of day and dealing at the time of release of market significant information. All references to time are to New Zealand Standard Time/Daylight Saving Time.

(d) If the Contractor intends to give instructions to the Hedge Counterparties to effect any part of the hedge(s) in an illiquid market or during a period of market disruption, the Hedge Counterparties are to be given a notice of intention (**Notice of Intention to Deal**) to deal as soon as possible.

(e) If a Notice of Intention to Deal is received during illiquid or market disruption periods, an additional adjustment will be made by the Hedge Counterparties to cover the inclusion of illiquidity or market disruption, based on prevailing market conditions. The Hedge Counterparties will notify the Contractor of the existence of such illiquidity or market disruption and indicate to the Contractor the quantum of the adjustment. The Hedge Counterparties reserve the right not to enter into interest rate swaps after market hours or during illiquid or market disruption periods. For the avoidance of doubt, the Contractor reserves the right not to deal during illiquid or market disruption periods, notwithstanding that it has provided the Hedge Counterparties with a Notice of Intention to Deal.

(f) In all cases, pricing will be confirmed on recorded lines at the time of dealing.

(g) The Contractor will endeavour to provide the Hedge Counterparties with reasonable notice (but not less than 24 hours) prior to implementing any part of the hedge(s). The Hedge Counterparties are to be kept fully informed, on a timely basis, with respect to developments relating to the dealing intentions of the Contractor.

(h) The Hedge Counterparties undertake that they will not enter into the interest rate market with the purpose of operating against the interests of the Contractor or any New Zealand government entity and that the interest rate swaps will be entered into in accordance with the relevant laws and, where applicable, internal compliance procedures. For the avoidance of doubt, this does not prevent trading in the ordinary course of business by the Hedge Counterparties.

(i) The Contractor, in its capacity as market participant and/or proprietary trader, and with the benefit of privileged information, undertakes that it will not enter into the interest rate market to operate against the interests of the Hedge Counterparties until the hedges have been completed. To this end, the Hedge Counterparties will advise when the hedges have been completed. For the avoidance of doubt, this does not prevent trading in the ordinary course of business by the advisors to the Contractor provided those activities are undertaken and directed by persons who do not have, and do not have access to, any information in relation to the transactions contemplated by this Swap Pricing Protocol which is not generally known in the relevant financial markets.

(j) The Contractor and the advisors to the Contractor will undertake not to release any information (including to any employee of the Contractor or the advisors to the Contractor not involved in the transaction) that could be used to operate against the interests of the Hedge Counterparties until the hedges have been completed.

(k) Execution of interest rate swaps will only be facilitated on request by an authorised dealing representative of the Contractor and subject to the satisfactory completion of appropriate ISDA interest rate swap documentation.

Annexure 3: Form of Quarterly Finance Summary

(Clause 55.2(a) (Financial Information))

TO: [Department/Ministry/Agency] (the **Crown**)

We refer to the project agreement relating to the [ ] Project between the Crown and [ ] (the **Contractor**) dated [ ] (**Project Agreement**). Terms defined in the Project Agreement have the same meaning when used in this document.

This document is provided to the Crown pursuant to clause 55.2(a) of the Project Agreement in relation to the three month period ending on [ ] (**Quarter**).

Exempt Refinancings

1. [Detail any changes to taxation or accounting treatment comprising an Exempt Refinancing during the Quarter, or confirm nil return.]

2. Provide reasonable particulars of each of the following that occurred during the Quarter:

   (a) The exercise of rights, the giving of waivers and consents, and similar actions, in each case by the Agent and/or the Security Trustee under the Senior Financing Agreements and of which written notice has been given by the Agent or the Security Trustee to the Contractor, that are in respect of:

      (i) a breach of representations and warranties or undertakings (including those relating to the provision of information, consents or licences), or a default or review event triggered by a breach of representations, warranties or undertakings (or to prevent, remedy or mitigate the effects of any such thing);

      (ii) any change to any cash sweep or lock-up provisions;

      (iii) approval of revised technical, financial and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Financing Agreements);

      (iv) restrictions imposed by the Senior Lenders on the dates on which the Senior Debt can be advanced to the Contractor under the Senior Financing Agreements which are imposed as a result of any failure by the Contractor to ensure that the construction work is performed in accordance with the agreed construction programme; or

      (v) changes to milestones for drawdown set out in the Senior Financing Agreements and which are imposed as a result of any failure by the Contractor to ensure that construction work is performed in accordance with the agreed programme and budget;

   (b) any sale of shares in HoldCo or securitisation of the existing rights and/or interests attaching to shares in HoldCo;

   (c) any sale, transfer or securitisation of a Subordinated Lender's existing rights and/or interests under the Subordinated Financing Agreements; and

   (d) any Qualifying Bank Transaction.

Without prejudice to the Crown's rights to request information under clause 55.2(b) or otherwise under the Project Agreement, the Contractor is not obliged to report, in any Quarterly Finance Summary, on Exempt Refinancings to the extent not referred to above.

Where the Contractor or any other person has separately provided the Crown with information required under this Quarterly Finance Summary, a cross-reference to any such information will be sufficient.

[Execution block to be added]

Schedule 5: Property

Schedule 5 (Property) should address the following:

- Description of the Crown Site (annexing plans where appropriate).

- Disclosed Title Matters – the Contractor is responsible for complying with any Disclosed Title Matters specified in this Schedule.

- Project-specific issues – the schedule will be significantly more complex for multi site or large site projects (e.g. roads). Project specific issues to address may include:

    - A deferred acquisition structure, where not all land is to be owned by the Crown on Financial Close;

    - Requirements for the Contractor to comply with third party property acquisition agreements (where applicable);

    - Return of surplus land (where the construction site is larger than that required over the operating phase);

    - Details of known areas of contamination (with the Contractor responsible for pricing the work required to address these, and no relief under the Project Agreement in relation to such disclosed areas); and

    - Any specific access requirements.

- Site access protocols (construction phase and operating phase). Model construction phase protocols are attached. The operating phase protocols will be project–specific and their content will depend on the nature of the project.

Appendix: Site Access Protocols – Prior to Works Completion

[See separate document]

Schedule 6: Resource Management Act Requirements

Schedule 6 (Resource Management Act Requirements) should address the following:

- Details of the RMA Designation(s) applicable to the project;
- Status of Outline Plan and Contractor Consents as at the Execution Date (ideally the Outline Plan will have completed the Council process by the Execution Date, but this may not always be the case);
- Division of the conditions of the RMA Designation as follows:
    - Conditions that the Contractor has the primary obligation to comply, or procure compliance, with;
    - Conditions that the Crown has the primary obligation to comply, or procure compliance, with; and
    - Conditions that have shared responsibility (and the details of how that shared responsibility is required to operate); and
- Any specific monitoring requirements that are not addressed in the Project Agreement or other schedules.

Schedule 7: Governance and Service Management

Part 1 – Groups

1. Composition

1.1 Project Governance Group

Unless otherwise agreed by the parties, the Project Governance Group shall comprise:

(a) representatives of the Contractor, including:

(i) the chairman of the Contractor's board of directors;

(ii) representatives of each of the holders of equity in HoldCo; and

(iii) other members of either HoldCo's board of directors or the Contractor's board of directors, in each case with relevant knowledge and oversight applicable to the then-current phase of the Project; and

(b) representatives of the Crown, who shall be members of the Crown's senior management, in each case with relevant knowledge and oversight applicable to the then-current phase of the Project.

1.2 Relationship Management Group

Unless otherwise agreed by the parties, the Relationship Management Group shall comprise six members, being:

(a) the Contractor's Representative and two other representatives appointed by the Contractor; and

(b) the Crown's Representative and two other representatives appointed by the Crown.

1.3 Notification of membership

(a) On or prior to Financial Close, each party must give the other party written notice of the representatives (and any alternates to those representatives) it appoints to the Project Governance Group. Subject to paragraph 1.1, each party may replace a representative or alternate appointed by it by written notice to the other party.

(b) Subject to paragraphs 6.4 (Notification of appointment) and 7.4 (Notification of appointment), on or prior to Financial Close, each party must give the other party written notice of the representatives (and any alternates to those representatives) it appoints to the Relationship Management Group. Subject to paragraphs 1.2, 6.4 (Notification of appointment) and 7.4 (Notification of appointment), each party may replace a representative or alternate appointed by it by written notice to the other party.

1.4 Authority of members

Each party must ensure the members of a Group appointed by it:

(a) are authorised to represent the respective party in respect of any of the purposes, duties or functions of the Group; and

(b) attend all meetings as required, subject to the terms of paragraphs 3.2 (Method of attendance) and 3.3 (Quorum).

1.5 Sub-groups

A Group may form a sub-group for any purpose. The sub-group will be governed by the same terms as the parent Group unless the sub-group is expressly formed on restricted terms (in which case such restricted terms shall apply to that sub-group).

2. Purposes

2.1 Project Governance Group

The Project Governance Group shall be responsible for the overall governance of the Project from the Execution Date until the Expiry Date or the Actual Termination Date (whichever occurs first), such responsibility to include:

(a) reviewing and setting the overall strategy for the Project;

(b) managing the strategic relationships required within the Project;

(c) informing members of developing and planned strategic matters relating to the transport sector, including those matters impacting, or reasonably capable of impacting, on the Project and the delivery of the Services;

(d) reviewing and discussing ideas for innovation;

(e) reviewing and discussing key stakeholder relationships;

(f) discussing issues of public concern;

(g) acting as a strategic risk management forum; and

(h) acting as a forum to discuss any other issues arising in relation to the Works Provisioning or the Operational Services, including any issues that may be escalated from the Relationship Management Group.

2.2 Relationship Management Group

The Relationship Management Group shall be responsible for overseeing the implementation and performance of the Project Documents from the Execution Date until the Expiry Date or the Actual Termination Date (whichever occurs first), such responsibility to include:

(a) monitoring the progress and delivery of the Works Provisioning and the Operational Services, with reference to all applicable Project Documents and Operative Documents;

(b) reviewing reports prepared by the Contractor, any Major Sub-contractor, the Independent Reviewer or any other person in relation to the Works Provisioning and the Operational Services;

(c) discussing any issues arising from any manuals, plans, programmes, reports or documents provided by or on behalf of the Contractor or the Independent Reviewer;

(d) discussing issues of public concern;

(e) discussing quality assurance;

(f) reporting on and discussing health and safety and environmental issues;

(g) raising for discussion any potential Changes, where practicable, prior to the issue of any Change Notice in accordance with Part 12 (Changes) of the Base Agreement;

(h) monitoring and overseeing the implementation and negotiation of any proposed Change;

(i) acting as a forum to discuss any other issues arising in relation to the Works Provisioning or the Operational Services; and

(j) working together to implement any strategy or innovation agreed by the Project Governance Group.

3. Meetings

3.1 Frequency

(a) The Project Governance Group shall meet:

  (i) quarterly or as otherwise agreed by the Project Governance Group; and

  (ii) at such other times as the parties may reasonably require.

(b) The Relationship Management Group shall meet:

  (i) monthly or as otherwise agreed by the Relationship Management Group; and

  (ii) at such other times as the parties may reasonably require.

(c) The Contractor shall:

  (i) within one month after the Execution Date, propose for approval by the Crown (acting reasonably) a schedule of Project Governance Group and Relationship Management Group meetings for the period up until the Planned Service Commencement Date (which shall be updated as necessary to reflect the likely Service Commencement Date); and

  (ii) within one month before the Planned Service Commencement Date and thereafter within one month before each anniversary of the Service Commencement Date, propose for approval by the Crown (acting reasonably), a schedule of Project Governance Group and Relationship Management Group meetings for the following 12 month period.

(d) Each party shall use its reasonable endeavours to adhere to the schedules of meetings approved by the Crown under paragraph 3.1(c).

3.2 Method of attendance

Subject to paragraph 3.3, a meeting of a Group may be held:

(a) by assembly at the place, date, and time appointed for the meeting under paragraph 3.1; and

(b) where requested by a member not less than five Business Days in advance, by means of audio, or audio and visual, communication by which all members participating can simultaneously hear and speak to each other throughout the meeting.

3.3 Quorum

(a) For a meeting of a Group to proceed there must be in attendance (whether in person or not) at all times during the meeting at least four members, including at least two representatives of the Crown and at least two representatives of the Contractor (a **Quorum**).

(b) If a Quorum is not present within 15 minutes after the time appointed for the meeting, the meeting is adjourned for two Business Days at the same time and place or to such other date, time and place as the members present at the meeting may appoint.

(c) A member may be represented by an alternate (either in person, by telephone, video conference or similar telecommunication device).

3.4 Chair

The chair of a Group shall be:

(a) with respect to the Project Governance Group, one of the Crown's representatives (or his or her alternate); and

(b) with respect to the Relationship Management Group, the Crown's Representative (or his or her alternate).

3.5 Attendees

During Works Provisioning:

(a) either party may have other sub-contractors, advisors and consultants present at any Relationship Management Group meeting from time to time as required, subject to giving the other party not less than two Business Days' prior notice of such attendance; and

(b) the Independent Reviewer shall be required to attend all meetings of the Relationship Management Group where his or her monthly report (verbal or written) will be considered, unless otherwise agreed by the Crown's Representative and the Contractor's Representative in advance of the meeting.

3.6 Procedures and protocols

Subject to this paragraph 3, meetings of a Group will be conducted according to such other procedures and protocols as the members of that Group agree from time to time.

4. Agenda and minutes

4.1 Agenda

(a) At least five Business Days prior to the scheduled date of each meeting, the Contractor shall prepare and provide to the members of the relevant Group a draft agenda for the meeting, along with supporting reports and information.

(b) The Crown shall advise the Contractor within two Business Days whether it wishes to make additions to the agenda and whether it requires the Contractor to provide additional information prior to the meeting.

(c) The final agenda shall be circulated by the Contractor at least one Business Day prior to the meeting, together with any additional material requested by the Crown.

(d) The agenda may be amended at the meeting by agreement of at least three members of the relevant Group present at the meeting.

4.2 Minutes

Within five Business Days of the conclusion of each meeting of the relevant Group, the Contractor shall prepare and circulate detailed minutes of the meeting to each member of the relevant Group. The minutes must include:

(a) a list of attendees;

(b) details of the matters discussed at the meeting; and

(c) the actions arising from the meeting as agreed by the relevant Group at that meeting.

4.3 Provision of additional information

The Crown may require, from time to time, the Contractor to provide additional information on matters discussed at any Group meeting and the Contractor must provide such information in a timely manner.

5. Conduct and decisions

5.1 Relationship principles

Each party acknowledges and agrees that the parties will behave and work together, in relation to all aspects of this Agreement and the delivery of the Services, in a manner that is consistent with the following principles:

(a) **Teamwork**: the Crown and the Contractor will operate as a team, tasked with delivering the Crown's outcomes and objectives. Communication will be open and honest. Each party will respond quickly and proactively to issues raised by the other, and both opportunities and solutions to problems will be shared.

(b) **Transparency**: transparency is a fundamental requirement in relation to all operational information and matters relating to the Project.

5.2 Completion of agreed actions

Without prejudice to the right of the Crown to issue directions and Change Notices in accordance with the Base Agreement, each party must seek to complete any actions assigned to it, which are agreed at the relevant Group meeting, within a timely manner.

5.3 Effect of decisions

The parties recognise that decisions of a Group shall not be binding nor confer rights or obligations on either the Crown or the Contractor under, or otherwise affect, any of the Project Documents, unless any such decision of a Group is given as an express direction pursuant to this paragraph 5.3 by the Crown's Representative in writing within five Business Days of the meeting, or a Confirmed Change results after the matter is progressed in accordance with Part 12 (Changes) of the Base Agreement.

5.4 Effect of exercise of rights by Crown

The Crown exercising, or omitting to exercise, any of its rights and obligations with respect to a Group will not:

(a) constitute an Event;

(b) lessen or otherwise affect the Contractor's obligations and the Crown's rights, whether under the Project Documents or at Law;

(c) entitle the Contractor to make any Claim against the Crown; or

(d) be construed as a Change,

except that in the event of any direction given, or Change initiated, by the Crown following any meeting of a Group, the relevant provisions of the Project Documents shall, notwithstanding the foregoing, apply.

Part 2 – Parties' Representatives

6. Crown's Representative

6.1 General

The Crown's Representative will:

(a) exercise the rights, powers and authority and perform the roles delegated to the Crown's Representative by the Crown as may be notified to the Contractor from time to time;

(b) exercise such other power or authority of the Crown under any Project Document, delegated in writing by the Crown to the Crown's Representative and notified to the Contractor (including any conditions applying to the delegated power);

(c) bind the Crown under the Project Documents, only to the extent of compliance with the conditions of any lawfully delegated power to do so; and

(d) exercise all powers, duties, discretions and authorities on behalf of the Crown (and not as an independent certifier, assessor or valuer).

6.2 Notices

Any notice that is required to be given to the Crown under any Project Document can, unless otherwise specified, be given to the Crown's Representative. Any notice given to, or any information within the possession of, the Crown's Representative is deemed to have been given to, or to be within the possession of, the Crown.

6.3 Reliance on instruction

(a) Except where notified in writing by the Crown before such act, instruction, notice or direction, the Contractor and the Contractor's Representative shall be entitled to treat any act, instruction, notice or direction of the Crown's Representative as being expressly authorised by the Crown, and the Contractor and the Contractor's Representative shall not be required to determine whether authority has in fact been given.

(b) The Contractor shall be entitled to rely on written instructions given by:

(i) the Crown's Representative or authorised delegate acting within his or her delegation;

(ii) the Chief Executive of the [Department/Ministry/Agency]; or

(iii) a person to whom the Chief Executive of the [Department/Ministry/Agency] has delegated appropriate authority, evidence of which has been provided to the Contractor.

(c) The Contractor shall not be entitled to rely on or claim, and the Crown shall not be responsible for, any relief, additional time, or Losses should the Contractor fail to act on any notice, communication or other purported instruction given by a person alleging to act for or on behalf of the Crown unless such instruction is given in accordance with paragraph 6.3(b).

(d) The Contractor shall not be required to act on any notice, communication or other purported instruction given by a person alleging to act for or on behalf of the Crown unless such instruction is given in accordance with paragraph 6.3(b).

6.4 Notification of appointment

(a) The Crown must provide written notice to the Contractor of the name and contact details of, and the extent of the delegation exercisable by, the Crown's Representative on or before Financial Close.

(b) The Crown may appoint a replacement or additional Crown's Representative at any time by written notice to the Contractor, which notice shall contain the information required by paragraph 6.4(a).

6.5 Delegation of function

For the avoidance of doubt, the Crown's Representative may, from time to time and on written notice to the Contractor's Representative, delegate all or part of his or her functions and powers to a suitably qualified and experienced alternate and may at any time revoke such delegation or limit or qualify its extent (in each case) on written notice to the Contractor's Representative.

7. Contractor's Representative

7.1 Generally

The Contractor's Representative will:

(a) exercise the rights, powers and authority and perform the roles delegated to the Contractor's Representative by the Contractor as may be notified to the Crown from time to time;

(b) exercise such other power or authority of the Contractor under any Project Document, delegated in writing by the Contractor to the Contractor's Representative and notified to the Crown (including any conditions applying to the delegated power);

(c) bind the Contractor under the Project Documents, only to the extent of compliance with the conditions of any lawfully delegated power to do so; and

(d) exercise all powers, duties, discretions and authorities on behalf of the Contractor (and not as an independent certifier, assessor or valuer).

7.2 Notices

Any notice that is required to be given to the Contractor under any Project Document can, unless otherwise specified, be given to the Contractor's Representative. Any notice given to, or any information within the possession of, the Contractor's Representative is deemed to have been given to, or to be within the possession of, the Contractor.

7.3 Reliance on instruction

(a) Except where notified in writing by the Contractor before such act, instruction, notice or direction, the Crown and the Crown's Representative shall be entitled to treat any act, instruction, notice or direction of the Contractor's Representative as being expressly authorised by the Contractor, and the Crown and the Crown's Representative shall not be required to determine whether authority has in fact been given.

(b) The Crown shall not be entitled to rely on or claim, and the Contractor shall not be responsible for, any relief, additional time or Losses should the Crown fail to act on any notice, communication or other instruction given by a person alleging to act for and on behalf of the Contractor unless that person is the Contractor's Representative or authorised delegate acting within his or her delegation.

(c) The Crown shall not be required to act on or acknowledge any notice, communication or other purported instruction given by a person alleging to act for or on behalf of the Contractor unless such instruction is given by the Contractor's Representative or authorised delegate acting within his or her delegation.

7.4 Notification of appointment

(a) The Contractor must provide written notice to the Crown of the name and contact details of, and the extent of the delegation exercisable by, the Contractor's Representative on or before Financial Close.

(b) Subject to clause 15.2 (Service management) of the Base Agreement, the Contractor may appoint a replacement Contractor's Representative at any time by written notice to the Crown, which notice shall contain the information required by paragraph 7.4(a).

7.5 Delegation

For the avoidance of doubt, but subject to clause 15.2 (Service management) of the Base Agreement, the Contractor's Representative may, from time to time and on written notice to the Crown's Representative, delegate his or her functions and powers to a suitably qualified and experienced alternate appointed when the Contractor's Representative is incapacitated, ill or on holiday and may at any time revoke such delegation or limit or qualify its extent (in each case) on written notice to the Crown's Representative.

Schedule 8: Review Procedures

1. Generally

1.1 Application

The provisions of this Schedule 8 shall apply whenever any item, document or course of action is required to be reviewed or processed in accordance with the Review Procedures.

1.2 Reviewing person

The Review Procedures are to be conducted by one or more reviewing persons (as directed by the Crown). A reviewing person may be the Crown's Representative and/or a qualified person appointed by the Crown to conduct or assist in the conduct of the relevant Review Procedures.

1.3 Contractor acknowledgments

The Contractor acknowledges and agrees that where, pursuant to this Agreement, any Reviewable Document is reviewed (or is available to be reviewed) by a reviewing person under the Review Procedures or where the Crown's Representative or other person acting on behalf of the Crown participates (or has the opportunity to participate) in any workshop, presentation or other forum in respect to the development of a Reviewable Document:

(a) the Review Procedures and the Crown's participation in such reviews, workshops, or presentations or any other forum (or the Crown's opportunity to so review or participate) are solely for the benefit of the Crown;

(b) neither the Crown, nor the Crown's Representative, a reviewing person nor any other person on behalf of the Crown, assumes or owes any duty of care to the Contractor to:

   (i) participate in workshops, presentations or any other forum, or in so participating in such workshops, presentations or other forum;

   (ii) review any Reviewable Document; or

   (iii) ascertain errors, omissions or compliance with this Agreement; and

(c) neither the Crown's participation in any workshops, presentations or other forum nor any review of, comments upon or failure to review or comment upon any Reviewable Document by the reviewing person or anyone else on behalf of the Crown will:

   (i) relieve the Contractor from, or alter or affect, the Contractor's obligations or liabilities under this Agreement;

   (ii) constitute any representation by the Crown or anyone acting on its behalf as to the compliance of the Reviewable Document with the requirements of this Agreement;

   (iii) evidence or constitute the granting of an extension of time, or affect the time for performance by the Contractor of its obligations under this Agreement;

   (iv) imply that the Services have been or will be provided in accordance with this Agreement or that the Facility is or will be Fit for the Intended Purpose; or

(v) prejudice the Crown's rights against the Contractor under this Agreement or otherwise according to Law.

2. Submitted Items

2.1 Contractor's submissions

(a) Each submission under the Review Procedures shall be made to the Crown.

(b) Each submission under the Review Procedures shall comprise:

(i) a complete copy of the Reviewable Document to be reviewed;

(ii) particulars of the relevant provisions of this Agreement under which such document is submitted; and

(iii) such other information necessary to enable the reviewing person to undertake the review for the purposes of this Schedule 8,

collectively referred to in this Schedule 8 as a **Submitted Item**.

(c) Where a Reviewable Document is to be submitted by a date or within a timeframe specified in the Construction Programme, that Reviewable Document must be submitted by that date or within that timeframe.

2.2 Crown's response

(a) The reviewing person will:

(i) subject to paragraph 2.2(b), within 10 Business Days of the date of receipt of a submission (or re-submission, as the case may be) of a Submitted Item of Reviewable Design Material to the Crown;

(ii) subject to paragraph 2.2(b), within 20 Business Days of the date of the receipt of a submission of a Submitted Item other than Reviewable Design Material to the Crown;

(iii) subject to paragraph 2.2(b), within 10 Business Days of the date of the receipt of a re-submission of a Submitted Item other than Reviewable Design Material to the Crown; or

(iv) within 10 Business Days of the date additional information in relation to the Submitted Item requested pursuant to paragraph 2.2(b) is provided to the reviewing person,

(or such other reasonable period as advised to the Contractor by the Crown at or about the time the Submitted Item is received by the reviewing person), provide to the Contractor an endorsement in relation to the relevant Submitted Item of "no comment" or (subject to and in accordance with paragraph 3.2 (Grounds for raising comments)) "comments" as appropriate.

(b) The Contractor shall submit any further or other information, data and documents that the reviewing person reasonably requires. Any request by the reviewing person for further or other information, data and documents must be made:

(i) in the case of Reviewable Design Material, within five Business Days; and

(ii) in the case of other Reviewable Documents, within 10 Business Days,

of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item to the Crown and, from the date of that request, the timeframe under paragraph 2.2(a) applicable to the Crown's review and response shall be that set out in paragraph 2.2(a)(iv).

(c) If the Contractor does not submit any such information, data and documents on a timely basis, and in any event within 10 Business Days following the request from the reviewing person, the reviewing person shall be entitled to:

(i) comment on the Submitted Item on the basis of the information, data and documents that have been provided; or

(ii) notify the Contractor that insufficient information, data and/or documents have been provided to enable the Crown to review that Submitted Item in accordance with this Schedule 8 (in which case the Crown will not be required to commence its review of the Submitted Item until sufficient information, data and/or documents have been provided.

(d) If the reviewing person fails to provide to the Contractor its endorsement in relation to a Submitted Item (including any re-submitted Submitted Item) in accordance with paragraph 2.2(a) and within the applicable timeframe specified in or advised pursuant to paragraph 2.2(a), then the Crown shall, unless it has notified the Contractor under paragraph 2.2(c)(ii) that insufficient information, data and/or documents have been provided to enable the Crown to review that Submitted Item, be deemed to have endorsed the Submitted Item "no comment".

(e) The reviewing person may raise comments in relation to any Submitted Item in accordance with this paragraph 2.2 and paragraph 3 (Grounds upon which Crown may comment on Submitted Items). In such cases, the reviewing person shall state the ground upon which such comments are based and the evidence or other information necessary to substantiate that ground.

3. Grounds upon which Crown may comment on Submitted Items

3.1 Raise comments

The expression "raise comments" shall be construed to mean "raise comments or make objections" unless the contrary appears from the context.

3.2 Grounds for raising comments

The reviewing person may raise comments in relation to any Submitted Item on the grounds that:

(a) the Submitted Item is incomplete, of poor quality or otherwise is not in a condition to allow the Crown to adequately review it;

(b) the Submitted Item is inconsistent with previously submitted and implemented documentation (including the terms of this Agreement) or creates ambiguity;

(c) the Submitted Item (on the balance of probabilities) is not in accordance with Good Industry Practice;

(d) the Submitted Item (on the balance of probabilities):

(i) is not in accordance with the Works Requirements (when read subject to clause 25.2 (Works Requirements and Construction Programme) of the Base Agreement);

(ii) is not in accordance with, or is not likely to enable the Contractor to be in compliance with, the Service Requirements;

(iii) in the case of any Reviewable Design Material:

(A) is inconsistent with or is not in accordance with any Final Design Documentation; or

(B) has not been submitted in accordance with the requirements of clause 27 (Design and Design Development) of the Base Agreement or in accordance with the Design Development Plan;

(iv) in the case of the Construction Programme, would not enable the Facility to be completed by the Planned Service Commencement Date; or

(v) is not in accordance with any Changes requested by or consented to by the Crown or does not otherwise comply with the terms of this Agreement or is likely to result in a breach of the terms of this Agreement;

(e) the Submitted Item (on the balance of probabilities):

(i) would lead to an increase in the Unitary Charge in circumstances where the proposed revision is not solely required due to a Qualifying Change in Law, a Compensation Extension Event, a Compensation Intervening Event or a Crown-initiated Change;

(ii) is likely to increase the likelihood of deductions being made pursuant to clause 48 (Unitary Charge) of the Base Agreement and Schedule 13 (Performance Regime);

(iii) would result in an inferior standard of performance of the relevant Services to the standard of performance in accordance with the Service Requirements;

(iv) does not accord with the requirements of every Project Document; or

(v) would breach any Law or not be in accordance with any Contractor Consent or any Crown Consent and/or is likely to result in a threat to health and safety;

(f) the Contractor's or the Crown's ability to perform their respective obligations under this Agreement would (on the balance of probabilities) be adversely affected;

(g) the Crown's ability to carry out any of its legal duties or other functions would be adversely affected;

(h) the proposed course of action would be likely to result in a material increase to the Crown's Liabilities or potential or contingent Liabilities under the Agreement or is likely to result in the Crown incurring material additional expense; and/or

(i) the proposed course of action would adversely affect any right of the Crown under this Agreement or its ability to enforce any such right.

3.3 Replacement sub-contract

The reviewing person may also raise comments in relation to any Submitted Item that is a replacement sub-contract submitted under clause 16 (Sub-contractors) of the Base Agreement on the grounds that the replacement sub-contract:

(a) does not comply with the requirements of clause 16 of the Base Agreement;

(b) is not on the same or similar terms as the sub-contract that the Contractor is proposing to replace; or

(c) may result in the Crown having a greater Liability than the Crown would have had under the sub-contract that the Contractor is proposing to replace.

4. Effect of review

4.1 Finalised Submitted Item

(a) Any Submitted Item which is endorsed (or deemed under paragraph 2.2(d) to have been endorsed) "no comment" by the Crown under these Review Procedures or any similar process undertaken by the Contractor and the Crown prior to Financial Close:

(i) will, subject to paragraph 4.1(b), be deemed to have been finalised for the purposes of this Agreement (**Finalised**); and

(ii) shall then, and only then, be complied with or implemented (as the case may be) by the Contractor at its own risk and expense,

it being acknowledged by the Contractor that notwithstanding any term of this Schedule 8 and the other terms of this Agreement (express or implied), no Review Procedure relieves the Contractor of any of its obligations under this Agreement (including the Contractor's obligation to ensure that the Submitted Item complies with the relevant terms of this Agreement) nor does any Review Procedure constitute an acknowledgement by the Crown that the Contractor has complied with any such obligations.

(b) For the avoidance of doubt, once a Reviewable Document is deemed Finalised for the purposes of this Agreement in accordance with this paragraph 4.1, the contents of that Reviewable Document may only be amended by re-submitting an updated version of that Reviewable Document, with amendments clearly marked, to the Review Procedures, and completing such procedures in accordance with this Schedule 8.

4.2 Amended Submitted Item

If the Crown provides an endorsement of "comments" in relation to any Submitted Item, the Contractor shall:

(a) amend such Submitted Item in accordance with the comments and re-submit (on one or more occasions) the amended Submitted Item for further review under the Review Procedures until such time as the Submitted Item is returned to the Contractor without any comment or with the endorsement "no comment";

(b) ensure that all amendments made to the Submitted Item since it was last reviewed by the Crown are clearly marked as amendments; and

(c) comply with such Submitted Item after amendment in accordance with the comments unless the Contractor considers that:

(i) such comments are outside the applicable grounds for comment permitted by paragraph 3.2 (Grounds for raising comments) or paragraph 3.3 (Replacement sub-contract), in which case the Contractor or the Crown may refer the matter for determination under the Accelerated Dispute Resolution Procedures; or

(ii) compliance with or implementation of the Submitted Item as amended by the "comments" would constitute a Change (including a Change that the Contractor would be entitled to reject under clause 41.4 (Contractor's right to refuse) of the Base Agreement), in which case the Contractor or the Crown may (subject to the terms of paragraph 5 (Disputes as to effect of Crown's comments)) refer the matter for determination under the Accelerated Dispute Resolution Procedures,

provided that, in the event that any Submitted Item is endorsed with a comment that any Reviewable Design Material is inconsistent with or not in accordance with previously submitted Design Documentation, the Contractor may (as an alternative to amending such Submitted Item in accordance with this paragraph 4.2) issue a Change Notice under Part 12 (Changes) of the Base Agreement to amend the relevant Design Documentation so as to remove any such inconsistency with that Submitted Item, and the terms of Part 12 to the Base Agreement shall apply.

4.3 Re-submission of Submitted Item

(a) Within five Business Days of receiving an endorsement of "comments" on any Submitted Item, the Contractor shall re-submit the amended Submitted Item pursuant to paragraph 4.2 and the provisions of paragraph 2.2 (Crown's response), paragraph 3 (Grounds upon which Crown may comment on Submitted Items) and this paragraph 4 shall apply (changed according to context) to such re-submission.

(b) Any failure to clearly mark all amendments to a Submitted Item in accordance with paragraph 4.2(b) in its re-submission shall result in:

(i) any such amendment not being considered by the Crown; and

(ii) the Submitted Item being deemed to continue to be endorsed "comments" until such time as the amendment is brought to the attention of the Crown through re-submission of that item under the Review Procedures,

and should the Contractor comply with or implement the Submitted Item notwithstanding this failure, such compliance or implementation remains at the Contractor's risk and expense.

4.4 Meeting to discuss endorsement of "comments"

In the event that any Submitted Item has been endorsed "comments" on more than one occasion, where the comments so lend themselves, the parties shall, if requested by either party, meet as soon as reasonably practicable to discuss such Submitted Item, the grounds for the comments and any suggestions that may enable that Submitted Item to be endorsed "no comments" when re-submitted.

4.5 Referral for determination

Where the Contractor or the Crown refers a matter concerning a Submitted Item for resolution in accordance with the Accelerated Dispute Resolution Procedures, the Contractor may proceed with Works Provisioning or provision of the Operational Services in accordance with the Submitted Item, but it may only do so at its own risk and expense (which expense may extend to the costs of undertaking rework as a result of any determination made under the Accelerated Dispute Resolution Procedures that is adverse to the Contractor).

5. Disputes as to effect of Crown's comments

5.1 No limitation

No comment or any failure to give or make a comment under this Schedule 8 shall operate to exclude or limit the Contractor's obligations or liabilities under this Agreement (or the Crown's rights under this Agreement) or shall constitute an Crown-initiated Change, except as set out in this paragraph 5.

5.2 Crown-initiated Change

If, having received an endorsement of "comments" in relation to a Submitted Item, the Contractor considers that compliance with those comments would amount to a Change, the Contractor shall, before complying with the comments, notify the Crown of the same.

5.3 Crown response

Where the Crown agrees that compliance with such comments constitutes an Crown-initiated Change, the Crown may either:

(a) withdraw the comments; or

(b) notify the Contractor that it intends to proceed with the comments, in which case the provisions of Part 12 (Changes) of the Base Agreement will apply.

5.4 Dispute

Where the Crown does not agree that compliance with such comments constitutes an Crown-initiated Change, either party may refer the dispute for resolution in accordance with the Accelerated Dispute Resolution Procedures.

5.5 Treatment of Change

If it is determined following dispute resolution that the comments will result in an Crown-initiated Change, the Crown may:

(a) withdraw the comments; or

(b) notify the Contractor that it intends to proceed with the comments, in which case the provisions of Part 12 (Changes) of the Base Agreement will apply.

5.6 Acceptance

Any failure by the Contractor to notify the Crown in accordance with paragraph 5.2 will constitute an irrevocable acceptance by the Contractor that compliance with such comments will be without cost to the Crown and without any extension of time.

5.7 Interpretation of Change

For the purposes of this Schedule 8, any reference to a Change shall be interpreted and construed on the basis that the words "that the Crown considers (on reasonable grounds) to be in furtherance of one or more of the Objectives" shall be disapplied from the definition of Change set out in the Base Agreement and ignored.

6. Document management

6.1 Document submission

In relation to any document, information or notification given or submitted in the course of the Review Procedures, the provisions of clause 92.3 (Deemed delivery) of the Base Agreement shall apply. Where the document, information or notification is provided by way of upload to a shared information system, such document, information or notification shall be deemed to have been delivered only when a notification email is provided by the sender to the recipient (in relation to which email, clause 92.3(c) of the Base Agreement shall apply).

6.2 Register

The Contractor shall compile and maintain a register of:

(a) the date and contents of the submission of all Submitted Items; and

(b) the date of receipt and content of all Submitted Items that are returned or deemed to be returned by the Crown.

6.3 Database

The Contractor shall establish and maintain a computerised database which the Contractor and the Crown may access remotely by computer to view, download or print out all or any Reviewable Documents and the documents comprising or referenced in Reviewable Documents. If the Crown is unable to access that database, the Contractor shall procure that the database is made available as soon as reasonably practicable for access and/or use by the Crown or any person authorised by the Crown.

Exhibit 1: Reviewable Design Material

[*Respondent to insert description of Reviewable Design Material as part of its Proposal*]

Schedule 9: Operative Documents

Part 1 – Works Provisioning Documentation

Document name	Mandatory content	Date first draft must be provided	Date by which document must be Finalised	Updates
Completion Sub-Programme	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Construction Management Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Construction Sub-Programme	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Design Development Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Disengagement Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Operational Completion Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Works Communications Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Works Completion Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Works Environmental Management Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Works Fire Management Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Works Occupational Health and Safety Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Works Project Management Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Works Provisioning Programme	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Works Quality Assurance Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Works Traffic Management Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*

Part 2 – Services Documentation

Document name	Mandatory content	Date first draft must be provided	Date by which document must be Finalised	Updates
Annual Work Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Asset condition register	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Asset Management Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Disengagement Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Emergency Procedures and Business Continuity Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Five Year Work Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Handover Package	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Monthly Maintenance Schedule	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Operational Communications Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Operational Environmental Management Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Operational Health and Safety Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Operational Quality Assurance Plan	*[insert]*	*[insert]*	*[insert]*	*[insert]*
Policy and Procedures Manual	*[insert]*	*[insert]*	*[insert]*	*[insert]*
User Manual	*[insert]*	*[insert]*	*[insert]*	*[insert]*

Schedule 13: Performance Regime

Redacted examples of NZ PPP performance regimes can be requested from the Infrastructure Commission. International precedents are also widely available. While these may be of some use for comparison purposes, New Zealand's PPP programme has a significantly different focus than the programmes in other jurisdictions – with the most relevant distinction, for the purposes of development of performance regimes, being the focus on outcomes and the improvement of the delivery of public services. It is recognised that performance regimes cannot be solely described in terms of outcomes, and that some output requirements may need to be specified to ensure the Contractor is appropriately bound and incentivised to deliver elements of the Project that drive the overall outcomes. These should be minimised to the extent possible, consistent with the overall outcomes focus of New Zealand's PPP model.

Performance regimes for accommodation-based projects (assuming core services are retained by the Crown and hard and soft facilities management services are provided by the Contractor) should be developed in accordance with the following high-level principles:

- The regime should link to the structure set out in the model version of Schedule 12 (Payment Mechanism) – with all operative provisions and standards set out in the Performance Regime, and the Payment Mechanism remaining algebraic.

- Deductions will be subject to a cashflow cap equal to the periodic unitary charge. Any deductions incurred in the quarter or month (as applicable) in excess of the unitary charge for that quarter or month will be permanently disregarded.

- Where the performance regime includes a charges regime (effectively the imposition of liquidated damages for serious events, payable directly by the Contractor rather than as a deduction from the unitary charge), charges will not be subject to a cashflow cap.

- The availability element of the performance regime will be project specific depending on the nature of the asset but in all cases should include the following core elements:

    - Area-by-area availability requirements;

    - Cure periods prior to the commencement of unavailability deductions; and

    - Weighted unavailability deductions.

- The performance element of the performance regime is equally as important as the availability element. It will be project specific depending on the nature of the asset but in all cases should be focussed on measuring the effectiveness of the asset and service provision relative to the desired outcomes, not just the provision itself.

- The performance criteria (or Key Performance Indicators) should focus on ensuring that the Contractor's provision of the asset and services enables the Retained Services Operator to perform the Retained Services without impediment. The criteria should not be overly granular (and should avoid the level of granularity commonly seen in DBFM projects internationally). The criteria should be simplified and/or aggregated to the extent possible so as to avoid micro-management and focus on failures of real importance.

- The model Project Agreement includes a Service Failure Points (SFP) regime, under which the Contractor is attributed SFPs based on the level of deductions incurred (for example, a one dollar deduction may equate to one SFP). The SFP regime has four thresholds which trigger various actions: Level 1 being increased monitoring, Level 2 requiring the Contractor to prepare and implement a remedial plan, Level 3 allowing the Crown to exercise its step-in rights and Level 4 comprising a Remediable Contractor Default. The amount of SFPs required to trigger each of the four SFP thresholds will need to be considered on a project by project basis.

- Ratcheting structures (where deductions increase on a ratcheted basis for repeated or unremedied KPI breaches) should be adopted to appropriately incentivise performance.

Schedule 14: Payment Mechanism

This Schedule has been drafted based on the following assumptions:

- *Quarterly (rather than monthly) unitary payment.*
- *Unitary charge includes an un-indexed and an indexed portion, with the indexed portion being split between CPI and LCI (proportions to be proposed by Respondents).*
- *Separate lifecycle element.*
- *Sharing of insurance premium risk.*
- *Crown takes upside and downside of first five EBR resets.*
- *Performance Regime includes Charges.*

Part 1 – Unitary Charge

1. The Quarterly Unitary Payment

1.1 Quarterly Unitary Payment

The **Quarterly Unitary Payment** for Contract Quarter (n) will be calculated in accordance with the following formula:

$QUP_n = (QUC_n - TD_n) - RefiGain_n$

where:

QUP_n = the Quarterly Unitary Payment for Contract Quarter (n);

QUC_n = the Quarterly Unitary Charge for Contract Quarter (n) calculated in accordance with paragraph 2 of this Schedule 14;

TD_n = the Total Deductions for Contract Quarter (n) calculated in accordance with Schedule 13 of the Base Agreement; and

$RefiGain_n$ = The Crown's share of any Refinancing Gain payable in respect of Contract Quarter (n) in accordance with clause 53.1 (Refinancing Gain) of the Base Agreement.

2. Calculation of the Quarterly Unitary Charge from Full Service Date

2.1 The Quarterly Unitary Charge for any Contract Quarter (n) shall be calculated in accordance with the following formula:

$$\mathbf{QUC_n = UC_n + IP_m + LP_n + EBR_n}$$

where:

QUC_n = the Quarterly Unitary Charge for Contract Quarter (n);

UC_n = the Unitary Charge for Contract Quarter (n), which is to be calculated as:

$UC_n = UE_n + IE_n$

where:

UE_n = The Quarterly Relevant Amount in respect of the unindexable element of the Unitary Charge as shown in [*model reference*];

IE_n = Indexable Element of the Unitary Charge for Contract Quarter (n) as calculated in paragraph 3 of this Schedule 14; and

IP_m = the Insurance Payment for Contract Year (m) as calculated in accordance with paragraph 4 of this Schedule 14;

LP_n = the Lifecycle Payment for Contract Quarter (n) as calculated in accordance with paragraph 5 of this Schedule 14; and

EBR_n = the Effective Base Rate for Contract Quarter (n) payment as calculated in accordance with paragraph 6 of this Schedule 14.

3. Indexation

3.1 Indexation of the Indexable Element

(a) On each Indexation Review Date, the Indexable Element shall be adjusted by applying to it the Indexation Formula in paragraph 3.1(b) of this Schedule 14.

(b) For the purposes of calculating indexation pursuant to this Schedule 14, the following definitions shall apply:

"Indexation Formula" means $IE_n = (IEC_n \times CPI_n) + (IEL_n \times LCI_n)$

where:

IEC_n = the Quarterly Relevant Amount in respect of the CPI indexed component of the Unitary Charge as shown in cells [ ] of the Returnable Schedule;

CPI_n= the most recently published [*month*] Quarter CPI at the last day of Contract Quarter (n) divided by the CPI for the [*month*] Quarter [*20XX*] (being the Quarter most recently ended prior to Financial Close);

IEL_n = the Quarterly Relevant Amount in respect of the Labour Costs Index (All Labour Costs) indexed component of the Unitary Charge as shown in cells [ ] of the Returnable Schedule; and

LCI_n = the most recently published [*month*] Quarter Labour Costs Index (All Labour Costs) at the last day of Contract Quarter (n) divided by the Labour Costs Index (All Labour Costs) for the [*month*] Quarter [*20XX*] (being the Quarter most recently ended prior to Financial Close).

3.2 De-escalation

Where a Relevant Event results in a change to the Indexable Element of the Unitary Charge at any time after Financial Close, any dollar amount added to or deducted from the then-current Indexable Element must, prior to its addition to or deduction from the Indexable Element, be expressed in Base Year Dollars, where **Base Year Dollars** means real dollars as at [*month, 20XX*].

4. Insurance Payment

The Insurance Payment will be paid, in advance:

(a) as part of the first Quarterly Unitary Payment following the Service Commencement Date; and

(b) subsequently, annually as a component of the Quarterly Unitary Charge invoiced each [*insert applicable Contract Quarter*].

The Insurance Payment (IP_m) for Contract Year (m) will be calculated as follows:

$$\mathbf{IP_m = (BIP + ISP_k)\ x\ CPI_k}$$

where:

Insurance Year (k) = the four quarter period applicable to the premium associated with the Shared Operating Insurances;

Base Insurance Premium or **BIP** = the premium associated with the Shared Operating Insurances (expressed in [*month, 20XX*] dollars) as determined in accordance with Part 3 (Insurance Premium Setting) of Schedule 15 (Insurance);

$\mathbf{CPI_k}$ = the most recently published [*month*] Quarter CPI at the last day of Contract Quarter (n) divided by the CPI for the [*month*] Quarter [*20XX*] (being the Quarter most recently ended prior to Financial Close);

Insurance Sharing Payment (k) or $\mathbf{ISP_k}$ = the Insurance Sharing Payment as calculated below:

If in Insurance Year (k), **BIP** < $\mathbf{AIP_k}$ ≤ ([**150**% x **BIP**), then $\mathbf{ISP_k}$ = **Max**{[$\mathbf{AIP_k}$ – **BIPx120%x0.5,0**

If in Insurance Year (k), $\mathbf{AIP_k}$ > (**150%** x **BIP**), then $\mathbf{ISP_k}$ = [(**30**% x **BIP**) x **0.5+AIPK–BIPx150%**

If in Insurance Year (k), **BIP** > **AIPk** ≥(**50%** x **BIP**), then $\mathbf{ISP_k}$ = **Min**{[$\mathbf{AIP_k}$— **BIPx80%x0.5,0**

If in Insurance Year (k), $\mathbf{AIP_k}$ < (**50%** x **BIP**), then $\mathbf{ISP_k}$ = [$\mathbf{AIP_K}$ – (**BIP** x **50%-30%xBIPx0.5**; and

Actual Insurance Premium (k) or $\mathbf{AIP_k}$ in respect of any Insurance Year (k), means the actual premium (expressed in [*month, 20XX*] dollars) payable by the Contractor in respect of the Shared Operating Insurances in that Insurance Year.

5. Lifecycle Payment

The Lifecycle Payment for each Contract Quarter (n) shall be calculated in accordance with the following formula:

$$\mathbf{LP_n = (LCC_n\ x\ CPI_n)}$$

where:

LCC_n = The Quarterly Relevant Amount in respect of the lifecycle cost component of the Unitary Charge as shown in cells [ ] of the Returnable Schedule; and

CPI_n= the most recently published [*month*] Quarter CPI at the last day of Contract Quarter (n) divided by the CPI for the [*month*] Quarter [*20XX*] (being the Quarter most recently ended prior to Financial Close).

5.1 De-escalation

Where a Relevant Event results in a change to the Lifecycle Payment of the Unitary Charge at any time after Financial Close, any dollar amount added to or deducted from the then-current Lifecycle Payment must, prior to its addition to or deduction from the Lifecycle Payment, be expressed in Base Year Dollars, where **Base Year Dollars** means real dollars as at [*month, 20XX*].

6. EBR Payment

[Note – background information in relation to this provision and its structure is set out in the attached Explanatory Note and Appendix.]

In respect of the first five EBR Re-sets, and in respect of any Exempt EBR Re-set, $\mathbf{EBRshare_n} = \mathbf{EBRshare1_n}$

In respect of the sixth and any subsequent EBR Re-sets, $\mathbf{EBRshare_n} = \mathbf{EBRshare2_n}$

EBRshare1$_n$

$$EBRshare1_n = [(OD_n \times EBR_n) - (BD_n \times FCBR_n) - (JD_n \times DDBR_n)] \times \frac{N}{365}$$

Where:

BD_n = the lesser of OD_n and MD_n.

MD_n = the Quarterly Relevant Amount in respect of model debt balance as shown in cells [ ] of the Returnable Schedule.

JD_n = OD_n less BD_n. JD is the total amount of incremental debt incurred over and above the BD for which the FCBR (modelled base case) is applicable. JD_n is comprised of 'x' individual tranches of incremental debt, $NJD_{x,n}$.

OD_n = the aggregate actual principal outstanding in respect of the Core Senior Debt on the first day of Debt Contract Quarter (n).

EBR_n = the Effective Base Rate applicable in respect of OD_n. Where there are multiple Effective Base Rates (due to tranches within OD_n or the Effective Base Rate changes within the Debt Contract Quarter), EBR_n will be calculated as a weighted average based on the proportion of actual principal outstanding in respect of each tranche of Core Senior Debt on the first day of Debt Contract Quarter (n) and the proportion of days that each Effective Base Rate applies.

$FCBR_n$ = the base swap rate in respect of Debt Contract Quarter (n) as determined in accordance with the Financial Close Adjustment Protocol at Financial Close. Where there are multiple $FCBR_n$ (due to $FCBR_n$ changes within the Debt Contract Quarter), $FCBR_n$ will be calculated as a weighted average based on the relevant amounts of MD_n which apply to each $FCBR_n$ on the first day of each period in which each $FCBR_n$ applies and the proportion of days that each $FCBR_n$ applies.

$DDBR_n$ = the base swap rate applicable in respect of Debt Contract Quarter (n) as determined in accordance with the Swap Pricing Protocol. Where there are multiple $DDBR_n$ (due to tranches within JD_n or $DDBR_n$ changes within the Debt Contract Quarter), $DDBR_n$ will be calculated as a weighted average based on the proportion of actual principal outstanding in respect of each $NJD_{x,n}$ on the first day of each period in which each $DDBR_n$ applies and the proportion of days that each $DDBR_n$ applies.

In determining $DDBR_n$, each $NJD_{x,n}$ for that Contract Quarter (n) must be determined in the order as follows:

1. If any $NJD_{x,n}$ was in existence for Debt Contract Quarter (n-1) then each such $NJD_{x,n}$ for Debt Contract Quarter (n) shall equal:

$$NJD_{x,n} = NJD_{x,n-1} \times \frac{JD_n}{JD_{n-1}}$$

where JD_n, in this formula, is calculated using a specification of OD_n that excludes any new incremental debt raised in Debt Contract Quarter (n) such that JD_n relates only to debt in place immediately prior to any new incremental debt raised in Debt Contract Quarter (n).

2. Any new $NJD_{x,n}$ incurred in that Debt Contract Quarter (n) is any new incremental debt that is drawn down. Any new $NJD_{x,n}$ is calculated such that for all closing amounts for OD_n, BD_n, and JD_n:

$$OD_n - BD_n = \sum_{x=1}^{y} NJD_{x,n} = JD_n$$

The $DDBR_n$ weighted average calculation applicable to that Debt Contract Quarter is then as follows:

$$DDBR_n = \sum_{x=1}^{y} \frac{NJD_{x,n}}{JD_n} \times DDBR_{n,x}$$

Where:

$DDBR_{n,x}$ is the base swap rate in respect of the Debt Contract Quarter in which $NJD_{x,n}$ was first hedged as determined in accordance with the Swap Pricing Protocol.

N means the number of days in the *n*th Debt Contract Quarter.

EBRshare2$_n$

The definitions for the terms in $EBRShare2_n$ are the same as they are for $EBRShare1_n$.

$$\mathbf{EBRshare2_n = Min\left\{OD_n \times 0.5(EBR_n - FCBR_n) \times \frac{N}{365}, 0\right\}}$$

7. Additional Payments

Each Additional Payment will be paid in accordance with clause 49.2 (Report and Invoice) of the Base Agreement.

8. Charges

Each Charge will be calculated and paid in accordance with Schedule 13 (Performance Regime) of the Base Agreement.

9. Cap on Total Deductions

9.1 The Crown may not, in respect of any Contract Quarter, make Total Deductions which are greater than the Quarterly Unitary Charge. Deductions which, but for this paragraph 9, could have been made by the Crown will be permanently disregarded for the purposes of this Schedule 14.

9.2 For the avoidance of doubt, paragraph 9.1 applies to Total Deductions only and does not apply to Charges.

Explanatory Note – Effective Base Rate

This note explains the operation of paragraph 6 (Effective Base Rate). It does not have contractual effect and should be deleted from this document before its execution.

Effective Base Rate

Although it is difficult to generalise how a Contractor will structure its debt financing for a PPP, a typical approach would be to obtain a floating interest rate facility and then enter into a swap arrangement, to swap the floating interest rate obligation for a fixed interest rate obligation. Under this approach, the interest rates that will determine the interest costs that the Contractor will recover from the Crown will be comprised of:

- An effective base swap rate; and
- A margin in addition to the effective base swap rate.

The market for long term interest rate swaps in New Zealand is relatively illiquid. This may change over time but the current market conditions mean that a Contractor is unlikely to be able to fix interest rates for the full term of the Project Agreement. Consequently, it will need to renew its interest rate swap arrangements a number of times during the term of the Project Agreement. The effective base swap rate will be reset to the then-current market rate each time a new swap arrangement is entered into.

Under the October 2013 version of the Standard Form Project Agreement (Version 3), the Crown takes the risk on changes to effective base swap rates for the first five qualifying refinancings (being any transaction that alters the effective base swap rate in respect of any one or more tranches of senior debt). The Contractor can undertake as many refinancings as it likes but the Crown will be obligated to pay the actual effective base swap rates resulting from the first five refinancings[1] only. The Contractor bears all the risk of increases in effective base swap rates, but shares the benefit of any decreases in effective base swap rates (relative to the base swap rates set at financial close), for the sixth and any subsequent refinancing.

Effective base rate difference calculation

A separate term is included in the unitary charge formula to capture the difference between the effective base rates set at each of the five qualifying refinancings and the effective base rates set at financial close (the **EBR difference calculation**). The formula for the EBR difference calculation is in paragraph 6 of Schedule 14. There are a number of inputs to this calculation:

- The effective base rates set at each refinancing (EBR).
- The effective base swap rates set at financial close (FCBR). These rates will have been included in the base case financial model and used to set the unitary charge profile at financial close.
- The quantum and profile of debt modelled in the base case financial model for the project set at financial close (MD).
- The actual debt at any point in time (OD). The actual debt for the purpose of the formula in paragraph 6 of Schedule 14 is Core Senior Debt. This is defined in the Standard Form Project

[1] The Crown does not take risk on the margin over the effective base swap rate.

Agreement. This definition is important as the Crown's obligation with regard to changes in effective base swap rates does not necessarily include all of the Contractor's debt.

- The effective base rates applicable to any qualifying debt in excess of the model debt (DDBR).

EBRshare1

The form of the EBR difference calculation will vary depending on whether actual debt (OD) is less than or greater than model debt (MD).

Where actual debt is no more than model debt, the Crown will pay (or receive) the difference between the effective base swap rate applying to the refinancing and the effective base swap rate set at financial close, multiplied by the actual debt. In terms of the $EBRshare1_n$ formula in paragraph 6 of Schedule 14, this can be stated as:

Equation 1

$$EBRshare1_n = OD_n \, x \, (EBR_n - FCBR_n)$$

Refer to Appendix A for the derivation of this formula from the $EBRshare1_n$ formula in paragraph 6 of Schedule 14.

Where actual debt exceeds model debt (i.e. where the Contractor has drawn down additional debt), the Crown will pay (or receive):

- The difference between the effective base swap rate applying to the refinancing and the effective base swap rate set at financial close, multiplied by the model debt as at the first day of the relevant unitary payment period; and

- The difference between the effective base swap rate applying to the refinancing and the effective base swap rate set at the time the additional debt was drawn down, multiplied by the amount of actual debt in excess of model debt.

In terms of the $EBRshare1_n$ formula in paragraph 6 of Schedule 14, the EBR difference calculation where actual debt exceeds model debt can be stated as:

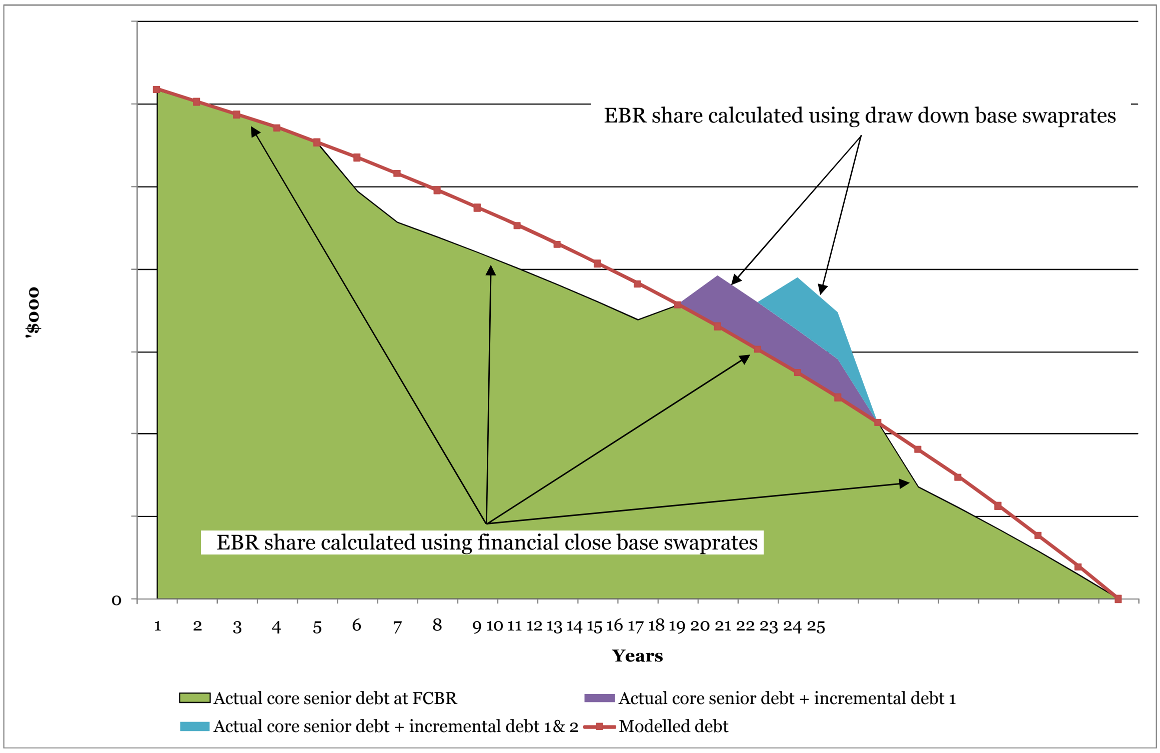
Equation 2

$$EBRshare1_n = MD_n \, x \, (EBR_n - FCBR_n) + (OD_n - MD_n) \, x \, (EBR_n - DDBR_n)$$

Refer to Appendix A for the derivation of this formula from the $EBRshare1_n$ formula in paragraph 6 of Schedule 14.

The components of the EBR difference calculation are illustrated in the following figure:

Figure 1 EBR Share



Critical to the calculation of the EBR difference for additional debt is the assumption about how additional debt (i.e. the debt in excess of model debt) will amortise. The additional debt identified for the purpose of the EBR difference calculation could be a notional amount in that it will not necessarily be a tranche in its own right with an amortisation profile separate to the rest of the Core Senior Debt. Also, it is possible that debt repayments will be used in the first instance to reduce the balance of any additional debt.

The amount of actual debt in excess of model debt could include more than one tranche with different tranches having different DDBRs. This may arise, for example, because the total difference between actual and model debt results from a number of tranches drawn down at different dates.

These issues have been accommodated in the formula in paragraph 6 of Schedule 14 by expressing DDBR as a weighted average of the DDBRs for each tranche of debt. The weighted average calculation involves dealing firstly with the tranches of debt that were outstanding in the previous unitary payment period and that remain outstanding in the current unitary payment period, secondly adding the tranches of debt that have been raised during the current unitary payment period and thirdly undertaking the weighted average calculation.

Step 1: Tranches of debt that were outstanding in the previous unitary payment period and that remain outstanding in the current unitary payment period

For tranches of debt that were outstanding in the previous unitary payment period and that remain outstanding in the current unitary payment period, the balance of the tranche to incorporate into the weighted average calculation for the current unitary payment period is calculated by taking the balance of the tranche from the previous unitary payment period and reducing it by the percentage reduction in all of the additional debt (i.e. the debt in excess of model debt) that was outstanding in both unitary payment periods. This means that all debt outstanding in both unitary payment periods is assumed to amortise in the same proportions.

This is given effect by the following formula:

Equation 3

$$NJD_{x,n} = NJD_{x,n-1} \ x \frac{JD_n}{JD_{n-1}}$$

$NJD_{x,n-1}$ is the outstanding balance of a specific tranche of debt (tranche x) in the previous unitary payment period.

JD_n and JD_{n-1} are the totals of all tranches of additional debt (i.e. debt in excess of model debt) that are outstanding in both unitary payment periods (before taking into account any new additional debt in period *n*).

$NJD_{x,n}$ is the calculated balance of tranche x in the current unitary payment period (before taking into account any new additional debt in period *n*).

In this formula, $JD_{n-1} = \sum NJD_{x,n-1}$ *and* $JD_n = \sum NJD_{x,n}$.

Step 2: Inclusion of new tranches of debt

The next step is to incorporate tranches of debt raised in the current unitary payment period. This involves expanding the definitions of JD_n and $NJD_{x,n}$ used in step 1 to include the new debt. That is, JD_n will equal the sum of all $NJD_{x,n}$ calculated in step 1 plus any new tranches of debt i.e. any $NJD_{x,n}$ raised in the current unitary payment period. This means that JD_n will now equal the entire difference between actual and model debt for the current unitary payment period. This is what the first formula in subparagraph 2 of paragraph 6 in Schedule 14 is demonstrating:

Equation 4

$$OD_n - BD_n = \sum_{x=1}^{y} NJD_{x,n} = JD_n$$

Step 3: Weighted average calculation

The weighted average calculation is straightforward. Each $NJD_{x,n}$ (as calculated in step 1 for debt in existence in both the current and previous unitary payment periods and in step 2 for debt raised in the current unitary payment period) is multiplied by its DDBR and then divided by JD_n (being the total of all the $NJD_{x,n}$). The sum of all of these amounts produces the weighted average DDBR for the current unitary payment period.

$$DDBR_n = \sum_{x=1}^{y} \frac{NJD_{x,n}}{JD_n} \times DDBR_{n,x}$$

EBRshare2

For the sixth and any subsequent refinancing, the Contractor will bear the risk of any increase in the effective base swap rate applying to the refinancing over the effective base swap rate set at financial close. However, if the effective base swap rate applying to the sixth and any subsequent refinancing is below the effective base swap rate set at financial close, then the unitary charge will be reduced by half of the difference between the effective base swap rate applying to the refinancing and the effective base swap rate set at financial close.

Hence, $EBRshare2_n$ is the minimum of zero or $OD_n \ x \ 0.5(EBR_n - FCBR_n)$. If EBR_n is less than $FCBR_n$ then $EBRshare2_n$ will be negative and result in a reduction in the unitary charge. If EBR_n is greater than $FCBR_n$ then $EBRshare2_n$ will be zero.

Appendix A

Equation 1 and Equation 2 presented in this document are the $EBRshare1_n$ formula in paragraph 6 of Schedule 14 in situations where actual debt is less than model debt and actual debt is greater than model debt respectively. This Appendix provides the derivation of Equation 1 and Equation 2 from the $EBRshare1_n$ formula in paragraph 6 of Schedule 14. The $EBRshare1_n$ formula in paragraph 6 of Schedule 14 is:

$$EBRshare1_n = (OD_n \times EBR_n) - (BD_n \times FCBR_n) - (JD_n \times DDBR_n)$$

Derivation of Equation 1: actual debt is less than or equal to model debt

If actual debt is less than or equal to model debt i.e. $OD_n \leq MD_n$, then:

$BD_n = OD_n$ and $JD_n = 0$ (as $JD_n = OD_n - BD_n$)

The $EBRshare1_n$ formula in paragraph 6 of Schedule 14 incorporating these definitions of BD_n and JD_n becomes:

Equation 5

$$EBRshare1_n = (OD_n \times EBR_n) - (OD_n \times FCBR_n) - (0 \times DDBR_n)$$

which reduces to Equation 1:

$$EBRshare1_n = OD_n \times (EBR_n - FCBR_n)$$

Derivation of Equation 2*: *actual debt is greater than model debt

If actual debt is greater than model debt i.e. $OD_n > MD_n$, then:

$BD_n = MD_n$ and $JD_n = OD_n - MD_n$

The $EBRshare1_n$ formula in paragraph 6 of Schedule 14 incorporating these definitions of BD_n and JD_n becomes:

Equation 6

$$(OD_n \times EBR_n) - (MD_n \times FCBR_n) - ((OD_n - MD_n) \times DDBR_n)$$

Expanding Equation 6 and adding *MDn x EBRn - MDn x EBRn* (which equals zero) produces:

Equation 7

$$OD_n \times EBR_n - MD_n \times FCBR_n - OD_n \times DDBR_n - MD_n \times DDBR_n + MD_n \times EBR_n - MD_n \times EBR_n$$

Equation 7 reduces to:

Equation 8

$$= MD_n \times (EBR_n - FCBR_n) + EBR_n \times (OD_n - MD_n) - DDBR_n \times (OD_n - MD_n)$$

Equation 8 reduces to Equation 2:

$$= MD_n \times (EBR_n - FCBR_n) + (OD_n - MD_n) \times (EBR_n - DDBR_n)$$

Schedule 15: Insurance

Part 1 – Required Insurances

Sub-part 1 – Design and Construction Phase

The policies to be taken out by the Contractor and maintained from Financial Close to Works Completion are as follows.

1. Contract Works Insurance (Material Damage)

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Insured	
Insured property	
Coverage	
Sum insured	
Maximum deductible	
Territorial limits	
Period of Insurance	
Cover features and extensions subject to sublimits	
Principal exclusions	

2. Contract Works Insurance (Advance Loss of Profits)

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Insured	
Indemnity	
Sum insured	
Maximum excess	
Indemnity period	
Period of Insurance	

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Cover features and extensions subject to sublimits	
Principal exclusions	

3. Contract Works Insurance (Public and Products Liability)

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Insured	
Additional insured	
Interest	
Limit of indemnity	
Maximum deductible	
Territorial limits	
Jurisdiction	
Period of Insurance	
Cover features and extensions subject to sublimits	
Principal exclusions	

4. D&C Professional Indemnity Insurance

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Insured	
Coverage	
Limit of Indemnity	
Maximum deductible	

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Territorial limits and Jurisdictional limits	
Retroactive Date	
Period of insurance	
Cover extensions	
Exclusions	
Additional requirements	

5. Motor Vehicle Insurance

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Insured	
Coverage	
Sum insured	
Maximum deductible	
Territorial limits	
Period of insurance	

Sub-part 2 – Services Phase

The policies to be taken out by the Contractor and maintained from Works Completion for the remainder of the Contract Term are as follows:

6. Industrial Special Risks (Material Damage) Insurance

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Insured	
Insured property	
Coverage	
Sum insured	
Maximum deductible	
Territorial limits	

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Period of Insurance	
Cover features and extensions subject to sublimits	
Principal exclusions	

7. Consequential Loss (Business Interruption) Insurance

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Insured	
Indemnity	
Sum insured	
Maximum excess	
Indemnity Period	
Period of Insurance	
Territorial limits	
Cover features and extensions subject to sublimits	
Principal exclusion	

8. Public and Products Liability Insurance

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Insured	
Additional insured	
Interest	
Limit of indemnity	
Maximum deductible	
Territorial limits	
Jurisdiction	

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Period of Insurance	
Cover features and extensions subject to sublimits	
Principal exclusions	

9. Motor Vehicle Insurance

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Insured	
Coverage	
Sum insured	
Maximum deductible	
Territorial limits	
Period of insurance	

10. Statutory Fines and Penalties Liability

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Insured	
Additional insured	
Interest	
Limit of indemnity	
Deductible	
Retroactive Date	
Period of Insurance	
Principal exclusions	

11. Professional Indemnity Insurance

INSURANCE ELEMENT	MINIMUM REQUIREMENT
Insured	
Coverage	
Limit of Indemnity	
Deductible	
Territorial limits	
Jurisdiction	
Retroactive Date	
Period of insurance	
Cover extensions	
Exclusions	

Part 2 - Endorsements

Parties should endeavour to obtain cover in accordance with the principles below where relevant to the specific insurance policy but excluding motor vehicle. If wordings consistent with the following principles are not in practice available, the parties should obtain the best terms reasonably available in the market at the time. The principles expressed below may be met by multiple endorsements.

Endorsement 1

Cancellation

(a) The policy is not cancellable unless from non-payment of premium; and

(b) 30 days prior written notice is to be provided to the Crown and the Security Trustee by the insurer for such cancellations where the Crown and the Security Trustee (as applicable) is an insured or an additional insured on the policy.

Endorsement 2

Multiple Insured/Non-Vitiation Clause

(a) Each Insured is treated as if each has a separate policy. However, the total policy sum insured or limit will not be exceeded;

(b) Innocent breach of non disclosure will not affect the policy;

(c) Breach by one insured party will not affect another insured party; and

(d) Insurers will not recover from the insured breaching the policy unless from fraud, misrepresentation, nondisclosure, breach of warranty or condition.

Endorsement 3

Communications

(a) 30 days prior written notice to be provided to the Crown and the Security Trustee by the insurer for proposed adverse change in the insurance terms (except at renewal), where the Crown and the Security Trustee (as applicable) is an insured or an additional insured on the policy; and

(b) Notification of loss by one insured party is understood to be from all insured parties.

Endorsement 4

Loss Payee (applicable only to the Physical Damage Policies)

All claims are to be paid into the Joint Insurance Account or as directed by the Contractor, the Crown or the Security Trustee (as applicable).

Endorsement 5

Primary and Non-contributory Insurance

These policies are to be in priority to other insurance policies held by the insured parties.

Part 3 – Insurance Premium Setting

1. Establishment of Base Insurance Premium

1.1 Setting of Base Insurance Premium

No later than two months (nor earlier than four months) before Works Completion, the Contractor shall:

(a) obtain and provide copies to the Crown of three independent quotes (or two such quotes if the Contractor is unable to obtain three such quotes by reason of capacity constraints in such markets at the relevant time, which quotes shall be inclusive of any brokerage and other fees payable and GST) from separate insurance brokers procuring Reputable Insurers with respect to the premium cost for the Shared Operating Insurances for the first Insurance Year, under insurance policies with terms and conditions that comply with the requirements of this Agreement;

(b) provide such documentation or information as the Crown reasonably requires to confirm the Contractor's compliance with paragraph 1.1(a) in obtaining those quotations; and

(c) notify the Crown in writing of the Contractor's preferred quotation and insurance broker, and the reasons why.

1.2 Agreement on insurances

(a) Within 10 Business Days after receiving the information given under paragraph 12.1, the Crown shall advise the Contractor whether it agrees with the Contractor's preferred insurance package and, if not, the reasons why.

(b) If the Crown and the Contractor, each acting reasonably, do not reach agreement on the matters referred to in paragraph 1.2(a), either party may refer the matter to be determined under the Accelerated Dispute Resolution Procedures, and the insurance policies will be taken out with the insurer either agreed by the parties or determined under the Accelerated Dispute Resolution Procedures to be the most suitable.

1.3 Outcome

The premium cost for the Shared Operating Insurances agreed between the parties under paragraph 1.2(a) or determined under paragraph 1.2(b):

(a) will establish the Base Insurance Premium, as defined in and for the purposes of Schedule 14 (Payment Mechanism); and

(b) will establish the premium for the Shared Operating Insurances for the first Insurance Year.

2. Procurement of Shared Operating Insurances

2.1 Procurement of insurances

No later than two months (nor earlier than four months) before the start of each Insurance Year (excluding the first Insurance Year), the Contractor shall:

(a) obtain and provide copies to the Crown of three independent quotes (or two such quotes if the Contractor is unable to obtain three such quotes by reason of capacity constraints in such markets at the relevant time, which quotes shall be inclusive of any brokerage and other fees payable and GST) from separate insurance brokers procuring Reputable Insurers with respect to the premium cost for the Shared Operating Insurances for the relevant Insurance Year, under insurance policies with terms and conditions that comply with the requirements of this Agreement;

(b) provide a detailed written report, prepared in consultation with its insurance brokers, on the reasons for any substantial increases in insurance premiums (if applicable); and

(c) notify the Crown in writing of the Contractor's preferred quotation and insurance broker, and the reasons why.

2.2 Agreement on insurances

(a) Within 10 Business Days after receiving the information given under paragraph 2.1, the Crown shall advise the Contractor whether it agrees with the Contractor's preferred insurance package and, if not, the reasons why.

(b) If the Crown and the Contractor, each acting reasonably, do not reach agreement on the matters referred to in paragraph 2.2(a), either party may refer the matter to be determined under the Accelerated Dispute Resolution Procedures, and the insurance policies will be taken out with the insurer either agreed by the parties or determined under the Accelerated Dispute Resolution Procedures to be the most suitable.

2.3 Outcome

The premium cost for the Shared Operating Insurances agreed between the parties under paragraph 2.2(a) or determined under paragraph 2.2(b) will establish the premium for the Shared Operating Insurances for the relevant Insurance Year.

3. Shared Operating Insurances – premium risk sharing

The parties will share in the increased or reduced Shared Operating Insurances premia, in respect of each applicable Insurance Year, as set out in clause 4 (Insurance Payment) of Schedule 14 (Payment Mechanism).

4. Insurance rebate payment

If:

(a) the Expiry Date does not coincide with an anniversary of the Service Commencement Date; or

(b) the Actual Termination Date does not coincide with an anniversary of the Service Commencement Date,

the Contractor shall use its best endeavours to procure receipt of a rebate from the relevant insurance provider as a result of the early termination of the Shared Operating Insurances and shall, within five Business Days of receipt of any such rebate, refund the amount of that rebate to the Crown.

Schedule 16: Change Notice

Contract [*insert details*]	**Change Proposal No.** [*insert details*]
To: (Change recipient)	**From:** (Change proposer)

Section 1 – Details of proposed Change (to be completed by Change proposer)

☐ Material Change
☐ Non-Material Change

Details of Change

All Changes - insert details, including in the case of:

- Change to Works Provisioning - details of the nature of the Change;
- where applicable, which of the provisions of the Works Requirements, Works Provisioning Programme, the Completion Plans and/or the Works Project Management Plan are required to be amended to accommodate the relevant Change;
- Change that requires additional works as part of the Works Provisioning - details of:
  - the nature and scope of the relevant additional works to the same level of detail as set out in Works Requirements; and
  - the times at or by which the work to implement the relevant Change is proposed to be commenced and completed; and
- Change to the Services - details of the nature of the Change and which of the provisions of the Service Requirements and/or the Services Documentation are required to be amended to accommodate the relevant Change.

Material Change proposed by the Crown

If the Crown is the party sending the Change Notice:

- whether the Crown intends to require the Contractor to use its best endeavours to seek financing for Capital Expenditure – Yes/No
- whether the Crown requires the Contractor to seek competitive quotations for any element of the Change (where it comprises a Significant Material Change) – [*specify details*]

Change proposed by Contractor

If the Contractor is the party sending the Change Notice, insert details of Contractor's reasons for proposing the Change.

Signed for and on behalf of the Change proposer by:

....

Name and Position: Date:

Section 2 – Change Proposal (to be completed by Contractor)
1. *Statement of Work* • set out all the steps that the Contractor proposes to take to implement and verify completion of the Change; • set out the schedule for implementing the Change (including, as applicable, a revised Works Provisioning Programme); and • detail all the consequences of the Change that are reasonably foreseeable consistent with Good Industry Practice. 2. *Cost of Change (to be determined in accordance with Schedule 17 (Change Compensation Principles) and to be disclosed on an Open Book Basis)* • detail the proposed Change in Costs (on an Open Book Basis) and the Contractor's proposal for financing such Change in Costs, including: o confirmation that the Contractor has used its best endeavours to source finance for any Capital Expenditure, and the extent to which the Contractor has actually sourced finance for any Capital Expenditure; and o any Capital Expenditure for the account of the Crown;
• in respect of any Material Change: o any capitalised interest, expenses, third party financing costs or other costs to be incurred by the Contractor as a consequence of the Change; o direct labour (person rates and wage rates); o materials (including specialist tools); o travel and subsistence; o overheads; o finance charges (including arrangement fees); and o any sub-contracted work where the value of such work is in excess of $5,000,000 (indexed) identifying: • each sub system, package of work, service or purchase of components and raw materials; • a detailed breakdown of prices/rates quoted for each tender requirement and the means by which prices are determined to be fair and reasonable; • the identity of the proposed Sub-contractor; and • any other relevant factors, (in each case and to the extent applicable, as per the schedule of rates referred

to in Schedule 17 (Change Compensation principles)) and, if the Contractor does not propose to invite competitive tenders for such sub-contracted work and the value of such work exceeds $[*Significant Material Change threshold*] (indexed), the Contractor shall provide full details of its reasons for not doing so; and

- itemise any effect on the Unitary Charge as a result of the Material Change, including by reason of any costs required or no longer required as a result of the Change:
- insert proposed payment schedule – including the timing of Capital Expenditure payments where the Crown is paying for the Capital Expenditure. Where payment for any part of the Change reflects the carrying out of, or specific progress towards, an element of the Change, the payment schedule is to include an objective means of providing evidence confirming that the part of the Change corresponding to each occasion when payment falls due under the payment schedule, has been carried out;
- describe steps taken to mitigate the adverse effects of a Material Change, to take advantage of any positive or beneficial effects of any Change and to maximise any reduction in costs arising from that Material Change;
- the matters set out in clause 41.2 (Material Change – Value for Money);

3. *Consents required or required to be amended (including Consents from financiers and authorisations from insurers)*

- All Changes: [*insert details*]
- Changes other than to Operative Documents: [*Financier consent has been obtained and a copy is attached*] or [*Financier consent has been sought and a copy of the consent will be provided to the Crown once obtained and prior to implementation of the Change.*]

4. *Timing of implementation of Change*

- All Changes: [*insert details*]

[*Note: except in relation to changes to Operative Documents, the timing of the implementation must be after the Crown has received a copy of the consent of the financiers or due confirmation as to their deemed consent*]

5. *Certification of successful implementation of Change*

- [insert details of certification procedures if required]

6. *Other consequences of Change to be specified*

To include (to the extent known or predicted and applicable) the effects of the proposed Change on:

- workmanship, quality, appearance or durability of any part of the Facility;
- the design, construction or commissioning of the Facility;
- the management and maintenance of the Facility;
- the residual value of the Facility;
- the Facility continuing to be Fit for the Intended Purposes;
- the provision of the Operational Services;

- the capability of the Contractor to meet the Service Requirements;
- the Crown's relationships with third parties;
- any applicable Rectification Programme;
- any applicable Prevention Plan;
- any warranty given by the Contractor under the Project Documents;
- the performance of any other of the Contractor's obligations under the Project Documents; and
- the Facility, including its risk profile (to the extent not covered above).

Note: for Non-Material Changes, all sections above are required to be completed except for section 2 (which must state 'no change in costs').

Section 3 – Contractor's Certifications (to be completed by a director of Contractor)

The Contractor certifies that:

1. the Change the subject of this Change Notice cannot be accommodated within the next planned refurbishment of the relevant part of the Facility;

2. it is not aware of any material omission or inaccuracy in the facts and pricing assumptions provided by it, on which the cost of the Change in Section 2 of this Change Notice is based;

3. in estimating the costs on which the cost of the Change recorded in Section 2 of this Change Notice is based, it has observed the requirements of Part 12 (Changes) of the Base Agreement and the Change Compensation Principles;

4. in costing the Change, full account has been taken of all insurance moneys on which the Contractor has made or may be able to make a claim under any Insurance Policies or which it might have been able to make a claim on if it had complied with its insurance obligations under this Agreement;

5. the proposed Change will not cause any part of the Facility not to be Fit for the Intended Purposes, nor prevent, impede or increase the cost of the Works Provisioning, nor adversely affect performance of the Contractor's other obligations under this Agreement, except to the extent that it is expressly stated or referenced in Section 2 of this Change Notice; and

6. the proposed Change will not prevent, impede or increase the cost of the Operational Services or adversely affect the Service Requirements or the performance of the Contractor's other obligations under this Agreement except to the extent that it is expressly stated or referenced in Section 2 of this Change Notice.

Signed for and on behalf of the Contractor

....

Name

Position

Date

Section 4 – Approval of Change (including any change proposal variations)
Section 4.1(a) (to be completed by the Crown) *Non-Material Change/Material Change (delete as appropriate)* *Initiated by the Crown* Change proposal variations: No/Yes [if yes set out particulars]
Section 4.1(b) (to be completed by the Crown) *Changes proposed by Contractor* Change proposal variations: No/Yes [if yes set out particulars]
Section 4.2: Technical and finance approval (to be completed by the appropriate Crown officers and to signify approval of Change Proposal) *All Changes* [when read subject to the change proposal variations noted above] (Project Manager) (Finance Manager) .... Name Name Date Date
Section 4.3: Overall approval of Change (to be completed by the Crown and to signify approval of the Change Proposal) *All Changes* [when read subject to the change proposal variations noted above, and the variations to the Agreement set out in section 7 below] Overall Approval (Crown) .... Name Position Date

Section 5 – Confirmation that implementation of Change completed (to be completed by Contractor)
All Changes
Section 6 – Certification of Work covered by Change (to be completed by or on behalf of the Crown)
All Changes
Section 7 – Formal variations to the Agreement (to be completed by the Crown)
[*Insert details of all amendments needed to the Agreement to implement the agreed Change. Attach draft amendment agreement (where applicable). Any amendment or variation agreement concluded in respect of this Change will comprise part of the Confirmed Change.*]

Schedule 17: Change Compensation Principles

1. General principles

1.1 Open book

Any Change or Change in Costs, in respect of which the Crown has agreed or is obliged to pay the Contractor compensation, will only be approved and will only be payable by the Crown if the calculation of charges proposed by the Contractor is disclosed to the Crown on an Open Book Basis (including in relation to components of the price submitted by any Major Sub-contractor).

1.2 Other considerations

In determining any Change in Costs or the amount of compensation payable in respect of a Change:

(a) appropriate regard must be given to the timing of cash flows and all cash flows should be discounted or inflated to reflect when they occur (if appropriate);

(b) the Contractor:

   (i) must take, and require all Contractor Personnel to take, all proper and reasonable steps to mitigate the effect and consequences of the Change or event giving rise to the Change in Costs; and

   (ii) will not be entitled to compensation under these Change Compensation Principles for any Costs or Losses to the extent it, or any Contractor Personnel, has failed to comply with paragraph 1.2(b)(i) of these Change Compensation Principles;

(c) the compensation will be assessed in a manner that avoids double counting, particularly in relation to profits, margins, delay and prolongation costs; and

(d) the compensation calculation will take full account of any insurance proceeds, damages, other compensation or amount paid or payable to the Contractor or any Contractor Personnel or that would have been payable to the Contractor or any Contractor Personnel had the Contractor or the Contractor Personnel complied with the Contractor's insurance obligations under the Base Agreement and made a proper claim under the relevant Insurance Policies as a result of the occurrence of the relevant event.

1.3 Omission of Services

Where the Crown omits a Service by way of Change, deductions will be made from the Unitary Charge for any savings to the Contractor (including any profit on the amount of such savings).

2. Material Changes

2.1 Generally

The entire compensation payable by the Crown for the implementation of a Material Change that has not been, and will not be, tendered out pursuant to paragraph 2.9 of these Change Compensation Principles is to comprise only:

(a) the Base Costs and (subject to paragraph 2.3) a Margin and not any separate fee, profit, element or uplift; and

(b) any third party costs that the Crown has agreed to pay for, subject to and in accordance with clause 45.2 (Withdrawn Change) of the Base Agreement.

2.2 Sub-contractor Margins

Subject to paragraph 2.3, the Margin that a Sub-contractor may apply to its Base Costs for the implementation of any Material Change must not exceed the relevant Margin specified in Appendix 1.

2.3 Contractor Margin

The Contractor will not charge any Margin in connection with the management or implementation of any Material Change except as provided in this paragraph 2.3. The Contractor may charge a Margin up to (but not exceeding) the applicable Margin Allowance in connection with the implementation of any Material Change, but only in the following circumstances where the Contractor can demonstrate to the Crown that due to the complexity of the Material Change:

(a) it is necessary for the Contractor to deploy significant additional or specialised resources into the processing or management of the Material Change; and/or

(b) due to the high value nature of the Material Change, the Contractor is being required to assume extraordinary risks in connection with the performance of the Sub-contractors in implementing the Change.

2.4 Base and lifecycle costs

(a) The labour cost and professional fee cost components of the Base Costs for a Material Change (and any associated lifecycle or maintenance changes) are to be calculated on the basis of then-current market rates on a fair and reasonable basis, fully disclosed to the Crown on an Open Book Basis and incorporating applicable comparator information.

(b) Any lifecycle replacement and maintenance associated with additional works (or changes to the Facility) shall be consistent with the lifecycle and maintenance profile of the Facility envisaged in the Base Case, the Asset Management Plan and the Five Year Work Plan (as applicable), provided that the Contractor shall reflect improvements in technology that can optimise whole of life costs for the Crown. If any such additional works are specified to a higher quality compared with the Facility, then the unit lifecycle replacement and maintenance costs shall be (in real terms) lower.

2.5 Costs or savings

(a) The costs or savings applicable to any Material Change to be paid for or received by the Crown and that has not been, and will not be, tendered out pursuant to paragraph 2.9 of these Change Compensation Principles are to be calculated as follows:

P = A – B

where:

P = the amount payable to or by the Contractor;

A = the amount payable to the Contractor or any Sub-contractor for implementing the Material Change calculated in accordance with these Change Compensation Principles; and

B = the amount avoided or saved by the Contractor.

(b) The calculation of A and B in the foregoing formula must take into account the Base Costs payable and any Margin payable in accordance with these Change Compensation Principles to the extent required to leave the Contractor in a 'no better and no worse' position on implementation of the Material Change.

(c) In determining Base Costs, the Contractor will only be entitled to compensation for those costs:

(i) of design, construction, commissioning, operation, maintenance, repair (in each case, if any) properly and reasonably incurred and directly attributable to the implementation of the Material Change in question; and

(ii) excluding any Margin.

(d) For the purposes of calculating any Margin Allowance, all Base Costs will exclude any financing, delay or prolongation costs that may otherwise be payable in accordance with these Change Compensation Principles.

(e) In calculating B in the foregoing formula, the calculation of Base Costs must include all costs avoided by the Contractor or any Sub-contractor and Margins saved as a result of the implementation of the Material Change. In the context of a Material Change that is an omission to the Works Provisioning or the other Services, this saving must include the same Margin Allowances that would apply as if there had been an increase in the Works Provisioning or the other Services.

(f) The Contractor must use its best endeavours to ensure that its Sub-contractors minimise any increase in costs and maximise any reductions in costs.

2.6 Form of compensation

Subject to the terms of the Base Agreement, the amounts calculated in accordance with these Change Compensation Principles will be paid in a manner determined by the Crown, by one or more lump sum payments, by increasing or decreasing the Unitary Charge or by a combination of these.

2.7 Payment of compensation

Any compensation payable by the Crown in respect of a Material Change:

(a) by means of adjustment to the Unitary Charge, is to be calculated in accordance with clause 5 (Base Case and Base Case adjustments) of the Base Agreement; or

(b) other than by means of adjustment to the Unitary Charge, is to be made in accordance with and subject to clause 49.2 (Report and invoice) of the Base Agreement.

2.8 External financing of Material Changes

(a) If the Crown has specified in the applicable Change Notice that it requires the Contractor to use its best endeavours to obtain financing for a Material Change, and if the Change Proposal proposes Capital Expenditure due to a Material Change, then the Contractor is to use its best endeavours to obtain financing on terms reasonably satisfactory to it, the Senior Lenders and the Crown.

(b) Such external financing may be sourced from savings resulting from earlier Changes which have resulted in financing being available under the Financing Agreements, from additional financing under the Financing Agreements, financing from the Contractor itself and financing from other third party sources approved by the Crown. The financing costs directly attributable to the financing of the Material Change in question may form part of the compensation payable by the Crown, but only then subject to the terms of these Change Compensation Principles.

(c) The Contractor must:

(i) advise the Crown in writing as soon as practicable after being directed by the Crown to use its best endeavours to obtain financing for additional Capital Expenditure:

(A) of the Contractor’s proposed method of financing the additional Capital Expenditure;

(B) of the adjustment proposed in the Unitary Charge in the event that the Contractor is able to obtain financing for the additional Capital Expenditure; and

(C) of any upfront costs, payments or reimbursements required as costs arise or savings are realised; and

(ii) keep the Crown informed of the progress of its endeavours to obtain financing for the Capital Expenditure throughout the period from its receipt of the Change Notice until it is required to return the Change Notice to the Crown pursuant to clause 40 (Initiation of Change Procedure) of the Base Agreement.

(d) The Crown may, at any time up to the end of the period the Contractor is required to return the Change Notice to the Crown, notify the Contractor that the Crown agrees to meet all or, to the extent that the Contractor has obtained financing for part of the Capital Expenditure, the remaining part of the Capital Expenditure.

2.9 Process to follow if Crown requires tendering of Significant Material Change

(a) If a Change is a Significant Material Change, the Crown may, in its absolute discretion, require the Contractor to obtain competitive quotations for the work or for elements of the work entailed in implementing the Change in accordance with this paragraph 2.9 of these Change Compensation Principles.

(b) The Contractor must obtain three separate quotations (or such other number of quotations as directed by the Crown, acting reasonably) from experienced, independent and capable contractors that are acceptable to the Crown, two of which must not be Contractor Related Persons, unless otherwise agreed by the Crown (in its sole discretion).

(c) The Contractor will be responsible for selecting a sub-contractor from this process in full consultation with (and subject to the prior agreement of) the Crown (acting reasonably).

(d) The Contractor must permit the Crown to review all materials that are submitted in the tender process and provide any other information that the Crown reasonably requires.

(e) The Contractor must provide the Crown with information that demonstrates to the reasonable satisfaction of the Crown that the sub-contractor it intends to select and engage is the best choice having regard to:

(i) the price quoted in the prevailing market conditions;

(ii) the relevant experience and capability of that sub-contractor in the context of the Change;

(iii) the ability of the sub-contractor to carry out the work in the manner and to the standards required by the Base Agreement;

(iv) the requirements of clause 16 (Sub-contractors) of the Base Agreement; and

(v) the financial standing and credit worthiness of that sub-contractor.

(f) The Crown may (acting reasonably) within 10 Business Days from receipt of the material provided by the Contractor under paragraph 2.9(d), and the information provided by the Contractor under paragraph 2.9(e), advise the Contractor that it:

(i) does accept the tender and the terms of engagement, in which case the Contractor will appoint the sub-contractor to implement the Material Change on those terms; or

(ii) does not accept the sub-contractor because that sub-contractor:

(A) does not have the legal capacity, power and agency to become a party to and perform the obligations of the relevant sub-contractor under the relevant sub-contract;

(B) does not employ persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) sufficient to enable it to perform the obligations of the relevant sub-contractor under the relevant sub-contract;

(C) is a person whose activities, in the reasonable opinion of the Crown, pose or could pose a threat to the reputation of the Crown, if appointed as a sub-contractor by the Contractor; and/or

(iii) does not accept the terms of engagement.

(g) In the event that the Crown does not accept the sub-contractor and/or the terms of engagement, the Crown may:

(i) direct the Contractor not to accept any one or more tender offers;

(ii) in the case of a Significant Material Change that has been initiated by the Crown sending a Change Notice, withdraw that Change Notice; or

(iii) proceed to implement the work that would otherwise have been performed in respect of the relevant Change itself through sub-contractors chosen by the Crown in its sole discretion.

(h) If the Crown implements work in respect of the relevant Significant Material Change itself in accordance with paragraph 2.9(g), the Crown may require that the Contractor provide the Operational Services in respect of any modification to the Works for all or part of the remainder of the Contract Term pursuant to a Consequential Change.

Appendix 1: Margin Allowances

Component	Margin Allowance		
Contractor Margin	$0 to $100,000 (inclusive) (Base Cost either by way of one off Capital Expenditure or annual Operating Expenditure)	>$100,000 to $500,000 (exclusive) (Base Cost either by way of one off Capital Expenditure or annual Operating Expenditure)	>$500,000 (Base Cost either by way of one off Capital Expenditure or annual Operating Expenditure)
	[*Respondent to propose*]	[*Respondent to propose*]	[*Respondent to propose*]

Component	Margin Allowance
Sub-contractor Margin - Works Provisioning	[*Respondent to propose*]
Sub-contractor Margin - Operational Services	[*Respondent to propose*]

Schedule 18: Calculation of Compensation on Termination

Part 1 – Definitions, interpretation and general provisions

1. Definitions

1.1 Definitions

In addition to the definitions set out in clause 1 (Definitions) of the Base Agreement:

Additional Capped Rescue Refinancing Amount means, in respect of each Rescue Refinancing, the amount by which Senior Debt (drawn down or available) immediately after the implementation of the Rescue Refinancing exceeds 110 per cent of the Core Senior Debt immediately prior to the implementation of that Rescue Refinancing;

Adjusted Estimated Value of the Contract means the aggregate of:

(a) the Estimated Value of the Contract plus the Crown Due Amount, minus:

(i) in the case of termination under clause 75 (Termination on Contractor Default), the Compensation Adjustment;

(ii) in the case of termination under clause 76 (Termination on Uninsurable Event) or clause 77 (Termination on Uninsurability), 50 per cent of the amount of the item specified in paragraph (b) of Tender Costs, and 100 per cent of the amount of each of the items specified in paragraphs (d), (e), (f) and (g) of Compensation Adjustment;

(b) the Termination Interest Amount (if any);

Adjusted Estimated Value of the equity means the aggregate of:

(a) the Estimated Value of the equity, plus the Crown Due Amount, minus the items specified in paragraphs (d), (e), (g) and (h) of Compensation Adjustment; and

(b) an amount equivalent to interest, at the Senior Debt Rate, from the Actual Termination Date to the date of actual payment, on the amount determined pursuant to paragraph (a) of this definition;

Adjusted Fully Paid Equity means the aggregate of:

(a) all equity and Subordinated Debt committed as at Financial Close to be contributed to HoldCo, minus the items specified in paragraphs (d), (e), (f), (g) and (h) of Compensation Adjustment, provided that such amount shall not in any circumstances be less than zero;

(b) an amount equivalent to interest, at the Government Bond Rate, from the Actual Termination Date to the Compensation Date, on the amount determined pursuant to paragraph (a) of this definition; and

(c) where the Compensation Sum is not paid on or prior to the Compensation Date, an amount equivalent to interest, at the Senior Debt Rate, from the Compensation Date until the date of actual payment, on the amount determined pursuant to paragraph (a) of this definition;

Adjusted Highest Compliant Tender Price means the Highest Compliant Tender Price, plus the Crown Due Amount, minus the Compensation Adjustment;

Amortised Aggregate Additional Rescue Refinancing Amounts or **AAARRA** means, on the Actual Termination Date, the aggregate of:

(a) all Additional Capped Rescue Refinancing Amounts drawn down by the Contractor prior to the Actual Termination Date (if any); less

(b) all principal payments of Senior Debt made to Senior Lenders following the date of the first Rescue Refinancing,

with any negative number deemed to be zero;

Base Senior Debt Termination Amount means:

(a) all amounts outstanding at the date on which the Base Senior Debt Termination Amount is actually paid, including interest and Default Interest accrued as at that date, from the Contractor to the Senior Lenders in respect of Permitted Borrowing; and

(b) all amounts including costs of early termination of Swaps and other breakage costs, payable by the Contractor to the Senior Lenders as a result of prepayment of amounts outstanding in respect of Permitted Borrowing as a result of termination of the Base Agreement, subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible, but excluding any amounts payable in respect of Swaps to the extent that the same are not entered into in respect of Permitted Borrowing;

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

(c) all credit balances on any bank accounts in respect of which the Senior Lenders have the benefit of a security interest (but excluding the Joint Insurance Account and excluding any other account to the extent that the credit balance of the account is not available for the repayment of Senior Debt) held by or on behalf of the Contractor on the date of actual payment of the Base Senior Debt Termination Amount;

(d) all amounts, including costs of early termination of Swaps and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing as a result of termination of the Base Agreement; and

(e) all other amounts received by the Senior Lenders on or after the Termination Date and before the date of actual payment of the Base Senior Debt Termination Amount as a result of enforcing any other rights they may have under the Senior Financing Agreements;

Compensation Adjustment means, as at the Compensation Date, an amount equal to the aggregate of:

(a) the Tender Costs;

(b) additional costs reasonably and properly incurred by the Crown as a direct result of termination of the Base Agreement or any other Project Documents;

(c) any Rectification Costs, less (to the extent that such sums are received or receivable in relation to Rectification Costs) any insurance proceeds paid, payable or which will be payable pursuant to policies maintained in accordance with clause 70 (Insurance) of the Base Agreement;

(d) amounts which the Crown is entitled to set off or deduct against amounts owing by the Contractor under the Base Agreement;

(e) to the extent (if any) not deducted under paragraph (d) of the definition of Base Senior Debt Termination Amount, gains which have accrued or will accrue to the Contractor as a result of the termination of the Base Agreement, any other Project Documents or any Senior Financing Agreement;

(f) insurance proceeds payable to the Contractor but not paid (or that would have been payable if the Contractor had complied with its obligations under the Base Agreement) in respect of any event to the extent that it gave rise or contributed to the termination of the Base Agreement and which in either case the Contractor is or would be entitled to retain under the Project Documents other than:

  (i) insurance proceeds representing insurance indemnification of the Contractor against its liabilities to third parties; and

  (ii) insurance proceeds that would be payable to the Joint Insurance Account;

(g) to the extent (if any) not deducted under paragraph (c) of the definition of Base Senior Debt Termination Amount, credit balances in accounts held by or for the benefit of the Contractor (but excluding the Joint Insurance Account and excluding any other account to the extent that the credit balance of the account is not available for the repayment of Senior Debt);

(h) where the Actual Termination Date occurs prior to the Service Commencement Date, amounts representing the undrawn commitments of Shareholders in HoldCo to contribute equity and/or Subordinated Debt to HoldCo which have been released provided that any associated security or collateral has been unconditionally and irrevocably released by HoldCo and the Security Trustee; and

(i) where:

  (i) the Base Agreement has been terminated under clause 75 (Termination on Contractor Default);

  (ii) paragraph 9 applies; and

  (iii) the Highest Compliant Tender Price (after subtracting the aggregate of the amounts referred to in paragraphs (a) to (h) of this definition) (**x**) is less than the balance of the Senior Debt specified in the Base Case as at the Compensation Date (**y**);

  an amount (a) calculated as follows:

  a = b x c

  where:

  b = the aggregate of the amounts paid to the Contractor representing the $SPDI_n$ component of the PTDSA; and

  c = the proportion (represented as a decimal) (y-x)/y,

in each case subject to paragraph 2;

Compensation Date means either:

(a) if paragraph 9 of Part 3 applies:

(i) the date specified by the Crown under the Tender Process on which the New Contract is to take effect (which date must be no later than 15 months (if the Actual Termination Date occurs before the Service Commencement Date) or nine months (if the Actual Termination Date occurs on or after the Service Commencement Date) after the Actual Termination Date);

(ii) if the Crown makes an election under paragraph 9.8, a date specified by the Crown which must be no later than 60 Business Days after the date of such determination; or

(iii) if it is determined in accordance with clause 89 (Accelerated Dispute Resolution Procedures) of the Base Agreement that there is no Liquid Market, a date specified by the Crown which must be no later than 60 Business Days after the date of such determination; or

(b) in any other case, subject to clause 79.1(a) and 79.1(b) (Payment of Compensation) of the Base Agreement, a date notified by the Crown to the Contractor which must be no later than 60 Business Days after the Actual Termination Date;

Compensation Sum means:

(a) where the Base Agreement is terminated under clause 74 (Termination for Convenience) of the Base Agreement, the amount calculated in accordance with Part 2; or

(b) where the Base Agreement is terminated under clause 75 (Termination on Contractor Default) of the Base Agreement, the amount calculated in accordance with Part 3; or

(c) where the Base Agreement is terminated under clause 76 (Termination on Uninsurable Event) or clause 77 (Termination on Uninsurability) of the Base Agreement, the amount calculated in accordance with Part 4;

Compliant Tender means any tender submitted by a Compliant Tenderer that meets the Qualification Criteria;

Compliant Tenderer means a tenderer who is a Suitable Substitute Contractor;

Crown Due Amount means any amount due and payable by the Crown to the Contractor in accordance with the terms of the Project Documents as at the Termination Date and which is not discharged prior to the Compensation Date;

Default Interest means any increased margin that is payable to the Senior Lenders or which accrues as a result of any payment due to the Senior Lenders not being made on the date on which it is due;

EOI Invitation means an invitation for expressions of interest, issued by the Crown, for parties to enter into a New Contract;

Estimated Value of the Contract means the Estimated Value of the Contract calculated in accordance with paragraph 10.2;

Estimated Value of the equity means the Estimated Value of the equity calculated in accordance with paragraph 5.4;

Government Bond Rate means, in respect of the period between the Termination Date and the Compensation Date, the published yield to maturity applicable to New Zealand Government Bonds with a remaining maturity closest to that period;

Highest Compliant Tender Price means the price offered by the Compliant Tenderer (if any) with the highest tender price;

Liquid Market means:

(a) there are at least three parties, each of whom in the Crown's reasonable opinion is capable of meeting the Qualification Criteria and being a Suitable Substitute Contractor who indicate, in response to the EOI Invitation, that they intend to participate in the Tender Process; and

(b) the Crown receives at least two Compliant Tenders through the Tender Process,

provided always that any vehicle controlled and established by the Senior Lenders specifically for the purposes of this Project and to which the Base Agreement may be novated shall be disregarded in assessing whether the tests set out in paragraphs (a) and (b) above are met, without limiting any such vehicle's ability to participate in the Tender Process;

New Contract means an agreement on the same terms and conditions as this Agreement (including the same Unitary Charge derived from the then-current Base Case) and the other Project Documents existing as at the Actual Termination Date, but with the following amendments:

(a) if the Base Agreement is terminated prior to the Service Commencement Date, then the Service Commencement Date shall be extended by a period to allow a New Contractor to achieve the Service Commencement Date;

(b) the term of such agreement shall be equal to the term from the Compensation Date until the Expiry Date, with Services to commence under the New Contract on the Compensation Date; and

(c) any other amendments which do not adversely affect the Contractor (including any adverse effect on the compensation payable to the Contractor under this Schedule 18),

provided that any accrued Service Failure Points and/or warning notices shall be deemed to be cancelled for all purposes on entry into the New Contract, and no liability for any breach by the Contractor prior to the date of the New Contract shall be imposed on the new party;

Permitted Borrowing means, without double counting, any:

(a) advances to the Contractor under the Senior Financing Agreements;

(b) interest under the Senior Financing Agreements; and

(c) other amounts accrued or payable under the Senior Financing Agreements,

in each case excluding:

(d) the aggregate of the AAARRA and Liabilities arising from any Swaps to the extent attributable to such AAARRA (if any) as at the Termination Date; and

(e) any increased advances, interest or amounts resulting from amendments to or replacements of any Senior Financing Agreements that have not, in either case, obtained the prior written approval (or the deemed approval) of the Crown under the Base Agreement;

Post Termination Date Service Amount or **PTDSA** means, for the whole or any part of a month, for the period from the Actual Termination Date to the Compensation Date, the amount calculated as follows:

$\mathbf{PTDSA_n} = SDPI_n + EBRshare_n - RefiGain_n + ED_n + SPV_n + ADS_n$

Where:

$\mathbf{PTDSA_n}$ means the Post Termination Date Service Amount in respect of month (n);

$\mathbf{SDPI_n}$ means the elements of the Unitary Charge specified in the Base Case as attributable to the payment of Senior Debt principal, interest and costs in respect of month (n);

$\mathbf{EBRshare_n}$ has the meaning given to that term in Schedule 14 (Payment Mechanism) in respect of month (n);

$\mathbf{RefiGain_n}$ has the meaning given to that term in Schedule 14 (Payment Mechanism) in respect of month (n);

$\mathbf{ED_n}$ means the elements of the Unitary Charge specified in the Base Case as attributable to Distributions in respect of month (n);

$\mathbf{SPV_n}$ means any overhead costs actually incurred by the Contractor in respect of month (n); and

$\mathbf{ADS_n}$ means any amount payable by the Crown under clause 84.4 (Disengagement Services) of the Base Agreement in respect of month (n) (if and for so long as any such amount is payable),

provided that for any partial month the $PTDSA_n$ will be adjusted on a proportionate basis to reflect the number of days in that partial month;

Qualification Criteria means the criteria each tenderer will be required by the Crown to meet as part of the Tender Process, which shall be:

(a) each tenderer must provide a commitment to enter into the New Contract with effect from the Compensation Date;

(b) each tenderer must provide evidence sufficient to satisfy the Crown (acting reasonably) that it has the financial ability to pay the capital sum tendered for the New Contract;

(c) each tenderer must bid on the basis of a single capital payment to be made by the tenderer to the Crown on the date of the New Contract, representing an amount bid by the tenderer in consideration of it assuming all rights and accepting all obligations set out in the New Contract and including within that sum an amount equivalent to the applicable Rectification Costs (if any);

(d) each tenderer must have (directly or via its sub-contractors) the experience, technical expertise (including asset management capability) and financial capability to provide the Services;

(e) the technical solution proposed by each tenderer is in sufficient detail and is capable of delivery, each to the Crown's satisfaction (acting reasonably);

(f) the Crown has not, at any time prior to the tender, made a determination that the tenderer or any of its equity providers is an Unsuitable Third Party or is not, where that equity provider is a person that Controls the tenderer, reputable for the purposes of clause 91 (Change of Ownership) of the Base Agreement; and

(g) any other criteria and processes that the Crown may determine at its reasonable discretion, provided that any other criteria and processes do not limit or reduce in any way the other Qualification Criteria specified in this definition;

Rectification Costs means an amount equal to the reasonable and proper costs incurred by the Crown (or, in the case of a retender under paragraph 8, to be incurred by the successful tenderer for the New Contract) in respect of any capital expenditure required to enable the Facility to achieve Works Completion, and any capital expenditure required to remedy any Snagging Defects occurring prior to the Termination Date or the Actual Termination Date (as applicable);

Request for Tenders means a request for tenders, issued by the Crown, for parties to enter into a New Contract;

Tender Costs means

(a) the reasonable and proper costs of the Crown incurred in carrying out the Tender Process; and/or

(a) the reasonable and proper third party costs of the Crown incurred in connection with any calculation of the Estimated Value of the Contract;

Tender Process means the process by which the Crown requests expressions of interest and tenders for entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a new contractor, in accordance with paragraph 9 of Part 3;

Tender Process Monitor means a third party appointed by the Contractor under paragraph 9.4 of Part 3;

Termination Interest Amount means:

(a) where the Project Agreement was terminated under clause 75 (Termination on Contractor Default), an amount equivalent to interest, at the Senior Debt Rate, from the Actual Termination Date to the Compensation Date, on that part of the amount determined pursuant to paragraph (a) of the definition of Adjusted Estimated Value of the Contract attributable to Senior Debt; or

(b) where the Project Agreement was terminated under clause 76 (Termination on Uninsurable Event) or clause 77 (Termination on Uninsurability), an amount equivalent to interest, at the Government Bond Rate, from the Actual Termination Date to the Compensation Date, on the amount determined pursuant to paragraph (a) of the definition of Adjusted Estimated Value of the Contract to the extent it exceeds the Base Senior Debt Termination Amount; and

Valuation Principles means the valuation principles set out in the Appendix to this Schedule 18.

1.2 Interpretation

Any reference in this Schedule to a **Part** or a **paragraph** is, unless the context otherwise requires, to a Part or a paragraph of this Schedule.

2. General principles

2.1 No double counting

Notwithstanding any other provisions in the Base Agreement or this Schedule 18, neither party shall be entitled to recover compensation or make a claim under the Base Agreement or this Schedule 18 in respect of any Losses that it has incurred or costs that it will incur to the extent that it has already been compensated in respect of those Losses or those costs pursuant to the Base Agreement, this Schedule 18 or otherwise.

2.2 Compensation Adjustment

To the extent that any amount, cost, gain, proceed or balance that falls within any of the limbs of the definition of Compensation Adjustment (**Relevant Amount**) has been taken into account when determining the Highest Compliant Tender Price or the Estimated Value of the Contract (as the case may be), those amounts will not be added or deducted when determining the Adjusted Estimated Value of the Contract or the Adjusted Highest Compliant Tender Price (as the case may be). The Crown will ensure that the retendering procedure in paragraph 9 of Part 3 or the valuation procedure in paragraph 10 of Part 3 is conducted in such a way that it can be determined whether any Relevant Amount is included in the Highest Compliant Tender Price or the Estimated Value of the Contract (as the case may be).

2.3 Compensation Adjustment methodology

(a) In determining the Compensation Adjustment, the Crown will determine the amounts comprised in that definition on a consistent basis and ensuring that no amounts are double counted.

(b) To the extent that Rectification Costs will be paid or due for payment after the Compensation Date, then those costs are to be discounted at the discount rate specified in paragraph 10.2(b) having regard to when those costs are projected to be paid (provided that costs which are paid on or before the Compensation Date are not to be discounted).

3. Post Termination Date Service Amount

(a) If the Crown:

   (i) terminates the Base Agreement pursuant to clause 75 (Termination on Contractor Default) of the Base Agreement; and

   (ii) elects to retender the provision of the Project in accordance with paragraph 8 of Part 3,

   then for all or any part of a month falling within the period from the Actual Termination Date to (but excluding) the Compensation Date, the Crown shall pay to the Contractor the PTDSA for that month (or relevant part of that month), on or before the date falling 20 Business Days after the end of that month.

(b) The Crown may, prior to making the payment, require the Contractor and/or the Senior Lenders to establish a mechanism acceptable to the Crown under which the Crown pays the Senior Lenders, on behalf of the Contractor, that element of the PTDSA (if any) attributable to principal, interest or fees payable to the Senior Lenders under the Senior Financing Agreements during the relevant period.

(c) No PTDSA will be payable in any circumstance other than that specified in paragraph 3(a).

4. Payment of Compensation Sum

(a) The Crown shall pay to the Contractor the element of the Compensation Sum that is not disputed on the Compensation Date and the remainder on or before the date falling 20 Business Days after it has been determined under the Accelerated Dispute Resolution Procedures.

(b) The Crown shall pay interest to the Contractor at the Senior Debt Rate on any amount of the Compensation Sum that the Crown:

(i) has failed to pay on or prior to the Compensation Date (where there is no Dispute as to any element of the Compensation Sum); or

(ii) has been held liable to pay under the Accelerated Dispute Resolution Procedures and which has been withheld from the Compensation Date until the date specified in paragraph 4(a).

(c) Without limiting the Crown's obligation to pay any PTDSA pursuant to paragraph 3, the discharge by the Crown of its payment obligation in paragraphs 4(a) and 4(b) shall be in full and final settlement of all of the Contractor's claims and rights against the Crown for breaches and/or termination of the Base Agreement and the Project Documents whether under contract, tort, restitution or otherwise, except (but only) to the extent provided in clause 78 (Consequences of Termination) of the Base Agreement.

Part 2 - Compensation on termination for convenience

5. Compensation payable

5.1 Obligation to pay

If the Crown terminates the Base Agreement pursuant to clause 74 (Termination for Convenience) of the Base Agreement, the Crown shall calculate the relevant Compensation Sum in accordance with paragraph 5.2 of this Part 2.

5.2 Compensation Sum

The Compensation Sum for termination for convenience under clause 74 (Termination for Convenience) of the Base Agreement is an amount equal to the net aggregate of the following:

(a) the Base Senior Debt Termination Amount;

(b) an amount which reflects the Adjusted Estimated Value of the equity, provided that such amount shall not in any circumstances be less than zero;

(c) redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of the Base Agreement, that the Contractor is legally liable to pay under the terms of the relevant employment contracts or at law and that would not have been otherwise incurred if the Base Agreement was not terminated for convenience; and

(d) amounts reasonably and properly incurred by the Contractor and payable as Sub-contractor Breakage Costs, as a direct result of termination of the Base Agreement, such amounts only to be paid to the extent that:

(i) the Contractor is liable to pay such amounts to the Sub-contractor under the express terms of the relevant sub-contract; and

(ii) as at the Termination Date there is no event of default (however described) subsisting under the relevant sub-contract that would entitle the Contractor to terminate such sub-contract.

5.3 Required Procedure

If the Crown terminates the Base Agreement pursuant to clause 74 (Termination for Convenience) of the Base Agreement, then the following procedure shall apply:

(a) the parties will appoint an Independent Expert in accordance with clause 89 (Accelerated Dispute Resolution Procedures) of the Base Agreement to determine the Estimated Value of the equity; and

(b) the terms of this paragraph 5 and the terms of clause 89 (Accelerated Dispute Resolution Procedures) of the Base Agreement will apply as if the Independent Expert was determining a Dispute.

5.4 Valuation methodology

Where an Independent Expert is required to determine the Estimated Value of the equity in the Contractor under this Part 2, the Independent Expert:

(a) will be required to determine the Estimated Value of the equity in the Contractor based on a discounted cash flow valuation methodology, in respect of the post-tax nominal equity cash flows, for the period from the Actual Termination Date to the Expiry Date;

(b) will be required to determine an appropriate post-Tax discount rate having regard to prevailing market rates of return on equity for projects with a similar risk profile to the Project, on a nominal basis;

(c) will be required to determine:

(i) the projected revenue of the Contractor for the Project; and

(ii) the projected operating and financing costs and lifecycle capital expenditure of the Contractor for the Project,

in accordance with the Valuation Principles;

(d) will be entitled to consider any relevant comparable data available from or submissions made by the Crown or the Contractor; and

(e) will be entitled to consider any other evidence, matters or market information that the Independent Expert considers to be relevant (acting reasonably) on a basis consistent with the requirements of this paragraph 5.4 and the Valuation Principles.

Part 3 - Compensation for Contractor Default

6. Obligation to pay

If the Crown terminates the Base Agreement pursuant to clause 75 (Termination for Contractor Default) of the Base Agreement, the Crown shall calculate the relevant Compensation Sum in accordance with paragraph 7 of this Part 3.

7. Compensation Sum

Where the Base Agreement is terminated under clause 75 (Termination for Contractor Default) of the Base Agreement, the Compensation Sum will be equal to either:

(a) the Adjusted Estimated Value of the Contract; or

(b) the Adjusted Highest Compliant Tender Price.

8. Retendering

8.1 Election

In determining the Compensation Sum for termination for contractor default under clause 75 (Termination for Contractor Default) of the Base Agreement the Crown, subject to paragraph 8.2 of this Part 3, is entitled to either:

(a) retender the provision of the Project in accordance with paragraph 9; or

(b) require an expert determination in accordance with paragraph 10.

8.2 Limitations on election

Subject to paragraph 9.9, the Crown shall only be entitled to elect to retender the provision of the Project in accordance with paragraph 9 of this Part 3 if:

(a) the Crown notifies the Contractor on or before the date falling 20 Business Days after the Actual Termination Date that it intends to retender; and

(b) the Crown (acting reasonably) determines that there is likely to be a Liquid Market, provided that the Crown shall not be entitled to retender if:

   (i) the Contractor or the Senior Lenders have demonstrated to the reasonable satisfaction of the Crown that they have used reasonable endeavours, (by way of a bona fide tender request issued to market participants and incorporating a bidder pre-qualification stage and a bidder short-listing stage), to procure the transfer of the rights and obligations of the Contractor under the Base Agreement or under clause [7] of the Financier Direct Deed, but have failed to do so (provided that failure to transfer was not a result of the Contractor or the Senior Lenders deciding not to transfer to a Suitable Substitute Contractor solely on the grounds of price);

   (ii) the Contractor or the Senior Lenders have notified the Crown of a Dispute under paragraph 8.3, and that Dispute has not yet been resolved in accordance with clause 89 (Accelerated Dispute Resolution Procedures) of the Base Agreement; or

(iii) it is determined in accordance with clause 89 (Accelerated Dispute Resolution Procedures) of the Base Agreement that there is not likely to be a Liquid Market.

8.3 Disputes

The Contractor may, no later than 10 Business Days after the Crown notifies the Contractor in writing that it intends to retender, notify the Crown in writing that it will dispute this decision on the grounds that the Crown has not acted in accordance with paragraph 8.2, and clause 89 (Accelerated Dispute Resolution Procedures) of the Base Agreement will apply.

9. Retendering procedure

If the Crown elects to retender the provision of the Project under paragraph 8.1 of this Part 3, then the following provisions shall apply.

9.1 Objective

(a) The objectives of the Tender Process are:

(i) to enable the Crown to enter into a New Contract with a Compliant Tenderer; and

(ii) to establish the Highest Compliant Tender Price.

(b) The Crown shall (subject to any legal requirements preventing it from doing so) use reasonable endeavours to complete the Tender Process as soon as practicable.

(c) The Crown shall, in undertaking the Tender Process and establishing the Highest Compliant Tender Price, owe a duty of reasonable care to the Contractor to obtain the best price reasonably obtainable at the time the Tender Process is undertaken.

9.2 Qualification Criteria

The Crown shall notify the Contractor of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, and shall act reasonably in setting such requirements and terms.

9.3 Information to be available

The Contractor authorises the release of any information by the Crown under the Tender Process, which would otherwise be prevented under clause 55 (Confidential Information) of the Base Agreement, that is reasonably required as part of the Tender Process.

9.4 Tender Process Monitor

The Contractor may, at its own cost, appoint a person (the **Tender Process Monitor**) to monitor the Tender Process for the purpose of reporting to the Contractor and the Senior Lenders on the Crown's compliance with the Tender Process and the Qualification Criteria, and making representations to the Crown. The Tender Process Monitor will not disclose any Confidential Information to the Contractor or any other person (and shall provide an undertaking to the Crown to such effect as a condition of its appointment) but shall be entitled to advise the Contractor and the Senior Lenders as to whether it considers that the Crown has acted in accordance with the Tender Process and the Qualification Criteria, and correctly determined the Highest Compliant Tender Price.

9.5 Role of Tender Process Monitor

The Tender Process Monitor shall enter into a confidentiality agreement with the Crown in a form acceptable to the Crown and shall (subject to execution of such confidentiality agreement) be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to the Crown, the Contractor and the Senior Lenders regarding compliance with the Tender Process and the Qualification Criteria. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Crown shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Contractor in the event that the Contractor refers a Dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with the Accelerated Dispute Resolution Procedures.

9.6 Adjusted Highest Compliant Tender Price

(a) As soon as practicable after tenders have been received, the Crown shall determine the Compliant Tenders, determine the Highest Compliant Tender Price and calculate and pay the Contractor the Adjusted Highest Compliant Tender Price.

(b) If, following the conclusion of the tender response period, the Crown has received at least two Compliant Tenders, but decides not to enter into a New Contract with a Compliant Tenderer, it shall notify the Contractor of this decision and pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price.

9.7 Completion of Retendering procedure

If the Crown elects to retender the provision of the Project under paragraph 8.1 of this Part 3, and the Highest Compliant Tender Price has not been established within 18 months after the Actual Termination Date, then the Compensation Sum will be ascertained in accordance with paragraph 10 of this Part 3.

9.8 Crown may elect to discontinue

The Crown may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under paragraph 10 of this Part 3 by notifying the Contractor that this election has been made.

9.9 No Liquid Market

(a) If the Crown does not receive:

(i) by the closing date specified in the EOI Invitation issued as part of the Tender Process, responses that meet the test set out in paragraph (a) of the definition of Liquid Market; or

(ii) by the closing date specified in the Request for Tenders issued as part of the Tender Process, responses that meet the test set out in paragraph (b) of the definition of Liquid Market,

the no retendering procedure under paragraph 10 of this Part 3 will automatically apply.

(b) If it is determined in accordance with clause 89 (Accelerated Dispute Resolution Procedures) of the Base Agreement that the Crown has not acted in accordance with paragraph 8.2, the no retendering procedure under paragraph 10 of this Part 3 will automatically apply.

10. No retendering

10.1 Required procedure

If:

(a) the Crown is not entitled to retender the provision of the Project under paragraph 8.2 of this Part 3;

(b) Part 4 applies;

(c) paragraph 9.8 or 9.9 applies; and/or

(d) the Crown elects pursuant to paragraph 8.1 to require determination of the Estimated Value of the Contract,

then the following procedure shall apply:

(e) the parties will appoint an Independent Expert in accordance with clause 89 (Accelerated Dispute Resolution Procedures) of the Base Agreement to determine the Estimated Value of the Contract; and

(f) the terms of this paragraph 10 and the terms of clause 89 (Accelerated Dispute Resolution Procedures) of the Base Agreement will apply as if the Independent Expert was determining a Dispute.

10.2 Valuation Methodology

Where an Independent Expert is required to determine the Estimated Value of the Contract under this Part 3, the Independent Expert:

(a) will be required to determine the Estimated Value of the Contract based on a discounted cash flow valuation methodology, in respect of the post-tax nominal cash flows for the Project, for the period from the Actual Termination Date to the Expiry Date;

(b) will be required to establish an appropriate post-tax nominal discount rate having regard to prevailing market weighted average costs of capital applicable to contracts with a similar risk profile to the Project;

(c) will be required to determine:

(i) the projected revenue of the Contractor for the Project; and

(ii) the projected operating costs and lifecycle capital expenditure of the Contractor for the Project,

in accordance with the Valuation Principles;

(d) will be required, when establishing the Estimated Value of the Contract where this Agreement has been terminated under clause 76 (Termination on Uninsurable Event) or clause 77 (Termination on Uninsurability), to exclude the effect of the relevant Uninsurable Event or the impact of the relevant risks that have become Uninsurable, as the case may be;

(e) will be entitled to consider any relevant comparable data available from or submissions made by the Crown or the Contractor; and

(f) will be entitled to consider any other evidence, matters or market information that the Independent Expert considers to be relevant (acting reasonably) on a basis consistent with the requirements of this paragraph 10.2 and the Valuation Principles.

Part 4 - Compensation on Uninsurable Event or Uninsurability

11. Obligation to pay

If the Crown terminates the Base Agreement pursuant to clause 76 (Termination on Uninsurable Event) or clause 77 (Termination on Uninsurability) of the Base Agreement, the Crown shall calculate the relevant Compensation Sum in accordance with paragraph 12 of this Part 4.

12. Compensation Sum

The Compensation Sum for termination on Uninsurable Event or Uninsurability under clause 76 (Termination on Uninsurable Event) or clause 77 (Termination on Uninsurability) shall be:

(a) where termination occurs before the Service Commencement Date, an amount equal to the aggregate of:

  (i) Adjusted Fully Paid Equity; and

  (ii) the Base Senior Debt Termination Amount.

(b) where termination occurs on or after the Service Commencement Date, an amount equal to the greater of:

  (i) the Adjusted Estimated Value of the Contract; or

  (ii) the Base Senior Debt Termination Amount.

Appendix – Valuation Principles

1. The Independent Expert must assume that the Project Documents and Major Sub-contracts in force immediately prior to the Termination Date continue for the Contract Term.

2. All assumptions made in determining costs and revenues must be adopted and applied consistently, and must not result in double counting of Deductions, Claims and other costs.

3. In determining any component of revenue or cost, the Independent Expert must, among other things:

   (a) consider the historical performance of the Contractor, on the assumption that the payment mechanism, performance regime and scope and nature of services remain in the form existing as at the Termination Date (excluding amounts incurred by the Contractor prior to termination in order to prevent, cure or mitigate the effects of any Deductions, Claims or default under this Agreement other than where such costs have resulted in a permanent increase in the historical cost base);

   (b) utilise the financing and economic assumptions set out in the then-current Base Case; and

   (c) determine that component of revenue or cost on a basis consistent with that incorporated into a price for the Project if the Project were to be sold in a market of knowledgeable, willing but not anxious buyers and sellers acting at arm's length.

4. The Independent Expert will have a duty to obtain specialist advice, including independent technical advice in relation to the provision of the Services (including costs and performance standards), specialist commercial and legal advice to the extent reasonably required.

5. Where the Actual Termination Date occurs prior to the Service Commencement Date, the projected cash flows for the purpose of this valuation will be those occurring from the Planned Service Commencement Date as per the then-current Base Case.

Schedule 19: Disengagement

1. Purpose

Part 1 of this Schedule 19 describes the obligations of the Contractor to ensure that there is, following service by the Crown of a Disengagement Services Notice on the Contractor (pursuant to clause 88.4 (Disengagement Services Notice) of the Base Agreement), an orderly and timely migration of responsibility for providing the Services from the Contractor to any New Contractor or to the Crown with no, or minimal, disruption to the *[Department/Agency/Ministry]* business or the Project.

2. Disengagement and Core Disengagement Services

2.1 General

The scope, nature and extent of the Disengagement Period and the Core Disengagement Services provided or to be provided by the Contractor, are or will be as specified in this Schedule 19 and in the Disengagement Plan.

2.2 Disengagement Plan

(a) The Contractor must:

(i) not less than 18 months prior to the Expiry Date; or

(ii) within 10 Business Days of the Crown requesting it to do so while a Contractor Default is subsisting or if a Termination Notice has been given,

prepare and submit to the Crown a draft Disengagement Plan which complies with the requirements for such plan as set out in Schedule 9 (Operative Documents) and this Schedule 19.

(b) If a Disengagement Services Notice is issued before a Disengagement Plan is Finalised, the provisions of this Schedule 19 will provide the basis for the Core Disengagement Services and the obligations the Contractor is required to perform for the purposes of the Core Disengagement Services, to bring about the seamless migration referred to in this Schedule 19.

2.3 Tender or other succession process

The Contractor acknowledges that the Crown may, without prejudice to the terms of the Project Documents and the Financier Direct Deed, on or following the commencement of the Disengagement Period:

(a) invite any person to tender for the provision of all or any part of the Services (each a **Tenderer**); or

(b) adopt another process for the appointment of a New Contractor.

2.4 Assistance with the re-tendering or handover process

The Contractor will, following an invitation from the Crown to a Tenderer or other potential New Contractor:

(a) provide reasonable assistance in the tendering process or other handover process for the relevant Services;

(b) provide a Tenderer, or other potential New Contractor, within five Business Days of a request by the Crown, with copies of the Handover Package;

(c) provide all Design Documentation in its then-current form and such additional information in respect of the design and construction of the Facility as the Crown or any Tenderer or other potential New Contractor may reasonably require;

(d) provide the Crown and any Tenderer or other potential New Contractor nominated by the Crown with reasonable access to Contractor Personnel, the Disengagement Deliverables and other assets and information relevant to the provision of the Services;

(e) provide such additional information about the Services as the Crown or any Tenderer or other potential New Contractor may reasonably require;

(f) provide reasonable assistance with the verification of any information relating to the provision of the Services including the provision of answers to verification questions; and

(g) use all reasonable endeavours to ensure that:

(i) all information, as at the date provided by it, constitutes true, correct and complete copies and is not misleading, whether by omission or otherwise; and

(ii) there are not in existence any other agreements or documents replacing or relating to any of the information that would materially affect the interpretation or application of the information,

and, to the extent the Contractor has not provided true, correct and complete information, it expressly clarifies with reasons that failure,

provided that the Crown has first procured a confidentiality undertaking from the Tenderer or other potential New Contractor in a form acceptable to the Contractor (acting reasonably).

2.5 Assistance to facilitate seamless migration

(a) The Contractor will do all things reasonably necessary to facilitate a seamless migration of responsibility for the provision of the Services from the Contractor to the New Contractor or to the Crown during the Disengagement Period, including:

(i) providing such training and consultancy services required by the Crown to fully understand the processes, techniques and methodologies employed by the Contractor in its delivery of the Services generally; and

(ii) otherwise complying with the provisions of the Disengagement Plan and this Schedule 19,

provided that the Contractor shall not be required to provide the Operational Services as part of the Core Disengagement Services.

(b) Provided that the Crown has first procured a confidentiality undertaking from the New Contractor in a form acceptable to the Contractor (acting reasonably), the Contractor will or will procure that the Crown and the New Contractor is, for a period of [*insert*] months following the end of the Contract Term, given access to:

(i) such information relating to the Services as remains in the possession or control of the Contractor or a Contractor Related Person; and

(ii) such Contractor Personnel as have been involved in the design, development, implementation and provision of the Services and who are still employed or retained by the Contractor, with such access to be reasonable in the context of that person's current role and geographic location,

and the Contractor will not do anything which prejudices or frustrates the seamless migration of the responsibility for the provision of the Services from the Contractor to the New Contractor or the Crown.

2.6 Hand Back Requirements

To the extent the Hand Back Requirements have not been met as at the Expiry Date or the Actual Termination Date (as applicable), the Contractor must, as part of the Core Disengagement Services, undertake such actions and works as are required to meet the Hand Back Requirements.

3. Disengagement Period

3.1 Conduct of business

The Contractor will, during the Disengagement Period:

(a) maintain all Disengagement Deliverables that the Crown may elect to have transferred to it in good operating condition and repair in accordance with the terms of this Agreement and otherwise in accordance with Good Industry Practice;

(b) not dispose of, lease or allow any Security Interest to subsist over, any Disengagement Deliverable that the Crown may elect to have transferred to it, without the prior written consent of the Crown; and

(c) continue to comply with all its applicable obligations under the Project Documents.

3.2 Disengagement completion

(a) All Core Disengagement Services and the completion of the transfer of all Disengagement Deliverables are to be effected on or prior to the last day of the Disengagement Period.

(b) Possession of, and (where appropriate), risk in and title to or responsibility for, the Disengagement Deliverables will be given on or prior to the last day of the Disengagement Period with, to the extent that the Contractor is able (having used reasonable endeavours) to procure the assignment of the same, the benefit of all warranties and guarantees provided by third parties in respect of those Disengagement Deliverables.

(c) If the Contractor fails to deliver or make available to the Crown a Disengagement Deliverable by the last day of the Disengagement Period, the Crown will have the right to enter the Contractor's premises to remove such Disengagement Deliverable, at the Contractor's risk and cost.

(d) The Contractor warrants that as at the relevant completion date for a Disengagement Deliverable it has full right and entitlement to sell, transfer or novate that Disengagement Deliverable to the Crown (or its nominee) as required by the terms of this Schedule 19.

(e) Where a Disengagement Deliverable comprises equipment, fittings, furniture, hardware, physical electronic components or other assets of a tangible nature, the Contractor must deliver to the Crown at the end of the Contract Term any documents of title or other documentary evidence of ownership held by the Contractor in respect of those Disengagement Deliverables, together with signed change of ownership forms for the same where applicable.

(f) As at the completion date for a Disengagement Deliverable, the Contractor must deliver to the Crown releases of all Security Interests over that Disengagement Deliverable.

(g) The Crown acknowledges that nothing in this Schedule 19 imposes any obligation on the Contractor to deliver or transfer to the Crown:

(i) its licence in, or otherwise provide the Crown with any right to use any commercially available third party software used by the Contractor to provide the Services, including any shrink-wrapped Intellectual Property; or

(ii) any facilities, plant and/or equipment required on the Crown Site for the execution of the Facility, but not forming part of the Facility.

3.3 Additional obligations of Contractor on Disengagement

The Contractor will, in accordance with the Disengagement Plan or as otherwise directed by the Crown:

(a) deliver all Intellectual Property Materials of the Crown used in connection with the Facility to the Crown;

(b) to the extent it is impossible or impracticable to comply with paragraph (a), ensure that all copies of the Intellectual Property Materials of the Crown that are retained by the Contractor or by any Contractor Personnel are securely stored or destroyed (at the direction of the Crown);

(c) deliver all Intellectual Property Materials that have been developed in relation to the Project during the Contract Term (including any Intellectual Property rights, to the extent that the Crown has such Intellectual Property rights, whether owned or licensed, in accordance with clause 57 (Intellectual Property) of the Base Agreement) to the Crown, including, in the case of Intellectual Property Materials that are software:

(i) and are Developed IP, an up to date copy of the source code and object code of the software; and

(ii) such software tools, other tools, object libraries, data configuration management tools, detailed designs and other documentation in order to enable the Crown to access, use, reproduce, adopt, modify, create new versions or derivative works of that software and to otherwise use and deal with that software as owner of the same, whether as owner of Developed IP under clause 57.4 (Developed IP) of the Base Agreement or as owner of a licence of Contractor Background IP under clause 57.6 (Licensing of Contractor Intellectual Property) of the Base Agreement;

(d) deliver the originals of all reports and records that the Contractor is required to maintain pursuant to the Project Documents to the Crown; and

(e) effect transfer to the Crown (or its nominee) of all of the data in accordance with the Disengagement Plan, by way of a data migration process that ensures that none of that data is lost or corrupted and that none of the data so transferred remains available to or accessible by the Contractor.

4. Employment Offers

4.1 Offers

The Crown (or its nominee) may, at any time during the Disengagement Period by giving the Contractor at least 20 Business Days' notice in writing, make an offer of employment (an **Employment Offer**) to such of the Contractor Personnel employed in undertaking the Services as it elects in its discretion, on the Crown's (or its nominee's) terms and conditions. Each Employment Offer must be capable of acceptance by the Contractor Personnel to whom it is made at any time with effect from the later of ten Business Days after it is made and the end of the Disengagement Period.

4.2 Consultation and co-operation

(a) The Contractor and the Crown must each:

(i) consult and co-operate with the other during the course of negotiations with Contractor Personnel employed or engaged in undertaking the Services then retained by the Contractor or a Contractor Related Person with respect to whom an Employment Offer has been made; and

(ii) use all reasonable endeavours to encourage each of those Contractor Personnel to accept such Employment Offer (provided that, in the case of the Contractor, such terms are no less favourable than the Contractor Personnel's then-current terms), but without any obligation to incur any financial cost or to require any Contractor Related Person to act in a way that may repudiate any employment agreement with its employees or otherwise prejudice the employer/employee relationship.

(b) The Contractor must release or obtain the release from his or her employment of each of the Contractor Personnel who accepts an Employment Offer, such release to be effective on or prior to the end of the Disengagement Period.

4.3 Other accrued entitlements

Where any Contractor Personnel employed or engaged in undertaking the Services accepts an Employment Offer, his or her entitlements to accrued annual leave, days in lieu not taken, long service leave accrued and other accrued entitlements (based on the then-current rates) will be assumed by the Crown (or its nominee). Where any Contractor Personnel does not accept or receive an Employment Offer, his or her entitlements to accrued annual leave, days in lieu not taken, long service leave accrued and other accrued entitlements then become payable by the Contractor.

5. Further assurances

Each party must, whenever requested by the other party, execute, sign and deliver all documents and do all things reasonably necessary or appropriate to complete the transfer to the Crown of the Disengagement Deliverables or otherwise to give effect to the provisions of this Schedule 19, whether before, during or after the Disengagement Period.

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