

PROJECT AGREEMENT

BETWEEN

THE CITY OF GLASGOW COLLEGE

and

GLASGOW LEARNING QUARTER LIMITED

NEW CAMPUS GLASGOW NPD PROJECT

PROJECT AGREEMENT



Pinsent Masons

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BETWEEN:

- (1) **THE CITY OF GLASGOW COLLEGE** (a charity registered under number SC036198) whose address is 60 North Hanover Street, Glasgow G1 2BP (the "**College**"); and
- (2) **GLASGOW LEARNING QUARTER LIMITED** (registered under number 08413842) whose registered office is Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR ("**Project Co**").

WHEREAS:

- (A) The College wishes to procure the design, build, finance and maintenance of a twin site campus in Glasgow (the "**New Campus**");
- (B) In accordance with the Scottish Government's NPD initiative the College conducted a competitive dialogue competition to identify the most economically advantageous tender from persons interested in being appointed the College's private sector partner and forming an NPD company to procure the design, build, finance and maintenance of the New Campus and design and build the Halls of Residence (the "**Project**").
- (C) This Agreement is entered into pursuant to a project applying principles similar to the principles of the private finance initiative and is excluded from the Housing Grants, Construction and Regeneration Act 1996 by virtue of the Construction (Scotland) Exclusion Order 1998 (SI 1998/686).
- (D) The tender submitted by Project Co has been selected as the most economically advantageous tender.

NOW IT IS HEREBY AGREED as follows:

PART 1: GENERAL

1. DEFINITIONS AND INTERPRETATION

Schedule Part 1 (*Definitions and Interpretation*) shall apply.

2. EXECUTION AND DELIVERY OF DOCUMENTS

On or prior to execution of this Agreement:

- 2.1 Project Co shall deliver to the College the documents referred to in Section 1 (*Documents to be delivered by Project Co*) of Schedule Part 2 (*Completion Documents*) (unless the requirement to deliver any such document is waived by the College by written notice to Project Co); and
- 2.2 the College shall deliver to Project Co the documents referred to in Section 2 (*Documents to be delivered by the College*) of Schedule Part 2 (*Completion Documents*) (unless the requirement to deliver any such document is waived by Project Co by written notice to the College).

3. COMMENCEMENT AND DURATION

This Agreement, and the rights and obligations of the parties, shall commence on the date of execution of this Agreement and, without prejudice to Clause 47.6, shall terminate automatically on the expiry of the Project Term.

4. PROJECT DOCUMENTS

Ancillary Documents

- 4.1 Project Co shall perform its obligations under, and observe all of the provisions of, the Project Documents to which it is a party and shall not:

- 4.1.1 terminate or agree to the termination of all or part of any Ancillary Document and the Parties agree that the definition of Ancillary Document for the purposes of this Clause 4.1.1 only shall not include the ICT Services Contract and for the avoidance of doubt the termination of all or part of the ICT Services Contract shall not be subject to review under Schedule Part 8 (*Review Procedure*);
- 4.1.2 make or agree to any material variation of any Ancillary Document;
- 4.1.3 in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Ancillary Document; or
- 4.1.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Ancillary Document

unless the proposed course of action (and any relevant documentation) has been submitted to the College's Representative for review under Schedule Part 8 (*Review Procedure*) and either:

- (a) there has been no objection in accordance with paragraph 3 of Schedule Part 8 (*Review Procedure*) within twenty (20) Business Days of receipt by the College's Representative of the submission of the proposed course of action (and any relevant documentation), or such shorter period as may be agreed by the parties; or
- (b) Project Co is acting in accordance with the comments of the College as provided in paragraph 4.2 of Schedule Part 8 (*Review Procedure*);

and, in the circumstances specified in Clause 4.1.1, Project Co has complied with Clause 57 (*Assignment and Sub-contracting*).

Changes to Funding Agreements and Refinancing

- 4.2 Subject to Clauses 4.3, 4.4 and 4.5, Project Co shall be free, at any time, to enter into, terminate, amend, waive its rights and generally deal with its Funding Agreements on such terms and conditions as it sees fit without the prior written consent of the College provided that (at the time such action is contemplated and effected) the same will not materially and adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Agreement.
- 4.3 No amendment, waiver or exercise of a right under any Funding Agreement or Ancillary Document shall have the effect of increasing the College's liabilities on early termination of this Agreement unless:
 - 4.3.1 Project Co has obtained the prior written consent of the College to such increased liability for the purposes of this Clause 4.3; or
 - 4.3.2 it is a Permitted Borrowing.
- 4.4 Project Co shall not, without the prior written consent of the College for the purposes of this Clause 4.4, vary, amend or replace any Funding Agreement or enter into any new Funding Agreement, the effect of which is to:
 - 4.4.1 change the circumstances in, or conditions on, which the Agreed Order of Priorities may be varied;
 - 4.4.2 change the circumstances in, or conditions on, which Project Co is entitled or obliged to make payments into the Surplus Account; and/or

- 4.4.3 change the circumstances in, or conditions on, which Project Co is entitled or obliged to make Surplus Payments.
- 4.5 Any amendment or variation of any Funding Agreements which constitutes a Refinancing shall be carried out in accordance with the provisions of Schedule Part 23 (*Refinancing*).
- 4.6 Without prejudice to Clause 4.2, Project Co shall liaise with the College, and shall use all reasonable endeavours to provide the College with a copy of the relevant agreement in settled draft form, not less than ten (10) Business Days before it enters into any Funding Agreement (other than the Initial Funding Agreements).

Delivery

- 4.7 Without prejudice to the provisions of this Clause 4 (*Project Documents*), if at any time an amendment is made to any Project Document, or Project Co enters into a new Project Document (or any agreement which affects the interpretation or application of any Project Document), Project Co shall deliver to the College a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation, certified as a true copy by an officer of Project Co.

Funding Default

- 4.8 Project Co shall promptly upon the occurrence of a Funding Default notify the College of such Funding Default.
- 4.9 The College may, in circumstances referred to in Clause 4.8 above (regardless of whether the Senior Funders have exercised any enforcement or similar rights under the Senior Funding Agreements), require Project Co to provide an Interim Project Report and to attend, and use all reasonable endeavours to ensure that the Senior Funders attend, such meetings as the College may convene to discuss such Interim Project Report and the circumstances giving rise to it.
- 4.10 Project Co shall promptly upon a failure by the Senior Funders to advance amounts due under the Senior Funding Agreements (or in circumstances that might reasonably be expected to lead to such a failure) notify the College of such failure (or expected failure).
- 4.11 The College may, in the circumstances referred to in Clause 4.10 above, require Project Co to attend, and use all reasonable endeavours to ensure that the Senior Funders attend, such meetings as the College may convene to discuss the circumstances.

5. THE PROJECT OPERATIONS

Scope

- 5.1 Subject to and in accordance with the provisions of this Agreement, Project Co shall perform its duties under this Agreement at its own cost and risk without recourse to the College except as otherwise expressly provided in this Agreement.

General standards

- 5.2 Project Co shall at its own cost be solely responsible for procuring that the Project Operations are at all times performed:
- 5.2.1 in compliance with all Law and Consents (including without limitation the giving of notices and the obtaining of any such Consents) and so as not to prejudice the renewal of any such Consents;
- 5.2.2 in a manner that is not likely to be injurious to health or to cause damage to property;
- 5.2.3 in a manner consistent with the Quality Plans;

- 5.2.4 not used;
- 5.2.5 in a manner consistent with the College discharging its statutory duties and other functions undertaken by it as the same may be notified to Project Co from time to time; and
- 5.2.6 in so far as not in conflict with an express obligation of Project Co under this Agreement, or where in relation to a matter there is no express obligation or standard imposed on Project Co under this Agreement, in accordance with Good Industry Practice.

In the event that any ambiguity, uncertainty, dispute or discrepancy arises in the nature and scope of Project Co's obligations under this Clause 5.2 (*General Standards*), the provisions of this Clause 5.2 (*General Standards*) will be given meaning and have effect in descending order of precedence set out in this Clause 5.2 (*General Standards*).

College's Undertaking

- 5.3 The College undertakes to Project Co that it shall:
 - 5.3.1 subject to the provisions of this Agreement, comply with all Laws, and Consents applicable to it which relate to the Project Operations;
 - 5.3.2 not wilfully impede Project Co in the performance of its obligations under this Agreement (having regard always to the interactive nature of the activities of the College and of Project Co and to the College's use of the Facilities to provide the relevant College Services and any other operations or activities carried out by the College on or at the Site for the purposes contemplated by this Agreement and any other of the College's statutory functions);
 - 5.3.3 inform Project Co as soon as reasonably practicable if at any time it becomes unable to meet any of its financial obligations and in such case inform, and keep Project Co informed, of any course of action to remedy the situation recommended or required by the Scottish Government, the College, the Scottish Funding Council or other competent authority; and
 - 5.3.4 to the extent permitted by Law, supply to Project Co within sixty (60) Business Days of their publication, a copy of the College's annual report and accounts

provided that, to avoid doubt, nothing in this Clause 5.3 (*College's Undertaking*) shall in any way fetter the discretion of the College in fulfilling its statutory functions.

Co-operation

- 5.4 Each party agrees to co-operate, at its own expense, with the other party in the fulfilment of the purposes and intent of this Agreement. To avoid doubt, neither party shall be under any obligation to perform any of the other's obligations under this Agreement.

6. GENERAL OBLIGATIONS AND RESPONSIBILITIES OF PROJECT CO

Other business

- 6.1 Project Co shall not engage in any business or activity other than the business or activities related to, and conducted for, the purpose of the Project Operations.

Project Co Parties

- 6.2 Subject to the provision of Clause 30.1.7, Project Co shall not be relieved or excused of any responsibility, liability or obligation under this Agreement by the appointment of any Project Co Party. Project Co shall, as between itself and the College, be responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of all Project Co Parties.

All references in this Agreement to any act, default, omission, breach or negligence of Project Co shall be construed accordingly to include any such act, default, omission, breach or negligence of a Project Co Party.

Safety

- 6.3 Project Co shall, in carrying out the Project Operations, have full regard for the safety of all persons on the Site (whether lawfully or not) and keep the Site, the Works and the Facilities in an orderly state, appropriate in accordance with Good Industry Practice, to avoid danger to such persons.

7. COLLEGE'S DATA

No liability

- 7.1 The College shall not be liable to Project Co for and Project Co shall not seek to recover from the College (or from any College Party) any damages, losses, costs, liabilities or expenses which may arise (whether in contract, delict or otherwise) from the adoption, use or application of the Disclosed Data by, or on behalf of, Project Co, the Independent Tester or any Project Co Party.

No warranty

- 7.2 The College gives no warranty or undertaking of whatever nature in respect of the Disclosed Data and, specifically (but without limitation), the College does not warrant that the Disclosed Data represents all of the information in its possession or power (either during the conduct of the tender process for the Project or at the time of execution of this Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Agreement or under any of the Project Documents. In addition, the College shall not be liable to Project Co in respect of any failure to disclose or make available to Project Co (whether before, on or after the execution of this Agreement) any information, documents or data, nor any failure to review or to update the Disclosed Data, nor any failure to inform Project Co (whether before, on or after execution of this Agreement) of any inaccuracy, error, omission, defects or inadequacy in the Disclosed Data.

Project Co investigation

- 7.3 Project Co acknowledges and confirms that:

7.3.1 it has conducted its own analysis and review of the Disclosed Data and has, before the execution of this Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Disclosed Data upon which it places reliance; and

7.3.2 it shall not be entitled to and shall not (and shall procure that no Project Co Party shall) make any claim against the College or any College Party whether in contract, delict or otherwise including, without limitation, any claim in damages, for extensions of time or for additional payments under this Agreement on the grounds:

(a) of any misunderstanding or misapprehension in respect of the Disclosed Data; or

(b) that incorrect or insufficient information relating to the Disclosed Data was given to it by any person, whether or not a College Party

nor shall Project Co be relieved from any obligation imposed on, or undertaken by it, under this Agreement on any such ground.

8. REPRESENTATIVES

Representatives of the College

- 8.1 The College's Representative shall be Iain Marley or such other person appointed pursuant to this Clause. The College's Representative shall exercise the functions and powers of the College in relation to the Project Operations which are identified in this Agreement as functions or powers to be carried out by the College's Representative. The College's Representative shall also exercise such other functions and powers of the College under this Agreement as may be notified to Project Co from time to time.
- 8.2 The College's Representative shall be entitled at any time, by notice to Project Co, to authorise any other person to exercise the functions and powers of the College delegated to him pursuant to this Clause, either generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of the College's Representative and all references to the "**College's Representative**" in this Agreement (apart from this Clause) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.
- 8.3 The College may by notice to Project Co change the College's Representative. The College shall (as far as practicable) consult with Project Co prior to the appointment of any replacement for the College's Representative, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to Project Co in the execution of its obligations under this Agreement).
- 8.4 During any period when no College's Representative has been appointed (or when the College's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Agreement) the College shall carry out the functions which would otherwise be performed by the College's Representative.
- 8.5 No act or omission of the College, the College's Representative or any officer, employee or other person engaged by the College shall, except as otherwise expressly provided in this Agreement:
- 8.5.1 in any way relieve or absolve Project Co from, modify, or act as a waiver or personal bar of, any liability, responsibility, obligation or duty under this Agreement; or
- 8.5.2 in the absence of an express order or authorisation under Schedule Part 16 (*Change Protocol*), constitute or authorise a Change.
- 8.6 Except as previously notified in writing before such act by the College to Project Co, Project Co and Project Co's Representative shall be entitled to treat any act of the College's Representative which is authorised by this Agreement as being expressly authorised by the College and Project Co and Project Co's Representative shall not be required to determine whether an express authority has in fact been given.

Representative of Project Co

- 8.7 Project Co's Representative shall be Brian McClintock or such other person appointed pursuant to Clause 8.8. Project Co's Representative shall have full authority to act on behalf of Project Co for all purposes of this Agreement. Except as previously notified in writing before such act by Project Co to the College, the College and the College's Representative shall be entitled to treat any act of Project Co's Representative in connection with this Agreement as being expressly authorised by Project Co and the College and the College's Representative shall not be required to determine whether any express authority has in fact been given.
- 8.8 Project Co may by notice to the College change Project Co's Representative or any of the named personnel listed in Schedule Part 3 (*Key Works Personnel*); Sections 4 (*Project Co's Proposals*), 04 (*Constraints*) and 11 (*Migration*) of Schedule Part 6 (*Construction Matters*); and Section 8 (*Quality Plans (Design and Construction)*) of Schedule Part 6 (*Construction Matters*). Where

Project Co wishes to do so it shall by written notice to the College propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of the College (not to be unreasonably withheld or delayed).

- 8.9 Project Co's Key Works Personnel are identified in Schedule Part 3 (*Key Works Personnel*). Project Co shall, as far as it is within Project Co's control, ensure that such persons retain their involvement in the Works and, in particular, will not, for the duration of the Works, require or request any of them to be involved in any other project on behalf of Project Co or any of the Shareholders or its or their Associated Companies if, in the reasonable opinion of the College, this would adversely affect the Project.

College Observer

- 8.10 Project Co shall, subject to Clauses 8.11 to 8.13, ensure that the College Observer:

8.10.1 is invited to attend all Project Co board meetings;

8.10.2 receives (at or around the time that they are received by Project Co's board members) the agendas and supporting papers that are circulated to the board members in advance of the board meetings or tabled at the board meetings including, without prejudice to the foregoing generality, six-monthly management accounts, budgets and management reports (including explanations of material variances against budget) and the statutory accounts in respect of each financial year;

8.10.3 is permitted by Project Co to attend and participate (but not vote at) all Project Co board meetings; and

8.10.4 receives (at or around the same time as they are received by the board members) copies of the minutes of Project Co's board meetings and all other financial information relating to Project Co as any Director might reasonably require to keep himself properly informed about the activities of Project Co.

- 8.11 The College Observer shall, unless otherwise determined by a board resolution in respect of any particular matter, be entitled to disclose any information received pursuant to Clause 8.10 subject to and in accordance with the provisions of Clause 61 (*Confidentiality*) and the College shall procure that the individual appointed to fulfil such role executes suitable undertakings of confidentiality to comply with the terms of Clause 61 (*Confidentiality*).

- 8.12 Project Co, acting reasonably, shall be entitled to exclude the College Observer from attending Project Co's board meetings and withhold the agendas and supporting papers referred to in Clause 8.10:

8.12.1 in the event that the College Observer discloses information received pursuant to Clause 8.10 other than in accordance with Clause 8.11; or

8.12.2 where and for so long as the conduct of the College Observer is inappropriate.

- 8.13 Project Co shall be entitled to exclude the College Observer from attending any part of a Project Co board meeting at which:

8.13.1 the exercise or purported exercise of contractual rights by Project Co against the College or by the College against Project Co; or

8.13.2 any claims or potential claims by Project Co against the College or by the College against Project Co; or

8.13.3 any matter of interpretation of this Agreement

is discussed and shall be entitled to withhold from the College any supporting papers and information to the extent that they relate to the matters listed in Clauses 8.13.1 to 8.13.3.

PART 2: LAND ISSUES

9. NATURE OF LAND INTERESTS

Access During Construction

- 9.1 From the Commencement Date until the Final Actual External Works Completion Date or (if earlier) the Termination Date, the College shall grant to Project Co and Project Co Parties, or procure that Project Co and the Project Co Parties are granted the Ancillary Rights subject only to the Reserved Rights, the Title Conditions and the College's rights under this Agreement and solely for the purposes of implementing the Works and carrying out Project Co's Pre-Completion Commissioning.

Access Following Construction

- 9.2 After the occurrence of a Phase Actual Completion Date the College shall grant to Project Co and Project Co Parties, or procure that Project Co and Project Co Parties are granted, access to the relevant Facilities subject only to the Reserved Rights, the Title Conditions and the provisions of this Agreement and solely for the purposes of:
- 9.2.1 carrying out the Project Operations (other than those Project Operations for which Project Co is granted rights pursuant to Clause 9.1 (*Access During Construction*));
 - 9.2.2 remedying Defects and carrying out Snagging Matters relating to that Phase; and
 - 9.2.3 exercising the rights granted in Section 3 (*Ancillary Rights*) of Schedule Part 5 (*Land Matters*), in so far as the exercise of such rights is required in order to allow Project Co to carry out the Project Operations.

Such rights shall terminate on the Expiry Date or (if earlier) the Termination Date.

Extent of Rights

- 9.3 The rights referred to at Clause 9.1 (*Access During Construction*) and 9.2 (*Access Following Construction*) shall not operate or be deemed to operate as a lease of the Facilities or the Site or any part of the Facilities or the Site and Project Co shall not have or be entitled to exclusive possession (save to the extent expressly included within the Ancillary Rights) or any estate, right, title or interest in and to the Site or the Facilities except as provided herein and shall occupy the Site as a licensee only.
- 9.4 The rights referred to at Clause 9.1 (*Access During Construction*) and 9.2 (*Access Following Construction*) are personal to Project Co and the Project Co Parties.
- 9.5 Project Co shall procure that:
- 9.5.1 all Project Operations carried out at the Site by or on behalf of Project Co (whether before, during or after the completion of the Works) shall be carried out in a manner which does not breach any of the Title Conditions and/or the Reserved Rights; and
 - 9.5.2 there shall be no action, or omission to act by Project Co or a Project Co Party, which shall give rise to a right for any person to obtain title to the Site or any part of it.
- 9.6 Notwithstanding the terms of Clause 9.1 and 9.2 or any other rights granted under this Agreement, the College shall (if it is the heritable proprietor of the Site), or (if it is not the heritable proprietor of the Site) shall procure that the heritable proprietor of the Site shall, enter into such wayleaves, deeds of servitude or other similar agreements with any third party that Project Co or any Project Co Party may require to be granted in favour of or by any third party, in order to exercise its rights or perform its obligations under this Agreement. The College shall enter into (or, where appropriate, shall procure that the heritable proprietor of the Site shall enter into) any such wayleave, deed of servitude or other similar agreement, as soon as reasonably practicable

after Project Co has provided to the College all relevant information in connection therewith provided always that Project Co has obtained at its own cost the prior agreement of the third party in terms acceptable to the College (acting reasonably). Project Co shall reimburse the College for all costs and expenses reasonably and properly incurred by the College (and/or the heritable proprietor of the Site) in connection with entering into such wayleaves, deeds of servitude or other similar agreements at the request of Project Co.

- 9.7 Project Co may by written notice to the College request on reasonable notice and during normal business hours, that persons designated by the European Investment Bank ("EIB"), as well as persons designated by other EU institutions or bodies when so required by the relevant mandatory provisions of EU law ("**Additional Persons**"), visit the Sites, installations and works comprising the Project to conduct checks as required by the terms of Clause 7.5(a) of the EIB Contract. The College shall in writing confirm their consent to such access together with any conditions of that access such consent not to be unreasonably withheld. The Parties agree that such Additional Persons shall be Project Co Parties for the purposes of this Agreement.

10. THE SITE

- 10.1 The condition of the Site shall be the sole responsibility of Project Co. Accordingly (without prejudice to any other obligation of Project Co under this Agreement), Project Co shall be deemed to have:
- 10.1.1 carried out a Ground Physical and Geophysical Investigation and to have inspected and examined the Site and its surroundings and (where applicable) any existing structures or works on, over or under the Site;
 - 10.1.2 satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Site, the load bearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution of the Works;
 - 10.1.3 satisfied itself as to the extent and adequacy of the Site and of the rights of access to and through the Site granted hereunder and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement (such as additional land or buildings outside the Site) without prejudice to Project Co's rights under this Agreement in respect of any breach by the College of its obligations under Clause 9.1 and/or 9.2;
 - 10.1.4 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties; and
 - 10.1.5 satisfied itself as to the conditions, burdens, restrictions and reservations set out in the Title Conditions and the Reserved Rights.
- 10.2 To avoid doubt, Project Co accepts full responsibility for all matters referred to in Clause 10.1 Project Co shall:
- 10.2.1 not be entitled to make any claim against the College of any nature whatsoever save, if applicable, as expressly provided in Clause 29 (*Delay Events*), on any grounds including (without limitation) the fact that incorrect or insufficient information on any matter relating to the Site was given to it by any person, whether or not the College or a College Party; and
 - 10.2.2 be responsible for, and hold the College harmless from, cleaning up and/or otherwise dealing with any Contamination at the Site so that it shall at all times comply with its obligations under this Agreement including (without limitation) complying with, at its own cost, any applicable Laws and any Consents, orders, notices or directions of any regulatory body (whether made against the College or Project Co).

11. CONSENTS & PLANNING APPROVAL

11.1 Project Co shall be responsible for:

11.1.1 obtaining all Consents which may be required for the performance of the Project Operations; and

11.1.2 subject to the provisions of Clause 11.1A and 11.1B, implementing each Consent within the period of its validity in accordance with its terms.

11.1A The parties have agreed that Project Co shall not be responsible for implementing and satisfying the College Planning Conditions.

11.1B The College undertakes to discharge each College Planning Condition in accordance with its terms.

11.2 In the event that:

11.2.1 a Consent that has been granted is subsequently amended, repealed, revoked or otherwise ceases to be in full force and effect in accordance with its terms as a consequence of any action by a Relevant Authority;

11.2.2 affected persons are entitled to claim compensation for the adverse effects of such action under a statutory scheme of compensation; and

11.2.3 Project Co is not entitled in its own name to claim under that scheme but the College is so entitled

the College must use all reasonable endeavours, at the request and at the cost of Project Co, to claim or to include within its claim such sums as Project Co acting reasonably requests and shall pay to Project Co the part of any compensation that it receives under that scheme that relates to the sums claimed at the request of Project Co.

Riverside Walkway

11.3 Project Co shall use all reasonable endeavours to obtain from Glasgow City Council the required access permission in respect of the Riverside Walkway for the purposes of carrying out the Riverside Walkway Works. In the event that Project Co is unable to obtain the access permission by the Riverside Walkway Longstop Date, then, Project Co shall not be required to carry out the Riverside Walkway Works and Project Co shall return the Riverside Walkway to the College in a condition which is consistent with the condition as set out in the dilapidation survey carried out by Project Co at or around the Commencement Date and pay to the College the Riverside Walkway Sums within 20 Business Days of written demand. The parties hereby agree that Project Co shall thereafter be released from any further obligations in respect of the completion of the Riverside Walkway Works.

PART 3: DESIGN AND CONSTRUCTION

12. THE DESIGN CONSTRUCTION AND COMMISSIONING PROCESS

Overall Responsibility

- 12.1 Project Co shall carry out the Works:
- 12.1.1 so as to procure satisfaction of the College's Construction Requirements;
 - 12.1.2 in accordance with Project Co's Proposals; and
 - 12.1.3 in accordance with the terms of this Agreement.
- 12.2 To avoid doubt, the obligations in Clauses 12.1.1, 12.1.2 and 12.1.3 are independent obligations. In particular:
- 12.2.1 the fact that Project Co has complied with Project Co's Proposals shall not be a defence to an allegation that Project Co has not satisfied the College's Construction Requirements; and
 - 12.2.2 the fact that Project Co has satisfied the College's Construction Requirements shall not be a defence to an allegation that Project Co has failed to comply with Project Co's Proposals.

Design responsibility

- 12.3 Project Co warrants that it has used, and will continue to use, the degree of skill and care in the design of the NPD Facilities and the Halls of Residence that would reasonably be expected of a competent professional designer experienced in carrying out design activities of a similar nature, scope and complexity to those comprised in the Works.

Corporate Identity and Signage

- 12.4 The parties acknowledge that the College may, from time to time during the Construction Phase, be required to procure the erection of hoarding, site boards, plaques and/or other signage in connection with the Project. Accordingly:
- 12.4.1 where requested by the College (acting reasonably), Project Co shall procure the erection and maintenance of such hoarding, site boards, plaques and/or other signage as the College may require; and
 - 12.4.2 the size, design, information disclosed, position and materials used in connection with such hoarding, site boards, plaques or other signage shall be approved by the College, such approval not to be unreasonably withheld.

College design approval

- 12.5 The College confirms that (a) as at the date of this Agreement, it has reviewed such of Project Co's Proposals as are listed in the table in Section 9 of Schedule Part 6 (*Construction Matters*) and that, subject to the qualifications set out in that table such proposals satisfy the College's requirements in respect of Operational Functionality, so far as can reasonably be determined given the level of detail of such of the Project Co's Proposals; and (b) the Adjacencies set out in Project Co's Proposals shall be deemed to satisfy the College's Construction Requirements and the Room Data Sheets, irrespective of any conflict.
- 12.6 Project Co shall develop and finalise the design and specification of the Works and the College shall review the Reviewable Design Data in accordance with Schedule Part 8 (*Review Procedure*) and the provisions of this Clause 12.6:

- 12.6.1 Project Co shall submit the Reviewable Design Data and the design of any Changes developed in accordance with the procedure set out in Schedule Part 16 (*Change Protocol*) to the College's Representative for review under Schedule Part 8 (*Review Procedure*). Project Co shall not commence or permit the commencement of construction of the part or parts of the NPD Facilities and the Halls of Residence to which such Reviewable Design Data relates until it has submitted the appropriate Reviewable Design Data and either it is confirmed by the College's Representative that Project Co is entitled to proceed with construction in accordance with paragraph 3.3 of Schedule Part 8 (*Review Procedure*) or Project Co is:
- (a) disputing the status of such Reviewable Design Data pursuant to paragraph 1.3.1 or paragraph 4.3 of Schedule Part 8 (*Review Procedure*); and
 - (b) proceeding at risk pursuant to paragraph 1.3.2 of Schedule Part 8 (*Review Procedure*).
- 12.6.2 with effect from the date at which any item of Reviewable Design Data is or becomes an Approved RDD Item in accordance with Schedule Part 8 (*Review Procedure*), such Approved RDD Item shall for the purposes of this Agreement be deemed to have satisfied the requirements of the College in the manner and to the extent set out in, Table A in Appendix 1 of Schedule Part 8 (*Review Procedure*);
- 12.6.3 Project Co shall allow the College's Representative, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the College's Representative as soon as practicable following receipt of any written request from the College's Representative; and
- 12.6.4 Project Co shall procure that the Contractor establishes and maintains a computerised design database which Project Co and the College's Representative may access remotely by computer to view drawings comprised within the Design Data (including Reviewable Design Data) and electronically store and/or print copies of such Design Data. In the event of the College's Representative being unable to access such design database, Project Co shall procure that it is made available for inspection by the College's Representative, or any other person authorised by the College's Representative.

Rectification of Project Co's Proposals

- 12.7 Without prejudice to Clause 12.1, if it should be found that Project Co's Proposals do not fulfil the College's Construction Requirements, Project Co shall at its own expense, and in accordance with Clause 12.8 below, amend Project Co's Proposals and rectify the Works or any part affected. Such amendment and rectification shall have the effect that:
- 12.7.1 Project Co's Proposals shall satisfy the College's Construction Requirements; and
 - 12.7.2 following the amendment or rectification, the structural, mechanical and electrical performance of the NPD Facilities and the Halls of Residence will be of an equivalent standard of performance to that set out in Project Co's Proposals prior to their amendment or rectification (for the purpose of this comparison disregarding the fault which required the amendment or rectification to be made).
- 12.8 Where Clause 12.7 applies, Project Co shall submit its proposal for amending Project Co's Proposals and rectifying the Works (or any part affected) to the College's Representative for review under Schedule Part 8 (*Review Procedure*) and shall not amend Project Co's Proposals or commence or allow the commencement of the rectification of the Works (or any part affected) until it is permitted to proceed in accordance with Schedule Part 8 (*Review Procedure*).

13. RIGHT OF ACCESS OF COLLEGE'S REPRESENTATIVE

Access to Site

13.1 Project Co shall procure that:

13.1.1 subject to complying with all relevant safety procedures, which shall include any relevant construction phase plans and health and safety plans for the construction of the NPD Facilities and the Halls of Residence, the Contractor's Site Rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Site Manager from time to time, the College's Representative shall have unrestricted access at all reasonable times during normal working hours to:

(a) view the Works at the Site on reasonable prior notice appropriate to the circumstances, provided that the notice procedures in this Clause 13.1.1(a) shall not apply to the right of access for the College's Representative and his staff and visitors to the office and other facilities provided at the Site for his use; and

(b) subject to obtaining the consent of the relevant manufacturer or supplier (which Project Co agrees to use all reasonable endeavours to obtain), visit any site or workshop where materials, plant or equipment are being manufactured, prepared or stored for use in the Works for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Works;

13.1.2 the College's Representative shall have such rights of access to the Site in an emergency as he (acting reasonably) considers suitable in the circumstances; and

13.1.3 monthly progress meetings and site meetings are held and that the College's Representative shall have the right to attend such monthly progress meetings and site meetings and to attend such other meetings as the College's Representative may reasonably request.

Increased monitoring

13.2 If, following any viewing, visit or inspection made pursuant to Clause 13.1.1, it is discovered that there are defects in the Works or that Project Co has failed to comply with the College's Construction Requirements or Project Co's Proposals, the College's Representative may (without prejudice to any other right or remedy available to the College) by notice to Project Co increase the level of monitoring of Project Co until such time as Project Co shall have demonstrated to the satisfaction of the College that it is capable of performing and will perform all its obligations to the College under this Agreement. Project Co shall compensate the College for any reasonable additional costs incurred as a result of such increased monitoring.

Right to Open Up

13.3 Subject to Clause 13.4, the College's Representative shall have the right at any time prior to a Phase Actual Completion Date to request Project Co to open up and inspect any part or parts of the Works relating to the relevant Phase where the College's Representative reasonably believes that such part or parts of the Works relating to the relevant Phase is or are defective and Project Co shall comply with such request.

13.4 Prior to exercising his right pursuant to Clause 13.3 above, the College's Representative shall notify Project Co of his intention to exercise such right, setting out detailed reasons.

13.5 If, following the exercise by the College's Representative of his right pursuant to Clause 13.3, the inspection shows that the relevant part or parts of the Works are not defective then Clause 29.3.4 shall apply.

13.6 If, following the exercise by the College's Representative of his right pursuant to Clause 13.3, the inspection shows that the relevant part or parts of the Works is or are defective, Project Co shall rectify and make good such Defect(s) and any consequence of such rectification and/or making good Defect(s) shall be carried out by Project Co at no cost to the College and Project Co shall

not be entitled to any extension of time in relation to such rectification and making good of the Works.

- 13.7 If, following the exercise by the College's Representative of his right pursuant to Clause 13.3, the College's Representative is of the opinion that the inspection shows that the relevant part or parts of the Works is or are defective and Project Co does not agree with such opinion, the matter shall be determined in accordance with Schedule Part 20 (*Dispute Resolution Procedure*).
- 13.8 Without prejudice to the rights of the College's Representative pursuant to this Clause 13 the parties acknowledge that the exercise of such rights shall not in any way affect the obligations of Project Co under this Agreement save as expressly set out in this Clause 13.

Safety during Construction

- 13.9 The provisions of Section 2 (*Safety During Construction*) of Schedule Part 6 (*Construction Matters*) shall apply to matters of safety.

14. PROGRAMME AND DATES FOR COMPLETION

Dates for Completion

- 14.1 Project Co shall complete the Works relating to a Phase by the relevant Phase Completion Date. Except as expressly provided for in Clause 17B (*Liquidated Damages*) and without prejudice to Clause 40 (*Project Co Event of Default*), 42 (*College Voluntary Termination*), 46 (*Compensation on Termination*) and 47 (*Consequences of Termination*) the College shall not be entitled to claim liquidated or general damages in respect of any delay which elapses between a Phase Completion Date and the relevant Phase Actual Completion Date.

The Programme

- 14.2 Any Programme submitted in accordance with the provisions set out below shall be prepared in accordance with Good Industry Practice and shall be in sufficient detail so as to enable the College's Representative to monitor the progress including all commissioning activities and likely future progress of the Works.
- 14.3 The initial Programme is set out at Schedule Part 7 (*The Programme*). Any change to the Programme shall only be made in accordance with this Clause 14 and Schedule Part 8 (*Review Procedure*). Project Co shall promptly submit to the College's Representative a copy of any version of the Programme varied in accordance with this Clause 14 and Schedule Part 8 (*Review Procedure*).
- 14.4 If it appears to the College's Representative at any time that the actual progress of the Works has significantly fallen behind the Programme, then the College's Representative shall be entitled to require Project Co to submit to the College's Representative a report identifying the reasons for the delay and, unless the event causing the delay is still subsisting and it is not possible to predict with any certainty when the delay might come to an end, require Project Co (at the College's option):
- 14.4.1 to produce and submit to the College's Representative in accordance with Schedule Part 8 (*Review Procedure*) a revised Programme showing the manner and the periods in which the Works will be carried out to ensure completion; and/or
- 14.4.2 to produce and submit to the College's Representative in accordance with Schedule Part 8 (*Review Procedure*) a revised Programme showing the steps which are to be taken to eliminate or reduce the delay.

Early completion

- 14.5 Notwithstanding that the Works relating to a Phase may have been completed in accordance with this Agreement, the Phase Actual Completion Date may only occur on a date on or after the Phase Completion Date unless the College, in its absolute discretion, agrees otherwise in writing.
- 14.6 Project Co shall notify the College's Representative if at any time the actual progress of the Works relating to a Phase is significantly ahead of the Programme such that Project Co anticipates that the Phase Actual Completion Date could occur earlier than the relevant Phase Completion Date in which case the College's Representative shall be entitled to require Project Co to produce and submit to the College's Representative a revised Programme showing the manner and the periods in which the Works relating to the relevant Phase will be carried out and what the revised date for completion would be to enable:
- 14.6.1 the College to consider (at its absolute discretion) whether to agree an earlier date for completion if requested by Project Co to do so; and
- 14.6.2 the parties to consider what modifications (if any) will be required to the Agreement in order to accommodate such earlier date for completion if agreed to by the College pursuant to Clause 14.5.

15. INDEPENDENT TESTER

Appointment

- 15.1 The parties have on or prior to the date of this Agreement, in compliance with all Law relating to procurement which is applicable to either party, appointed a suitably qualified and experienced consultant to act as the Independent Tester for the purposes of this Agreement upon the terms of the Independent Tester Contract.

Changes to terms of appointment

- 15.2 Neither the College nor Project Co shall without the other's prior written approval (not to be unreasonably withheld or delayed):
- 15.2.1 terminate, repudiate or discharge the Independent Tester Contract or treat the same as having been terminated, repudiated or otherwise discharged;
- 15.2.2 waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Tester; or
- 15.2.3 vary the terms of the Independent Tester Contract or the service performed or to be performed by the Independent Tester.
- 15.3 The parties shall comply with and fulfil their respective duties and obligations arising under or in connection with the Independent Tester Contract.

Co-operation

- 15.4 The parties agree to co-operate with each other generally in relation to all matters within the scope of or in connection with the Independent Tester Contract. All instructions and representations issued or made by either of the parties to the Independent Tester shall be simultaneously copied to the other and both parties shall be entitled to attend all inspections undertaken by or meetings involving the Independent Tester.

Replacement

- 15.5 If the Independent Tester's appointment is terminated otherwise than for full performance, the parties shall liaise and co-operate with each other in order to appoint, in accordance with this Clause 15.5, a replacement consultant to act as the Independent Tester as soon as reasonably

practicable. The identity of any such replacement shall be as agreed by the parties and the terms of his appointment shall, unless otherwise agreed, be as set out in the Independent Tester Contract.

- 15.6 If the parties fail to agree the identity and/or terms of a replacement Independent Tester in accordance with Clause 15.5 within ten (10) Business Days of the original Independent Tester's appointment being terminated then such disagreement shall be referred for resolution in accordance with Schedule Part 20 (*Dispute Resolution Procedure*).

16. EQUIPMENT AND MIGRATION

- 16.1 The provisions of Schedule Part 11 (*Equipment and Migration*) shall apply in respect of the procurement, installation, commissioning and maintenance of Equipment and carrying out of the Migration Services.
- 16.2 A Migration Service Payment shall be payable by the College to Project Co in respect of Project Co's obligations under paragraphs 1 to 4 of Section 2 of Schedule Part 11 (*Equipment and Migration*) and in accordance with Clause 34A and Clause 34B.

17. PRE-COMPLETION COMMISSIONING AND COMPLETION

- 17.1 Not less than six (6) months before a Phase Completion Date, the College shall provide Project Co with a draft of the Final Commissioning Programme for the relevant Phase as jointly developed by the College and Project Co in accordance with the provisions of Clause 17.2 and 17.3. Project Co shall provide the College with comments on the draft Final Commissioning Programme for the relevant Phase submitted to it within fifteen (15) Business Days. The parties shall, within fifteen (15) Business Days of receipt by the College of Project Co's comments agree the terms of the Final Commissioning Programme for the relevant Phase provided that the College may by prior notice to Project Co change the scope and time of the College's Commissioning and reimburse Project Co its reasonable costs incurred as a result of such change in scope or time. If the parties are unable to agree the Final Commissioning Programme for the relevant Phase or the change in scope or time of the College's Commissioning by three (3) months the matter shall be referred for determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*).
- 17.2 The Final Commissioning Programme for each Phase shall be in accordance with the Outline Commissioning Programme and shall impose no greater or more onerous obligations on the College than those set out in the Outline Commissioning Programme (unless otherwise agreed by the College in its absolute discretion). The Final Commissioning Programme shall then replace the Outline Commissioning Programme as it relates to that Phase.
- 17.3 The Final Commissioning Programme shall describe the steps necessary, the party responsible for taking each of such steps and the timing and sequence of each of such steps to ensure insofar as relevant for the Phase:
- 17.3.1 that Project Co's Pre-Completion Commissioning and the College's Commissioning will not delay the Phase Actual Completion Date from occurring by the Phase Completion Date; and
- 17.3.2 that Project Co's Post-Completion Commissioning and the College's Post-Completion Commissioning are completed by the Commissioning End Date.
- 17.4 The parties shall procure that the steps that they are responsible for carrying out and completing pursuant to the Final Commissioning Programme for the relevant Phase include, in the case of Project Co's activities, the activities described at paragraph 6.13.3 of the College's Construction Requirements.
- 17.5 Project Co shall notify the Independent Tester and the College's Representative of the date when Project Co (acting reasonably) considers that a Phase of the Works will be complete in accordance with the College's Construction Requirements, the Completion Criteria and this

Agreement not less than three (3) months prior to such anticipated completion. Such notification shall trigger the activities of the Independent Tester under this Clause.

- 17.6 The parties each undertake to co-operate with the Independent Tester to ensure that the Independent Tester is familiar with all necessary aspects of the Project for the purposes of its role as described in this Clause.

Commissioning prior to Completion Date

- 17.7 Project Co shall insofar as relevant for each Phase:

17.7.1 undertake Project Co's Pre-Completion Commissioning in accordance with the relevant Final Commissioning Programme; and

17.7.2 permit the College to undertake the College's Commissioning including permitting specialist contractors engaged by the College to deliver and install Equipment on such dates as agreed between the College and Project Co, in accordance with the Final Commissioning Programme

and the College shall undertake the College's Commissioning in accordance with the relevant Final Commissioning Programme and so as not to cause material damage to the Works.

- 17.8 Project Co shall give written notice to the Independent Tester and the College of the commencement of Project Co's Pre-Completion Commissioning in relation to a Phase and shall ensure that the Independent Tester and the College's Representative are invited to witness all of, and are provided with all information they may reasonably require in relation to, Project Co's Pre-Completion Commissioning of the relevant Phase and that the Independent Tester is invited to comment on Project Co's Pre-Completion Commissioning of the relevant Phase.

- 17.9 Project Co shall (or shall procure that the Contractor shall), give the College access to the Facilities at such times as may be set out in the relevant Final Commissioning Programme to enable the College to undertake the College's Commissioning in accordance with the Final Commissioning Programme for the relevant Phase for the period prior to completion of the relevant Phase. When exercising such rights the College shall comply with all relevant safety procedures, which shall include any relevant construction phase plans and health and safety plans for the construction of the Facilities, the Contractor's Site Rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Site Manager from time to time.

Pre-Completion inspection

- 17.10 Project Co shall give the Independent Tester and the College's Representative not less than twenty (20) Business Days' notice and not more than thirty (30) Business Days' notice of the date upon which Project Co considers that the Works relating to a Phase will be complete and the tests on completion required for the relevant Phase to be performed in accordance with the Final Commissioning Programme for the relevant Phase will be carried out. Following receipt of the notice specified in this Clause 17.10 the College's Representative and the Independent Tester shall be entitled to inspect the Works relating to the relevant Phase on the date or dates reasonably specified by Project Co in accordance with this Clause 17.10, and to attend any of the tests on completion. Project Co shall, if so requested, accompany the College's Representative and the Independent Tester on any such inspection.

Pre-Completion matters

- 17.11 The parties shall procure that the Independent Tester, within five (5) Business Days of any inspection made pursuant to Clause 17.10, notifies Project Co and the College of any outstanding matters (including, without limitation, the repetition of any of the tests on completion which are required to be carried out and passed in accordance with the Final Commissioning Programme for the relevant Phase) which are required to be attended to before the Works relating to the relevant Phase can be considered to be complete in accordance with the College's Construction

Requirements, Project Co's Proposals and the Completion Criteria. Project Co shall attend to such matters and shall, if necessary, give the Independent Tester further notices in accordance with Clause 17.10 (but dealing only with matters raised in the notification under this Clause 17.11) so that the procedures in Clause 17.10 and this Clause 17.11 are repeated as often as may be necessary to ensure that all outstanding matters in relation to the Works relating to the relevant Phase are attended to.

Phase Completion Certificate

- 17.12 Pursuant to the terms of the Independent Tester Contract, the parties shall procure that the Independent Tester, when he is satisfied that a Phase is complete in accordance with the Completion Criteria, issues a Certificate of Practical Completion in respect of that Phase to that effect to the College and to Project Co.
- 17.13 Without prejudice to Clauses 17.14 and 17.17, the issue of the Certificate of Practical Completion in respect of a Phase shall, in the absence of manifest error, bad faith or fraud, be conclusive evidence (but only for the purpose of ascertaining the relevant Payment Commencement Date), that the Phase was complete in accordance with the Completion Criteria on the date stated in the relevant Certificate of Practical Completion.
- 17.14 The Independent Tester shall issue the Certificate of Practical Completion in relation to a Phase notwithstanding that there are Snagging Matters. Where there are Snagging Matters, the parties shall procure that the Independent Tester shall, within ten (10) Business Days of the date of issue of the relevant Certificate of Practical Completion, issue a Snagging Notice which shall specify the Snagging Matters and an estimate of the cost of rectifying such Snagging Matters.
- 17.15 Following the issue of a Snagging Notice, Project Co shall, in consultation with the College's Representative and in such manner as to cause as little disruption as reasonably practicable to the College's Post Completion Commissioning and the College's use of the Facilities, rectify all Snagging Matters within fifteen (15) Business Days of the issue of the Snagging Notice.
- 17.16 If, within fifteen (15) Business Days of the issue of the Snagging Notice, Project Co has failed to rectify the Snagging Matters specified in the Snagging Notice the College may by itself (or engage others to) carry out the works necessary to rectify the Snagging Matters, at the risk and cost of Project Co.
- 17.17 The issue of the Certificate of Practical Completion in respect of a Phase shall in no way affect the obligations of Project Co under this Agreement including in respect of any Defects.

As-built specification

- 17.18 As soon as it is available, after the issue of the Certificate of Practical Completion in relation to a Phase to the extent relating to that Phase, Project Co shall provide to the College a copy of the as-built building specification, together with all drawings relating to the Works.

17A HALLS OF RESIDENCE DEFECTS

Project Co to Make Good

- 17A.1 Project Co shall procure that all Halls of Residence Defects which are present or shall appear in the Halls of Residence Works during the Defects Liability Period for the Halls of Residence Works shall be made good by Project Co to the standards required by this Agreement within a reasonable time. The College and Project Co, both acting reasonably, shall agree a programme for access for this purpose with the intention to cause the least practicable disruption to users of the Halls of Residence.

Schedule of Defects

- 17A.2 Without prejudice to Clause 17A.1 not later than ten (10) Business Days after the expiry of the Defects Liability Period, the College shall procure that the Independent Tester shall

prepare a schedule of Halls of Residence Defects ("**Schedule of Defects**") specifying any Halls of Residence Defects apparent as at the date of expiry of the Defects Liability Period which have not been made good by Project Co by such date in accordance with Clause 17A.1 and shall deliver such Schedule of Defects to Project Co. Subject always to Clause 17A.3 Project Co shall, at its own expense, as soon as reasonably practicable after the date of issue of such Schedule of Defects (and in any event within a period of 45 days of such date) make good all such Halls of Residence Defects.

Project Co Failure to Comply

17A.3 Where Project Co fails to comply with the provisions of Clause 17A.1 or Clause 17A.2, the College may appoint or instruct any third party contractor to execute and complete the remedial, repair or other works as may be necessary to make good any Halls of Residence Defect, in which event Project Co shall reimburse the College, on demand, its reasonable costs of doing so.

Certificate of Making Good Defects

17A.4 Without prejudice to Project Co's continuing obligations under this Agreement, when, following the Halls of Residence Phase Actual Completion Date, all Halls of Residence Defects in the Schedule of Defects have been made good, the College shall procure that the Independent Tester shall issue a statement to that effect to Project Co (a "**Certificate of Making Good Defects**").

Liability

17A.5 Subject to Clause 17A.7 and Clause 17A.8, following the expiry of the Defects Liability Period, Project Co shall be liable to the College for the reasonable costs of, and reasonably foreseeable expenses properly incurred in, procuring the repair of Halls of Residence Defects. For the avoidance of doubt, the provisions of this Clause 17A shall not be construed as limiting or excluding in any way the College's general right to claim damages for any breach of this Agreement by Project Co.

Limitation

17A.6 For the avoidance of doubt, the provisions of this Clause 17A shall not in any manner or way serve to limit, reduce, satisfy, discharge, negate, avoid or otherwise affect the obligations and/or liability (including in respect of Halls of Residence Defects) of Project Co to the College specified or referred to elsewhere in this Agreement.

17A.7 Project Co's liability pursuant to Clause 17A.5 in respect of Halls of Residence Defects caused by a failure to carry out the Halls of Residence Works in accordance with this Agreement shall end on the date falling twelve (12) years from the earlier of:

17A.7.1 the Halls of Residence Phase Actual Completion Date; or

17A.7.2 the Termination Date

save, in each case, in respect of claims which have been made prior to such date and in respect of which actions or proceedings have been commenced within six months of such date or in respect of any impact on the Halls of Residence.

17A.8 Subject to:

17A.8.1 Clause 49; and;

17A.8.2 the operation of Schedule Part 14A (RAFM Payment Mechanism).

the College's sole remedy following the issue of the Certificate of Making Good Defects in respect of Halls of Residence Defects caused by a failure to carry out the Halls of Residence Works in accordance with this Agreement shall be as set out in Clause 17A.5.

Major Equipment Warranties

17A.9 Project Co shall procure in favour of the College (at no additional cost to the College) manufacturers or product guarantees on all proprietary materials and major equipment installed as part of the Halls of Residence Works, which guarantees shall have the longest duration reasonably obtainable in the market place.

17B LIQUIDATED DAMAGES

17B.1 If a Certificate of Practical Completion is not issued in relation to the Halls of Residence by or on the Halls of Residence Phase Completion Date, Project Co shall with effect from eight (8) weeks of this date become liable to pay or allow to the College (whether by payment, set off or deduction), on demand, liquidated and ascertained damages at the relevant rate calculated in accordance with Appendix 3 of Schedule Part 14 (*Payment Mechanism*) for each day from the date which is eight (8) weeks from Halls of Residence Phase Completion Date until the Halls of Residence Phase Actual Completion Date or the date of termination of this Agreement (which ever is the earlier) (the "**Liquidated Damages**").

Genuine Pre-Estimate

17B.2 The College and Project Co agree that the Liquidated Damages represent a genuine and reasonable pre-estimate of the losses, damages, costs and expenses that the College would suffer or incur as a result of any such delay in completion of the Halls of Residence Works.

College Waiver

17B.3 The right of the College to recover Liquidated Damages may only be waived by written notice from the College to Project Co.

Liquidated Damages Held Unenforceable

17B.4 In the event that the right of the College to recover Liquidated Damages pursuant to Clause 17B.1 is held to be unenforceable in whole or in part and the College is therefore not entitled to the relevant Liquidated Damages in respect of any delay to the Halls of Residence Works, the College and Project Co specifically acknowledge and agree that the College shall be entitled to recover damages at Law which would otherwise have been payable in respect of the consequences of any delay in obtaining the Certificate of Practical Completion by the Halls of Residence Phase Completion Date.

Effect of Liquidated Damages

17B.5 Subject to Clause 17B.6, the payment or allowance by Project Co of Liquidated Damages or damages pursuant to Clause 17B.4 to the College pursuant to this Clause 17B shall not relieve Project Co of any other of its duties, liabilities or obligations under this Agreement.

17B.6 Subject to Clause 17B.4, the College's sole remedy where a Certificate of Practical Completion is not issued in relation to the Halls of Residence by or on the Halls of Residence Phase Completion Date shall be as set out in Clause 17B.1.

18. POST COMPLETION COMMISSIONING

Commissioning

- 18.1 Project Co and the College shall, within twenty (20) Business Days following the Phase Actual Completion Date, respectively undertake and complete Project Co's Post-Completion Commissioning and the College's Post Completion Commissioning, in accordance with the Final Commissioning Programme for the relevant Phase. Both parties shall, at all times, and in particular in the period between the Phase Actual Completion Date and the Actual Commissioning End Date for the relevant Phase, use reasonable endeavours to assist the other party to ensure compliance with the Final Commissioning Programme for the relevant Phase.

Information

- 18.2 Project Co shall ensure that the College's Representative is provided with all the information he may reasonably require in relation to Project Co's Post-Completion Commissioning and the College shall ensure that Project Co is provided with all information Project Co may reasonably require in relation to the College's Post Completion Commissioning.
- 18.3 If the College's Representative, acting reasonably, makes any comment in relation to the carrying out of Project Co's Post-Completion Commissioning, such comments shall be taken into account by Project Co and if Project Co, acting reasonably, makes any comment in relation to the carrying out of the College's Post Completion Commissioning, such comment shall be taken into account by the College.
- 18.4 On the completion of Project Co's Post-Completion Commissioning and the College's Post Completion Commissioning for a Phase the Independent Tester shall issue the Commissioning Completion Certificate for that Phase.

Operational Manuals

- 18.5 Project Co shall make available to the College's Representative:
- 18.5.1 at least twelve (12) weeks prior to the anticipated Phase Actual Completion Date, 1 electronic copy and 1 paper copy of a draft operation and maintenance manual in connection with the relevant Phase in sufficient detail to allow the College to plan for the safe and efficient operation of the Facilities which draft shall include a Training Schedule which will provide sufficient detail of the training to be provided by Project Co to allow the College to operate, maintain and clean the Facilities effectively from the relevant Phase Actual Completion Date.
 - 18.5.2 on or before the Phase Actual Completion Date, 1 electronic copy and 1 paper copy of a final draft operation and maintenance manual in connection with the relevant Phase in sufficient detail to allow the College to operate and use the Facilities safely and efficiently;
 - 18.5.3 within four (4) weeks following the Phase Actual Completion Date, the principal operation and maintenance manual in connection with the relevant Phase
- in each case including all manufacturers' instructions relating to Equipment installed by any Project Co Party;
- 18.6 Project Co shall provide to the College such information after the Phase Actual Completion Date as relates to any Snagging Matters or rectification of Defects in relation to the relevant Phase as is reasonably necessary to allow for the updating of any of the items listed in Clause 18.5.
- 18.7 On termination of this Agreement (howsoever arising) prior to the provision by Project Co in accordance with Clause 18.5 of the items listed therein, Project Co shall within ten (10) Business Days of such termination provide a copy of any operating and maintenance manual not yet provided (completed as appropriate to the date of termination) to the College.

18A DECANTING AND DECOMMISSIONING

- 18A.1 The College and Project Co shall, as appropriate, undertake any necessary decanting and decommissioning activities in accordance with the requirements of the Final Commissioning Programme for the relevant Phase and the Appendix of Schedule Part 10 (*Outline Commissioning Programme*) such that Project Co is able to perform its obligations in subsequent Phases.
- 18A.2 Project Co shall provide Decant Accommodation to the College during the Construction Phase for the period set out in Section 3(4) of Schedule Part 6 (*College's Construction Requirements*).
- 18A.3 Project Co shall provide the Decant Services to the Decant Accommodation.
- 18A.4 In the event that Project Co fails to provide Decant Accommodation pursuant to Clause 18A.2 the College shall be entitled to obtain reasonable alternative accommodation and recover the reasonable cost of doing so from Project Co.
- 18A.5 In the event that Project Co fails to provide Decant Services pursuant to Clause 18A.3 the College shall be entitled to carry out the Decant Services or any of them and recover the reasonable costs of doing so from Project Co provided that if a failure to provide Decant Services has a material and adverse effect on the ability of the College to use the Decant Accommodation the College acting reasonably can deem that the Decant Accommodation has not been provided and Clause 18A.4 shall apply.

19. FOSSILS AND ANTIQUITIES

Property

- 19.1 As between the parties, all fossils, antiquities, and other objects having artistic, historic or monetary value and human remains which may be found on or at the Site are or shall become, upon discovery, the absolute property of the College.

Discovery

- 19.2 Upon the discovery of any such item during the course of the Works, Project Co shall:
- 19.2.1 immediately notify the College's Representative of such discovery;
- 19.2.2 take all steps not to disturb the object and, if necessary, cease any Works in so far as the carrying out of such Works would endanger the object or prevent or impede its excavation; and
- 19.2.3 take all necessary steps to preserve the object in the same position and condition in which it was found.

Action

- 19.3 The College shall procure that the College's Representative promptly, and in any event within five (5) Business Days of receipt of notice pursuant to Clause 19.2.1, issues an instruction to Project Co specifying what action the College's Representative requires Project Co to take in relation to such discovery.
- 19.4 Project Co shall promptly and diligently comply with any instruction issued by the College's Representative referred to in Clause 19.3 above (except and to the extent that such instruction constitutes a College Change pursuant to Clause 19.6 below in which case the provisions of Schedule Part 16 (*Change Protocol*) shall apply), at its own cost.
- 19.5 If directed by the College's Representative, Project Co shall allow representatives of the College to enter the Site for the purposes of removal or disposal of such discovery provided that such entry shall be subject to the College complying with all relevant safety procedures, which shall

include any relevant construction phase plans and health and safety plans for the construction of the Facilities, the Contractor's Site Rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Site Manager from time to time.

- 19.6 If, in relation to such discovery, the College requires Project Co to carry out works (being any work of alteration, addition, demolition or extension or variation in the Works) which are not works which would be necessary for the purpose of compliance with Law or any Consents, it must issue a College Change Notice in accordance with the provisions of Schedule Part 16 (*Change Protocol*).

PART 4: QUALITY ASSURANCE

20. QUALITY ASSURANCE

Quality Plans and Systems

- 20.1 Project Co shall procure that all aspects of the Project Operations are the subject of quality management systems in accordance with the provisions of this Clause 20.
- 20.2 The quality management systems referred to in Clause 20.1 above shall be reflected in appropriate quality plans, the standard of which shall be consistent with BS EN ISO 9001 or 9002 (as the case may be) or any equivalent standard which is generally recognised as having replaced them (or either of them).
- 20.3 Without limitation to the generality of Clause 20.2, there shall be:
- 20.3.1 a Design Quality Plan;
 - 20.3.2 a Construction Quality Plan; and
 - 20.3.3 a Services Quality Plan for the Services
- provided that the Design Quality Plan and the Construction Quality Plan may be incorporated into one document.
- 20.4 Project Co shall procure that the Project Operations are carried out in compliance with the Quality Plans. All changes to the Quality Plans shall be submitted to the College's Representative in accordance with Schedule Part 8 (*Review Procedure*) and Project Co shall not be entitled to implement or procure the implementation of any Quality Plan unless Project Co is entitled to proceed with such implementation pursuant to Schedule Part 8 (*Review Procedure*).
- 20.5 Project Co shall implement the quality management systems referred to in Clause 20.1 and shall procure that:
- 20.5.1 the Contractor implements the Design Quality Plan;
 - 20.5.2 the Contractor implements the Construction Quality Plan;
 - 20.5.3 each Service Provider implements the relevant Services Quality Plan for the Service being provided by that Service Provider.
- 20.6 Where any aspect of the Project Operations is performed by more than one contractor or subcontractor, then the provisions of this Clause 20 (in so far as relevant or appropriate to the activities to be performed by such contractor or subcontractor) shall apply in respect of each of such contractors or subcontractors, and references in this Clause 20 to the "**Contractor**" or the "**Service Provider**" shall be construed accordingly. To avoid doubt, this Clause shall not be construed as requiring subcontractors of the Contractor or the Service Provider to have their own quality plans but only to comply with the Design Quality Plan and the Construction Quality Plan or the relevant aspects of the Services Quality Plan (as the case may be).
- 20.7 Project Co shall from time to time submit to the College's Representative in accordance with Schedule Part 8 (*Review Procedure*) any changes to any of the Quality Plans required for such Quality Plan to continue to comply with the requirements set out in Clause 20.2. The College's Representative may raise comments on any such proposed change only on the grounds set out in paragraph 3 of Schedule Part 8 (*Review Procedure*).
- 20.8 If there is no objection under Schedule Part 8 (*Review Procedure*) to a change to any Quality Plan proposed pursuant to Clause 20.7, the Quality Plan shall be amended to incorporate such change.

Quality Manuals and Procedures

- 20.9 If any Quality Plan refers to, relies on or incorporates any quality manual or procedure, then such quality manual or procedure or the relevant parts of it shall be submitted to the College's Representative at the time that the relevant Quality Plan or part of (or change to) a Quality Plan is submitted in accordance with Schedule Part 8 (*Review Procedure*), and the contents of such quality manual or procedure shall be taken into account in the consideration of the relevant Quality Plan or part of (or change to) a Quality Plan in accordance with Schedule Part 8 (*Review Procedure*).

Quality Management

- 20.10 Project Co shall maintain a quality management system which shall:
- 20.10.1 ensure the effective operation of the quality systems described in this Clause 20;
 - 20.10.2 cause an audit of the quality systems at regular intervals and the findings of such audit will be reported to the College's Representative;
 - 20.10.3 require review of all quality systems at intervals agreed with the College's Representative to ensure their continued suitability and effectiveness;
 - 20.10.4 require liaison with the College's Representative on all matters relating to quality management; and
 - 20.10.5 require production of reports and their delivery to the College's Representative.

Quality Monitoring

- 20.11 The College's Representative may carry out audits of Project Co's quality management system (including all relevant Quality Plans and any quality manuals and procedures) to establish that Project Co is complying with Clauses 20.1 and 20.3. The College's Representative may carry out such audits at approximate intervals of three (3) months and may carry out other periodic monitoring, spot checks and auditing of Project Co's quality management systems. Project Co shall procure that the College's Representative shall have an equivalent right in respect of the Contractor's and Service Providers' quality management systems. Project Co shall co-operate, and shall procure that any Sub-Contractor co-operates, with the College's Representative including providing him with all information and documentation which he reasonably requires in connection with his rights under this Clause.

PART 5: INFORMATION TECHNOLOGY

21. ICT SUPPORT AND MAINTENANCE

21.1 Throughout the Initial Term and any Extension Period (as defined in Schedule Part 27 (*ICT Support and Maintenance*)) of this Agreement Project Co shall provide (or procure that the Service Providers provide) the ICT Services in accordance with:

21.1.1 Schedule Part 27 (*ICT Support and Maintenance*); and

21.1.2 the terms of this Agreement.

21.2 To avoid doubt, where there is any conflict between Schedule Part 27 (*ICT Support and Maintenance*) and the remainder of this Agreement, Schedule Part 27 (*ICT Support and Maintenance*) shall take precedence.

21.3 Project Co shall commence provision of the ICT Services in respect of the City Phase and the Riverside Phase on the relevant Phase Actual Completion Date.

21.4 Subject to Clauses 21.5 and 21.6 the Parties agree that the sole remedy of Project Co in respect of an ICT Dependency shall be the operation of ICT Relief.

21.5 For the purposes of the ICT Services, if the College fails to pay the ICT Service Charges due to Project Co pursuant to Schedule Part 27 (*ICT Support and Maintenance*) and such failure continues for thirty (30) Business Days from receipt by the College of a notice of non-payment from Project Co this will be a College ICT Event of Default ("**College ICT Event of Default**").

21.6 On the occurrence of a College ICT Event of Default or within a reasonable time after Project Co becomes aware of the same, and while the same is still subsisting Project Co may serve notice on the College (or such other party as may be notified in advance by the College to Project Co) of the occurrence (and specifying details) of such College ICT Event of Default. If the relevant matter or circumstance has not been rectified or remedied by the College (or otherwise) within thirty (30) Business Days of such notice Project Co may serve a further notice on the College or its substitute notified in accordance with Clause 21.4) terminating the ICT Services with immediate effect.

21.7 On or before a date falling no later than 6 months prior to the expiry of the Initial Term either of the Parties may write to the other expressing its desire to extend the Initial Term subject to the prior written agreement of both of the Parties of the terms of such extension, including any consequential variations to this Agreement, the ICT Service Charges and any Ancillary Documents.

21A ICT Design Revalidation

21A.1 Project Co will carry out the ICT Design Revalidation in accordance with ICT Design Revalidation as defined in Volume 2 Section 6.04.09 ICT Design Revalidation APPENDIX 2.6.3.9.0.2 of Section 4 (*Project Co's Proposals*) and so as to comply with Section 3 (*College's Construction Requirements*) (unless otherwise agreed) of Schedule Part 6 (*Construction Matters*).

21A.2 No later than ten months prior to the Riverside Phase Completion Date and/or the City Phase Completion Date as the case may be Project Co shall submit the results of the ICT Design Revalidation to the College (the "Proposed Updated ICT Solution"). Unless otherwise agreed with the College, the cost to the College of the Proposed Updated ICT Solution will not exceed the bid cost of the Baseline ICT Solution as set out in the Baseline ICT Costs Table. To the extent that the Updated ICT Solution contains elements unchanged from the Baseline ICT Solution, the cost of these elements will be capped at the relevant costs as set out in the Baseline ICT Costs Table. Professional services, overheads, contingency and profit levels shall be capped at the rates set in Baseline ICT Costs Table and shall not be increased as a result of the ICT Design Revalidation.

- 21A.3 The College will have ten (10) Business Days to confirm or reject the Proposed Updated ICT Solution in whole or part and/or make counter-proposals. If Project Co fails to submit the Proposed Updated ICT Solution in accordance with Clause 21A.2, the College may make proposals for an Updated ICT Solution (a "**College Initiated Proposal**").
- 21A.4 Thereafter, the Baseline ICT Solution will be deemed to be amended by the Proposed Updated ICT Solution insofar as accepted by the College and/or amended by way of counter proposals or a College Initiated Proposal except to the extent that any such amendment would result in:
- 21A.4.1 an increase in the total cost to Project Co for providing the ICT solution and/or ICT Services unless the College agrees to pay for the increase;
- 21A.4.2 material and demonstrable increased deliverability and/or delay risk to Project Co;
- 21A.4.3 demonstrable incompatibility with other aspects of the ICT solution.
- 21A.5 If the cost of implementing the Baseline ICT solution, or the Proposed Updated ICT solution, is less than the cost set out in the Baseline ICT Costs Table, the ICT Contract Sum payable by the College will be correspondingly reduced (but not for the avoidance of doubt Project Co's profit as set out in Baseline ICT Costs Table). Project Co shall account to the College on an open book basis for all the ICT solution costs and shall take all reasonable steps to minimize such costs including seeking competitive tenders from sub-contractors where appropriate.
- 21A.6 Any dispute between the Parties under this Clause 21A.6 shall be determined in accordance with Clause 56 or such other dispute resolution procedure that the parties agree is appropriate to determine the dispute.

PART 6: SERVICES

22. THE SERVICES

General obligations

- 22.1 Project Co shall provide (or procure that the Service Providers provide) the Services in accordance with:
- 22.1.1 the Service Level Specification;
 - 22.1.2 the Method Statements; and
 - 22.1.3 the terms of this Agreement.
- 22.2 To avoid doubt the obligations in Clauses 22.1.1, 22.1.2 and 22.1.3 are independent obligations and:
- 22.2.1 the fact that Project Co has complied with the Method Statements shall not be a defence to an allegation that Project Co has not satisfied the Service Level Specification; and
 - 22.2.2 the fact that Project Co has complied with the Service Level Specification shall not be a defence to an allegation that Project Co has not satisfied the Method Statements;

provided that where there is any conflict between the Service Level Specification and the Method Statements the College shall be entitled (in its sole discretion) to decide which shall take precedence and inform Project Co of its decision and Project Co shall, at its own cost, be obliged to implement the College's decision.

Commencement and phase in of Services

- 22.3 Project Co shall procure that the provision of the Services in respect of the City Phase and the Riverside Phase commences on the relevant Phase Actual Completion Date.

Commencement and phase in of RAFM

- 22.3A.1 Subject to Schedule Part 28 (RAFM Assets) Project Co shall procure that the provision of the RAFM commences on the Halls of Residence Phase Actual Completion Date.

Project Co Services Changes

- 22.4 Project Co may at any time submit to the College's Representative in accordance with Schedule Part 8 (*Review Procedure*) proposals for amendments to or substitution for the Method Statements or any part of them. If there is no comment on such proposed amendment or substitution (on the grounds set out in paragraph 3 of Schedule Part 8 (*Review Procedure*)), then the Method Statements as so amended or substituted shall be the Method Statements for the purposes of this Agreement, subject to any further amendment or substitution to which there has been no comment in accordance with Schedule Part 8 (*Review Procedure*).
- 22.5 To avoid doubt, an amendment to or substitution for the Method Statements proposed pursuant to Clause 22.4 shall not be a Qualifying Change entitling Project Co to any payment (or other compensation) or to any relief from the performance of its obligations under this Agreement.

No disruption

- 22.6 Project Co shall perform the Services so as to co-ordinate with the College's operations on the Site and/or in the Facilities and shall take all reasonable care to ensure that it does not interfere with the operations of the College or any College Party.

Notification of terms

- 22.7 The College shall notify Project Co of the dates of the terms for the first Academic Year no later than 31 March in the year of the first Phase Actual Completion Date.
- 22.8 No later than 31 March in each year the College must notify Project Co of the dates of the terms for each Academic Year (including any half-term holidays) in the period 1 August to 31 July following that notice.
- 22.9 The College is entitled to require changes to the Core Times which changes shall not be Changes pursuant to Schedule Part 16 (*Change Protocol*) unless Project Co can demonstrate to the College that such change will not have a de minimis impact on the cost of and/or the delivery of the Services, in which case the College shall instruct the change to Core Times as a change to the Service Level Specification in accordance with Schedule Part 16 (*Change Protocol*).

23. MAINTENANCE

Programmed Maintenance Works

- 23.1 No later than three (3) months prior to the Riverside Phase Completion Date Project Co shall submit to the College's Representative in accordance with Schedule Part 8 (*Review Procedure*) a Schedule of Programmed Maintenance for the period from the Riverside Phase Completion Date to the expiry of that Contract Year.
- 23.2 Not later than three (3) months prior to the commencement of each subsequent anniversary of the Riverside Phase Completion Date Project Co shall submit to the College's Representative in accordance with Schedule Part 8 (*Review Procedure*) a Schedule of Programmed Maintenance for the next succeeding Contract Year in respect of all Phases completed prior to, and all Phases scheduled to be completed in, that Contract Year.
- 23.3 Each Schedule of Programmed Maintenance shall contain the following information (the "**Programmed Maintenance Information**"):
- 23.3.1 details of the proposed start and end dates for each period of Programmed Maintenance, the works to be carried out and the proposed hours of work; and
 - 23.3.2 details of any effect of the Programmed Maintenance on the delivery of any of the Services and/or the activities of the College.
- 23.4 Not later than twenty (20) Business Days prior to the commencement of any quarter (being a three month period commencing on 1 April, 1 July, 1 October or 1 January), Project Co may submit to the College's Representative for approval in accordance with Schedule Part 8 (*Review Procedure*) a revision to the Schedule of Programmed Maintenance for the Contract Year in which the relevant quarter falls showing the effect of the proposed changes to the Programmed Maintenance Information. If the College's Representative does not raise comments on such proposed revision in accordance with Schedule Part 8 (*Review Procedure*), the Schedule of Programmed Maintenance as revised shall become the Schedule of Programmed Maintenance in respect of that quarter.
- 23.5 Where the College's Representative raises comments in respect of any Programmed Maintenance periods and/or hours of work shown in a Schedule of Programmed Maintenance in accordance with paragraph 3 of Schedule Part 8 (*Review Procedure*), he shall indicate whether, and if so when, the Programmed Maintenance can be re-scheduled and Project Co shall amend the relevant Schedule of Programmed Maintenance accordingly.

23A LIFECYCLE REPLACEMENT

Lifecycle Replacement

- 23A.1 No later than 2 months prior to the Riverside Phase Completion Date, Project Co shall submit to the College's Representative in accordance with Schedule Part 8 (*Review Procedure*) a Schedule of Lifecycle Replacement for the NPD Facilities for the Project Term.
- 23A.2 Not later than 2 months prior to each subsequent anniversary of the Riverside Phase Completion Date, Project Co shall submit to the College's Representative in accordance with Schedule Part 8 (*Review Procedure*) a Schedule of Lifecycle Replacement for the NPD Facilities for the next succeeding Contract Year.
- 23A.3 Each Schedule of Lifecycle Replacement shall contain the following information:
- 23A.3.1 details of all items of Plant and Equipment and any other asset for which Lifecycle Replacement is planned during the Project Term;
- 23A.3.2 the Contract Year (or Years) when the Lifecycle Replacement is planned to take place.
- 23A.4 Each Schedule of Lifecycle Replacement shall contain the following additional information for the items scheduled for the following Contract Year:-
- 23A.4.1 details of all items of Plant and Equipment and any other asset for which Lifecycle Replacement is planned during the Contract Year;
- 23A.4.2 any changes in any Plant, Equipment or any other assets which appear in the Schedule of Lifecycle Replacement since the previous annual revision of the Schedule of Lifecycle Replacement;
- 23A.4.3 evidence which demonstrates that Project Co has taken into account in the proposed Lifecycle Replacement the cost to the College of occupation and operation of the NPD Facilities, which may be affected by Project Co's proposals for Lifecycle Replacement, including without limitation, energy consumption and the College's maintenance and cleaning obligations;
- 23A.4.4 details of Group 1 Equipment to be replaced and commentary on how this has been determined with particular reference to any changes to the College Services which the College has made Project Co aware of, which mean that a like for like replacement of Group 1 Equipment may not be appropriate or represent best value for money to the College;
- 23A.4.5 details of the proposed start and end dates for the Lifecycle Replacement, the works to be carried out and the proposed hours of work, and any other information which the College may reasonably require; and
- 23A.4.6 details of any effect of the Lifecycle Replacement on the delivery of any of the Services and/or the activities of the College.
- 23A.5 Where Lifecycle Replacement provides an opportunity to improve whole life costs, such as through lower energy consumption, longer life, or lower replacement cost, Project Co shall provide the College with the details and benefits of any alternative products or solutions
- 23A.6 The College Representative may comment on each Schedule of Lifecycle Replacement submitted by Project Co in accordance with this Clause 23A in accordance with Schedule Part 8 (*Review Procedure*). Project Co shall consider the College Representative's comments but, for the avoidance of doubt (and without prejudice to Project Co's obligations under this Agreement), Project Co shall not be obliged to amend the Schedule of Lifecycle Replacement to reflect any comments which the College Representative may make in accordance with the provisions of paragraph 3.11 of Schedule Part 8 (*Review Procedure*).

Programmed and Unprogrammed Maintenance

- 23.6 Project Co shall not carry out any Programmed Maintenance or Unprogrammed Maintenance Works or Lifecycle Replacement save:
- 23.6.1 in accordance with a Schedule of Programmed Maintenance or Lifecycle Replacement to which no objection has been made under Schedule Part 8 (*Review Procedure*) or, where comment has been raised in respect of the Programmed Maintenance or Lifecycle Replacement periods and/or time, the Schedule of Programmed Maintenance has been amended pursuant to the Service Level Specification;
 - 23.6.2 in accordance with the procedures set out in Clause 23.8; or
 - 23.6.3 in an emergency, in accordance with Clause 23.9.
- 23.7 Notwithstanding that there has been no objection to a Schedule of Programmed Maintenance or Schedule of Lifecycle Replacement, the College's Representative may, at any time, require Project Co to accelerate or defer any Programmed Maintenance or Lifecycle Replacement by giving written notice to Project Co, (unless otherwise agreed) not less than twenty (20) Business Days prior to the scheduled date for carrying out such Programmed Maintenance or Lifecycle Replacement, which notice shall set out the time and/or periods at or during which the College requires the Programmed Maintenance or Lifecycle Replacement to be performed. Project Co shall notify the College of the amount of any additional reasonable costs which it will incur as a direct consequence of such acceleration or deferment (the "**Estimated Increased Maintenance and Lifecycle Costs**") within five (5) Business Days of the receipt of the written notice advising of the requirement for an acceleration or deferment of the Programmed Maintenance or Lifecycle Replacement. The College shall, within a further period of five (5) Business Days following receipt by the College of notification of the amount of the Estimated Increased Maintenance and Lifecycle Costs, at the College's option, either confirm or withdraw its request to accelerate or defer the Schedule of Programmed Maintenance or Schedule of Lifecycle Replacement. If the College does not respond within this five (5) Business Day period, the request shall be deemed to have been confirmed. The College shall reimburse Project Co the direct and reasonable costs actually incurred by Project Co as a consequence of such acceleration or deferment up to, but not exceeding, the amount of the Estimated Increased Maintenance and Lifecycle Costs.
- 23.8 If, in circumstances other than an emergency, the need arises for Maintenance Works or Lifecycle Replacement (excluding any works of a de minimis nature in respect of which the parties have agreed this Clause 23.8 shall not apply and excluding works carried out for the purpose of Rectification, which shall take place in accordance with the provisions of Schedule Part 14 (*Payment Mechanism*)), which are not scheduled to be carried out as part of the Programmed Maintenance or Schedule of Lifecycle Replacement ("**Unprogrammed Maintenance or Lifecycle Replacement Work**"), Project Co shall not carry out any Unprogrammed Maintenance Work and Lifecycle Replacement unless and until the College's Representative has approved the proposed commencement date, the proposed hours of work and estimated duration of the requisite Unprogrammed Maintenance Works and Lifecycle Replacement in accordance with the provisions of paragraph 3.9 of Schedule Part 8 (*Review Procedure*). Nothing in this Clause 23.8 (including any approval of the College pursuant to Schedule Part 8 (*Review Procedure*)) shall prevent the College from making any Deductions.
- 23.9 If, as a result of an emergency, the need arises for Unprogrammed Maintenance Works and/or Lifecycle Replacement, Project Co may carry out such Unprogrammed Maintenance Works and/or Lifecycle Replacement provided that Project Co shall notify the College's Representative as soon as possible (and in any event within two (2) Business Days of the occurrence of the emergency) of the extent of the necessary Unprogrammed Maintenance Works and/or Lifecycle Replacement and the reasons for them. Project Co shall take all reasonable steps to minimise the duration of such Unprogrammed Maintenance Works and/or Lifecycle Replacement. Nothing in this Clause 23.9 shall prevent the College from making any Deductions.
- 23.10 Where Programmed Maintenance scheduled to be carried out in accordance with the Schedule of Programmed Maintenance or Lifecycle Replacement has been deferred by the College's

Representative under Clause 23.7, Project Co shall not be treated as having failed to perform the relevant Service on account of the condition of the NPD Facilities or any part of them from the time the Programmed Maintenance or Lifecycle Replacement was scheduled to have been completed until the time the deferred Programmed Maintenance or Lifecycle Replacement was scheduled to have been completed, but not afterwards, provided always, to avoid doubt, that Project Co shall not be relieved from the consequences of any failure to maintain the NPD Facilities in respect of any period prior to the period for performing the particular work according to the Schedule of Programmed Maintenance or Schedule of Lifecycle Replacement.

5 Year Maintenance Plan

- 23.11 Project Co shall deliver to the College's Representative not less than three (3) months prior to the Riverside Phase Completion Date, and thereafter not less than three (3) months prior to the commencement of each Contract Year the latest version of the 5 Year Maintenance Plan.
- 23.12 The College shall have a right to inspect the NPD Facilities and the Maintenance Works to ensure that the NPD Facilities are being maintained in accordance with the Service Level Specification and that the NPD Facilities comply with the College's Construction Requirements and Project Co's Proposals throughout the Project Term. The College may appoint an independent third party for the purposes of carrying out any such inspection and shall make known the findings to Project Co and the Funders. The parties shall then meet to discuss any implications of such findings and any steps that are necessary to remedy any failure to comply with such obligations. Project Co shall (subject to Schedule Part 16 (*Change Protocol*)) take into account such discussions in the next Schedule of Programmed Maintenance so that any failure to comply with such obligations shall be remedied.

College's Maintenance Obligations

- 23.13 The College's Maintenance Obligations are as follows:
- 23.13.1 not less frequently than once in every five (5) years from the relevant Phase Actual Completion Date, in a good and workmanlike manner to make good plaster and other interior wall and decoration in all such parts of the interior of the Functional Areas as were plastered, finished and/or decorated by Project Co as part of the Works (other than the Halls of Residence Works) or in implementing a College Change;
- 23.13.2 not less frequently than once in every 15 years from the relevant Phase Actual Completion Date, to renew and replace all carpets in the Functional Areas provided by Project Co as part of the Works (other than the Halls of Residence Works) or in implementing a College Change;
- 23.13.3 not used;
- 23.13.4 as often as is necessary, to maintain anything provided by the College under a Derogated Low Value Change;
- 23.13.5 to ensure that all portable electrical appliances that are connected to the electricity supply in the NPD Facilities by the College and College Parties have been tested in accordance with Law and the "Code of Practice for In-service Inspection and Testing of Electrical Equipment" published from time to time by the Institution of Electrical Engineers.
- 23.14 Subject to Clause 23.21, the College must carry out and perform the College's Maintenance Obligations or procure that the College's Maintenance Obligations are carried out and performed as often as required by Clause 23.13 and in accordance with Good Industry Practice. Without prejudice to the College's rights under Clause 23.7, the College's Maintenance Obligations must be scheduled by the College so as not to interfere with Project Co carrying out Programmed Maintenance or Lifecycle Replacement in accordance with the Schedule of Programmed Maintenance, Schedule of Lifecycle Replacement and/or interfere with Project Co carrying out Unprogrammed Maintenance Work in accordance with Clause 23.8.

23.15 If the College is in breach of Clause 23.14, Project Co may, while the breach is continuing, give a notice to the College requiring it to carry out the relevant College Maintenance Obligations. If the College:

23.15.1 does not reply to Project Co in writing within ten (10) Business Days of the date of Project Co's notice with a programme for carrying out the relevant College Maintenance Obligations within a period of time that is reasonable having regard to the nature of the breach, the reasonably foreseeable consequences of non-performance of the relevant College Maintenance Obligations for the Services and Project Co's obligations under this Agreement; or

23.15.2 having provided such a programme, does not comply with it

Project Co shall be entitled to perform the College's Maintenance Obligations so far as necessary to prevent any reasonably foreseeable adverse effect on the Services and/or Project Co's obligations under this Agreement consequent upon the non-performance of the relevant College Maintenance Obligations.

23.16 Project Co shall not carry out any Project Co's Remedial Services unless and until the College's Representative, pursuant to this Clause 23.16, has approved or is deemed to have approved or has specified the proposed commencement date, the proposed hours of work and the estimated duration of Project Co's Remedial Services (together the "**PRS Timetable**"). Project Co must give the College Representative not less than twenty (20) Business Days notice of its proposed PRS Timetable. If the College Representative considers that the proposed PRS Timetable is not consistent with the principles set out in Appendix 2 to Schedule Part 8 (*Review Procedure*), he may specify an alternative PRS Timetable that is consistent with those principles, which shall be as near to the PRS Timetable proposed by Project Co as reasonably practicable. If the College's Representative fails either to approve Project Co's proposed PRS Timetable or to specify an alternative PRS Timetable within ten (10) Business Days of receipt of Project Co's proposed PRS Timetable, he shall be deemed to have approved it.

23.17 The College must allow Project Co and relevant Project Co Parties access to the Site and the NPD Facilities:

23.17.1 for the purpose of monitoring the carrying out of College's Maintenance Obligations; and

23.17.2 in accordance with the approved PRS Timetable for the purpose of carrying out any of Project Co's Remedial Services.

23.18 If the College does not allow access to the Site and/or the NPD Facilities as required pursuant to Clause 23.17.2, or otherwise prevents or interferes with Project Co and any relevant Project Co Party performing the PRS Remedial Works, Project Co may propose a new PRS Timetable in respect of the relevant Project Co's Remedial Services and Clause 23.16 shall apply.

23.19 In carrying out and performing Project Co's Remedial Services, Project Co must comply with the standards applicable to the relevant College's Maintenance Obligations and Good Industry Practice and must use reasonable endeavours to match colours and other finishes to those that currently exist in the relevant part or parts of the NPD Facilities.

23.20 The College must reimburse Project Co all reasonable costs that it incurs in carrying out and performing Project Co's Remedial Services in accordance with this Clause 23.

23.21 Notwithstanding the terms of Clauses 23.14 to 23.19 above and without prejudice to Project Co's obligations and liability in respect of Defects in the Halls of Residence Works, Project Co is responsible for:

23.21.1 making good any defects in plaster and other interior wall and ceiling finishes and decoration and floor coverings provided by Project Co as part of the Works (other than the Halls of Residence Works) or in implementing a College Change, caused by defective design or workmanship in the carrying out of the Works (other than the Halls of

Residence Works) or in implementing the College Change or any act or omission of Project Co; and

23.21.2 making good any defects in plaster and other interior wall and ceiling finishes and decoration and floor coverings provided by Project Co as part of the Works (other than the Halls of Residence Works) or in implementing a College Change (whether or not these have subsequently been replaced or renewed by the College), consequential on any Programmed Maintenance, Unprogrammed Maintenance or Lifecycle Replacement.

23.22 The College and Project Co shall co-operate with each other to coordinate any activities that the College proposes to undertake to implement any of the College's Maintenance Obligations and Project Co's Programmed Maintenance and Project Co must include the College's intentions with regard to performing the College's Maintenance Obligations in the Schedule of Programmed Maintenance for each Contract Year.

Energy for Repairs

23.23 Subject to Clause 23.24, the College is entitled to be reimbursed by Project Co for costs incurred by the College for Utilities supplied to the NPD Facilities during the Operational Term that are consumed in the process of Project Co or any Project Co Party carrying out operations to rectify an Availability Failure.

23.24 For the purpose of applying Clause 23.23 the cost of each Utility shall be considered separately and Clause 23.23 shall not apply if the costs concerned, in respect of the particular Availability Failure, do not exceed the daily average cost based on bills paid by the College to the supplier of the relevant Utility to the NPD Facilities over the most recent 12-month period for which figures are available.

23.25 Where the College claims reimbursement of Utilities costs pursuant to Clause 23.23 it must reasonably estimate those costs using all available evidence and send Project Co a statement showing its calculation of the amount claimed along with its supporting evidence. Unless Project Co disputes the statement within ten (10) Business Days of receipt, the College will be entitled, pursuant to Clause 34.6, to set-off the amount claimed.

24. MONITORING OF PERFORMANCE

Monitoring

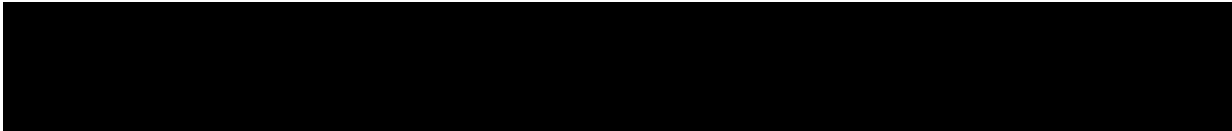
24.1 In carrying out the Services, Project Co shall, and shall procure that all Project Co Parties and any other persons for whom it is responsible shall, comply with the provisions of Schedule Part 12 (*Service Requirements*).

24.2 Project Co shall be responsible for monitoring its performance of this Agreement during the Operational Term, in the manner and at the frequencies set out in Schedule Part 12 (*Service Requirements*). Project Co shall provide the College's Representative with relevant particulars of any aspects of its performance which fail to meet the requirements of this Agreement (unless otherwise notified in writing by the College). The College may at all reasonable times observe, inspect and satisfy itself as to the adequacy of the monitoring procedures (including without limitation carrying out sample checks).

Grounds for Warning Notices

24.3 If at any time during the Operational Term (other than by reason of a Force Majeure Event, a Relief Event or an Emergency):

24.3.1



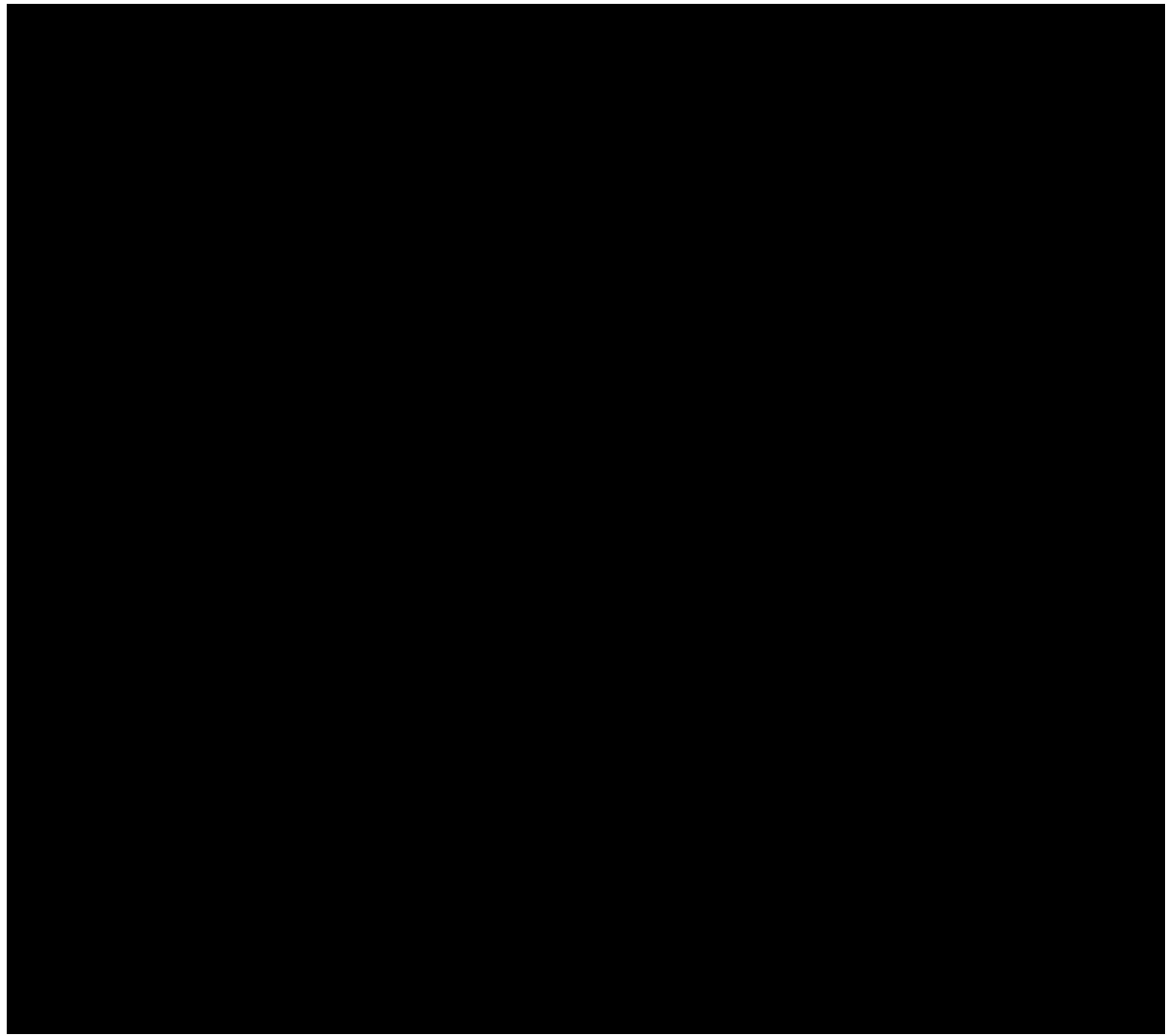
24.3.1A

24.3.1B

24.3.2

24.3.2A

24.3.2B



Warning Notices Disputes

- 24.4 If Project Co disputes that the College was or is entitled to serve a Warning Notice, Project Co may refer that dispute for determination under the Dispute Resolution Procedure for resolution. If, after the College's Representative issues a Warning Notice, the parties subsequently agree, or it is determined under the Dispute Resolution Procedure that the Warning Notice was served without justification, that Warning Notice shall be recalled or shall be cancelled and deemed not to have been served.

College's remedial rights

- 24.5 The provisions of Clauses 24.6 to 24.9 (inclusive) shall apply if the College, acting reasonably, considers that it needs to take action in connection with the Services:
- 24.5.1 because of an immediate and serious threat to the health or safety of any user of the NPD Facilities; or
 - 24.5.2 to prevent or address material interruption in the provision of the Services; or
 - 24.5.3 because of a risk of the ability of the College to provide the relevant College Services being prejudiced to a material degree.
- 24.6 If any of the circumstances set out in Clause 24.5 arise (without prejudice to its rights under Clause 40 (*Project Co Event of Default*) or any other express rights under this Agreement) and the College wishes to take action (either by itself or by engaging others), the College shall notify Project Co in writing of the following:

- 24.6.1 the action it wishes to take;
 - 24.6.2 the reason for such action;
 - 24.6.3 the date it wishes to commence such action;
 - 24.6.4 the time period which it believes will be necessary for such action; and
 - 24.6.5 to the extent practicable, the effect on Project Co and its obligation to provide the Services during the period such action is being taken.
- 24.7 Following service of such notice, the College shall take such action as has been notified under Clause 24.6 and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**") and Project Co shall give all reasonable assistance to the College while it is taking the Required Action. To the extent that the College performs any of the obligations of Project Co hereunder or undertakes tasks that would otherwise be undertaken by Project Co pursuant to this Agreement, the College shall perform such obligations or undertake such tasks to the same standard as would be required of Project Co under the terms of this Agreement.
- 24.8 If the Required Action is taken other than as a result of a breach by Project Co of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents Project Co from providing any part of the Services:
- 24.8.1 Project Co shall be relieved from its obligations to provide such part of the Services; and
 - 24.8.2 in respect of this period in which the College is taking the Required Action and provided that Project Co provides the College with reasonable assistance (such assistance to be at the expense of the College to the extent that additional costs are incurred), the Monthly Service Payments due from the College to Project Co shall equal the amounts that Project Co would receive if it were satisfying all of its obligations and providing the Services affected by the Required Action in full over that period and the College shall indemnify Project Co against all Direct Losses sustained by Project Co as a result of the College taking the Required Action.
- 24.9 If the Required Action is taken as a result of a breach by Project Co of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents Project Co from providing any part of the Services:
- 24.9.1 Project Co shall be relieved of its obligations to provide such part of the Services; and
 - 24.9.2 in respect of the period in which the College is taking the Required Action, the Monthly Service Payments due from the College to Project Co shall equal the amounts Project Co would receive if it were satisfying all of its obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to all of the costs incurred by the College in taking the Required Action (including, without limitation, an appropriate sum in respect of general staff costs and overheads).

Emergencies

- 24.10 If an Emergency arises during the Operational Term which cannot be dealt with by performance of the Services, the College may instruct Project Co to procure that such additional or alternative services are undertaken by Project Co as and when required by the College to ensure that the Emergency is dealt with and normal operation of the Facility resumes as soon as is reasonably practicable.
- 24.11 The cost of any additional or alternative services provided by Project Co under Clause 24.10 shall be borne by the College and paid in accordance with Clause 34 (*Payment*). The College will not be entitled to levy Deductions in respect of any failure to provide the Services to the extent that such failure arises by reason of Project Co's compliance with Clause 24.10.

25. TUPE AND EMPLOYMENT MATTERS

No Employee Transfer

- 25.1 The College and Project Co agree that there are no individuals presently employed by the College or any other sub-contractor of the College whose contracts of employment will, by virtue of the transfer to Project Co of responsibility for provision of (or procuring the provision by Service Providers of) any of the Services in accordance with this Agreement and in accordance with the Transfer Regulations, have effect after the date or dates of such transfer as agreed by the parties (each a "**Relevant Service Transfer Date**") (or at any other time) as if originally made between those persons and the relevant Service Provider.
- 25.2 If it is subsequently agreed or determined that there are persons presently employed by the College or any other sub-contractor of the College whose contracts of employment do have effect after the Relevant Service Transfer Date as if originally made between those persons and the relevant Service Provider ("**Transferring Staff**") then:
- 25.2.1 the College shall within ten (10) Business Days of the date on which it was so agreed or determined have the opportunity to offer or procure the offer of a position as an employee of the College to some or all of the Transferring Staff;
- 25.2.2 Project Co shall procure that no person to whom the College has offered a position in accordance with Clause 25.2.1 shall be dismissed by reason of redundancy until the period for acceptance of such offer has expired and the person in question has not accepted such offer; and
- 25.2.3 subject to Clauses 25.2.1 and 25.2.2, Project Co or any Service Provider shall be entitled to dismiss any or all of the Transferring Staff by reason of redundancy provided that Project Co shall use and shall procure that any Service Provider shall carry out in the required manner any obligation to consult with the Transferring Staff or any of them, or their respective representatives, and shall use all reasonable endeavours to mitigate the amount of any costs payable in respect of the Transferring Staff or their dismissal.

The College shall indemnify Project Co against any costs referred to in Clause 25.2.3 reasonably incurred by Project Co (or by a relevant Service Provider and for which Project Co is responsible) and shall reimburse any costs reasonably and properly incurred by Project Co or the Service Provider in employing any Transferring Staff prior to the expiry of the period referred to in Clause 25.2.2.

Compliance with Legislation and College Policies

- 25.3 Project Co shall comply and shall procure that each Service Provider and all persons employed or engaged by a Service Provider in connection with the provision of any Service shall comply at all times with the Law on health and safety at work and on anti-discrimination and equal opportunities.
- 25.4 Project Co shall procure that each Service Provider takes all reasonable steps to procure that all persons including any employed or engaged by a Service Provider in connection with the provision of any Service shall, so far as applicable, comply with the College Policies as regards health and safety at work (including the College Policy regarding smoking) and with those relating to anti-discrimination and equal opportunities (including those relating to harassment). Project Co also shall take and shall procure that every Service Provider shall take all such steps as the College may reasonably require, which shall include co-operation with action proposed or taken by the College, to ensure that the College complies with its duty under Section 3(1) Health and Safety at Work Act 1974 regarding the conduct of the undertaking of the College.

Project Co Indemnities

25.5 Project Co shall indemnify and keep indemnified in full the College and, at the College's request, each and every service provider who has or shall provide any service equivalent to any of the Services against:

25.5.1 claims in respect of all emoluments and all other contractual or statutory payments unpaid by Project Co or a Service Provider to any person entitled to such payments from Project Co or a Service Provider who is or has been employed or engaged by Project Co or any Service Provider on or after the Relevant Service Transfer Date but prior to the date of expiry or termination of this Agreement, and all income tax and pension and national insurance contributions payable thereon; and

25.5.2 insofar as Clause 25.5.1 does not apply, all Direct Losses incurred by the College as a result of any claim against the College in respect of any liability to any person who is or has been employed or engaged (whether as a consequence of the Transfer Regulations or of the provisions of this Clause 25) by Project Co or any Service Provider in connection with the provision of any of the Services, where such claim arises as a result of any act or omission of Project Co or the Service Provider occurring after the Relevant Service Transfer Date and before the expiry or termination of this Agreement;

BUT the indemnities in Clauses 25.5.1 and 25.5.2 shall not apply to the extent that the claim arises from a wrongful act or omission of the College or is in respect of sums for which the College is liable pursuant to Clause 25.2.

25.6 Clause 49.3 (*Conduct of Claims*) of this Agreement shall apply where any claim is made in respect of the indemnities given by Project Co under Clause 25.5 (*Project Co Indemnities*).

Position on expiry or earlier termination of this Agreement

25.7 On the expiry or earlier termination of this Agreement, the College and Project Co agree that it is their intention that the Transfer Regulations shall apply in respect of the provision thereafter of any service equivalent to a Service but the position shall be determined in accordance with the Law at the date of expiry or termination as the case may be and this Clause is without prejudice to such determination.

25.8 Project Co shall not and shall procure that no Service Provider shall make any material change to the terms and conditions of employment of any person employed in the provision of any Service, transfer any person employed in the provision of any Service to another part of its business, or materially increase or decrease the number of such persons:

25.8.1 within the period of twelve months immediately preceding the expiry of this Agreement, or

25.8.2 within the period of twelve months before the termination of this Agreement or, if shorter, during the period of notice of termination

without the College's consent (which shall not be unreasonably withheld), except if such change is required by Law.

25.9 If the Transfer Regulations do not apply on the expiry or earlier termination of this Agreement, the College shall ensure that each new provider of a service equivalent to a Service on or after the expiry or earlier termination of this Agreement (including the College) shall offer employment to the persons employed by Project Co or a Service Provider in the provision of the Service immediately before the expiry or earlier termination of this Agreement and shall indemnify Project Co or a Service Provider for Direct Losses any of them may suffer or incur as a result of its failure to do so, and for any costs, claims or liabilities for redundancy payments (whether statutory or contractual).

25.10 If an offer of employment is made in accordance with Clause 25.9 the employment shall be on the same terms and conditions as applied immediately before the expiry or earlier termination of this

Agreement including full continuity of employment, except that the College or other new service provider may at its absolute discretion not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of Clause 25.8.

26. **NOT USED**

27. **SITE SECURITY AND PERSONNEL ISSUES**

Access

27.1 The College shall have the right to refuse admittance to, or order the removal from, the Facilities of any person employed by (or acting on behalf of) Project Co, any Project Co Party or any sub-contractor whose presence, in the reasonable opinion of the College, is likely to have a material adverse effect on the provision by the College of the relevant College Services at the Facilities or who is not a fit and proper person to be in the Facilities.

27.2 Action taken under Clause 27.1 shall forthwith be confirmed in writing by the College to Project Co and, to avoid doubt, shall not relieve Project Co of any of its obligations under this Agreement.

27.3 If and when so directed in writing by the College, Project Co shall within twenty (20) Business Days provide a list of the names and addresses of all persons it expects may require admission in connection with this Agreement, to any premises occupied by the College, specifying the capacities in which those persons are concerned with this Agreement and giving such other particulars as the College may reasonably require.

27.4 The decision of the College as to whether any person is to be refused admission shall be final and conclusive.

College Policies

27.5 Project Co shall, and shall procure that all Project Co Parties shall, comply at all times with the College Policies.

27.6 The College shall notify Project Co of any proposed change to the College Policies as soon as practicable (and, in any event, prior to such change taking effect) and consult with Project Co. Subject to Clause 27.7, such change shall take effect as a Change in accordance with Schedule Part 16 (*Change Protocol*).

27.7 The College may, at its sole option, notify Project Co that Project Co shall not be obliged to comply with any change to any College Policy and that Project Co should continue to comply with the relevant College Policy prior to any change in which case such change shall not take effect as a Change in accordance with Schedule Part 16 (*Change Protocol*).

Resources and training

27.8 Project Co shall procure that:

27.8.1 there shall at all times be a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience. To avoid doubt, this obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in demand for each of the Services; and

27.8.2 all staff receive such training and supervision as is necessary to ensure the proper performance of this Agreement and compliance with all health and safety rules, procedures and requirements

27.9 Not used.

Convictions and disciplinary action

- 27.10 Project Co (to the extent permitted by Law) shall procure that all potential staff or persons performing any of the Project Operations who may reasonably be expected in the course of their employment or engagement to have access to children, the elderly and/or vulnerable adults:
- 27.10.1 are questioned concerning their Convictions; and
 - 27.10.2 only in the case of potential staff who may reasonably be expected in the course of their employment to have access to children, the elderly and/or vulnerable adults, are required to complete a Protecting Vulnerable Groups Scheme form.
- 27.11 Project Co shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the completion of a Protecting Vulnerable Groups Scheme form administered by Disclosure Scotland, in either case of which Project Co or a Service Provider is aware or ought to be aware is employed or engaged in the provision of the Project Operations without the College's prior written consent (such consent not to be unreasonably withheld or delayed).
- 27.12 Project Co shall procure that the College is kept advised at all times of any person employed or engaged by Project Co or any Service Provider in the provision of any of the Project Operations who, subsequent to his/her commencement of such employment or engagement, receives a Conviction of which Project Co or a Service Provider becomes aware or whose previous Convictions become known to Project Co or a Service Provider.
- 27.13 The College's Representative (acting reasonably) may instruct Project Co to procure that appropriate disciplinary action is taken against any employee of Project Co or any Sub-Contractor (in accordance with the terms and conditions of employment of the employee concerned) who misconducts himself or is incompetent or negligent in his duties or whose presence or conduct on the Site or at work is otherwise considered by the College's Representative (acting reasonably) to be undesirable. The College shall co-operate with any such disciplinary proceedings and shall be advised in writing by Project Co of the outcome.
- 27.14 Project Co shall procure that there are set up and maintained, by it and by all Service Providers, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). Project Co shall procure that the terms and the implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to the College.

Management

- 27.15 Project Co shall consult with the College in relation to the selection procedure for Project Co's Facility Manager and such person shall not be appointed (or replaced) without the prior written consent of the College (such consent not to be unreasonably withheld or delayed).
- 27.16 Project Co shall provide, and shall procure that all Service Providers provide, to the College upon request details of their respective management organisations.

Lists and Records

- 27.17 Project Co shall procure that the College's Representative shall at all reasonable times have access to all material details in respect of all employees of Project Co or any Service Provider engaged in the provision of the Services including numbers and categories of staff employed to perform the Services and including in respect of each such employee:
- 27.17.1 details of qualifications; and
 - 27.17.2 details of training undertaken by the employee.

Health Requirements

- 27.18 Not used.
- 27.19 To the extent permitted by Law records of all screenings, examinations or treatments referred to in this Clause 27 shall be held by Project Co on behalf of and as agent for the College and produced (subject to requirements under the Law) for inspection upon request by the College's Representative provided that no such inspection shall take place unless each staff member has given his or her written consent to such inspection.
- 27.20 Not used.
- 27.21 The College's Representative may (acting reasonably) refuse admittance to or order the removal from the College's premises of any person employed or engaged in the provision of the Services whose presence poses or is reasonably believed to pose a risk to the health of College staff, patients or visitors and such action which shall forthwith be confirmed in writing by the College shall not relieve Project Co of any of its obligations under this Agreement.

28. STOCKS CONSUMABLES, MATERIALS AND EQUIPMENT

Standards

- 28.1 All goods, equipment, consumables and materials which are to be used in the provision of the Services shall be of satisfactory quality.
- 28.2 Project Co shall ensure that the goods, equipment, consumables and materials used by it or any Sub-Contractor in connection with the provision of any of the Services (each as a distinct and separate obligation) are:
- 28.2.1 maintained in a safe, serviceable and clean condition in accordance with Good Industry Practice;
 - 28.2.2 of the type specified in the Service Level Specification and/or the Method Statements (where appropriate); and
 - 28.2.3 in compliance with any relevant rules, regulations, codes of practice and/or British or European Standards

and shall, as soon as practicable after receiving a request from the College's Representative, supply to the College's Representative evidence to demonstrate its compliance with this Clause 28.2.

- 28.3 Project Co shall procure that sufficient stocks of goods, consumables, equipment and materials are held in order to comply with its obligations under this Agreement.

Hazardous substances and materials

- 28.4 Project Co shall not install, keep or use in or on the Facilities any materials, equipment or apparatus the installation, keeping or use of which is likely to cause (or in fact causes):
- 28.4.1 material damage to the Facilities;
 - 28.4.2 dust, noise or vibration constituting a nuisance to the owners and/or occupiers of any property adjoining or near to the Facilities; or
 - 28.4.3 the generation, accumulation or migration of any hazardous substance in an unlawful manner whether within or outside the Facilities

and shall use all reasonable endeavours to ensure (by directions to staff and otherwise) that all materials, equipment or apparatus in or on the Facilities is operated so as to

minimise noise and vibration likely to cause annoyance or disturbance and the unlawful generation or migration of any hazardous substance.

28.5 Project Co shall not bring in or on to (or keep or maintain in or on) the Facilities any hazardous materials or equipment without the prior written consent of the College and unless Project Co has complied with all relevant Law.

28.6 Without prejudice to the generality of its obligations, Project Co shall:

28.6.1 procure that all hazardous materials and equipment used, by it or by a Sub-Contractor or used on behalf of any of them, or stored, by it or by a Sub-Contractor or stored on behalf of any of them, on the Site are kept in accordance with all relevant Law and Good Industry Practice, properly and securely labelled and stored, under appropriate supervision and used only by appropriately trained and competent staff; and

28.6.2 use all practicable and reasonable means to:

- (a) prevent or counteract, to the satisfaction of the College's Representative, the unlawful emission of any such hazardous substance;
- (b) avoid the unlawful discharge into any conducting media serving the Facilities of any hazardous substance;
- (c) prevent the unlawful generation, accumulation or migration of any hazardous substance at or from the Facilities; and
- (d) prevent any environmental claims arising or any circumstances arising likely to result in any environmental claims

in so far as any such hazardous substance is, or should be, under the control of Project Co pursuant to this Agreement.

28.7 The College shall:

28.7.1 procure that all hazardous materials and equipment used, by it or by any College Party or used on behalf of any of them, or stored, by it or by any College Party or stored on behalf of any of them, on the Site are kept in accordance with all relevant Law and Good Industry Practice, properly and securely labelled and stored, under appropriate supervision and used only by appropriately trained and competent staff; and

28.7.2 use all practicable and reasonable means to:

- (a) prevent or counteract the unlawful emission of any such hazardous substance;
- (b) avoid the unlawful discharge into any conducting media serving the Facilities of any hazardous substance;
- (c) prevent the unlawful generation, accumulation or migration of any hazardous substance at or from the Facilities; and
- (d) prevent any environmental claims arising or any circumstances arising likely to result in any environmental claims

in so far as any such hazardous substance is, or should be, under the control of the College.

28.8 The College shall:

28.8.1 maintain a COSHH register for the Facilities, which shall be up-to-date at all times;

28.8.2 ensure that a copy of the COSHH register is kept at the Facilities; and

28.8.3 ensure that a further copy of the COSHH register is given to Project Co as often as it is changed.

PART 6A: COMMUNITY BENEFITS

28A COMMUNITY BENEFITS

28A.1 Project Co shall comply with the Community Benefits requirements set out in this Clause 28A and in the Community Benefits subsection of Section 04.04 of Section 4 (*Project Co's Proposals*) of Schedule Part 6 (*Construction Matters*).

28A.2 If Project Co, in relation to the Works, does not:

28A.2.2 provide 5203 person-weeks of employment for New Entrants in accordance with the Community Benefits requirements. In calculating whether 5203 person-weeks of employment have been provided employment of less than 26 weeks will be disregarded unless the trainee has left voluntarily or there are other bona fide reasons why the trainee's contract has been terminated prior to 26 weeks. Subject to Clause 28A.3 Project Co shall pay to the College the sum [REDACTED] per person-week not so provided;

28A.2.3 advertise each Relevant Sub-Contract and Relevant Supply Opportunity in accordance with the Community Benefit requirements. Project Co shall pay to the College the sum of [REDACTED] per Relevant Sub-Contract and Relevant Supply Opportunity not so advertised; and

28A.2.4 provide the quarterly/annual information relating thereto in accordance with the Community Benefits requirements.

Project Co shall pay to the College the sum of [REDACTED] per occurrence, provided that, in each case, the College has first served a notice on Project Co notifying it of its non-compliance and Project Co has failed to rectify such non-compliance within 20 Business Days of such notice.

28A.3 The College's exclusive and sole remedy in respect of a breach of Clauses 28A.1 in respect of the Works shall be the payments provided for in Clause 28A.2. Project Co's maximum liability in this respect shall [REDACTED].

28A.4 If Project Co, in relation to the Services, does not:

28A.4.1 provide one apprenticeship every two years during the Operational Term (each such apprenticeship being for a period of three years); and

28A.4.2 provide two 26 week work placements each year during the Operational Term;

Project Co shall pay to the College the sum [REDACTED] per occurrence;

28A.4.3 provide the quarterly/annual information relating to the Community Benefits requirements.

Project Co shall pay to the College the sum [REDACTED] per occurrence;

provided that, in each case, the College has first served a notice on Project Co notifying it of its non-compliance with this Clause 28A.4 and Project Co has failed to rectify that non-compliance within twenty (20) Business Days of such notice.

28A.5 The College's exclusive and sole remedy in respect of a breach of Clause 28A shall be the payments provided for in Clause 28A and for the avoidance of doubt any breach of this Clause 28A will not count towards the calculation of Deductions and/or Warning Notices and/or constitute a breach for the purposes of Clause 40.1.3.

28A.6 All payments due by Project Co to the College under this Clause shall be payable within twenty (20) Business Days of written demand.

PART 7: DELAY EVENTS, RELIEF EVENTS AND FORCE MAJEURE

29. DELAY EVENTS

- 29.1 If, at any time, Project Co becomes aware that there will be (or is likely to be) a delay in completion of the Works relating to one or more Phases, Project Co shall forthwith give notice to the College's Representative to that effect specifying the relevant delay or impediment. In relation to any such delay or impediment if the College's Representative is satisfied, or it is determined in accordance with Schedule Part 20 (*Dispute Resolution Procedure*), that such delay or impediment has arisen as a result of the occurrence of a Delay Event, then, subject to Clause 29.2, the College's Representative shall allow Project Co an extension of time equal to the delay or impediment caused by such Delay Event (taking into account reasonably foreseeable consequences of the Delay Event) and shall revise the relevant Phase Completion Dates accordingly but to avoid doubt, there shall be no extension to the Project Term as a result of any such delay or impediment.
- 29.2 If Project Co is (or claims to be) affected by a Delay Event:
- 29.2.1 it shall (and shall procure that the Project Co Parties shall) take and continue to take all reasonable steps to eliminate or mitigate the consequences of such an event upon the performance of its obligations under this Agreement and, where relevant, resume performance of its obligations affected by the Delay Event as soon as practicable; and
- 29.2.2 it shall neither be relieved from liability under this Agreement nor entitled to any extension of time for the purpose of Clause 29 to the extent that it is delayed or impeded due to its failure (if any) to comply with its obligations under Clause 29.2.1 above.
- 29.3 For the purposes of this Agreement, a Delay Event means any of the following to the extent in each case that there will be (or is likely to be) a delay in completion of a Phase or Phases:
- 29.3.1 the occurrence of a Qualifying Change in relation to which it has been agreed or determined that the implementation of the College Change would delay the completion of the Phase(s);
- 29.3.2 any breach by the College and/or any College Party of any of the College's express obligations under this Agreement to the extent in each case that any such breach is not caused, or contributed to, by Project Co or any Project Co Party;
- 29.3.3 the execution of works on the Site not forming part of this Agreement by the College or any contractors employed by the College which, for the avoidance of doubt, does not include the works by Scottish Water referred to in Clauses 29.3.9 and 29.10.4;
- 29.3.4 opening up of the Works pursuant to Clauses 13.3 to 13.7 (inclusive) where such Works are not subsequently found to be defective (unless it is agreed or determined in accordance with Schedule Part 20 (*Dispute Resolution Procedure*) that the opening up of the Works was reasonable in the light of other defects previously discovered by the College);
- 29.3.5 Force Majeure;
- 29.3.6 a Relief Event;
- 29.3.7 a Relevant Change in Law referred to in Clause 32.3.1 (*Discriminatory Change in Law*) and Clause 32.3.2 (*Specific Change in Law*); or
- 29.3.8 not used
- 29.3.9 the carrying out of any works by Scottish Water on the area identified and delineated in black cross hatching and/or by a broken red line on the Scottish Water Plan after 31 December 2013 and/or a failure by Scottish Water to comply with the requirements in

respect of the provision of access over the area shown delineated by broken red in the Scottish Water Plan as set out in Schedule Part 5 (*Land Matters*).

29.4 Without prejudice to the generality of Clause 29, Project Co shall give notice in writing to the College's Representative as soon as it (or the Contractor) can reasonably foresee a Delay Event occurring or, if the same is not reasonably foreseeable, as soon as it (or the Contractor) shall become aware of a Delay Event. Project Co shall within ten (10) Business Days after such notification, give further written details to the College's Representative which shall include:

29.4.1 a statement of which Delay Event the claim is based upon;

29.4.2 details of the circumstances from which the Delay Event arises;

29.4.3 details of the contemporary records which Project Co will maintain to substantiate its claim for extra time;

29.4.4 details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon completion of the relevant Phases; and

29.4.5 details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.

29.5 As soon as possible but in any event within five (5) Business Days of Project Co (or the Contractor) receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim then, provided that the Phase Completion Date has not otherwise already been revised pursuant to Clause 29.7, Project Co shall submit further particulars based on such information to the College's Representative.

29.6 The College's Representative shall, after receipt of written details under Clause 29.4, or of further particulars under Clause 29.5, be entitled by notice in writing to require Project Co to provide such further supporting particulars as he may reasonably consider necessary. Project Co shall afford the College's Representative reasonable facilities for investigating the validity of Project Co's claim including, without limitation, onsite inspection.

29.7 Subject to the provisions of this Clause, the College's Representative shall revise the relevant Phase Completion Dates in accordance with Clause 29.1 (*Delay Events*) as soon as reasonably practicable and in any event within five (5) Business Days of the later of:

29.7.1 the date of receipt by the College's Representative of Project Co's notice given in accordance with Clause 29.4 and the date of receipt of any further particulars (if such are required under Clause 29.6), whichever is the later; and

29.7.2 the date of receipt by the College's Representative of any supplemental information supplied by Project Co in accordance with Clause 29.5 and the date of receipt of any further particulars (if such are required under Clause 29.6), whichever is the later.

If Project Co has failed to comply with the requirements as to the giving of notice under Clause 29.4, or has failed to maintain records or afford facilities for inspection to the College's Representative, then Project Co shall not be entitled to any extension of time (and the relevant Phase Completion Dates shall not be revised) in respect of any period of delay by Project Co in giving notice or providing information under Clause 29.4 and/or to the extent that its failure to maintain records or afford facilities for inspection to the College's Representative has prevented the College's Representative from assessing the consequences of the Delay Event.

29.8 If:

29.8.1 the College's Representative declines to fix a revised Phase Completion Date(s); or

29.8.2 Project Co considers that a different Phase Completion Date(s) should be fixed; or

29.8.3 there is a disagreement as to whether a Delay Event has occurred

then Project Co shall be entitled to refer the matter for determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*).

Compensation

- 29.9 If the Delay Event is a Compensation Event Project Co's sole right to compensation shall be as provided for in Clauses 29.11 to 29.13 inclusive. To avoid doubt, no other Delay Event shall entitle Project Co to receive any compensation save as otherwise expressly provided in:
- 29.9.1 Schedule Part 16 (*Change Protocol*) in the case of a Delay Event referred to in Clause 29.3.1 (subject always to the provisions of Clause 32); or
- 29.9.2 Clause 32 in the case of a Delay Event referred to in Clause 29.3.7.
- 29.10 For the purposes of Clause 29.9, a Compensation Event means:
- 29.10.1 any Delay Event referred to in Clause 29.3.2, Clause 29.3.3 or Clause 29.3.4 for which, in each case, it has been agreed or determined pursuant to this Clause 29 that Project Co is entitled to an extension of time; or
- 29.10.2 in the period prior to a Phase Actual Completion Date, in circumstances where there is no delay in completion of the relevant Phase any breach by the College and/or any College Party of any of the College's express obligations under this Agreement to the extent that such breach is not caused, or contributed to, by Project Co or any Project Co Party; or
- 29.10.3 not used
- 29.10.4 the carrying out of any works by Scottish Water on the area identified and delineated in black cross hatching and/or by a broken red line on the Scottish Water Plan after 31 December 2013 and/or a failure by Scottish Water to comply with the requirements in respect of the provision of access over the area shown delineated by broken red in the Scottish Water Plan as set out in Schedule Part 5 (*Land Matters*).
- 29.11 Subject to Clause 29.12, if it is agreed, or determined, that there has been a Compensation Event, and Project Co has incurred loss (including loss of revenue) and/or expense as a direct result of such Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better or worse position than it would have been in had the relevant Compensation Event not occurred. Project Co shall promptly provide the College's Representative with any additional information he may require in order to determine the amount of such compensation.
- 29.12 Project Co shall take all reasonable steps so as to minimise the loss and/or expense referred to in Clause 29.11 in relation to any Compensation Event and any compensation payable shall:
- 29.12.1 exclude any amounts incurred or to be incurred as a result of any failure of Project Co (or any Project Co Party) to comply with this Clause 29.12; and
- 29.12.2 be reduced by any amount which Project Co has recovered or will recover under any insurance policy (or would have recovered if it had complied with the requirements of this Agreement or of any policy of insurance required under this Agreement) which amount, to avoid doubt, shall not include any excess or deductibles or any amount over the maximum amount insured applicable to any such insurance policy.
- 29.13 The amount of any compensation due to Project Co under Clause 29.11 shall be agreed between the parties or, failing agreement, determined pursuant to Schedule Part 20 (*Dispute Resolution Procedure*) and such compensation shall be payable:

- 29.13.1 in respect of compensation for a Compensation Event to the extent resulting in Capital Expenditure being incurred the College shall compensate Project Co for the actual Capital Expenditure incurred by Project Co within twenty (20) Business Days of its receipt of a written demand accompanied by a valid VAT invoice for the same by Project Co supported by all relevant information; and
- 29.13.2 in all other cases in accordance with Section 6 (*Changing the Financial Model*) of Schedule Part 16 (*Change Protocol*) as if a Relevant Event had taken place.

30. RELIEF EVENTS

- 30.1 For the purposes of this Agreement, subject to Clause 30.4, Relief Events mean any of the following events:
- 30.1.1 fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;
- 30.1.2 failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;
- 30.1.3 accidental loss or damage to the Works and/or Facilities or any roads servicing the same;
- 30.1.4 without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with the College's Construction Requirements, the Service Level Specification, failure or shortage of power, fuel or transport;
- 30.1.5 blockade or embargo falling short of Force Majeure;
- 30.1.6 the discovery of fossils, antiquities and human remains requiring action in accordance with Clause 19 (*Fossils and Antiquities*);
- 30.1.7 official or unofficial strike, lockout, go slow or other dispute in each case generally affecting the construction, building maintenance or facilities management industry (or a significant sector of that industry),
- 30.1.8 the suspension of the Halls of Residence Works by Project Co in accordance with Clause 34A.3 (*Right to Suspend*).

provided in each case that such event does not arise (directly or indirectly) as a result of any wilful act or default of the party claiming relief and/or (i) in the case of Project Co claiming relief, any Project Co Party and (ii) in the case of the College claiming relief, any College Party.

- 30.2 Subject to Clauses 30.3 and 30.4, no right of termination shall arise under this Agreement by reason of any failure by a party to perform any of its obligations under this Agreement to the extent that such failure to perform occurs because of the occurrence of a Relief Event (and, to avoid doubt, and without prejudice to Clause 30.9, unless expressly stated to the contrary in this Agreement, it is acknowledged that all other rights and obligations of the parties under this Agreement remain unaffected by the occurrence of a Relief Event).
- 30.3 Without prejudice to Project Co's rights under Clause 29 (*Delay Events*), Project Co shall only be relieved of its obligations under Clauses 12 (*The Design, Construction and Commissioning Process*), 13 (*Right of Access of College's Representative*), 14 (*Programme and Dates for Completion*), 17 (*Pre-Completion Commissioning and Completion*) and 29 (*Delay Events*) by Delay Events in accordance with Clause 29 (*Delay Events*).

Mitigation

- 30.4 Where a party is (or claims to be) affected by a Relief Event:
- 30.4.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Relief Event as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and
- 30.4.2 it shall not be entitled to rely upon the relief afforded to it pursuant to Clause 30.2 of this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure (if any) to comply with its obligations under Clause 30.4.1 above.
- 30.5 The party claiming relief shall serve written notice on the other party within five (5) Business Days of it becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- 30.6 A subsequent written notice shall be served by the party claiming relief on the other party within a further five (5) Business Days of the notice referred to in Clause 30.5 which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the Relief Event on the ability of the party to perform, the action being taken in accordance with Clause 30.4, the date of the occurrence of the Relief Event and an estimate of the period of time required to overcome it (and/or its effects).
- 30.7 The party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- 30.8 If, following the issue of any notice referred to in Clause 30.6, the party claiming relief receives or becomes aware of any further information relating to the Relief Event (and/or any failure to perform), it shall submit such further information to the other party as soon as reasonably possible.
- 30.9 To avoid doubt, the occurrence of a Relief Event shall not entitle Project Co to any compensation.

31. FORCE MAJEURE

- 31.1 For the purposes of this Agreement, Force Majeure means any of the following events or circumstances:
- 31.1.1 war, civil war, armed conflict or terrorism; or
- 31.1.2 nuclear contamination unless in any case Project Co and/or any Project Co Party is the source or the cause of the contamination; or
- 31.1.3 chemical or biological contamination of the Works and/or the Facilities and/or the Site from any of the events referred to in Clause 31.1.1 above; or
- 31.1.4 pressure waves caused by devices travelling at supersonic speeds

which directly causes either party to be unable to comply with all or a material part of its obligations under this Agreement.

- 31.2 Subject to Clauses 31.3 and 31.4 the party claiming relief shall be relieved from liability under this Agreement to the extent that by reason of the Force Majeure it is not able to perform its obligations under this Agreement. For the avoidance of doubt (but without prejudice to Clause 41 (*Termination Resulting from Force Majeure*)) the College shall not be entitled to terminate this Agreement for a Project Co Event of Default if such Project Co Event of Default arises from a Force Majeure Event.

- 31.3 Where a party is (or claims to be) affected by an event of Force Majeure:
- 31.3.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and
 - 31.3.2 it shall not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure (if any) to comply with its obligations under Clause 31.3.1.
- 31.4 Without prejudice to Project Co's rights under Clause 29 (*Delay Events*), Project Co shall only be relieved from its obligations under Clauses 12 (*The Design, Construction and Commissioning Process*), 13 (*Right of Access of College's Representative*), 14 (*Programme and Dates for Completion*) and 29 (*Delay Events*) by Delay Events in accordance with Clause 29 (*Delay Events*).
- 31.5 The party claiming relief shall serve written notice on the other party within five (5) Business Days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- 31.6 A subsequent written notice shall be served by the party claiming relief on the other party within a further five (5) Business Days which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the party to perform, the action being taken in accordance with Clause 31.3, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it (and/or its effects).
- 31.7 The party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- 31.8 If, following the issue of any notice referred to in Clause 31.6, the party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other party as soon as reasonably possible.
- 31.9 Nothing in this Clause 31 shall affect the College's entitlement to make Deductions in the period during which any event of Force Majeure is subsisting.
- 31.10 The parties shall endeavour to agree any modifications to this Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule Part 20 (*Dispute Resolution Procedure*) shall not apply to a failure of the College and Project Co to reach agreement pursuant to this Clause 31.10.

PART 8: CHANGES IN LAW & CHANGES

32. CHANGES IN LAW

General

- 32.1 Project Co shall take all steps necessary to ensure that the Project Operations are performed in accordance with the terms of this Agreement (including, without limitation, Clause 5.2.1) following any Change in Law.

Relevant Changes in Law

- 32.2 Subject to Clause 32.4.3(e) and Clause 32.4.3(f) and on the occurrence of any Relevant Change in Law, the parties shall be entitled to seek adjustments to the Annual Service Payment to compensate for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Project Operations. Such adjustments (if any) will be calculated in accordance with and subject to Clause 32.4.
- 32.2A The Parties agree that the provisions of Clauses 32.2 to 32.6 shall not apply to the provision by Project Co of RAFM and therefore for the purposes of Clauses 32.2 to 32.6 only references to Project Operations shall be to Project Operations under exception of RAFM.
- 32.3 Relevant Change in Law means any of the following:
- 32.3.1 the occurrence of any Discriminatory Change in Law having an impact on the cost of performance of the Project Operations;
 - 32.3.2 the occurrence of any Specific Change in Law having an impact on the cost of performance of the Project Operations; or
 - 32.3.3 the occurrence, after the relevant date, of any Change in Law which requires any work of alteration, addition, demolition or extension or variation in the quality or function of the NPD Facilities which is not Maintenance Work or Lifecycle Replacement or work which Project Co would otherwise be required to undertake to comply with its obligations under this Agreement. For the purposes of this Clause 32.3.3, the relevant date shall in respect of a Phase be the later to occur of the Phase Completion Date and the Phase Actual Completion Date, save where the Phase Actual Completion Date is delayed by a Compensation Event, a Delay Event referred to in Clause 29.3.1 or by a Delay Event referred to in Clauses 29.3.7, 29.3.8 and 29.3.9 in which case the relevant date shall be the later to occur of the Phase Completion Date and the date on which the Works relating to the relevant Phase would have been completed in accordance with this Agreement had the relevant Compensation Event or Delay Event not occurred

provided that:

- (a) such Change in Law was not reasonably foreseeable at the date of this Agreement by an experienced contractor performing operations similar to the relevant the Project Operations, on the basis of draft bills published in Government green or white papers or other Government departmental consultation papers, bills, draft statutory instruments or draft instruments or proposals published in the Official Journal of the European Union, in each case published:
 - (i) prior to the date of this Agreement; and
 - (ii) in substantially the same form or having substantially the same effect as the Relevant Change in Law; and

- (b) a Change in Law relating to the application for, coming into effect, terms, implementation, repeal, revocation or otherwise of any Planning Permission shall not constitute a Relevant Change in Law.

32.4 On the occurrence of a Relevant Change in Law:

32.4.1 either party may give notice to the other of the occurrence of the Relevant Change in Law;

32.4.2 the parties shall meet within fifteen (15) Business Days of the notice referred to in Clause 32.4.1 to consult and seek to agree the effect of the Relevant Change in Law. If the parties, within ten (10) Business Days of this meeting, have not agreed the occurrence or the effect of the Relevant Change in Law, either party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule Part 20 (*Dispute Resolution Procedure*); and

32.4.3 within ten (10) Business Days of the agreement or determination referred to in Clause 32.4.2 above, the College's Representative shall issue a College Change Notice and the relevant provisions of Schedule Part 16 (*Change Protocol*) shall apply except that:

- (a) Project Co may give notice to the College's Representative that it objects to such a College Change Notice only on the grounds that the implementation of the Change would not give effect to or comply with the Relevant Change in Law;
- (b) the College shall, (i) agree the implementation of the Low Value Change, or (ii) confirm the estimate for the Medium Value Change, or (iii) approve the High Value Change Stage 2 Submission, (as appropriate) in respect of the Change in accordance with the relevant provisions of 0 (*Change Protocol*);
- (c) the provisions of Clause 11 (*Consents and Planning Approval*) shall apply;
- (d) the College shall not be entitled to withdraw any College Change Notice or its agreement as to the implementation of the Low Value Change, confirmation of an estimate for the Medium Value Change or approval of a High Value Change Stage 2 Submission (as appropriate), issued in accordance with this Clause 32.4;
- (e) Project Co shall, without prejudice to its general obligation to comply with the terms of this Agreement:
 - (i) use all reasonable endeavours to mitigate the adverse effects of any Relevant Change in Law and take all reasonable steps to minimise any increase in costs arising from such Relevant Change in Law; and
 - (ii) use all reasonable endeavours to take advantage of any positive or beneficial effects of any Relevant Change in Law and take all reasonable steps to maximise any reduction in costs arising from such Relevant Change in Law; and
- (f) any compensation payable, or reduction to the Annual Service Payments, shall be calculated in accordance with the relevant provisions of Schedule Part 16 (*Change Protocol*) provided that:
 - (i) the amount of any compensation payable; or
 - (ii) the amount by which the Annual Service Payment is to be reduced

shall not take into account any amounts incurred or to be incurred as a result of Project Co's failure to comply with Clause 32.4.3(e) above.

General Change in Law

- 32.5 Either party may give notice to the other of the need for a Change which is necessary in order to enable Project Co to comply with any Change in Law which is not a Relevant Change in Law, in which event:
- 32.5.1 the parties shall meet within fifteen (15) Business Days to consult and seek to agree the effect of the Change in Law and any Change required as a consequence. If the parties, within ten (10) Business Days of this meeting, have not agreed the occurrence or the effect of the relevant Change in Law, either party may refer the question of whether a Change in Law has occurred or the effect of the Change in Law for resolution in accordance with Schedule Part 20 (*Dispute Resolution Procedure*); and
- 32.5.2 within ten (10) Business Days of the agreement or determination referred to in Clause 32.5.1 above the College's Representative shall, if it is agreed or determined that a Change is required in order to comply with the Change in Law, issue a College Change Notice and the relevant provisions of Schedule Part 16 (*Change Protocol*) shall apply except that:
- (a) Project Co may give notice to the College's Representative that it objects to such a College Change Notice only on the grounds that the implementation of the Change would not give effect to or comply with the Change in Law;
 - (b) the College shall (i) agree the implementation of the Low Value Change; or (ii) confirm the estimate for the Medium Value Change; or (iii) approve the High Value Change Stage 2 Submission, (as appropriate) in respect of the Change in accordance with the relevant provisions of Schedule Part 16 (*Change Protocol*);
 - (c) the provisions of Clause 11 (*Consents and Planning Approval*) shall apply;
 - (d) the College shall not be entitled to withdraw any College Change Notice or its (i) agreement as to the implementation of the Low Value Change; or (ii) confirmation of an estimate for the Medium Value Change; or (iii) approval of a High Value Change Stage 2 Submission (as appropriate), issued in accordance with this Clause 32.5 (*General Changes in Law*); and
 - (e) Project Co shall not be entitled to any payment or other compensation or relief from any performance of its obligations under this Agreement in respect of such Change in Law or associated Change (or the consequences of either).
- 32.6 The Parties acknowledge and agree that Project Co shall have no responsibility to implement or to provide funding for any Change in Law that requires Capital Expenditure in relation to the RAFM or the ICT Services.

33. CHANGE PROTOCOL

The provisions of Schedule Part 16 (*Change Protocol*) shall have effect in respect of Changes except as otherwise expressly provided in this Agreement.

PART 9: FINANCIAL

34. PAYMENT

34.1 Service Payments

Project Co shall not be entitled to receive any Monthly Service Payments until the first Payment Commencement Date. Subject to the provisions of this Agreement, the College shall pay Project Co the Monthly Service Payments in respect of each Contract Month following the first Payment Commencement Date in accordance with the provisions of Schedule Part 14 (*Payment Mechanism*). Project Co shall not be entitled to receive any RAFM Monthly Service Payment until the Halls of Residence Payment Commencement Date. Subject to the provisions of this Agreement, the College shall pay Project Co the RAFM Monthly Service Payments in respect of each Contract Month following the Halls of Residence Payment Commencement Date in accordance with the provisions of Schedule Part 14A (*RAFM Payment Mechanism*). The College shall pay Project Co the ICT Service Charges in accordance with the provisions of Schedule Part 27 (*ICT Support and Maintenance*).

Service Payments Invoicing and payment arrangements

34.2 The provisions of this Clause 34.2 apply to the issue of invoices in respect of the Monthly Service Payment, the RAFM Monthly Service Payment and the ICT Service Charges by Project Co under this Agreement:

- 34.2.1 On or after the 1st day of each Contract Month Project Co shall submit to the College an invoice ("**Monthly Invoice**") aggregating the following:
- (a) the Monthly Service Payment and the RAFM Monthly Service Payment for that Contract Month, calculated in accordance with Section 2 (Calculation of Service Payments) of Schedule Part 14 (*Payment Mechanism*) and Section 2 of Schedule Part 14A (*RAFM Payment Mechanism*) respectively;
 - (b) adjustments to reflect previous over-payments and/or under-payments (each adjusted stated separately);
 - (c) any other amounts due by one party to the other (and where owed by Project Co showing as a negative figure) (to the extent, in the case of amounts due by Project Co to the College, which the College may deduct such amounts under Clause 34.6);
 - (d) any VAT payable in respect of the above amounts;
 - (e) as a negative figure, in respect of the Monthly Invoice issued during the final Contract Month only, an amount equivalent to twice the monthly average of the Deductions (excluding RAFM Deductions) incurred in the previous six Contract Months ("**Estimated Deductions**");
 - (f) where appropriate, any Annual Energy Payment calculated pursuant to Section 7 of Schedule Part 14 (*Payment Mechanism*) of this Agreement;
 - (g) any ICT Service Charges payable in accordance with Schedule Part 27 (*ICT Support and Maintenance*) of this Agreement.

and setting out the date of the invoice, the due date for payment of the invoice and the account to which payment is to be made together with supporting information that clearly sets out the derivation and calculation of amounts referred to in the Monthly Invoice.

34.2.2 Subject to Clauses 34.2.3 and 34.3 and the submission of the supporting information referred to in Clause 34.2.1, where a Monthly Invoice shows a net amount owed by the College to Project Co, the College shall pay the amount of the Monthly Invoice within

twenty (20) Business Days of receipt of a valid VAT invoice in respect thereof. Where a Monthly Invoice shows a net amount owed by Project Co to the College, Project Co shall pay that amount to the College within twenty (20) Business Days of the Monthly Invoice or, at the option of the College, carry forward that amount to the next Monthly Invoice to reduce amounts which would otherwise be owed by the College to Project Co.

- 34.2.3 Within 10 Business Days of the Expiry Date, Project Co shall provide to the College a Performance Monitoring Report in respect of the final two Contract Months. If the Deductions incurred in the final two Contract Months exceed the Estimated Deductions, Project Co shall pay to the College an amount equal to the excess within twenty (20) Business Days of receipt of an invoice therefor. If the Estimated Deductions exceed the Deductions incurred in the final two Contract Months the College shall pay to Project Co an amount equal to the excess within twenty (20) Business Days of receipt of an invoice therefor.
- 34.2.4 On or before the tenth (10th) day of each Contract Month Project Co shall submit to the College a Monthly Service Report in respect of the immediately preceding Contract Month. The Monthly Service Report shall set out, in respect of the immediately preceding Contract Month:
- (a) details of each and the aggregate amount of all Deductions incurred in relation to Performance Failures;
 - (b) details of each and the aggregate amount of all Deductions incurred in relation to Availability Failures;
 - (c) other information detailed in Schedule Part 12 (*Service Requirements*).
- 34.2.5 The parties shall endeavour to agree the contents of a Monthly Service Report within ten (10) Business Days of its submission in accordance with Clause 34.2.4, failing which either party may refer the matter to the Dispute Resolution Procedure.

Manner of payment

- 34.3 All payments under this Agreement shall be made in pounds sterling by electronic transfer of funds for value on the day in question to the bank account of the recipient (located in the United Kingdom) specified in the relevant invoice, quoting the invoice number against which payment is made.

Service Payment Disputes

- 34.4 If the College (acting in good faith) disputes all or any part of the payments calculated in accordance with Clause 34.2 (Invoicing and Payment Arrangements) as the case may be, the undisputed amount of the Monthly Service Payment and/or any RAFM Monthly Service Payment and/or any ICT Service Charges payable in accordance with Schedule Part 27 (*ICT Support and Maintenance*) shall be paid by the College in accordance with Clause 34.2 (*Invoicing and Payment Arrangements*) as the case may be, and the provisions of this Clause 34.4 shall apply. The parties shall use all reasonable endeavours to resolve the dispute in question within ten (10) Business Days of the dispute arising. If they fail so to resolve it, either party may refer the matter to the Dispute Resolution Procedure. Following resolution of the dispute, any amount agreed or determined to have been payable shall be paid forthwith by the College to Project Co, together with interest on such amount calculated in accordance with Clause 34.5 (*Late Payments*).

Late Payments

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

Set-Off

- 34.6 Subject to Clause 46.13 and Clause 34.8 whenever any sum of money shall be agreed, or determined, as due and payable by Project Co to the College under exception of any Service Credits or sums due or payable pursuant to Schedule Part 27 (*ICT Support and Maintenance*), such sum may at the College's discretion be deducted from or applied to reduce the amount of any sum then due, or which at any time afterwards may become due, to Project Co from the College under this Agreement provided that the College has given Project Co not less than five (5) Business Days' notice of its intention to deduct or apply such sum.
- 34.7 Whenever any sum of money shall be agreed, or determined, as due and payable by the College to Project Co, such sum may at Project Co's discretion be deducted from or applied to reduce the amount of any sum then due, or which at any time afterwards may become due, from Project Co to the College under this Agreement provided that Project Co has given the College not less than five (5) Business Days' notice of its intention to deduct or apply such sum.
- 34.8 Notwithstanding any other provision of this Agreement to the contrary, the College agrees not to set-off any amount whether or not agreed or determined as due and payable by Project Co to the College against any payment under Clauses 34A.1, 34A.9 and 34A.10.

34A. APPLICATION OF CAPITAL PAYMENTS

- 34A.1 Subject to Clause 34.A.9 below in consideration for the Capital Payment Works, the College shall pay the Capital Payment by way of the Capital Payment Instalments into the Capital Payment Account, each payable on the later of:
- 34A.1.1 the Capital Payment Instalment Date for that Capital Payment Instalment; or
- 34A.1.2 five (5) Business Days after receipt of a valid VAT invoice from Project Co for that Capital Payment Instalment,
- without deduction, withholding, set-off or counterclaim.
- 34A.2 Without prejudice to Clause 39.1.2 (*College Event of Default*) interest will not be payable pursuant to Clause 34.5 in respect of late payment of any Capital Payment Instalment provided it is paid into the Capital Payment Account by the date on which Project Co is first entitled under Clause 34B.1 to release the payment to which the Capital Payment relates, which date will be the due date for the purposes of Clause 34.5.
- 34A.3 Without prejudice to any other rights and remedies which Project Co may possess, if the College fails to pay any Capital Payment Instalment into the Capital Payment Account by the date on which Project Co is entitled under Clause 34B.1 to release the amount to which the Capital Payment relates and such failure continues for a period of seven (7) Business Days after which Project Co has given to the College written notice of its intention to suspend performance of the Halls of Residence Works and the ground or grounds on which it is intended to suspend performance, then, if the Capital Payment Instalment has not been paid into the Capital Payment Account by the expiry of such seven (7) Business Day period, Project Co may on expiry of such period suspend performance of the Halls of Residence Works under this Agreement until payment of such Capital Payment Instalment is made.
- 34A.4 The net amount (after deduction of tax, if any) of any interest accruing in the Capital Payment Account shall be paid by Project Co to the College within twenty 20 Business Days of being credited to the Capital Payment Account.
- 34A.5 Project Co shall provide statements of account to the College on a quarterly basis commencing on 1 September showing details of all deposits in and withdrawals from the Capital Payment Account and the balance outstanding to the Capital Payment Account at the date of the statement.
- 34A.6 Clause 34B shall apply to release of sums from the Capital Payment Account.

34A.7 If the Termination Date occurs prior to the Final Actual External Works Completion Date, the termination compensation payable by the College to Project Co shall be adjusted by the addition (if a negative sum) or deduction (if a positive sum) of an amount (the "**Termination Capex Adjustment**") calculated as follows (but without any double counting):

$$\text{Termination Capex Adjustment} = X - (Y+Z)$$

where:

X = the total of the Capital Payment Instalments (exclusive of applicable VAT) paid by the College prior to the Termination Date, and the net amount of any interest accrued on the Capital Payment Account which has not been paid to the College prior to the date of termination

Y = the total amount of payments (exclusive of applicable VAT) certified by the Independent Tester in accordance with Clause 34B.1 for release from the Capital Payment Account as at the Termination Date; and

Z = the value as at the Termination Date of the Capital Payment Works (exclusive of applicable VAT) insofar as not included in the Relevant Certificates issued by the Independent Tester prior to the Termination Date, as such value is certified by Independent Tester in accordance with the Independent Tester Contract.

34A.8 If the Termination Date occurs prior to the Final Actual External Works Completion Date and a New Agreement is entered into pursuant to paragraph 3 of Section 2 of Schedule Part 17 (*Compensation on Termination*):

34A.8.1 the balance of the Capital Payment payable to the New Project Co in consideration for completion of the Capital Payment Works shall be the Capital Payment less the amounts "Y" and "Z" as certified by the Independent Tester under Clause 34A.7; and

34A.8.2 the Capital Payment Table shall be revised to provide for payment of the resulting balance of the Capital Payment by way of monthly instalments calculated by reference to the construction programme in the New Agreement.

34A.9 The parties acknowledge and agree that the Capital Payment Instalments include an amount in respect of the VAT due and payable on the Capital Payments which reflect the applicable rate of VAT on the Capital Payments as at the date of this Agreement. In the event that the applicable rate of VAT changes prior to the completion of the Capital Payment Works and the issue of the relevant VAT invoice the Capital Payment Table will be updated to reflect the VAT then due and payable and the College will make payment into the Capital Payment Account of any additional sums due and payable.

34A.10 The parties acknowledge and agree that in respect of the Provisional Sums only if at the later of the City Phase Commencement Date or the Riverside Phase Commencement Date as case may be the amounts certified by the Independent Tester in a Relevant Certificate issued in accordance with paragraph 1.13 of Appendix 1 of the Independent Tester Contract for the Provisional Sums is more than the Capital Payment in respect of Provisional Sums the College shall pay to Project Co the difference within twenty (20) Business Days of written notice of this shortfall (the "Shortfall") and if the amounts certified by the Independent Tester in a Relevant Certificate issued in accordance with paragraph 1.13 of Appendix 1 of the Independent Tester Contract Provisional Sums are less than the Capital Payment in respect of Provisional Sums Project Co shall be entitled under Clause 34B.1 to release the amount which reflects the difference (the "Saving") and shall pay the Saving to the College within twenty (20) Business Days.

34B. **RELEASE BY PROJECT CO OF AMOUNTS FROM CAPITAL PAYMENT ACCOUNT**

34B.1 Subject to Clauses 34A.5 and 34B.2, Project Co shall only release from the Capital Payment Account, the following amounts in each case as certified by the Independent Tester if a Relevant Certificate is issued in accordance with paragraph 1.12 of Appendix 1 of the Independent Tester

Contract and not until a copy of a Relevant Certificate has been emailed to the College Representative in accordance with Clause 64 (*Notices*):

34B.1.1 in the case of the Halls of Residence Works, subject to Clause 34B.2:

- (a) on a quarterly basis following the end of each Construction Period Quarter, 97% of the amount certified by the Independent Tester as being the value of:
 - (i) the Halls of Residence Works executed during that Construction Period Quarter in accordance with this Agreement, together with
 - (ii) the value of any goods and/or materials delivered to Riverside Site which are intended for incorporation in the Halls of Residence Works, provided always that they are adequately protected against weather and other casualties and they are not on the Site prematurely; and
- (b) following the Halls of Residence Phase Actual Completion Date, the shortfall, if any, between 97% of the amounts certified by the Independent Tester pursuant to Clause 34B.1.1(a) above prior to that date and 97% of the Halls of Residence Contract Sum, together with one half of the Halls of Residence Retention; and
- (c) following issue to Project Co by the Independent Tester of a Certificate of Making Good Defects in accordance with Clause 17A.4, one half of the Halls of Residence Retention.

34B.1.2 in the case of the Commercial Space Contract Sum, the amounts shown against each Commercial Space Milestone in consideration of the satisfactory performance by Project Co of the relevant Commercial Space Milestone set out in Part 10 of Schedule Part 6 (*Construction Matters*) as certified by the Independent Tester; and

34B.1.3 in the case of the Migration Services Payment, the amounts shown against each of the Migration Milestones in consideration of the satisfactory performance by Project Co of the Migration Milestones set out in Schedule Part 11 (*Equipment and Migration*) as certified by the Independent Tester; and

34B.1.4 in the case of the Riverside ICT Contract Sum:

- (a) 90% of the Riverside ICT Contract Sum following the Riverside Phase Actual Completion Date; and
 - (b) 5% of the Riverside ICT Contract Sum following the later of:
 - (i) 3 months from the Riverside Phase Actual Completion Date; and
 - (ii) the remedying of any Category One, Two and Three failures notified to Project Co during, or before, such 3 month period as certified by the Independent Tester;
- and
- (c) the remaining 5% of the Riverside ICT Contract Sum following the later of:
 - (i) 12 months from the Riverside Phase Actual Completion Date; and
 - (ii) the remedying of any Category One, Two and Three failures notified to Project Co during, or before, such 3 month period as certified by the Independent Tester;

34B.1.5 in the case of the City ICT Contract Sum:

- (a) 90% of the City ICT Contract Sum following the City Phase Actual Completion Date; and
- (b) 5% of City ICT Contract Sum following the later of:
 - (i) 3 months from the City Phase Actual Completion Date; and
 - (ii) the remedying of any Category One, Two and Three failures notified to Project Co during, or before, such 3 month period as certified by the Independent Tester; and
- (c) the remaining 5% of the City ICT Contract Sum following the later of:
 - (i) 12 months from the City Phase Actual Completion Date; and
 - (ii) the remedying of any Category One, Two, Three, Four and Five failures notified to Project Co during, or before, such 12 month period as certified by the Independent Tester;

34B.1.6 in the case of the Riverside Group 2 Equipment Contract Sum, following the Riverside Payment Commencement Date; and

34B.1.7 in the case of the City Group 2 Equipment Contract Sum, following the City Payment Commencement Date.

34B.2 The following shall apply to release of funds from the Capital Payment Account:

34B.2.1 Project Co may release sums due by Project Co to HM Revenue and Customs in respect of VAT included in any Capital Payment Instalment;

34B.2.2 in the case of payments for the Halls of Residence Works, the total payments released from the Capital Payment Account at any date shall not exceed the total Capital Payment Instalments paid or payable by the College in respect of the Halls of Residence Contract Sum prior to that date and;

34B.2.3 In the event that the Independent Tester fails to issue a Relevant Certificate as required in the terms of the Independent Tester Contract, Project Co may release from the Capital Payment Account the amount set out in the Contractor's CP Application for Payment (as such term is defined in Clause 34A.5 of the Construction Contract) or any statement of final account issued in accordance with Clause 34A.17 or Clause 34A.18 of the Construction Contract subject to Clause 34B.2.2;

34B.2.4 In the event that Project Co incurs reasonable costs and expenses in rectifying Defects in the Halls of Residence Works during the Defects Liability Period where the Contractor has failed to do so in terms of the Construction Contract Project Co shall be entitled to submit an application for payment to the Independent Tester for the amount of such reasonable costs and for expenses up to the value of the Halls of Residence Retention together with satisfactory supporting documentation. The Independent Tester shall issue a Relevant Certificate to Project Co within ten (10) Business Days of receipt of such statement and such satisfactory supporting documentation for the amount that the Independent Tester considers was reasonably and necessarily incurred by Project Co up to the value of the Halls of Residence Retention in procuring the rectification of any such Defects and such amount may be released to Project Co from the Capital Payment Account from the Halls of Residence Retention.

Non-Compliant Works

34B.3 In the case of the Halls of Residence Works, by each Relevant Certificate the Independent Tester gives notice to Project Co specifying the amount of the payment proposed to be made and the basis upon which it is calculated. For the avoidance of doubt, no sum shall be included in any

Relevant Certificate if, in the reasonable opinion of the Independent Tester, any Works included do not comply with the provisions of this Agreement, in which event the amount relating to such non-compliant Works shall not be included in the Relevant Certificate and such sum shall only be included in a Relevant Certificate following rectification of the Halls of Residence Works by Project Co to the satisfaction of the Independent Tester acting in accordance with the Independent Tester Contract.

Correction of Certificates

- 34B.4 The Independent Tester shall in any Relevant Certificate make any correction or modification that should properly have been made in respect of any previous Relevant Certificate.

Effect of Certificates

- 34B.5 No Relevant Certificate shall of itself be conclusive evidence that any design, works, materials or goods to which it relates are in accordance with this Agreement and, without prejudice to the generality of the foregoing, the issue of a Relevant Certificate shall not prejudice any right of the College against Project Co in respect of any defect in the Works (including the College's rights under Clause 17A (Halls of Residence Defects)).

35. VAT AND CONSTRUCTION INDUSTRY TAX DEDUCTION SCHEME

VAT

- 35.1 All amounts stated to be payable by either party under this Agreement shall be exclusive of any VAT properly chargeable on any amount.
- 35.2 Each party shall pay to the other party any VAT properly chargeable on any supply made to it under this Agreement provided that it shall first have received from the other party a valid tax invoice in respect of that supply which complies with the requirements of Part III VAT Regulations 1995.
- 35.3 If either party (referred to in this Clause as the "**First Party**") shall consider that any VAT which the other party (referred to in this Clause as the "**Second Party**") claims to be properly chargeable to the First Party in connection with this Agreement is not in fact properly so chargeable, the First Party shall be entitled to require the Second Party to obtain a ruling from the Commissioners for Customs and Excise (or, if relevant, such other body as is charged at the time with the collection and management of VAT) (referred to in this Clause as the "**Commissioners**") as to the VAT (if any) properly so chargeable. The Second Party shall forthwith request the Commissioners for such a ruling.
- 35.4 The following further provisions shall apply in respect of the application for a ruling in accordance with Clause 35.3:
- 35.4.1 prior to submitting its request for such a ruling and any further communication to the Commissioners in connection with the obtaining of the ruling, the Second Party shall first obtain the agreement of the First Party to the contents of such request and any such further communication, such agreement not to be unreasonably withheld or delayed;
- 35.4.2 the Second Party shall provide to the First Party copies of all communications received from the Commissioners in connection with the application for a ruling as soon as practicable after receipt; and
- 35.4.3 the Second Party shall use all reasonable endeavours (including without limitation the provision of such additional information as the Commissioners may require) to obtain such a ruling as soon as reasonably practicable following the initial request.
- 35.5 If a ruling is required by the First Party under Clause 35.3, the First Party shall not be obliged to pay the VAT so claimed by the Second Party unless and until a ruling is received from the Commissioners which states that a sum of VAT (the "**VAT Sum**") is properly so chargeable or the

Commissioners state that they are not prepared to give any ruling on the matter. In this case, then subject to Clauses 35.6 and 35.7 and provided that the First Party shall first have received a valid tax invoice which complies with the requirements of Part III VAT Regulations 1995 and which states the VAT Sum to be the amount of VAT chargeable to the First Party, the First Party shall pay the VAT Sum (and any interest or penalties attributable to the VAT Sum) to the Second Party.

- 35.6 If the First Party disagrees with any ruling obtained pursuant to Clause 35.3 by the Second Party from the Commissioners, then the Second Party (provided that it is indemnified to its reasonable satisfaction against all costs and expenses including interest and penalties which it may incur in relation thereto) shall take such action and give such information and assistance to the First Party as the First Party may require to challenge such ruling or otherwise to resist or avoid the imposition of VAT on the relevant supply.
- 35.7 The following further provisions shall apply if the First Party shall exercise its rights under Clause 35.6:
- 35.7.1 the action which the First Party shall be entitled to require the Second Party to take shall include (without limitation) contesting any assessment to VAT or other relevant determination of the Commissioners before any VAT tribunal or court of competent jurisdiction and appealing any judgement or decision of any such tribunal or court;
- 35.7.2 if the Second Party shall be required to pay to or deposit with the Commissioners a sum equal to the VAT assessed as a condition precedent to its pursuing any appeal, the First Party shall, at its election, either pay such sum to the Commissioners on behalf of the Second Party or on receipt of proof in a form reasonably satisfactory to the First Party that the Second Party has paid such sum to or deposited such sum with the Commissioners the First Party shall pay such sum to the Second Party;
- 35.7.3 save as specifically provided in Clause 35.5, the First Party shall not be obliged to pay to the Second Party any sum in respect of the VAT in dispute to the Second Party or in respect of VAT on any further supplies made by the Second Party to the First Party which are of the same type and raise the same issues as the supplies which are the subject of the relevant dispute unless and until the final outcome of the relevant dispute is that it is either determined or agreed that VAT is properly chargeable on the relevant supply or supplies; and
- 35.7.4 the Second Party shall account to the First Party for any costs awarded to the Second Party on any appeal, for any sum paid to or deposited with the Commissioners in accordance with Clause 35.7.2 which is repayable to the Second Party and for any interest to which the Second Party is entitled in respect of such sums.

Changes in recoverability of VAT

- 35.8 Subject to Clause 35.9, if, following a Change in Law, Project Co becomes unable to recover VAT attributable to supplies to be made to the College by Project Co pursuant to this Agreement, the College shall ensure that Project Co is left in no better and no worse position than it would have been had such Change in Law not occurred (including but not limited to making such amendments to this Agreement as Project Co and the College shall agree acting reasonably), provided that Project Co shall use all reasonable endeavours to mitigate the adverse effects of any such Change in Law.
- 35.9 The provisions of Clause 35.8 shall apply only if (and to the extent that) the Change in Law was not reasonably foreseeable at the date of this Agreement by an experienced contractor performing operations similar to the relevant Works on the basis of draft bills published in Government green or white papers or other Government departmental consultation papers, bills, draft statutory instruments or draft instruments or proposals published in the Official Journal of the European Union, in each case published:
- 35.9.1 prior to the date of this Agreement; and

35.9.2 in substantially the same form as the Change in Law.

Construction Industry Tax Deduction Scheme

35.10 This Clause 35.10 (*Construction Industry Tax Deduction Scheme*) relates to the Construction Industry Tax Deduction Scheme:

35.10.1 In this Clause 35.10 (*Construction Industry Tax Deduction Scheme*) (but not otherwise):

- (a) **"the Act"** means the Finance Act 2004;
- (b) **"the Regulations"** means the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045);
- (c) **"the Legislation"** means Chapter 3 Part 3 of the Act and the Regulations, taken together;
- (d) **"Contractor"** means a person who is a contractor for the purposes of Chapter 3 Part 3 of the Act; and
- (e) **"sub-contractor"** means a person who is a sub-contractor for the purposes of Chapter 3 Part 3 of the Act.

35.10.2 Each of the College and Project Co shall comply with the Legislation.

35.10.3 If any payment due from the College to Project Co under this Agreement is a contract payment under section 60(1) of the Act, then the College, as Contractor, shall (not later than fifteen (15) Business days before the first such payment is due to be made) verify, in accordance with paragraph 6 of the Regulations, whether the sub-contractor is registered for gross payment or for payment under deduction or is not registered under Chapter 3 Part 3 of the Act.

35.10.4 If any payment due from the College to Project Co under this Agreement is a contract payment under section 60(1) of the Act, then:

- (a) if Project Co is registered for gross payment under section 63(2) of the Act, the College shall make a payment to Project Co without any deduction;
- (b) if Project Co is not registered for gross payments under section 63(2) of the Act, the College shall make a payment to Project Co, subject to the deduction of the relevant percentage in accordance with section 61(1) of the Act, and thereupon Clause 35.10.6 below shall apply.

35.10.5 If any dispute arises between the College and Project Co as to whether any payment due by the College to Project Co under this Agreement is or is not a contract payment by virtue of the exemption in Regulation 23 of the Regulations, the parties will jointly apply to HM Revenue and Customs for a written ruling and until such ruling is received it shall be assumed that such payment is a contract payment and the provisions of Clause 35.10 (*Construction Industry Tax Deduction Scheme*) shall apply accordingly.

35.10.6 The College shall be entitled to make a deduction at the rate specified in section 61(1) of the Act or at such other rate as may be in force from time to time from the whole of any payment to Project Co (and not just that part of such payment which does not represent the direct cost to Project Co or any other person of materials used or to be used in carrying out the construction operations to which the relevant payment relates) unless prior to making such payment the College shall have received written confirmation from HM Revenue and Customs (obtained by and at the expense of Project Co) in a form which is reasonably satisfactory to the College directing the College to make the deduction against only a specified amount or proportion of any such payment to Project Co.

35.10.7 Where any error or omission has occurred in calculating or making any payment under this Clause 35.10 (*Construction Industry Tax Deduction Scheme*) then:

- (a) in the case of an over deduction, the College shall correct that error by repayment of the sum over deducted to Project Co; and
- (b) in the case of an under deduction, Project Co shall correct that error or omission by repayment of the sum under deducted to the College.

35.10.8 The College shall send promptly to H M Revenue & Customs any returns required by the Legislation, and shall provide to Project Co a payment statement (where appropriate) and/or such other information as may be required by the Legislation in relation to any contract payment.

35.10.9 If compliance with this Clause 35.10 involves the College or Project Co in not complying with any other of the terms of this Agreement, then the provisions of this Clause shall prevail.

36. PAYMENT OF SURPLUSES AND COMPLIANCE WITH NPD REQUIREMENTS

Project Co shall:

36.1 subject to the provisos, obligations and restrictions referred to in Article 3.7.2 of the Articles of Association and the right to postpone payments referred to in Article 3.8 of the Articles of Association, pay to the College (or to such other party as the College may, in its absolute discretion direct), within 30 Business Days of each Surplus Payment Date, the Surplus available as at the relevant Surplus Payment Date as a rebate of the Monthly Service Payments for the Contract Year most recently ended prior to the relevant Surplus Payment Date; and

36.2 comply with the NPD Requirements at all times throughout the Project Term.

37. FINANCIAL MODEL

37.1 Unless otherwise agreed between the parties, any amendments to the Financial Model shall reflect, be consistent with and be made only in accordance with the provisions of this Agreement, and shall in all cases be subject to the prior written approval of the College (such approval not to be unreasonably withheld or delayed). In the event that the parties fail to agree any proposed amendments to the Financial Model, the matter shall be referred for resolution in accordance with Schedule Part 20 (*Dispute Resolution Procedure*).

37.2 Following any amendment of the Financial Model in accordance with this Agreement, Project Co shall promptly deliver a copy of the revised Financial Model to the College in the same form as the original form (or such other form as may be agreed by the parties from time to time).

38. RECORDS AND OPEN BOOK ACCOUNTING

Records and Reports

The provisions of Schedule Part 19 (*Record Provisions*) shall apply to the keeping of records and the making of reports.

PART 10: TERMINATION

39. COLLEGE EVENTS OF DEFAULT

39.1 For the purposes of this Agreement, College Events of Default means any of the following events or circumstances:

39.1.1 the College is in material breach of its obligations under Clause 9 (*Nature of Land Interests*) (other than as a consequence of a breach by Project Co of its obligations under this Agreement) and such breach materially adversely affects the ability of Project Co to perform its material obligations under this Agreement for a continuous period of not less than thirty (30) Business Days; or

39.1.2 the College fails to pay any sum or sums due to Project Co under this Agreement (which sums are not in dispute) other than the RAFM Monthly Service Payment and/or the ICT Service Charges which, either singly or in aggregate, exceed(s);

- (a) subject to (b) and (c) during the Construction Phase the amount [REDACTED]
- (b) from the commencement of the Operational Term the amount of the Monthly Service Payment from time to time; or
- (c) from the commencement of the Operational Term an amount which exceeds either singly or in the aggregate [REDACTED] (index linked) (under exception of any payments being made by the College pursuant to Clause 34A to which (a) will also apply during the Operational Term) which is outstanding for a period of two (2) Contract Months;

and in each case such failure continues for thirty (30) Business Days from receipt by the College of a notice of non payment from Project Co such notice of non-payment to be copied to the Scottish Funding Council; or

39.1.3 the College is in breach of its obligations under Clause 57.4; or

39.1.4 an expropriation, sequestration or requisition of a material part of the assets and/or shares of Project Co or HoldCo by the College or any Relevant Authority; or

39.1.5 the College is sequestrated under the Bankruptcy (Scotland) Act 1985 or otherwise becomes insolvent and its obligations are not otherwise transferred to another party such as is referred to in Clause 57.4; or

39.1.6 the winding up of the College pursuant to the Further and Higher Education (Scotland) Act 1992 where its obligations and liabilities are not otherwise transferred to another party in accordance with Clause 57.4.

Project Co's options

39.2 On the occurrence of a College Event of Default, or within a reasonable time after Project Co becomes aware of the same, and while the same is still subsisting, Project Co may, at its option:

39.2.1 in respect of execution of the Works, suspend performance by it of its obligations under this Agreement until such time as the College shall have demonstrated to the reasonable satisfaction of Project Co that it is capable of performing, and will perform, its obligations under this Agreement; or

39.2.2 serve notice on the College and the Scottish Funding Council (or such other party as may be notified in advance in writing by the College to Project Co) of the occurrence (and specifying details) of such College Event of Default. If the relevant matter or circumstance has not been rectified or remedied by the College (or otherwise) in respect of Clause 39.1.1 or Clause 39.1.3 or Clause 39.1.4, Clause 39.1.5 or 39.1.6 within sixty

(60) Business Days of such notice, and in respect of Clause 39.1.2 within thirty (30) Business Days of such notice, Project Co may serve a further notice on the College (or its substitute notified in accordance with this Clause 39.2.2) terminating this Agreement with immediate effect.

39.3 Project Co shall not exercise or purport to exercise any right to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly set out in this Agreement.

40. PROJECT CO EVENT OF DEFAULT

Project Co Event of Default

40.1 For the purposes of this Agreement, Project Co Event of Default means any of the following events or circumstances:

Insolvency

40.1.1 the occurrence of any of the following events in respect of Project Co, namely:

- (a) any arrangement or composition with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into by or in relation to Project Co;
- (b) a receiver, administrator, administrative receiver or other encumbrancer taking possession of or being appointed over, or any distress, execution or other process being levied or enforced (and not being discharged within ten (10) Business Days) upon, the whole or any material part of the assets of Project Co;
- (c) Project Co ceasing to carry on business;
- (d) a petition being presented (and not being discharged within twenty (20) Business Days), or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of Project Co; or
- (e) if Project Co shall suffer any event analogous to the events set out in Clauses 40.1.1(a) to (d) in any jurisdiction in which it is incorporated or resident;

Long stop

40.1.2 Project Co failing to achieve the Riverside Phase Actual Completion Date and the City Phase Actual Completion Date within a period of 18 months after the City Phase Completion Date.

40.1.2A Project Co failing to achieve the Final Actual External Works Completion Date within a period of 12 months after the Final External Works Completion Date.

Default

40.1.3

- (a) Project Co committing a material breach of its obligations under this Agreement (under exception of its obligations in respect of the provision of (i) the RAFM; and (ii) the ICT Services) which has a material and adverse effect on the delivery of the College Services (other than as a consequence of a breach by the College of its obligations under this Agreement);

- (b) Project Co wilfully breaches Schedule Part 23 (*Refinancing*);

40.1.4 Project Co abandoning this Agreement;

Health and safety

40.1.5 at any time after the relevant Phase Actual Completion Date Project Co committing a material breach of its obligations under this Agreement (other than as a consequence of a breach by the College of its obligations under this Agreement or as a consequence of a material breach by Project Co of its obligations under Schedule Part 27 (*ICT Support and Maintenance*)) which results in the criminal investigation, prosecution and conviction of Project Co or any Project Co Party or the College under the Health and Safety Regime (an "**H&S Conviction**") provided that an H&S Conviction of a Project Co Party or the College shall not constitute a Project Co Event of Default if, within ninety (90) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project Operations of each relevant Project Co Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by Project Co in accordance with Clause 57.5 (*Sub-contracting*);

In determining whether to exercise any right of termination or right to require the termination of the engagement of a Project Co Party pursuant to this Clause 40.1.5, the College shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
- (b) give all due consideration, where appropriate, to action other than termination of this Agreement;

Change in Control

40.1.6 the occurrence of any Change in Control which is prohibited by Clause 58 (*Ownership Information and Changes in Control*);

Assignment

40.1.7 Project Co failing to comply with the provisions of Clauses 57.2 or 57.5;

Deductions

40.1.8 [Redacted]

40.1.8A [Redacted]

40.1.8B [Redacted]

Warning Notices

40.1.9

Payment

40.1.10 Project Co failing to pay any sum or sums due to the College under this Agreement save for any sums due to the College pursuant to Schedule Part 27 (*ICT Support and Maintenance*) (which sums are not in dispute) which, either singly or in aggregate, exceed(s) [REDACTED] (index linked) and such failure continues for sixty (60) Business Days from receipt by Project Co of a notice of non payment from the College; or

Insurance

40.1.11 a breach by Project Co of its obligation to take out and maintain the insurances required by Clauses 53.1 and 53.2.

Notification

40.2 Project Co shall notify the College of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Project Co Event of Default, in either case promptly on Project Co becoming aware of its occurrence.

College's options

- 40.3 On the occurrence of a Project Co Event of Default, or within a reasonable time after the College becomes aware of the same, and while the same is subsisting, the College may:
- 40.3.1 in the case of the Project Co Events of Default referred to in Clauses 40.1.1 (*Insolvency*), 40.1.2 (*Long Stop*), 40.1.3(b), 40.1.5 (*Health and Safety*), 40.1.6 (*Change in Control*), 40.1.7 (*Assignment*), 40.1.8 (*Deductions*) 40.1.9 (*Warning Notices*), or 40.1.10 (*Payment*), terminate this Agreement in its entirety by notice in writing having immediate effect;
- 40.3.2 in the case of any Project Co Event of Default referred to in Clause 40.1.3(a) and 40.1.4, serve notice of default on Project Co requiring Project Co at Project Co's option either:
- (a) to remedy the Project Co Event of Default referred to in such notice of default (if the same is continuing) within twenty (20) Business Days of such notice of default; or
 - (b) to put forward within twenty (20) Business Days of such notice of default a reasonable programme (set out, if appropriate, in stages) for remedying the Project Co Event of Default. The programme shall specify in reasonable detail the manner in, and the latest date by, which such Project Co Event of Default is proposed to be remedied (Project Co shall only have the option of putting forward a programme in accordance with this Clause 40.3.2(b) if it first notifies the College within ten (10) Business Days of such notice of default that it proposes to do so); and
- 40.3.3 in the case of any Project Co Event of Default referred to in Clause 40.1 (*Insurance*) serve notice of default on Project Co requiring Project Co to remedy the Project Co Event of Default (if the same is continuing) within twenty (20) Business Days of such notice of default.

Remedy provisions

- 40.4 Where Project Co puts forward a programme in accordance with Clause 40.3.2(b), the College shall have twenty (20) Business Days from receipt of the same within which to notify Project Co (acting reasonably) that it does not accept the programme, failing which the College shall be deemed to have accepted the programme. Where the College notifies Project Co that it does not accept the programme as being reasonable, the parties shall endeavour within the following five (5) Business Days to agree any necessary amendments to the programme put forward. In the absence of agreement within five (5) Business Days, the question of whether the programme (as the same may have been amended by agreement) will remedy the Project Co Event of Default in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable programme) may be referred by either party for resolution in accordance with Schedule Part 20 (*Dispute Resolution Procedure*).
- 40.5 If:
- 40.5.1 the Project Co Event of Default notified in a notice of default served under Clause 40.3.2 or Clause 40.3.3 (as the case may be) is not remedied before the expiry of the period referred to in Clause 40.3.2(a) or Clause 40.3.3 (as appropriate); or
 - 40.5.2 where Project Co puts forward a programme pursuant to Clause 40.3.2(b) which has been accepted by the College or has been determined to be reasonable and Project Co fails to achieve any element of the programme or the end date for the programme (as the case may be); or
 - 40.5.3 any programme put forward by Project Co pursuant to Clause 40.3.2(b) is rejected by the College as not being reasonable, and the Dispute Resolution Procedure does not find against that rejection

then the College may terminate this Agreement in its entirety by written notice to Project Co with immediate effect. Provided that for the purposes of Clause 40.5.2 if Project Co's performance of the programme is adversely affected by the occurrence of Force Majeure, a Relief Event or an Excusing Cause then, subject to Project Co complying with the mitigation and other requirements in this Agreement concerning Force Majeure, a Relief Event or an Excusing Cause (as the case may be), the time for performance of the programme or any relevant element of it shall be deemed to be extended by a period equal to the delay caused by Force Majeure, the Relief Event or the Excusing Cause (as the case may be) which is agreed by the parties or determined in accordance with Schedule Part 20 (*Dispute Resolution Procedure*).

College's costs

- 40.6 Project Co shall reimburse the College for all reasonable costs incurred by the College in exercising any of its rights pursuant to this Clause 40 (*Project Co Event of Default*) (including, without limitation, any relevant increased administrative expenses). The College shall take reasonable steps to mitigate such costs.
- 40.7 The College shall not exercise, or purport to exercise, any right to terminate this Agreement except as expressly set out in this Agreement. The rights of the College (to terminate or otherwise) under this Clause are in addition (and without prejudice) to any right which the College may have to claim the amount of loss or damage suffered by the College on account of the acts or omissions of Project Co (or to take any action other than termination of this Agreement).

41. TERMINATION RESULTING FROM FORCE MAJEURE

If, in the circumstances referred to in Clause 31 (*Force Majeure*), the parties have failed to reach agreement on any modification to this Agreement pursuant to Clause 31 (*Force Majeure*) within six (6) calendar months of the date on which the party affected serves notice on the other party in accordance with Clause 31 (*Force Majeure*) either party may at any time afterwards terminate this Agreement by written notice to the other party having immediate effect provided always that the

effects of the relevant event of Force Majeure continues to prevent either party from performing any material obligation under this Agreement.

42. COLLEGE VOLUNTARY TERMINATION

42.1 The College shall be entitled to terminate this Agreement at any time on six (6) months' written notice to Project Co. In the event of notice being given by the College in accordance with this Clause, the College shall, at any time before the expiration of such notice, be entitled to direct Project Co, where the Works (or any part or parts of the Works) or any Service (or any elements of any Service) have not been commenced, to refrain from commencing any such Works or Services (or to procure the same).

42A.2 TERMINATION ON A COLLEGE BREAK POINT DATE

42A.1 Without prejudice to its rights under Clause 42.1 the College may terminate the RAFM on the College Break Point Date and thereafter on 6 months written notice to Project Co by complying with its obligations under Clause 42A.2 and Clause 42A.3 below.

42A.2 If the College wishes to terminate the RAFM on the College Break Point Date or on a date specified in writing pursuant to Clause 42A.1 it must serve a notice on Project Co ("**College Break Point Notice**") not less than 180 days prior to date on which the RAFM will terminate provided that the College shall not serve such a notice prior to the date falling 180 days prior to the fifth anniversary of the Halls of Residence Phase Actual Completion Date. Such notice shall state:

- (a) that the College is terminating the RAFM under this Clause 42A.2; and
- (b) the date that the RAFM will terminate.

42A.3 Not less than 90 days before the College Break Point Date and/or the termination date specified in a College Break Point Notice issued pursuant to Clause 42A.2 Project Co shall jointly develop and agree with the College a RAFM Transition Programme.

42A.4 Provided that a valid College Break Point Notice has been served pursuant to Clause 42A.2. above, all of Project Co's obligations in relation to RAFM will terminate and for the avoidance of doubt Section G of the Service Level Specification shall no longer apply with effect from the date specified in such College Break Point Notice.

42A.5 The Parties agree and acknowledge that on the fifth anniversary of the Halls of Residence Phase Actual Complete Date and every fifth anniversary thereafter (in each case the "**RAFM Adjustment Date**") the RAFM Annual Service Payments shall be adjusted to reflect any increase in the net cost to Project Co of performing the RAFM arising as a result of any Change in Law (the "**RAFM Increased Amount**").

42A.6 Project Co shall serve written notice of the RAFM Increased Amount on the College no later than six months prior to the relevant RAFM Adjustment Date together with such supporting information as the College acting reasonably requires.

42A.7 Within 20 Business Days of receipt by the College of the notice referred to at Clause 42A.6 above the College shall either (i) confirm acceptance of the RAFM Increased Amount and the RAFM Annual Service Payment shall be increased to incorporate the RAFM Increased Amount with effect from the RAFM Adjustment Date; or (ii) reject the RAFM Increased Amount and the provisions of Clause 42A.9 shall apply.

42A.8 Where the College do not respond within 20 Business Days of receipt by the College of the notice referred to at Clause 42A.6 above, the College shall be deemed to have confirmed acceptance of the RAFM Increased Amount and the RAFM Annual Service Payment shall be increased with effect from the RAFM Adjustment Date to incorporate to the RAFM Increased Amount.

42A.9 Where the College reject the RAFM Increased Amount pursuant to Clause 42A.7, the College shall at the same time serve a College Break Point Notice on Project Co.

43. **EXPIRY**

- 43.1 This Agreement shall terminate automatically on the Expiry Date unless it shall have been terminated earlier in accordance with the provisions of this Agreement. To avoid doubt, Project Co shall not be entitled to any compensation for termination of this Agreement on the Expiry Date.

44. **CORRUPT GIFTS AND PAYMENTS**

Prohibition on corruption

- 44.1 The term "**Prohibited Act**" means:

44.1.1 offering, giving or agreeing to give to the College or any other public body or to any person employed by or on behalf of the College or any other public body any gift or consideration of any kind as an inducement or reward:

(a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the College or any other public body; or

(b) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the College or any other public body;

44.1.2 entering into this Agreement or any other agreement with the College or any other public body in connection with which commission has been paid or has been agreed to be paid by Project Co or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to the College;

44.1.3 committing any offence:

(a) under the Bribery Act 2010;

(b) under any Law creating offences in respect of fraudulent acts; or

(c) at common law, in respect of fraudulent acts in relation to this Agreement or any other agreement with the College or any other public body; or

44.1.4 defrauding or attempting to defraud or conspiring to defraud the College or any other public body.

Warranty

- 44.2 Project Co warrants that in entering into this Agreement it has not committed any Prohibited Act.

Remedies

- 44.3 If Project Co or any Project Co Party (or anyone employed by or acting on behalf of them) commits any Prohibited Act, then the College shall be entitled to act in accordance with Clauses 44.3.1 to 44.3.6 below:

44.3.1 if a Prohibited Act is committed by Project Co or by an employee not acting independently of Project Co then the College may terminate this Agreement with immediate effect by giving written notice to Project Co;

44.3.2 if the Prohibited Act is committed by an employee of Project Co acting independently of Project Co, then the College may give written notice to Project Co of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such

notice Project Co terminates the employee's employment and (if necessary) procures the performance of the relevant part of the Works and/or Services by another person;

- 44.3.3 if the Prohibited Act is committed by a Contracting Associate or by an employee of that Contracting Associate not acting independently of that Contracting Associate then the College may give written notice to Project Co of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice Project Co terminates the relevant Sub-Contract and procures the performance of the relevant part of the Works and/or Services by another person, where relevant, in accordance with Clause 57 (*Assignment and Sub-Contracting*);
- 44.3.4 if the Prohibited Act is committed by an employee of a Contracting Associate acting independently of that Contracting Associate, then the College may give notice to Project Co of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice Project Co procures the termination of the employee's employment and (if necessary) procures the performance of the relevant part of the Works and/or Services by another person;
- 44.3.5 if the Prohibited Act is committed by any other person not specified in Clauses 44.3.1 to 44.3.4 above, then the College may give notice to Project Co of termination and this Agreement will terminate unless within twenty (20) Business Days Project Co procures the termination of such person's employment and of the appointment of their employer (where the employer is not the College and where such person is not employed by Project Co or the Contracting Associate) and (if necessary) procures the performance of the relevant part of the Works and/or Services by another person; and
- 44.3.6 any notice of termination under this Clause shall specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party who the College believes has committed the Prohibited Act; and
 - (c) the date on which this Agreement will terminate in accordance with the applicable provisions of this Clause.

44.4 Without prejudice to its other rights or remedies under this Clause, the College shall be entitled to recover from Project Co:

44.4.1 the amount or value of any such gift, consideration or commission; and

44.4.2 any other loss sustained in consequence of any breach of this Clause.

Permitted payments

44.5 Nothing contained in this Clause shall prevent Project Co from paying any proper commission or bonus to its employees within the agreed terms of their employment.

Notification

44.6 Project Co shall notify the College of the occurrence (and details) of any Prohibited Act promptly on Project Co becoming aware of its occurrence.

Interim Management

44.7 Where Project Co is required to replace any Sub Contractor pursuant to this Clause, the provisions of Clause 57.9 shall apply and be construed accordingly.

45. **BREACH OF THE NPD REQUIREMENTS**

Breach by Project Co

- 45.1 If Project Co breaches Clause 36 (*Payment of Surpluses and Compliance with NPD Requirements*) then the College may terminate this Agreement, at any time within 18 months of becoming aware of such breach, in accordance with Clause 45.2 below. The College shall inform Project Co of the occurrence of any such breach as soon as reasonably practicable after becoming aware of the breach, provided that failure by the College to so inform Project Co shall not constitute a breach of this Agreement by the College and shall not prejudice the exercise of its rights under Clause 45.2.

Notice of Termination

- 45.2 If the College wishes to terminate this Agreement under this Clause 45 (*Breach of the NPD Requirements*), it must first give Project Co notice stating:

45.2.1 that the College is terminating this Agreement under this Clause 45 (*Breach of the NPD Requirements*); and

45.2.2 that this Agreement will terminate on the date falling 30 Business Days after the date of receipt of the notice.

and this Agreement will terminate on the day falling 30 Business Days after Project Co receives the notice unless Project Co demonstrates to the satisfaction of the College (acting reasonably) that such breach was caused by an administrative error of Project Co and Project Co rectifies such breach within 10 Business Days of receipt of such notice, in which the notice shall be deemed not to have been served.

46. **COMPENSATION ON TERMINATION**

- 46.1 If this Agreement is terminated pursuant to Clause 41 (*Termination Resulting from Force Majeure*), then the College shall pay compensation to Project Co in accordance with Section 3 (*Consequence of Termination for Force Majeure*) of Schedule Part 17 (*Compensation on Termination*).
- 46.2 If this Agreement is terminated pursuant to Clause 40 (*Project Co Events of Default*) other than pursuant to Clause 40.1.3(b), then the College shall pay compensation to Project Co in accordance with Section 2 (*Compensation on Project Co Default*) of Schedule Part 17 (*Compensation on Termination*).
- 46.3 If this Agreement is terminated pursuant to Clause 39 (*College Events of Default*), then the College shall pay compensation to Project Co in accordance with Section 1 (*Compensation on Termination for College Default and Voluntary Termination*) of Schedule Part 17 (*Compensation on Termination*).
- 46.4 If this Agreement is terminated pursuant to Clause 42.1 (*Voluntary Termination*), then the College shall pay compensation to Project Co in accordance with Section 1 (*Compensation on Termination for College Default and Voluntary Termination*) of Schedule Part 17 (*Compensation on Termination*).
- 46.5 If this Agreement is terminated pursuant to Clause 40.1.3(b), Clause 44.3 or Clause 45 (*Breach of the NPD Requirements*) then the College shall pay compensation to Project Co in accordance with Section 4 (*Corrupt Gifts and Fraud or Breach of Refinancing or Breach of NPD Requirements*) of Schedule Part 17 (*Compensation on Termination*).
- 46.6 If the RAFM are terminated pursuant to Clause 42A then in respect of the RAFM only the College shall not pay compensation to Project Co.

- 46.6A If the ICT Services are terminated pursuant to Schedule Part 27 (*ICT Support and Maintenance*) then in respect of ICT Services the College shall pay compensation to Project Co in accordance with Schedule Part 27 (*ICT Support and Maintenance*).

Tax equalisation

- 46.7 Where a payment is to be made to Project Co pursuant to Clause 46.1, Clause 46.3, Clause 46.4 or Clause 46.5 (a "**Compensation Payment**") and Project Co has a Relevant Tax Liability in respect of such payment, then the amount of the Compensation Payment to be made by the College to Project Co shall be increased so as to ensure that Project Co is in the same position (after account is taken of the Relevant Tax Liability) as it would have been in had it not been for such Relevant Tax Liability.
- 46.8 For the purposes of this Clause 46 (*Compensation on Termination*):
- 46.8.1 "**Relief**" shall mean any relief, allowance or deduction in computing profits or tax or a credit against, or right to repayment of, tax granted by or pursuant to any legislation for tax purposes;
- 46.8.2 a "**Relief derived from the Project**" is a Relief which arises in connection with the Project and includes any Relief arising as a consequence of the distribution of any amount obtained in respect of the Project (other than a Compensation Payment) by Project Co (whether by way of interest, dividend or other distribution, repayment, reduction or redemption of capital or indebtedness or return of assets or otherwise); and
- 46.8.3 Project Co shall be regarded as having a "**Relevant Tax Liability**" in respect of a Compensation Payment to the extent that:
- (a) it has a liability for tax in consequence of or in respect of a Compensation Payment ("**Actual Liability**"); or
 - (b) it would have had a liability for tax within paragraph (a) above but for the utilisation of a Relief other than a Relief derived from the Project ("**Deemed Liability**").
- 46.9 In determining whether Project Co has a Relevant Tax Liability by reason of a Compensation Payment, it should be assumed that any Reliefs derived from the Project which are available to Project Co (or would have been so available but for a surrender by Project Co of such Reliefs by way of group or consortium relief) for offset against the Compensation Payment, or against tax in relation to the same, have been so offset to the maximum extent possible.
- 46.10 Project Co shall keep the College fully informed of all negotiations with the HM Revenue and Customs in relation to any Relevant Tax Liability in respect of a Compensation Payment. Project Co shall not agree, accept or compromise any claim, issue or dispute relating to such Relevant Tax Liability without the prior written consent of the College, which shall not be unreasonably withheld or delayed. The College may, if it considers in good faith that such action is justified having regard to the likely costs and benefits, direct Project Co to resist, appeal, defend or otherwise dispute the Relevant Tax Liability in respect of the Compensation Payment, provided that the cost of any such dispute (including any interest or penalties incurred) shall be at the College's expense. However, if Project Co obtains professional advice from an independent person with relevant expertise that any resistance, appeal, defence or other mode of dispute is not likely to result in any more beneficial position in relation to the Relevant Tax Liability, Project Co shall be entitled not to continue with such resistance, appeal, defence or other mode of dispute. Where any resistance, appeal, defence or other mode of dispute results in a more beneficial position in relation to the Relevant Tax Liability, an adjustment will be made to the amount payable under Clause 46.7 to reflect such outcome.
- 46.11 Any increase in the amount of a Compensation Payment which is payable under Clause 46.7 shall be paid on the later of five (5) Business Days after a demand therefore (together with evidence in

sufficient detail for the College to satisfy itself of the Relevant Tax Liability and its calculation) is made by Project Co and:

46.11.1 in the case of an Actual Liability, five (5) Business Days before the date on which the relevant tax must be paid to the tax authority in order to avoid incurring interest and penalties; and

46.11.2 in the case of a Deemed Liability, five (5) Business Days before the date on which tax which would not have been payable but for the utilisation of the relevant Relief must be paid in order to avoid incurring interest or penalties (whether by Project Co or otherwise) and, for the purposes of determining when the Relief would otherwise have been utilised, Reliefs shall be regarded as utilised in the order in which they arise.

46.12 The College shall have the right to pay the amount payable under Clause 46.7 direct to HM Revenue and Customs in satisfaction of the relevant tax due by Project Co.

Rights of Set-Off

46.13 To avoid doubt, and without prejudice to paragraph 1.3 of Section 2 of Schedule Part 14A (*RAFM Payment Mechanism*) the College's obligations to make any payment of compensation to Project Co pursuant to this Clause are subject to the College's rights under Clause 34.6, save that the College agrees not to set-off any amount agreed or determined as due and payable by Project Co to the College against any payment of termination compensation (whether payable as a lump sum or in instalments) under Clause 46.1, 46.3, 46.4, or 46.5, except to the extent that such termination payment exceeds the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as the case may be) at that time.

Full and final settlement

46.14 Subject to the provisions of paragraph 2 of Section 5 (*General*) of Schedule Part 17 (*Compensation on Termination*):

46.14.1 any compensation paid pursuant to this Clause shall be in full and final settlement of any claim, demand and/or proceedings of Project Co in relation to any termination of this Agreement and/or any Project Document (and the circumstances leading to such termination) and Project Co shall be excluded from all other rights and remedies in respect of any such termination; and

46.14.2 the compensation payable (if any) pursuant to this Clause 46 (*Compensation on Termination*) above shall be the sole remedy of Project Co and Project Co shall not have any other right or remedy in respect of such termination.

47. CONSEQUENCES OF TERMINATION

Continued performance

47.1 Subject to any exercise by the College of its rights to perform, or to procure a third party to perform, the obligations of Project Co, the parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or notice of termination, until the Termination Date.

Transfer to College of Assets, Contracts etc.

47.2 On the service of a notice of termination in accordance with this Agreement for any reason:

47.2.1 if prior to the final Phase Actual Completion Date, in so far as any transfer shall be necessary fully and effectively to transfer property to the College, Project Co shall transfer to, and there shall vest in, the College, such part of the Works and/or the Facilities as shall have been constructed and such items of the Plant and Equipment as shall have been procured by Project Co if the College so elects:

- 47.2.2 all goods and all materials on or near to the Site not yet incorporated in the Works shall remain available to the College for the purposes of completing the Works and if the cost of such goods and materials has not been reflected in the payment of any compensation pursuant to Schedule Part 17 (*Compensation on Termination*), subject to the payment by the College (determined as between a willing vendor and willing purchaser with any disputes determined pursuant to Clause 56 (*Dispute Resolution Procedure*));
- 47.2.3 the construction plant shall remain available to the College for the purposes of completing the Works, subject to payment of the Contractor's reasonable charges;
- 47.2.4 Project Co shall hand over to, and there shall vest in, the College, free from any Encumbrances (other than any created on or by or against the College), the Facilities (which in the case of the termination of this Agreement in accordance with Clause 43 (*Expiry*) shall be in the state required in accordance with Schedule Part 18 (*Handback Procedure*));
- 47.2.5 if the College so elects, Project Co shall procure that any of the Construction Contract, the Service Contract and/or the Independent Tester Contract shall be novated or assigned to the College, provided that where termination occurs under Clause 39 (*College Events of Default*) the consent of the Contractor, the Service Provider or the Independent Tester (as the case may be) shall be required;
- 47.2.6 Project Co shall, or shall procure that any Contracting Associate shall (as the case may be), offer to sell to the College at a fair value (determined as between a willing vendor and willing purchaser, with any disputes as to such fair value being determined pursuant to Schedule Part 20 (*Dispute Resolution Procedure*), free from any Encumbrance all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by Project Co or any of its Contracting Associates and reasonably required by the College in connection with the operation of the Facilities or the provision of the Services;
- 47.2.7 Project Co shall deliver to the College (as far as not already delivered to the College) one complete set of:
- (a) "as built drawings" showing all alterations made to the Facilities since the commencement of operation of the Facilities; and
 - (b) maintenance, operation and training manuals for the Facilities;
- 47.2.8 Project Co shall use all reasonable endeavours to procure that the benefit of all manufacturer's warranties in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Agreement and included in the Facilities are assigned, or otherwise transferred, to the College with full title guarantee; and
- 47.2.9 Project Co shall deliver to the College it is required to provide in accordance with the records referred to in Clause 38 (*Records and Open Book Accounting*) except where such documents are required by Law to be retained by Project Co or its Contracting Associates (in which case complete copies shall be delivered to the College).
- 47.3 Project Co shall ensure that provision is made in all contracts of any description whatsoever to ensure that the College will be in a position to exercise its rights, and Project Co will be in a position to comply with its obligations, under Clause 47.2.

Transitional arrangements

- 47.4 On the termination of this Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall have the following duties:
- 47.4.1 Project Co shall co-operate fully with the College and any successor providing to the College services in the nature of any of the Services or any part of the Services in order

to achieve a smooth transfer of the manner in which the College obtains services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of the College and members of the public;

47.4.2 Project Co shall as soon as practicable remove from the Site all property not acquired by the College pursuant to Clause 47.2 (or not belonging to the College or any College Party) and if it has not done so within forty (40) Business Days after any notice from the College requiring it to do so the College may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and shall hold any proceeds less all costs incurred to the credit of Project Co;

47.4.3 Project Co shall forthwith deliver to the College's Representative:

- (a) any security passwords, access codes and other keys to the Facilities and the equipment; and
- (b) without prejudice to Clause 55 (*Intellectual Property*), any copyright licences for any computer programmes (or licences to use the same) necessary for the operation of the Facilities (but excluding computer programmes, which have been developed or acquired by a Service Provider for its own use and not solely for the purposes of provision of any of the Services at the Facilities or the assignation or transfer of which is otherwise restricted); and

47.4.4 Project Co shall as soon as practicable vacate the Site and (without prejudice to Schedule Part 18 (*Handback Procedure*)) shall leave the Site and the Facilities in a safe, clean and orderly condition.

47.5 If the College wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Services or any of them) following the expiry of this Agreement, Project Co shall co-operate with the College fully in such competition process including (without limitation) by:

47.5.1 providing any information which the College may reasonably require to conduct such competition but, to avoid doubt, information which is commercially sensitive to Project Co shall not be provided (and, for the purpose of this Clause 47.5.1 commercially sensitive shall mean information which would if disclosed to a competitor of Project Co give that competitor a competitive advantage over Project Co and thereby prejudice the business of Project Co but shall, to avoid doubt, exclude any information to be disclosed in terms of Clause 25 (*TUPE and Employment matters*)); and

47.5.2 assisting the College by providing all (or any) participants in such competition process with access to the Site and the Facilities.

Continuing Obligations

47.6 Save as otherwise expressly provided in this Agreement or as already taken into account in the calculation of any termination sum or other payment of compensation on termination pursuant to this Agreement:

47.6.1 termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination; and

47.6.2 termination of this Agreement shall not affect the continuing rights and obligations of Project Co and the College under Clauses 10 (*The Site*), 25 (*TUPE and Employment Matters*), 31 (*Force Majeure*), 34 (*Payment*), 34A (*Application of Capital Payments*), 34B (*Halls of Residence, Commercial Space and ICT Contract Sums and Migration*), 35 (*Taxation*), 36 (*Payment of Surpluses and Compliance with NPD Requirements*), 37 (*Custody of Financial Model*), 38 (*Records and Reports*), 41 (*Termination Resulting from Force Majeure*), 42 (*College Voluntary Termination*), 44 (*Corrupt Gifts and Payments*),

46 (*Compensation on Termination*), 47.2, 47.4 and 47.5 (*Transitional Arrangements*), 49 (*Indemnities and Liability*), 53 (*Insurance*), 54 (*Exclusions and Limits on Liability*), 55 (*Intellectual Property*), 56 (*Dispute Resolution Procedure*), 59 (*Mitigation*), 61 (*Confidentiality*), 64 (*Notices*) and Clause 73 (*Governing Law and Jurisdiction*) or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

48. **HANDBACK PROCEDURE**

The provisions of Schedule Part 18 (*Handback Procedure*) shall apply to the handback of the NPD Facilities to the College on expiry of this Agreement.

PART 11: INDEMNITIES, WARRANTIES & INSURANCE

49. INDEMNITIES

Project Co indemnities to College

- 49.1 Project Co shall indemnify and keep the College indemnified at all times from and against all Direct Losses sustained by the College in consequence of:
- 49.1.1 any claim for, or in respect of, the death and/or personal injury of any employee of, or person engaged by, Project Co or any Project Co Party notwithstanding any act or omission of the College or any College Party;
 - 49.1.2 any claim for, or in respect of, the death and/or personal injury of any third party (other than a person referred to in Clause 49.2.1) arising out of, or in the course of, the Project Operations, save to the extent caused (or contributed to) by any Unreasonable Act by the College or any College Party, breach of any express provision of this Agreement by the College or any College Party or any deliberate or negligent act or omission of the College or any College Party;
 - 49.1.3 any physical loss of or damage to College Assets arising by reason of any act or omission of Project Co or any Project Co Party, save to the extent that such loss or damage arises out of the breach of any express provision of this Agreement by the College or any College Party or any deliberate or negligent act or omission of the College or any College Party; and
 - 49.1.4 any loss of or damage to property or assets of any third party arising by reason of any act or omission of Project Co or any Project Co Party, save to the extent that such loss or damage arises out of the breach of any express provision of this Agreement by the College or any College Party or any deliberate or negligent act or omission of the College or any College Party.

College indemnities to Project Co

- 49.2 The College shall indemnify and keep Project Co indemnified at all times from and against all Direct Losses sustained by Project Co in consequence of:
- 49.2.1 any claim for, or in respect of, the death and/or personal injury of any employee of, or person engaged by, the College or any College Party notwithstanding any act or omission of Project Co or any Project Co Party;
 - 49.2.2 any claim for, or in respect of, the death and/or personal injury of any third party (other than a person referred to in Clause 49.1.1) arising by reason of any act or omission of the College or any College Party in the course of provision of the College Services, any Unreasonable Act by the College or any College Party, breach of any express provision of this Agreement by the College or any College Party or any deliberate act or omission of the College or any College Party, save to the extent caused (or contributed to) by any act or omission of Project Co or any Project Co Party;
 - 49.2.3 any physical damage to any part of the NPD Facilities and in respect of the Halls of Residence any physical damage to any part of the Halls of Residence during the period from the Commencement Date to the Halls of Residence Phase Actual Completion Date or any assets or other property of Project Co or any Project Co Party arising by reason of any breach of any express provision of this Agreement by the College or any College Party or any deliberate act or omission of the College or any College Party, save to the extent caused (or contributed to) by any act or omission of Project Co or any Project Co Party; and
 - 49.2.4 any loss of or damage to property or assets of any third party arising by reason of any breach of any express provision of this Agreement by the College or any College Party or

any deliberate act or omission of the College or any College Party, save to the extent caused (or contributed to) by any act or omission of Project Co or any Project Co Party;

provided that in the case of Clauses 49.2.3 and 49.2.4 there shall be excluded from the indemnity given by the College any liability:-

- (a) for the occurrence of risks against which and to the extent to which Project Co is obliged to insure under this Agreement (but for the avoidance of doubt, no such liability to the extent within any applicable excess or deductible or over the maximum amount insured or to be insured under such insurance); or
- (b) in respect of a matter which is a Compensation Event; or
- (c) subject to Clause 49A.7 in respect of malicious damage.

Conduct of claims

49.3 This Clause 49.3 (*Conduct of Claims*) shall apply to the conduct, by a party from whom an indemnity is sought under this Agreement, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. The party having, or claiming to have, the benefit of the indemnity is referred to as the "**Beneficiary**" and the party giving the indemnity is referred to as the "**Indemnifier**". Accordingly:

49.3.1 if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of the same;

49.3.2 subject to Clauses 49.3.3, 49.3.4 and 49.3.5 below, on the giving of a notice by the Beneficiary pursuant to Clause 49.3.1 above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with an indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;

49.3.3 with respect to any claim conducted by the Indemnifier pursuant to Clause 49.3.2 above:

- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
- (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute; and
- (c) the Indemnifier shall not pay or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

49.3.4 the Beneficiary shall be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:

- (a) the Indemnifier is not entitled to take conduct of the claim in accordance with Clause 49.3.2 above; or
- (b) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within twenty (20) Business Days of the notice from the Beneficiary under Clause 49.3.1 above or notifies the Beneficiary that it does not intend to take conduct of the claim; or

- (c) the Indemnifier fails to comply in any material respect with the provisions of Clause 49.3.3 above;
- 49.3.5 the Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which Clause 49.3.2 above applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Clause 49.3.5, then the Indemnifier shall be released from any liability under its indemnity under Clause 49.1 (*Project Co Indemnities to College*) or Clause 49.2 (*College Indemnities to Project Co*) (as the case may be) and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to Clause 49.3.2 in respect of such claim;
- 49.3.6 if the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (a) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
- (b) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity
- 49.3.7 provided that there shall be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including for this purpose indirect or consequential losses or claims for loss of profits which are excluded by this Agreement from being recovered from the Indemnifier); and
- 49.3.8 any person taking any of the steps contemplated by Clauses 49.3.1 to 49.3.5 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.

Mitigation – indemnity claims

- 49.4 To avoid doubt the provisions of Clause 59 (*Mitigation*) apply to any indemnity given under this Agreement and any such indemnity shall not apply to the extent that such part or parts of Direct Losses could have been reduced or avoided by the Beneficiary complying with the provisions of such Clause 59 (*Mitigation*).

49A MALICIOUS DAMAGE

49A.1 Remit of Clause

This Clause 49A specifies the respective obligations of the parties in relation to malicious damage to the NPD Facilities during the Operational Term.

49A.2 Notification

- 49A.2.1 As soon as possible after a Service Event has been notified to the Helpdesk or after Project Co has itself or by a Service Provider become aware of a Service Event, if it considers that the Service Event was caused by malicious damage by a person other than a Project Co Party, Project Co must verbally inform the Helpdesk and the College's

Representative (a "Malicious Damage Report"). Where it is reasonably practicable for it to do so without prejudicing its ability to achieve Rectification of the Service Event within the Rectification Period and subject to any immediate steps that it requires to take to make the NPD Facilities safe, it must allow the College's Representative an opportunity to inspect the evidence it relies on to support its claim that malicious damage caused the Service Event concerned before carrying out Rectification and, where this is not reasonably practicable, Project Co must take reasonable steps to preserve or record in a suitable manner any such evidence and forthwith make that record available to the College.

49A.2.2 Provided Project Co has complied with the requirements of Clause 49A.2.1, unless within two (2) hours of receipt of a Malicious Damage Report or within two (2) hours of the start of the next Core Times where the Malicious Damage Report is made outside Core Times, or, if applicable, within one (1) Business Day of receipt of the evidence or record of the alleged malicious damage concerned the College's Representative notifies Project Co that he agrees that the Service Event referred to in the relevant Malicious Damage Report was caused by malicious damage by a person other than a Project Co Party, the College's Representative will be deemed to have disagreed that the Service Event concerned was caused by malicious damage by a person other than a Project Co Party.

49A.3 **Rectification of Malicious Damage**

49A.3.1 In relation to any Service Event referred to in a Malicious Damage Report, Project Co shall always take such steps as are necessary in accordance with its obligations under this Agreement to make the NPD Facilities safe. The College shall be entitled to take such steps as are necessary to make the NPD Facilities safe and secure where malicious damage or vandalism occurs outwith the Core Times.

49A.3.2 If the College's Representative agrees in accordance with Clause 49A.2 that a Service Event was caused by malicious damage by a person other than a Project Co Party, except when Clause 49A.3.3 applies, Project Co shall not Rectify the Service Event beyond what is required by Clause 49A.3.1 unless instructed by the College to do so as a College Change under Schedule Part 16 (*Change Protocol*).

49A.3.3 If, in the reasonable opinion of Project Co, the Service Event referred to in a Malicious Damage Report, if not Rectified, will or is likely to result in the costs of performing the Services and in particular the costs of Maintenance Works and Lifecycle Replacement being materially increased, it may notify the College's Representative to that effect and shall be entitled to proceed with Rectification in accordance with its obligations under this Agreement.

49A.3.4 If the College's Representative does not agree in accordance with Clause 49A.2 that the Service Event referred to in a Malicious Damage Report was caused by malicious damage by a person other than a Project Co Party, Project Co shall be entitled to proceed with Rectification in accordance with its obligations under this Agreement.

49A.4 **Costs of rectifying malicious damage**

Project Co will be entitled to include all reasonable costs incurred with any Service Provider or third party:

49A.4.1 to make the NPD Facilities safe pursuant to Clause 49A.3.1 if it is agreed by the College or subsequently determined under the Dispute Resolution Procedure that the Service Event was caused by malicious damage by a person other than a Project Co Party; or

49A.4.2 to carry out Rectification pursuant to Clause 49A.3.3; or

49A.4.3 to carry out Rectification pursuant to Clause 49A.3.4 if it is subsequently determined under the Dispute Resolution Procedure that the Service Event was caused by malicious damage by a person other than a Project Co Party

in a Monthly Invoice in accordance with Clause 34.2.1(c). In deciding what a reasonable cost is, regard may be had to prices and rates in the Catalogue (as defined in Schedule Part 16 (*Change Protocol*)).

49A.5 **Project Co to Provide Information**

Project Co must provide the College with such information as the College reasonably requests for the purpose of making claims for losses due to malicious damage, under the Operational Insurances.

49A.6 **Disputes**

Any dispute under this Clause 49A shall be determined under the Dispute Resolution Procedure.

49A.7 For the avoidance of doubt the College agrees and acknowledges that Project Co shall have no responsibility in respect of malicious damage in respect of the RAFM Assets.

50. **TAX ON INDEMNITY PAYMENTS**

50.1 If any payment by one party under an indemnity in this Agreement is subject to income tax or corporation tax (or any tax replacing them) in the hands of the recipient, the recipient may demand in writing to the party making the payment that the payment shall be increased by such amount as would ensure that, after taking into account any such tax payable in respect of such additional amount, the recipient receives and retains a net sum equal to the amount it would have otherwise received had the payment not been subject to such tax. In relation to any such additional amount payable to Project Co, Project Co and the College shall have the same rights and obligations as would apply to a Relevant Tax Liability under Clause 46.8.3 and Clauses 46.7 to 46.12 (inclusive) shall apply mutatis mutandis to the payment of the additional amount. The party making the payment shall pay such additional amount within ten (10) Business Days of receipt of such demand.

51. **EXCUSING CAUSES**

51.1 If an Excusing Cause interferes adversely with, or causes or contributes to a failure of, the performance of the Project Operations by Project Co and/or causes or contributes to the occurrence of an Availability Failure and/or a Performance Failure and provided that the effect of such Excusing Cause is claimed within ten (10) Business Days of the date on which Project Co became aware (or ought reasonably to have become so aware) of the occurrence of the Excusing Cause, then (subject to Clauses 51.3 (*Insured Exposure*) and 51.4) to the extent such failure or interference or occurrence of an Availability Failure and/or a Performance Failure arises as a result of such Excusing Cause provided that on the occurrence of an Excusing Cause referred to in Clause 51.2.9, Project Co shall only be entitled to claim the relief specified in this Clause 51.1 to the extent the Excusing Cause interferes adversely with, or causes or contributes to a failure in, the performance of the RAFM Services:

51.1.1 such failure by Project Co to perform or interference or occurrence, and any poor performance of, any affected Service shall not constitute a breach of the provisions of this Agreement by Project Co;

51.1.2 such failure by Project Co to perform or interference or occurrence shall be taken account of in measuring the performance of any affected Service in accordance with the Service Level Specification, which shall be operated as though the relevant Service had been performed free from such adverse interference; and

51.1.3 any such Availability Failure and/or Performance Failure shall be deemed not to have occurred

so that Project Co shall be entitled to payment under this Agreement as if there had been no such interference with, or failure in the performance of, the Project Operations and no such occurrence of an Availability Failure and/or Performance Failure.

51.2 For the purpose of Clause 51 (*Excusing Causes*), an Excusing Cause means:

- 51.2.1 any breach of any express provision of this Agreement by the College or any College Party (unless, and to the extent, caused or contributed to by Project Co or any Project Co Party);
- 51.2.2 any deliberate act or omission of the College or of any College Party or any failure by the College or College Party (having regard always to the interactive nature of the activities of the College and of Project Co) to take reasonable steps to carry out its activities in a manner which minimises undue interference with Project Co's performance of the Project Operations, save where (and to the extent):
 - (a) caused or contributed to by Project Co or any Project Co Party;
 - (b) the College or College Party is acting in accordance with a recommendation or instruction of Project Co or any Project Co Party;
 - (c) any such act or omission giving rise to such failure was within the contemplation of the parties or was otherwise provided for in this Agreement;
 - (d) the consequences of any such deliberate act or omission or other acts or omissions giving rise to such failure would have been prevented by the proper performance of Project Co's obligations under this Agreement; or
 - (e) the same arises from an act of the College or a College Party compliant with the Contractor's Site Rules and other requirements of the Contractor as referred to in Clause 13.1 (*Access to Site*) or 17.9.
- 51.2.3 not used;
- 51.2.4 the implementation of any action taken by the College or any College Party, or any suspension of Project Co's obligation to deliver any or any part of the Services or the compliance by Project Co with instructions given by the College, in each case in the circumstances referred to in Clauses 24.6 to 24.9 (inclusive);
- 51.2.5 the carrying out of any Low Value Change in accordance with the terms of this Agreement during the period of time agreed between the College and Project Co;
- 51.2.6 the carrying out of planned preventative maintenance or Lifecycle Replacement in accordance with the Schedule of Programmed Maintenance and Schedule of Lifecycle Replacement;
- 51.2.7 the occurrence of a Service Event that the College Representative has agreed pursuant to Clause 49A.3.2 has been caused by malicious damage by a person other than a Project Co Party, but only until such time as either (i) the College has instructed Project Co to Rectify the Service Event as a College Change and the time period for implementation of such College Change has expired or (ii) Project Co has Rectified the Service Event pursuant to Clause 49A.3.3;
- 51.2.8 the failure by the College to carry out any of the activities identified as College activities in the Interface Matrix;
- 51.2.9 the failure by the College to carry out any of the activities identified in the RAFM Lifecycle Schedule which impact on the delivery of the RAFM by Project Co.

Insured exposure

- 51.3 Without prejudice to Clause 53 (*Insurance*), Project Co shall not be entitled to any payment which would not have been due under this Agreement but for Clause 51 (*Excusing Causes*) to the extent that Project Co is or should be able to recover under any policy of insurance required to be

maintained by Project Co or any Project Co Party in accordance with this Agreement (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of Project Co (or any Project Co Party), including but not limited to non-disclosure or under-insurance) or any other policy of insurance which Project Co has taken out and maintained.

Mitigation of Excusing Cause

- 51.4 Project Co shall take all reasonable steps to mitigate the consequences of an Excusing Cause on Project Co's ability to perform its obligations under this Agreement. To the extent that Project Co does not take such steps, Project Co shall not be entitled to, and shall not receive, the relief specified in Clause 51.1
- 51.5 To avoid doubt, Clause 51.2.2 shall not impose a general obligation on the College to take (or to procure that any College Party takes) such steps and shall apply (and be construed) solely for the purpose of establishing whether an Excusing Cause has occurred.

52. WARRANTIES

NOT USED

53. INSURANCE

Project Co Insurances

- 53.1 Project Co shall procure that the insurances, details of which are set out in Section 1 (*Policies to be taken out by Project Co and maintained during the Design and Construction Phase*) of Schedule Part 15 (*Insurance Requirements*), are taken out prior to the commencement of the Works and are maintained for the periods specified in Section 1 (*Policies to be taken out by Project Co and maintained during the Design and Construction Phase*) of Schedule Part 15 (*Insurance Requirements*).
- 53.2 Project Co shall procure that the insurances, details of which are set out in Section 2 (*Policies to be taken out by Project Co and maintained from the Actual Completion Date*) of Schedule Part 15 (*Insurance Requirements*), are taken out prior to the Phase Actual Completion Date and are maintained for the periods specified in Section 2 (*Policies to be taken out by Project Co and maintained from the Actual Completion Date*) of Schedule Part 15 (*Insurance Requirements*).
- 53.3 Without prejudice to the other provisions of this Clause 53 (*Insurance*), Project Co shall, at all relevant times effect and maintain in full force those insurances which it is required to effect by any applicable Law.
- 53.4 All Insurances referred to in Clauses 53.1 and 53.2 shall:
- 53.4.1 be maintained in the names of the parties specified in Schedule Part 15 (*Insurance Requirements*) and shall be composite policies of insurance (and not joint) unless stated otherwise in Schedule Part 15 (*Insurance Requirements*);
 - 53.4.2 be placed with insurers who are acceptable to the College (such acceptance not to be unreasonably withheld or delayed);
 - 53.4.3 in so far as they relate to damage to assets (including the NPD Facilities and in respect of the Halls of Residence only from the Commencement Date to the Halls of Residence Phase Actual Completion Date), cover the same for the full reinstatement value;
 - 53.4.4 comply with the relevant provisions of Section 1 (*Policies to be taken out by Project Co and maintained during the Design and Construction Phase*) and Section 2 (*Policies to be taken out by Project Co and maintained from the Actual Completion Date*) of Schedule Part 15 (*Insurance Requirements*).

- 53.4.5 provide for 30 days prior written notice of their cancellation, non-renewal or amendment to be given to the College in accordance with Endorsement 1 or paragraph 7.2 in Section 3 (*Endorsements*) of Schedule Part 15 (*Insurance Requirements*);
 - 53.4.6 in respect of the Physical Damage Policies provide for payment of any proceeds received by Project Co to be applied in accordance with Clause 53.22 (*Reinstatement*);
 - 53.4.7 in the case of the Operational Insurances only, be taken out and maintained in accordance with Section 4 of Schedule Part 15 (*Insurance Requirements*).
- 53.5 Project Co shall ensure that its brokers give the College a letter of undertaking substantially in the form set out in Section 5 (*Broker's Letter of Undertaking*) of Schedule Part 15 (*Insurance Requirements*) at Financial Close and subsequently on the renewal of each of the Insurances.

Subrogation and Vitiating

- 53.6 Project Co shall in respect of the insurances referred to in Clauses 53.1 and 53.2:
- 53.6.1 procure that all policies of insurance to be effected by it pursuant to this Clause shall contain a provision to the effect that the insurers have agreed to waive all rights of subrogation against the College (and all College Parties) other than contractors and sub-contractors in accordance with Endorsement 2 or 12 in Section 3 (*Endorsements*) of Schedule Part 15 (*Insurance Requirements*); and
 - 53.6.2 provide for non-vitiating protection in respect of any claim made by the College as co-insured in accordance with Endorsement 2 or 6 in Section 3 (*Endorsements*) of Schedule Part 15 (*Insurance Requirements*);
- provided that, to avoid doubt, this Clause 53.6 shall not by itself prevent Project Co from claiming against the College (or any College Party) under an express provision of this Agreement for any loss or damage not covered because of the level of deductibles under such insurance permitted by this Agreement or to the extent such loss or damage exceeds the maximum of such insurance required by this Agreement.
- 53.7 Neither party shall take any action or fail to take any reasonable action or (in so far as it is reasonably within its power) permit or allow others to take or fail to take any action (including failure to disclose any fact) as a result of which any of the Insurances may be rendered void, voidable, unenforceable or suspended or impaired in whole or in part or which may otherwise render any sum paid out under any relevant policy repayable in whole or in part.

Evidence of Project Co Insurance

- 53.8 Not less than twenty (20) Business Days prior to the amendment or expiry of any relevant insurance policy (other than the expiry of any of the Operational Insurances in respect of which Project Co must comply with the provisions of Section 2 of Schedule Part 15 (*Insurance Requirements*)), Project Co shall submit to the College a request for approval from the College of the insurer and the principal terms and conditions of such insurance policy (and any revision to such terms and conditions or change in identity of such insurer), such approval not to be unreasonably withheld or delayed.
- 53.9 Project Co shall provide to the College:
- 53.9.1 copies on request of all insurance policies referred to in Clauses 53.1 to 53.3 (together with any other information reasonably requested by the College relating to such insurance policies) and the College shall be entitled to inspect them during ordinary business hours; and
 - 53.9.2 evidence that the premiums payable under all insurance policies have been paid and that the Insurances are in full force and effect in accordance with the requirements of this Clause 53 (*Insurance*) and Schedule Part 15 (*Insurance Requirements*).

53.10 Renewal certificates or other such evidence of renewal in relation to the Insurances shall be obtained as and when necessary and copies (certified in a manner acceptable to the College) shall be forwarded to the College as soon as possible but in any event within 20 Business Days of the renewal date.

53.11 If Project Co defaults in insuring or continuing to maintain the Insurances, the College may insure against any risk in respect of which such default has occurred and recover any premiums from Project Co as a debt, provided that if the default occurs during the Operational Term the amount recoverable from Project Co shall be the difference between the premiums had Project Co continued to maintain the Insurances and the premiums paid by the College to take out and maintain the Insurances.

Acceptance and compliance

53.12 The supply to the College of any draft insurance policy or certificate of insurance or other evidence of compliance with this Clause 53 (*Insurance*) shall not imply acceptance by the College (or the College's Representative) that:

53.12.1 the extent of insurance cover is sufficient and its terms are satisfactory; or

53.12.2 in respect of any risks not insured against, that the same were Uninsurable.

53.13 Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall relieve Project Co of its liabilities and obligations under this Agreement.

Uninsurable Risks

53.14

53.14.1 If a risk usually covered by contractors' 'all risks' insurance, property damage insurance, third party liability insurance, delay in start up and business interruption insurance (but not loss of profits) or statutory insurances in each case required under this Agreement becomes Uninsurable then:

(a) Project Co shall notify the College of any risk becoming Uninsurable within five (5) Business Days of becoming aware of the same and in any event at least five (5) Business Days before expiry or cancellation of any existing insurance in respect of that risk; and

(b) if both parties agree, or it is determined in accordance with the Dispute Resolution Procedure that the risk is Uninsurable and that:

(i) the risk being Uninsurable is not caused by the actions of Project Co or any sub-contractor of Project Co (of any tier); and

(ii) Project Co has demonstrated to the College that Project Co and a prudent board of directors of a company operating the same or substantially similar businesses in the United Kingdom to that operated by Project Co would in similar circumstances (in the absence of the type of relief envisaged by this Clause) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company

the parties shall meet to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by either party).

53.14.2 If the requirements of Clause 53.14.1 are satisfied, but the parties cannot agree as to how to manage or share the risk, then:

- (a) where such requirements are satisfied in respect of such third party liability insurance only the College shall (at the College's option) either pay to Project Co an amount equal to the amount calculated in accordance with Section 3 (*Compensation on Termination for Force Majeure*) of Schedule Part 17 (*Compensation on Termination*) and this Agreement will terminate, or elect to allow this Agreement to continue and Clause 53.14.2(b) below shall thereafter apply in respect of such risk; and
- (b) where such requirements are satisfied in respect of such contractors' 'all risks' insurance, property damage insurance, third party liability insurance (if the College elects to allow this Agreement to continue in accordance with Clause 53.14.2(a)), delay in start up and business interruption insurance (but not loss of profits) or statutory insurances this Agreement shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the College shall (at the College's option) either pay to Project Co an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available and this Agreement will continue, or an amount equal to the amount calculated in accordance with Section 3 (*Compensation on Termination for Force Majeure*) of Schedule Part 17 (*Compensation on Termination*) plus (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable whereupon this Agreement will terminate; and
- (c) where pursuant to paragraphs 53.14.2(a) and/or (b) this Agreement continues Project Co shall approach the insurance market at least every four months to establish whether the risk remains Uninsurable. As soon as Project Co is aware (and, in relation to a risk that has become Uninsurable during the Operational Term, the College agrees) that the risk is no longer Uninsurable, Project Co shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this Agreement;
- (d) in respect of any period between the College receiving notification in accordance with Clause 53.14.1(a) that a TPL Risk has become Uninsurable and the College's notification to the Project Co in accordance with Clause 53.14.2(a) in respect of such risk then, provided it is ultimately agreed or determined that the requirements of Clause 53.14.1(b) are satisfied in respect of the Uninsurable TPL Risk and subject to Clause 53.14.2(e) below, Clause 53.14.2(b) shall apply in respect of occurrences of the Uninsurable TPL Risk during such period unless the parties otherwise agree how to manage the risk during this period; and
- (e) Clause 53.14.2(d) shall only apply provided the Project Co does not unreasonably materially delay (a) agreement and/or determination in accordance with the Dispute Resolution Procedure as to whether the requirements of Clause 53.14.1(b) are satisfied in respect of the Uninsurable TPL Risk and/or (b) meeting with the College to discuss the means by which the risk should be managed.

Where this Clause 53.14.2 applies and this Agreement continues, Project Co shall, subject to Clause 53.14.2(c), be relieved of its obligations to maintain insurance in respect of the relevant Uninsurable Risk.

53.14.3 If, pursuant to Clause 53.14.2(b), the College elects to make payment of compensation to Project Co (such that this Agreement will terminate)(the "**Relevant Payment**"), Project Co shall have the option (exercisable in writing within (20) Business Days of the date of such election by the College (the "**Option Period**")) to pay to the College on or before the end

of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant risk not become Uninsurable, in which case this Agreement will continue (and the Relevant Payment will not be made by the College), and Project Co's payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.

53.14.4 During the Operational Term, the College shall be entitled to notify Project Co that a risk has become Uninsurable under paragraph (b) of the definition "Uninsurable". Following such notification Clauses 53.14.1(b) to 53.14.3 (except Clause 53.14.1(b)(ii)) shall apply as if Project Co has issued a notice under Clause 53.14.1(a).

53.15 Unavailability of terms

53.15.1 If, upon the renewal of any of the Insurances:

- (a) any Insurance Term is not available to Project Co in the worldwide insurance market with reputable insurers of good standing; and/or
- (b) the insurance premium payable for Insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom

other than, in each case by reason of one or more actions of Project Co and/or any sub-contractor of Project Co (of any tier) then Clause 53.15.2 shall apply.

53.15.2 If it is agreed or determined that Clause 53.15.1 applies then the College shall waive Project Co's obligations in Clauses 53.1 to 53.3 and/or Schedule Part 15 (*Insurance Requirements*) in respect of that particular Insurance Term and Project Co shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Agreement as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in Clause 53.15.1 continue to apply to such Insurance Term.

53.15.3 To the extent that the parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution Procedure, that an alternative or replacement term and /or condition of insurance is available to Project Co in the worldwide insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address Project Co's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which contractors in the UK are (at such time) generally prepared to pay, with the College's agreement, Project Co shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition.

53.15.4 Project Co shall notify the College as soon as reasonably practicable and in any event within five (5) days of becoming aware that Clause 53.15.1(a) and/or Clause 53.15.1(b) are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). During the Operational Term the College shall be entitled to notify Project Co that Clause 53.15.1(b) is likely to apply or (on expiry of the relevant insurance then in place) does apply in respect of an Insurance Term (irrespective of the reason for the same). Project Co shall provide the College with such information as the College reasonably requests regarding the unavailability of the Insurance Term and the parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.

53.15.5 In the event that Clause 53.15.1(a) and/or Clause 53.15.1(b) apply in respect of an Insurance Term, (irrespective of the reasons for the same) Project Co shall approach the insurance market at least every four months to establish whether Clause 53.15.1(a) and/or Clause 53.15.1(b) remain applicable to the Insurance Term. As soon as Project Co is aware that Clause 53.15.1(a) and/or Clause 53.15.1(b) has ceased to apply to the

Insurance Term and the College agrees, Project Co shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Agreement.

Risk Management

- 53.16 With effect from the date of this Agreement, the College and Project Co shall each designate or appoint an insurance and risk manager and notify details of the same to the other party. Such person shall:
- 53.16.1 be responsible for dealing with all risk management matters on behalf of its appointing or designating party including (without limitation) ensuring compliance by that party with this Clause 53.16;
 - 53.16.2 advise and report to that party on such matters; and
 - 53.16.3 ensure that any report or survey conducted by any insurer of any relevant procedures in relation to the Project is disclosed to the parties.
- 53.17 Without prejudice to the provisions of Clause 53.16, the parties shall notify one another, and in Project Co's case the relevant insurer, of any circumstances which may give rise to a claim of a value equal to or in excess of twenty five thousand pounds (£25,000) (index-linked) under the Insurances within five(5) Business Days of becoming aware of the same (or earlier, if so requested by the terms of the relevant insurance policy). If any insurer disputes any such claim, Project Co shall provide the College with full details of any disputed claim and the parties shall liaise with one another to ensure that the relevant claim is preserved or pursued.

Application of Proceeds

- 53.18 All insurance proceeds received by Project Co under the insurances referred to in paragraph 1 (*Contractor's "All Risk" Insurance*) of Section 1 (*Insurance Requirements*) and paragraph 1 (*Property Damage Insurance*) of Section 2 (*Policies to be taken out by Project Co and Maintained from the Actual Completion Date*) of Schedule Part 15 (*Insurance Requirements*) shall be paid into the Insurance Proceeds Account and shall be applied in accordance with this Agreement and in accordance with the Insurance Proceeds Accounts Agreement.
- 53.19 Subject to the provisions of the Funders' Direct Agreement and Clause 53.22 (*Reinstatement*), Project Co shall apply any proceeds of any policies of Insurance:
- 53.19.1 in the case of third party legal liability or employers' liability insurance, in satisfaction of the claim, demand, proceeding or liability in respect of which such proceeds are payable; and
 - 53.19.2 in the case of any other insurance, other than delay in start up or business interruption insurance, so as to ensure the performance by Project Co of its obligations under this Agreement, including where necessary the reinstatement, restoration or replacement of the Facilities, assets, materials or goods affected by the event giving rise to the insurance claim and consequent payment of proceeds.
- 53.20 Where reinstatement monies are required to be released from the Insurance Proceeds Account Project Co shall obtain the College's consent in accordance with the Insurance Proceeds Account Agreement. The College shall give its consent (or confirm that it is withholding its consent) to the release of monies from the Insurance Proceeds Account within one (1) Business Day of a request from Project Co (provided that such consent must not be unreasonably withheld).
- 53.21 If the proceeds of any insurance claim are insufficient to cover the settlement of such claims, Project Co will make good any deficiency forthwith.

53.22 **Reinstatement**

- 53.22.1 All insurance proceeds received under any Physical Damage Policy shall be applied to repair, reinstate and replace each part or parts of the Facilities in respect of which the proceeds were received.
- 53.22.2 Subject to Clause 53.18, where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the ("**Relevant Incident**") in an amount in excess of ██████████ (index-linked):
- (a) Project Co shall deliver as soon as practicable and in any event within 28 days after the making of the claim a plan prepared by Project Co for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, reinstate or replace (the "**Reinstatement Plan**") the assets which are the subject of the relevant claim or claims in accordance with paragraph (iv) below. The Reinstatement Plan shall set out:
 - (i) if not the Contractor, the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the College; and
 - (ii) the proposed terms and timetable or, if not then established, the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior written approval of the College, which approval shall not be unreasonably delayed;
 - (b) provided that the College is satisfied that the Reinstatement Plan will enable Project Co to comply with paragraph (iv) below within a reasonable timescale:
 - (i) the Reinstatement Plan will be adopted;
 - (ii) Project Co shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan approved by the College;
 - (iii) prior to the earlier to occur of the Termination Date or the Expiry Date, any amounts standing to the credit of the Insurance Proceeds Account (the "**Relevant Proceeds**") (together with any interest accrued) may be withdrawn by Project Co from the Insurance Proceeds Account as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in paragraph (ii) above, and to meet any other reasonable costs and expenses of Project Co for the sole purposes of funding the Reinstatement Works and the parties shall operate the signatory requirements of the Insurance Proceeds Account in order to give effect to such payments. Following the earlier to occur of the Termination Date and the Expiry Date, the College may withdraw amounts standing to the credit of the Insurance Proceeds Account for the purposes of funding any Reinstatement Works;
 - (iv) the College agrees and undertakes that, subject to compliance by Project Co with its obligations under this Clause, and provided that Project Co procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in Clause 53.22.2(b), it shall not exercise any right which it might otherwise have to terminate this Agreement by virtue of the event which gave rise to the claim for the Relevant Proceeds;

- (v) the College undertakes to use reasonable endeavours to assist Project Co in the carrying out of the Reinstatement Plan; and
- (vi) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the College and in accordance with Clause 53.22.2(b) below the College shall permit withdrawal by Project Co of any Relevant Proceeds then held in the Insurance Proceeds Account that have not been paid under Clause 53.22.2(b) above, in respect of the Relevant Incident, together with any interest accrued.
- (vii) subject to the provisions of Clause 49.1 (*Project Co Indemnities to College*) Project Co shall be solely responsible for the payment of any deficiency.

53.22.3 Where insurance proceeds are to be used, in accordance with this Agreement, to repair, reinstate or replace any Facility, Project Co shall carry out the work in accordance with the College's Construction Requirements so that on completion of the work, the provisions of this Agreement are complied with.

53.22.4 If and to the extent that a breach by Project Co of its obligations under Clause 53.22.2(b) leads to a delay in the completion of the Reinstatement Works, any entitlement that Project Co has to relief under Clause 30 (*Relief Events*) shall be suspended.

54. EXCLUSIONS AND LIMITATIONS ON LIABILITY

Exclusions

- 54.1 The indemnities under this Agreement shall not apply and (without prejudice to the College's rights under the Payment Mechanism and the RAFM Payment Mechanism) there shall be no right to claim damages for breach of this Agreement, in delict or on any other basis whatsoever to the extent that any loss claimed by either party is for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or is a claim for consequential loss or for indirect loss of any nature ("**Indirect Losses**") suffered or allegedly suffered by either party. The College agrees that, notwithstanding the foregoing, any losses of Project Co arising under the Construction Contract, the Service Contract and the ICT Services Contract as originally executed (or as amended in accordance with and subject to Clause 4.1 (*Ancillary Documents*)) which are not Indirect Losses shall not be excluded from such a claim solely by reason of this Clause 54.1.
- 54.2 The College shall not be liable in delict to Project Co or any Project Co Party in respect of any negligent act or omission of the College or any College Party relating to or in connection with this Agreement and Project Co shall procure that no Project Co Party shall bring such a claim against the College. Project Co has accepted this on the basis that it and each Project Co Party will cover the risk of negligent acts or omissions by insurance or in such other manner as it (or they) may think fit.

No Double Recovery

54.3 Subject to:

54.3.1 any other express right of the College pursuant to this Agreement; and

54.3.2 the College's right to claim, on or after termination of this Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Agreement by Project Co save to the extent that the same has already been recovered by the College pursuant to this Agreement or has been taken into account to reduce any compensation payable by the College pursuant to Clause 46 (*Compensation on Termination*)

the sole remedy of the College in respect of a failure to provide the Services in accordance with this Agreement shall be the operation of the Payment Mechanism and the RAFM Payment Mechanism.

- 54.4 Subject to Clause 39 (*College Events of Default*) and any other express right of Project Co pursuant to this Agreement, Project Co's sole remedy in respect of any breach of this Agreement which is a Compensation Event shall be pursuant to Clause 29 (*Delay Events*).
- 54.5 Nothing in Clause 54.3 shall prevent or restrict the right of the College to seek interdict or a decree of specific implement or other discretionary remedies of the court.
- 54.6 Notwithstanding any other provision of this Agreement, neither party shall be entitled to recover compensation or make a claim under this Agreement or any other agreement in relation to the Project in respect of any loss that it has incurred (or any failure of the other party) to the extent that it has already been compensated in respect of that loss or failure pursuant to this Agreement or otherwise.
- 54.7 Neither party shall have the right to terminate this Agreement for breach of contract save as expressly set out in this Agreement.
- 54.8 Subject to Clause 17A and Clause 17B, nothing in this Agreement shall exclude any right of the College to seek damages from Project Co for breach of contract by Project Co in respect of any losses the College incurs as a direct result of any Defect in the Halls of Residence.

PART 12: MISCELLANEOUS

55. INTELLECTUAL PROPERTY

Project Data

- 55.1 Project Co shall make available to the College free of charge (and hereby irrevocably licences the College to use) all Project Data that might reasonably be required by the College and Project Co shall ensure that it can make the Project Data available to the College on these terms, for the purposes of:
- 55.1.1 the College carrying out the College Services (and its operations relating to the performance of the College Services), its duties under this Agreement and/or any statutory duties that the College may have; and
- 55.1.2 following termination of this Agreement, the design or construction of the NPD Facilities and the Halls of Residence, the operation, maintenance or improvement of the Facilities and/or the carrying out of operations the same as, or similar to, the Project Operations
- (together the "**Approved Purposes**") and in this Clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

Intellectual Property Rights

- 55.2 Project Co:
- 55.2.1 hereby grants to the College, free of charge, an irrevocable, non-exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Agreement or upon or at any time following termination of this Agreement) licence (carrying the right to grant sub-licences) to use the Intellectual Property Rights which are or become vested in Project Co; and
- 55.2.2 shall, where any Intellectual Property Rights are or become vested in a third party, use all reasonable endeavours to procure the grant of a like licence to that referred to in Clause 55.2.1 above to the College

in both cases, solely for the Approved Purposes.

Project Co shall use all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the term of this Agreement vest, and remain vested throughout the term of this Agreement, in Project Co and Project Co shall enter into appropriate agreements with any Project Co Party (or other third parties) that may create or bring into existence, or from which it may acquire, any Intellectual Property Rights.

Maintenance of data

- 55.3 To the extent that any of the data, materials and documents referred to in this Clause are generated by or maintained on a computer or similar system, Project Co shall use all reasonable endeavours to procure for the benefit of the College, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the College or its nominee to access and otherwise use (subject to the payment by the College of the relevant fee, if any) such data for such purposes as the College may at its sole discretion require. As an alternative, Project Co may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time and in hard copy format.
- 55.4 Project Co shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in Clause 55.3 in accordance with Good Industry Practice. Without prejudice to this obligation, Project Co shall submit to the College's Representative for approval its proposals for the back-up and storage in safe custody of such data, materials and documents and

the College shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the College's Representative has given its approval. Project Co may vary its procedures for such back-up and storage subject to submitting its proposals for change to the College's Representative, who shall be entitled to object on the basis set out above.

Claims

- 55.5 Where a claim or proceeding is made or brought against the College which arises out of the infringement of any rights in or to any Intellectual Property (other than any Disclosed Data) or because the use of any materials, Plant, machinery or equipment in connection with the Project Operations infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of the College otherwise than in accordance with the terms of this Agreement, Project Co shall indemnify the College at all times from and against all such claims and proceedings and the provisions of Clause 49.3 (*Conduct of Claims*) shall apply.

56. DISPUTE RESOLUTION PROCEDURE

Except where expressly provided otherwise in this Agreement, any dispute arising out of or in connection with this Agreement shall be resolved in accordance with the procedure set out in Schedule Part 20 (*Dispute Resolution Procedure*).

57. ASSIGNATION AND SUB-CONTRACTING

Assignment

- 57.1 This Agreement and any other agreement in connection with the Project to which both the College and Project Co are a party shall be binding on, and shall enure to the benefit of, Project Co and the College and their respective statutory successors and permitted transferees and assignees. In the case of the College, its successors shall include any person to whom the Scottish Ministers, in exercising their statutory powers to transfer property, rights and liabilities of the College upon the College ceasing to exist, transfers the property, rights and obligations of the College under this Agreement and such other agreements in connection with the Project to which the College and Project Co are both a party.
- 57.2 Subject to Clause 57.3, Project Co shall not, without the prior written consent of the College, assign, novate, transfer, sub-contract or otherwise dispose of any interest in this Agreement, the Independent Tester Contract, the Construction Contract, the Service Contract and any other contract entered into by Project Co for the purposes of performing its obligations under this Agreement.
- 57.3 The provisions of Clause 57.2 do not apply to the grant of any security, in a form approved by the College prior to its grant (such approval not to be unreasonably withheld or delayed), for any loan made to Project Co under the Initial Funding Agreements provided that any assignee shall enter into the Funders' Direct Agreement in relation to the exercise of its rights, if the College so requires.
- 57.4 The College shall be entitled to assign, transfer or dispose of the whole of this Agreement and/or of any agreement entered into in connection with this Agreement to which the College and Project Co are both party:
- 57.4.1 a Minister of the Crown (including for the avoidance of doubt the Scottish Ministers);
- 57.4.2 a Fundable Body (as defined in the Further and Higher Education (Scotland) Act 2005) with responsibility for providing the College Services (or a material part thereof) which has sufficient financial standing or financial resources to perform the obligations of the College under this Agreement and any other agreements to which such assignment, transfer or disposal relates; or

57.4.3 any other public body whose obligations under this Agreement and any other agreements to which such assignation, transfer or disposal relates are unconditionally and irrevocably guaranteed by the College or a Minister of the Crown (including for the avoidance of doubt the Scottish Ministers) having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the College under this Agreement and any other agreements to which such assignation, transfer or disposal relates to

without the consent of Project Co. The prior written consent of Project Co (not to be unreasonably withheld or delayed) shall be required for any other assignation, transfer or disposal by the College of the whole or any part of this Agreement or of any agreement entered into in connection with this Agreement to which the College and Project Co are both party, provided that nothing in this Clause shall restrict the rights of the Scottish Ministers to effect a statutory transfer.

Sub-contractors

57.5 Project Co shall, without prejudice to Clause 57.1, procure that none of the persons listed below shall sub-contract all (or substantially all) of their obligations under or in the agreement set out next to its name:

Person	Contract
Contractor	Construction Contract
Service Provider	Service Contract

without, in each case, the prior written consent of the College (such consent not to be unreasonably withheld or delayed). To avoid doubt, (i) any failure to comply with Clause 57.7 shall be a reasonable ground for withholding consent and (ii) consent shall, without prejudice to the other provisions of Clause 57.5, not be required in respect of the appointment of any party currently approved by the College as a suitable replacement.

57.6 If the contract set out next to the name of any person referred to in Clause 57.5 shall at any time lapse, terminate or otherwise cease to be in full force and effect (whether by reason of expiry or otherwise), with the effect that such person shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement (subject to compliance with Clause 57.5).

57.7 Project Co shall procure that any replacement for any person referred to in Clause 57.5 or any Key Sub-Contractor shall enter into a contract upon the same or substantially similar terms as the person so replaced and shall also enter into a collateral agreement on the same or substantially the same terms as the Collateral Agreement entered into by the person so replaced.

57.8 Where Project Co enters into a contract with a sub-contractor for the purposes of carrying out the Project Operations or any part of the Project Operations under this Agreement, Project Co shall cause a term to be included in such contract:

57.8.1 which requires payment to be made to the sub-contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the contract requirements and in the case of the provision of Services provides that, for the purpose of payment alone, where the College has made payment to Project Co and the sub-contractor's invoice includes Project Operations in relation to which payment has been made by the College then, to the extent that it relates to such Project Operations, the invoice shall be treated as valid and payment shall be made to the sub-contractor without deduction (but without prejudice to any right to deduct or set off validly arising under the terms of the contract with the sub-contractor); and

57.8.2 which notifies the sub-contractor that the contract forms part of a larger contract for the benefit of the College and that should the sub-contractor have any difficulty in securing the timely payment of an invoice that matter may be referred by the sub-contractor to the College's Representative; and

57.8.3 in the same terms as this Clause 57.8 (including for the avoidance of doubt this Clause 57.8.3) subject only to modification to refer to the correct designation of the equivalent party as the supplier and recipient of the relevant Project Operations as the case may be.

Replacement of a non-performing Sub-Contractor

57.9 On the substitution or replacement of a Service Provider due to a breach or default under a Service Contract, Project Co may elect, subject to Clause 57.11 and provided that at the time of making such election no notice of termination has been served under this Agreement, that for the purposes of Clause 40.1.8, 40.1.8A, 40.1.8B (*Deductions*) and Clause 40.1.9 (*Warning Notices*) only all Deductions incurred and Warning Notices served prior to the date of such substitution or replacement shall be disregarded by virtue of Clause 57.10 below.

57.10 If Project Co makes an election pursuant to Clause 57.9 above then, with effect from the date of substitution or replacement of the Service Provider, all Deductions incurred and Warning Notices served prior to that date and/or Ratchets subsisting at that date shall be disregarded for the purposes of Clause 40.1.8, 40.1.8A, 40.1.8B (*Deductions*) and Clause 40.1.9 (*Warning Notices*) only. For the avoidance of doubt, the College shall retain the right to make Deductions in accordance with Schedule Part 14 (*Payment Mechanism*) in respect of the Availability Failures and/or Performance Failures to which the Deductions and/or Warning Notices are attributable.

57.11 Project Co shall be entitled to make an election pursuant to Clause 57.9 on a maximum of two occasions during the Project Term.

58. OWNERSHIP INFORMATION AND CHANGES IN CONTROL

58.1 Project Co represents and warrants to the College that at the date of this Agreement the legal and beneficial ownership of Project Co is as set out in Schedule Part 21 (*Project Co Information*) and that, other than any Shareholder pre-emption rights, no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in Project Co.

58.2 Project Co shall inform the College as soon as reasonably practicable (and in any event, within thirty (30) days) of any Change in Control occurring in respect of Project Co.

58.3 The College may, not more than twice in any Contract Year, or at any time when a Project Co Event of Default is outstanding, require Project Co to inform it, as soon as reasonably practicable and in any event within thirty (30) days of receipt of the College's request for details, of any Change in Control in respect of Project Co.

58.4 Project Co's obligations under Clauses 58.1 and 58.2 above shall, except where a legal transfer of shares has occurred be limited to the extent of Project Co's awareness having made all reasonable enquiry.

58.5 Subject to Clause 58.6, prior to the expiry of a period of twelve (12) months commencing on the final Actual Completion Date, no Change in Control in any or all of the shares in Project Co shall be permitted without the prior written approval of the College. Any Change in Control arising as a consequence of either:

58.5.1 the grant or enforcement of security in favour of the Senior Funders over or in relation to any of the shares of the Project Co, provided that any document conferring security over any shares has been approved by the College (such approval not to be reasonably withheld or delayed); or

58.5.2 any transfer by a Shareholder to an Associate of such transferor;

shall be disregarded for the purpose of this Clause 58.5 above.

58.6 Where Clause 58.5.2 applies and subsequent to any such transfer (the "**Original Transfer**") the transferee ceases to be an Associate of the original transferor, it shall be a breach of this Clause

58.5 if the shares or interests which were the subject of the Original Transfer are not within 20 Business Days of the transferee ceasing to be an Associate of the original transferor, transferred to the original transferor or any Associate of such transferor.

58.7 No Change in Control (at any time) in any or all of the shares in Project Co (or any company (other than a public quoted company whose equity securities are listed on a recognised investment exchange, as defined in section 285 of the Financial Services and Markets Act 2000) holding shares in Hold Co, Project Co or in any company (or its shareholders) holding shares in such a company (or its shareholders)) shall be permitted without the prior written approval of the College where the person acquiring control is a Restricted Person.

59. MITIGATION

Each of the College and Project Co shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement.

60. DATA PROTECTION

Data Protection

60.1 For the purpose of the following Clauses, the term "personal data" shall have the meaning given to it in the Data Protection Act 1998.

60.2 Project Co undertakes to the College that it shall comply with the obligations of a "data controller" under the provisions of the Seventh Data Protection Principle as set out in Schedule 1 of the Data Protection Act 1998. In addition, Project Co:

60.2.1 warrants that it has, or will have at all material times, (and it shall use best endeavours to procure that all Sub-Contractors (and their agents and sub-contractors of any tier have or will have at all material times) the appropriate technical and organisational measures in place against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data held or processed by it and that it has taken, or will take at all material times, all reasonable steps to ensure the reliability of any of its staff which will have access to personal data processed as part of the Project Operations;

60.2.2 undertakes that it will act only on the instructions of the College in relation to the processing of any personal data made available by or on behalf of the College as part of the Project Operations;

60.2.3 undertakes that it will only obtain, hold, process, use, store and disclose personal data as is necessary to perform its obligations under this Agreement and (without prejudice to Clause 5.2 (*General standards*)) that such data will be held, processed, used, stored and disclosed only in accordance with the Data Protection Act 1998 and any other applicable Law; and

60.2.4 undertakes to allow the College access to any relevant premises on reasonable notice to inspect its procedures described at Clause 60.2.1 above.

61. CONFIDENTIALITY

61.1 The College shall, subject to Clause 61.2 be entitled to make the documents and information listed in this Clause 61.1 freely available to the public (which may include, without limitation, publication on the College's website):

61.1.1 this Agreement;

61.1.2 the Independent Tester Contract;

- 61.1.3 the Collateral Agreements;
- 61.1.4 the payment and performance report; and
- 61.1.5 the Financial Model (as updated from time to time in accordance with this Agreement).

and Project Co acknowledges and agrees that, subject to the exclusion of information referred to in Clause 61.2.2, the provision or publication of the documents and information listed in this Clause 61.1 shall not give rise to any liability under the terms of this Agreement or otherwise. The College shall notify Project Co in writing not less than ten (10) Business Days prior to any intended provision or publication of information pursuant to this Clause 61.1.

61.2

- 61.2.1 The parties agree that the provisions of this Agreement and each Ancillary Document shall, subject to Clause 61.2.2 below, not be treated as Confidential Information and may be disclosed without restriction and Project Co acknowledges that the College shall, subject to Clause 61.2.2 below, be entitled to make this Agreement and each Ancillary Document available in the public domain.
- 61.2.2 Clause 61.2.1 above shall not apply to provisions of this Agreement or an Ancillary Document designated as Commercially Sensitive Information and listed in Schedule Part 26 (*Commercially Sensitive Information*) to this Agreement which shall, subject to Clause 61.3 be kept confidential for the periods specified in that Schedule Part 26 (*Commercially Sensitive Information*).
- 61.2.3 The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Agreement and Ancillary Documents or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

Permitted Disclosure

61.3 Clauses 61.2.2 and 61.2.3 shall not apply to:

- 61.3.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Agreement for the performance of those obligations;
- 61.3.2 any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause;
- 61.3.3 any disclosure to enable a determination to be made under Schedule Part 20 (*Dispute Resolution Procedure*) or in connection with a dispute between Project Co and any of its subcontractors;
- 61.3.4 any disclosure which is required pursuant to any Law or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- 61.3.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 61.3.6 any provision of information to the parties' own professional advisers or insurance advisers or to the Senior Funders or the Senior Funders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to Project Co to enable it to carry out its obligations under this Agreement, or may wish to

acquire shares in Project Co and/or Hold Co in accordance with the provisions of this Agreement to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

- 61.3.7 any disclosure by the College of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new contractor, its advisers and lenders, should the College decide to retender this Agreement; or
- 61.3.8 any registration or recording of the Consents and property registration required;
- 61.3.9 any disclosure of information by the College to any other department, office or agency of the Government or their respective advisers or to the Scottish Futures Trust or to any person engaged in providing services to the College for any purpose related to or ancillary to this Agreement;
- 61.3.10 any disclosure for the purpose of:
 - (a) the examination and certification of the College's or Project Co's accounts;
 - (b) any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the College has used its resources;
 - (c) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - (d) (without prejudice to the generality of Clause 61.3.4) compliance with the FOI(S)A and/or the Environmental Information (Scotland) Regulations;
- 61.3.11 disclosure pursuant to Clause 61.1; or
- 61.3.12 disclosure to the extent required pursuant to Clause 63.2

provided that, to avoid doubt, neither Clause 61.3.10(d) nor Clause 61.3.4 above shall permit disclosure of Confidential Information otherwise prohibited by Clause 61.2.3 where that information is exempt from disclosure under section 36 of the FOI(S)A.

- 61.4 Where disclosure is permitted under Clause 61.3, other than under Clauses 61.3.2, 61.3.4, 61.3.5, 61.3.8 and 61.3.10, the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.
- 61.5 Project Co shall not make use of this Agreement or any information issued or provided by or on behalf of the College in connection with this Agreement otherwise than for the purpose of this Agreement, except with the written consent of the College.
- 61.6 Where Project Co, in carrying out its obligations under this Agreement, is provided with information relating to any College Party, Project Co shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless Project Co has obtained the prior written consent of that person and has obtained the prior written consent of the College.
- 61.7 On or before the Expiry Date, Project Co shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to any patient or College Party including any documents in the possession, custody or control of a Sub-Contractor, are delivered up to the College.

61.8 The parties acknowledge that Audit Scotland has the right to publish details of this Agreement (including Commercially Sensitive Information) in its relevant reports to Parliament.

61.9 The provisions of this Clause 61 (*Confidentiality*) are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

Announcements

61.10 Unless otherwise required by any Law or any regulatory or governmental authority (but only to that extent), neither party shall make or permit or procure to be made any public announcement or disclosure (whether for publication in the press, the radio, television screen or any other medium) of any Confidential Information or in the case of Project Co of its (or any Project Co Party's) interest in the Project or, in any such case, any matters relating thereto, without the prior written consent of the other party (which shall not be unreasonably withheld or delayed).

62. FREEDOM OF INFORMATION

62.1 Project Co acknowledges that the College is subject to the requirements of the FOI(S)A and the Environmental Information (Scotland) Regulations and shall assist and cooperate with the College to facilitate the College's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 62.2 to 62.8.

62.2 Where the College receives a Request for Information in relation to Information that Project Co is holding on its behalf and which the College does not hold itself the College shall refer to Project Co such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving such Request for Information and Project Co shall:

62.2.1 provide the College with a copy of all such Information in the form that the College requires as soon as practicable and in any event within five (5) Business Days (or such other period as the College acting reasonably may specify) of the College's request; and

62.2.2 provide all necessary assistance as reasonably requested by the College in connection with any such Information, to enable the College to respond to the Request for Information within the time for compliance set out in section 10 of the FOI(S)A or Regulation 5 of the Environmental Information (Scotland) Regulations.

62.3 Following notification under Clause 62.2, and up until such time as Project Co has provided the College with all the Information specified in Clause 62.2.1, Project Co may make representations to the College as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the College shall be responsible for determining at its absolute discretion:

62.3.1 whether Information is exempt from disclosure under the FOI(S)A and the Environmental Information (Scotland) Regulations;

62.3.2 whether Information is to be disclosed in response to a Request for Information, and

in no event shall Project Co respond directly, or allow its Sub-Contractors to respond directly, to a Request for Information unless expressly authorised to do so by the College.

62.4 Project Co shall ensure that all Information held on behalf of the College is retained for disclosure for at least the number of years (from the date it is acquired) specified in the College Policy relating to records retention and shall permit the College to inspect such Information as requested from time to time.

62.5 Project Co shall transfer to the College any Request for Information received by Project Co as soon as practicable and in any event within two (2) Business Days of receiving it.

62.6 Project Co acknowledges that any lists provided by it listing or outlining Confidential Information are of indicative value only and that the College may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of FOI(S)A and the Environmental (Scotland) Regulations.

62.7 In the event of a request from the College pursuant to Clause 62.2 Project Co shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the College of Project Co's estimated costs of complying with the request to the extent these would be recoverable, if incurred by the College, under section 13(1) of the FOI(S)A and the Fees Regulations. Where such costs (either on their own or in conjunction with the College's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in section 12(1) of the FOI(S)A and as set out in the Fees Regulations (the "**Appropriate Limit**") the College shall inform Project Co in writing whether or not it still requires Project Co to comply with the request and where it does require Project Co to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the College is entitled to under section 10 of the FOI(S)A. In such case, the College shall notify Project Co of such additional days as soon as practicable after becoming aware of them and shall reimburse Project Co for such costs as Project Co incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOI(S)A policy from time to time.

62.8 Project Co acknowledges that (notwithstanding the provisions of Clause 61 (*Confidentiality*)) the College may, acting in accordance with the Scottish Ministers Code of Practice on the Discharge of Functions of Public Authorities under Part 6 of the Freedom of Information (Scotland) Act 2002 (the "**Code**"), and/or having full regard to any guidance or briefings issued by the Scottish Information Commissioner or the Scottish Ministers, be obliged under the FOI(S)A, or the Environmental Information (Scotland) Regulations to disclose Information concerning Project Co or the Project:

62.8.1 in certain circumstances without consulting with Project Co; or

62.8.2 following consultation with Project Co and having taken their views into account

provided always that where paragraph 62.8.1 above applies the College shall, in accordance with the recommendations of the Code, draw this to the attention of Project Co prior to any disclosure.

62.9 In the event that the Project Co is or becomes subject to Environmental Information (Scotland) Regulations or FOI(S)A it shall comply with its obligations under Environmental Information (Scotland) Regulations and FOI(S)A. In doing so, it will use reasonable endeavours to consult the College before disclosing Information about them or any agreement entered into between the College and Project Co.

63. INFORMATION AND AUDIT ACCESS

63.1 Project Co shall provide to the College's Representative all information, documents, records and the like in the possession of, or available to, Project Co (and to this end Project Co shall use all reasonable endeavours to procure that all such items in the possession of the Contractor or any Service Providers shall be available to it and Project Co has included, or shall include, relevant terms in all contracts with the Contractor or any Service Providers to this effect) as may be reasonably requested by the College's Representative for any purpose in connection with this Agreement.

63.2 For the purpose of:

63.2.1 the examination and certification of the College's accounts; or

63.2.2 any examination pursuant to section 23 of the Public Finance and Accountability (Scotland) Act 2000 of the economy, efficiency and effectiveness with which the College has used its resources

the Auditor General for Scotland may examine such documents as he may reasonably require which are owned, held or otherwise within the control of Project Co (and Project Co shall procure that any person acting on its behalf who has such documents and/or other information shall also provide access) and may require Project Co to produce such oral or written explanations as he considers necessary.

63.3 Project Co shall provide and shall procure that its Sub-Contractors shall provide such information as the College may reasonably require from time to time to enable it to meet its obligations to provide reports and returns pursuant to regulations, directions or guidance applicable to the College including, without limitation, reports and returns regarding the physical condition of buildings occupied by the College, health and safety, under the firecode, relating to environmental health.

64. NOTICES

64.1 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, by hand or by email, leaving the same at:

If to Project Co

Company Secretary
Glasgow Learning Quarter Limited
Eaton Court
Maylands Avenue
Hemel Hempstead
Hertfordshire
HP2 7TR

email: k.pearson@sir-robert-mcalpine.com

If to the College

Principal and Chief Executive
60 North Hanover Street
Glasgow G1 2TA

email:
Paul.Little@cityofglasgowcollege.ac.uk

If to the Scottish Funding Council

Chief Executive
Scottish Further and Higher Education
Funding Council
Apex 2
97 Haymarket Terrace
Edinburgh EH12 5HD

email:
LHowells@sfc.ac.uk

64.2 Where any information or documentation is to be provided or submitted to the College's Representative or the Project Co Representative it shall be provided or submitted by sending the same by first class post, by hand or by email, leaving the same at:

If to Project Co's Representative

Brian McClintock
11 Elmbank Street
Glasgow
G2 4PB

email: b.mcclintock@sir-robert-mcalpine.com

If to the College's Representative

Iain Marley
City of Glasgow College
300 Cathedral Street
Glasgow G1 2TA

email:
Iain.Marley@cityofglasgowcollege.ac
.uk

If to the Scottish Funding Council

Chief Executive
Scottish Further and Higher
Education Funding Council
Apex 2
97 Haymarket Terrace
Edinburgh EH12 5HD

email:
LHowells@sfc.ac.uk

(copied in each case to the College)

- 64.3 Either party to this Agreement (and either Representative) may change its nominated address or email address by prior notice to the other party.
- 64.4 Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery:
- 64.4.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or
- 64.4.2 by 11am on the next following Business Day, if sent after 4pm, on a Business Day but before 9am on that next following Business Day.
- 64.5 Notices given by email shall be deemed to have been received:
- 64.5.1 at the time the email enters the Information System of the intended recipient designated by them to receive electronic notices pursuant to this Agreement (as identified by the email address specified in Clauses 64.1 and 64.2 or notified from time to time under Clause 64.3) if on a Business Day between the hours of 9am and 4pm;
- 64.5.2 by 11am on the next following Business Day, if the email enters the intended recipient's relevant Information System after 4pm, on a Business Day but before 9am on that next following Business Day,

and provided that no error message indicating failure to deliver has been received by the sender and provided that in the case of notices that relate to any reserved discretions listed in the controls matrix in Schedule 12 of the Common Terms Agreement that within 24 hours of transmission a hard copy of the email signed by or on behalf of the person giving it is sent by post or delivered by hand to the intended recipient in accordance with the provisions of Clauses 64.1 and 64.2.

65. NO WAIVER

- 65.1 Any relaxation, forbearance, indulgence or delay (together "**indulgence**") of any party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that party or any other person).

Continued effect – no waiver

65.2 Notwithstanding any breach of this Agreement by either party, and without prejudice to any other rights which the other party may have in relation to it, the other party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of either party to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

66. NO AGENCY

66.1 Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the College and Project Co.

66.2 Save as expressly provided otherwise in this Agreement, Project Co shall not be, or be deemed to be, an agent of the College and Project Co shall not hold itself out as having authority or power to bind the College in any way.

66.3 Without limitation to its actual knowledge, Project Co shall for all purposes of this Agreement, be deemed to have such knowledge in respect of the Project as is held (or ought reasonably to be held) by any Project Co Party.

67. ENTIRE AGREEMENT

67.1 Except where expressly provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

67.2 Each of the parties acknowledges that:

67.2.1 it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and

67.2.2 this Clause shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

68. THIRD PARTY RIGHTS

Save to the extent expressly provided in this Agreement and, to avoid doubt, without prejudice to the terms of the Funders' Direct Agreement or the rights of any permitted successor to the rights of Project Co or of any permitted assignee, it is expressly declared that no rights shall be conferred under and arising out of this Agreement upon any person other than the College and Project Co and without prejudice to the generality of the foregoing, there shall not be created by this Agreement a *jus quaesitum tertio* in favour of any person whatsoever.

69. SEVERABILITY

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.

70. **CONFLICTS OF AGREEMENTS**

In the event of any conflict between this Agreement and the Project Documents, the provisions of this Agreement shall prevail.

71. **COSTS AND EXPENSES**

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

72. **FURTHER ASSURANCE**

Each party shall do all things and execute all further documents necessary to give full effect to this Agreement.

73. **GOVERNING LAW AND JURISDICTION**

73.1 This Agreement shall be considered as a contract made in Scotland and shall be subject to the laws of Scotland.

73.2 Subject to the provisions of the Dispute Resolution Procedure, both parties agree that the courts of Scotland shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrevocably submit to the jurisdiction of those courts.

IN WITNESS WHEREOF these presents typewritten on this and the preceding 110 pages together with the Schedule in 30 Parts are executed by the parties hereto as follows:

SUBSCRIBED for and on behalf of
THE CITY OF GLASGOW COLLEGE

by

PAUL LITTLE Authorised Signatory

(Full Name)

at **GLASGOW**

in the presence of:


Witness name: **WENDY NICOLSON**

Signature:

Wendy Nicolson

Address:

*West George Street
Glasgow*



Signature

on **29/8/13**

SUBSCRIBED for and on behalf of
GLASGOW LEARNING QUARTER LIMITED

at GLASGOW

on the 29th day

of AUGUST 2013

by



Director

DAVID HONEYMAN

Full Name



~~Director~~

WITNESS

WENDY NICOLSON

Full Name

WEST GEORGE STREET

GLASGOW

This is the Schedule referred to in the foregoing Project Agreement between the City of Glasgow College and Glasgow Learning Quarter Limited

DA
FELK

**SCHEDULE - Part 1
DEFINITIONS AND INTERPRETATION**

In this Agreement unless the context otherwise requires:

"5 Year Maintenance Plan" means the plan, to be prepared by or on behalf of Project Co, for any works for the maintenance or repair of the NPD Facilities, including the renewal or replacement of plant or equipment as necessary, during each rolling five year period for the duration of the Project Term

"Academic Year" means the period from the first day of the College's academic year until the last day of the College's academic year (excluding holiday periods) (as published from time to time prior to the commencement of each Academic Year) such period not to include more than 230 College Days.

"Access Plans" means City Access Plan 1; City Access Plan 2; City Access Plan 3; City Access Plan 3A; City Access Plan 4, City Access Plan 5; Riverside Access Plan 1; Riverside Access Plan 2; Riverside Access Plan 3 and Riverside Access Plan 4, all in Appendix 2 to Schedule Part 5 (*Land Matters*)

"Actual Commissioning End Date" means the date specified in the Commissioning Completion Certificate issued by the Independent Tester pursuant to Clause 18.4

"Actual External Works Completion Date " means either or both (as the context may require) of the Riverside Actual External Works Completion Date and the City Actual External Works Completion Date.

"Actual Liability" has the meaning given in Clause 46.8.3

"Additional Permitted Borrowing" means on any date, the amount equal to any amount of principal outstanding under the Senior Funding Agreements (as the same may from time to time be amended, whether or not with the approval of the College) in excess of the amount of principal scheduled under the Senior Funding Agreements at Financial Close to be outstanding at that date

but only to the extent that:

- (a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and
- (b) in respect of any Additional Permitted Borrowing the Global Agent is not in material breach of its obligations under Clause 9.4.3 of the Funders' Direct Agreement as it applies to such Additional Permitted Borrowing

and provided further that any such excess amount of principal which is:

- (i) invested as part of any Qualifying Change; or

- (ii) outstanding from time to time as a result of any drawing under the Senior Funding Agreements as entered into at the date of this Agreement, disregarding any subsequent amendment;
- (iii) outstanding from time to time as a result of any amendment to the Senior Funding Agreements in respect of which the College has agreed that its liabilities on a termination may be increased pursuant to Clause 4.3

shall not be counted as Additional Permitted Borrowing

"Additional Permitted Borrowings Limit"

means an amount equal to:

- (a) 10% of the Original Senior Commitment, for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Funding Agreements is reduced to 50% or less of the Original Senior Commitment; and thereafter
- (b) the higher of:
 - (i) 5% of the Original Senior Commitment; and
 - (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in paragraph (a)

"Additional Persons"

has the meaning given in Clause 9.7

"Adjacencies"

means the information noted under the directly adjacent spaces and reasonable close spaces sub headings on the Room Data Sheets

"Adjudicator"

has the meaning given in paragraph 4.1 of Schedule Part 20 (*Dispute Resolution Procedure*)

"Agreed Order of Priorities"

has the meaning given in the Articles of Association

"Ancillary Documents"

means the Construction Contract, the Service Contract, the ICT Services Contract and the appointments of the Design Team, the appointments of the Key Sub-Contractors and the Performance Guarantees, all as the same may be amended or replaced from time to time

"Ancillary Rights"

means such rights as set out in Section 3 (*Ancillary Rights*) of Schedule Part 5 (*Land Matters*)

"Annual Service Payment"

has the meaning given in Schedule Part 14 (*Payment Mechanism*)

"Application for Payment"	has the meaning given to it in Clause 34B.2
"Approved RDD Item"	means an item of Reviewable Design Data which has been returned or has been deemed to have been returned endorsed either "Level A – no comment" or "Level B – proceed subject to amendment as noted" by the College's Representative pursuant to the provisions of Clause 12 (<i>Design, Construction and Commissioning Process</i>) and Schedule Part 8 (<i>Review Procedure</i>) (provided that in the case of any item of Reviewable Design Data which has been returned or has been deemed to have been returned endorsed "Level B – proceed subject to amendment as noted" Project Co has taken account of the College's Representative's comments), as such item of Reviewable Design Data may be varied or amended from time to time in accordance with Schedule Part 16 (<i>Change Protocol</i>)
"Articles of Association"	means Project Co's articles of association, and the term " Articles " shall be construed accordingly
"Associated Companies"	means, in respect of a relevant company, a company which is a Subsidiary, a Holding Company or a company that is a Subsidiary of the ultimate Holding Company of that relevant company, and in the case of Project Co shall include Hold Co and each of the Shareholders, and the term "Associate" shall be interpreted accordingly
"Availability Failure"	has the meaning given in Schedule Part 14 (<i>Payment Mechanism</i>)
"Base Date"	has the meaning given in paragraph 16 of Section 2 (<i>Interpretation</i>) of Schedule Part 1 (<i>Definitions and Interpretation</i>)
"Base Senior Debt Termination Amount"	has the meaning given in Section 6 (<i>Definitions</i>) of Schedule Part 17 (<i>Compensation on Termination</i>)
"Baseline ICT Solution"	means the constituent parts of Volume 2 Section 6.04.09 of Project Co's Proposals and in particular the ICT High Level Design detailed in Volume 2 Section 6.04.09 ICT High Level Design APPENDIX 2.6.3.9.0.4a;
"Baseline ICT Costs Table"	means the table contained in Section 11 of Schedule Part 6 (<i>Construction Matters</i>)
"Beneficiary"	has the meaning given in Clause 49.3 (<i>Conduct of Claims</i>)
"Business Day"	means a day other than a Saturday, Sunday or a bank holiday in Glasgow
"Capital Expenditure"	means capital expenditure (as such term is interpreted in accordance with generally accepted accounting principles in the United Kingdom from time to time)

"Capital Payment"	<p>means the total of the following amounts:</p> <ul style="list-style-type: none"> (a) the Commercial Space City Contract Sum; (b) the Commercial Space Riverside Contract Sum; (c) the Halls of Residence Contract Sum; (d) the Riverside ICT Contract Sum; (e) the City ICT Contract Sum; (f) the Migration Service Payment; (g) the City Group 2 Equipment Contract Sum; (h) the Riverside Group 2 Equipment Contract Sum; and (i) the Provisional Sums, <p>all as set out in the respective columns of the Capital Payments Table together with an amount equal to the VAT due and payable in respect of these amounts on the due date.</p>
"Capital Payment Account"	has the meaning given in the Common Terms Agreement in the Agreed Form
"Capital Payment Amount"	means each payment identified in column I of the Capital Payments Table
"Capital Payment Instalment"	means the monthly amounts (exclusive of VAT) shown in column K of the Capital Payments Table, being the total of the instalments payable for each element of the Capital Payments Works for each month shown in columns A to H of the Capital Payments Table in Schedule Part 29 (<i>Capital Payment Schedule</i>) together with an amount equal to the amount of VAT due and payable in respect of these amounts as at the date of this Agreement.
"Capital Payment Instalment Date"	means the date on which each Capital Payment Instalment is payable as set out in the last column of the Capital Payments Table in Schedule Part 29 (<i>Capital Payment Schedule</i>).
"Capital Payment Works"	<p>mean the following elements of the Works:</p> <ul style="list-style-type: none"> (a) the Halls of Residence Works; (b) the Migration Services; (c) the design construction and fit out of the Commercial Space; (d) the ICT Works; (e) the supply and installation of Group 2

Equipment

"Capital Payments Table"	means the Capital Payments table in Schedule Part 29 (<i>Capital Payments</i>)
"CDM Regulations"	has the meaning given in Section 2 (<i>Safety During Construction</i>) of Schedule Part 6 (<i>Construction Matters</i>)
"Certificate of Practical Completion"	means a certificate in the relevant form set out in Schedule Part 22 (<i>Certificates</i>)
"Change"	has the meaning given in Schedule Part 16 (<i>Change Protocol</i>)
"Change in Control"	means: <ul style="list-style-type: none">(a) any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (including the control over the exercise of voting rights conferred on that equity share capital, control over the right to appoint or remove directors or the rights to dividends); and/or(b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above
"Change in Law"	means the coming into effect or repeal (without re-enactment or consolidation) in Scotland of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in Scotland in each case after the date of this Agreement
"City Actual External Works Completion Date"	means the later of: <ul style="list-style-type: none">(a) the date of the Certificate of Practical Completion issued by the Independent Tester in respect of the City Phase External Works pursuant to Clause 17.12; and(b) subject to Clause 14.5, the City External Works Completion Date
"City Annual Service Payment"	has the meaning given to it in Schedule Part 14 (<i>Payment Mechanism</i>)
"City Car Park"	means the area shown coloured blue on City Access Plan 5
"City Decant Accommodation"	means the part of the Decant Accommodation to be constructed on the area shown coloured orange on City Access Plan 2
"City External Works Completion Date"	means (subject to Clause 29 (<i>Delay Events</i>)) 14 August 2017 or such other date as the parties may agree

"City Facility"	means the buildings and other facilities, together with all supporting infrastructure (including the Plant and the Group 1 Equipment), external hard-standings, specialist surfaces and other amenities to be constructed by Project Co on the City Site in accordance with this Agreement, but excluding all Equipment other than Group 1 Equipment, all as the same may be varied, amended or supplemented from time to time in accordance with this Agreement
"City Group 2 Equipment Contract Sum"	means [REDACTED] exclusive of VAT
"City ICT Contract Sum"	means [REDACTED] exclusive of VAT
"City Payment Commencement Date"	means the City Phase Actual Completion Date
"City Phase"	means the design, construction, and maintenance of the City Facility
"City Phase Actual Completion Date"	means the later of: <ul style="list-style-type: none"> (a) the date of the Certificate of Practical Completion issued by the Independent Tester in respect of the City Phase pursuant to Clause 17.12; and (b) subject to Clause 14.5, the City Phase Completion Date
"City Phase Completion Date"	means (subject to Clause 29 (<i>Delay Events</i>)) 15 August 2016 or such other date as the parties may agree
"City Phase External Works"	has the meaning given to it in Schedule Part 6 (<i>Construction Matters</i>)
"City Site"	means the land made available to Project Co for the construction and maintenance of the City Facility as set out in the relevant Site Plan in Appendix 3 of Schedule Part 5 (<i>Land Matters</i>)
"Collateral Agreements"	means the Contractor's Collateral Agreement, the Service Providers' Collateral Agreements and the Key Sub-Contractor Collateral Agreements
"College Assets"	means: <ul style="list-style-type: none"> (a) from the Commencement Date until the Halls of Residence Phase Actual Completion Date the assets and equipment or other property used by, or on behalf of, the College or any College Party, other than any asset, equipment or property forming part of the Halls of Residence, the NPD Facilities or the Decant Accommodation; and (b) from the Halls of Residence Phase Actual Completion Date until the Expiry Date or the Termination Date of this Agreement the assets

and equipment or other property used by or on behalf of the College or any College Party, other than any asset, equipment or property forming part of the NPD Facilities or the Decant Accommodation.

"College Break Point Date"	means the fifth (5 th) anniversary of the Halls of Residence Phase Actual Completion Date
"College Change"	has the meaning given in Schedule Part 16 (<i>Change Protocol</i>)
"College Change Notice"	has the meaning given in Schedule Part 16 (<i>Change Protocol</i>)
"College Events of Default"	has the meaning given in Clause 39.1
"College Observer"	means, from time to time, the individual designated as such by the College
"College Party"	means any of the College's agents, contractors and sub-contractors of any tier and its or their directors, officers and employees at the Facilities with the College but excluding Project Co, any Project Co Party and statutory undertakers and utilities and "College Parties" shall be construed accordingly
"College Planning Condition"	means Condition 16 (Dead, damaged or diseased trees or plants), Condition 20 (Hours of operation of the architectural lighting scheme), Condition 26 (access), Condition 34 (travel plan) and Condition 42 (Halls of Residence management statement) specified in Riverside Site Decision Notice Reference 13/00205/DC dated 28 March 2013 and Condition 13 (Dead, damaged or diseased trees or plants), Condition 17 (Hours of operation of the architectural lighting scheme), Condition 23 (access) and Condition 39 (travel plan) specified in City Site Decision Notice Reference 13/00206/DC dated 27 March 2013; and from the Riverside Walkway Longstop Date Condition 2 (Riverside) specified in Riverside Site Decision Notice Reference 13/00205/DC
"College Policies"	means, subject to Clause 27.7, the policies of the College as set out in Schedule Part 30 (<i>College Policies</i>) as amended from time to time
"College Services"	means all activities carried out by the College at the NPD Facilities and the RAFM Assets from time to time
"College's Commissioning"	means the College's pre-completion commissioning activities to be carried out by the College in accordance with Clause 17 (<i>Pre-Completion Commissioning and Completion</i>)
"College's Construction Requirements"	means the requirements of the College set out or identified in Section 3 (<i>College's Construction Requirements</i>) of Schedule Part 6 (<i>Construction Matters</i>) as amended from time to time in accordance with the terms of this Agreement

"College's Maintenance Obligations"	has the meaning given in Clause 23.13
"College's Post Completion Commissioning"	means the College's post-completion commissioning activities to be carried out by the College in accordance with Clause 18.1 (<i>Post Completion Commissioning</i>)
"College's Representative"	means the person so appointed by the College pursuant to Clause 8 (<i>Representatives</i>)
"Commencement Date"	means the date of this Agreement
"Commercial Space"	means the area highlighted yellow and described as commercially funded space in the schedule of accommodation contained in Section 6 of Schedule Part 6 (<i>Construction Matters</i>)
"Commercial Space Contract Sum"	means the Commercial Space City Contract Sum or the Commercial Space Riverside Contract Sum as case may be
"Commercial Space City Contract Sum"	means [REDACTED] exclusive of VAT
"Commercial Space Milestone"	means any milestone in respect of the Commercial Space as identified and defined in Section 10 of Schedule Part 6 (<i>Construction Matters</i>)
"Commercial Space Riverside Contract Sum"	means [REDACTED] exclusive of VAT
"Commercially Sensitive Information"	means the sub set of Confidential Information listed in column 1 of Part 1 (<i>Commercially Sensitive Contractual Provisions</i>) and column 1 of Part 2 (<i>Commercially Sensitive Material</i>) of Schedule Part 26 (<i>Commercially Sensitive Information</i>) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule Part 26 (<i>Commercially Sensitive Information</i>)
"Commissioners"	has the meaning given in Clause 35.3
"Commissioning Completion Certificate"	means a certificate in the relevant form set out in Schedule Part 22 (<i>Certificates</i>)
"Commissioning End Date"	means the date by which the parties' commissioning activities are programmed to be completed in accordance with the Final Commissioning Programme
"Committed Standby Facility"	means any standby facility that is committed by the Senior Funders at the date of this Agreement for the purposes of funding any unforeseen cost overrun, increased expenses or loss of revenues incurred by Project Co.
"Common Terms Agreement"	means the common terms agreement dated on or around the date of this Agreement among Project Co, Hold Co and the Senior Funders
"Compensation Event"	has the meaning given in Clause 29.10

"Compensation Payment"	has the meaning given in Clause 46.7
"Completion Criteria"	means the Completion Tests as defined in the Appendix to Schedule Part 10 (<i>Outline Commissioning Programme</i>) and as may be applicable to each Phase
"Confidential Information"	means: <ul style="list-style-type: none"> (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988 and (b) Commercially Sensitive Information
"Consents"	means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorisations required by Law, and all necessary consents and agreements from any third parties (including, without limitation, any Planning Permission), needed to carry out the Project Operations in accordance with this Agreement but excluding the College Planning Conditions.
"Construction Contract"	means the design and build contract dated the same date as this Agreement between Project Co and the Contractor (which, as at the date of this Agreement, is in the Agreed Form) as amended or replaced from time to time in accordance with this Agreement
"Construction Period Quarter"	means each period of three Construction Period Months with the final quarter ending on the date of the last Application for Payment in respect of the Halls of Residence
"Construction Period Month"	means any month or part of a month which falls after commencement of the Works and prior to the Final Actual External Works Completion Date
"Construction Phase"	means the period from and including the Commencement Date to and including the last Actual External Works Completion Date
"Construction Quality Plan"	means the document at Section 8 (<i>Quality Plans (Design and Construction)</i>) of Schedule Part 6 (<i>Construction Matters</i>)
"Contamination"	means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour) and including without limitation genetically modified organisms

"Contract Month"	means a calendar month provided that: <ul style="list-style-type: none"> (a) the first Contract Month shall be the period from and including the first Payment Commencement Date to and including the last day of the calendar month in which the Payment Commencement Date falls; and (b) the last Contract Month shall be the period from and including the first day of the calendar month in which the Expiry Date or Termination Date (as the case may be) falls to and including the Expiry Date or the Termination Date (as the case may be)
"Contract Year"	means the period from the date of this Agreement to the following 31 March and subsequently each period of 12 calendar months commencing on 1 April, until the final Contract Year which is the period from 1 April prior to expiry or termination of this Agreement to the Expiry Date or Termination Date
"Contracting Associate"	means the Contractor, any Service Provider and any other entity which performs on behalf of Project Co any material function in connection with this Agreement or the Project Operations
"Contractor"	means Sir Robert McAlpine Limited engaged by Project Co to carry out the Works and any substitute design and/or building contractor engaged by Project Co as may be permitted by this Agreement
"Contractor's Collateral Agreement"	means a collateral agreement among the College, Project Co and the Contractor in the form set out in Section 1 of Schedule Part 9 (<i>Collateral Agreements</i>)
"Contractor's Site Manager"	means the manager to be appointed by the Contractor for purposes of supervision of all day-to-day activities on the Site
"Contractor's Site Rules"	means the Contractor's rules, applicable on the Site to the College, Project Co, the Contractor and their respective sub-contractors and suppliers of every tier during the construction of the Facilities
"Convictions"	means other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 Scottish SI 2003/231) or any replacement or amendment to those Orders)
"Decant Accommodation"	means the accommodation to be provided by Project Co as described in Paragraphs 4.3.4 and 4.3.5 in Section 3

of Schedule Part 6 (*Construction Matters*)

"Decant Services"	means the ancillary services to be provided by Project Co as described in Paragraph 4.3.6 of Section 3 of Schedule Part 6 (<i>Construction Matters</i>)
"Deduction"	means a deduction to be made in calculating a Monthly Service Payment, calculated in accordance with Section 3 (<i>Deductions from Monthly Service Payments</i>) of Schedule Part 14 (<i>Payment Mechanism</i>)
"Deemed Liability"	has the meaning given in Clause 46.8.3
"Default Interest"	means any increased margin that is payable to the Senior Funders or which accrues as a result of any payment due to the Senior Funders not being made on the date on which it is due
"Default Interest Rate"	means 2% over LIBOR
"Defects"	means any defect or fault in the Works and/or the NPD Facilities and the Halls of Residence (not being a Snagging Matter) which occurs due to a failure by Project Co to meet the College's Construction Requirements and/or Project Co's Proposals or otherwise to comply with its obligations under this Agreement
"Defects Liability Period"	means the period of 12 months from the Halls of Residence Phase Actual Completion Date
"Delay Event"	has the meaning given in Clause 29.3
"Derogated Low Value Change"	has the meaning given in Schedule Part 16 (<i>Change Protocol</i>)
"Design Data"	means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing and/or operation of the NPD Facilities and the Halls of Residence
"Design Quality Plan"	means the document at Section 8 (<i>Quality Plans (Design and Construction)</i>) of Schedule Part 6 (<i>Construction Matters</i>)
"Design Team"	means: (a) Michael Laird Architects Limited (registered number SC255196) whose registered office is 5 Forres Street, Edinburgh EH3 6DE; (b) Ove Arup and Partners Scotland Limited (registered number SC062237) whose registered office is Scotstoun House, South Queensferry, West Lothian EH30 9SE; and (b) FES Limited (registered number SC053848) whose registered office is at Forth House, Pirnhall Business Park, Stirling FK7 8HW

"Development Framework"	means the development framework noted by Glasgow City Council's Business and the Economy Policy Development Committee on 20 April 2010
"Direct Losses"	means, subject to the provisions of Clause 54.1, all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses
"Disclosed Data"	means any Design Data and any other written information, data and documents (excluding information contained within Schedule Part 5 (<i>Land Matters</i>)) made available or issued to Project Co or any Project Co Party in connection with the Project by or on behalf of the College (or any College Party) whether on, before or after the execution of this Agreement
"Discriminatory Change in Law"	<p>means any Change in Law the effect of which is to discriminate directly against:</p> <ul style="list-style-type: none"> (a) colleges whose design, construction, financing and operation are procured under the private finance initiative in relation to other similar projects; or (b) companies undertaking projects procured by contracts under the private finance initiative in relation to other companies undertaking similar projects; or (c) the City of Glasgow College New Campus NPD Project in relation to other similar facilities; or (d) Project Co in relation to other companies <p>save:</p> <ul style="list-style-type: none"> (i) where such Change in Law is in response to any act or omission on the part of Project Co which is illegal (other than an act or omission rendered illegal by virtue of the Change in Law itself); (ii) that such action shall not be deemed to be discriminatory solely on the basis that its effect on Project Co is greater than its effect on other companies; and (iii) that a change in taxes or the introduction of a tax affecting companies generally or a change in VAT shall be deemed not to be discriminatory in any circumstances (to avoid doubt, such changes being given effect in accordance with Clause 35 (<i>VAT and Construction Industry Tax Deduction Scheme</i>))

"Dispute"	has the meaning given in paragraph 1 of Schedule Part 20 (<i>Dispute Resolution Procedure</i>)
"Dispute Resolution Procedure"	means the procedure set out in Schedule Part 20 (<i>Dispute Resolution Procedure</i>)
"EIB Contract"	means the finance contract between Project Co, Hold Co and European Investment Bank dated on or around the date of this Agreement
"Emergency"	means an event causing or, in the reasonable opinion of a party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment, in each case on a scale beyond the capacity of the emergency services or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services
"Encumbrance"	means any option, right of pre-emption, pledge, security, interest, lien, charge, mortgage, lease, licence, claim, condition, retention or other encumbrance or restriction whether imposed by agreement, by law or otherwise
"Environmental Information (Scotland) Regulations"	means the Environmental Information (Scotland) Regulations 2004 together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant Government Department in relation to such regulations
"Equipment"	means the equipment referred to in Schedule Part 11 (<i>Equipment and Migration</i>)
"Escrow Account"	has the meaning given in the Common Terms Agreement in the Agreed Form
"Estimated Deductions"	has the meaning given in Clause 34.2.1
"Estimated Increased Maintenance and Lifecycle Costs"	has the meaning given in Clause 23.7
"Excusing Cause"	has the meaning given in Clause 51.2
"Expanded Migration Programme"	means the programme setting out the standards, specifications, procedures and other requirements for the carrying out of the Migration Services and the procurement, installation and commissioning of the Equipment set out in Section 4 Appendix Management of the Works of the Project Co's Proposals
"Expiry Date"	means midnight on 31 August 2041
"Facilities"	means the Riverside Facility, the City Facility and the Halls of Residence but in respect of the Halls of Residence only from the Commencement Date until the date of termination of RAFM

"Facility Manager"	means Project Co's duty manager who shall be present at the NPD Facilities in accordance with the Service Level Specification
"Fees Regulations"	means the Freedom of Information (Fees for Required Disclosure (Scotland) Regulations 2004
"Final Actual External Works Completion Date"	means the day on which all of the Actual External Works Completion Dates have been achieved;
"Final External Works Completion Date"	means whichever is the later of the Riverside External Works Completion Date and the City External Works Completion Date.
"Final Commissioning Programme"	means the programme jointly developed and agreed by the College and Project Co in accordance with the provisions of Clause 17.1
"Final Migration Programme"	means the programme for delivery of the Migration Services and the installation and commissioning of the Equipment jointly developed by Project Co and the College in accordance with Schedule Part 11 (<i>Equipment and Migration</i>)
"Financial Close"	means the date of this Agreement
"Financial Model"	means the computer spreadsheet model for the Project incorporating statements of Project Co's cashflows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model, as amended from time to time in accordance with the terms of Clause 37 (<i>Financial Model</i>), a copy of which is attached to this Agreement on disk as Attachment A
"Finishes"	means those finishes listed in the table set out in paragraph 1.2.3 of Schedule 8 (<i>Review Procedure</i>)
"Finishes Proposal Date"	means, in relation to a Finish, the relevant date identified in the table set out in paragraph 1.2.3 of Schedule 8 (<i>Review Procedure</i>)
"Finishes Selection Date"	means, in relation to a Finish, the relevant date identified in the table set out in paragraph 1.2.3 of Schedule 8 (<i>Review Procedure</i>)
"First Party"	has the meaning given in Clause 35.3
"FOI(S)A"	means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation (as defined in section 73 of the Freedom of Information (Scotland) Act 2002) made under the Freedom of Information (Scotland) Act 2002 from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant Government

department in relation to such Act

"Force Majeure"	has the meaning given in Clause 31 (<i>Force Majeure</i>)
"Functional Area"	means an area of the NPD Facilities identified as such in Appendix 2 to Schedule Part 14 (<i>Payment Mechanism</i>)
"Funders"	means the Senior Funders and the Subordinated Funders.
"Funders' Direct Agreement"	means the agreement to be entered into between the College, the Senior Funders and Project Co in the form set out in Schedule Part 4 (<i>Funders' Direct Agreement</i>)
"Funding Agreements"	means all or any of the agreements or instruments to be entered into by Project Co or any of its Associates relating to the financing of the Project Operations (including the Initial Funding Agreements and any agreements or instruments to be entered into by Project Co or any of its Associates relating to the rescheduling of their indebtedness or the refinancing of the Project Operations)
"Funding Default"	means an Event of Default as defined in the Common Terms Agreement in respect of which written notice has been given by (i) Senior Funders to Project Co or (ii) Project Co to the Senior Funders
"Glasgow City Council"	means the City of Glasgow Council constituted in terms of the Local Government etc. (Scotland) Act 1994 and having its headquarters at City Chambers, George Square, Glasgow, G2 1DU (or any successor body)
"Global Agent"	means THE BANK OF NEW YORK MELLON acting through its London Branch whose registered office is One Canada Square, London, E14 5AL acting in its capacity as global agent for each Senior Funder (other than the Administrative Finance Parties (as defined in the Common Terms Agreement)) or such other party as may be appointed to perform the role of global agent pursuant to the Senior Funding Agreements from time to time
"Good Industry Practice"	means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances
"Government"	means the government of the United Kingdom or the Scottish Ministers
"Ground Physical and Geophysical Investigation"	means the investigation of all the conditions of and surrounding the Site and of any extraneous materials in, on or under the Site (including its surface and subsoil) to enable the Facilities to be designed and constructed and the Works to be carried out with due regard for those conditions and the seismic activity (if any) in the region

of the Site

"Group 1 Equipment"	means the equipment which Project Co is required to procure, install, commission and maintain as detailed in the Schedule of Equipment in Section 3(10) Appendix A of Schedule Part 6 (<i>Construction Matters</i>)
"Group 2 Equipment"	means the equipment which Project Co is required to procure, install and commission as detailed in the Schedule of Equipment in Section 3(10) Appendix A of Schedule Part 6 (<i>Construction Matters</i>)
"Group 3 Equipment"	means the equipment which the College will provide and Project Co will migrate, install and commission as detailed in Section 3(11) Appendix 4, Migration Data Sheets of Schedule Part 6 (<i>Construction Matters</i>)
"Group 5 Equipment"	means the equipment which the College will provide, install, commission and maintain prior to the issue of the Certificate of Practical Completion detailed in Appendix B and C of Section 3(10) of Schedule Part 6 (<i>Construction Matters</i>)
"H&S Conviction"	has the meaning given in Clause 40.1.5
"Halls of Residence"	means the buildings and other facilities, together with all supporting infrastructure (including plant and equipment) and other amenities to be constructed by Project Co on the Riverside Site in accordance with Section 3, Section 4 and Section 6 of Schedule Part 6 (<i>Construction Matters</i>) as required to enable Project Co to comply with its obligations under this Agreement, all as the same may be varied, amended or supplemented from time to time in accordance with this Agreement
"Halls of Residence Contract Sum"	means [REDACTED] (VAT zero rated)
"Halls of Residence Defects"	means any Defects in the Halls of Residence Works and/or the Halls of Residence
"Halls of Residence Payment Commencement Date"	means the Halls of Residence Phase Actual Completion Date
"Halls of Residence Phase"	means the design and construction of the Halls of Residence
"Halls of Residence Phase Actual Completion Date"	means the later of: (a) the date of the Certificate of Practical Completion issued by the Independent Tester in respect of the Halls of Residence Works pursuant to Clause 17.12; and (b) subject to Clause 14.5 the Halls of Residence Phase Completion Date.
"Halls of Residence Phase Completion Date"	means (subject to Clause 29 (<i>Delay Events</i>)) the 2 nd November 2015 or such other date as the parties may agree;
"Halls of Residence Retention"	means 3% of the Halls of Residence Contract Sum
"Halls of Residence Works"	means the design (including the preparation of all Design Data) construction, testing and commissioning

and completion of the Halls of Residence (including any temporary works) to be performed by Project Co in accordance with this Agreement (as varied, amended or supplemented from time to time in accordance with this Agreement

"Handback Amount"	has the meaning given in Schedule Part 18 (<i>Handback Procedure</i>)
"Handback Bond"	has the meaning given in Schedule Part 18 (<i>Handback Procedure</i>)
"Handback Certificate"	means the certificate of confirmation that the NPD Facilities comply with the Handback Requirements in the relevant form set out in Schedule Part 18 (<i>Handback Procedure</i>)
"Handback Programme"	has the meaning given in Schedule Part 18 (<i>Handback Procedure</i>)
"Handback Requirements"	has the meaning given in Schedule Part 18 (<i>Handback Procedure</i>)
"Handback Works"	has the meaning given in Schedule Part 18 (<i>Handback Procedure</i>)
"Health and Safety Regime"	means the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act 1990 and the Water Industry (Scotland) Act 2002 and any similar or analogous health, safety or environmental legislation in force from time to time
"Helpdesk"	has the meaning given in Schedule Part 12 (<i>Service Requirements</i>)
"High Value Change Stage 2 Submission"	has the meaning given in Schedule Part 16 (<i>Change Protocol</i>)
"Hold Co"	means Glasgow Learning Quarter (Holdings) Limited incorporated under the Companies Acts (registered number 08413783) and having its registered office at Eaton Court, Maylands Avenue, Hemel Hempstead Industrial Estate, Hemel Hempstead, Hertfordshire, HP2 7TR;
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006
"Hours for Programmed Maintenance"	means any time other than the Hours of Operation
"Hours of Operation"	means Core Times as defined in Schedule Part 12 (<i>Service Requirements</i>)
"ICT Design Revalidation"	means the process set out in Volume 2.S6.04.09 ICT Design Revalidation and Appendix 2.6.3.9.0.2 of Project Co's Proposals

"ICT Contract Sum"	[REDACTED] exclusive of VAT
"ICT Dependency"	means the ICT Dependency identified in column 4 of the ICT Dependency Register.
"ICT Dependency Register"	means the register contained in Section 13 of Schedule Part 6 (<i>Construction Matters</i>).
"ICT Relief"	means the ICT Relief identified (in respect of a specific ICT Dependency) in Column 9 of the ICT Dependency Register.
"ICT Services"	has the meaning given in Schedule Part 27 (<i>ICT Support and Maintenance</i>).
"ICT Services Contract"	means the contract dated the same date as this Agreement between Project Co and the ICT Service Provider (which as at the date of this Agreement is in the Agreed Form), by which Project Co will procure the performance of the ICT Services (as amended or replaced from time to time in accordance with this Agreement)
"ICT Service Event"	has the meaning given in Schedule Part 14 (<i>Payment Mechanism</i>)
"ICT Service Provider"	means FES Support Services Limited incorporated under the Companies Acts (registered number SC387816) and having its Registered Office at Forth House, Pirnhill Business Park, Stirling, FK7 8HW
"ICT Works"	means the design, deployment, commissioning and handover of the ICT infrastructure and equipment documented in Section 04.09 of the Project Co Proposals at Section 4 of Schedule Part 6 (<i>Construction Matters</i>)
"Indemnifier"	has the meaning given in Clause 49.3 (<i>Conduct of Claims</i>)
"Indemnity Period"	means the period beginning with the loss or damage and ending when the Services cease to be affected in consequence of the loss or damage but not exceeding the minimum indemnity period
"Independent Tester"	means Currie and Brown UK Ltd or such substitute independent tester as may be permitted pursuant to this Agreement
"Independent Tester Contract"	means the contract dated the same date as this Agreement in the form set out in Schedule Part 13 (<i>Independent Tester Contract</i>) or any replacement thereof among Project Co, the College and the Independent Tester
"Indirect Losses"	has the meaning given in Clause 54.1 (<i>Exclusions and Limits on Liability</i>)

"Information"	has the meaning given under section 73 of the Freedom of Information (Scotland) Act 2002
"Information System"	means a system for generating, sending, receiving, storing or otherwise processing electronic communications
"Initial Funding Agreements"	means the Senior Funding Agreements and Subordinated Funding Agreements entered into on or around the date of this Agreement
"Initial Senior Funding Agreements"	means each Finance Document (as defined in the Common Terms Agreement in the Agreed Form) entered into on or around the date of this Agreement
"Insurance Proceeds Account"	means the Joint Insurance Account as defined in the Common Terms Agreement in the Agreed Form
"Insurance Proceeds Account Agreement"	means the agreement in the form set out in Schedule 25 (<i>Insurance Proceeds Account Agreement</i>)
"Insurance Term"	means any term and/or condition required to be included in a policy of insurance by Clause 53 (<i>Insurance</i>) and/or Schedule Part 15 (<i>Insurance Requirements</i>) but excluding any risk
"Insurances"	means, as the context requires, all or any of the insurances required to be maintained by Project Co pursuant to this Agreement
"Intellectual Property"	means all registered or unregistered trademarks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered designs, the sui generis rights of extraction relating to databases, trade secrets and other confidential information or know-how
"Intellectual Property Rights"	means the Intellectual Property which (or the subject matter of which) is created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for the use by or on behalf of or for the benefit of Project Co) for the purposes of the design or construction of the NPD Facilities and the Halls of Residence, the operation, maintenance, improvement and/or testing of the Facilities or the conduct of any other Project Operation or otherwise for the purposes of this Agreement
"Interface Matrix"	means the interface matrix appended to Section 2 (<i>Method Statements</i>) of Schedule Part 12 (<i>Service Requirements</i>)
"Interim Project Report"	means a report prepared by Project Co setting out all information which the Contractor is required to provide to the Senior Funders in respect of a Funding Default;
"IRR"	means the pre-tax pre-financing project internal rate of return as shown in the Financial Model

"IT"	means information technology systems, hardware and software
"Key Sub-Contractor"	means the subcontractors appointed to complete the following works packages: <ul style="list-style-type: none"> (a) mechanical and electrical engineering (b) civil and structural engineering (c) architectural services (d) ICT infrastructure
"Key Sub-Contractor Collateral Agreements"	means the collateral agreements among the College, Project Co, the Contractor and the Key Sub-Contractors in the form set out in Section 3 of Schedule Part 9 (<i>Collateral Agreements</i>)
"Law"	means: <ul style="list-style-type: none"> (a) any applicable statute or proclamation or any delegated or subordinate legislation; (b) any enforceable community right within the meaning of section 2(1) of the European Communities Act 1972; (c) any applicable guidance, direction or determination with which the College and/or Project Co is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to Project Co by the College; and (d) any applicable judgement of a relevant court of law which is a binding precedent in Scotland <p>in each case in force in Scotland</p>
"LIBOR"	has the meaning given to it in the Commercial Loan Facility Agreement (in the Agreed Form and as defined in the Common Terms Agreement)
"Lifecycle Replacement"	means any works for the renewal or replacement of any Plant, Group 1 Equipment, or any other asset or part of the NPD Facilities that are necessary to ensure that the NPD Facilities are maintained in accordance with the Service Level Specification and Method Statements and that the NPD Facilities comply with the College's Construction Requirements and Project Co's proposals throughout the Project Term
"Loan Proceeds Account"	has the meaning given in the Common Terms Agreement in the Agreed Form
"Low Value Change"	has the meaning given in Schedule Part 16 (<i>Change</i>)

Protocol)

"Maintenance Works"	means any works for maintenance or repair of the NPD Facilities and/or the RAFM Assets that are necessary to ensure that the NPD Facilities and/or the RAFM Assets are maintained in accordance with Service Level Specification and Method Statements and that the NPD Facilities and the Halls of Residence comply with the College's Construction Requirements and Project Co's Proposals (including the renewal or replacement of any Plant or equipment other than Lifecycle Replacement) throughout the Project Term
"Malicious Damage Report"	has the meaning given in Clause 49A.2.1
"Medium Value Change"	has the meaning given in Schedule Part 16 (<i>Change Protocol</i>)
"Method Statements"	means the method of providing the Services as set out or identified in Section 2 (<i>Method Statements</i>) of Schedule Part 12 (<i>Service Requirements</i>) as amended from time to time in accordance with Schedule Part 16 (<i>Change Protocol</i>) and Clause 22 (<i>The Services</i>)
"Migration Equipment Table"	means the FF&E Migration data sheets contained in Section 3(11) Appendix 4 of Schedule Part 6 (<i>Construction Matters</i>)
"Migration Milestones"	means the table of migration milestones in Section 3 (<i>Migration Milestones</i>) of Schedule Part 11 (<i>Equipment and Migration</i>)
"Migration Service"	means the migration of staff and students, equipment and other items in accordance with Section 3(11) of the College's Construction Requirements and Section 4(11) of the Project Co's Proposals and in accordance with the Final Migration Programme
"Migration Service Payment"	means the amounts indicated in columns A and B (as exclusive or inclusive of VAT respectively) of Section 3 of Schedule Part 11 (<i>Equipment and Migration</i>);
"Monthly Service Payment"	has the meaning given in Schedule Part 14 (<i>Payment Mechanism</i>)
"Monthly Service Report"	means a monthly report to be prepared by Project Co and provided to the College in accordance with the relevant provisions in Section 1 (<i>Service Level Specification</i>) of Schedule Part 12 (<i>Service Requirements</i>)
"Net Present Value"	has the meaning given in Schedule Part 23 (<i>Refinancing</i>)
"New Entrants"	means a person who is trained and employed to do a specific job for a minimum of 26 weeks and is leaving an educational establishment or a training provider, or a person who is trained and employed to do a specific job for a minimum of 26 weeks that has been non-employed with no experience or a person with construction

experience who has been unemployed for at least three months and is seeking employment

"NPD Facilities"

means the Riverside Facility and the City Facility

"NPD Mandatory Provisions"

means:

- (a) the articles listed in Article 16.5.2 of the Articles of Association; and
- (b) Project Co's obligations at Clause 4.4 of this Agreement

"NPD Requirements"

means all of the following requirements:

- (a) not to make a distribution of profit or surplus, or any transfer of assets to one or more shareholders whether by means of any payment or transfer of assets, directly or indirectly, in cash or in any kind, whether by way of dividend, bonus or release of obligation or in any other way otherwise than:
 - (i) for full consideration; or
 - (ii) to the College pursuant to Clause 36 (Payment of Surpluses and Compliance with NPD Requirements) or Article 12 or 13 of the Articles of Association); or
 - (iii) Project Co's Share of a Project Co Change; or
 - (iv) Project Co's Share of a Refinancing Gain;
- (b) not to amend or delete, or add new provisions to the Articles of Association, which have the effect of amending or frustrating the NPD Mandatory Provision
- (c) to comply with the NPD Mandatory Provisions; and
- (d) not to frustrate the appointment of the Public Interest Director to Project Co's board of directors in accordance with the Articles of Association

"Operational Functionality"

means in relation to each of the NPD Facilities the following matters:

- (a) points of access to and within the schools and departments in each relevant building forming part of the NPD Facilities;
- (b) the relationship between the buildings forming the NPD Facilities; and
- (c) adjacencies between schools and departments and rooms and, where relevant

between departments within the NPD Facilities

but only in so far as the above relate to or affect the provision of the College Services and as more particularly described in Section 9 of Schedule Part 6 (*Construction Matters*)

"Operational Insurances"	means the insurances required by Clause 53.2 and "Operational Insurance" means any one of such insurances
"Operational Term"	means in respect of the Facilities the period from the Phase Actual Completion Date until the end of the Project Term
"Option Period"	has the meaning given in Clause 53.14.3 (<i>Uninsurable Risks</i>)
"Original Senior Commitment"	means the amount committed under the Senior Funding Agreements as at Financial Close (as adjusted to take into account any Qualifying Change)
"Outline Commissioning Programme"	means the programme setting out the standards, specifications, procedures and other requirements for the carrying out and completion of the commissioning activities of the parties set out in Appendix A to 2.6.3.4.9 (Constraints Section, Management of the Works) of the Project Co Proposals
"Payment Commencement Date"	means the first to occur of either (i) City Payment Commencement Date; or (ii) Riverside Payment Commencement Date.
"Payment Mechanism"	means Schedule Part 14 (<i>Payment Mechanism</i>)
"Performance Failure"	has the meaning given in Section 1 of Schedule Part 14 (<i>Payment Mechanism</i>)
"Performance Guarantees"	means the guarantees to Project Co in respect of the Construction Contract, the Service Contract and the ICT Services Contract which, as at the date of this Agreement are in the Agreed Form
"Permitted Borrowing"	means without double-counting, any: <ul style="list-style-type: none">(a) advance to Project Co under the Senior Funding Agreements, provided that such advance is not made under any Committed Standby Facility;(b) Additional Permitted Borrowing;(c) advance to Project Co under any Committed Standby Facility which is made solely for the purpose of funding any cost overruns, increased expenses or loss of revenue which Project Co incurs, provided that such funds are not used in substitution for other sources of committed funding designated for those

purposes; and

- (d) interest and, in respect of the original Senior Funding Agreements only (as entered into at the date of this Agreement, prior to any subsequent amendment), other amounts accrued or payable under the terms of such original Senior Funding Agreements

except where the amount referred to in paragraphs (a) to (d) above is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing

"Phase"

means, as the context may require, the Riverside Phase and/or City Phase and/or Halls of Residence Phase and/or City Phase External Works and/or Riverside Phase External Works and **"Phases"** shall be construed accordingly

"Phase Actual Completion Date"

means, as the context may require, the Riverside Phase Actual Completion Date and/or the City Phase Actual Completion Date and/or the Halls of Residence Phase Actual Completion Date and/or City Actual External Works Completion Date and/or Riverside Actual External Works Completion Date

"Phase Completion Date"

means, as the context may require, the Riverside Phase Completion Date and/or the City Phase Completion Date, and/or the Halls of Residence Phase Completion Date and/or City External Works Completion Date and/or Riverside External Works Completion Date

"Physical Damage Policies"

means the policies of insurance referred to in paragraph 1 (*Contractors' 'All Risk' Insurance*) of Section 1 (*Policies to be Taken Out by Project Co and Maintained During the Design and Construction Phase*) and paragraph 1 (*Property Damage*) of Section 2 (*Policies to be Taken Out By Project Co and Maintained From the Actual Completion Date*) of Schedule Part 15 (*Insurance Requirements*)

"Planning Permission"

means any planning permission, approval of reserved matters, listed building consent, conservation areas consent and/or other consent or approval reasonably required from time to time for construction and/or operation of the Facilities (including without limitation for any College Change and the planning approval)

"Plant"

means the infrastructure systems, building systems, fixed, and immovable equipment systems, installed as part of the Works or pursuant to a College Change as replaced from time to time

"Programme"

means the programme set out in Schedule Part 7 (*The Programme*) as revised and issued by Project Co (or on its behalf) from time to time pursuant to Clause 14 (*Programme and Dates for Completion*)

"Programmed Maintenance"

means the maintenance work which Project Co is to carry out in accordance with Schedule of Programmed

	Maintenance
"Programmed Maintenance Information"	has the meaning given in Clause 23.3
"Prohibited Act"	has the meaning given in Clause 44 (<i>Corrupt Gifts and Payments</i>)
"Project"	has the meaning given in Recital B;
"Project Co Event of Default"	has the meaning given in Clause 40 (<i>Project Co Events of Default</i>)
"Project Co Party"	means Project Co's agents and contractors (including without limitation the Contractor, the Service Providers and the ICT Service Provider) and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and the Additional Persons and "Project Co Parties" shall be construed accordingly
"Project Co's Post-Completion Commissioning"	means Project Co's commissioning activities carried out in accordance with Clause 18.1
"Project Co's Pre-Completion Commissioning"	means Project Co's commissioning activities to be carried out in accordance with Clause 17 (<i>Pre Completion Commissioning and Completion</i>)
"Project Co's Proposals"	means the document at Section 4 (<i>Project Co Proposals</i>) of Schedule Part 6 (<i>Construction Matters</i>) as amended from time to time in accordance with Schedule Part 16 (<i>Change Protocol</i>) and all references to Contractor's Proposals in the Project Documents shall be construed as references to the Project Co's Proposals
"Project Co's Remedial Services"	means any activities to be performed by or on behalf of Project Co pursuant to its rights under Clause 23.15
"Project Co's Representative"	means the person appointed by Project Co pursuant to Clause 8 (<i>Representatives</i>)
"Project Data"	means: <ul style="list-style-type: none"> (a) all Design Data; (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Services; and (c) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Operations or this Agreement;
"Project Documents"	means the Ancillary Documents and the Funding Agreements

"Project Operations"	means the carrying out of the Works, the carrying out of Project Co's Pre-Completion Commissioning and Project Co's Post-Completion Commissioning, the management and provision of the Services and the performance of all other obligations of Project Co under this Agreement from time to time
"Project Term"	means the period commencing at midnight on the date of this Agreement and ending on the earlier of the Expiry Date and the Termination Date
"Provisional Sums"	means the provisional sums contained in Schedule Part 29 (<i>Capital Payments</i>).
"PRS Timetable"	has the meaning given in Clause 23.16
"Public Interest Director"	means Alastair Young
"Qualifying Change"	<p>means (unless expressly stated otherwise):</p> <ul style="list-style-type: none"> (a) a Low Value Change in respect of which the parties have agreed the method of implementation; or (b) a Medium Value Change in respect of which the College has issued a confirmation notice pursuant to paragraph 7.1.1 of Section 3 (<i>Medium Value Changes</i>) of Schedule Part 16 (<i>Change Protocol</i>); or (c) a High Value Change which has received Stage 2 Approval pursuant to paragraph 8.2.1 of Section 4 (<i>High Value Changes</i>) of Schedule Part 16 (<i>Change Protocol</i>) <p>in each case provided that any necessary changes required to be made to any Project Document and/or Ancillary Document pursuant to Schedule Part 16 (<i>Change Protocol</i>) have been given effect to and become unconditional</p>
"Quality Plans"	means the Design Quality Plan and Construction Quality Plan, prepared in accordance with Section 8 (<i>Quality Plans (Design and Construction)</i>) of Schedule Part 6 (<i>Construction Matters</i>), and the Services Quality Plan, prepared in accordance with Section 8 (<i>Service Quality Plan</i>) of Schedule Part 12 (<i>Service Requirements</i>), as required to be implemented by Project Co in accordance with Clause 20 (<i>Quality Assurance</i>)
"RAFM"	means the services which form part of the Services to be provided, managed and/or procured by Project Co for the College in accordance with Section G of Schedule Part 12 (<i>Service Requirements</i>)
"RAFM Assets"	means the RAFM Existing Assets and the RAFM New Assets
"RAFM Deduction"	means a deduction to be made in calculating a RAFM Monthly Service Payment calculated in accordance with

Section 3 (*Deduction from RAFM Monthly Service Payments*) of Schedule Part 14A (*RAFM Payment Mechanism*)

"RAFM Existing Assets"	means the marine skills centre, jetty and pontoon shown in yellow on the Riverside Assets Plan
"RAFM Lifecycle Schedule"	shall have the meaning given in Schedule Part 28
"RAFM New Assets"	means the Halls of Residence
"RAFM Payment Mechanism"	means Schedule Part 14A (<i>RAFM Payment Mechanism</i>)
"RAFM Transition Programme"	means the programme for transition of the RAFM from Project Co to the College agreed by the parties in accordance with Clause 42A.3
"Range of Finishes"	has the meaning given in paragraph 1.2.3(a) of Schedule Part 8 (<i>Review Procedure</i>)
"Ratchets"	means (i) any accrued Availability Failures and/or Performance Failures that have been taken into account in calculating Deductions applicable to repeated failures pursuant to paragraph 6 of Section 3 of Schedule Part 14 (<i>Payment Mechanism</i>) and (ii) any accrued Service Events that have been taken into account pursuant to paragraph 7 of Section 3 of Schedule Part 14 (<i>Payment Mechanism</i>)
"Rectification"	has the meaning given in Schedule Part 14 (<i>Payment Mechanism</i>)
"Rectification Period"	has the meaning given in Schedule Part 14 (<i>Payment Mechanism</i>)
"Refinancing"	has the meaning given in Schedule Part 23 (<i>Refinancing</i>)
"Reinstatement Plan"	has the meaning given in Clause 53.22 (<i>Reinstatement</i>)
"Reinstatement Works"	has the meaning given in Clause 53.22.3 (<i>Reinstatement</i>)
"Relevant Authority"	means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom, or of the European Union, (or of the Scottish Government or the Scottish Parliament)
"Relevant Certificate"	means any of a CP Interim Certificate or CP Payment Certificate (as such terms are defined in Clauses 34A.6 and 34A.18 respectively of the Construction Contract issued by the Independent Tester pursuant to Clause 34A of the Construction Contract or a Certificate issued by the Independent Tester pursuant to Clause 34A or Clause 34B of this Agreement
"Relevant Change in Law"	has the meaning given in Clause 32.3 (<i>Changes in Law</i>)

"Relevant Event"	has the meaning given in Section 1 of Schedule Part 16 (<i>Change Protocol</i>)
"Relevant Incident"	has the meaning given in Clause 53.22.2 (<i>Reinstatement</i>)
"Relevant Payment"	has the meaning given in Clause 53.14.3
"Relevant Proceeds"	has the meaning given in Clause 53.22.2 (<i>Reinstatement</i>)
"Relevant Sub- Contract"	means every sub-contract under the exception of those contracts which Project Co considers, acting reasonably to be of a specialist nature or where preferred contractors have been identified
"Relevant Supply Opportunity"	means every supply opportunity under the exception of those contracts which Project Co considers, acting reasonably to be of a specialist nature or where preferred contractors have been identified
"Relevant Tax Liability"	has the meaning given in Clause 46.7
"Relief"	has the meaning given in Clause 46.8
"Relief Events"	has the meaning given in Clause 30 (<i>Relief Events</i>)
"Request for Information"	has the meaning set out in the FOI(S)A or the Environmental Information (Scotland) Regulations as relevant (where the meaning set out for the term "request" shall apply)
"Required Action"	has the meaning given in Clause 24.7
"Reserved Rights"	means the matter referred to in Section 2 (<i>Reserved Matters</i>) of Schedule Part 5 (<i>Land Matters</i>)
"Restricted Person"	means either: <ul style="list-style-type: none"> (a) a person providing or proposing to provide educational services of a similar nature to those provided or contemplated by the College at the time in question; or (b) any person who has a material interest in the production of tobacco products and/or alcoholic beverages
"Retail Prices Index" or "RPI"	means the Retail Prices Index (All Items) as published by the Office for National Statistics from time to time (the "Index"), or, failing such publication or in the event of a fundamental change to the Index, such other index as the parties may agree, or such adjustments to the Index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been in had the Index not ceased to be published or the relevant fundamental change not made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute

	Resolution Procedure
"Revenue"	means the projected Unavoidable Fixed Costs and Senior Debt Service Costs of Project Co
"Reviewable Design Data"	means the Design Data listed at Section 5 (<i>Reviewable Design Data</i>) of Schedule Part 6 (<i>Construction Matters</i>)
"Revised Senior Debt Termination Amount"	has the meaning given in Section 6 (<i>Definitions</i>) of Schedule Part 17 (<i>Compensation on Termination</i>)
"Riverside Actual External Works Completion Date"	means the later of: <ul style="list-style-type: none"> (a) the date of the Certificate of Practical Completion issued by the Independent Tester in respect of the Riverside Phase External Works, pursuant to Clause 17.12; and (b) subject to Clause 14.5 the Riverside External Works Completion Date.
"Riverside Annual Service Payment"	has the meaning given to it in Schedule Part 14A (<i>RAFM Payment Mechanism</i>)
"Riverside Assets Plan"	means the plan in Appendix 4 to Schedule Part 5 (<i>Land Matters</i>)
"Riverside Decant Accommodation"	means the part of the Decant Accommodation to be constructed on the area shown coloured blue on the Riverside Access Plan 2
"Riverside External Works Completion Date"	means (subject to Clause 29 (<i>Delay Events</i>)) 17th October 2016 or such other date as the parties may agree;
"Riverside Facility"	means the buildings and other facilities, together with all supporting infrastructure (including the Plant and the Group 1 Equipment), external hard-standings, specialist surfaces and other amenities to be constructed by Project Co on the Riverside Site, but excluding (a) all Equipment other than Group 1 Equipment and (b) the Halls of Residence, all as may be varied, amended or supplemented from time to time in accordance with this Agreement
"Riverside Group 2 Equipment Contract Sum"	means [REDACTED] exclusive of VAT
"Riverside ICT Contract Sum"	means [REDACTED] exclusive of VAT.
"Riverside Payment Commencement Date"	means the Riverside Phase Actual Completion Date
"Riverside Phase"	means the design, construction, and maintenance of the Riverside Facility
"Riverside Phase Actual Completion Date"	means the later of <ul style="list-style-type: none"> (a) the date of the Certificate of Practical Completion issued by the Independent Tester

in respect of Riverside Phase pursuant to Clause 17.12; and

(b) subject to Clause 14.5, the Riverside Phase Completion Date

"Riverside Phase Completion Date"	means (subject to Clause 29 (<i>Delay Events</i>)) 17th August 2015 or such other date as the parties may agree
"Riverside Phase External Works"	has the meaning given to it in Schedule Part 6 (<i>Construction Matters</i>)
"Riverside Site"	means the land made available to Project Co for the construction and maintenance of Riverside Facility and the Halls of Residence as set out in the relevant Site Plan in Appendix 3 of Schedule Part 5 (<i>Land Matters</i>)
"Riverside Walkway Longstop Date"	means 31st July 2016;
"Riverside Walkway"	means the area shown coloured blue on the plan titled Riverside Assets Plan;
"Riverside Walkway Sums"	██████████ exclusive of VAT
"Riverside Walkway Works"	means the works to the public walkway adjacent to the Riverside Facility between the railway viaduct and Crown Street as detailed in section 5.6.3.1 of the College's Construction Requirements and as required to satisfy Riverside Planning Consent Condition 02 as specified in the Riverside Site Decision Notice Reference 13/00205/DC
"Room Data Sheets"	means the room data sheets set out or identified in Section 6 (<i>Room Data Sheets</i>) of Schedule Part 6 (<i>Construction Matters</i>) as amended from time to time in accordance with the terms of this Agreement
"Schedule of Lifecycle Replacement"	means the programme of Lifecycle Replacement for the Project Term and/or any programme of Lifecycle Replacement for a Contract Year prepared in accordance with Clause 23A (<i>Lifecycle Replacement</i>) as the context requires that complies with the requirements set out in Clause 23A
"Schedule of Programmed Maintenance"	means the programme referred to in Clause 23.1 to be submitted to the College's Representative by Project Co in accordance with Schedule Part 8 (<i>Review Procedure</i>)
"Scottish Funding Council"	means the Scottish Further and Higher Education Funding Council, a Non-Departmental Public Body of the Scottish Government, established by the Further and Higher Education (Scotland) Act 2005;
"Scottish Futures Trust"	means Scottish Futures Trust Limited (Company Number SC348382), having its registered office at 1 st Floor, 11-15 Thistle Street, Edinburgh EH2 1DT
"Scottish Water Plan"	means the Scottish Water Plan in Appendix 1 to

Schedule Part 5 (*Land Matters*)

"Second Party"	has the meaning given in Clause 35.3
"Security Trustee"	means BNY Mellon Corporate Trustee Services Limited (Registered Number 02631386) acting in its capacity as security trustee as more particularly referred to in the Security Trust and Intercreditor Deed (as defined in the Common Terms Agreement) or such other party as may be appointed to perform the role of security trustee pursuant to the Security Trust and Intercreditor Deed (as defined in the Common Terms Agreement)
"Senior Debt"	has the meaning given in Section 6 (<i>Definitions</i>) of Schedule Part 17 (<i>Compensation on Termination</i>)
"Senior Debt Service Costs"	means interest and debt service costs incurred in respect of the Senior Funding Agreements less (a) sums which are in arrears; (b) all sums reserved by Project Co and which Project Co is entitled to use to make such payments, without breaching the Senior Funding Agreements
"Senior Funders"	means each Finance Party (as defined in the Common Terms Agreement in the Agreed Form) from time to time and any other person providing senior debt finance under the Senior Funding Agreements to Project Co from time to time and whether in addition to or as successors, assignee or transferee of the Finance Parties in any capacity
"Senior Funding Agreements"	means the Initial Senior Funding Agreements as amended as permitted under Clause 4 (<i>Project Documents</i>)
"Service Contract"	means the contract dated the same date as this Agreement between Project Co and the Service Provider (which as at the date of this Agreement is in the Agreed Form), by which Project Co will procure the performance of the Services (as amended or replaced from time to time in accordance with this Agreement)
"Service Event"	has the meaning given in Schedule Part 14 (<i>Payment Mechanism</i>)
"Service Level Specification"	means the requirements of the College set out in Section 1 (<i>Service Level Specification</i>) of Schedule Part 12 (<i>Service Requirements</i>) as amended from time to time in accordance with Schedule Part 16 (<i>Change Protocol</i>)
"Service Provider"	means each of FES FM Limited or any other person engaged by Project Co from time to time as may be permitted by this Agreement to procure the provision of the Services (or any of them)
"Service Provider's Collateral"	means the collateral agreement among the College,

Agreement"	Project Co and the Service Provider in the form set out in Section 2 of Schedule Part 9 (<i>Collateral Agreements</i>)
"Services"	means the services to be provided, managed and/or procured by Project Co for the College in accordance with Schedule Part 12 (<i>Service Requirements</i>) as subsequently amended or adjusted in accordance with this Agreement
"Services Quality Plan"	means the document set out in Section 3 (<i>Services Quality Plan</i>) of Schedule Part 12 (<i>Service Requirements</i>)
"Shareholder(s)"	means any person(s) who from time to time, as permitted by this Agreement, holds share capital in Project Co or Hold Co which persons are, as at the date of this Agreement, listed as such in Schedule Part 21 (<i>Project Co Information</i>)
"Shareholders Agreements"	means the agreement or agreements between the Shareholders relating to Project Co, including any agreement relating to the subscription of equity (or other shareholder funding) by the Shareholders in Project Co or Hold Co
"Site"	means, as the context may require, the Riverside Site and/or the City Site
"Site Conditions"	means the condition of the Sites including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions
"Site Plans"	means the plans in Appendix 3 to Schedule Part 5 (<i>Land Matters</i>)
"Snagging Matters"	means minor items of outstanding work (including in relation to landscaping) which would not materially impair the College's use and enjoyment of the Facilities or the carrying out by the College of the College Services or the performance of the Services by Project Co
"Snagging Notice"	means the notice to be issued by the Independent Tester in accordance with Clause 17.14
"Specific Change in Law"	means any Change in Law which specifically refers to: <ul style="list-style-type: none"> (a) the provision of works or services the same as or similar to the Works or the Services in premises similar to the NPD Facilities; or (b) the holding of shares in companies whose main business is providing works or services the same as or similar to the Works or the Services in premises similar to the NPD Facilities
"Sub-Contractor"	means any third party (including the Contractor and a

	Services Provider) who enters into any Sub-Contract
"Sub-Contracts"	means the contracts entered into by or between Project Co, the Contractor and/or a Service Provider and other third parties in relation to any aspect of the Project Operations
"Subordinated Debt"	has the meaning in Section 6 (<i>Definitions</i>) of Schedule Part 17 (<i>Compensation on Termination</i>)
"Subordinated Funder"	means a person providing finance under a Subordinated Funding Agreement
"Subordinated Funding Agreements"	means the Subordinated Loan Notes issued by Project Co and Hold Co pursuant to the Subordinated Loan Note Instruments
"Subordinated Loan Note Instruments"	has the meaning given in the Common Terms Agreement in the Agreed Form
"Subsidiary"	has the meaning given to it in Section 1159 of the Companies Act 2006
"Suitable Substitute Contractor"	has the meaning given in Section 6 (<i>Definitions</i>) of Schedule Part 17 (<i>Compensation on Termination</i>)
"Surplus"	means, on any given date, the amount (if any) standing to the credit of the Surplus Account
"Surplus Account"	has the meaning given in the Common Terms Agreement in the Agreed Form
"Surplus Payment"	means the payment of a Surplus or Surpluses by Project Co to the College pursuant to Clause 36 (<i>Payment of Surpluses and Compliance with NPD Requirements</i>)
"Surplus Payment Date"	means, the Distribution Date as defined in the Common Terms Agreement in the Agreed Form
"Temporary Car Park"	means the area shown coloured blue on City Access Plan 4
"Termination Date"	means the date on which termination of this Agreement takes effect in accordance with its terms
"Title Conditions"	means title conditions set out in Section 1 of Schedule Part 5 (<i>Land Matters</i>)
"TPL Risk"	means a risk which is required to be insured under the third party liability insurance policy
"Training Schedule"	means the schedule to the draft operation and maintenance manual which details the training required in relation to: (a) Safety, Access and Security Systems; including Fire and Intruder Alarms, Access Control, CCTV, Door locks and any other system necessary for the effective and safe operation of the building; (b) Cleaning; demonstration of finishes and appropriate cleaning methodology; (c) Catering; training and

demonstration of kitchen and catering equipment and systems; (d) Teaching Equipment; training and demonstration of any new curriculum equipment and building features to be used by teaching staff including environmental room controls; and (d) Provision of the Building User Guide

"Transfer Regulations"

means the Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI No. 246)

"Unavoidable Fixed Costs"

means the fixed costs incurred by Project Co which first fall due for payment by Project Co during the period of indemnity but excluding:

- (a) costs which could have reasonably been mitigated or avoided by Project Co;
- (b) payments to Project Co's Associated Companies;
- (c) payments which are not entirely at arm's length;
- (d) payments to holders of equity in Project Co, providers of Subordinated Debt and any other financing costs other than Senior Debt Service Costs
- (e) indirect losses suffered or allegedly suffered by any person;
- (f) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations;
- (g) payments Project Co can recover under contract or in respect of which Project Co has a remedy against another person in respect of the same liability;
- (h) payments to the extent that Project Co has available to it including
 - (i) reserves which Project Co can draw upon without breaching the Senior Funding Agreements;
 - (ii) standby or contingent facilities or funds of Senior Debt or equity which Project Co is entitled to have available;
- (i) payments representing any profits of the Project (to the extent not already excluded in (e) above)

"Uninsurable"

means, in relation to a risk, either that:

- (a) insurance is not available to Project Co in respect of the Project in the worldwide insurance market with reputable insurers of

good standing in respect of that risk; or

- (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom

"Unprogrammed Maintenance Work"

has the meaning given in Clause 23.8

"Unreasonable Act"

means any act or omission which is contrary to any reasonable instruction, guidance or rules for the operation or management of the Facilities

"Utilities"

has the meaning given in the Service Level Specification

"VAT"

means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994

"VAT Sum"

has the meaning given in Clause 35 (*VAT and Construction Industry Tax Deduction Scheme*)

"Vitiating Act"

has the meaning given in Endorsement 2, Section 3 (*Endorsement*) of Schedule Part 15 (*Insurance Requirements*)

"Warning Notice"

means a notice validly served by the College's Representative on Project Co under Clause 24.3 (*Warning Notices*), specifying that it is a Warning Notice and setting out the circumstances that have given rise to the issue thereof

"Works"

means the design (including the preparation of all Design Data), construction, testing, commissioning and completion of the NPD Facilities and the Halls of Residence (including any temporary works) and the installation, testing, commissioning and completion of Equipment to be performed by Project Co in accordance with this Agreement (as varied, amended or supplemented from time to time in accordance with this Agreement) (but excluding the Riverside Walkway Works if Project Co has not obtained an access permission from Glasgow City Council in accordance with Clause 11.3 by the Riverside Walkway Longstop Date).

SECTION 2

INTERPRETATION

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

1. The headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement.
2. Except where the context expressly requires otherwise, references to Clauses, Sub-clauses, paragraphs, sub-paragraphs, and parts of the Schedule are references to Clauses, Sub-clauses, paragraphs, sub-paragraphs and parts of the Schedule to this Agreement and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Agreement.
3. The Schedule and Attachments (if any) to this Agreement are integral parts of this Agreement and a reference to this Agreement includes a reference to the Schedule and the Attachments (if any).
4. Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.
5. Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
6. The language of this Agreement is English. All correspondence, notices, drawings, Design Data, test reports, certificates, specifications and information shall be in English. All operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Agreement shall be in English.
7. Save where stated to the contrary, references to any agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments to agreements or documents) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned.
8. References to any Law are to be construed as references to that Law as from time to time amended or to any Law from time to time replacing, extending, consolidating or amending the same provided that the provisions of this paragraph shall be without prejudice to the operation of Clause 32 (*Changes in Law*) and Schedule Part 16 (*Change Protocol*) which shall operate in relation to a Change in Law on the basis set out in this Agreement.
9. Without prejudice to Clause 57.1, references to a public organisation (other than the College) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the relevant functions and relevant responsibilities of such public organisation.
10. Without prejudice to Clause 57.1, references to other persons (other than the College and Project Co) shall include their successors and assignees.
11. References to a deliberate act or omission of the College or any College Party shall be construed having regard to the interactive nature of the activities of the College and of Project Co and the expression shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.

12. The words in this Agreement shall bear their natural meaning. The parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
13. Reference to "parties" means the parties to this Agreement and references to "a party" mean one of the parties to this Agreement.
14. In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
15. All of Project Co's obligations, duties and responsibilities shall be construed as separate obligations, duties and responsibilities owed to the College and to be performed at Project Co's own cost and expense.
16. Unless expressly stated otherwise, references to amounts or sums expressed to be "index linked" are references to amounts or sums in June 2013 ("**Base Date**") prices which require to be adjusted whenever the provision containing the amount or sum is given effect in accordance with this Agreement to reflect the effects of inflation after that date. The adjustment shall be measured by changes in the relevant index published for that Contract Year as calculated in accordance with the following formula:

$$\text{Amount or sum in June 2013 prices} \times \frac{RPI_d}{RPI_0}$$

Where RPI_d is the value of the Retail Prices Index published or determined with respect to the month most recently preceding the date when the provision in question is to be given effect and RPI_0 is the value of the Retail Prices Index in respect of June 2013.

17. Reference to a document being in the Agreed Form is a reference to the form of the relevant document (or where appropriate, the form of relevant document on disc) agreed between the parties and for the purpose of identification either (i) initialled by each of them or on their behalf or (ii) entered into on or around the Commencement Date.
18. The operation of the Housing Grants, Construction and Regeneration Act 1996 upon any Project Document shall not affect the rights or obligations of the parties under this Agreement.
19. Words in parenthesis and italics appearing after a Clause reference or a reference to a Schedule Part are inserted for ease of reference only. If there is any discrepancy between the Clause reference and the words appearing in parenthesis and italics after the Clause reference, the Clause reference shall prevail.
20. Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a prescribed number of Business Days after a stipulated date or event, or "no later than" or "by" a stipulated date or event which is a prescribed number of Business Days after a stipulated date or event, the latest time for performance shall be 5pm on the last Business Day for performance of the obligations concerned.
21. Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a prescribed number of Business Days before a stipulated date or event, or "no later than" or "by" a stipulated date or event which is a prescribed number of Business Days before a stipulated date or event, the latest time for performance shall be 5pm on the last Business Day for performance of the obligations concerned.

SCHEDULE - Part 2

COMPLETION DOCUMENTS

SECTION 1

DOCUMENTS TO BE DELIVERED BY PROJECT CO

Unless an original document is specifically requested, a copy (certified by an officer of Project Co as being a true copy) of each of the following documents is to be delivered by Project Co to the College in accordance with Clause 2 (*Execution and Delivery of Documents*) of this Agreement:

1. Not used
2. The Shareholders Agreements
3. The Initial Funding Agreements and certification from Project Co that (1) the Initial Funding Agreements have become unconditional (other than any condition relating to the conditionality of this Agreement) and (2) that all conditions to the availability of funds to Project Co under the Initial Funding Agreements have been satisfied or waived, accompanied by evidence of the same.
4. The Construction Contract, the Services Contract, the ICT Services Contract and the Performance Guarantees, executed by the parties to such agreements.
5. An original of the Funders' Direct Agreement, the Independent Tester Contract, the Insurance Proceeds Account Agreement, the Collateral Agreements and the brokers letters of undertaking relating to the Insurances referred to in paragraph 11 below in the Agreed Form, executed by the parties to such agreements (other than the College).
6. The minutes of the meeting of the board of directors (certified as true copies) of each of Project Co, each Shareholder, Hold Co and each of the other parties to the documents listed in Section 1 (*Documents to be delivered by Project Co*) of Schedule Part 2 (*Completion Documents*), at which resolutions were passed approving the execution, delivery and performance of each relevant document to which such person is expressed to be a party and in each case authorising the directors, and/or approving the execution of a power of attorney to authorise named persons, to execute and deliver each such document and any other documents to be delivered by it pursuant to it. For the avoidance of doubt, this requirement shall not extend to the Senior Funders or the Design Team.
7. A certificate signed by a director of each of the companies referred to in paragraph 6 above setting out the names and specimen signatures of the person or persons authorised to sign on behalf of the relevant company.
8. Evidence of the share subscriptions required under the Shareholders Agreements and other shareholder funding commitments having been made by the Shareholders in Project Co and Hold Co.
9. Project Co's and Hold Co's Certificate of Incorporation and of any Certificate of Incorporation on Change of Name.
10. The Articles of Association of Project Co and Hold Co.
11. The insurance broker's letter of undertaking, evidence of the insurances required in accordance with Clause 53 (*Insurances*) having been taken out by Project Co and that the policies comply with the requirements of this Agreement, and an estimate by the insurance broker of the premiums for the Operational Insurances for the first year of the Operational Term.
12. Two computer disk copies of the Financial Model audited by relevant financial adviser.

13. Evidence that an election has been made for Project Co to act as "client" for the Project for the purposes of the CDM Regulations.
14. Evidence that the Insurance Proceeds Account has been opened.
15. Letter appointing Alastair Young as B Director
16. Certified extract of the Company's share register evidencing the subscription by the College for the Golden Share.
17. An original duly executed copy of this Agreement.

SECTION 2

DOCUMENTS TO BE DELIVERED BY THE COLLEGE

The College shall deliver to Project Co the following documents:

1. An original copy of the Funders' Direct Agreement, the Collateral Agreements, the Independent Tester Contract, the Insurance Proceeds Account Agreement and this Agreement, duly executed by the College.
2. A certified copy of the resolution of the College authorising the entry into and performance to all of the documents to which it is a party and in each case authorising a named person or persons to execute and deliver each such document and any documents to be delivered by it pursuant thereto.
3. An original copy of the Undertaking Agreement among The Scottish Ministers, Project Co, the College and BNY Mellon Corporate Trustee Services Limited as Security Trustee relating to this Agreement dated on or around the date of this Agreement duly executed by the College and the Scottish Ministers.
4. A certificate of the relevant officer of the College setting out the names and specimen signatures of the person or persons named in the resolution of the College referred to in paragraph 2 above.
5. A certified copy of the Minutes of the meeting of the Finance Committee of the Scottish Parliament approving the grant by the Scottish Ministers of the Scottish Ministers Undertaking.
6. An original copy of the letter from Scottish Government confirming that the Scottish Ministers have the necessary legal powers to enter into the Scottish Ministers Undertaking signed by Janet Edgell, Deputy Director of Infrastructure Investment within the Finance Directorate of the Scottish Government.
7. A certified copy of the Scottish Government letter of consent as required under the Further and Higher Education (Scotland) Act 1992, duly executed by Michael Russell as Cabinet Secretary for Education and Lifelong Learning, for the attention of Douglas Baillie at the College, dated 9 July 2013.
8. A certified copy of the Scottish Government letter of support as required under the Further and Higher Education (Scotland) Act 2005, duly executed by Michael Russell as Cabinet Secretary for Education and Lifelong Learning, for the attention of John McClelland at the Scottish Funding Council, dated 9 July 2013.
9. The Scottish Funding Council letter of consent as required under the College's financial memorandum, duly executed by Laurence Howells as Interim Chief Executive, dated 7th June 2013.
10. The Scottish Funding Council letter of support as required under the College's financial memorandum, duly executed by Laurence Howells as Interim Chief Executive, dated on or around the date hereof.
11. The College's acceptance letter, duly executed by Paul Little for the attention of Laurence Howells at the Scottish Funding Council dated on or around the date hereof.

SCHEDULE - Part 3

KEY WORKS PERSONNEL

Project Co Key Works Personnel are detailed in the table below

TITLE	NAME As at date of the Agreement
Project Director	Colin Clark
Project Engineer	Matthew Howieson
Financial Adviser	Stuart McCall
Project Manager (City)	Philip Galbraith
Project Manager (Riverside)	Paul Jaffray

SCHEDULE - Part 4

FUNDERS' DIRECT AGREEMENT

This is the Funders Direct Agreement in the Agreed Form.

SCHEDULE - Part 5

LAND MATTERS

SECTION 1

TITLE CONDITIONS

1. Not used.
2. Subject always to paragraph 6 below and Clauses 29 and 51 of this Agreement, rights for all third parties (or their successors and assignees) (excluding, for the avoidance of doubt, Network Rail) having equipment, apparatus, structures, cables or service media (including public water, sewerage, drainage, electricity, gas, telephone or telecommunications), or having rights to install such equipment, apparatus, structures, cables or service media):
 - 2.1 within the Site as at the Commencement Date; or
 - 2.2 which is to be installed and used in connection with the carrying out of the Project Operations, to (i) access the Site for purposes of inspecting, removing, maintaining, operating, replacing, repairing, enlarging, connecting or renewing such equipment, apparatus, structures, cables or service media and (ii) use, inspect, remove, maintain, operate, replace, repair, enlarge, connect or renew such equipment, structures, cables or service media.

PROVIDED THAT the existence of any such rights which are registered in the Land Register of Scotland or recorded in the General Register of Sasines but not expressly provided for in any other paragraph of this Part of the Schedule shall constitute a breach by the College of its obligations under Clause 9 (*Nature of Land Interests*).
3. Any other third party rights which have been constituted by way of any applicable laws relating to prescription.
4. All conditions contained in any wayleaves, deeds of servitude or other agreements entered into pursuant to Clause 9 (*Nature of Land Interests*) of this Agreement and any agreements entered into or to be entered into in respect of the temporary substations.
5. During the Construction Phase and the Operational Term, all walls, structures of walls, fences and other boundary features of the Sites for which the College is responsible as indicated in the Site Plans at common law or in terms of Legislation are repaired, maintained, reconstructed and/or rebuilt as required by such common law and/or Legislation by Project Co and in accordance with the College's Requirements.
6. During the period from the Commencement Date until 31 December 2013, a right in favour of Scottish Water to occupy and carry out the Scottish Water Works on the area identified and shown in cross hatching on the Scottish Water Plan, subject to Scottish Water maintaining access in favour of the College and Project Co over the area identified and delineated by a broken red line on the Scottish Water Plan except, subject always to the College giving not less than five Business Days' notice to Project Co:
 - 6.1 during the hours of 20.00 to 06.00 from Mondays to Sundays; and
 - 6.2 during the hours of 06.00 to 20.00 on Saturdays and Sundays subject to Scottish Water maintaining one lane open for vehicular access.

SECTION 2
RESERVED RIGHTS

1. In relation to the Riverside Site and the City Site, there are excepted and reserved the following rights to the following parties:
 - 1.1 to the College and/or the College's Representative, the right to enter the Site (with or without workmen and/or equipment) in accordance with the College and/or the College Representative's rights and obligations pursuant to this Agreement and/or carry out the activities provided for in this Agreement;
 - 1.2 to the College and to those authorised by the College a right of pedestrian and vehicular access and egress, at any time, over:
 - 1.2.1 the areas shown cross hatched in black on the plans referred to in paragraph 8 of Section 3 of this Schedule Part 5 (*Land Matters*); or
 - 1.2.2 such other route as is notified to the College by Project Co from time to time (in the case of changes to the route provided in City Access Plan 4) or agreed with the College (in all other cases),subject always to (in the case of vehicles) Project Co's rights to manage such access and egress under the aforementioned paragraph 8.
2. The Access Rights are subject to Section 3(4) (Constraints) of Volume 2 of Schedule Part 6 (*Construction Matters*).

SECTION 3

ANCILLARY RIGHTS

1. An exclusive right to access to, egress from and to remain on the areas shown coloured green on the Access Plans, in each case for the period shown on the relevant Access Plan.
- 1A. An exclusive right to access to, egress from and to remain on the areas shown coloured blue on Riverside Access Plan 1 from the earlier of (a) 1 July 2013; and (b) the date that the Parties agree, acting reasonably, that the area has been vacated by the College, to the date the Independent Tester certifies as the date that the Completion Criteria for the Riverside Decant Accommodation have been met.
2. Subject to 1 above, a non-exclusive right of:
 - 2.1 access and egress across the area shown outlined in red on each of the Site Plans to and from each of the coloured areas on the Access Plans;
 - 2.2 access to, egress from and a right to remain on each of the Sites in order to carry out surveys and investigations, service connections and service diversions, provided that the same does not materially and adversely impact on the College's use of the relevant area. Where any such work is likely to materially and adversely affect the College's use of the relevant area, Project Co shall seek the prior written consent of the College (such consent not to be unreasonably withheld or delayed) before commencing the same; and
 - 2.3 access to, egress from and a right to remain on each of the Sites for the installation, maintenance and removal of site barriers and hoardings and for the purpose of taking all reasonable action in the event of severe weather conditions or emergencies.
3. Rights to connect into all utilities and services serving the Sites to serve the Riverside Facility, the City Facility and the Halls of Residence and to use, maintain, repair and renew all such utilities and services, subject to obtaining the consent of the relevant utility provider where required by statute.
4. A non-exclusive right of access to, egress from and to remain on the area shown coloured orange on City Access Plan 2 from the date the Independent Tester certifies as the date that the Completion Criteria for the City Decant Accommodation to the City Phase Actual Completion Date have been met for the purpose of maintaining the City Decant Accommodation and performing any element of the works in connection with the City Decant Accommodation.
5. A non-exclusive right to access to, egress from and to remain on the area shown coloured blue on City Access Plan 3A from the completion of migration from the College's Townhead Building, 220 Cathedral Street, as certified by the Independent Tester until the date of completion of the Temporary Car Park as certified by the Independent Tester for the purpose of carrying out demolition works.
6. A non-exclusive right to access to, egress from and to remain on the area shown coloured blue on City Access Plan 4 from the date of completion of the Temporary Car Park as certified by the Independent Tester until the date of completion of the City Car Park as certified by the Independent Tester to carry out maintenance of the Temporary Car Park and performing any element of the Works in connection with the Temporary Car Park.
7. A non-exclusive right to access to, egress from and to remain on the area shown coloured blue on City Access Plan 5 from the date of completion of the City Car Park as certified by the Independent Tester to the City Actual External Works Completion Date to carry out maintenance of the City Car Park and performing any element of the Works in connection with the City Car Park.
8. A non-exclusive right to access to, egress from and to remain on the areas shown cross hatched in black on the Access Plans, or such other area as is notified to the College by Project Co pursuant to paragraph 1.2 of Section 2 of this Schedule Part 5 (*Land Matters*), in each case for the period

shown on the relevant Access Plan subject only to the Reserved Rights and to Project Co managing pedestrian and vehicle access and egress across these areas and ensuring no blockages for such movements.

9. A non-exclusive right to access to, egress from and to remain on the area shown coloured orange on Riverside Access Plan 2 from the date the Independent Tester certifies as the date that the Completion Criteria for the Riverside Decant Accommodation have been met to the City Phase Actual Completion Date for the purpose of maintaining the Riverside Decant Accommodation.
10. An exclusive right to access to, egress from and to remain on the areas shown coloured brown on Riverside Access Plan 3 from the Riverside Phase Actual Completion Date to the Halls of Residence Phase Actual Completion Date in order to carry out any element of the Works relating to the construction of the Halls of Residence.
11. A non-exclusive right to access to, egress from, to remain and carry out any aspect of the Works relating to the modification of the Riverside Decant Accommodation shown as the area coloured orange on Riverside Access Plan 3 from the date of completion of migration from the Tower (shown coloured blue on Riverside Access Plan 3) as certified by the Independent Tester into the Riverside Decant Accommodation until the City Phase Actual Completion Date.
12. A non-exclusive right to access to, egress from and to remain on the areas shown coloured blue on Riverside Access Plan 3 for the purpose of carrying out migration from that area to the Riverside Decant Accommodation and thereafter, from the date that the parties agree, acting reasonably, that the area has been vacated by the College to the Riverside Actual External Works Completion Date, an exclusive right to access to, egress from and remain on the area shaded blue on Riverside Access Plan 3.

Appendix 1

Scottish Water Plan

This is the Scottish Water Plan in the Agreed Form.

Appendix 2

Access Plans

These are the Access Plans in the Agreed Form.

Appendix 3

Site Plans

These are the Site Plans in the Agreed Form.

Appendix 4

Riverside Assets Plan

This is the Riverside Assets Plan in the Agreed Form.

SCHEDULE - Part 6
CONSTRUCTION MATTERS
SECTION 1
DEVELOPMENT FRAMEWORK

1. DEVELOPMENT FRAMEWORK

1.1 Project Co's Proposals will comply with the development parameters set out in the College's Development Framework as noted by Glasgow City Council's Business and the Economy Policy Committee on 20 April 2010.

1.2 The table below (extracted from the Development Framework; April 2010) sets out a summary of the key development parameters for both sites.

Development parameter	City Site	Riverside Site
Size of Site	2.72 hectares (approx)	1.35 hectares (approx)
New build floorspace	55,000 sq metres (approx)	15,000 sq metres (approx)
Size of potential expansion site	1.05 hectares (approx)	0.7 hectares (approx)
Height of new buildings	3 – 14 storeys	3 – 14 storeys
Vehicle access	St Mungo Avenue	Ballater St (As existing)
Servicing vehicle access	St Mungo Avenue and existing on Cathedral Street	Ballater St and Crown St (As existing)
Existing car parking	414 spaces	120 spaces
Proposed car parking	50 staff spaces based on 1500 staff; and 4% disabled parking provision green travel plan to be prepared for both Sites	17 spaces based on 500 staff; and 4% disabled parking provision green travel plan to be prepared for both Sites
Public realm proposals	Creation of an open and accessible campus to improve connectivity between Townhead and the city centre	Creation of an open and accessible campus to improve linkages to the Clyde riverside walkway
Use Class proposed	Education, ancillary uses (offices, retail, cafes, leisure and restaurants) Use Classes 1,3,4,10 + 11	Education, ancillary uses (offices, retail, cafes, restaurants, leisure, and student accommodation) Use Classes 1,3,4,9,10 + 11

- 1.3 In addition to the requirements detailed above Project Co may consider the potential for a permanent access to the north of the City Site by the extension of Grafton Place. The College's understanding is that this would be within the parameters of the Development Framework but also note that any proposal for this access route may be subject to close scrutiny and challenge by the neighbouring Townhead community.
- 1.4 As an amendment to the requirements detailed above Project Co must also provide 10 of the 50 spaces for disabled parking provision at the City Site and 4 of the 17 spaces for disabled parking provision at the Riverside Site and provide the maximum number of car parking spaces allowed by the Planning Permissions having due regard to other aspects of the College's Construction Requirements.

2. **OVERVIEW ON KEY REQUIREMENTS**

- 2.1 The responsibility for the continued accuracy and relevance of the existing deliverables is with Project Co.
- 2.2 The Project Co must, at its expense, obtain all necessary planning Consents for the Project and comply with those Consents at its expense.

SECTION 2

SAFETY DURING CONSTRUCTION

1. In this Section 2 (*Safety During Construction*) of Schedule Part 6 (*Construction Matters*) and wherever used elsewhere in this Agreement:
 - 1.1 "**CDM Regulations**" means the Construction (Design and Management) Regulations 2007 (and "**CDM Regulation**" shall be construed accordingly); and
 - 1.2 "**the client**", "**the CDM Co-ordinator**" and "**the Executive**" shall have the same meanings as are ascribed to them in the CDM Regulations.
2. In so far as not already done, within five (5) Business Days of the date of execution of this Agreement, Project Co shall make and serve on the College a declaration pursuant to and in the form (if any) required by CDM Regulation 8 that Project Co will act as the client in relation to the Works for all the purposes of the CDM Regulations. Notwithstanding the election made by Project Co in relation to CDM Regulation 8, the College will comply with its remaining obligations as set out in CDM Regulation 8. During the Project Term, Project Co shall not, and shall not seek to, withdraw, terminate or in any manner derogate from its declaration that it will act as, and its acceptance of its responsibilities as, the client in relation to the Works for all the purposes of the CDM Regulations. The College will endorse its consent, in writing, to such election on the said election and return it to Project Co within five (5) Business Days of receipt.
3. Project Co warrants that it has the competence, resources and capacity to, and shall, observe, perform and discharge or shall procure the observance, performance and discharge of:
 - 3.1 all the obligations, requirements and duties of the client arising under the CDM Regulations in connection with the Works and, where necessary, the provision of the Services; and
 - 3.2 all obligations incumbent on the client under any Code of Practice for the time being approved by the Health and Safety Commission pursuant to the Health and Safety at Work etc Act 1974 issued in connection with the CDM Regulations.
4. Project Co shall provide to the College's Representative:
 - 4.1 in a substantially complete form on the Phase Actual Completion Date; and
 - 4.2 in final form within four (4) weeks of the Phase Actual Completion Date

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

SECTION 3

COLLEGE'S CONSTRUCTION REQUIREMENTS

These are the College's Construction Requirements in the Agreed Form.

SECTION 4

PROJECT CO'S PROPOSALS

These are the Project Co's Proposals in the Agreed Form.

SECTION 5

REVIEWABLE DESIGN DATA

No	RDD	Aspects	RDD Initial Engagement Date	RDD Proposal Date	RDD Selection Date
5.1	Lock Suiting	Arrangements	03.03.14 (Both Sites)	04-08-14	22.09.14
5.2	Passive Structured Cabling System	Rack Layouts <ul style="list-style-type: none"> • Building and floor distributors • Data Centre cabling and equipment 	01.09.14 – Riverside 31.08.15 - City	01/12/2014 - Riverside 30/11/2015 - City	22/12/14- Riverside 21/12/15- City
5.3	Passive Structured Cabling System	1:50 co-ordinated room layout plans and elevations <ul style="list-style-type: none"> • Data Centres • Main Comms Rooms • Comms Rooms 	01.09.14 – Riverside 31.08.15 - City	01/12/2014 - Riverside 30/11/2015 - City	22/12/14- Riverside 21/12/15- City
5.4	Active IP Network	Detailed design document including but not limited to:- <ul style="list-style-type: none"> • IP addressing scheme • Naming conventions • VLAN configuration • Authorisation / authentication • Web filtering • Network management • Wireless coverage maps 	01.09.14 – Riverside 31.08.15 - City	01/12/2014 - Riverside 30/11/2015 - City	22/12/14- Riverside 21/12/15 -City
5.5	Wireless Network Design	Detailed design should include a description of the access restrictions applied to each 'network' (including Halls of Residence) i.e. number of separate SSIDs, authentication requirements, resources accessible.	01.09.14 – Riverside 31.08.15 - City	01/12/2014 - Riverside 30/11/2015 - City	22/12/14- Riverside 21/12/15 - City
5.6	Telephone System	Detailed design document including but not limited to:- <ul style="list-style-type: none"> • Fully detailed schematics • Numbering plan • Routing • Extension profiles • Voicemail • Simulator suite 	01.09.14 – Riverside 31.08.15 - City	01/12/2014 - Riverside 30/11/2015 - City	22/12/14- Riverside 21/12/15 - City

		• Simulated office			
5.7	Server & SAN and Thin Client solutions	Detailed design document including but not limited to:- <ul style="list-style-type: none"> • Fully detailed schematics • Virtualised applications list • Application image configuration details • Storage allocation configuration • Thin client image builds • Business continuity configuration • Application Delivery Plan 	01.09.14 – Riverside 31.08.15 - City	01/12/2014 - Riverside 30/11/2015 - City	22/12/14- Riverside 21/12/15 - City
5.8	ICT Low Level Design	Configuration level design document of the holistic solution documenting each technology area and integration.	Riverside – 09.02.15 HoR – 20.07.15 City – 07.12.15	Riverside 8/5/15 HoR 19/10/15 City 7/3/16	29/5/15- Riverside 09/11/15-HoR 28/3/16-City
5.9	TV and Radio Studios	Specialist FF&E High Level Design Document Specialist FF&E Low Level Design Document	City – Must be seven weeks prior to Room Layout RDD 07.12.15	Four weeks before room layout RDD 07.03.16	28/3/16
5.10	AV Plate	Detail relating to the AV Plate within classrooms	07.04.14	7/7/14	28/7/14
5.11	Soft landscaping	Planting Plan	03.02.14	03/03/2014	21/04/14
5.12	Sanitary Ware	Style and colour	06.01.14	03/02/2014	24/03/14
5.13	External Doors	Colour	N/A	16/09/2013	07/10/13
5.14	Ceiling Rafts	Detailed proposals	N/A	17/02/2014	28/03/14
5.15	Water Coolers	Agree locations	02.12.13	13/01/2014	03/02/14
5.16	1: 50 RLS and elevations – all rooms	Coordination of Architectural fabric and finishes with all new and migrated FF&E and ICT (including, as appropriate catering equipment and Radio/TV equipment) and Mechanical and Electrical services	Process to commence August 2013 with Architectural and FF&E elements. Fully co-ordinated layouts, i.e.	27/01/2014 Rolling programme for room layout release based on departments. 5 months review process.	17/03/14 Rolling Programme. 5 months to conclude overall from above date.

			Including M&E and ICT, will commence from 27th January 2014.		
5.17	CCTV/Security equipment/devices	Final locations to meet identified areas of coverage	Timings as 5.16 above	Timings as 5.16 above	Timings as 5.16 above
5.18	Allocation of pooled classrooms CPG 001-106 and RPG 001 - 027 in the context of 'plug and play'	Final allocation of the scheduled rooms (IT enabled, IT equipped PC or thin client) within the four floors and fixed partition layouts	Pre-submission discussion one month in advance of proposal date; process to commence August 2013	23/09/2013	11/11/13
5.19	FF&E Library items noted as 'to meet specification'	Final design proposals	Pre-submission discussion one month in advance of proposal date; process to commence August 2013	23/09/2013 Rolling programme for release of information, i.e. including library items noted as "to meet specification" , 2 months duration	11/11/3 Rolling Programme, two months to conclude overall from above date
5.20	Corporate Suite including Corporate Café. Engineering Threshold Main Reception (desk arrangements only)	Final GA and design including allocation of associated scheduled FF&E in the context of indicative proposals embraced within CP's	Pre-submission discussion one month in advance of proposal date; process to commence August 2013	23/09/2013	11/11/13
5.21	Office areas partition configuration (4 x floors at city and 3 x levels at riverside)	Location/disposition of scheduled enclosed rooms within zoning strategy contained within CP's. This will include underfloor servicing strategy, including provisional locations for floor boxes.	Pre-submission discussion one month in advance of proposal date; process to commence August 2013	23/09/2013	11/11/13
5.22	Office Areas open plan space planning	Final furniture and floor box locations.	City – 01/05/15 Riverside – 20/10/14	City – 01/06/15 Riverside – 17/11/14	20/07/15 – City 19/01/15 - Riverside

5.23	Migration RDS	Reconciliation with finalised RLS	Via Migration Meetings	26/05/2014 Riverside 25/05/15 City	14/07/14 Riverside 13/07/15 City
5.24	Display Screens	Final Locations	07.04.14	05/05/2014	26/05/14
5.25	Sports Hall Acoustics	Demonstration of compliance through design calculations	N/A	28/10/2013	16/12/13
5.26	Sports Halls Natural Vent	Demonstrate adequacy through modelling	November 2013	February 2014	April 2014

SECTION 6

ROOM DATA SHEETS

These are the Room Data Sheets in the Agreed Form.

SECTION 7

THEMAL AND ENERGY EFFICIENCY TESTING PROCEDURE

This section confirms the key principle and processes to be followed in order to demonstrate that the completed design is no less efficient than that proposed by Project Co as part of the final bid submission.

The key principle is that the completed design must be no less efficient with respect to energy and CO2 performance compared to the bid stage models as defined at 2.6.3.2.5.4 and 2.6.3.6.14 Appendix A & B of the Project Co's Proposals for each of the Facilities (being the City Facility, the Riverside Facility and the Halls of Residence) (each a "Bid Energy Model").

There are 4 stages in the process as defined below:

Stage 1: As Designed Model

Not later than 6 months prior to the anticipated City Phase Actual Completion Date and the Riverside Phase Actual Completion Date and the Halls of Residence Actual Completion Date, (the "Actual Completion Dates") Project Co shall provide the College with Audited (as defined below) updates to the respective Bid Energy Models ("As Designed Energy Models") to reflect design development to stage F and procurement of plant, equipment and systems. If any of the As Designed Energy Models demonstrates that the completed design and procured plant, equipment and systems will be less efficient overall than provided for in the relevant Bid Energy Model (an "Efficiency Shortfall), Project Co shall identify to the College and subsequently implement changes to the completed design and/or plant equipment and systems to remedy the Efficiency Shortfall for the relevant Facility ("Remedial Actions").

For the purpose of this Section 7 of Schedule Part 6, "Audited" means accompanied by a certificate from the Independent Tester (obtained at Project Co's sole expense) that:

- the model inputs and assumptions reflect design development and procurement of plant, equipment and systems
- model outputs correspond to inputs and the correct execution of model formulae

Stage 2: Accommodation Completion

As part of Project Co's commissioning process for Facilities (being the City Facility, the Riverside Facility and the Halls of Residence), the Completion Criteria defined in Schedule Part 10 to be applied at the Actual Completion Dates shall be deemed to include -

1. Testing to demonstrate that the building construction achieves the agreed performance and design parameters. Testing will include:
 - (i) Airtightness testing in compliance with the requirements of the Scottish Technical Handbook to demonstrate that the air permeability meets the design stage commitment
 - (ii) Infrared / thermographic surveys - to prove the quality of the build; identify any cold bridging or gaps in insulation; and provide comfort regarding the efficiency of the building fabric
 - (iii) Confirmation of as installed plant efficiency by reference to manufacturers' data sheets for the as installed HVAC plant and luminaries and through commissioning test results to include specific fan powers, lighting power densities and efficiency of heat recovery components
 - (iv) Commissioning tests in compliance with the College Requirements (CIBSE, BS7671, etc.) to encompass heating, cooling and ventilation systems including lighting and building management systems

2. Demonstration by calculation that the thermal performance of the façade and building envelope meets the College Requirements, including confirmation of u-values for all major building elements, calculated with known manufacturers / product details and following approved methodology (e.g. BS EN ISO 6496)
3. Completion of any Remedial Actions for the relevant Facility required under Stage 1.

In order to pass the above completion tests, the results must demonstrate that the design meets the requirements defined in the College Requirements including CIBSE and BSRIA standards.

Stage 3: As Built Models for Riverside, Halls of Residence and City

Project Co shall provide Audited updates of the relevant As Designed Energy Models incorporating as built specifications and the results of commissioning testing (the "As Built Energy Models") demonstrating that the completed Facilities (being the City Facility, the Riverside Facility and the Halls of Residence) are no less efficient than provided for in the respective Bid Energy Models and meet the Sustainability KPI's as detailed in 2.5.4 of the College Requirements as follows –

- in the case of the Riverside Facility and the City Facility, as part of the Completion Criteria in Schedule Part 10 to be applied at the Riverside Actual External Works Completion Date and the City Actual External Works Completion Date respectively; and
- in the case of the Halls of Residence, at or prior to the Riverside Actual External Works Completion Date.

Stage 4: Setting the Targets for Monitoring and Reporting of Future Consumption

Within 15 months of the Actual Completion Date for a Facility, Project Co shall provide to the College a report in respect of that Facility comprising the following–

- 12 Months actual utility consumption from the 3 month rolling Utility Profile referenced under FM048
- Identification of any potential interference factors, potential areas of waste and potential solutions from this consumption data
- An Interpretation of this information on a utility by utility basis to allow a prediction of future energy trends to assist The College with their on-going utility budgeting process
- Project Co will participate in and support any joint Utility Working Group formed by the College to support on-going energy management.

SECTION 8

QUALITY PLANS (DESIGN AND CONSTRUCTION)

These are the Quality Plans in the Agreed Form.

SECTION 9

OPERATIONAL FUNCTIONALITY

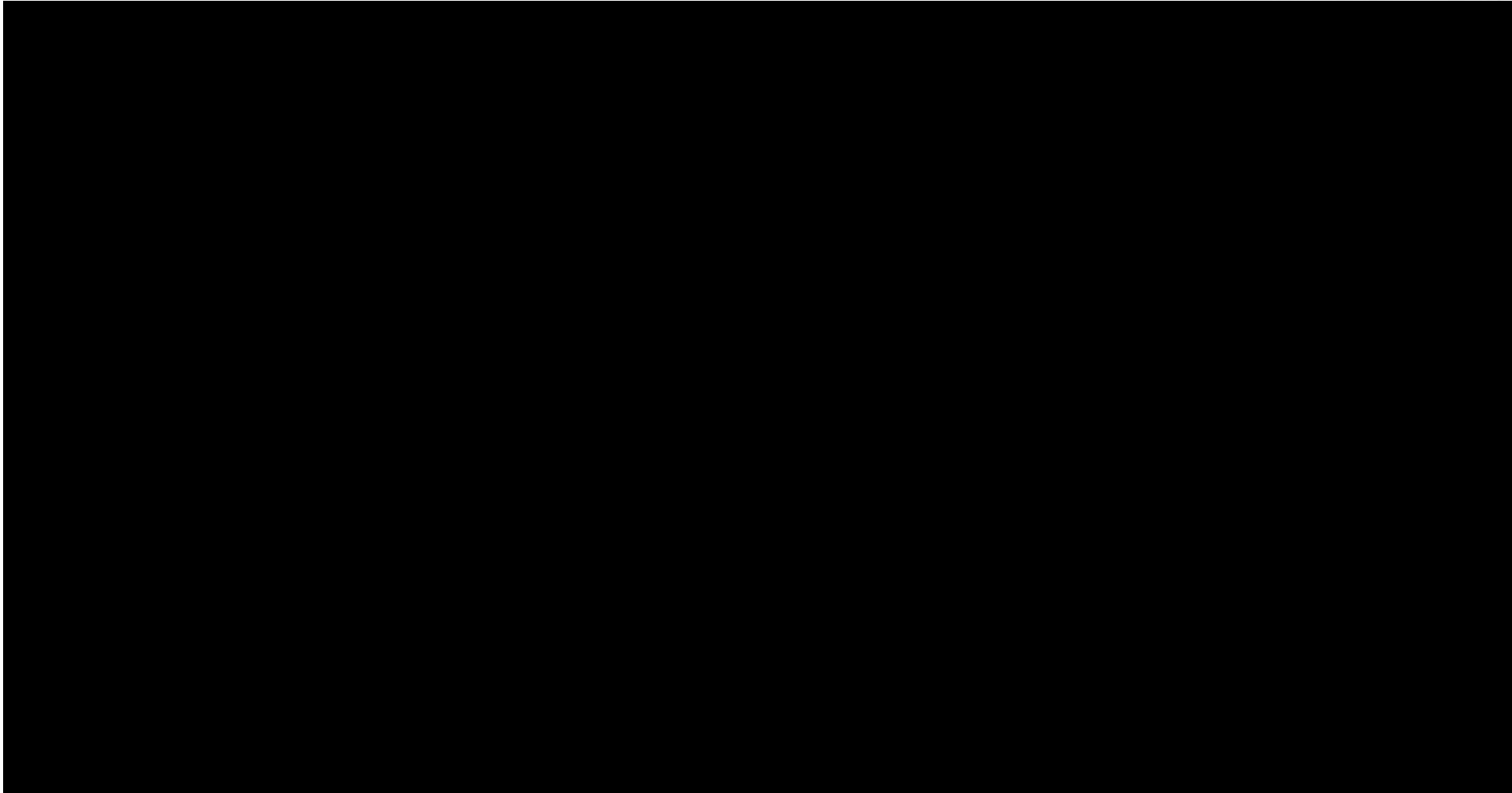
Limb of “Operational Functionality” Definition	Description	Project Co’s Proposals Reference	Qualifications
(a) points of access to and within the schools and departments in each relevant building forming part of the NPD Facilities	City Ground Floor	CC-AG(02)X00-020	Project Co's Proposals referred to are only confirmed as satisfying the College's requirements in respect of Operational Functionality with regard to identifying the accepted location of entrances to the buildings and each school and department within the City and Riverside Facilities.
	City First Floor	CC-AG(02)X01-021	
	City First Floor Mezz	CC-AG(02)X01-022	
	City Second Floor	CC-AG(02)X02-023	
	City Third Floor	CC-AG(02)X03-024	
	City Fourth Floor	CC-AG(02)X04-025	
	City Fifth Floor	CC-AG(02)X05-026	
	City Sixth Floor	CC-AG(02)X06-027	
	City Seventh Floor	CC-AG(02)X07-028	
	City Eighth Floor	CC-AG(02)X08-029	
	City Ninth Floor	CC-AG(02)X09-030	
	City Tenth Floor	CC-AG(02)X10-031	
	Riverside Ground Floor	RS-AG(02)X00-020	
	Riverside First Floor	RS-AG(02)X01-021	
	Riverside First Floor Mezz	RS-AG(02)X01-032	
	Riverside Second Floor	RS-AG(02)X02-024	
	Riverside Third Floor	RS-AG(02)X03-025	
Riverside Fourth Floor	RS-AG(02)X04-026		
Riverside Fifth Floor	RS-AG(02)X05-027		
Riverside Sixth Floor	RS-AG(02)X06-028		
Riverside Seventh Floor	RS-AG(02)X07-029		
(b) the relationship between the buildings forming the NPD Facilities	City Landscape Plan	CC-LG (90) 003	Project Co's Proposals referred to are only confirmed as satisfying the College's requirements in respect of Operational Functionality with regard to identifying the accepted location of buildings on the City and Riverside Sites.
	Riverside Landscape Plan	RS-LG (90) 002	
(c) adjacencies between schools and departments and rooms and, where relevant between departments within the NPD Facilities	City Ground Floor	CC-AG(02)X00-020	Project Co's Proposals referred to are only confirmed as satisfying the College's requirements in respect of Operational Functionality with regard to identifying the accepted location of schools and departments within the City and Riverside Facilities
	City First Floor	CC-AG(02)X01-021	
	City First Floor Mezz	CC-AG(02)X01-022	
	City Second Floor	CC-AG(02)X02-023	
	City Third Floor	CC-AG(02)X03-024	
	City Fourth Floor	CC-AG(02)X04-025	
	City Fifth Floor	CC-AG(02)X05-026	
	City Sixth Floor	CC-AG(02)X06-027	
	City Seventh Floor	CC-AG(02)X07-028	
	City Eighth Floor	CC-AG(02)X08-029	
	City Ninth Floor	CC-AG(02)X09-030	
	City Tenth Floor	CC-AG(02)X10-031	
	Riverside Ground Floor	RS-AG(02)X00-020	
Riverside First Floor	RS-AG(02)X01-021		

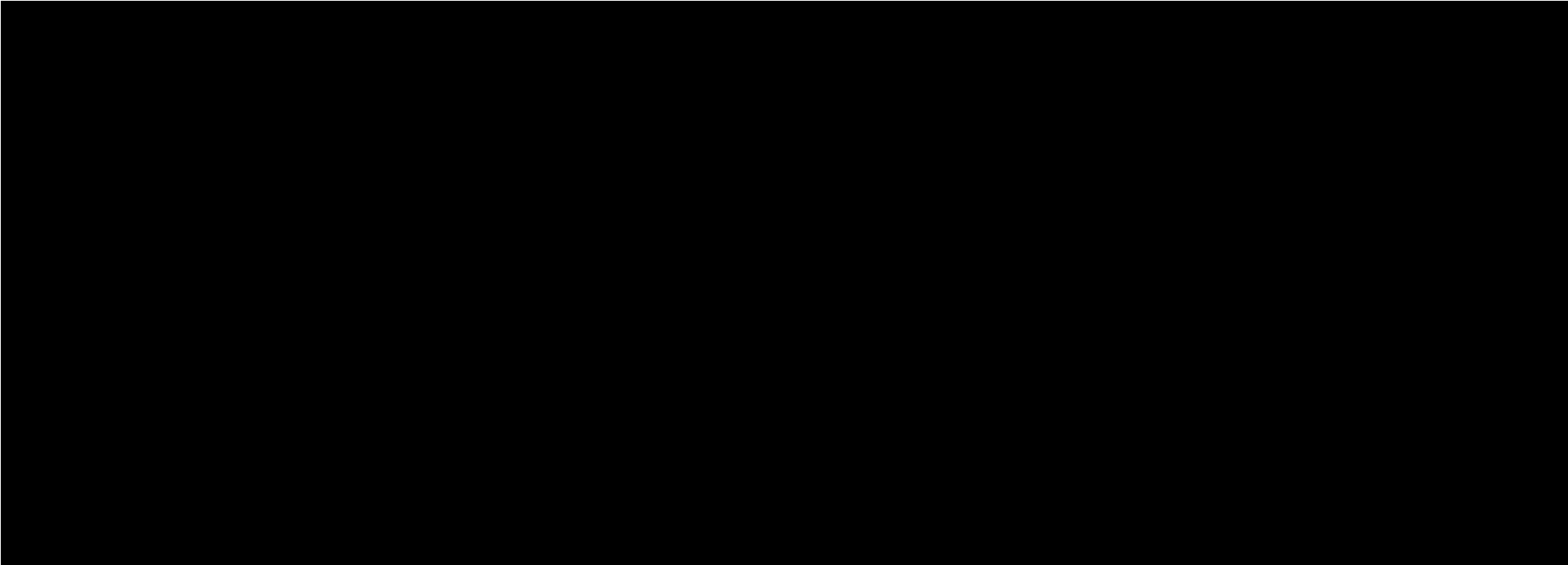
Limb of "Operational Functionality" Definition	Description	Project Co's Proposals Reference	Qualifications
	Riverside First Floor Mezz	RS-AG(02)X01-032	
	Riverside Second Floor	RS-AG(02)X02-024	
	Riverside Third Floor	RS-AG(02)X03-025	
	Riverside Fourth Floor	RS-AG(02)X04-026	
	Riverside Fifth Floor	RS-AG(02)X05-027	
	Riverside Sixth Floor	RS-AG(02)X06-028	
	Riverside Seventh Floor	RS-AG(02)X07-029	

SECTION 10

COMMERCIAL SPACE MILESTONES

Note – All dates are indicative and for information and are not intended to have any contractual effect





SECTION 11

BASELINE ICT COSTS TABLE

This is the Baseline ICT Costs Table in the Agreed Form.

SECTION 12
NOT USED

SECTION 13

ICT DEPENDENCY REGISTER

This is the ICT Dependency Register in the Agreed Form.

SCHEDULE - Part 7

THE PROGRAMME

Critical Milestones	City	Riverside	Halls of Residence
Financial Close			
IT Sign Off of decant accommodation	16/8/13	19/8/13	
IT Sign Off of decant accommodation Phase 2		21/8/15	
ICT Installation	5/8/16	11/8/15	
Data/Hub Room Available	23/5/16	25/5/15	10/08/15
Building Practical Completion	15/8/16	17/8/15	02/11/15
External Works Practical Completion	14/8/17	17/10/16	
Progress Milestones			
Start demolition of Allan Glen	26/8/13		
Completion demolition of Allan Glen	17/1/14		
External Service Connections	3/7/15	20/2/15	
Water Available	17/8/15	9/3/15	
Power Available	31/8/15	23/3/15	
Heat Available	12/10/15	13/4/15	
Temp Car Park Available	22/08/16		
Start demolition of Townhead	12/9/16		
Completion demolition of Townhead	1/5/17		
Start demolition of Riverside HOR, and Podium Phase 1		1/7/13 - HoR 26/08/13 Podium	1/7/13

SCHEDULE - Part 8

REVIEW PROCEDURE

1. REVIEW

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

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

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

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

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

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

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

- (a) Project Co shall submit to the College a range or selection of finishes ("**Range of Finishes**") no later than the relevant Finishes Proposal Date;
- (b) the College's Representative shall by the relevant Finishes Selection Date notify Project Co of its selection for the relevant Finish; and
- (c) if no selection of a Finish has been made by the College's Representative and notified to Project Co in accordance with paragraph 1.2.3(b) by the relevant Finish Selection Date, Project Co shall be entitled to make a selection from the Range of Finishes submitted in accordance with paragraph 1.2.3(a). After the relevant Finish Selection Date, should the College wish to vary any selection previously made by Project Co or by the College, such variation shall be effected as a Change in accordance with Schedule Part 16 (*Change Protocol*).

No	Finishes and Other Items	Aspects	Initial Engagement Date	Finishes Proposal Date	Finishes Selection Date
8.1	External finishes (roof, windows and external elevations)	Colour	12.08.13	16/09/2013	7/10/13
8.2	Wall finishes	Colour	07.10.13	11/11/2013	02/12/13
8.3	Internal Door Finishes	Colour	30.09.13	04/11/2013	25/11/13
8.4	Floor finishes	Colour and degree of slip resistance (relative to slip resistant type floor finishes)	09.12.13	20/01/2014	10/02/14
8.5	Ceiling finishes	Colour	02.12.13	13/01/2014	03/02/14
8.6	Skirtings and architraves	Colour	30.09.13	04/11/2013	25/11/13
8.7	Loose Furniture	Colour	02.12.13	13/01/2014	03/02/14
8.8	Loose Equipment	Colour	02.12.13	13/01/2014	03/02/14
8.9	Fixed Furniture	Colour	02.12.13	13/01/2014	03/02/14
8.10	Fixed Equipment	Colour	02.12.13	13/01/2014	03/02/14
8.11	Ironmongery	Style and finish	30.09.13	04/11/2013	25/11/13
8.12	Tapware	Style and finish	06.01.14	03/02/2014	24/02/14
8.13	Main public light fittings	Specification and style	10.02.14	10/03/2014	31/03/14
8.14	External signage	Size, style, colour and location, graphics and wording	03.02.14	03/03/2014	21/04/14
8.15	Internal signage	Size, style, colour and location, graphics and wording	03.02.14	03/03/2014	21/04/14
8.16	Light switches and sockets	Style	03.02.14	03/03/2014	24/03/14

No	Finishes and Other Items	Aspects	Initial Engagement Date	Finishes Proposal Date	Finishes Selection Date
8.17	Light fittings	Style and colour (where not defined in the CPs)	10.02.14	10/03/2014	31/03/14
8.18	Hard landscaping	Colours and any configuration changes in response to design development in respect of bus stops and signage	06.01.14	10/02/2014	31/03/14
8.19	Toilet Cubicles	Colour	30.09.13	04/11/2013	25/11/13
8.20	Sliding/Folding Partitions	Colour, finish, method of operation	18.11.13	16/12/2013	20/01/14

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

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

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

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

2. FURTHER INFORMATION

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

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

3. **GROUNDS OF OBJECTION**

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

3.1 in relation to any Submitted Item if:

- 3.1.1 Project Co's ability to perform its obligations under this Agreement would (on the balance of probabilities) be adversely affected by the implementation of the Submitted Item; or
- 3.1.2 the implementation of the Submitted Item would (on the balance of probabilities) adversely affect any right of the College under this Agreement or its ability to enforce any such right;

3.2 in relation to any Submitted Item submitted pursuant to Clause 4.1 (*Ancillary Documents*) if:

- 3.2.1 the College's ability to perform its obligations under this Agreement would be adversely affected by the proposed course of action;
- 3.2.2 the College's ability to provide the relevant College Services or to carry out any of its statutory functions would (on the balance of probabilities) be adversely affected by the proposed course of action;
- 3.2.3 the proposed course of action would be likely to result in an increase to the College's liabilities or potential or contingent liabilities under this Agreement;
- 3.2.4 the proposed course of action would adversely affect any right of the College under this Agreement or its ability to enforce any such right; or
- 3.2.5 Project Co's ability to perform its obligations under this Agreement would be materially adversely affected by the proposed course of action;

3.3 in relation to Reviewable Design Data submitted pursuant to Clause 12.6:

3.3.1 which does not comprise 1:50 scale Room Layout Drawings the College's Representative may raise comments, subject to and in accordance with paragraph 4 (*Effect of Review*) on the ground that the Submitted Item is not in accordance with:

- (a) the College's Construction Requirements; and/or
- (b) Project Co's Proposals;

3.3.2 which comprises a 1:50 scale Room Layout Drawing in respect of which there is a corresponding generic 1:50 scale Room Layout Drawing for the relevant room type (which has previously been reviewed and commented upon by the College's Representative in accordance with this Schedule Part 8 (*Review Procedure*)), the College's Representative may raise comments, subject to and in accordance with paragraph 4 (*Effect of Review*), on the ground that the Submitted Item does not conform to the generic 1:50 scale Room Layout Drawing; and

- 3.3.3 which comprises a 1:50 scale Room Layout Drawing in respect of which there is no corresponding generic 1:50 scale Room Layout Drawing for the relevant room type (which has previously been reviewed and commented upon by the College's Representative in accordance with this Schedule Part 8 (*Review Procedure*)), the College's Representative may raise comments, subject to and in accordance with paragraph 4 (*Effect of Review*), on the grounds that the Submitted Item is not in accordance with the College's Construction Requirements and/or Project Co's Proposals.
- 3.4 in relation to a proposal to amend Project Co's Proposals and rectify (part of) the Works submitted pursuant to Clause 12.8, on the grounds that, following the amendment and rectification proposed:
- 3.4.1 Project Co's Proposals would not satisfy the College's Construction Requirements; and/or
- 3.4.2 the structural, mechanical and/or electrical performance of the Facilities would not be of an equivalent standard of performance to that set out in Project Co's Proposals prior to their amendment or rectification (for the purpose of this comparison disregarding the fault which required the amendment or rectification to be made);
- 3.5 in relation to Finishes:
- 3.5.1 which have the effect of making a selection from the Range of Finishes (or any alternative range or selection of Finishes submitted by Project Co to the College's Representative) pursuant to Clause 12.6.1; or
- 3.5.2 where the Submitted Item does not comply with the relevant provisions of the College's Construction Requirements and/or Project Co's Proposals;
- 3.6 in relation to the submission of any revised Programme pursuant to Clause 14 (*Programme and Dates for Completion*) on the ground that the revised Programme would not (on the balance of probabilities) enable the Works to be completed by the phase Completion Date;
- 3.7 in relation to the submission of any Quality Plan or part of a Quality Plan or any changes to any Quality Plan pursuant to Clause 20.4 or Clause 20.7 or any quality manual or procedure in accordance with Clause 20.9 (*Quality Manuals and Procedures*), on the grounds that such Quality Plans, or parts of or changes to such Quality Plans, quality manuals or procedures, or the quality management systems which they reflect, would not comply with:
- 3.7.1 in the case of the Design Quality Plan and the Construction Quality Plan referred to in Clause 20.8, the requirements referred to in 0 (*Quality Plans (Design and Construction)*) of Schedule Part 6 (*Construction Matters*); and
- 3.7.2 in the case of the Services Quality Plan referred to in Clause 20 (*Quality Assurance*), the requirements referred to in 0 (*Services Quality Plan*) of Schedule Part 12 (*Service Requirements*);
- 3.8 in relation to the submission of any proposed revision or substitution for the Method Statements or any part of any Method Statement (as the case may be) pursuant to Clause 22.4, on the grounds that:
- 3.8.1 the proposed revision or substitution is not in accordance with Good Industry Practice;
- 3.8.2 the performance of the Services in accordance with the proposed revision or substitution would (on the balance of probabilities):
- (a) be materially different from the performance of the Services in accordance with the Method Statement prior to such proposed revision or substitution; or
- (b) be less likely to achieve compliance with the Service Level Specification; or

- (c) have an adverse effect on the provision by the College of the relevant College Services at, or on the safety of any users of, the Facilities; or
- 3.8.3 the proposed revision or substitution would (on the balance of probabilities) result in an inferior standard of performance of the Services to the standard of performance in accordance with the Method Statement prior to such proposed revision or substitution; and
- 3.9 in relation to the submission of any Schedule of Programmed Maintenance pursuant to Clause 23.1, any revision to any Schedule of Programmed Maintenance pursuant to 23.4, any submission of Unprogrammed Maintenance Works pursuant to Clause 23.8, or the submission of any Schedule of Lifecycle Replacement pursuant to Clause 23A on the grounds that:
 - 3.9.1 carrying out the Programmed Maintenance, Lifecycle Replacement or the Unprogrammed Maintenance Works in the period or at the times suggested would (on the balance of probabilities) interfere with the operations of the College and such interference could be avoided or mitigated by Project Co rescheduling the Programmed Maintenance, Lifecycle Replacement or the Unprogrammed Maintenance Works; or
 - 3.9.2 in relation to the Schedule of Programmed Maintenance or Schedule of Lifecycle Replacement the proposed hours for carrying out the Programmed Maintenance or Lifecycle Replacement are not consistent with the principles set out in Appendix 2, Table B to this Schedule Part 8 (*Review Procedure*); or
 - 3.9.3 the proposed method of performance of the Programmed Maintenance, Lifecycle Replacement or the Unprogrammed Maintenance Works would not be in accordance with the Service Level Specification; or
 - 3.9.4 the safety of users of the Facilities would (on the balance of probabilities) be adversely affected; or
 - 3.9.5 the period for carrying out the Programmed Maintenance, Lifecycle Replacement or the Unprogrammed Maintenance Works would (on the balance of probabilities) exceed the period reasonably required for the relevant works.
- 3.10 In relation to the submission of Project Co's proposals for the Handback Works, the Handback Programme and the Handback Amount pursuant to Schedule Part 18 (*Handback Procedure*), on the grounds that:
 - 3.10.1 in the case of the Handback Works, Project Co's proposals will not (on the balance of probabilities) ensure that the Handback Requirements are achieved by the Expiry Date;
 - 3.10.2 in the case of the Handback Programme, performance of the Handback Works in accordance with the programme is not (on the balance of probabilities) capable of achieving satisfaction of the Handback Requirements by the Expiry Date; and
 - 3.10.3 in the case of the Handback Amount, it does not represent the cost of carrying out the Handback Works according to the Handback Programme and the provisions of Schedule Part 18 (*Handback Procedure*).
- 3.11 In relation to the submission of any Schedule of Lifecycle Replacement, Project Co's proposals do not address the issues set out in Clause 23A.3 and/or Clause 23A.4, or the College Representative wishes to make additional comments on the issues set out in Clause 23A.3, Clause 23A.4 and/or Clause 23A.5.

4. EFFECT OF REVIEW

- 4.1 Any Submitted Item which is returned or deemed to have been returned by the College's Representative endorsed "no comment" (and in the case of Reviewable Design Data, endorsed

"Level A - no comment") shall be complied with or implemented (as the case may be) by Project Co.

4.2 In the case of any Submitted Item other than Reviewable Design Data, if the College's Representative returns the Submitted Item to Project Co endorsed "comments", Project Co shall comply with such Submitted Item after amendment in accordance with the comments unless Project Co disputes that any such comment is on grounds permitted by this Agreement, in which case Project Co or the College's Representative may refer the matter for determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*) and Project Co shall not act on the Submitted Item until such matter is so determined or otherwise agreed.

4.3 In the case of a Submitted Item comprising Reviewable Design Data, if the College's Representative returns the Submitted Item endorsed other than "Level A - no comment", Project Co shall:

4.3.1 where the College's Representative has endorsed the Submitted Item "Level B - proceed subject to amendment as noted", either proceed to construct or proceed to the next level of design of the part of the Works to which the Submitted Item relates but take into account any amendments required by the College's Representative in his comments;

4.3.2 where the College's Representative has endorsed the Submitted Item "Level C - subject to amendment as noted" not act upon the Submitted Item, amend the Submitted Item in accordance with the College's Representative's comments and re-submit the same to the College's Representative in accordance with paragraph 4.4; and

4.3.3 where the College's Representative has endorsed the Submitted Item "Level D - rejected" not act upon the Submitted Item, amend the Submitted Item and re-submit the Submitted Item to the College's Representative in accordance with paragraph 4.4

unless Project Co disputes that any such comment or proposed amendment is on grounds permitted by this Agreement, in which case Project Co or the College's Representative may refer the matter for determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*) and Project Co shall not act on the Submitted Item until such matter is so determined or otherwise agreed except at its own risk in accordance with paragraph 1.3.2.

4.4 Within ten (10) Business Days of receiving the comments of the College's Representative on any Submitted Item comprising Reviewable Design Data, Project Co shall (except in the case contemplated in paragraph 4.3.1) send a copy of the Submitted Item as amended to the College's Representative pursuant to paragraph 4.3 and the provisions of paragraphs 1.2.1, 4.1 and 4.3 shall apply (changed according to context) to such re-submission.

4.5 The return or deemed return of any Submitted Item endorsed "no comment" (or in the case of Reviewable Design Data endorsed "Level A - no comment" or otherwise endorsed in accordance with paragraph 4.3.1 or 4.3.2) shall mean that the relevant Submitted Item may be used or implemented for the purposes for which it is intended but, save to the extent expressly stated in this Agreement including, without limitation, as specified in Appendix 1 Table A to this Schedule Part 8 (*Review Procedure*), such return or deemed return of any Submitted Item shall not otherwise relieve Project Co of its obligations under this Agreement nor is it an acknowledgement by the College that Project Co has complied with such obligations.

4.6 Clause 23A.6 shall apply in respect of any comments made by the College Representative on the grounds set out in paragraph 3.11 which Project Co shall not be bound to implement, notwithstanding any other provision in this Schedule Part 8 (*Review Procedure*).

5. DOCUMENTATION MANAGEMENT

5.1 Project Co shall issue 3 copies of all Submitted Items to the College and compile and maintain a register of the date and contents of the submission of all Submitted Items.

5.2 Project Co shall compile and maintain a register of the date of receipt and content of all Submitted Items that are returned or deemed to be returned by the College's Representative.

5.3 Save to the extent set out in Appendix 1, Table A to this Schedule Part 8 (*Review Procedure*) or elsewhere in this Schedule Part 8 (*Review Procedure*), no review, comment or approval by the College shall operate to exclude or limit Project Co's obligations or liabilities under this Agreement (or the College's rights under this Agreement).

6. CHANGES

6.1 No approval or comment or any failure to give or make an approval or comment under this Schedule Part 8 (*Review Procedure*) shall constitute a Change save to the extent provided in this Schedule Part 8 (*Review Procedure*).

6.2 If, having received comments from the College's Representative, Project Co considers that compliance with those comments would amount to a Change, Project Co shall, before complying with the comments, notify the College of the same and, if it is agreed by the parties or determined pursuant to Schedule Part 20 (*Dispute Resolution Procedure*) that a Change would arise if the comments were complied with, the College may, if it wishes, implement the Change and it shall be dealt with in accordance with Schedule Part 16 (*Change Protocol*). Any failure by Project Co to notify the College that it considers compliance with any comments of the College's Representative would amount to a Change shall constitute an irrevocable acceptance by Project Co that any compliance with the College's comments shall be without cost to the College and without any extension of time.

6.3 No alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design shall be construed or regarded as a Change.

Appendix 1

TABLE A

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

Approved RDD Item (by category)	Scale	Meaning of "Level A - no comment" and "Level B – proceed subject to amendment as noted" endorsement of Reviewable Design Data under Schedule Part 8 (<i>Review Procedure</i>) (including both the actual and deemed endorsement).
Drawings - Departmental plans	1:50	A "Level A - no comment" endorsement or a "Level B – proceed subject to amendment as noted" endorsement of any 1:50 scale departmental plan means that Project Co may proceed to construct in accordance with the Submitted Item and that the College is satisfied (to the extent of the design and other information contained in the relevant drawing) that the design and other information in the relevant drawing satisfies Operational Functionality.

APPENDIX 2

HOURS FOR PROGRAMMED MAINTENANCE

1. Subject to paragraphs 3 to 5 below, Project Co shall carry out Programmed Maintenance and Lifecycle Replacement at the NPD Facilities during the Hours for Programmed Maintenance.
2. Project Co may, with the consent of the College (which consent shall not be unreasonably withheld) carry out Maintenance Works and Lifecycle Replacement outside the Hours for Programmed Maintenance provided always that it shall take into account:
 - 2.1 the likely disturbance to the College and/or its staff and users within the immediate area where the Maintenance Works and Lifecycle Replacement are to be undertaken;
 - 2.2 the likely disturbance to adjacent areas, the College and/or its staff and users in those adjacent areas that may be affected by the Maintenance Works or Lifecycle Replacement to be undertaken in the area(s) identified in paragraph 2.1 above; and
 - 2.3 compliance with the Law.
3. Subject to paragraph 4, Project Co shall have access to the NPD Facilities during the Hours of Operation to carry out Programmed Maintenance and Lifecycle Replacement.
4. Where Project Co requires access to an area of the NPD Facilities during the Hours of Operation, Project Co will consult with and obtain the consent of the College Representative concerning dates, times and periods during which Programmed Maintenance or Lifecycle Replacement is to be undertaken in those areas so as to minimise disruption to the College.
5. The College may request Project Co to carry out Programmed Maintenance or Lifecycle Replacement outside the Hours for Programmed Maintenance in the event that the carrying out of such Programmed Maintenance or Lifecycle Replacement during the Hours for Programmed Maintenance would adversely affect the use of the department or area.

SCHEDULE - Part 9
COLLATERAL AGREEMENTS

SECTION 1

CONTRACTOR COLLATERAL AGREEMENT

This is the Contractor Collateral Agreement in the Agreed Form.

SECTION 2

SERVICE PROVIDER COLLATERAL AGREEMENT

This is the Service Provider Collateral Agreement in the Agreed Form.

SECTION 3

KEY SUB-CONTRACTOR COLLATERAL AGREEMENT

These are the Key –Subcontractor Collateral Agreements in the Agreed Form.

SCHEDULE - Part 10

SECTION 1

OUTLINE COMMISSIONING PROGRAMME

The Outline Commissioning Programme is contained in Appendix A to 2.6.3.4.9 of the Project Co's Proposals.

APPENDIX

COMPLETION CRITERIA

In assessing whether the Completion Criteria have been satisfied, the tests that the Independent Tester shall carry out as a minimum are those items listed below. The Independent Tester may carry out such other tests as are considered necessary.

- Temporary Accommodation City
- Temporary Accommodation Riverside
- Temporary Accommodation Riverside Refit
- Phase – 1. Riverside Phase
- 2. City Phase
- 3. Halls of Residence Phase
- 4. City Phase External Works
- 5. Riverside Phase External Works

The parties agree that Project Co shall not be responsible for any Completion Requirements which relate to the College Planning Conditions.

Completion Requirements	Test	Process Compliance for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
							1	2	3	4	5
1. The Works have been carried out in accordance with the College's Requirements and Project Co's Proposals, and any relevant (i.e. related to that phase) planning approvals.	The areas comply with the following statutory consents: (a) Planning Approval	(a) Project Co to provide copies of planning permissions and confirm that the Works have been constructed to the design agreed by planners.	Planning Authority Planning Permission.	✓	✓	✓	✓	✓	✓	✓	✓
(i)	(b) Building Regulations	(b) Project Co to provide matrix to demonstrate the discharge of Planning Conditions, with evidence of approval.	Planning Authority letter confirming discharge of Conditions.	✓	✓	✓	✓	✓	✓		
(ii)		(c) Project Co to provide Building Completion Certificate or Building Occupation Certificate as appropriate.	Building Control Certificate.	✓	✓	✓	✓	✓	✓		
2. The Works have been designed and constructed in the forms and materials	The structural elements and building fabric (external and internal) affecting the areas must be physically present and as detailed in the	(a) Building Control to provide Occupation or Completion Certificate.	Building Control Certificate.	✓	✓	✓	✓	✓	✓		

Completion Requirements	Test	Process Compliance for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
							1	2	3	4	5
described and as approved in any planning approvals and the College's Requirements and Project Co's Proposals.	College's Requirements and Project Co's Proposals.										
(i)	The fixtures, fittings and fixed furniture and equipment detailed in the agreed RDS and FF&E schedule (See Project Co's Proposals for Temp Accommodation) for those areas must be present and in a safe and functional condition.	(a) Project Co to provide, confirm and revise FF&E schedules/drawings appropriately. (b) Independent Tester to conduct FF&E asset Inspection.	Final Schedules of FF&E.	✓	✓	✓	✓	✓	✓	✓	✓
(ii)	Subject to restriction imposed by any adjacent construction works, the areas must have the specified number of fully functional doors. Keys must be made available to the College's Representative.	(a) College to sign for the handing over of keys, swipe cards and combination lock details	Signed handover letter from College.	✓	✓		✓	✓	✓		
(iii)	The areas have access to sufficient toilet accommodation, which meets the requirements of the Accommodation Schedules and Room Datasheets. (See Project Co Proposals for Temp Accommodation)	(a) Project Co to confirm that final WC provision meets the requirements of Accommodation Schedules and RDS. (See Project	Final Accommodation Schedules & RDS. (See Project Co's Proposals for Temp Accommodation)	✓	✓		✓	✓	✓		

Completion Requirements	Test	Process Compliance for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
							1	2	3	4	5
		Co Proposals for Temp Accommodation) (b) Independent Tester may inspect, and check.									
(iv)	Project Co is not permitted to use any substance which is known to be deleterious.	Prior to the final Completion Certificate being issued Project Co shall provide a certificate stating that no deleterious materials have been used in the Works.	Project Co's Certificate.				✓	✓	✓	✓	✓
(v)	The areas are to have an electrical supply and distribution system with the requisite number of outlet points as stated in the Architectural, FF&E and ICT Room Data Sheets, (See Project Co's Proposals for Temp Accommodation) which have been appropriately tested and commissioned.	Project Co to confirm design criteria and provide detailed combined small power distribution schedules complete with IET test and commissioning results and certificates.	Electrical Test Certificate from Project Co. Earth Loop and Insulation Resistance Test Certificate from Project Co.	✓	✓	✓	✓	✓	✓	✓	✓
(vi)	The areas have the following functioning and commissioned systems as required by Project Co's Proposals. fire detection and alarms systems	(a) Project Co to provide all test and commissioning certificates. (b) Systems to be	Project Co's Certificate. Building Control Certificates. Fire Alarm Audibility Tests Certificates from Project Co.	✓	✓		✓	✓	✓		

Completion Requirements	Test	Process Compliance	for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
								1	2	3	4	5
	specialist lighting installations hearing aid loops (Not required in Temp Accommodation)	demonstrated to Independent Tester including integration with relevant systems. (c) Fire Strategy drawing to be provided to confirm location of call points through Project Co's Proposals.										
(vii)	Pre hand over checks on the following: Accessibility for initial commissioning and subsequent balancing or other modifications Adequacy of testing points and balancing and regulating devices Water dosing Suitability of engineering services strategy for phased/staged completion Asset register PPM access certification Plant replacement strategy Integrated as fitted drawings Cleaning, flushing, water	(a) Project Co to provide all test and commissioning certificates. (b) Systems to be demonstrated to Independent Tester including integration with relevant systems. (c) Fire Strategy drawing to be provided to confirm location of call points through Project Co's		Project Co's Certificate Provision of clear performance data	✓	✓		✓	✓	✓		

Completion Requirements	Test	Process Compliance for	Documentary evidence indicating that the Test has been passed	Phase							
				Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	1	2	3	4	5
	dosing testing etc Balancing and regulating MV & LV Switchgear UPS & Generators (Not required in Temp Accommodation) Main & sub main cabling tests	Proposals. (d) Commission Manager certification									
(viii)	Earthing Power control & monitoring Final circuit testing Lighting & emergency lighting Fire systems Gas extinguishant systems (Not required in Temp Accommodation) CCTV installation Access control & security systems Setting to work all M&E systems Inter operation test matrix Cause and effect schedule Underground services Internal fit-out Underfloor services Mechanical installation Bulk fuel systems (Not required in Temp Accommodation) Public health and water Direct supply equipment Below ground drainage Utilities: water, gas,	As above	As above	✓	✓		✓	✓	✓	✓	✓

Completion Requirements	Test	Process Compliance	for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
								1	2	3	4	5
	power and telecoms											
(ix)	Demonstrate resilience of system CHP Installation (Not required in Temp Accommodation)	As above		As above				✓	✓	✓		
(x)	Seasonal commissioning – appropriate to the month of completion of the buildings (Not required in Temp Accommodation)							✓	✓	✓		
(xi)	Seasonal commissioning - appropriate to one years operation of the buildings (Not required in Temp Accommodation)							✓	✓	✓		

Completion Requirements	Test	Process Compliance for	Documentary evidence indicating that the Test has been passed	Phase							
				Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	1	2	3	4	5
(xii)	Lifts hoists and other such access equipment provided. BEMS (Not required in Temp Accommodation) Sprinklers (Not required in Temp Accommodation)	(a) Independent Tester may conduct inspections and witness testing.	Lifting Beam test certificate from Project Co. Lift functional tests Lift weight test Lift operation audibility tests	✓	✓		✓	✓	✓		
(xiii)	IT passive infrastructure installed- Completion of testing as defined in Volume 2 Schedule Part 6 Section 3 (9) 9.1.6.1 and provision of manufacturers 25 year warranty (Not required in Temp Accommodation)	(a) Infrastructure to be tested by Project Co: <ul style="list-style-type: none">• RJ45 user outlets for both channel and link tests as appropriate to include Consolidation Points• All backbone cabling subsystems including fibre and copper cabling.• Validation of blown fibre infrastructure	Test Certificates for all RJ45 outlets and cores: As per Volume 2 Schedule Part 6 Section 3 (9) 9.1.6.1 CCTV cameras	✓	✓	✓	✓	✓	✓		
(xiv)	The areas have the access control - security alarm and stand alone local commissioning	(a) Infrastructure to be tested by Project Co: (b) the CCTV cameras	Test Certificates for the following: CCTV cameras with electric supply Project Co's Certificate	✓	✓		✓	✓	✓		

Completion Requirements	Test	Process Compliance for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
							1	2	3	4	5
		tested locally.	and local commission of the cameras provided.								
(xv)	The areas are to the size/area set out in the Accommodation Schedule (See Project Co's Proposals for Temp Accommodation) and the areas are located as per the plans contained in Project Co's Proposals or agreed changes of them.	(a) Project Co to provide, confirm or revise room area schedules appropriately – with agreement of the College.	Final Accommodation Schedules & RDS (See Project Co's Proposals for Temp Accommodation) from Project Co.	✓	✓	✓	✓	✓	✓		
(xvi)	Car Parking areas must: (applicable to phase area completion detailed within Phasing Diagrams and Project Co's Proposals) Exist; Be free from standing water 24 hours after rainfall (For Temporary Car Park detailed in Phasing Diagrams in Schedule Part 5 see * point below); Have markings which are visible (For Temporary Car Park detailed in Phasing Diagrams in Schedule Part 5 see * point below); Be accessible; (For Temporary Car Park detailed in Phasing Diagrams in Schedule Part 5 see * point below);	Independent Tester may inspect.	Independent Tester may inspect.							✓	✓

Completion Requirements	Test	Process Compliance	for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
								1	2	3	4	5
	and Be surfaced (For Temporary Car Park detailed in Phasing Diagrams in Schedule Part 5 see * point below);											
3. Buildings have been located on each of the Sites together with external hard and soft landscaped areas as shown in the College's Requirements and Project Co's Proposals and as approved in any planning approval.	Hard stand and planted areas must: (applicable to phase area completion detailed within Phasing Diagrams and Project Co's Proposals) Exist in the case of hard landscaped areas and (where appropriate) in the case of planted be sown with grass seed or other planting as detailed in Project Co's Proposals (If sowing/planting can not be undertaken due to inclement weather the requirement will be treated as a Snagging Matter; Be accessible.	Independent Tester may inspect.		Independent Tester may inspect.							✓	✓
4. External fencing, gates, security equipment, vehicular and pedestrian access are complete as described in the College's Requirements and Project Co's	There is safe vehicular and pedestrian access.	(a) Independent Tester may inspect. (b) Security Access Control infrastructure to be tested by the Project Co: • RJ45 data		(a) Building Control Certificate, (b) Test Certificates for the following from Project Co: ISO/IEC standard 11801:2002 and TIA/EIA standard 568-B measurement methods when appropriate:							✓	✓

Completion Requirements	Test	Process Compliance	for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
								1	2	3	4	5
Proposals.		<ul style="list-style-type: none"> outlets Cat 6A cabling from RJ45 data outlets to Distribution Patching Cabinets (c) the CCTV cameras tested locally by Project Co. 		Specified frequency range Attenuation NEXT Power-sum NEXT Power-sum ELFEXT Return loss Propagation delay Delay skew, CCTV cameras with electric supply Building Control Certificate and local commission of the cameras provided from Project Co								
5. Any Buildings that are to be made weatherproof and watertight as part of the Works are weatherproof and watertight.	The areas are free from flood, penetrating water and damp.	Independent Tester may inspect.		Independent Tester may inspect.	✓	✓		✓	✓	✓	✓	✓
6. The building services and drains comply with the College's Requirements and Project Co's Proposals in all material respects.	The areas to have an adequate hot, cold and potable water supply which has been appropriately tested and commissioned.	<ul style="list-style-type: none"> Project Co to provide test and commissioning certificates to confirm installation conforms to the design criteria. Project Co to provide water chlorination 		Commissioning and Test Certificates for water temperature and pipe work pressure test Certificate from Project Co. Chlorination Test Certificate from Project Co.	✓	✓		✓	✓			

Completion Requirements	Test	Process Compliance	for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
								1	2	3	4	5
		certificates for complete system.										
(i)	The areas to have an electrical supply and distribution system with the requisite number of outlet points as stated in the room data sheets, which have been appropriately tested and commissioned.	Project Co to confirm design criteria and provide test and commissioning certificates.		Electrical Test Certificate from Project Co. Earth Loop and Insulation Resistance Test Certificate from Project Co.	✓	✓	✓	✓	✓	✓		
(ii)	The areas are to have a sewerage and below ground drainage system that is functional and which has been appropriately tested and commissioned.	(a) Project Co to confirm that systems are functional and provide CCTV report for new drains.		Building Control Certificate.				✓	✓	✓	✓	✓
(iii)		(b) Building Control inspection records to be maintained.						✓	✓	✓	✓	✓
(iv)	The areas have a gas supply which have been appropriately tested and commissioned	Project Co to confirm design criteria and provide test and commissioning certificates.		Gas Commissioning and Test Certificates from Project Co.				✓	✓	✓		
(v)	The areas heating systems in so far as the permanent system has been installed and is in use, have been tested and commissioned and	(a) Project Co to confirm heating has been designed in accordance with the Project Co's		Boiler /CHP Commissioning Certificate (Not required in Temp Accommodation) and pipe work pressure test	✓	✓		✓	✓	✓		

Completion Requirements	Test	Process Compliance	for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase					
								1	2	3	4	5	
	are functioning.	Proposals.		Certificate from Project Co.									
(vi)		(b) Project Co to provide commissioning certificates for BMS and LTHW systems and balancing test certificates (not inclusive of the further coordination with the IT system). (For Temporary Accommodation only the items specified in Project Co 's Proposals will be tested).			✓	✓		✓	✓	✓			
(vii)	The areas' ventilation is present, tested and commissioned to the ventilation rates as set out in Project Co's Proposals and meet the College's. Construction Requirements.	(a) Project Co to confirm installation complies with relevant legislation and that necessary fire dampers are installed. (For Temporary Accommodation only the items specified in Project Co's Proposals will		(a) (b) and (c) Test and Commissioning Certificates provided by Project Co.	✓	✓		✓	✓	✓			

Completion Requirements	Test	Process Compliance for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
							1	2	3	4	5
		be tested).									
(viii)		(b) Project Co to provide commissioning certificates for mechanical ventilation and Air Conditioning systems (For Temporary Accommodation only the items specified in Project Co's Proposals will be tested).		✓	✓		✓	✓	✓		
		(c) Project Co to provide copies of ventilation modelling design.					✓	✓	✓		
		(d) All to be inspected by Independent Tester including window openings		✓	✓		✓	✓	✓		
7. The Buildings, and where relevant the Sites, are clean and tidy and all debris, surplus	The area must be clear of waste and dust and cleaned to the standard set out in the Completion Requirements.	(a) Project Co to ensure compliance that all waste and protection material has been removed	Independent Tester may inspect.	✓	✓	✓	✓	✓	✓	✓	✓

Completion Requirements	Test	Process Compliance	for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
								1	2	3	4	5
material and rubbish has been removed.		from site.										
8a. Project Co has provided all necessary information to enable the occupation and use of each Building and in accordance with Clause 18.5 of the Project Agreement (For Temporary Accommodation the final draft O&M Manuals will be provided at handover.	Operation and maintenance manuals and user instructions are to be made available,	Project Co to provide a draft copy of O&M manual with comments of any additional information required.		Provision of draft Building Manual with Draft O&M at Acceptance Completion.	✓	✓		✓	✓	✓		
9. Project Co has provided a Planned Maintenance Programme in relation to the Works or the parts of the Works relating to each individual Facility in accordance with clause 23.1 (Provision of Planned Maintenance	The Project Co has provided a Schedule of Project Maintenance in accordance with Clause 23.1 of the Project Agreement.	Project Co provides a Schedule of Project Maintenance Programme in accordance with Clause 23.1 of the Project Agreement.		Receipt of the Schedule of Project Maintenance in accordance with Clause 23.1 of the Project Agreement.				✓	✓	✓	✓	✓

Completion Requirements	Test	Process Compliance	for Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
							1	2	3	4	5
Programme) of the Project Agreement.											
10. The fire and intruder alarm installations and any other security related equipment are complete to a sufficient standard to allow a fire certificate to be issued.	The areas means of escape for fire or other emergency must be functional and free from obstruction.	<p>(a) Project Co to obtain Fire Officer approval to means of escape strategy and fire escape plan, Fire Appliance access, plan and fire fighting equipment and signage provisions.</p> <p>(b) Project Co to ensure all means of escape are clear from obstruction and fire signage is in place.</p> <p>(c) Ironmongery to be completed on fire exit doors.</p> <p>(d) Independent Tester may witness the testing of emergency lighting and</p>	<p>(a) Either Building Control Certificate or Fire Officers agreement.</p> <p>(b-e) Building Control Certificate from Project Co.</p> <p>(d-e) Fire Alarm & Emergency Lighting Test and Commissioning Certificates applicable to area under test, provided by Project Co's Certificate.</p> <p>Commissioning Certificates from Project Co.</p>	✓	✓		✓	✓	✓		

Completion Requirements	Test	Process Compliance	for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
								1	2	3	4	5
		integration of fire detection and alarm. (e) Cause and effect tests to be demonstrated on lift, "hold open" fire doors etc.										
11. The mechanical and electrical plant and equipment have been tested on Site to ascertain compliance with the College's Construction Requirements and the Project Co's Proposals and meet the standards set out in the College's Construction Requirements and the Project Co's Proposals.	Testing and commissioning of plant and equipment insofar as permanent installations have been satisfactorily completed and copies of the relevant certificates have been provided.	Project Co to provide commissioning and testing certificates via Commissioning Manager (Commissioning Manager role restricted to Phase 1-3 only). Inspection by Independent Tester.		Test and Commission Certificates from the Contractor.	✓	✓	✓	✓	✓	✓		
12. All mechanical and electrical installation work is complete and the plant and	Start up tests complete.	Test running complete. Sign off by Commissioning Manager (Commissioning Manager role restricted		Test and Commission Certificates from Project Co.	✓	✓	✓	✓	✓	✓		

Completion Requirements	Test	Process Compliance for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
							1	2	3	4	5
equipment are safe for use.		to Phase 1-3 only).									
13. The ICT Infrastructure is in accordance with the ICT Requirements (as set out Volume 2 Schedule Part 6 Section 3 (9)) and Project Co's Proposals	Passing/Failing of tests to be determined in accordance with Project Co's Proposals - Appendix 2.6.3.9.0.4b	Infrastructure to be tested by Project Co: Active IP Network and wireless Telephone System Servers and storage network Thin Client solution End User Devices	Test Certificates for the following from Project Co: Provision of training and handover manuals Provision of warranty documentation As per Volume 2 Schedule Part 6 Section 3 (9) 9.1.7				✓	✓	✓		
14. General system Commissioning	As CIBSE Commissioning Management Guide	Site specific test regime Sign off by Commissioning Manager (Commissioning Manager role restricted to Phase 1-3 only).	Certification	✓	✓		✓	✓	✓		
15. Passive Systems	Natural Ventilation	Site specific test regime	Certification	✓	✓		✓	✓	✓		
	Solar Shading	Site specific test regime	Certification				✓	✓	✓		
	Purging	Site specific test regime	Certification				✓	✓	✓		
	Element of Mixed mode	Site specific test regime	Certification				✓	✓	✓		
16. Acoustics	Separation, isolation and reverberation compliance.	Test as determined in Project Co's Proposals - Section 5 Attendance by	Certification				✓	✓	✓		

Completion Requirements	Test	Process Compliance for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
							1	2	3	4	5
		Independent Tester during testing									
17. Room Proving	Comfort cooling, Lighting levels, ventilation, heating, cooling, glare, fire alarm sounder audibility. Air quality, Daylighting as detailed in the College's Construction Requirements and Project Co's Proposals	Site specific test regime Sign off by Commissioning Manager (Commissioning Manager role restricted to Phase 1-3 only).	Certification	✓	✓		✓	✓	✓		
18. Specialist ventilation systems	Testing and commissioning of plant and equipment	Site specific test regime Sign off by Commissioning Manager	Certification				✓	✓	✓		
19. Building Efficiency	Thermal and energy efficiency testing procedure. To include but not limited to the items detailed in Schedule Part 6, Section 7, Stage 2 and additional items as proposed by Project Co	In regard to the items detailed in Schedule Part 6, Section 7 Stage 2, - <ul style="list-style-type: none"> ▪ Passing the tests listed in Paragraph 1; ▪ Demonstrating the thermal performance as required in Paragraph 2; and ▪ Completion of any Remedial Actions in accordance with Paragraph 3 <p>In regard to all other tests, sign off by Commissioning Manager that the</p>	Certification				✓	✓	✓		

Completion Requirements	Test	Process Compliance for	Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
							1	2	3	4	5
		thermal and energy measures have been achieved consistently throughout the buildings.									
20. Energy Monitoring	As provided in Schedule Part 6, Section 7 Stage 3	Provision of an Audited As Built Energy model in accordance with Schedule Part 6 Section 7 Stage 3	Certification							✓	✓
21. Building Log Book	Suitability	Provision	BREEAM cert for City, Riverside and the Halls of Residence							✓	✓
22. On site renewables	Operational test Output test	Site specific test regime	Certification G59/ G10/ G83				✓	✓	✓		
23. Reclaimed Water	Testing and commissioning of plant and equipment	Site specific test regime	Certification				✓	✓	✓		
24. Halls of Residence	Halls of Residence is fully compliant with HMO Legislation regulating the private residential sector	HMO Licence	HMO Licence						✓		
25. Training	ICT All Building Systems Radio & TV Systems FF&E (For Temp Accommodation Training limited to items provided in Project Co Proposals)	Project Co to provide training to College identified staff on: Plant operation BMS operation CCTV operation Security operation (locks, alarms and barriers) Heating and Ventilation operation		✓	✓	✓	✓	✓	✓		

Completion Requirements	Test	Process Compliance	for Documentary evidence indicating that the Test has been passed	Temp Acc - City	Temp Acc - Riverside	Temp Acc - Riverside - Refit	Phase				
							1	2	3	4	5
		Lighting operation FF&E operation (FF&E as supplied by Project Co) ICT Infrastructure operation and maintenance (where infrastructure is supplied by Project Co) Specialist and General Cleaning Methodologies									
26. Migration	Migration to temporary decant accommodation has been completed in accordance with the requirements details in the College's Requirements Section 11.2 and 11.2.1	Transfer of all items to Temporary Accommodation	Completion	✓	✓	✓					

*=Temporary Car Park: (applicable to phase area completion detailed within Phasing Diagrams contained in Schedule Part 5 (*Land Matters*) and Project Co's Proposals) must

Exist;
Be accessible; and
Have hardstanding surfacing suitable for the parking of motor vehicles

*=The tests detailed in this section must also be complied with for migration from the Townhead Building and Riverside Tower prior to the College granting access to Project Co to the Townhead Building and Riverside Tower and permit demolition to commence.

APPENDIX 1

ANNEX 1

ICT TESTING: ACCEPTANCE CRITERIA

As the ICT solution progresses from initial factory testing to Service Availability Project Co shall seek acceptance, at the various stages (both testing stages and project stages), from the College by means of obtaining College sign off.

These categories shall be used as the means to define College sign off, the tables below details the requirement. For the avoidance of doubt where acceptance is based on agreed workarounds, acceptance will be on the basis that Project Co carries out full rectification as soon as reasonably practicable after acceptance.

A five level category of test failure severity, ranging from severe failures to cosmetic failures is defined as follows:-

Category	Definition
One - Critical	A test failure which prevents testing of the complete solution or individual elements of the complete solution and renders the complete solution operationally unusable.
Two - High	A test failure which potentially prevents testing of the complete solution or individual elements of the complete solution and renders elements of the complete solution operationally unusable.
Three - Medium	A test failure which allows the testing to proceed but renders elements of the complete solution operationally unusable. A known workaround shall be in place such that the complete solution is operationally usable.
Four – Low	A test failure which allows the testing to proceed and has minimal impact on the performance or functionality of the complete solution.
Five – Cosmetic	A test failure which allows the testing to proceed and has no impact on the performance or functionality of the complete solution.

Scenario	Acceptance Outcome
Category One failures outstanding	Acceptance withheld if one or more failures are outstanding. Full retest required following rectification works carried out in accordance with retesting procedure.
Category Two failures outstanding	Acceptance withheld if one or more failures are outstanding. Full retest required following rectification works carried out in accordance with retesting procedure.
Category Three failures outstanding	<p>Acceptance will be confirmed where:</p> <ul style="list-style-type: none"> (i) no more than three 3 Category 3 failures are outstanding in total; and (ii) the Contractor has provided the College with a detailed workaround plan which demonstrates, to the College's satisfaction, the way in which limited duration workarounds will be implemented to provide a short term workaround for each Category 3 failure; and (iii) the Contractor implements the agreed workaround plan in accordance with its terms (failure to do so being a breach of this Agreement) and <ul style="list-style-type: none"> (a) the Contractor has provided the College with a detailed rectification plan which demonstrates, to the College's satisfaction, the way in which all of the Category 3 failures identified will be rectified within timescales which the College confirms as being acceptable; and (b) the Contractor confirms to the College that it will implement the agreed rectification plan in accordance with its terms (failure to do so being a breach of this Agreement.)

Scenario	Acceptance Outcome
<p>Category Four failures outstanding</p>	<p>Acceptance will be confirmed where:</p> <ul style="list-style-type: none"> (i) no more than twelve (12) of the total test failures outstanding were Category 4 outstanding in total; (ii) the Contractor has provided the College with a detailed rectification plan which demonstrates, to the College's satisfaction, the way in which all of the Category 4 failures identified will be rectified within timescales which the College confirms as being acceptable; and (iii) the Contractor confirms to the College that it will implement the agreed rectification plan in accordance with its terms (failure to do so being a breach of this Agreement).
<p>Category 5 failures outstanding</p>	<p>Acceptance will be confirmed where:</p> <ul style="list-style-type: none"> (i) no more than one hundred (100) Category 5 failures outstanding in total; (ii) the Contractor has provided the College with a detailed rectification plan which demonstrates, to the College's satisfaction, the way in which the Category 5 failures concerned will be rectified; and (iii) the Contractor confirms to the College that it will implement the agreed rectification plan in accordance with its terms (failure to do so being a breach of this Agreement).

SCHEDULE - Part 11

EQUIPMENT AND MIGRATION

SECTION 1

EQUIPMENT PROVISIONS

1. GROUP 1 EQUIPMENT AND GROUP 2 EQUIPMENT

- 1.1 Project Co shall at its own cost procure, install and commission the Group 1 Equipment and Group 2 Equipment at the Facilities as part of the Works in accordance with the College's Construction Requirements, the Final Migration Programme and Project Co's Proposals.
- 1.2 Project Co shall at its own cost maintain and replace the Group 1 Equipment in accordance with the College's Construction Requirements, the Service Level Specification and Project Co's Proposals.
- 1.3 The College shall be responsible for the maintenance, replacement and disposal of the Group 2 Equipment in accordance with Good Industry Practice and Project Co shall have no responsibility to maintain or replace or dispose of the Group 2 Equipment
- 1.4 A Certificate of Practical Completion in respect of any Phase shall not be issued by the Independent Tester until the installation and commissioning of Group 1 Equipment and Group 2 Equipment to be located in the relevant Facility has been completed to the Independent Tester's satisfaction

2. GROUP 3 EQUIPMENT

- 2.1 The College shall at its own cost:-
 - 2.1.1 provide and make available to Project Co the Group 3 Equipment for installation and commissioning by Project Co at the Facilities in accordance with the Programme, the Final Migration Programme and the Migration Equipment Table;
 - 2.1.2 procure that at the time the Group 3 Equipment is made available, such Equipment is compliant with the Room Data Sheets, the Consents and Law, is accompanied by current electrical testing certification (where not new) and is in such state and condition as will not constitute grounds for the Independent Tester to refuse to issue a Certificate of Practical Completion, provided that the College shall be entitled (in its absolute discretion) to instruct the Independent Tester to issue a Certificate of Practical Completion notwithstanding any deficiency in the Group 3 Equipment.
- 2.2 Project Co shall migrate, install and commission the Group 3 Equipment at the Facilities in accordance with the Final Migration Programme, the Migration Equipment Table, the College's Construction Requirements and Project Co's Proposals.
- 2.3 Project Co shall give the College not less than three months prior written notice of the date (which date shall be within any relevant period stated in the Migration Equipment Table) upon which Project Co requires the College to procure that each item of Group 3 Equipment is made available to Project Co for migration, installation and commissioning by Project Co in accordance with paragraph 2.2.
- 2.4 Each notice given pursuant to paragraph 2.3 shall specify:-
 - 2.4.1 the item or items of Group 3 Equipment to be made available;
 - 2.4.2 the date upon which Project Co requires the College to make the relevant item or items of Group 3 Equipment available in accordance with the Migration Equipment Table.

- 2.5 Without prejudice to paragraph 2.1, the College shall make available the relevant item or items of and/or pertaining to the Group 3 Equipment on the date specified in the relevant notice issued pursuant to paragraph 2.3 at such location as is agreed between the parties (which for the avoidance of doubt, must be safely accessible by those persons collecting the relevant item or items of Equipment).
- 2.6 If at the time of collection of the Group 3 Equipment, such Group 3 Equipment is found to be damaged, does not properly function or otherwise does not correspond with the items to be made available by the College pursuant to paragraph 2.1 to allow successful completion of commissioning to occur, then the College shall procure the repair or replacement of such Group 3 Equipment as soon as reasonably practicable, having regard to the length of time generally taken to procure such Group 3 Equipment or procure repairs of such Group 3 Equipment provided that, to avoid doubt, where such Group 3 Equipment is damaged or does not function properly to allow commissioning to occur due to the acts or omissions of Project Co or any Project Co Party, then Project Co shall reimburse the College for any costs reasonably and properly incurred by the College in procuring the repair of or a replacement item of Group 3 Equipment within 20 Business Days of receipt of a demand therefore together with supporting information.
- 2.7 A Certificate of Practical Completion in respect of any Phase shall not be issued by the Independent Tester until the installation and commissioning of Group 3 Equipment to be located in the relevant Facility has been completed to the Independent Tester's satisfaction

3. **GROUP 4 EQUIPMENT**

- 3.1 **Not used**

4. **GROUP 5 EQUIPMENT**

- 4.1 The College shall at its own cost:-

4.1.1 procure, install and commission the Group 5 Equipment at the Facilities as part of the College's Commissioning in accordance with Schedule Part 10 (*Outline Commissioning Programme*), this Schedule Part 11 (*Equipment and Migration*) and the Final Migration Programme; and

4.1.2 without prejudice to Clause 5.3 of this Agreement. procure that at the time of installation of the Group 5 Equipment, such Group 5 Equipment is compliant with the College's Construction Requirements, the Room Data Sheets, the Consents and Law, is accompanied by current electrical testing certification (where not new) and is in such state and condition as will not constitute grounds for the Independent Tester to refuse to issue a Certificate of Practical Completion.

- 4.2 Subject always to compliance with the Final Commissioning Programme by the College and College Parties, Project Co shall provide all reasonable access to Works and/or the Facilities (to the extent permitted by the Licence and the Ancillary Rights) to the College and College Parties for the purposes of installing and commissioning the Group 5 Equipment, including such access as may be required to allow the College to install and commission the Equipment identified in Section 5 of this Schedule Part 11 (*Equipment and Migration*).

- 4.3 The College, when installing and commissioning the Group 5 Equipment, shall and shall procure that the College Parties shall:-

4.3.1 act in accordance with Law, the Consents and the terms of all applicable building warrants, the relevant Quality Plans and Good Industry Practice and shall comply with all relevant safety procedures, which shall include any relevant construction phase plan for the construction of the Facilities, the Contractor's Site Rules from time to time and any directions as to site safety that may be issued by or on behalf of Project Co and/or the Contractor's Site Manager from time to time;

- 4.3.2 do so in a manner that is not likely to be injurious to health or to cause damage to property;
 - 4.3.3 not damage the Works and/or the Facilities or interfere with, hinder or delay Project Co in carrying out its obligations under this Agreement;
 - 4.3.4 be responsible for removing from the Site all debris, waste, packaging and surplus materials associated with such Group 5 Equipment on completion of such installation;
 - 4.3.5 ensure that the installed Group 5 Equipment and all components installed are adequately protected (such levels of protection to be agreed between the College and Project Co) to ensure they shall not be vulnerable to damage as a result of Project Co's activities at the Site prior to the relevant Phase Actual Completion Date; and
 - 4.3.6 no less than 15 Business Days prior to taking any access to the Site for such purposes, submit for approval by Project Co (as principal contractor under the CDM Regulations), a method statement and a detailed programme (consistent with this Schedule Part 11 (*Equipment and Migration*) and the Final Migration Programme) and details of all individuals who are to attend the Site for such purposes.
- 4.4 The College shall be responsible for procuring and complying with all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorisations, required by law, and all necessary consents and agreements from any third party needed to install and commission the Group 5 Equipment.

5. GENERAL

- 5.1 Each party shall at its own expense perform its obligations described in this Schedule Part 11 (*Equipment and Migration*).
- 5.2 Following the Phase Actual Completion Date for a Facility at which Group 1 Equipment is located, Project Co shall not be responsible for and shall have no obligation to insure any Equipment other than the Group 1 Equipment.

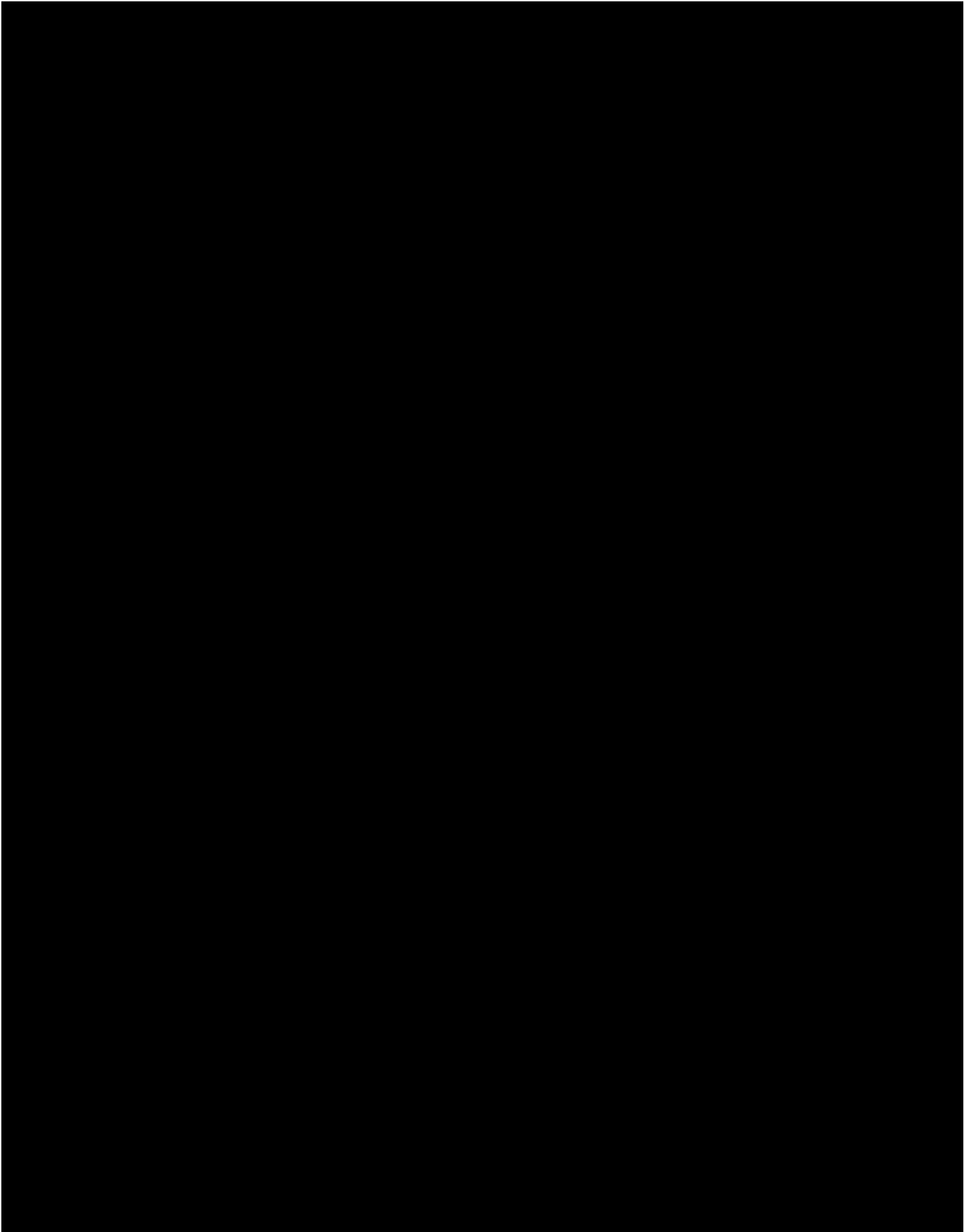
SECTION 2

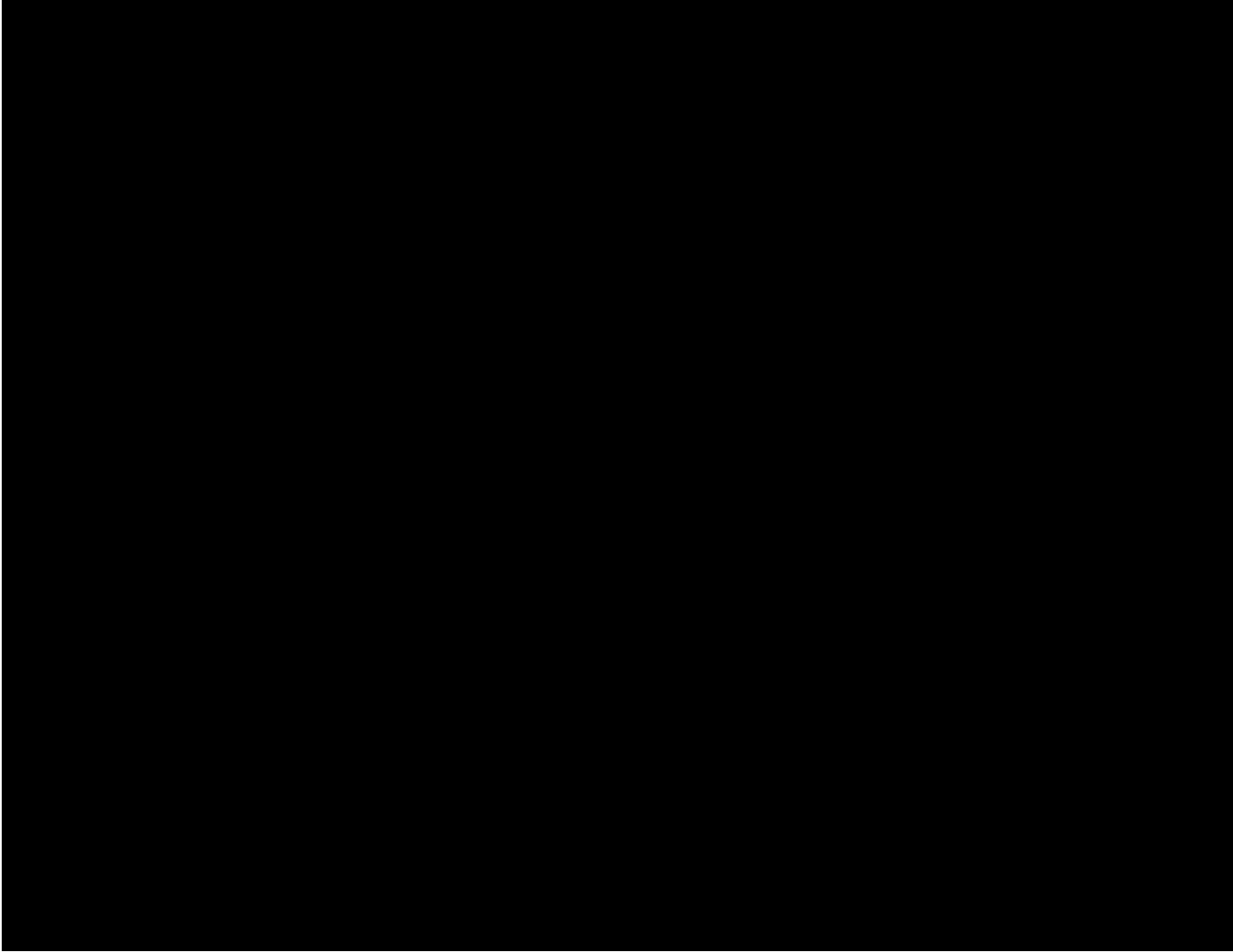
MIGRATION

1. Not less than 12 months before a Phase Completion Date, the Project Co shall provide the College with a draft of the Final Migration Programme for the relevant Phase as jointly developed by the College and Project Co in accordance with the provisions of paragraphs 2 and 3 below and in accordance with the Migration Methodology set out in section 11 Appendix A Migration Plan and section 4 Appendix – Management of the Works of Project Co's Proposals. The College shall provide Project Co with comments on the draft Final Migration Programme for the relevant Phase submitted to it within 3 months. The parties shall, within 2 months of receipt by Project Co of the College's comments agree the terms of the Final Migration Programme for the relevant Phase. The College may by prior notice to Project Co change the scope and time of the Migration Services and reimburse Project Co its reasonable costs incurred as a result of such change in scope or time. If the parties are unable to agree the Final Migration Programme for the relevant Phase or the change in scope or time of the Migration Services by 3 months before the proposed completion of that Phase, the matter shall be referred for determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*).
2. The Final Migration Programme for each Phase shall be in accordance with the Expanded Migration Programmes as contained in section 4 Appendix – Management of the Works of Project Co's Proposals and shall impose no greater or more onerous obligations on the College than those set out in the Expanded Migration Programme (unless otherwise agreed by the College in its absolute discretion). The Final Migration Programme shall then replace the Expanded Migration Programme as it relates to that Phase.
3. The Final Migration Programme shall describe the steps necessary, the party responsible for taking each of such steps and the timing and sequence of each of such steps to ensure insofar as relevant for the Phase all activities required to complete the procurement, migration, installation and commissioning of Equipment (other than Group 4 Equipment) are completed prior to the relevant Phase Completion Date.
4. The Parties shall undertake and complete the activities which they are responsible for under the Final Migration Programme in accordance with that programme. If Project Co fails to undertake any activities which are programmed to take place after the relevant Phase Completion Date the College may give notice to Project Co requiring it to carry out the activities. If Project Co fails to remedy its failure within 5 Business Days of receipt of such a notice the College shall be entitled to perform or procure the performance of the activities Project Co is responsible for under the Final Migration Programme and Project Co shall pay to the College all reasonable costs, expenses and claims incurred by the College whilst performing or procuring the performance of such activities where they exceed the Migration Service Payment which would have been payable to Project Co had Project Co performed such activities in accordance with the Final Migration Programme.

SECTION 3

MIGRATION MILESTONES





SECTION 4
NOT USED

SECTION 5

ACCESS FOR COMMISSIONING OF GROUP 5 EQUIPMENT

Introduction

The Parties agree and acknowledge that two specialist installations have elements of Group 5 Equipment as listed below:

- Working Ship's Engine (described in Section 3.10 Appendix B of Schedule Part 6 (*Construction Matters*))
- Simulators (described in Section 3.10 Appendix C of Schedule Part 6 (*Construction Matters*))

Project Co will be responsible for ensuring safe working and co-ordination and co-operation between all contractors on Site including the Group 5 contractor(s) as required under the CDM Regulations and agree that their main duties will include:

- to plan, manage and monitor the Construction Phase to ensure, so far as is reasonably practicable, it is carried out without risks to health or safety
- to ensure sufficient and adequate welfare facilities are available for those working on the Site
- to implement the Contractors Site Rules as necessary
- to implement the Construction Phase Health and Safety Plan
- to provide a suitable Site induction and make sure those working on Site have received the training they need to carry out the work safely and without risks to health and safety
- to make sure the Site is suitably fenced and prevent unauthorised people from entering the Site
- to ensure co-operation between those working on the Site, and that work is co-ordinated in such a way as to prevent danger
- to ensure suitable arrangements for effective consultation with the workforce
- to ensure the right health and safety information is provided to the right people at the right time.

Prior to the Group 5 contractor start on Site

Project Co will establish a single point of contact with the College to facilitate effective communication and the general co-ordination of the contractors. Project Co will issue the College with the documents as listed below which will be issued to the Group 5 contractor(s) prior to starting on site:

- Construction Phase Health & Safety Plan
- A copy of the Contractors Site Rules
- Site induction details
- Details of co-ordination meetings
- Details of work force consultation meetings
- List of agreed attendances
- A blank copy of method statement & risk assessment review record

- A blank copy of the daily briefing sheets
- Layout and location of welfare
- A blank copy of all required Permits to Work.

The College shall procure that a fully detailed site- specific method statement and risk assessment will be issued for review and acceptance by Project Co by the Group 5 contractor(s) a minimum of two weeks before starting on Site. Project Co shall review the method statement and risk assessment and their acceptance will be a condition of commencement of the works.

Simulators Group 5 FF&E Requirements

The simulator suite comprises the following rooms/spaces

- RENG021 PC Engine Simulator
- RENG022 Engine Simulator
- RNS013 Cargo Lab LICOS simulator
- RNS014 Cargo Lab general handling (simulator future-proofed)
- RNS015 GMDSS
- RNS016 ENS Lab
- RNS017 ENS Lab (GMDSS future-proofed)
- RNS18-21 135deg bridge simulators
- RNS022 360 bridge simulators
- RNS023 Simulator Server Space

Programme and installation

Project Co agrees an 8 week programme for the installation works.

Project Co shall comply with this programme and will complete, prior to the start of the simulator fit out

- The relevant rooms and server spaces including environmental systems
- ICT network fully tested and commissioned and certified as Practically Complete.

Project Co shall ensure that the surrounding areas, including ducts and voids, will be sufficiently complete so that the rooms will be dust free and securable.

Project Co requires access and egress for plant, materials and equipment for the full duration of the installation. The College will agree with Project Co a delivery route to the simulator suite prior to the specialists starting on Site. The route will be agreed taking account of size, shape, weight of the materials being delivered, as well as any other activities currently in progress on Site. Vulnerable areas will be protected by the Group 5 contractor(s) prior to any materials being distributed.

During the specialist installations, a period of dual running may be required between the new Riverside Site and the existing simulator suite prior to service availability in order to minimise the shutdown of the

simulator teaching facilities.

Working Ship's Engine

Project Co shall comply with their Schedule and RDS R ENG 054 which provides details of the requirements for the working ship's engine infrastructure and systems. Project Co agrees that its scope of works includes the incorporation of the infrastructure and supporting systems which includes:

- Exhaust and silencers
- Fuel supply pipework and tanks
- Water cooling system and pipework
- Basic electrical control system and cabling
- Rolling hoist/crane.

The above items are classified as Group 2 Equipment.

- The supporting beams to the main engine.
- Proposals and provision to bund the floor
- Sufficient provision for the engine to run for periods of up to a maximum of a four hour 'watch' per day, and up to five days per week.
- Provision of an electrical board integrated with lighting to accommodate future engine installations in addition to any required for 'shore power', as per sketch provided with appendix B.
- If any externally mounted tanks used then provision of frost protection to be included.
- The flue and associated attenuation tank.
- Provision for sufficient access during installation and future access, roller shutter or demountable panel (likely frequency of demounting, once per 20 years).
- Provision to structural design for the installation of a control room and gantry as a potential separate element of the College fit-out.

Programme and installation

Project Co agrees that before the specialist installation takes place, Project Co will make sure the room is secure, wind and water tight with power and background lighting.

Project Co agrees that in week 6 of the Group 5 installation, all base electrical and mechanical systems, including the gantry crane, will be fully operational (including testing and commissioning) to allow for the integration of the fit-out systems to be finalised by the end of week 9.

Project Co agrees that from the end of week 9, all external tanks and pipe work will be operational to allow for the final 6 weeks of engine connections and commissioning.

Project Co requires access and egress for plant, materials and equipment for the full duration of the installation. The College will agree with Project Co a delivery route to the engine room R ENG 054 which access will be agreed with Project Co prior to the Group 5 contractor(s) starting on Site. The route will be agreed taking account of size, shape, weight of the materials being delivered, as well as any other activities currently in progress on site. Vulnerable points along the delivery route will be protected by the

Group 5 contractor(s) prior to materials being distributed.

Attendances

Project Co and the College will agree a list of attendances before the Group 5 contractor(s) start on Site. Project Co agrees to the undernoted list of key attendances and sets out the ownership of these attendances:

- Access and safety scaffolding – Group 5 contractor
- Sanitary accommodation, welfare facilities and mess rooms etc – Project Co
- Clean away rubbish to skips within 24 hours – Group 5 contractor
- Removal / servicing of skips – Project Co
- COSHH requirements for removal from site – Group 5 contractor
- Unloading, storage / security of plant / materials & temporary craneage – Group 5 contractor
- Distribution of materials around Site and within Facilities – Group 5 contractor
- Power at 110v to within 25 metres of work place – Project Co
- Back ground safety lighting – Project Co
- Task lighting – Group 5 contractor
- PPE (Hard hats / boots / luminous vests / gloves / safety glasses) - Group 5 contractor
- First Aid – Project Co
- Extension leads and small tools – Group 5 Contractor

SCHEDULE - Part 12
SERVICE REQUIREMENTS
SECTION 1
SERVICE LEVEL SPECIFICATION

This is the Service Level Specification in the Agreed Form.

SECTION 2

METHOD STATEMENTS

These are the Method Statements in the Agreed Form.

SECTION 3

SERVICES QUALITY PLAN

This is the Services Quality Plan in the Agreed Form.

SCHEDULE - Part 13
INDEPENDENT TESTER CONTRACT

This is the Independent Tester Contract in the Agreed Form.

SCHEDULE - Part 14

PAYMENT MECHANISM

SECTION 1

INTERPRETATION

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

- "Annual Energy Payment"** shall have the meaning given to it in paragraph 1.1.2 of Section 7 of this Schedule Part 14 (*Payment Mechanism*)
- "Annual Energy Base Payment"** [REDACTED] (index linked)
- "Availability Failure"** subject to Section 4 (*Temporary Repairs*) of this Schedule Part 14 (*Payment Mechanism*), a Service Event which has not been Rectified within the relevant Rectification Period and which causes a Functional Area to be Unavailable
- "Availability Standards"** means the service requirements identified as such, set out in the Service Level Specification
- "Core Times"** has the meaning given in the Service Level Specification and "Core Time" means a time within Core Times
- "Daily SUF"** means, on a Day, the aggregate GSUs for all of the Functional Areas that have Core Time on that Day
- "Day"** means a period of 24 hours, beginning at 00:00 hours, during which there are Core Times
- "Deduction Period" or "DP"**
- (a) where the relevant Performance Failure or Availability Failure arises following a Service Event in respect of which a Rectification Period is specified in the Availability Standards or the Performance Standards, as applicable
 - (i) if the Service Failure Time occurs before or during Core Time for the relevant Functional Area on a Day, means the number of Days that elapse from and including that Day to, and including, the Day on which the Logged Rectification Time occurs, but excludes the Day on which the Logged Rectification Time occurs if the Logged Rectification Time is before the commencement of Core Time for the relevant Functional Area on that Day; and
 - (ii) if the Service Failure Time occurs after the expiry of Core Times for the relevant Functional Area on a Day, means the number of Days that elapse from and including the next Day to, and including, the Day on which the Logged Rectification Time occurs, but excludes the Day on which the Logged Rectification Time occurs if this occurs before commencement of Core Time for the relevant Functional Area on that Day; and

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

"External Utility Failure"

means a failure in:

- (a) the supply of gas, electricity, water, telephone or telecommunications services to the Sites; or
- (b) the service and facility of discharging water and sewerage from the Sites

where such failure originates on the side of the relevant Utility Point that is owned or controlled by the relevant utility provider and provided that such failure has not arisen as a result of an act or omission of Project Co or a Project Co Party

"Gross Monthly Availability Deduction"

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

$SUR \times TMGSUF$

where:

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

"Gross Service Units" or "GSUs"

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

"Helpdesk"

means the helpdesk facilities established by Project Co pursuant to the Service Level Specification

"ICT Rooms"

means the Data Centre, Main Comms Room(s) and Comms Rooms

"ICT Service Event"

means an incident or state of affairs which (i) Project Co can demonstrate to the satisfaction of the College, acting reasonably, pursuant to Appendix 4 of Schedule Part 14 (*Payment Mechanism*); or (ii) it has been determined pursuant to the Dispute Resolution Procedure that such incidence or state of affairs has occurred as a result of any act or omission of Project Co or any Project Co Party in relation to the carrying out or failure to carry out the ICT Services.

"ICT Systems"

means:

- (a) the ICT Systems and infrastructure to be provided in accordance with the College's requirements set out in Schedule Part 6 Section 3 (9) (but excluding passive structured cabling); and
- (b) any amendments or additions to such Systems and infrastructure made by the College from time to time

"Logged Rectification Time"

means the time which is shown in the Helpdesk records maintained by Project Co in accordance with the Service Level Specification as being the time when a Service Event was Rectified or Remedied, as the case may be, Project Co

"Logged Report Time" means the date and time which is shown in the Helpdesk records maintained by Project Co in accordance with the Service Level Specification as being the date and time at which a Service Report was received by the Helpdesk

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

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

"Minimum Agreed Availability Standards" means the minimum standards with which a Functional Area must comply, as agreed between the College and Project Co, for the period until a Permanent Repair can be undertaken

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

$$MAD_n = MAD_0 \times (1 - IF) + \left((MAD_0 \times IF) \times \left(1 + \frac{RPI_n - RPI_0}{RPI_0} \right) \right)$$

where:

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

MAD₀ [REDACTED] e
[REDACTED]
[REDACTED] DA. [REDACTED]

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

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

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

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

"NPD Facility Annual Service Payments" means the Riverside Annual Service Payment and City Annual Service Payment being sums in pounds sterling calculated in accordance with paragraph 3 (*Annual Service Payments*) of Section 2 (*Calculation of Service Payments*) of this Schedule Part 14 (*Payment Mechanism*)

"Pass Through Costs" means costs payable to Project Co pursuant to Section 6 (*Pass Through Costs*) of this Schedule Part 14 (*Payment Mechanism*)

"Performance Failure" subject to Section 4 (*Temporary Repairs*) of this Schedule Part 14 (*Payment Mechanism*), means a Service Event relating to a

Performance Standard which has not been Rectified within the relevant Rectification Period (if any)

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

"Permanent Repair" means Rectification following the agreement of a Temporary Repair

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

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

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

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

provided that:

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

"Remedial Period" means, where applicable, the period of time specified in the Performance Standards within which Project Co must Remedy a Service Event

"Remedy" means the actions or tasks, detailed in the column headed Remedial Period/Remedy in the Performance Standards, required to remedy a

Performance Failure and "Remedied" shall be construed accordingly

"Service Event" means an incident or state of affairs which occurs after the Phase Actual Completion Date which does not meet or comply with the Performance Standards and/or does not satisfy the Availability Standards excluding an ICT Service Event

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

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

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

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

where:

ASP_n is the NPD Facility Annual Service Payment for Contract Year "n" calculated in accordance with paragraph 3 of Section 2 (*Calculation of Service Payments*) of this Schedule Part 14 (*Payment Mechanism*)

"Service Units Affected" or "SUA" means the total Gross Service Units of the Functional Areas affected by an Availability Failure)

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

"Service Units of the Riverside Facility" or "SURF" means the total number of Gross Service Units attributable to the Riverside Facility as set out in Appendix 2 of this Schedule Part 14 (*Payment Mechanism*)

"Service Units of the City Facility" or "SUCF" means the total number of Gross Service Units attributable to the Riverside Facility as set out in Appendix 2 of this Schedule Part 14 (*Payment Mechanism*)

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

"Total Annual Gross Service Units of the NPD Facility" or "TAGSUF" means the total number of Service Units for the Facility calculated as follows:-

$$TAGSUF = (SUFT \times 230) + (SUFS \times 260)$$

Where:-

SUFT is the total number of Gross Service Units attributable to Functional Areas identified as "teaching spaces" in Appendix 2 of this Schedule Part 14 (*Payment Mechanism*)

SUFS is the total number of Gross Service Units attributable to Functional Areas identified as "support spaces" in Appendix 2 of this Schedule Part 14 (*Payment Mechanism*)

- "Total Energy Income"** shall have the meaning given to it in paragraph 1.1.1 of Section 7 of this Schedule Part 14 (*Payment Mechanism*)
- "Unavailable"** means in relation to a Functional Area that such Functional Area is in a state or condition which does not comply with any one or more of the Availability Standards
- "Unavailable but Used"** means in relation to any Functional Area that it is Unavailable but is used by the College for its normal purpose at any time (apart from the purposes of evacuating the Functional Areas and the time taken for such evacuation) during the Core Times including for the avoidance of doubt, for the provision of College Services during which it would otherwise be Unavailable
- "Utility Point"** means the location at which the relevant Utility service first enters a Facility.
- "Whole City Unavailability Conditions"** means any of the following conditions:
- (a) the Whole City Unavailability Threshold is exceeded
 - (b) more than 30% of the total toilet provision at the City Facility for either sex is Unavailable
 - (c) the ICT Systems being wholly or substantially unavailable to users at City Facility as a consequence of:
 - (i) all or any of the ICT Rooms in the City Facility being Unavailable; and
 - (ii) such unavailability resulting in failure of, or necessitating shut-down of, the ICT Systems installed in such ICT Rooms.
- "Whole City Unavailability Threshold"** means that Functional Areas in the City Facility having aggregate Gross Service Units equal to or greater than 30% of the Service Units at the City Facility are Unavailable or Unavailable but Used
- "Whole Riverside Unavailability Conditions"** means any of the following conditions:
- (a) the Whole Riverside Unavailability Threshold is exceeded; or
 - (b) more than 30% percent of the total toilet provision at the Riverside Facility for either sex is Unavailable ; or
 - (c) the ICT Systems being wholly or substantially unavailable to users at Riverside Facility as a consequence of:
 - (i) all or any of the ICT Rooms in the Riverside Facility being Unavailable; and
 - (ii) such unavailability resulting in failure of, or necessitating shut-down of, the ICT Systems installed in such ICT Rooms.
- "Whole Riverside Unavailability Threshold"** means that Functional Areas in the Riverside Facility having aggregate Gross Service Units equal to or greater than 30% of the Service Units at the Riverside Facility are Unavailable or

SECTION 2

CALCULATION OF SERVICE PAYMENTS

1. MONTHLY SERVICE PAYMENT AFTER THE FINAL EXTERNAL WORKS COMPLETION DATE

- 1.1 Calculate the Monthly Service Payment payable in respect of a Contract Month "n" after the Final Actual External Works Completion Date using the following formula:

$$MSP_n = AGSP_n - \sum D_{n-2} + PTC$$

where:

AGSP_n is the aggregate gross Service Payment for Contract Month "n" being the amount calculated by applying the following formula:

$$\frac{RASP_n + CASP_n}{12}$$

MSP_n is the Monthly Service Payment for the Contract Month "n";

RASP_n is the Riverside Annual Service Payment for the Contract Year in which Contract Month "n" occurs, calculated in accordance with paragraph 3 below;

CASP_n is the City Annual Service Payment for the Contract Year in which Contract Month "n" occurs, calculated in accordance with paragraph 3 below;

$\sum D$ is the sum of Deductions in respect of performance of the Services during the Contract Month;

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

PTC means any Pass Through Costs due for which supporting uncontested invoices from Project Co's suppliers are available; and

- 1.2 In the Contract Month in which the Final Actual External Works Completion Date falls, unless the Actual External Works Completion Date is the first day of that Contract Month, and in the last Contract Month of the Project Term, unless the last day of the Project Term is the last day of that Contract Month, adjust the RASP_n and CASP_n for the purposes of paragraph 1.1 above pro rata to reflect the actual number of days in the relevant Contract Month from and including the Final Actual External Works Completion Date (for the first month) and (for the last month) up to and including the last day of the Project Term.

2. MONTHLY SERVICE PAYMENTS PRIOR TO THE LAST Actual EXTERNAL WORKS COMPLETION DATE

- 2.1 Calculate the Monthly Service Payment payable in respect of a Contract Month n or any part of a Contract Month n which falls after the first Payment Commencement Date but prior to the Final Actual External Works Completion Date using the following formula:

$$MSP_n = APGSP_n - \sum D_{n-2} + PTC$$

Where:

APGSP_n is the Aggregate Phased Gross Service Payment for Contract Month n, being the amount calculated in accordance with paragraph 2.2 below.

MSP is the Monthly Service Payment for Contract Month m;

All other definitions are as set out in paragraph 1 above

2.2 The Aggregate Phased Gross Service Payment for Contract Month n, is the aggregate of the amounts calculated in paragraphs 2.2.1 to 2.2.7 below, calculated where relevant on a pro rata basis in accordance with paragraph 2.2.8.

2.2.1 In respect of the Riverside Facility, following the Riverside Payment Commencement Date but prior to the Riverside External Works Completion Date, the sum calculated by applying the following formula:

$$97.5\% \times \frac{RASP_n}{12}$$

2.2.2 In respect of the Riverside Facility, following the Riverside External Works Completion Date but prior to the Riverside Actual External Works Completion Date, the sum calculated by applying the following formula:

$$97.5\% \times \frac{RASP_n}{12}$$

2.2.3 In respect of the Riverside Facility, following the Riverside Actual External Works Completion Date, the sum calculated by applying the following formula:

$$\frac{RASP_n}{12}$$

Where:

RASP_n is the Riverside Annual Service Payment for the Contract Year in which the Contract Month n occurs calculated in accordance with paragraph 3 below.

2.2.4 In respect of the City Facility, following the City Payment Commencement Date, but prior to the City External Works Completion Date, the sum calculated by applying the following formula:

$$97.5\% \times \frac{CASP_n}{12}$$

2.2.5 In respect of the City Facility, following the City External Works Completion Date, but prior to the City Actual External Works Completion Date, the sum calculated by applying the following formula:

$$97.5\% \times \frac{CASP_n}{12}$$

2.2.6 In respect of the City Facility, following the City Actual External Works Completion Date, the sum calculated by applying the following formula

$$\frac{CASP_n}{12}$$

Where:

CASP_n is the City Annual Service Payment for the Contract Year in which the Contract Month n occurs calculated in accordance with paragraph 3 below.

2.2.7 Where a Payment Commencement Date, External Works Completion Date or Actual External Works Completion Date falls part way through a Contract Month, the amounts calculated pursuant to paragraphs 2.2.1 to 2.2.7 shall be calculated on a pro rata basis to reflect the number of days in the Contract Month after the Payment Commencement Date and before and after the Actual External Works Completion Date and External Works Completion Date (as the case may be).


3. ANNUAL SERVICE PAYMENTS

The Annual Service Payments for any Contract Year "n" will be calculated using the following formula:

$$RASP_n = RASP_0 \times (1 - IF) + \left((RASP_0 \times IF) \times \left(1 + \frac{(RPI_n - RPI_0)}{RPI_0} \right) \right)$$

$$CASP_n = CASP_0 \times (1 - IF) + \left((CASP_0 \times IF) \times \left(1 + \frac{(RPI_n - RPI_0)}{RPI_0} \right) \right)$$

where:

- RASP_n** is the Riverside Annual Service Payment for the relevant Contract Year;
- RASP₀** is the value for RASP₀ stated in Appendix 1 to this Schedule Part 14 (*Payment Mechanism*) (being the Riverside Annual Service Payment at the Base Date), subject to any adjustments made from time to time in accordance with any express provision of this Agreement;
- CASP_n** is the City Annual Service Payment for the relevant Contract Year;
- CASP₀** is the value for CASP₀ stated in Appendix 1 to this Schedule Part 14 (*Payment Mechanism*) (being the City Annual Service Payment at the Base Date), subject to any adjustments made from time to time in accordance with any express provisions of this Agreement;
- IF** is the indexation factor  *DA. PERK*
- RPI_n** is the value of the Retail Prices Index published or determined with respect to the month of February which most recently precedes the relevant Contract Year; and
- RPI₀** is the value of the Retail Prices Index published or determined with respect to the Base Date.

SECTION 3

DEDUCTIONS FROM MONTHLY SERVICE PAYMENTS

1. ENTITLEMENT TO MAKE DEDUCTIONS

1.1 If at any time after the Payment Commencement Date an Availability Failure or Performance Failure occurs the College will be entitled, subject to paragraphs 1.2 and 1.3 of this Section 3 (*Deductions from Monthly Service Payments*) and paragraph 1 of Section 4 (*Temporary Repairs and Alternative Accommodation*), to make Deductions in calculating the Monthly Service Payment in respect of that Availability Failure, or Performance Failure, calculated in accordance with this Section 3 (*Deductions from Monthly Service Payments*) of Schedule Part 14 (*Payment Mechanism*).

1.2 In calculating the Monthly Service Payment for Contract Month "n", the maximum aggregate of all Deductions that the College may make in respect of Contract Month "n-2" is the Gross Monthly Availability Deduction for Contract Month "n-2".

1.3 In any Contract Month where the value of $\sum D_{n-2}$ exceeds:

1.3.1 the value of the Aggregate Gross Service Payment (where the Final Actual External Works Completion Date has occurred), or

1.3.2 the value of the Aggregate Phased Gross Service Payment (where the Final Actual External Works Completion Date has not occurred)

the Monthly Service Payment due by the College shall be an amount equal to PTC for that Contract Month but the College shall, in calculating the Monthly Service Payment in respect of the following and (to the extent necessary) any subsequent Contract Months, be entitled to carry forward and set off the amount of such excess against the amount by which the value of AGSP_n or APGSP_n exceeds the value of $\sum D_{n-2}$ (as such values are calculated in the following Contract Month and (to the extent necessary) any subsequent Contract Months) until the amount of such excess has been set-off in full. To the extent that any such excess has not been set off as at the earlier to occur of the Expiry Date and the Termination Date, then an amount equal to such excess shall be immediately due and payable by Project Co to the College.

1.4 To the extent that an Availability Failure or a Performance Failure:

1.4.1 is the result of an Excusing Cause; or

1.4.2 is the result of an External Utility Failure

the College shall not be entitled to make Deductions.

1.5 To the extent that an Availability Failure or a Performance Failure is the result of:

1.5.1 a Relief Event; or

1.5.2 an event of Force Majeure

the College shall be entitled to make Deductions but any such Deductions shall be disregarded for the purposes of Clause 24.3 and Clauses 40.1.8, 40.1.8A and 40.1.8B.

2. DEDUCTIONS FOR PERFORMANCE FAILURES

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

$$D = PFD \times DP$$

where:

D	means the amount (in pounds sterling) of the Deduction in respect of the Performance Failure and
PFD	means: <ul style="list-style-type: none"> (a) in the case of a Minor Performance Failure, the sum [REDACTED]; (b) in the case of a Medium Performance Failure, the sum [REDACTED] and (c) in the case of a Major Performance Failure, the sum of [REDACTED].

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

2.3 No Deduction may be made by the College from the Monthly Service Payment for the relevant Contract Month in respect of any Minor Performance Failure if the total number of Minor Performance Failures which have occurred in the relevant Contract Month is not more than 10.

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

3. DEEMED PERFORMANCE FAILURES

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

4. DEDUCTIONS FOR AVAILABILITY FAILURES

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

4.1.1 The Minimum Availability Deduction; and

4.1.2 an amount calculated in accordance with the following formula:

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

where:

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

4.2 Where the relevant Functional Area is Unavailable but Used the Deduction in respect of the Availability Failure shall be reduced by 50%.

- 4.3 If on the relevant day any of the Whole Riverside Unavailability Conditions or Whole City Unavailability Conditions are met then for the purposes of the formula in paragraph 4.1 above the SUA at the Riverside Facility will be deemed to be equal to SURF where the Whole Riverside Unavailability Conditions have been met and the SUA at the City Facility will be deemed to be equal to SUCF where the Whole City Unavailability Conditions have been met.

5. **REPEATED FAILURES**

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

- 5.1 a Performance Failure in respect of the same Performance Standard (other than a Performance Failure in respect of Performance Standard FM64 that relates to a Service Event that is either Routine or Important); or
- 5.2 an Availability Failure in respect of the same Availability Standard

occurs 5 or more times in a rolling period of 3 consecutive Contract Months, then the Deduction calculated pursuant to paragraph 2 (*Deductions for Performance Failures*) or paragraph 4 (*Deductions for Availability Failures*) of this Section 3 (*Deductions from Monthly Service Payments*) for the 6th and each subsequent such Performance Failure and/or the 6th and each subsequent such Availability Failure during the relevant period of 3 consecutive Contract Months shall be multiplied by 1.5.

- 5A. Subject to paragraph 1 (*Entitlement to make Deductions*) of this Section 3 (*Deductions from Monthly Service Payments*) if in respect of Performance Standard FM64, 20 or more Performance Failures relating to Service Events that are Routine and/or 10 or more Performance Failures relating to Service Events that are Important occur in a rolling period of 3 consecutive Contract Months, then the Deduction calculated pursuant to paragraph 2 (*Deductions for Performance Failures*) of this Section 3 (*Deductions from Monthly Service Payments*) for the 21st or 11th (respectively) and each subsequent such Performance Failure during the relevant period of 3 consecutive Contract Months shall be multiplied by 1.5.

6. **REPEATED RECTIFICATION**

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

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

then, notwithstanding that Project Co achieves Rectification of the Service Events within the relevant Rectification Period, there will be deemed to be a Major Performance Failure.

7. **EFFECT OF UNAVAILABILITY ON OTHER DEDUCTIONS**

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

SECTION 4

TEMPORARY REPAIRS

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

SECTION 5

FAILURE BY PROJECT CO TO MONITOR OR REPORT

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

in each case on the part of Project Co or a Project Co Party.

7. The provisions of this Section 5 (*Failure by Project Co to Monitor or Report*) shall be without prejudice to any rights of the College in this Agreement pursuant to Clause 24 (*Monitoring of Performance*), Clause 40 (*Project Co Events of Default*) and Clause 44 (*Corrupt Gifts and Payments*).
8. The Parties agree and acknowledge that all reference to RAFM and RAFM Deductions within this Section 5 of Schedule Part 14 (*Payment Mechanism*) shall be deemed to be deleted upon termination of RAFM by the College pursuant to Clause 42A of this Agreement.

SECTION 6

PASS THROUGH COSTS

1. OPERATIONAL INSURANCE PREMIUMS

- 1.1 Subject to paragraph 1.2, Project Co may include the premiums paid by Project Co to take out and maintain the Operational Insurances in accordance with Clause 53 in the Monthly Service Payment in accordance with paragraph 1 (*Monthly Service Payment*) of Section 2 (*Calculation of Service Payments*) of this Schedule Part 14 (*Payment Mechanism*) on the basis of the cost incurred by Project Co and supported by an appropriate premium notice(s) from the relevant insurer.
- 1.2 There shall be excluded from the premiums referred to in paragraph 1.1 a sum equal to any portion of the premiums attributable to any issue or factor other than circumstances generally prevailing in the relevant insurance market and circumstances attributable to malicious damage to the NPD Facilities or the claims history or re-rating of the College or any College Party.

SECTION 7

ANNUAL ENERGY PAYMENT

1. Annual Energy Payment

1.1 With effect from the first anniversary of the City Phase Actual Completion Date, the following provisions shall apply:

1.1.1 At the expiry of the first Contract Month following the expiry of each Contract Year, the College shall notify Project Co of the aggregate total, for the previous Contract Year, of all income received by the College in respect of feed in tariffs, renewable obligation certificates and renewable heat incentives (the "**Total Energy Income**");

1.1.2 Project Co shall pay the Annual Energy Payment to the College in accordance with this Schedule Part 14.

Annual Energy Payment means $AEP = AEBP - TEI$

where:

AEP is the Annual Energy Payment

AEBP is the Annual Energy Base Payment; and

TEI is the Total Energy Income.

1.1.3 The Parties agree that where the AEP is more than zero the Parties agree that the AEP shall be deducted from the next available Monthly Service Payment.

1.1.4 The Parties agree that where AEP is less than or equal to zero, then Project Co shall not be required to pay the Annual Energy Payment for that Contract Year and, for the avoidance of doubt, in the event that AEP is less than zero, there will be no sums due by the College to Project Co.

APPENDIX 1

ANNUAL SERVICE PAYMENTS AT BASE DATE



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APPENDIX 2

FUNCTIONAL AREAS AND GSUs

This is the Appendix 2 of Schedule Part 14 (*Payment Mechanism*) identifying the Functional Areas and GSUs in the Agreed Form.

APPENDIX 3

LIQUIDATED DAMAGES FOR THE HALLS OF RESIDENCE

Project Co will be liable for Liquidated Damages in the amount of:

- [REDACTED]
- [REDACTED] \$.

APPENDIX 4

ICT SERVICE EVENTS

- 1.1 As soon as possible after an ICT Service Event after Project Co has itself or by a Service Provider become aware of an ICT Service Event, Project Co must verbally inform the Helpdesk and the College's Representative (an "ICT Services Report"). Where it is reasonably practicable for it to do so without prejudicing its ability to achieve Rectification of the Service Event or the RAFM Service Event as the case may be within the Rectification Period and subject to any immediate steps that it requires to take to make the Facilities safe, it must allow the College's Representative an opportunity to inspect the evidence it relies on to support its claim that an ICT Service Event has occurred before carrying out Rectification and, where this is not reasonably practicable, Project Co must take reasonable steps to preserve or record in a suitable manner any such evidence and make that record available to the College as soon as reasonably practicable.
- 1.2 Provided Project Co has complied with the requirements of Clause 1.1, unless within
 - 1.2.1 two (2) hours of receipt of a ICT Services Report where the ICT Services Report is made within Core Times; or
 - 1.2.2 within two (2) hours of the start of the next Core Times where the ICT Services Report is made outside Core Times

the College's Representative notifies Project Co that he disagrees that it is an ICT Service Event the College's Representative will be deemed to have agreed that an ICT Service Event has occurred.
- 1.3 In relation to any ICT Service Event referred to in an ICT Services Report, Project Co shall always take such steps as are necessary in accordance with its obligations under this Agreement to make the Facilities safe.
- 1.4 If the College's Representative agrees in accordance with Clause 1.2 that an ICT Service Event has occurred Project Co shall still be responsible for Rectification in accordance with its obligations under this Agreement at no additional cost to the College.
- 1.5 If the College's Representative does not agree in accordance with Clause 1.2 that an ICT Service Event has occurred Project Co shall proceed with Rectification in accordance with its obligations under this Agreement.
- 1.6 Any dispute under this Appendix 4 shall be determined under the Dispute Resolution Procedure.

Part 14A

RAFM PAYMENT MECHANISM

SECTION 1

INTERPRETATION

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

- "RAFM Annual Service Payments"** means the sum in pounds sterling calculated in accordance with paragraph 2 (*RAFM Annual Service Payments*) of Section 2 (*Calculation of RAFM Service Payments*) of this Schedule Part 14A (*RAFM Payment Mechanism*)
- "Deduction Period" or "DP"**
- (a) where the relevant Performance Failure in relation to RAFM arises following a RAFM Service Event in respect of which a Rectification Period is specified in the Performance Standards, as applicable
 - (i) if the Service Failure Time occurs before or during Core Time for the relevant Functional Area on a Day, means the number of Days that elapse from and including that Day to, and including, the Day on which the Logged Rectification Time occurs, but excludes the Day on which the Logged Rectification Time occurs if the Logged Rectification Time is before the commencement of Core Time for the relevant Functional Area on that Day; and
 - (ii) if the Service Failure Time occurs after the expiry of Core Times for the relevant Functional Area on a Day, means the number of Days that elapse from and including the next Day to, and including, the Day on which the Logged Rectification Time occurs, but excludes the Day on which the Logged Rectification Time occurs if this occurs before commencement of Core Time for the relevant Functional Area on that Day; and
 - (b) where the relevant Performance Failure in relation to RAFM arises following a RAFM Service Event in respect of which no Rectification Period is specified in the Performance Standards, as applicable, means 1
- "Major Performance Failure"** means a Performance Failure in relation to RAFM which has been designated as such in the Service Level Specification or in this Schedule Part 14A (*RAFM Payment Mechanism*)
- "Medium Performance Failure"** means a Performance Failure in relation to RAFM which has been designated as such in the Service Level

Specification or in this Schedule Part 14A (*RAFM Payment Mechanism*)

- "Minor Performance Failure"** means a Performance Failure in relation to RAFM which has been designated as such in the Service Level Specification or in this Schedule Part 14A (*RAFM Payment Mechanism*)
- "RAFM Monthly Service Payment"** means the sum in pounds sterling calculated in accordance with paragraph 1 of Section 2 (*Calculation of Service Payments*) of this Schedule Part 14A (*RAFM Payment Mechanism*)
- "RAFM Service Event"** means an incident or state of affairs in relation to the RAFM Assets which occurs after the Halls of Residence Phase Actual Completion Date which does not meet or comply with the Performance Standards excluding an ICT Service Event
- "Performance Failure"** subject to Section 4 (*Temporary Repairs*) of this Schedule Part 14A (*RAFM Payment Mechanism*), means a Service Event relating to a Performance Standard which has not been Rectified within the relevant Rectification Period (if any)
- "Permanent Repair Deadline"** has the meaning given in paragraph 1.2 of Section 4 (*Temporary Repairs*) of this Schedule Part 14A (*RAFM Payment Mechanism*)
- "Rectification"** means, following the occurrence of an RAFM Service Event, making good the RAFM Service Event so that the subject matter of the RAFM Service Event complies with the levels of Service required in relation to RAFM pursuant to this Agreement which shall, without prejudice to the generality of the foregoing, include (a) restoring all functional capability and (b) ensuring that any Functional Area which has been affected by the relevant RAFM Service Event complies with the Performance Standards, as applicable, and "**Rectify**" and "**Rectifying**" shall be construed accordingly
- "Rectification Period"** means, where applicable, the period of time specified in the Performance Standards, allowed for the Rectification of the relevant RAFM Service Event, which period:
- (a) shall commence at the Logged Report Time (if the Logged Report Time occurs during Core Time for the relevant Functional Area); or
 - (b) if the Logged Report Time occurs outwith Core Time for the relevant Functional Area, shall commence at the commencement of the immediately following Core Time for the relevant Functional Area;
- provided that:
- (i) subject to Project Co having promptly notified the College's Representative of the fact and having recorded the same on the

Helpdesk system, the Rectification Period shall be extended by any period during which Project Co was prevented or interrupted by the College and any College Party from Rectifying any failure to meet the Performance Standards; and

- (ii) if the Rectification Period would otherwise expire outside Core Time for the relevant Functional Area, it shall be extended so as to expire immediately prior to the start of the next Core Time for the relevant Functional Area

"Service Failure Time"

means the date and time when a RAFM Service Event becomes a Performance Failure.

"Temporary Repair"

means, in respect of the occurrence of a RAFM Service Event, works of a temporary nature that do not constitute Rectification but substantially make good the relevant RAFM Service Event for the period until a Permanent Repair can be undertaken

SECTION 2

CALCULATION OF RAFM SERVICE PAYMENTS

1. RAFM MONTHLY SERVICE PAYMENT

Calculate the RAFM Monthly Service Payment payable in respect of a Contract Month "n" after the Halls of Residence Phase Actual Completion Date using the following formula:

$$RFMMSP_n = RFAGSP_n - \sum D_{n-2}$$

where:

RFAGSP_n is the aggregate gross RAFM Service Payment for Contract Month "n" being the amount calculated by applying the following formula:

$$\frac{RFMASP_n}{12}$$

RFMMSP_n is the RAFM Monthly Service Payment for the Contract Month "n";

RFMASP_n is the RAFM Annual Service Payment for the Contract Year in which Contract Month "n" occurs calculated in accordance with paragraph 2 below;

∑D is the sum of RAFM Deductions in respect of performance of the RAFM Services during the Contract Month;

The sum will be calculated in respect of the performance of RAFM that was 2 months prior to Contract Month "n" as shown in the Monthly Service Report for that Contract Month and calculated in accordance with the provisions set out in Section 3 (*RAFM Deductions from RAFM Monthly Service Payments*) of this Schedule Part 14A (*RAFM Payment Mechanism*).

2. RAFM ANNUAL SERVICE PAYMENTS

2.1 The RAFM Annual Service Payments for any Contract Year "n" will be calculated using the following formula:

$$RFMASP_n = RFMASP_0 \times \left(\left(1 + \frac{(RPI_n - RPI_0)}{RPI_0} \right) \right)$$

where:

RFMASP_n is the RAFM Annual Service Payment for the relevant Contract Year;

RFMASP₀ is the value for RAFM ASP₀ stated in Appendix 1 to this Schedule Part 14A (*Payment Mechanism*) (being the Riverside Annual Service Payment at the Base Date), subject to any adjustments made from time to time in accordance with any express provision of this Agreement;

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

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

2.2 Where the Halls of Residence Phase Actual Completion Date falls part way through a Contract Month, the amounts calculated pursuant to paragraph 2.1 above shall be calculated on a pro rata basis to reflect the number of days in the Contract Month before and after the Halls of Residence Phase Actual Completion (as the case may be).

SECTION 3

RAFM DEDUCTIONS FROM RAFM MONTHLY SERVICE PAYMENTS

1. ENTITLEMENT TO MAKE RAFM DEDUCTIONS

1.1 If at any time after the Halls of Residence Phase Actual Completion Date a Performance Failure occurs in relation to RAFM the College will be entitled, subject to paragraphs 1.2 and 1.3 of this Section 3 (*Deductions from RAFM Monthly Service Payments*) and paragraph 1 of Section 4 (*Temporary Repairs and Alternative Accommodation*), to make RAFM Deductions in calculating the RAFM Monthly Service Payment in respect of that Performance Failure, calculated in accordance with this Section 3 (*RAFM Deductions from Monthly Service Payments*) of Schedule Part 14A (*RAFM Payment Mechanism*).

1.2 In calculating the RAFM Monthly Service Payment for Contract Month "n", the maximum aggregate of all RAFM Deductions that the College may make in respect of Contract Month "n-2" is the RAFM Monthly Service Payment.

1.3 Not used

1.4 In any Contract Month where the value of $\sum D_{n-2}$ exceeds:

the value of the aggregate gross RAFM Service Payment the RAFM Monthly Service Payment due by the College shall be zero but the College shall, in calculating the RAFM Monthly Service Payment in respect of the following and (to the extent necessary) any subsequent Contract Months, be entitled to carry forward and set off the amount of such excess against the amount by which the value of RFAGSP_n exceeds the value of $\sum D_{n-2}$ (as such values are calculated in the following Contract Month and (to the extent necessary) any subsequent Contract Months) until the amount of such excess has been set-off in full. To the extent that any such excess has not been set off as at the earlier to occur of the Expiry Date and the Termination Date, then an amount equal to such excess shall be immediately due and payable by Project Co to the College provided that the College shall not be entitled to set-off such amount pursuant to Clause 46.13 or otherwise against any payment of termination compensation (whether payable as a lump sum or by instalments) except to the extent such payment exceeds the Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount (as the case may be) at that time.

1.5 To the extent that a Performance Failure in relation to RAFM:

1.5.1 is the result of an Excusing Cause; or

1.5.2 is the result of an External Utility Failure

the College shall not be entitled to make RAFM Deductions.

1.6 To the extent that a Performance Failure in relation to RAFM is the result of:

1.6.1 a Relief Event; or

1.6.2 an event of Force Majeure

the College shall be entitled to make RAFM Deductions but any such RAFM Deductions shall be disregarded for the purposes of Clause 24.3 and Clause 40.1.8, 40.1.8A and 40.1.8B.

2. RAFM DEDUCTIONS FOR PERFORMANCE FAILURES

2.1 Subject to paragraphs 1 (*Entitlement to make RAFM Deductions*) and 5 (*Repeated Failures*) of this Section 3 (*RAFM Deductions from Monthly Service Payments*), the amount of the RAFM

Deduction in respect of a Performance Failure relating to RAFM is calculated using the following formula:

$$D = PFD \times DP$$

where:

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

PFD means:

- (a) in the case of a Minor Performance Failure, the sum of [REDACTED];
- (b) in the case of a Medium Performance Failure, the sum of [REDACTED] and [REDACTED];
- (c) in the case of a Major Performance Failure, the sum of [REDACTED].

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

2.3 No RAFM Deduction may be made by the College from the RAFM Monthly Service Payment for the relevant Contract Month in respect of any Minor Performance Failure if the total number of Minor Performance Failures in relation to RAFM which have occurred in the relevant Contract Month is not more than 10.

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

3. DEEMED PERFORMANCE FAILURES

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

4. REPEATED FAILURES

Subject to paragraph 1 (*Entitlement to make RAFM Deductions*) of this Section 3 (*RAFM Deductions from Monthly Service Payments*) if in relation to RAFM a Performance Failure in respect of the same Performance Standard; or occurs 5 or more times in a rolling period of 3 consecutive Contract Months, then the RAFM Deduction calculated pursuant to paragraph 2 (*RAFM Deductions for Performance Failures*) of this Section 3 (*RAFM Deductions from Monthly Service Payments*) for the 6th and each subsequent such Performance Failure during the relevant period of 3 consecutive Contract Months shall be multiplied by 1.5.

5. REPEATED RECTIFICATION

- 5.1 If four or more RAFM Service Events occur in any rolling seven day period and:
- 5.2 each such RAFM Service Event is in connection with the same Performance Standard;
- 5.3 each such RAFM Service Event affects the same Functional Area; and

5.4 there is good reason to believe that the root cause of each such RAFM Service Event is the same then, notwithstanding that Project Co achieves Rectification of the RAFM Service Event within the relevant Rectification Period, there will be deemed to be a Major Performance Failure.

SECTION 4

TEMPORARY REPAIRS

1. If Project Co informs the College that it is unable to rectify a RAFM Service Event within the specified Rectification Period due to the need for specialised materials or personnel that are not, and cannot reasonably be expected to be, immediately available at the RAFM Assets but that a Temporary Repair can be effected:
 - 1.1 Project Co may carry out the Temporary Repair proposed by Project Co unless the College, acting reasonably, considers that, if the Temporary Repair proposed by Project Co is carried out, the relevant Functional Area will not be fit for use for the College Services for which it is normally used; and
 - 1.2 where a Temporary Repair is permitted pursuant to paragraph 1.1, the College and Project Co must act reasonably to agree a date and time (the "**Permanent Repair Deadline**") by which a Permanent Repair must be made, giving Project Co a reasonable period within which to carry out the Permanent Repair.
2. If the Permanent Repair is not carried out by the Permanent Repair Deadline, a Performance Failure will occur at that date and time and the provisions of paragraph 2 (*RAFM Deductions for Performance Failures*), and, if applicable, paragraph 5 (*Repeated Failures*) of Section 3 (*RAFM Deductions from RAFM Monthly Service Payments*) of this Schedule Part 14A (*RAFM Payment Mechanism*) shall apply.

SECTION 5

FAILURE BY PROJECT CO TO MONITOR OR REPORT ON RAFM

The Parties agree that the provisions of Section 5 (*Failure by Project Co to monitor or report*) of Schedule Part 14 (*Payment Mechanism*) shall apply to monitoring or reporting on RAFM.

APPENDIX 1

RAFM ANNUAL SERVICE PAYMENTS AT BASE DATE



SCHEDULE - Part 15
INSURANCE REQUIREMENTS

SECTION 1

POLICIES TO BE TAKEN OUT BY PROJECT CO AND MAINTAINED DURING THE DESIGN AND CONSTRUCTION PHASE

Common to each policy in Section 1 (*Policies to be taken out by Project Co and maintained during the Design and Construction Phase*) (unless stated otherwise):

Insureds:

1. College
2. Project Co.
3. Contractor.
4. Service Provider.
5. Construction sub-contractors of any tier.
6. Senior Funders.
7. Subordinated Funders.
8. Consultants - for their site activities only.

each for their respective rights and interests in the Project.

1. CONTRACTORS' 'ALL RISKS' INSURANCE (CAR)

1.1 Insured Property

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

(ii) The Decant Accommodation.


1.2 Coverage

"All risks" of physical loss or damage to the insured property unless otherwise excluded.

1.3 Sum Insured

At all times an amount not less than the full reinstatement or replacement value of the insured property, but not less than the value specified in the Construction Contract plus provision to include cover features and extensions as appropriate.

1.4 Maximum Deductible

 in respect of all other claims.

1.5 **Territorial Limits**

United Kingdom including offsite storage and during inland transit.

1.6 **Period of Insurance**

Insured Property (i)

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

Insured Property (ii)

From the date of this Agreement until the completion of decommissioning of the Decant Accommodation.

1.7 **Cover Features & Extensions**

1.7.1 Terrorism.

1.7.2 Munitions of war clause.

1.7.3 Additional costs of completion clause.

1.7.4 Professional fees clause.

1.7.5 Debris removal clause.

1.7.6 72 hour clause.

1.7.7 European Union local authorities clause.

1.7.8 Free issue materials clause (including Group 3 Equipment (excluding defects liability))

1.7.9 15% escalation clause.

1.7.10 Automatic reinstatement of sum insured clause.

1.7.11 Loss minimisation.

1.7.12 Guarantee maintenance

1.7.13 Taken into use

1.8 **Principal Exclusions**

1.8.1 War and related perils (UK market agreed wording).

1.8.2 Nuclear/radioactive risks (UK market agreed wording).

1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.

1.8.4 Wear, tear and gradual deterioration.

1.8.5 Consequential financial losses.

1.8.6 Cyber risks.

- 1.8.7 Inventory losses
- 1.8.8 Fraud and employee dishonesty.
- 1.8.9 DE5/DE3 drop down option

2. DELAY IN START UP INSURANCE (DSU)

2.1 Insureds

- 2.1.1 Project Co
- 2.1.2 Senior Funders
- 2.1.3 Subordinated Funders

each for their respective rights and interests in the Project.

2.2 Indemnity

In respect of:

- 2.2.1 loss of Revenue during at least the minimum indemnity period arising from a delay in completion of any Phase of the Project as a result of loss or damage covered under the contractors' all risks' insurance effected in accordance with Item 1 (*contractors' 'all risks' insurance (CAR)*) of Schedule Part 15 (*Insurance Requirements*), including physical loss or damage which would be indemnifiable but for the application of any deductible;
- 2.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of Project Co which without such expenditure would have taken place, during the minimum indemnity period.

2.3 Sum Insured

An amount sufficient to cover the sums the subject of the indemnity for the minimum indemnity period.

2.4 Maximum Excess

45 days.

2.5 Minimum Indemnity Period

City Site 42 months;

Riverside Site 30 months.

2.6 Period of Insurance

As per the contractors' "all risks" insurance for insured property (i), excluding the defects liability period.

2.7 Cover Features & Extensions

- 2.7.1 Denial of access.
- 2.7.2 Utilities.
- 2.7.3 Terrorism.

2.7.4 Automatic Reinstatement of sum insured.

2.7.5 Professional Fees.

2.8 Principal Exclusions

2.8.1 The exclusions under the contractors' 'all risks' insurance, other than for consequential financial losses.

2.8.2 Delayed response by a public body or state authority.

3. CONSTRUCTION THIRD PARTY LIABILITY INSURANCE

3.1 Interest

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

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

3.1.2 loss or damage to property;

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

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

3.2 Limit of Indemnity

Riverside Site

[REDACTED] ng

City Site

[REDACTED] ng

3.3 Maximum Deductible

[REDACTED] n

3.4 Territorial Limits

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

3.5 Jurisdiction

Worldwide excluding USA and Canada.

3.6 Period of Insurance

As per the contractors' "all risks" insurance for insured property (i), including the defects liability period.

3.7 Cover Features & Extensions

- 3.7.1 Munitions of war.
- 3.7.2 Cross liability clause.
- 3.7.3 Contingent motor.
- 3.7.4 Legal defence costs.

3.8 Principal Exclusions

- 3.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the insured.
- 3.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- 3.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured.
- 3.8.4 Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the College which is in the care, custody and control of another insured.
- 3.8.5 Events more properly covered under a professional indemnity policy.
- 3.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 3.8.7 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 3.8.8 Losses indemnified under the CAR policy or DSU policy.

SECTION 2

POLICIES TO BE TAKEN OUT BY PROJECT CO AND MAINTAINED FROM THE FIRST ACTUAL COMPLETION DATE

Common to all policies in Section 2 (*Policies to be taken out by Project Co and maintained from the first of the Riverside Phase Actual Completion Date or the City Phase Actual Completion Date*) (unless stated otherwise):

Insureds

1. College
2. Project Co
3. Service Provider
4. Service Provider's sub-contractors
5. Senior Funders
6. Subordinated Funders

each for their respective rights and interests in the Project.

1. PROPERTY DAMAGE INSURANCE

1.1 Insured Property

The project assets which are the property of Project Co or for which Project Co may be responsible including but not limited to the NPD Facilities.

1.2 Coverage

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

1.3 Sum Insured

At all times an amount not less than the total reinstatement or replacement value of the insured property plus provision to include other Principal Extensions as appropriate. (escalated periodically as appropriate)

1.4 Maximum Deductible

████████████████████ (escalated periodically as appropriate)

1.5 Territorial Limits

United Kingdom plus elsewhere whilst in inland transit.

1.6 Period of Insurance

In respect of the NPD Facilities from the first Phase Actual Completion Date and each subsequent Phase Actual Completion Date as appropriate or as otherwise specified in this Agreement for the duration of this Agreement and renewable on an annual basis unless agreed otherwise by the Parties.

1.7 **Cover Features & Extensions**

- 1.7.1 Terrorism
- 1.7.2 Automatic reinstatement of sum insured.
- 1.7.3 Capital additions clause.
- 1.7.4 72 hour clause.
- 1.7.5 European Union local authorities clause.
- 1.7.6 Professional fees.
- 1.7.7 Debris removal.
- 1.7.8 Pollution and contamination to the insured property arising from an event which itself is not otherwise excluded.
- 1.7.9 Repair / reinstatement basis of claims settlement with cash option for non-reinstatement.

1.8 **Principal Exclusions**

- 1.8.1 War and related perils (UK market agreed wording).
- 1.8.2 Nuclear/radioactive risks (UK market agreed wording).
- 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 1.8.4 Wear, tear and gradual deterioration.
- 1.8.5 Consequential financial losses.
- 1.8.6 Cyber risks.
- 1.8.7 Losses recovered under the CAR policy.

2. **BUSINESS INTERRUPTION INSURANCE**

2.1 **Insureds**

- 2.1.1 Project Co.
- 2.1.2 Senior Funders.
- 2.1.3 Subordinated Funders.

each for their respective rights and interests in the Project.

2.2 **Indemnity**

In respect of:

- 2.2.1 loss of anticipated Revenue during at least the minimum indemnity period arising from an interruption or interference in the operation of the Project as a result of loss or damage covered under property damage Insurance effected in accordance with paragraph 1 of Section 2 (*Policies to be taken out by Project Co and maintained from the Actual*

Completion Date) of this Schedule Part 15 (*Insurance Requirements*) including physical loss or damage which would be indemnifiable but for the application of any deductible;

2.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of Project Co which without such expenditure would have taken place, during the Indemnity Period.

2.3 **Sum Insured**

An amount sufficient to cover the sums the subject of the Indemnity for the minimum indemnity period.

2.4 **Maximum Excess**

████████████████████ (escalated periodically as appropriate)

2.5 **Minimum Indemnity Period**

City Site

42 months.

Riverside Site

30 months

2.6 **Period of Insurance**

In respect of the NPD Facilities from the first Phase Actual Completion Date and each subsequent Phase Actual Completion Date as appropriate for the duration of this Agreement and renewable on an annual basis unless agreed otherwise.

2.7 **Cover Features & Extensions**

2.7.1 Denial of access.

2.7.2 Terrorism.

2.7.3 Utilities.

2.7.4 Accountants Clause.

2.7.5 Automatic reinstatement of sum insured.

2.8 **Principal Exclusions**

2.8.1 Financial losses.

2.8.2 Delayed response by a public body or state authority.

3. **THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

3.1 **Indemnity**

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

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

3.1.2 loss or damage to property;

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

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

3.2 **Limit of Indemnity**

[REDACTED],
[REDACTED] and
[REDACTED] tail
[REDACTED]

3.3 **Maximum Deductible**

[REDACTED] (escalated periodically as appropriate).
(Personal injury claims will be paid in full).

3.4 **Territorial Limits**

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

3.5 **Jurisdiction**

Worldwide.

3.6 **Period of Insurance**

In respect of the NPD Facilities from the first Phase Actual Completion Date and each subsequent Phase Actual Completion Date as appropriate or as otherwise specified in this Agreement for the duration of this Agreement and renewable on an annual basis unless agreed otherwise.

3.7 **Cover Features & Extensions**

3.7.1 Munitions of war.

3.7.2 Cross liability clause.

3.7.3 Contingent motor.

3.7.4 legal defence costs in addition to the limit of indemnity.

3.8 **Principal Exclusions**

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

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

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

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

- 3.8.5 Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property.
- 3.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 3.8.7 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 3.8.8 Losses under the property damage policy or business interruption policy.

SECTION 3

LENDER'S AND AUTHORITY'S ENDORSEMENTS

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Agreement or Common Terms Agreement.

Notwithstanding any other provisions of this Policy, the following endorsement shall apply:

Section 1: Definitions

1. **Authority** means **The City of Glasgow College**.

Common Terms Agreement means the agreement dated [] 2013 between, amongst others, the Company and the Global Agent.

Company means Glasgow Learning Quarter Limited a company incorporated in England and Wales with registered number 08413842.

CTAIPA Account has the meaning given to it in the Common Terms Agreement.

Finance Parties has the meaning given to it in the Common Terms Agreement in the Agreed Form and includes any assignee, transferee, successor or novated, replacement or additional creditor of or in relation to any of the foregoing.

Global Agent means [] in its capacity as agent and trustee for the Finance Parties and includes its successors in that capacity.

Insurance Proceeds Account has the meaning ascribed to in the Project Agreement.

Insured means those parties so described in the Policy Schedule.

Insurers means the insurer or insurers underwriting this insurance policy.

Joint Insurance Account has the meaning ascribed to in the Common Terms Agreement.

Policy means this insurance policy.

Proceeds Account has the meaning given to it in the Common Terms Agreement in the Agreed Form.

Project has the meaning given to it in the Project Agreement.

Project Agreement means the agreement so designated dated [] 2013 between the Authority and the Company.

Section II: Policy formation / basis

2. **Separate Policy**

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate policy covering each insured. Accordingly, the liability of the Insurers under this Policy to any one of the Insured shall not be conditional upon the due observance and fulfilment of any other insured of the terms of this Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

3. **Interest of the Finance Parties and the Authority**

3.1 The Insurers acknowledge that the Finance Parties and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional co-insureds under this Policy and that the premium specified in this Policy provides consideration for their being co-insured parties.

3.2 The Insurers acknowledge that the Authority and (in respect of third part liabilities) its officers, directors, employees, secondees and assigns are each additional co-insureds under the sections of this Policy relating to material damage risks and public liability risks and that the premium specified in this Policy provides consideration for their being co-insured parties.

4. **Liability for premium**

Neither the Global Agent, the Finance Parties nor the Authority shall be liable for the payment of any premium under this Policy although they may choose to pay the premium. This provision shall not relieve the Project Company from its obligations to pay any premium under this Policy.

5. **Disclosure**

5.1 The Finance parties shall have no duty of disclosure to Insurers in relation to the Policy. Nevertheless, on the written request of the Insurers, the Finance Parties shall provide the Insurers with access to any relevant due diligence report(s) commissioned by the Finance Parties relating to the Project and the Insurers shall keep such report(s) confidential and shall accept such information without rights of recourse against the party / parties that prepared the said reports.

5.2 The Insurers acknowledge to the Finance Parties alone that (i) they have received adequate information in order to evaluate the risk of insuring Project Company in respect of the risks hereby insured on the assumption that such information is not materially misleading, (ii) there is no information which has been relied on or is required by Insurers in respect of their decision to co-insure the Finance Parties or their directors, officers, employees or agents, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Finance Party. The acknowledgements provided by the Insurers in this clause 5.2 shall have no effect on any rights that Insurers might have had under or in relation to the Policy against any party (including Project Company) other than the Finance Parties and the Global Agent in the absence of such acknowledgements.

5.3 Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

Section III: Rights to avoid / cancel or change Policy terms

6. **Non-vitiation**

6.1 The Insurers undertake to each Insured that the Policy will not be invalidated as regards the rights and interests of such Insured and that the Insurers will not seek to avoid any liability under this Policy because of any act, neglect, error or omission made by any other Insured, including any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured or any breach or non-fulfilment by any other Insured of any condition, warranty or provision contained in the Policy.

6.2 The Insurers agree that no Insured shall be penalised or prejudiced in any way by any unintentional or inadvertent misrepresentation, non-disclosure, want of due diligence or breach of any declaration, terms, condition or warranty of this Policy (together the "Vitiating Act"), but that this shall not apply as regards the individual Insured responsible for the Vitiating Act if that Insured fails to notify the Insurers or the brokers through whom the Policy was placed as soon as reasonably practicable after the management or managers of that Insured become aware or are made aware of the Vitiating Act.

7. Cancellation

7.1 The Insurers agree that they shall not seek to cancel or suspend the construction phases of this insurance except: (i) for non payment of premium; or (ii) where an insured party consistently fails to comply with Insurers' requirements relating to survey or loss control action points; or (iii) where an insured party is in breach of an applicable Joint Code of Practice (or equivalent).

7.2 The Insurers shall promptly notify the Global Agent and the Authority in writing in the event of any:

7.2.1 suspension or cancellation of the construction all risks delay in start up or construction third party liability sections permitted by clause 7.1 above; or

7.2.2 in the case of cover under (the property damage – operational period; business interruption, third party public liability sections, cancellation or non-renewal

of this Policy by the Insurers or by the Insured. The cover provided by this Policy shall continue in force and unaltered for at least 30 days after written notice of such suspension, cancellation, termination or (in the case of cover under the property damage, business interruption and third party public liability sections) non-renewal is given to the Global Agent and the Authority. Nothing in this clause shall give the Insurers any right to suspend, cancel or terminate this Policy which the Insurers do not otherwise have under this Policy.

7.3 The Insurers shall promptly notify the Global Agent and the Authority in writing of any default in the payment of premium and shall give the Global Agent and the Authority at least 30 days notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.

8. Changes in cover

The Insurers shall give the Global Agent and the Authority at least 30 days notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

9. Amendments to Endorsement

During the terms of this Policy, the provisions of this endorsement may only be amended by written agreement between Project Company, the Insurers and the Global Agent, such amendment to be endorsed on the Policy.

Section IV: Claims

10. Notice of claims

Notice of claim by the Authority or the Finance Parties or any other party entitled to indemnity under the Policy shall, in the absence of manifest error, be accepted by Insurers as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy.

11. Claims Payments/Loss Payee

11.1 Subject to the provision of Clause 53.22.2 of the Project Agreement all proceeds of this Policy for the material damage risk only shall be payable without deduction or set-off to the Insurance Proceeds Account or to such other account the Global Agent directs in writing.

Any return premiums shall be paid to the Insurance Proceeds Account or to such other account as the Global Agent directs in writing.

11.2 In respect of the insurance under this Policy of public liability risks only

All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to the Project Company Insurance Proceeds Account or such account as the Global Agent directs in writing.

Any return premiums shall be paid to the Insurance Proceeds Account or such other account as the Global Agent directs in writing.

11.3 In respect of the insurance under this Policy of delay in start up or loss of revenue risks only

All claim payments or return premiums shall be paid to the CTAIPA Account or such account as the Global Agent directs in writing.

11.4 **Set-off**

Insurers may, at their discretion, deduct overdue unpaid premium from claims settlements but shall not set off or deduct premium that is not overdue or any other amounts payable by the Project Company under or in relation to the Policy.

12. **Waiver of subrogation**

The Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured described within the appropriate Schedules arising out of any Occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Insured except against any:

- (i) such Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition; or
- (ii) consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iii) supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iv) such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within sub-clause 13(a)-(e) below (or would be so insured if cover in the terms set out in this Policy had not been taken out); or
- (v) in relation to losses paid under the property damage – operational period; or business interruption sections of the Policy, any Insured who is not covered under those Sections. However the Authority (and the Authority Parties, as defined under the Agreement, other than the Authority's contractors and sub-contractors) shall enjoy a waiver of subrogation under Insurance the delay in start up and business interruption sections whether or not it is insured under said sections.

13. **Primary Insurance**

The Insurers agree that this insurance provides the primary cover for risks insured under this Policy. In the event that any risk under this Policy is also insured under any other policy of insurance effected by any Insured, the Insurers agree to indemnify the Insured as if such other policy of insurance did not exist except in respect of:

- 13.1 excess layers of third party cover effected specifically for the Project;
 - 13.2 any public liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Insurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Insured;
 - 13.3 any claim under this Policy to which a Marine 50/50 Clause applies;
 - 13.4 any claim made under a contingent motor liability extension to this Policy; or
 - 13.5 any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:
 - 13.5.1 any other policy specifically effected for the construction or operational phase(s) of the Project; or
 - 13.5.2 a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Project;
- or a related business interruption insurance policy.

Section V: Miscellaneous

14. Notice of Security Interest

The Insurers acknowledge that by an assignment contained in a security agreement dated [] (the "**Assignment**"), the Company assigned by way of security to the Finance Parties all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Insured is or may at a future time become entitled. The Insurers confirm that they have been notified of any other assignment of or security interest in the Company's interest in this insurance.

15. Notice

- 15.1 All notices or other communications under or in connection with the Policy will be given by fax and post. Any such notice given by Insurers will be deemed to be given on the earlier of:
 - 15.1.1 if by fax, when transmitted but only if the sender's fax machine confirms successful transmission; and
 - 15.1.2 if by post, within 2 business days of release from the relevant Insurer's office.
- 15.2 The address and fax number of the Global Agent for all notices under or in connection with the Policy are those notified from time to time by the Finance Parties for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Global Agent
 as advised in the relevant Common Terms Agreement or its equivalent.
- 15.3 The address and facsimile number of the Authority for all notices under or in connection with this policy are those notified from time to time by the Authority for this purpose to Project Co at the relevant time. The initial address and facsimile number of the Authority are as follows:

The Authority:	City of Glasgow College
Address:	300 Cathedral Street
	Glasgow

Attention:

Paul Little, Principal and Chief Executive

16. Ring Fencing

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

17. Governing Law and Jurisdiction

The Policy shall be governed by and interpreted in accordance with the Laws of Scotland.

This endorsement overrides any conflicting provision in this Policy.

or in the event that all borrowing is repaid, the foregoing endorsements will be replaced as follows:

Endorsement 1

Cancellation

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

Endorsement 2

Multiple Insured/Non-Vitiation Clause

1. Each of the parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.
2. It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.

3. Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a "**Vitiating Act**") committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.
4. For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.
5. Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.
6. Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:
 - 6.1 no party other than the College has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the College;
 - 6.2 where any warranty, disclosure or representation is required from the College in connection with this policy insurers will contact the College in writing (in accordance with Endorsement 3 to the Contract) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the College (regarding itself); and
 - 6.3 save as set out in a request from insurers to the College in accordance with (2) above, the College shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the College not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

Endorsement 3

Communications

1. All notices or other communications under or in connection with this policy shall be given to each insured (and the College) in writing or by facsimile. Any such notice will be deemed to be given as follows:
 - 1.1 if in writing, when delivered;
 - 1.2 if by facsimile, when transmitted but only if, immediately after transmission, the sender's facsimile machine records a successful transmission has occurred.
2. The address and facsimile number of the College for all notices under or in connection with this policy are those notified from time to time by the College for this purpose to Project Co at the relevant time. The initial address and facsimile number of the College are as follows:

The College:	City of Glasgow College
Address:	300 Cathedral Street
	Glasgow
	G1 2TA
Facsimile No:	0141 566 6226

Attention:

Paul Little, Principal and Chief Executive

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

Endorsement 4

Loss Payee (applicable only to the Physical Damage Policies)

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

Endorsement 5

Primary Insurance

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

Endorsement 6

Ringfencing

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

SECTION 4

INSURANCE ARRANGEMENTS

1. Project Co must comply with the provisions of this Section 4 of Schedule Part 15 (*Insurance*) when placing or renewing the Operational Insurances.
2. Not less than sixty (60) Business Days prior to the first Phase Actual Completion Date in respect of the NPD Facilities and each subsequent renewal date in respect of each of the Operational Insurances, Project Co must inform the College's Representative of the forthcoming requirement to place or renew an Operational Insurance and its proposals for obtaining competitive quotations from at least (three (3)) suitable insurers. Project Co must take advice from reputable insurance brokers experienced in arranging insurances for similar risks as to which insurers are most likely to provide quotations that will represent best value for money for the College as payer of the premiums for such insurance. In considering which insurers to approach, Project Co must consider whether any of the Shareholders enjoys any special relationship with any insurer and/or is otherwise able to procure the placing of the relevant insurance in any particular manner consistent with the requirements of this Agreement that may result in lower premiums and shall include such insurers in its proposal under this paragraph 2
3. Within ten (10) Business Days of receiving a notice from Project Co pursuant to paragraph 2, the College may provide Project Co with details of any other insurers that it wishes Project Co to invite to quote for provision of the relevant Operational Insurance.
4. Not less than thirty (30) Business Days prior to the first Phase Actual Completion Date in respect of the NPD Facilities and each subsequent renewal date for any of the Operational Insurances, Project Co must forward to the College's Representative quotes from the proposed insurers (together with the principal terms and conditions of the relevant insurance policies), to include any insurer nominated by the College pursuant to paragraph 3, including a reasoned recommendation as to which quote Project Co views as offering best value for money for the College, taking into account all relevant circumstances.
5. Within ten (10) Business Days of receiving a recommendation from Project Co pursuant to paragraph 4, the College must notify Project Co in writing which insurer it is to place the relevant Operational Insurance with, failing which Project Co shall be entitled to place the relevant Operational Insurance with the insurer recommended by Project Co.

SECTION 5

BROKER'S LETTER OF UNDERTAKING

To: The College

Dear Sirs

Agreement dated [] entered into between [] Limited ("Project Co") and The City of Glasgow College (the "College") (the "Agreement")

1. We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter.
2. We act as insurance broker to Project Co in respect of the Insurances and in that capacity we confirm that the Insurances which are required to be procured pursuant to Clause 53.1 and Clause 53.2 and Schedule Part 15 (*Insurance Requirements*) of the Agreement:
 - 2.1 where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
 - 2.2 are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect in respect of all the matters specified in the Agreement; and
 - 2.3 that all premiums due to date in respect of the Insurances are paid and the Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not, however, make any representations regarding such insurers' current or future solvency or ability to pay claims; and that
 - 2.4 the endorsements set out in Section 3 (*Endorsements*) of Schedule Part 15 (*Insurance Requirements*) of the Agreement are as at today's date in full force and effect in respect of the Insurances.
3. We further confirm that the attached cover notes confirm this position.
4. Pursuant to instructions received from Project Co and in consideration of your approving our appointment (or continuing appointment) as brokers in connection with the Insurances, we hereby undertake in respect of the interests of the College in relation to the Insurances:
 - 4.1 **Notification Obligations**
 - 4.1.1 to notify you at least 30 (thirty) days prior to the expiry of any of the Insurances if we have not received instructions from Project Co to negotiate renewal and in the event of our receiving instructions to renew, to advise you promptly of the details thereof;
 - 4.1.2 to notify you at least 30 (thirty) days prior to ceasing to act as brokers to Project Co unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable; and
 - 4.1.3 to pay into the Insurance Proceeds Account without set off or deduction of any kind for any reason all payments in respect of claims received by us from insurers in relation to the Insurances specified in Section 1 paragraph 1 and Section 2 Paragraph 1 of Schedule Part 15 (*Insurances*) of this Agreement.

4.2 **Advisory Obligations**

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

4.3 **Disclosure Obligations**

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

4.4 **Administrative Obligations**

- 4.4.1 to hold copies of all documents relating to or evidencing the Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Insurances, payment of premiums and presentation and receipt of claims;
- 4.4.2 to supply to the College and/or its insurance advisers (or the College's or its insurance advisers' authorised representatives) promptly on written request copies of the documents set out in Clause 4.4.1 of this letter, and to the extent available, to make available to such persons promptly upon the College's request the originals of such documents;
- 4.4.3 to administer the payment of premiums due pursuant to the Insurances such that, in so far as we hold appropriate funds, all such premiums shall be paid to insurers in accordance with the terms of the Insurances;

- 4.4.4 to administer the payment of claims from insurers in respect of the Insurances (the "**Insurance Claims**") including:
- (a) negotiating settlement of Insurance Claims presented in respect of the Insurances;
 - (b) collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Insurances, and
 - (c) insofar as it is relevant and practicable, liaising with and reporting to each College throughout the settlement, payment and administration of such Insurance Claims.
- 4.4.5 to advise the College promptly upon receipt of notice of any material changes which we are instructed to make in the terms of the Insurances and which, if effected, in our opinion as Insurance Brokers would result in any material reduction in limits or coverage or in any increase in deductibles, exclusions or exceptions;
- 4.4.6 to advise the College in advance of any change to the terms of, or any lapse, non-renewal and/or cancellation of any policy maintained in respect of the Insurances;
- 4.4.7 to use our reasonable endeavours to have endorsed on each and every policy evidencing the Insurances (when the same is issued) endorsements substantially in the form set out in Section 3 (*Endorsements*) to Schedule Part 15 (*Required Insurances*) of the Agreement; and
- 4.4.8 to provide, prior to the Commencement of the Operational Insurances and prior to each renewal of any of them, a statement containing
- (a) the information required to satisfy the requirement of Section 4 of Schedule Part 15 (*Insurance Arrangements*) to the Project Agreement; and
 - (b) our opinion, supported by appropriate evidence, of the generally prevailing market for the relevant Insurance and of any other circumstances relevant to the application of paragraph 1.2 of Section 6 (*Pass Through Costs*) of Schedule Part 14 (*Payment Mechanism*) to the Project Agreement to the premiums for the relevant Insurance specifying the impact of each factor on the premium quotations obtained.

5. **NOTIFICATION DETAILS**

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

The Authority:	City of Glasgow College
Address:	300 Cathedral Street
	Glasgow
	G1 2TA
Attention:	Paul Little, Principal and Chief Executive

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

Yours faithfully

For and on behalf of [Project Co's broker]

SCHEDULE - Part 16

CHANGE PROTOCOL

SECTION 1

DEFINITIONS

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

"Adjustment Date"	means the date on which the adjustment to the Annual Service Payments takes effect in accordance with the provisions of this Agreement, or such other date as is agreed between the parties
"Affordable"	means within the revenue resource parameters determined by the College and notified in writing by it to Project Co as available for a proposed High Value Change
"Approval Criteria"	has the meaning given in paragraph 7 (<i>Approval Criteria</i>) of Section 4 (<i>High Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>)
"Approved Criteria"	has the meaning given in paragraph 8.2.1 of Section 4 (<i>High Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>)
"Assumption Adjustment"	means an adjustment to any of the assumptions contained in the Financial Model
"College Change"	means, as the case may be, a Low Value Change, a Medium Value Change or a High Value Change
"College Change Notice"	means a notice issued in accordance with this Schedule Part 16 (<i>Change Protocol</i>) requiring a College Change
"Calculation Date"	means the relevant date for the purposes of calculating the Incurred Change Management Fee in accordance with Section 4 (<i>High Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>)
"Capital Cost"	means in relation to any High Value Change the cost of carrying out the design, construction and commissioning of any construction works required to implement that High Value Change
"Catalogue of Small Works and Services" and "Catalogue"	means the list of Low Value Changes forming Appendix 1 Part 1B (<i>Catalogue</i>) to this Schedule Part 16 (<i>Change Protocol</i>), as amended from time to time in accordance with paragraph 8 (Update of Catalogue etc and Small Works and Service Rates) of Section 2 (<i>Low Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>)

"Catalogue Price"	means the total cost (excluding VAT) specified in the Catalogue for carrying out a Low Value Change listed in the Catalogue
"Catalogue Review Date"	means each anniversary of the Commencement Date
"Change"	means a change in the Works, the NPD Facilities and the Halls of Residence (prior to the issue of a Practical Completion Certificate for the Halls of Residence) and/or Services or additional works and/or services or a change in the College's Policies that may be made under this Schedule Part 16 (<i>Change Protocol</i>)
"Change in Costs"	<p>means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of Project Co and/or the Contractor and/or any Service Provider (without double counting), including, as relevant, the following:</p> <ul style="list-style-type: none"> (a) the reasonable costs of complying with the requirements of Clauses 24.9, 29 (<i>Delay Events</i>), 32 (<i>Changes in Law</i>) and/or Sections 2 (<i>Low Value Changes</i>) to 4 (<i>High Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>), including the reasonable costs of preparation of design and estimates; (b) the costs of continued employment of, or making redundant, staff who are no longer required; (c) the costs of employing additional staff; (d) reasonable professional fees; (e) the costs to Project Co of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of Project Co's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Annual Service Payment; (f) the effects of costs on implementation of any insurance reinstatement in accordance with this Agreement, including any adverse effect on the insurance proceeds payable to Project Co (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement; (g) operating costs, including Lifecycle Replacement or Maintenance Works costs;

- (h) Capital Expenditure (or, in the case of a Relevant Event which is a Relevant Change in Law, Capital Expenditure for which the College is responsible);
- (i) the costs required to ensure continued compliance with the Funding Agreements;
- (j) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (k) Direct Losses or Indirect Losses, including reasonable legal expenses on an indemnity basis

"Change Management Fee"

means the fee calculated in accordance with paragraph 10 (*Information and notifications by the College to Project Co and cooperation of the College*) of Section 4 (*High Value Changes*)

"Cost"

where used in the definitions of High Value Change and Low Value Change means the immediate cost that will be incurred by Project Co to implement the relevant Change, disregarding any Whole Life Costs

"Debt to Equity Ratio"

has the meaning given in the Common Terms Agreement in the Agreed Form

"Derogated Low Value Change"

means:

- (a) Low Value Changes listed in Appendix 1 Part A of the Catalogue;
- (b) Low Value Changes identified as Derogated Low value Changes by the letters DLVC in the column headed "Category" A in the Catalogue (Appendix 1 Part 1B); and
- (c) any other Low Value Change that:
 - i. consists of minor works;
 - ii. only affects the interior of the NPD Facilities;
 - iii. does not affect any of the mechanical and electrical equipment of the NPD Facilities;
 - iv. does not involve any interference with the service media in the NPD Facilities;
 - v. will not conflict with any Programmed Maintenance or Lifecycle Replacement; and
 - vi. will not prejudice any of the Operational Insurances;

"Derogated Low Value Change Notice"

means a notice given by the College in accordance with paragraph 1.3 of Section 2 (*Low Value Changes*)

		of this Schedule Part 16 (<i>Change Protocol</i>)
"Estimate"		has the meaning given in paragraph 3 of Section 3 (<i>Medium Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>)
"Estimated Change in Project Costs"		means, in respect of any Relevant Event, the aggregate of any Change in Costs
"High Value Change"		means: <ul style="list-style-type: none"> (a) a Change requested by the College that, in the reasonable opinion of the College, is likely either to Cost in excess of one hundred thousand pounds (£100,000) (index linked) or to require an adjustment to the Annual Service Payment that on a full year basis is 2% or more of the Annual Service Payment in the relevant Contract Year provided that the parties may agree that such a Change should instead be processed as a Medium Value Change; or (b) any other Change that the parties agree is to be treated as a High Value Change
"High Value Change Proposal"		means a proposal satisfying the requirements of paragraph 3.4 of Section 4 (<i>High Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>)
"High Value Change Requirements"		has the meaning given in paragraph 2.1.3 of Section 4 (<i>High Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>)
"High Value Change Stage Submission"	2	has the meaning given in paragraph 4.1.1 of Section 4 (<i>High Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>)
"Historic Debt Service Cover Ratio"		has the meaning give in the Common Terms Agreement in the Agreed Form
"Incurred Change Management Fee"		means the amounts actually incurred or payable by or on behalf of Project Co up to the Calculation Date in respect of matters identified by Project Co pursuant to paragraphs 3.4.3 and/or 4.3.7 of Section 4 (<i>High Value Changes</i>) of this Schedule as falling within the Change Management Fee (and not already reimbursed by the College)
"Input Adjustment"		means any adjustment to the Financial Model other than Assumption Adjustment and Logic Adjustments
"Key Ratios"		means the following ratios: <ul style="list-style-type: none"> (a) the Loan Life Cover Ratio; (b) the Historic Debt Service Cover Ratio; (c) the Projected Debt Service Cover Ratio; and (d) the Debt to Equity Ratio

"Loan Life Cover Ratio"	has the meaning given in the Common Terms Agreement in the Agreed Form
"Logic Adjustment"	means an adjustment to the logic or formulae contained in the Financial Model
"Low Value Change"	means a Change which is either: <ul style="list-style-type: none"> (a) of a type listed in the Catalogue of Small Works and Services (Appendix 1 Part 1B) or in Appendix 1 Part 1A; or (b) is not so listed, but has an individual Cost not exceeding five thousand pounds (£5,000) (index linked), or as otherwise agreed from time to time, except for any request that would (if implemented) increase the likelihood of Project Co failing to meet the College's Construction Requirements and/or the Service Level Specification or materially and adversely affect Project Co's ability to perform its obligations under this Agreement
"Medium Value Change"	means a Change requested by the College which is not a Low Value Change or a High Value Change
"Post-Adjustment Financial Model"	means the Financial Model in effect immediately following the making of the relevant Adjustments
"Pre-Adjustment Financial Model"	means the Financial Model in effect immediately prior to the making of the relevant Adjustments
"Project Co Change"	means a Change that is initiated by Project Co by submitting a Project Co Notice of Change to the College pursuant to Section 5 (<i>Project Co Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>)
"Project Co Notice of Change"	has the meaning given in paragraph 1 of Section 5 (<i>Project Co Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>)
"Projected Debt Service Cover Ratio"	has the meaning given in the Common Terms Agreement in the Agreed Form
"Relevant Event"	means an event or circumstance in which this Agreement expressly provides for an adjustment to the Annual Service Payments to be made
"Review Procedure"	means the procedure set out in Schedule Part 8 (<i>Review Procedure</i>)
"Small Works and Services Rates"	means the rates to be applied in respect of any request from the College for a Low Value Change not included in the Catalogue as set out in Appendix 1 Part 2 (<i>Small Works and Services Rates</i>) to this Schedule Part 16 (<i>Change Protocol</i>), as amended from time to time in accordance with paragraph 8 of Section 2 (<i>Low Value Changes</i>) of this Schedule Part 16 (<i>Change Protocol</i>)
"Stage 1 Approval"	has the meaning given in paragraph 3.7 of Section 4

(High Value Changes) of this Schedule Part 16
(Change Protocol)

"Stage 1 Approved Project"

has the meaning given in paragraph 3.7 of Section 4
(High Value Changes) of this Schedule Part 16
(Change Protocol)

"Stage 2 Approval"

has the meaning given in paragraph 8.2.1 of Section 4
(High Value Changes) of this Schedule Part 16
(Change Protocol)

"Target Cost"

has the meaning given in paragraph 2.1.2 of Section 4
(High Value Changes) of this Schedule Part 16
(Change Protocol)

"Third Party Costs"

means the costs incurred by Project Co with third parties in responding to a College Change Notice for a Medium Value Change or a High Value Change, including, but not limited to, the Sub-Contractors, consultants and advisers; and

"Whole Life Cost"

means the estimated and (to the extent that such information is available) the actual cost of operating and maintaining that High Value Change over its intended design life (consistent with Project Co's Proposals).

SECTION 2

LOW VALUE CHANGES

1. DEROGATED LOW VALUE CHANGES TO BE CARRIED OUT BY COLLEGE

- 1.1 If the College requires a Derogated Low Value Change it may either-
 - 1.1.1 carry out Derogated Low Value Changes itself in accordance with the paragraph 1 of this Section 2; or
 - 1.1.2 instruct Project Co to carry it out in accordance with paragraph 2 of this Section 2
- 1.2 If the College wishes to carry out a derogated Low Value Change identified in Appendix Part 1A it may do so without notifying Project Co.
- 1.3 If the College wishes to carry out any other Derogated Low Value Change it shall send Project Co a notice (a "Derogated Low Value Change Notice") at least five (5) Business Days prior to the date on which it proposes to start to implement the Change setting out the nature of the proposed Change in sufficient detail to enable Project Co to satisfy itself that the proposed Change constitutes a Derogated Low Value Change. Project Co may notify the College within three (3) Business Days of receipt of a Derogated Low Value Change Notice that it does not agree that the proposed Change constitutes a Derogated Low Value Change and, unless the parties otherwise agree, the College must not take any steps to carry out the proposed Change unless it has referred the dispute to the Dispute Resolution Procedure and it has been determined that the proposed Change is a Derogated Low Value Change.
- 1.4 The College shall procure that the carrying out of a Derogated Low Value Change does not interfere with Project Co carrying out Programmed Maintenance.
- 1.5 If it carries out a Derogated Low Value Change, the College shall do so in accordance with Good Industry Practice to the standards that would have applied to Project Co if it had carried it out as a Low Value Change.

2. LOW VALUE CHANGES TO BE CARRIED OUT BY PROJECT CO

- 2.1 If the College requires Project Co to carry out a Low Value Change (including a Derogated Low Value Change that the College has decided not to carry out itself) the College must submit a notice (a "College Low Value Change Notice") to Project Co. A College Low Value Change Notice must:
 - 2.1.1 state that it relates to a Low Value Change;
 - 2.1.2 contain a description of the works and/or the change to the Works and/or the Services that the College requires including, if relevant, the applicable type of Low Value Change listed in the Catalogue; and
 - 2.1.3 specify the time period within which the College requires the Change to be carried out if this is different from the time period in the Catalogue or there is no applicable type of change listed in the Catalogue.

3. PROJECT CO RESPONSE AND COLLEGE CONFIRMATION

Within five (5) Business Days of receipt of a College Low Value Change Notice Project Co must notify the College of:

- 3.1 the cost of carrying out the required Low Value Change; and
- 3.2 the time period for carrying out the Low Value Change

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

4. **COST AND TIMING**

- 4.1 Wherever practicable the Low Value Change will be carried out by an existing on-site and suitable qualified employee of Project Co or a Project Co Party and in that case Project Co may not charge for labour.
- 4.2 Subject to paragraph 4.1 if the Low Value Change is of a type listed in the Catalogue, the cost of carrying out that Low Value Change shall not exceed the relevant Catalogue Price and the time period for carrying out the Low Value Change shall not exceed the relevant time specified in the Catalogue, unless otherwise agreed by the College (acting reasonably having regard to the nature of the Low Value Change).
- 4.3 If the Low Value Change is not of a type that is listed in the Catalogue, the cost of carrying out that Low Value Change shall be calculated on the basis that:
- 4.3.1 Where there is no suitably qualified on-site employee reasonably available to carry out the Low Value Change, the cost of the labour element will be calculated in accordance with the Small Works and Services Rates or, where such rates are not applicable, in accordance with rates which are fair and reasonable; and
- 4.3.2 the materials element will be charged at the cost of materials to Project Co or to the Project Co Party carrying out the work (net of all discounts) and there shall be no management fee, margin, overhead, contingency or other cost applied in relation thereto.
- 4.4 Other than the costs referred to in paragraphs 4.1 to 4.4 of this Section 2 (*Low Value Changes*) Project Co may not charge the College for processing, implementing or managing a Low Value Change.

5. **COLLEGE OBJECTION**

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

6. **IMPLEMENTATION**

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

- 6.3.3 gives a notice pursuant to paragraph 3 of this Section 2 (*Low Value Changes*) to which the College does not object pursuant to paragraph 5 but then fails to fully implement the Low Value Change within ten (10) Business Days after the timescale specified in that notice or agreed in accordance with paragraph 5 of this Section 2 (*Low Value Changes*)

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

7. PAYMENT

Unless the College notifies Project Co within five (5) Business Days of receipt of a notice from Project Co pursuant to paragraph 6.2 above that the Low Value Change has not been implemented to its reasonable satisfaction, Project Co shall include the costs of the Low Value Change.

- 7.1 Implemented prior to the first Payment Commencement Date in the next Application for Payment submitted pursuant to Clause 34A of this Agreement following completion or implementation of the relevant Low Value Change.
- 7.2 Implemented after the first Payment Commencement Date in the next Monthly Invoice submitted pursuant to Clause 34.2 of this Agreement following completion or implementation of the relevant Low Value Change.

8. UPDATE OF CATALOGUE ETC AND SMALL WORKS AND SERVICES RATES

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

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

- 8.3 On the date which is twenty (20) Business Days before each Catalogue Review Date, Project Co must provide the College with:

- 8.3.1 a revised and updated Catalogue which:

- (a) includes updated Catalogue Prices including prices for any additional types of Low Value Changes which have occurred and which the parties consider are reasonably likely to reoccur during the life of the Project and any other types of Low Value Changes as the parties may agree; and
- (b) includes time periods for the carrying out of each such additional Low Value Change; and
- (c) includes any changes to the list of Derogated Low Value Changes (Part 1A of Appendix 1) agreed with the College.

- 8.3.2 updated Small Works and Services Rates.

- 8.3.3 the updated Catalogue Prices and Small Works and Services Rates for the ensuing one year period following the Catalogue Review Date. The updated Catalogue Prices and Small Works and Service Rates must represent good value for money having regard to:

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

(b) paragraph 4.3 of this Section 2 (*Low Value Changes*).

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

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

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

9. DOCUMENTATION AND MONITORING

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

9.2 No changes shall be made to this Agreement or any Project Document as a result of a Low Value Change, unless otherwise agreed between the parties.

9.3 Where it is agreed that an adjustment of the Annual Service Payment is required in respect of a Low Value Change, the Financial Model shall be adjusted to give effect to such Low Value Changes once each Contract Year on a date to be agreed between the parties and all relevant Low Value Changes that have occurred since the preceding such adjustment shall be aggregated together into a single cumulative adjustment in accordance with Section 6 (*Changing the Financial Model*) of this Schedule Part 16 (*Change Protocol*).

9.4 Project Co shall keep a record of all Low Value Changes processed, completed and outstanding and shall provide the College with a copy of that record whenever reasonably required by the College.

9.5 Project Co shall include an update of Low Value Changes processed completed and outstanding in each Monthly Service Report, with a summary included in the Annual Service Report.

10. DISPUTES

10.1 Any dispute concerning any matter referred to in this Section 2 (*Low Value Changes*) may be referred by either party to the Dispute Resolution Procedure.

10.2 Project Co shall not be obliged to implement a Low Value Change to be implemented by Project Co until any dispute has been determined except that where such dispute concerns only the cost of a Low Value Change in that case unless the College otherwise directs, Project Co must continue to implement the Low Value Change within the prescribed timescale notwithstanding the dispute.

10.3 The College is not entitled to withdraw a College Low Value Change Notice and procure implementation of a Low Value Change in respect of which there is a dispute that has been referred to the Dispute Resolution Procedure, unless that dispute has been determined in its favour and Project Co has not confirmed to the College in writing within five (5) Business Days of

the date of the determination that it will implement the Low Value Change in accordance with the determination.

SECTION 3

MEDIUM VALUE CHANGES

1. MEDIUM VALUE CHANGES

If the College requires a Medium Value Change, it must serve a College Change Notice on Project Co in accordance with paragraph 2 (*Medium Value Change Notice*) of this Section 3 (*Medium Value Changes*). Project Co shall be entitled to refuse a Medium Value Change that:

- 1.1 requires the Works and/or the Services to be performed in a way that infringes any law or is inconsistent with Good Industry Practice;
- 1.2 would cause any Necessary Consent to be revoked (or would require a new consent to be obtained or any existing Necessary Consent to be amended which, after using reasonable efforts, Project Co has been unable to obtain);
- 1.3 would materially and adversely affect Project Co's ability to deliver the Works and /or Services (except those Works and/or Services which have been specified as requiring to be amended in the College Change Notice) in a manner not compensated for pursuant to this Section 3 (*Medium Value Changes*);
- 1.4 would materially and adversely affect the health and safety of any person;
- 1.5 would, if implemented, materially and adversely change the nature of the Project (including its risk profile); or
- 1.6 the College does not have the legal power or capacity to require implementation of.

2. MEDIUM VALUE CHANGE NOTICE

- 2.1 An College Change Notice for a Medium Value Change must:
 - 2.1.1 state that it refers to a Medium Value Change;
 - 2.1.2 set out the change in the Works or Services or the additional works or services required in sufficient detail to enable Project Co to calculate and provide the Estimated Change in Project Costs in accordance with paragraph 3 (*Contractor's Estimate*) of this Section 3 (*Medium Value Changes*);
 - 2.1.3 set out whether, in respect of any additional facilities, Project Co is expected to provide facilities management services and lifecycle maintenance services in respect of such additional facilities; and
 - 2.1.4 set out the timing of the additional works or services required by the College.
- 2.2 Within fifteen (15) Business Days of receipt of the Medium Value Change Notice, Project Co must notify the College in writing:
 - 2.2.1 whether it considers that it is entitled to refuse the Medium Value Change on any of the grounds set out in paragraphs 1.2.1 to 1.2.6 of this Section 3;
 - 2.2.2 when it will provide the Estimate to the College bearing in mind the requirement in paragraph 7.2.2 of this Section 3; and
 - 2.2.3 its estimate of the Third Party Costs that it will incur to prepare the Estimate.
- 2.3 If Project Co notifies the College that it considers that it is entitled to refuse the Medium Value Change on one or more of the grounds set out in paragraphs 1.2.1 to 1.2.6 of this Section 3, then

unless the parties otherwise agree, the College shall be deemed to have withdrawn the College Notice of Change if it has not referred the matter to the Dispute Resolution Procedure within twenty (20) Business Days of receipt of Project Co's notice.

- 2.4 If the College considers that Project Co's proposed time for providing the Estimate is not reasonable, the parties shall endeavour to agree the time, failing which the matter may be referred to the Dispute Resolution Procedure.
- 2.5 If the College considers that the Project Co's estimate of Third Party Costs to prepare the Estimate is not reasonable, the parties shall endeavour to agree the same, failing which the matter may be referred to the Dispute Resolution Procedure.
- 2.6 If any matter is referred to the Dispute Resolution Procedure pursuant to paragraph 2 (*Medium Value Change Notice*) of this Section 3 (*Medium Value Changes*), the time for Project Co to provide the Estimate shall be counted from the date of determination of that dispute, if the dispute is determined in Project Co's favour.

3. **CONTRACTOR'S ESTIMATE**

As soon as reasonably practicable and in any event within the time period agreed or determined pursuant to paragraph 2.4 of this Section 3, Project Co shall deliver to the College the Estimate. The Estimate must contain:

- 3.1 a detailed timetable for implementation of the Medium Value Change;
- 3.2 any requirement for relief from compliance with obligations, including the obligations of Project Co to achieve an Actual Phase Completion Dates and Actual External Works Completion Date by the relevant Phase Completion Dates and External Works Completion Date and to meet the requirements set out in the College's Construction Requirements and/or the Service Level Specification during the implementation of the Medium Value Change;
- 3.3 an outline of the proposed design solution and design, including an appropriate analysis/risk appraisal and, to the extent relevant, the impact on whole life costings;
- 3.4 any impact on the provision of the Works and/or the Services;
- 3.5 a value for money justification for any proposed change to the quality of the works or the services comprised in the Medium Value Change as compared to the Works and the Services;
- 3.6 any amendment required to this Agreement and/or any Project Document as a result of the Medium Value Change;
- 3.7 any Estimated Change in Project Costs that results from the Medium Value Change;
- 3.8 any Capital Expenditure that is required or no longer required as a result of the Medium Value Change;
- 3.9 amendments to existing Necessary Consents that are required;
- 3.10 a payment schedule for any Capital Expenditure required to implement the Change, based on milestones where relevant;
- 3.11 costs and details of (i) any other approvals required and/or due diligence permitted pursuant to paragraph 12 of this Section 3 (*Medium Value Changes*); and (ii) any Third Party Costs;
- 3.12 the method of implementation and the proposed method of certification of any construction aspects of the Medium Value Change, if not covered by the procedures specified in Clause 14 (*Programme and Dates for Completion*); and
- 3.13 any other information requested by the College in the College Change Notice.

4. COSTING OF THE ESTIMATE

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

- 4.1 unless the College's requirements for the Medium Value Change specify a different quality as compared to the Works:
 - 4.1.1 the unit cost of any construction or installation works or associated preliminaries required to implement the Medium Value Change is the equivalent unit rate set out in Part 1B (*Small Works Catalogue*) of Appendix 1 of this Schedule Part 16 (*Change Protocol*), uplifted using the DTI Pubsec index for construction cost inflation in the period between the Commencement Date and the date the Medium Value Change is to be commenced;
 - 4.1.2 any Lifecycle Replacement and Maintenance Works associated with additional works (or changes to the Works) are consistent with the lifecycle and maintenance profile of the NPD Facilities envisaged in Section 4 (Project Co's Proposals) of Schedule Part 6 (*Construction Matters*) including (without limitation) in terms of the replacement cycles for equipment, provided that Project Co must reflect improvements in technology that can optimise Whole Life Costs for the College.
- 4.2 any professional fees, to be charged by any consultant, sub-contractor or supplier in respect of construction and/or installation and/or lifecycle and/or service provision for the Medium Value Change are the equivalent rates set out in Part 3 (*Consultant, Sub-contractor or Supplier Fees*) of Appendix 1 of this Schedule Part 16 (*Change Protocol*), or if the professional fees, being charged by consultants, sub-contractors and/or suppliers in current market conditions have changed significantly from those set out in Part 3 (*Consultant, Sub-contractor or Supplier Fees*) of Appendix 1 of this Schedule Part 16 (*Change Protocol*), such other rates as the parties agree or failing agreement as may be determined under the Dispute Resolution Procedure as being consistent with those charged in current market conditions;
- 4.3 unless the College's requirements for the Medium Value Change specify a different quality than required by the Service Level Specification, the unit cost of any extension of, or change to, any Service (either in scope or area), taking into account the capacity of existing labour resources, is consistent with the equivalent unit rate set out in Part 2 of Appendix 1 to this Schedule Part 16 (*Change Protocol*);
- 4.4 other than as referred to in paragraphs 4.1 to 4.3 of this Section 3 (*Medium Value Changes*) no charge shall be made in respect of Project Co's time, or that of any Project Co Party spent processing, managing or monitoring the Medium Value Change (and no additional mark up or management fee shall be applied by Project Co); and
- 4.5 where aspects of the Medium Value Change are not addressed by paragraphs 4.1 to 4.4 of this Section 3 (*Medium Value Changes*), they shall be costed on a fair and reasonable basis reflecting the then current market rates.

5. STANDARDS OF PROVISION OF THE ESTIMATE

In providing the Estimate Project Co must:

- 5.1 use reasonable endeavours to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
- 5.2 demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, reasonably foreseeable Changes in Law at that time have been taken into account; and
- 5.3 demonstrate that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Medium Value Change concerned, has

been taken into account in the amount which in its opinion has resulted or is required under paragraphs 3.7 and/or 3.8 of this Section 3; and

5.4 provide written evidence of Project Co's compliance with paragraphs 5.1 to 5.3 of this Section 3.

6. DETERMINATION OF THE ESTIMATE

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

7. CONFIRMATION OR WITHDRAWAL OF THE MEDIUM VALUE CHANGE NOTICE

7.1 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to paragraph 6 of this Section 3, the College shall:

7.1.1 confirm in writing to Project Co the Estimate (as modified); or

7.1.2 withdraw the College Change Notice.

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

7.2.1 Project Co has used all reasonable endeavours to submit a reasonably priced Estimate; and

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

8. IMPLEMENTATION OF THE MEDIUM VALUE CHANGE

8.1 Subject to Clause 8.4, when the College has confirmed the Estimate in accordance with paragraph 7.1 of this Section 3, Project Co shall, subject to Project Co obtaining all new or amended Necessary Consents that are required and have not already been obtained, implement the required Medium Value Change in accordance with the Estimate. Where an extension of time has been granted as part of the Estimate the relevant Phase Actual Completion Dates shall be extended as agreed in the Estimate.

8.2 Project Co shall notify the College when it considers that the Medium Value Change has been completed.

8.3 If:

8.3.1 Project Co fails to provide a response pursuant to paragraph 3 of this Section 3 within fifteen (15) Business Days of the date of the Medium Value Change Notice;

8.3.2 Project Co fails to provide an Estimate in accordance with paragraph 3 of this Section 3; or

8.3.3 the College has confirmed an Estimate but Project Co fails to fully implement the Medium Value Change within ten (10) Business Days after the expiry of the time for implementing

the Medium Value Change set out in the Estimate Medium Value Change (as such time may be extended for any delay that is, or is equivalent to, a Delay Event);

then, subject to paragraph 14.3 of this Section 3, the College may notify Project Co that the Medium Value Change Notice is withdrawn and, following such notification, may procure the implementation of the Medium Value Change without further recourse to Project Co, but the College must ensure that the Medium Value Change is carried out in accordance with Good Industry Practice and to the standards that would have applied to Project Co if it had implemented the Medium Value Change.

8.4 Project Co shall not be obliged to implement a Medium Value Change until any dispute relating to the Estimate has been determined except that where such dispute concerns only the cost of a Medium Value Change or the extension of time relating thereto, in which case the College shall be entitled to instruct Project Co to carry out and implement the Medium Value Change within a reasonable timescale notwithstanding the dispute and in accordance with the Estimate, submitted in accordance with paragraph 3 of this Section 3, as agreed with the College.

8.5 Where the College has instructed Project Co to carry out and implement a Medium Value Change prior to confirmation of the relevant Estimate the College shall pay the demonstrable costs reasonably and properly incurred by Project Co in carrying out the Medium Value Change up and until the dispute is agreed or determined, as follows:

8.5.1 Project Co shall, where the Medium Value Change is implemented prior to the Operational Term, issue an invoice in respect of such costs of the Medium Value Change, which the College must pay within 20 Business Days of receipt; or

8.5.2 Project Co shall, where the Medium Value Change is implemented during the Services Period, include such costs in the next Monthly Invoice submitted pursuant to Clause 34.2 of this Agreement following the implementation Medium Value Change and the amount payable for the Medium Value Change shall be invoiced and paid in accordance with the procedure described in Clause 34 of this Agreement.

8.6 Following agreement or determination of the dispute the total amount paid to Project Co by way of demonstrable costs shall be deducted from the total amount due to Project Co for the carrying out and implementation of the Medium Value Change.

9. CERTIFICATION OF THE MEDIUM VALUE CHANGE

9.1 Where the Medium Value Change is implemented at the NPD Facilities before the relevant Phase Actual Completion Date, the procedure set out at Clause 17 (*Pre-Completion Commissioning and Completion*) shall apply to the Medium Value Change at the same time as it applies to the original Works.

9.2 Where the Medium Value Change is implemented at any of the NPD Facilities after the relevant Phase Actual Completion Date, and constitutes additional works, the procedure set out and agreed in the Estimate for certifying the completion of the Medium Value Change shall apply to determine whether the Medium Value Change has been completed appropriately.

10. METHOD OF PAYMENT OF COLLEGE CONTRIBUTION

10.1 Project Co shall invoice the College for Capital Expenditure incurred by Project Co to implement a Medium Value Change according to the payment schedule set out in the Estimate as referred to in paragraph 3.10.

10.2 The College shall make a payment to Project Co within fifteen (15) Business Days of receipt by the College of invoices presented to the College (complete in all material respects) in accordance with paragraph 10.1 of this Section 3 accompanied by the relevant evidence (where applicable) that the relevant part of the Medium Value Change has been carried out.

11. ADJUSTMENT TO ANNUAL SERVICE PAYMENT

Any adjustment to the Annual Service Payment that is necessary due to the implementation of a Medium Value Change shall be calculated in accordance with Section 6 of this Schedule Part 16 (*Change Protocol*).

12. DUE DILIGENCE

12.1 Project Co shall procure that the Senior Funders shall not:

12.1.1 (in any event) withhold or delay any consents that are required pursuant to the Senior Funding Agreements to a Medium Value Change other than on the basis that the Senior Funders, acting pursuant to the terms of the Senior Funding Agreements, reasonably believe that one or more of the circumstances set out in paragraphs 1.2.1 to 1.2.6 of this Section 3 apply; or

12.1.2 carry out any due diligence (whether funder, legal, technical, insurance or financial) in relation to the carrying out of any Medium Value Change unless either (i) the Medium Value Change in question would result in an adjustment to the Annual Service Payment that, on a full year basis, is in excess of one percent (1%) of the Annual Service Payment in the relevant Contract Year or (ii) the Senior Funders, acting pursuant to the terms of the Senior Funding Agreements, reasonably believe that one or more of the circumstances set out in paragraphs 1.2.1 to 1.2.6 of this Section 3 apply.

12.2 Where not prohibited by paragraph 12.1 of this Section 3, the Senior Funders may carry out legal, financial, insurance and/or technical due diligence on any proposal for a Medium Value Change. In the event that such due diligence is permitted and required, the parties shall agree a budget for the due diligence not exceeding 5% of the overall value of the Medium Value Change in question unless the parties (acting reasonably) agree otherwise. Any costs incurred by Project Co as a result of the Senior Funders due diligence shall be reimbursed by the College following agreement or determination of the contents of the Estimate within ten (10) Business Days of Project Co submitting an invoice for and evidence of such costs, subject to the invoices being in accordance with the agreed budget.

12.3 It is acknowledged that Changes (particularly where they involve a change to the Works or the NPD Facilities) may require authorisation from the insurers under the Required Insurances. Project Co shall notify the relevant insurance broker immediately upon any material Medium Value Change being agreed (materiality being judged in relation to the size and nature of the scope of the Medium Value Change).

13. PROJECT DOCUMENTATION

13.1 Unless the parties otherwise agree, no changes to the Project Documents shall be made as a result of a Medium Value Change.

13.2 Project Co shall, no later than one (1) month following completion of a Medium Value Change, update the as-built drawings and the operating and maintenance manuals as necessary to reflect the Medium Value Change.

14. DISPUTES

14.1 Any dispute concerning any matter referred to in this Section 3 may be referred by either party to the Dispute Resolution Procedure.

14.2 Except as provided in paragraph 8, Project Co shall not be obliged to implement the Medium Value Change until the dispute has been determined.

14.3 The College is not entitled to withdraw a College Change Notice and procure implementation of a Medium Value Change in respect of which there is a dispute that has been referred to the Dispute Resolution Procedure, unless that dispute has been determined in its favour and Project Co has not confirmed to the College in writing within five (5) Business Days of the date of the

determination that it will implement and carry out the Medium Value Change in accordance with the determination.

SECTION 4

HIGH VALUE CHANGES

1. HIGH VALUE CHANGES

If the College requires a High Value Change, it must serve a College Change Notice on Project Co in accordance with paragraph 2 of this Section 4 (*High Value Changes*). Project Co shall be entitled to refuse a High Value Change that:

- 1.1 requires the Works and/or the Services to be performed in a way that infringes any law or is inconsistent with Good Industry Practice;
- 1.2 would cause any Necessary Consent to be revoked (or would require a new consent to be obtained to implement the relevant change in the Works and/or the Services which, after using reasonable efforts, Project Co has been unable to obtain);
- 1.3 would materially and adversely affect Project Co's ability to deliver the Works and /or Services (except those Works and/or Services which have been specified as requiring to be amended in the High Value Change Notice) in a manner not compensated pursuant to this Section 4 (*High Value Changes*);
- 1.4 would materially and adversely affect the health and safety of any person;
- 1.5 would, if implemented, materially and adversely change the nature of the Project (including its risk profile);
- 1.6 is the subject of a High Value Change Notice that cannot reasonably be complied with;
- 1.7 the College does not have the legal power or capacity to require implementation of; or
- 1.8 would if implemented adversely affect the enforceability or priority of the security held by or on behalf of the existing Senior Funders.

2. HIGH VALUE CHANGE NOTICE

- 2.1 An College Change Notice for a High Value Change must:
 - 2.1.1 state that is refers to a High Value Change;
 - 2.1.2 set out the maximum available capital and/or revenue the College is able to commit to that High Value Change (the "**Target Cost**");
 - 2.1.3 identify any requirements of the College that must be satisfied as part of the High Value Change Proposal (the "**High Value Change Requirements**"); and
 - 2.1.4 identify how the College will assess whether the High Value Change Stage 2 Submission offers it value for money.
- 2.2 The parties may agree written protocols with express reference to this Section 4 (*High Value Changes*) which explain or clarify any aspects of the High Value Change approval procedure set out in this Section 4 (*High Value Changes*) and such protocols shall be read as if incorporated into this Section 4 (*High Value Changes*) (including accelerated procedures with reduced requirements for High Value Changes of relatively low values).
- 2.3 The parties must:
 - 2.3.1 within five (5) Business Days of receipt by Project Co of any High Value Change Notice, discuss and review the nature of the High Value Change, including a discussion as to

which of the items set out in paragraph 3.4 of this Section 4 (*High Value Changes*) are appropriate to be included within the High Value Change Proposal; and

- 2.3.2 within five (5) Business Days of a High Value Change Proposal becoming a Stage 1 Approved Project, discuss and review the nature of the Stage 1 Approved Project, including a discussion as to which of the items set out in paragraph 4.3 of this Section 4 (*High Value Changes*) are appropriate to be included within the High Value Change Stage 2 Submission.

3. HIGH VALUE CHANGE PROPOSAL

- 3.1 Project Co must notify the College in writing as soon as practicable and in any event within fifteen (15) Business Days after having received the College Change Notice for a High Value Change if it considers that any of the circumstances set out in paragraphs 1.2.1 to 1.2.8 of this Section 4 (*High Value Changes*) apply. If no such notice is served, Project Co must (within thirty (30) Business Days after having received the College Change Notice) either:
- 3.1.1 submit a High Value Change Proposal to the College; or
 - 3.1.2 notify the College as to when the High Value Change Proposal will be provided to it (provided that Project Co shall use all reasonable endeavours to obtain all the information that it requires, expeditiously).
- 3.2 If Project Co notifies the College that it considers that one or more of the grounds set out in paragraphs 1.2.1 to 1.2.8 of this Section 4 (*High Value Changes*) apply, then unless the parties otherwise agree, the College shall be deemed to have withdrawn the College Notice of Change if it has not referred the matter to the Dispute Resolution Procedure within twenty (20) Business Days of receipt of Project Co's notice. If the matter is referred to the Dispute Resolution Procedure the time for Project Co to provide the High Value Change Proposal shall be counted from the date of determination of that dispute, if the dispute is determined in Project Co's favour.
- 3.3 If the College considers that Project Co's proposed time for providing the High Value Change Proposal is not reasonable, the parties shall endeavour to agree the time, failing which the matter may be referred to the Dispute Resolution Procedure.
- 3.4 Unless Project Co has submitted a High Value Change Proposal in accordance with paragraph 3.1.1 of this Section 4 (*High Value Changes*), Project Co must deliver to the College the High Value Change Proposal as soon as reasonably practicable and in any event within the time period agreed or determined pursuant to paragraph 3.3 of this Section 4 (*High Value Changes*). Unless the parties agree otherwise, a High Value Change Proposal will contain at least the following information in sufficient detail to enable the College to make an informed decision under paragraph 3.6 of this Section 4 (*High Value Changes*):
- 3.4.1 a description of the High Value Change, with evidence of how the High Value Change meets the High Value Change Requirements;
 - 3.4.2 an outline of the proposed building solution and design including an appropriate analysis/risk appraisal of, in each case to the extent relevant (if at all), the preferred investment solution contemplated in terms of new build, refurbishment, whole life costings;
 - 3.4.3 the Change Management Fee for the High Value Change, which shall be a capped fee calculated in accordance with paragraph 10 of this Section 4 (*High Value Changes*);
 - 3.4.4 details of the third party activity likely to be required by Project Co in developing a High Value Change Stage 2 Submission together with a budget (or budgets) for relative Third Party Costs;
 - 3.4.5 an estimated programme for submission of the High Value Change Stage 2 Submission and for the implementation of the High Value Change;

- 3.4.6 any requirement for relief from compliance with obligations, including the obligations of Project Co to achieve the Phase Actual Completion Date by the relevant Phase Completion Date and meet the requirements set out in the College's Construction Requirements and/or the Service Level Specification during the implementation of the High Value Change;
- 3.4.7 any impact on the provision of the Works and/or the Services;
- 3.4.8 any amendment required to this Agreement and/or any Project Document as a result of the High Value Change;
- 3.4.9 any Estimated Change in Project Costs that results from the High Value Change;
- 3.4.10 an outline of how Project Co proposes to finance any Capital Expenditure required for the High Value Change;
- 3.4.11 Project Co's suggested payment schedule for any Capital Expenditure to be incurred in implementing the Change that is to be borne by the College, based on milestones where relevant;
- 3.4.12 any new Necessary Consents and/or any amendments to existing Necessary Consents which are required;
- 3.4.13 costs and details of any other approvals required or due diligence permitted pursuant to paragraph 14 of this Section 4 (*High Value Changes*);
- 3.4.14 the proposed method of certification of any construction or operational aspects of the Works or the Services required by the proposed High Value Change if not covered by the procedures specified in Clause 17 (*Pre-Completion Commissioning and Completion*); and
- 3.4.15 a value for money assessment explaining why Project Co's proposals represent value for money taking into account both the proposed Capital Cost and Whole Life Cost.

3.5 **Liaison between Project Co, the College and relevant end users**

In developing a High Value Change Proposal Project Co must liaise with the College and relevant end users (being such persons or organisations as Project Co in consultation with the College considers appropriate). The College must provide Project Co with such information about its requirements as Project Co reasonably requires and must assist Project Co in the review of any draft designs in relation to the High Value Change Proposal. Any and all information and other input or feedback provided by the College to Project Co, unless expressly stated otherwise by the College, will be without warranty and will be provided without prejudice to the College's rights under this Section 4 (*High Value Changes*).

3.6 **Consideration of a High Value Change Proposal by the College**

The College will consider in good faith each High Value Change Proposal put forward by Project Co and the College will not unreasonably withhold or delay its consent to a High Value Change Proposal. If, acting reasonably, the College finds that any material aspects of the High Value Change Proposal are unsatisfactory to it, it shall notify Project Co of the same and offer reasonable assistance to Project Co to enable it to revise and resubmit the High Value Change Proposal as soon as reasonably practicable.

3.7 **College response to a High Value Change Proposal**

If the College approves a High Value Change Proposal (including any revised High Value Change Proposal resubmitted pursuant to paragraph 3.5 of this Section 4 (*High Value Changes*)), then it shall be a "**Stage 1 Approved Project**" or be referred to as having received "**Stage 1 Approval**", as the context requires.

3.8 **Project Co not entitled to dispute non-approval**

Project Co shall not be entitled to refer any dispute concerning the College's failure to approve a High Value Change Proposal to the Dispute Resolution Procedure.

4. **STAGE 2 SUBMISSION**

4.1 **Development of a High Value Change Stage 2 Submission**

4.1.1 Within ten (10) Business Days of a High Value Change Proposal having become a Stage 1 Approved Project, the parties shall seek to agree the time period within which Project Co must develop the Stage 1 Approved Project into a detailed submission (the "**High Value Change Stage 2 Submission**"). If the parties are unable to agree a reasonable time period for such submission any dispute may be referred to the Dispute Resolution Procedure.

4.1.2 Following agreement or determination of what is an appropriate time period for submission by Project Co of the High Value Change Stage 2 Submission pursuant to paragraph 4.1.1 of this Section 4 (*High Value Changes*), Project Co shall proceed regularly and diligently to produce and submit the same to the College within the agreed or determined time period.

4.2 **Liaison between Project Co, the College and relevant end users**

In developing a High Value Change Stage 2 Submission Project Co must continue to liaise with the College and relevant end users (being such persons or organisations as the College in consultation with Project Co considers appropriate). The College must provide Project Co with such information as to its requirements as is reasonably necessary to enable Project Co to submit a full and complete High Value Change Stage 2 Submission and any such other information as Project Co may reasonably require and must assist Project Co in the review of any draft designs in relation to the Stage 1 Approved Project and in the development of other aspects of the High Value Change Stage 2 Submission (but not where this would involve the College incurring additional material expense). Any and all information and other input or feedback provided by the College to Project Co will be without warranty and will be provided without prejudice to the College's rights under this Section 4 (*High Value Changes*).

4.3 **Content requirements in relation to a High Value Change Stage 2 Submission**

Save where the parties agree otherwise, in relation to the relevant Stage 1 Approved Project, Project Co shall procure that a High Value Change Stage 2 Submission includes (but not be limited to):

4.3.1 draft(s) of the relevant Project Document(s) identifying (if relevant) any material changes or amendments proposed in respect of the relevant Stage 1 Approved Project, together with the reasons for any such changes or amendments proposed and including full details of which provisions of the relevant Project Documents will apply to the High Value Change so that it is implemented in equivalent manner and to an equivalent standard as required in respect of the Works and/or Services as appropriate;

4.3.2 detailed design solutions (to RIBA Level D);

4.3.3 appropriate plans and drawings;

4.3.4 relevant detailed planning permissions and any other relevant planning approvals and Necessary Consents (or such lesser confirmation or information in relation to planning as may be agreed with the College);

4.3.5 a proposed revised Financial Model including the detailed price estimates for the Stage 1 Approved Project;

- 4.3.6 an explanation (together with appropriate supporting evidence) as to why the High Value Change Stage 2 Submission meets the Approval Criteria (as defined in paragraph 7 of this Section 4 (*High Value Changes*));
- 4.3.7 confirmation (or details of any requested variations to (with supporting justification)) of the Change Management Fee referred in paragraph 3.4.3 of this Section 4 (*High Value Changes*);
- 4.3.8 the proposed method of certification of any construction aspects of the High Value Change, if not covered by the procedures specified in Clause 17 (*Pre-Completion Commissioning & Completion*);
- 4.3.9 a value for money assessment explaining why Project Co's proposals represent value for money taking into account both the proposed Capital Cost and Whole Life Cost;
- 4.3.10 a timetable and method statement setting out how the relevant High Value Change will be delivered, which shall include (but not be limited to) in so far as relevant:
- (a) proposals for the effective management of the building programme;
 - (b) Not used
 - (c) an assessment as to the savings to be generated by the High Value Change, particularly on staff costs and lifecycle replacement and maintenance and operation of Services;
 - (d) details of the Sub-Contractors together with evidence and explanation of the value testing undertaken by Project Co in relation to the High Value Change;
 - (e) a completed risk register showing the potential risks identified in relation to the delivery of the High Value Change the occurrence of which are capable of adversely affecting the time for completion, cost and/or quality of the project, the probability of such risks occurring and a financial estimate of the most likely consequences of each risk occurring together with the prioritisation of all continuing risks and an action plan in respect of, and risk owners for, all risks prioritised as serious risks;
- 4.3.11 any surveys and investigations and associated reports that are reasonably necessary to ascertain (in relation to Changes involving the construction of additional buildings) information as to the nature, location and condition of the relevant land (including hydrological, geological, geotechnical and sub-surface conditions) together with information relating to archaeological finds, areas of archaeological, scientific or natural interest and (in relation to the refurbishment of any existing buildings) information on the condition and quality of existing structures and, in particular, the presence of any latent defects.

Co-operation of the College

- 4.4 The College will co-operate with Project Co in relation to any High Value Change Stage 2 Submission being developed by Project Co, including (without limitation) promptly providing:
- 4.4.1 written confirmation of the Target Cost and/or High Value Change Requirements and any change to such Target Cost and/or High Value Change Requirements; and
 - 4.4.2 any information reasonably required by Project Co to enable it to satisfy the requirements of paragraph 4.3 of this Section 4 (*High Value Changes*).

5. **TIME PERIODS FOR APPROVAL**

- 5.1 Each High Value Change Proposal and each High Value Change Stage 2 Submission shall be valid for a period of three (3) months from the date of its submission by Project Co.
- 5.2 If by the end of the three (3) month period referred to in paragraph 5.1 of this Section 4 (*High Value Changes*) the College has not:
- 5.2.1 in relation to a High Value Change Proposal, approved or rejected that High Value Change Proposal in accordance with the procedures set out in this Section 4 (*High Value Changes*):
- (a) Project Co shall be entitled to withdraw the High Value Change Proposal; and
 - (b) Project Co shall not be entitled to any costs relating to the High Value Change Proposal unless the College has either not responded to the High Value Change Proposal and/or is in material breach of its obligations in paragraph 3 and/or paragraph 4.4 of this Section 4 in which case paragraph 8.5 of this Section 4 (*High Value Changes*) shall apply;
- 5.2.2 in relation to a High Value Change Stage 2 Submission, approved or rejected that High Value Change Stage 2 Submission in accordance with the procedures set out in this Section 4 (*High Value Changes*) (or has not given any notification of the College's response to the High Value Change Stage 2 Submission or has given written notice to Project Co withdrawing or cancelling the High Value Change to which the High Value Change Stage 2 Submission relates) then the High Value Change Stage 2 Submission shall be deemed to have been improperly rejected by the College and paragraph 8.5 shall apply.

6. **CHANGES TO THE HIGH VALUE CHANGE REQUIREMENTS OR APPROVAL CRITERIA**

- 6.1 If the High Value Change Requirements or Approval Criteria are subject to any material variation in relation to a High Value Change by the College after the High Value Change Proposal has been submitted then:
- 6.1.1 Project Co and the College shall negotiate in good faith as to the implications on the High Value Change Proposal or High Value Change Stage 2 Submission (as the case may be) and shall seek to agree changes thereto to accommodate the variation (including any change to the Target Cost and/or to the Change Management Fee);
- 6.1.2 if agreement has not been reached pursuant to paragraph 6.1.1 of this Section 4 (*High Value Changes*) within twenty (20) Business Days (or such longer period as the parties may agree) then:
- (a) Project Co shall be entitled by notice in writing to the College to withdraw the High Value Change Proposal or the High Value Change Stage 2 Submission (as the case may be) and to be paid the Incurred Change Management Fee with the Calculation Date being the date of the variation notified by the College; and
 - (b) the College shall not be entitled to procure the High Value Change without issuing a new College Change Notice for the High Value Change and complying with the procedure in this Section 4 (*High Value Changes*) in relation to that High Value Change.
- 6.1.3 The College may, at any time, give notice in writing to Project Co that it proposes to cancel a High Value Change without completing the process set out in this Section 4 (*High Value Changes*) in which case the College must pay Project Co the Incurred Change Management Fee in respect of the cancelled High Value Change with the Calculation Date being the date of such notice.

7. **APPROVAL CRITERIA**

- 7.1 For the purposes of this Section 4 (*High Value Changes*), Approval Criteria means the criteria against which any Stage 1 Approved Project is to be judged by the College in determining whether it achieves Stage 2 Approval. The criteria are:
- 7.1.1 whether the costs of the Stage 1 Approved Project are within the Target Cost notified to Project Co by the College;
 - 7.1.2 whether it has been demonstrated that the Stage 1 Approved Project provides value for money assessed in accordance with the measures identified by the College in accordance with paragraph 2.1.3 of this Section 4 (*High Value Changes*);
 - 7.1.3 whether the College, acting reasonably, is satisfied that the High Value Change Stage 2 Submission meets the High Value Change Requirements;
 - 7.1.4 whether any material changes or amendments to the relevant Project Document(s) as detailed pursuant to paragraph 4.3.1 of this Section 4 (*High Value Changes*) are acceptable to the College, acting reasonably; and
 - 7.1.5 whether the High Value Change Stage 2 Submission contains all the information required pursuant to paragraph 4.3 of this Section 4 (*High Value Changes*) (or as otherwise agreed by the parties).

8. **SUBMISSION OF THE HIGH VALUE CHANGE STAGE 2 SUBMISSION TO THE COLLEGE AND CONSIDERATION OF THAT SUBMISSION BY THE COLLEGE**

- 8.1 The College will consider in good faith High Value Change Stage 2 Submissions submitted by Project Co and the College will not unreasonably withhold or delay its consent to a High Value Change Stage 2 Submission. The College is entitled to call for such reasonable information and assistance as it considers appropriate to enable it to decide whether the High Value Change Stage 2 Submission meets the Approval Criteria. Project Co must reply promptly to all such requests for further information and assistance.
- 8.2 As soon as reasonably practicable after the submission to it of a High Value Change Stage 2 Submission (including any revised High Value Change Stage 2 Submission re-submitted by Project Co) the College must give written notice of whether it:
- 8.2.1 approves the relevant Stage 1 Approved Project (in which case the Stage 1 Approved Project will be referred to as having received "**Stage 2 Approval**" or as being a "**Stage 2 Approved Project**" or an "**Approved Project**" as the context requires); or
 - 8.2.2 rejects the Stage 1 Approved Project:
 - (a) on the ground that the High Value Change Stage 2 Submission in relation to the relevant Stage 1 Approved Project has failed to meet one or more of the Approval Criteria (except as referred to in paragraph 8.2.2(b)(i) or paragraph 8.2.2(c)), in which case (subject to resubmission under paragraph 8.2.3) paragraph 8.3 shall apply;
 - (b) because, as a result of any change to the Target Cost referred to in paragraph 2.1.2, the Stage 1 Approved Project is not in fact Affordable despite the High Value Change Stage 2 Submission being within the Target Cost notified by the College pursuant to paragraph 2.1.2 of this Section 4 (*High Value Changes*); or
 - (c) because Project Co has failed to meet one or more of the Approval Criteria and the sole reason for that failure is that any Necessary Consent identified by Project Co (in compliance with paragraph 3.4.12 of this Section 4 (*High Value Changes*)) has not been obtained; or

- (d) otherwise on grounds other than those set out in paragraphs 8.2.2(a), 8.2.2(b) and 8.2.2(b)(c) of this Section 4 (*High Value Changes*)

in which case paragraph 8.5 shall apply.

8.2.3 If the College rejects the High Value Change Stage 2 Submission on the grounds set out in paragraph 8.2.2(a) the College and Project Co will work together to address the reasons for such failure and attempt in good faith to produce a revised High Value Change Stage 2 Submission for Project Co to re-submit to the College.

8.2.4 If:

- (a) a resubmitted High Value Change Stage 2 Submission is rejected by the College on the ground set out in paragraph 8.2.2(a) (subject to paragraphs 16.3 to 16.4 (if applicable) of this Section 4 (*High Value Changes*)); or
- (b) no resubmission of the High Value Change Stage 2 Submission is made within 30 Business Days of the date of the notice of rejection (or such longer period as the parties may agree)

then the relevant Stage 1 Approved Project shall be treated as having been properly rejected, the provisions of paragraph 8.3 of this Section 4 (*High Value Changes*) shall apply and neither the College nor Project Co will have any further obligations in relation to the relevant High Value Change referred to in the High Value Change Stage 2 Submission.

If a High Value Change Stage 2 Submission is properly rejected by the College

8.3 Where this paragraph 8.3 applies (as set out in paragraph 8.2.2(a), paragraph 8.2.4 and paragraph 16.4.2 of this Section 4 (*High Value Changes*)) the College shall not be required to reimburse or compensate Project Co in respect of any costs relating to the High Value Change including the Change Management Fee.

8.4 If:

- 8.4.1 Project Co fails to provide a response to a College Change Notice in accordance with paragraph 3.1 of this Section 4 (*High Value Changes*); or
- 8.4.2 (where applicable) Project Co fails to provide a High Value Change Proposal in accordance with paragraph 3.4 of this Section 4 (*High Value Changes*); or
- 8.4.3 Project Co fails to submit a High Value Change Stage 2 Submission in accordance with paragraph 4.1.2 of Section 4 (*High Value Changes*); or
- 8.4.4 the College has validly rejected a High Value Change Stage 2 Submission in accordance with paragraph 8.2 and the matter has not been referred to the Dispute Resolution Procedure or any such dispute has been determined as described in paragraph 16.4.2 of this Section 4 (*High Value Changes*)

then, subject to paragraph 17 of this Section 4 (*High Value Changes*), the College may notify Project Co that the High Value Change Notice is withdrawn and, following such notification, may procure the implementation of the High Value Change without further recourse to Project Co, but the College must ensure that the High Value Change is carried out in accordance with Good Industry Practice and to the standards that would have applied to Project Co if it had implemented the High Value Change.

If a High Value Change Stage 2 Submission is improperly rejected by the College

8.5 Where this paragraph 8.5 applies (as set out in paragraph 5.2.1(b), paragraph 5.2.2 paragraph 8.2.2(b) and paragraph 16.4.1)), the Incurred Change Management Fee and Third Party Costs

incurred by Project Co to prepare the High Value Change Proposal and Stage 2 Submission, which shall be in accordance with the activities and budget referred to in paragraph 3.4.4 of this Section 4 (*High Value Changes*), in relation to the relevant High Value Change will be paid by the College within ten (10) Business Days of the date on which Project Co receives written notice of the rejection or the date of the deemed rejection (as the case may be) with the date of the rejection or the deemed rejection (as the case may be) being the Calculation Date for the purposes of calculating the amount of the Incurred Change Management Fee (unless a different Calculation Date is expressly stated in this Section 4 (*High Value Changes*) in relation to the circumstances giving rise to the entitlement of Project Co to be paid the Incurred Change Management Fee).

9. INFORMATION AND NOTIFICATIONS BY THE COLLEGE TO PROJECT CO AND COOPERATION OF THE COLLEGE

9.1 The College must notify Project Co as soon as it becomes aware of any matter which may have a reasonably foreseeable material adverse effect on the viability of any High Value Change including any:

9.1.1 planning issues likely to cause a material delay in the anticipated programme for the High Value Change or material cost increases; and

9.1.2 changes to funding which the College receives or to the way in which funding may be applied, either or both of which may affect whether a High Value Change is Affordable.

9.2 The College shall provide reasonable assistance to Project Co in relation to the procurement by Project Co of all relevant Necessary Consents.

10. CHANGE MANAGEMENT FEE

The Change Management Fee is to reimburse Project Co for the time spent by its employees in project managing the development, procurement and implementation of the High Value Change and shall:

10.1 be based on actual time spent (validated by time sheets);

10.2 be calculated at the daily rates as set out in Appendix 2 Part 3 to this Schedule Part 16 (*Change Protocol*), but capped at the sum set out in the High Value Change Proposal;

10.3 not include the time of any person who is not employed by Project Co;

10.4 not include any mark-up or profit or additional overheads;

10.5 be paid in three stages as follows:

10.5.1 on Stage 1 Approval;

10.5.2 on Stage 2 Approval; and

10.5.3 when any works involved in the High Value Change have been completed

and at each stage Project Co shall charge the College (subject to the applicable cap) only for the time incurred by its staff up to completion of that stage.

11. IMPLEMENTATION OF THE HIGH VALUE CHANGE

11.1 Project Co must implement any High Value Change approved by the College so as to minimise any inconvenience to the College and to the provision of College Services and in accordance with the Approved Project. Where an extension of time has been agreed as part of the Stage 2 Approval the relevant Phase Completion Dates shall be extended as agreed in the Approved Project.

- 11.2 The College shall be entitled to instruct Project Co to carry out and implement a High Value Change in respect of which a High Value Change Stage 2 Submission has been submitted, notwithstanding that such High Value Change is not an Approved Project, where the only aspects of the High Value Change Stage 2 Submission not agreed between the Parties relate to the cost of the High Value Change and any extension of time relating thereto.
- 11.3 Where the College has instructed Project Co to carry out and implement a High Value Change which is not an Approved Project the College shall pay the demonstrable costs reasonably and properly incurred by Project Co in carrying out the High Value Change up and until the dispute is agreed or determined, as follows:
- 11.3.1 Project Co shall, where the High Value Change is implemented prior to the Operational Term, issue an invoice in respect of such costs of the High Value Change, which the College must pay within 20 Business Days of receipt; or
- 11.3.2 Project Co shall, where the High Value Change is implemented during the Services Period, include such costs in the next Monthly Invoice submitted pursuant to Clause 34.2 of this Agreement following completion or implementation of the relevant milestones of the High Value Change and the amount payable for the High Value Change shall be invoiced and paid in accordance with the procedure described in Clause 34 of this Agreement.
- 11.4 Following agreement or determination of the dispute the total amount paid to Project Co by way of demonstrable costs shall be deducted from the total amount due to Project Co for the carrying out and implementation of the Approved Project.
- 11.5 Where Project Co is instructed to carry out and implement a High Value Change under paragraph 11.2, Project Co shall implement the High Value Change in accordance with the High Value Change Proposal, submitted in accordance with paragraph 3.4 of this Section 4, as agreed with the College.

12. **METHOD OF PAYMENT OF COLLEGE CONTRIBUTION**

- 12.1 This paragraph 12 shall apply where Capital Expenditure for an Approved Project is to be funded in whole or part by the College.
- 12.2 Project Co shall invoice the College for Capital Expenditure incurred by Project Co to implement a High Value Change that is to be borne by the College according to the payment schedule set out in the High Value Change Stage 2 Submission as referred to in paragraph 3.4.11 of this Section 4.
- 12.3 The College shall make a payment to Project Co within fifteen (15) Business Days of receipt by the College of invoices presented to the College (complete in all material respects) in accordance with paragraph 12.2 of this Section 4, accompanied by the relevant evidence (where applicable) that the relevant part of the High Value Change has been carried out.

13. **ADJUSTMENT TO ANNUAL SERVICE PAYMENT**

Any adjustment to the Annual Service Payment which is necessary as a result of the implementation of a High Value Change shall be calculated in accordance with Section 6 of this Schedule Part 16 (*Change Protocol*).

14. **DUE DILIGENCE**

- 14.1 Where the College is funding the High Value Change, Project Co shall procure that the Senior Funders shall not withhold or delay any consents which are required pursuant to the Senior Funding Agreements to such High Value Change other than on the basis that the Senior Funders, acting pursuant to the terms of the Senior Funding Agreements, reasonably believe that one or more of the circumstances set out in paragraphs 1.2.1 to 1.2.8 of this Section 4 (*High Value Changes*) apply.

- 14.2 Where the College is not funding the High Value Change, Project Co shall procure that the Senior Funders do not unreasonably withhold or delay any consents which are required pursuant to the Senior Funding Agreements to such High Value Change other than on the basis that the Senior Funders, acting pursuant to the terms of the Senior Funding Agreements, reasonably believe that one or more of the circumstances set out in paragraphs 1.2.1 to 1.2.8 of this Section 4 (*High Value Changes*) apply.
- 14.3 The parties agree that the Senior Funders may carry out legal, financial, insurance and technical due diligence on any proposal for a High Value Change. The parties shall agree a budget for the due diligence provided that the costs may not exceed the lower of (i) 3% of the overall value of the High Value Change in question or (ii) fifty thousand pounds (£50,000) unless, in either case, the parties (acting reasonably) agree otherwise. Any costs incurred by Project Co as a result of the Senior Funders due diligence will be reimbursed by the College following the conclusion of the process in this Section 4 (*High Value Changes*) within ten (10) Business Days of Project Co submitting an invoice for and evidence of such costs, subject to the invoices being in accordance with the agreed budget.
- 14.4 It is acknowledged that High Value Changes (particularly where they involve a change to the Works or the NPD Facilities) may require authorisation from the insurers under the Required Insurances. Project Co shall notify the relevant insurance broker immediately upon any material High Value Change being agreed (materiality being judged in relation to the size and nature of the scope of the High Value Change).
- 14.5 The parties agree that paragraph 14.2 of this Section 4 (*High Value Changes*) of this Schedule Part 16 (*Change Protocol*) does not oblige the Senior Funders to provide any additional funding for the relevant High Value Change, which shall be in their absolute discretion.

15. PROJECT DOCUMENTATION

- 15.1 The only changes to the Project Documents or Ancillary Documents to be made as a result of a High Value Change shall be those identified in the Approved Project (subject to any amendments to it agreed by the parties).
- 15.2 Project Co shall, on completion of the Change, update the as-built drawings and the operating and maintenance manuals as necessary to reflect the High Value Change.

16. DISPUTES

- 16.1 Except as otherwise expressly provided, any dispute concerning any matter referred to in this Section 4 (*High Value Changes*) may be referred by either party to the Dispute Resolution Procedure.
- 16.2 Subject to Clause 11, the College shall not be entitled to approve a High Value Change Proposal or a High Value Change Stage 2 Submission that is the subject of a dispute until the dispute has been determined.
- 16.3 If the College rejects a High Value Change Stage 2 Submission pursuant to the provisions of paragraph 8.2(a) of this Section 4, Project Co shall be entitled to refer the matter for consideration under the Dispute Resolution Procedure within ten (10) Business Days after receiving written notice of the College's decision.
- 16.4 If, following a referral to the Dispute Resolution Procedure, it is agreed or determined:
- 16.4.1 that the High Value Change rejected by the College pursuant to paragraph 8.2.2(a) of this Section 4 met the Approval Criteria the College shall either:
- (a) declare that the relevant High Value Change has received Stage 2 Approval and that High Value Change shall proceed; or

- (b) declare that its rejection of the relevant High Value Change be treated as an improper rejection and that the provisions of paragraph 8.5 of this Section 4 (*High Value Changes*) shall apply.

16.4.2 the High Value Change did not meet the Approval Criteria, save in one of the respects referred to in paragraphs 8.2.2(b) or 8.2.2(c), the provisions of paragraph 8.3 of this Section 4 (*High Value Changes*) shall apply.

17. The College is not entitled to withdraw a College Change Notice and procure implementation of a High Value Change in respect of which there is a dispute that has been referred to the Dispute Resolution Procedure, unless that dispute has been determined in its favour and Project Co has not confirmed to the College in writing within five (5) Business Days of the date of the determination that it will comply with its obligations under this Section 4 in accordance with the determination.

SECTION 5

PROJECT CO CHANGES

1. If Project Co wishes to introduce a Project Co Change, it shall serve a notice containing the information required pursuant to paragraph 2 of this Section 5 (*Project Co Changes*) (a "**Project Co Notice of Change**") on the College.
2. A Project Co Notice of Change shall:
 - 2.1 set out the proposed Project Co Change in sufficient detail to enable the College to evaluate it in full;
 - 2.2 specify Project Co's reasons for proposing Project Co Change;
 - 2.3 indicate any implications of Project Co Change;
 - 2.4 indicate what savings, if any, will be generated by Project Co Change, including:
 - 2.4.1 whether a reduction of the Annual Service Payment is; or
 - 2.4.2 whether such savings will be paid to the College in a lump sumin each case giving details in accordance with paragraph 8 of this Section 5 (*Project Co Changes*);
 - 2.5 indicate whether there are any critical dates by which a decision by the College is required; and
 - 2.6 request the College to consult with Project Co with a view to deciding whether to agree to Project Co Change and, if so, what consequential changes the College requires as a result.
3. The College shall evaluate Project Co Notice of Change in good faith, taking into account all relevant issues, including whether:
 - 3.1 a revision of the Annual Service Payment will occur;
 - 3.2 the Project Co Change may affect the quality of the Services and/or the Works or the likelihood of successful completion of the Works and/or delivery of the Services (or any of them);
 - 3.3 the Project Co Change will interfere with the relationship of the College with third parties;
 - 3.4 the financial strength of Project Co is sufficient to perform the Works and/or Services after implementation of Project Co Change;
 - 3.5 the value and/or life expectancy of any of the NPD Facilities will be reduced; or
 - 3.6 the Project Co Change materially affects the risks or costs to which the College is exposed.
4. As soon as practicable after receiving Project Co Notice of Change, the parties shall meet and discuss the matters referred to in it, including in the case of a Relevant Change in Law those matters referred to in Clause 32.4 of this Agreement. During discussions the College may propose modifications to, or accept or reject, Project Co Notice of Change.
5. If the College accepts Project Co Notice of Change (with or without modification) the parties shall consult and agree the remaining details as soon as practicable and upon agreement the College shall issue a notice confirming Project Co Change which shall set out the agreed Project Co Change and:
 - 5.1 shall enter into any documents to amend this Agreement or any relevant Ancillary Document which are necessary to give effect to Project Co Change;

- 5.2 subject to paragraph 7 of this Section 5 (*Project Co Changes*), the Annual Service Payment shall be revised in accordance with Section 6 (*Changing the Financial Model*) of this Schedule Part 16 (*Change Protocol*); and
- 5.3 Project Co Change shall be implemented within the period specified by the College in its notice of acceptance.
6. If the College rejects Project Co Notice of Change, it shall not be obliged to give its reasons for such a rejection and Project Co shall not be entitled to reimbursement by the College of any of its costs involved in the preparation of Project Co Notice of Change.
7. Unless the College's written acceptance expressly agrees to an increase in the Annual Service Payment or that Project Co should be entitled to relief from any of its obligations, there shall be no increase in the Annual Service Payment or relief granted from any obligations as a result of a Project Co Change.
8. If a Project Co Change causes, or will cause, Project Co's costs or those of a sub-contractor to decrease, there shall be a decrease in the Annual Service Payment such that any cost savings (following deduction of costs reasonably incurred by Project Co in implementing such Project Co Change) will be shared on the basis of fifty per cent (50%) of the saving being retained by Project Co and fifty per cent (50%) of the saving being paid to the College as a lump sum within ten (10) Business Days of agreement or determination or by way of revision of the Annual Service Payment pursuant to Section 6 (*Changing the Financial Model*) of this Schedule Part 16 (*Change Protocol*).

SECTION 6

CHANGING THE FINANCIAL MODEL

Procedure

1. If a Relevant Event occurs, the Financial Model shall be adjusted in accordance with this Section 6 (*Changing the Financial Model*) of this Schedule Part 16 (*Change Protocol*).

Adjusting the Logic or Formulae

2. If it is necessary to make a Logic Adjustment to permit an Input Adjustment or Assumption Adjustment to be made, Project Co shall make such Logic Adjustment only:
 - 2.1 to the extent necessary;
 - 2.2 in accordance with generally accepted accounting principles in the United Kingdom; and
 - 2.3 so as to leave Project Co in no better and no worse a position.
3. In order to demonstrate that the conditions in paragraph 2 are met, Project Co shall prepare:
 - 3.1 a run of the Financial Model before making any Assumption Adjustment or Input Adjustment and immediately prior to making the Logic Adjustment; and
 - 3.2 a run of the Financial Model immediately following the Logic Adjustment which shows that Project Co is in no worse and no better a position following the making of the Logic Adjustment.

Adjusting the Assumptions

4. Subject to paragraph 5, Project Co may make an Assumption Adjustment so that the Assumptions in the Financial Model reflect:
 - 4.1 reasonable economic assumptions prevailing at the Adjustment Date; and
 - 4.2 reasonably foreseeable changes in the prospective technical performance of the Project arising as a result of the Relevant Event.
5. In making Assumption Adjustments, Project Co may make such adjustments only insofar as they relate to the Relevant Event, and such adjustments shall not have effect in relation to any period prior to the Adjustment Date, nor in relation to any aspect of the Project other than the Relevant Event in the period following the Adjustment Date.

Adjusting the Inputs

6. Project Co may make Input Adjustments to the extent required to reflect the Estimated Change in Project Costs arising out of the Relevant Event.

Adjusting the Annual Service Payments

7. In order to calculate the adjustment to be made to the Annual Service Payments, Project Co shall run the Financial Model after making the Logic Adjustments, the Assumption Adjustments and the Input Adjustments relating to the Relevant Event and permitted by this Section 6 (*Changing the Financial Model*) of this Schedule Part 16 (*Change Protocol*) so that, following the Relevant Event, it is in no better and no worse a position than it would have been if no Relevant Event had occurred.

8. The Annual Service Payments shall be adjusted by such amount as leaves Project Co, following the Relevant Event, in no better and no worse a position than it would have been if no Relevant Event had occurred.

No better and no worse

9. Any reference in this Agreement to "no better and no worse" or to leaving Project Co in "no better and no worse a position" shall be construed by reference to Project Co's:
 - 9.1 rights, duties and liabilities under or arising pursuant to performance of this Agreement, the Funding Agreements, the Construction Contract and the Service Contract; and
 - 9.2 ability to perform its obligations and exercise its rights under this Agreement, the Funding Agreements, the Construction Contract and the Service Contract
- so as to ensure that:
- 9.3 Project Co is left in a position in relation to the Key Ratios which is no better and no worse in the Post-Adjustment Financial Model than it is in the Pre-Adjustment Financial Model; and
 - 9.4 following the making of the Adjustments, the ability of Project Co to comply with this Agreement is not adversely affected or improved as a consequence of the Relevant Event.

APPENDIX 1

PART 1

DEROGATED LOW VALUE CHANGES THAT CAN BE CARRIED OUT WITHOUT NOTICE AND CATALOGUE

A: Derogated Low Value Changes that can be carried out without notice to Project Co.

The following are the Derogated Low Value Changes that may be carried out without notice to the Project Co

- Hanging and mounting of pictures, displays and artwork;
- Installation of shelving and fixed furniture;
- Changes to layout, furniture and fittings;
- Minor repairs to internal fabric;
- Repair, unblocking or replacement of washroom fittings, including cubicles, and door and window furniture, blinds and internal glazing where the damage has been caused by misuse, vandalism, or malicious damage;
- Minor redecoration and making good of internal finishes, subject to Clause 23.13;
- Repair and replacement of floor coverings, subject to Clause 23.13;

Provided that the Change:

- i. only affects the interior of the NPD Facilities;
- ii. does not affect any of the mechanical and electrical equipment of the NPD Facilities; other than the Functional Area in which the work will be undertaken
- iii. does not involve any interference with the service media in the NPD Facilities other than the Functional Area in which the work will be undertaken;
- iv. will not conflict with any Programmed Maintenance or Lifecycle Replacement;
- v. will not prejudice any of the Operational Insurances;

B: Small Works and Services Catalogue/Rates

This is Part 1B, Part 2 and Part 3 of Appendix 1 of this Schedule Part 16 (*Change Protocol*) in the Agreed Form.

SCHEDULE - Part 17

COMPENSATION ON TERMINATION

The Parties agree that the provisions of Schedule Part 17 (*Compensation on Termination*) shall not apply to the provision by Project Co of RAFM and the ICT Services and therefore for the purposes of Schedule Part 17(*Compensation on Termination*) only references to Project Operations shall be to Project Operations under exception of RAFM and ICT Services.

SECTION 1

COMPENSATION ON TERMINATION FOR COLLEGE DEFAULT AND VOLUNTARY TERMINATION

1. Compensation on Termination for the College Default and Voluntary Termination
 - 1.1 If Project Co terminates this Agreement pursuant to Clause 39 (*College Events of Default*) or the College terminates this Agreement pursuant to Clause 42.1 the College shall pay to Project Co the "**College Default Termination Sum**" as set out in paragraph 1.2.
 - 1.2 Subject to paragraphs 1.4 to 1.6 below the College Default Termination Sum shall be an amount equal to the aggregate of:
 - 1.2.1 the Base Senior Debt Termination Amount;
 - 1.2.2 Redundancy Payments and Sub-Contractor Losses; and
 - 1.2.3 the aggregate amount for which the share capital of Project Co and the amounts outstanding under the Subordinated Funding Agreements could have been sold on an open market basis based on the Relevant Assumptions

LESS, to the extent it is a positive amount, the aggregate of without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below:
 - 1.2.4 the value of any right of Project Co to receive insurance proceeds (save where such insurance proceeds are held in the Insurance Proceeds Account and are to be applied in accordance with Clause 53.19 of this Agreement in reinstatement, restoration or replacement or, in the case of any third party legal liability or employer's liability, in satisfaction of the claim, demand, proceeding or liability) or sums due and payable from third parties (but only when received from third parties) but excluding any claims under any Sub-Contracts or claims against other third parties which have not been determined or have been determined but not yet paid provided that in such case Project Co shall assign any such rights and claims under the Sub-Contracts or claims against other third parties to the College and give the College reasonable assistance in prosecuting such claims;
 - 1.2.5 to the extent realised before the Invoice Date the market value of any other assets and rights of Project Co (other than those transferred to the College pursuant to this Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Agreement as at the Termination Date provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (a) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (b) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms; and

- 1.2.6 amounts which the College is entitled to set off pursuant to Clause 46.13 of this Agreement.
- 1.3 To the extent that such assets and rights referred to in paragraph 1.2.5 above are not realised and applied by the Invoice Date, Project Co shall on payment of the College Default Termination Sum assign such assets and rights to the College.
- 1.4 If the aggregate of the amounts referred to in paragraphs 1.2.1 and 1.2.3 is less than the Revised Senior Debt Termination Amount, then the College Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.2.2 LESS the amounts referred to in paragraphs 1.2.4 to 1.2.6 above; provided always that (a) the amount referred to in paragraph 1.2.2 shall only be paid to the extent that Project Co has demonstrated to the reasonable satisfaction of the College that the amount will not be applied (in whole or in part) in payment of any Distribution and (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Losses shall be paid in respect of any Sub Contract in circumstances where there is an event of default under such Sub-Contract which would entitle Project Co to terminate such Sub-Contract.
- 1.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and Project Co has wilfully, or through gross negligence failed to comply with its obligations under clause 9.4.4(a) of the Funders' Direct Agreement then in addition to the deduction of the Distribution made pursuant to paragraph (v) of the definition of Revised Senior Debt Termination Amount, the College shall be entitled to set off the value of that Distribution a second time against the College Default Termination Sum, provided that the amount of the College Default Termination Sum shall never be less than the Revised Senior Debt Termination Amount.
- 1.6 If Project Co has wilfully or through gross negligence failed to comply with its obligations under clause 9.4.4(b) of the Funders' Direct Agreement and there has been an overstatement of the cash balances by Project Co as at that date which has caused the College to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Section 1 (*Compensation on Termination for College Default and Voluntary Termination*), then the College Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the College Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 1.7 The College Default Termination Sum shall be payable in accordance with Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*).

SECTION 2

COMPENSATION FOR PROJECT CO DEFAULT

1. If the College terminates this Agreement pursuant to Clause 40 (*Project Co Events of Default*), with the exception of termination pursuant to Clause 40.1.3(b), the College shall pay to Project Co such sum as is calculated according to this Section 2 (*Compensation for Project Co Default*) of this Schedule Part 17 (*Compensation on Termination*).

2. RETENDERING ELECTION

- 2.1 The College shall be entitled to retender the provision of the Project Operations in accordance with paragraph 3 (*Retendering Procedure*) and the provisions of paragraph 3 (*Retendering Procedure*) shall apply if:

- 2.1.1 the College notifies Project Co on or before the date falling twenty (20) Business Days after the Termination Date that it intends to retender; and

- 2.1.2 there is a Liquid Market; and either

- (a) the Senior Funders have not exercised their rights to step-in under clause 5 (*Representative*) of the Funders' Direct Agreement; or

- (b) Project Co or the Senior Funders have not procured the transfer of Project Co's rights and liabilities under this Agreement to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so

but otherwise the College shall not be entitled to re-tender the provision of the Project Operations and paragraph 4 (*No Retendering Procedure*) shall apply.

3. RETENDERING PROCEDURE

- 3.1 The objective of the Tender Process shall be to enter into a New Agreement with a Compliant Tenderer.

- 3.2 The College shall (subject to any legal requirements preventing it from doing so) use all reasonable endeavours to complete the Tender Process as soon as practicable.

- 3.3 The College shall as soon as reasonably practicable notify Project Co of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, and shall act reasonably in setting such requirements and terms.

- 3.4 Project Co authorises the release of any information by the College under the Tender Process which would otherwise be prevented under Clause 61 (*Confidentiality*) that is reasonably required as part of the Tender Process.

- 3.5 For all or any part of a month, falling within the period from the Termination Date to the Compensation Date, the College shall pay to Project Co:

- 3.5.1 the Post Termination Service Amount for each completed month, on or before the date falling ten (10) Business Days after the end of that month; and

- 3.5.2 the Post Termination Service Amount for the period from the end of the last completed month until the Compensation Date, on or before the date falling twenty (20) Business Days after the Compensation Date.

- 3.6 Project Co may, at its own cost, appoint a person to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Senior Funders on the College's compliance with the Tender Process.

- 3.7 The Tender Process Monitor shall enter into a confidentiality agreement with the College in a form acceptable to the College and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to the College as to compliance with the Tender Process. The College shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by Project Co in the event that Project Co refers a dispute as to the Adjusted Highest Compliant Tender Price to the Dispute Resolution Procedure. The Tender Process Monitor will not disclose confidential information to Project Co or the Senior Funders or any other person (and shall provide an undertaking to the College to such effect as a condition of his appointment) but shall be entitled to advise Project Co and the Senior Funders on whether it considers that the College has acted in accordance with the Tender Process and correctly determined the Adjusted Highest Compliant Tender Price.
- 3.8 If any Post Termination Service Amount is less than zero then it may be carried forward and may be set off against any future positive Post Termination Service Amounts.
- 3.9 The College shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under material damage insurance policies and the amount (if any) standing to the credit of the Insurance Proceeds Account on the date that the New Agreement is entered into.
- 3.10 As soon as practicable after tenders have been received, the College shall (acting reasonably) review and assess the Compliant Tenders and shall notify Project Co of:
- 3.10.1 the Highest Compliant Tender Price;
- 3.10.2 the Tender Costs; and
- 3.10.3 the Adjusted Highest Compliant Tender Price.
- 3.11 If Project Co refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with Clause 56 (*Dispute Resolution*), the College shall irrespective of such dispute be entitled to enter into a New Agreement.
- 3.12 The Adjusted Highest Compliant Tender Price shall be paid in accordance with Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*).
- 3.13 Subject to paragraphs 1.6 and 1.8 of Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*), if the College has not paid an amount equal to the Adjusted Highest Compliant Tender Price to Project Co on or before the date falling two years after the Termination Date then the following provisions of this paragraph 3 shall not apply to that termination and the provisions of paragraph 4 (*No Retendering Procedure*) shall apply instead.
- 3.14 The College may elect at any time prior to the receipt of a Compliant Tender, to follow the no retendering procedure under paragraph 4 (*No Retendering Procedure*) by notifying Project Co that this election has been made.
- 3.15 In the event that the Adjusted Highest Compliant Tender Price exceeds the Maximum Termination Amount, the Adjusted Highest Compliant Tender Price shall be deemed to be an amount equal to the Maximum Termination Amount.
- 4. NO RETENDERING PROCEDURE**
- 4.1 Subject to paragraph 4.2, if the provisions of this paragraph 4 (*No Retendering Procedure*) apply Project Co shall not be entitled to receive any Post Termination Service Amount.
- 4.2 If the College elects to follow the no retendering procedure in accordance with this paragraph 4 (*No Retendering Procedure*) after it has elected to follow the procedure under paragraph 3 (*Retendering Procedure*), then the College shall continue to pay to Project Co each Post Termination Service Amount until the Compensation Date, in accordance with paragraph 3 (*Retendering Procedure*).

4.3 In agreeing or determining the Estimated Fair Value of the Agreement the parties shall be obliged to follow the principles set out below:

4.3.1 all forecast amounts of revenues and costs should be calculated in nominal terms at current prices, recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Agreement;

4.3.2 the total of all payments of the full Service Payments forecast to be made from the Termination Date to the Expiry Date shall be calculated and discounted at the Discount Rate;

4.3.3 the total of all costs reasonably forecast to be incurred by the College as a result of termination shall be calculated and discounted at the Discount Rate and deducted from the payment calculated pursuant to paragraph 4.3.2 above, such costs to include (without double counting):

(a) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;

(b) the costs of providing the Services reasonably forecast to be incurred by the College from the Termination Date to the Expiry Date in providing the Project Operations to the standard required; and

(c) any rectification costs required to deliver the Project Operations to the standard required (including any costs reasonably forecast to be incurred by the College to complete the Works) and additional operating costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs for the purposes of this paragraph) the aggregate of:

any insurance proceeds received (or held in the Insurance Proceeds Account) or which will be received pursuant to policies maintained in accordance with Clause 53 (*Insurance*); and

amounts payable by the College in respect of Capital Expenditure under this Agreement which have not been paid

in each case such costs to be forecast at a level that will deliver the Services to the standards required by this Agreement;

4.3.4 the Net Present Value at the Termination Date of all future Surplus Payments forecast in the Financial Model shall be calculated and deducted from the payment calculation pursuant to paragraph 4.3.2 above but only to the extent that the payment calculation pursuant to paragraph 4.3.2 above less the sum of:

(a) the costs calculation pursuant to paragraph 4.3.3 above; and

(b) the Net Present Value at the Termination Date of all future Surplus Payments forecast in the Financial Model

exceeds the Revised Senior Debt Termination Amount.

4.4 If the parties cannot agree on the Estimated Fair Value of the Agreement on or before the date falling twenty (20) Business Days after the date on which the College elected or was required pursuant to paragraph 2 (*Retendering Election*) or paragraph 3 (*Retendering Procedure*) to follow the no retendering procedure in accordance with this paragraph 4 (*No Retendering Procedure*), then the Adjusted Estimated Fair Value of the Agreement shall be determined in accordance with Clause 56 (*Dispute Resolution*).

- 4.5 The Adjusted Estimated Fair Value of the Agreement shall be paid in accordance with Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*).
- 4.6 In the event that the Adjusted Estimated Fair Value of the Agreement exceeds the Maximum Termination Amount, the Adjusted Estimated Fair Value of the Agreement shall be deemed to be an amount equal to the Maximum Termination Amount.

SECTION 3

COMPENSATION ON TERMINATION FOR FORCE MAJEURE

1. CONSEQUENCES OF TERMINATION FOR FORCE MAJEURE

1.1 If Project Co or the College terminates this Agreement pursuant to Clause 41 (*Force Majeure*) or Clause 53.14.2 the College shall pay to Project Co the "**Force Majeure Termination Sum**" as set out in paragraph 1.2.

1.2 Subject to paragraphs 1.4 to 1.6 below the Force Majeure Termination Sum shall be an amount equal to the aggregate of:

1.2.1 the Base Senior Debt Termination Amount;

1.2.2 Redundancy Payments and Sub-Contractor Losses (but excluding therefrom any claims for loss of profit);

1.2.3 an amount equal to the Subordinated Debt less an amount equal to the aggregate of payments of interest paid on the Subordinated Debt provided that where such figure is a negative number it shall be instead fixed at zero; and

LESS, to the extent it is a positive amount, the aggregate of (without double counting) in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below:

1.2.4 the value of any right of Project Co to receive insurance proceeds (save where such insurance proceeds are held in the Insurance Proceeds Account and are to be applied in accordance with Clause 53.19 of this Agreement in reinstatement, restoration or replacement, or in the case of third party legal liability or employer's liability, in satisfaction of the claim, demand, proceeding or liability) or sums due and payable from third parties (but only when received from third parties) but excluding any claims under any Sub-Contracts or claims against other third parties which have not been determined or have been determined but not yet paid provided that in such case Project Co shall assign any such rights and claims under the Sub-Contracts or claims against other third parties to the College and give the College reasonable assistance in prosecuting such claims;

1.2.5 to the extent realised before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to the College pursuant to this Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Agreement as at the Termination Date provided that no account should be taken of any liabilities and obligations of Project Co arising out of:

(a) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; and

(b) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms; and

1.2.6 amounts which the College is entitled to set off pursuant to Clause 46.13 of this Agreement.

1.3 To the extent that such assets and rights referred to in paragraph 1.2.4 above are not realised and applied pursuant to that paragraph Project Co shall on payment of the Force Majeure Termination Sum assign such assets and rights to the College.

1.4 If the aggregate of the amounts referred to in paragraphs 1.2.1 and 1.2.3 is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so

that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.2.2 LESS the amounts referred to at paragraphs 1.2.4 to 1.2.6 above; provided always that (a) the amount referred to in paragraph 1.2.2 LESS the amounts referred to at paragraphs 1.2.4 to 1.2.6 above shall only be paid to the extent that Project Co has demonstrated to the reasonable satisfaction of the College that the amount will not be paid (in whole or in part) in payment of any Distribution and (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Losses shall be paid in respect of any Sub Contract in circumstances where there is an event of default under such Sub-Contract which would entitle Project Co to terminate such Sub-Contract.

- 1.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and Project Co has wilfully, or through gross negligence failed to comply with its obligations under clause 9.4.4(a) of the Funders' Direct Agreement then in addition to the deduction of the Distribution made pursuant to paragraph (v) of the definition of Revised Senior Debt Termination Amount, the College shall be entitled to set off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum shall never be less than the Revised Senior Debt Termination Amount.
- 1.6 If Project Co has wilfully or through gross negligence failed to comply with its obligations under clause 9.4.4(b) of the Funders' Direct Agreement and there has been an overstatement of the cash balances by Project Co as at that date which has caused the College to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Schedule Part 17 (*Compensation on Termination for Force Majeure*), then the Force Majeure Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 1.7 The Force Majeure Termination Sum shall be paid in accordance with Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*).

SECTION 4

CORRUPT GIFTS AND FRAUD, BREACH OF REFINANCING OR BREACH OF NPD REQUIREMENTS

1. CONSEQUENCES OF TERMINATION FOR CORRUPT GIFTS AND FRAUD, BREACH OF REFINANCING OR BREACH OF NPD REQUIREMENTS

- 1.1 If the College terminates this Agreement pursuant to Clause 40.1.3, Clause 44.3 or Clause 45 (*Breach of NPD Requirements*) the College shall pay to Project Co an amount equal to the Revised Senior Debt Termination Amount;

LESS, to the extent it is a positive number, the aggregate of (without double counting):

- 1.1.1 the value of any right to receive insurance proceeds (save where such insurance proceeds are held in the Insurance Proceeds Account and are to be applied in accordance with Clause 53.19 of this Agreement in reinstatement, restoration or replacement or, in the case of third party legal liability or employer's liability, in satisfaction of the claim, demand, proceeding or liability) or sums due and payable from third parties (but only when received from third parties) but excluding any claims under any Sub-Contracts or claims against other third parties which have not been determined or which have been determined but not paid provided that in such case Project Co shall assign any such rights and claims under the Sub-Contracts or claims against other third parties to the College and give the College reasonable assistance in prosecuting such claims; and

- 1.1.2 to the extent realised before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to the College pursuant to this Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Agreement as at the Termination Date provided that no account should be taken of any liabilities and obligations of Project Co arising out of:

- (a) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; and
- (b) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms.

- 1.2 To the extent that such assets and rights referred to in paragraph 1.1.2 above are not realised and applied pursuant to that paragraph, Project Co shall, on payment of the sum referred to in paragraph 1.1 above, assign such assets and rights to the College.

- 1.3 The sum referred to in paragraph 1.1 above shall be paid in accordance with Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*).

SECTION 5

GENERAL

1. PAYMENT AND INTEREST

Following termination for College Default, Force Majeure or Corrupt Gifts or Fraud, Breach of Refinancing

- 1.1 Subject to paragraphs 1.2 and 1.6 below, the College shall pay to Project Co the Termination Sum, together with interest on any Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum at the No Default Interest Rate, on or before the date falling 60 days after the Notice Date provided that, if the College fails to pay the Termination Sum in full by such date, interest shall accrue at the Default Interest Rate on any unpaid amount from (but not including) such date until the date such amount is paid.
- 1.2 The College may, other than where payment is to be made pursuant to Section 1 (*Compensation on Termination for Default and Voluntary Termination*) of this Schedule Part 17 (*Compensation on Termination*), elect to pay the Adjusted Estimated Fair Value of the Agreement or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum:
- 1.2.1 in instalments as follows:
- (a) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Agreement (as relevant) is greater than or equal to the Outstanding Principal:
 - (i) in respect of that element of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Agreement (as relevant) representing the Outstanding Principal, on the dates (the "Instalment Dates") and in the amounts that Project Co would have been required to pay principal to the Senior Funders under the terms of the Senior Funding Agreements had the Termination Date not occurred; and
 - (ii) in respect of the sum (if any) remaining after deducting the Outstanding Principal from the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Agreement (as relevant), in equal instalments on the Instalment Dates;
 - (b) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Agreement (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that Project Co would have been required to pay to the Senior Funders on each Instalment Date under the terms of the Senior Funding Agreements had the Termination Date not occurred; or
- 1.2.2 as the parties may otherwise agree.
- 1.3 From the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the No Default Interest Rate and be payable on the next occurring Instalment Date.
- 1.4 If the College has elected to pay in accordance with paragraph 1.2 above, it may (on 28 days' prior written notice to Project Co) elect to pay the outstanding part of the Adjusted Estimated Fair Value of the Agreement or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in full on any Instalment Date.

- 1.5 If the Authority:
- 1.5.1 fails to make a payment Project Co in accordance with paragraphs 1.1 or 1.2 or 1.3 above; or
 - 1.5.2 breaches Clause 57.4

Project Co may issue a notice to the College declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Agreement or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum and any accrued but unpaid interest to be immediately due and payable.

- 1.6 To the extent that the Adjusted Estimated Fair Value of the Agreement is less than zero, then an amount equal to the Adjusted Estimated Fair Value of the Agreement shall be due and payable by Project Co to the College on the Compensation Date.

Following Retendering

- 1.7 Subject to paragraphs 1.8 and 1.10, following a retendering exercise under Section 2 (*Compensation for Project Co Default*) of this Schedule Part 17 the College shall pay to Project Co an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling twenty (20) Business Days after the later of:
- 1.7.1 the date of the New Agreement; and
 - 1.7.2 if Project Co has referred a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution pursuant to paragraph 3.11 of Section 2 (*Compensation for Project Co Default*) of this Schedule Part 17, the date on which the dispute is finally determined in accordance with Clause 56 (*Dispute Resolution*)

provided that, to avoid doubt, if the dispute referred by Project Co to dispute resolution (pursuant to paragraph 1.7.2 above) concerns only a proportion of the Adjusted Highest Compliant Tender Price then the College shall pay the undisputed proportion of such sum no later than 20 Business Days after the date referred to in paragraph 1.7.1 above (the "**Undisputed Payment Date**") and the College shall pay interest to Project Co on any amount of the Adjusted Highest Compliant Tender Price which has been withheld, from the Undisputed Payment Date until the date on which payment is due under paragraph 1.7.2 above at the No Default Interest Rate.

- 1.8 If the College has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify Project Co of this decision and (if the Adjusted Highest Compliant Tender Price is a positive number) pay to Project Co an amount equal to the Adjusted Highest Compliant Tender Price within 20 Business Days of such notification.
- 1.9 If the College fails to pay the Adjusted Highest Compliant Tender Price (or any proportion thereof) by the date on which payment is due in accordance with paragraph 1.7 or paragraph 1.8 above, the College shall pay to Project Co interest on such unpaid amount, which shall accrue on such amount at the Default Interest Rate from (but not including) the date on which payment is due in accordance with paragraph 1.7 or paragraph 1.8 above until such amount is paid.
- 1.10 If the Adjusted Highest Compliant Tender Price is zero or a negative number then, on entering into the New Agreement with the New Project Co, the College shall have no obligation to make any payment to Project Co and (if a negative number) an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by Project Co to the College on the date of the New Agreement or (where paragraph 1.8 applies) within 20 Business Days of notification from the College pursuant to that paragraph.

2. FULL AND FINAL SETTLEMENT

- 2.1 Any and all sums irrevocably paid by the College to Project Co under this Schedule Part 17 (*Compensation on Termination*) will be in full and final settlement of each party's rights and claims against the other for breaches and/or termination of this Agreement and any other Project Document whether under contract, delict, restitution or otherwise but without prejudice to:
- 2.1.1 any antecedent liability of Project Co to the College which the College has been unable to set off pursuant to Clause 46.13 of this Agreement;
 - 2.1.2 any antecedent liability of either party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the College Default Termination Sum, Adjusted Highest Compliant Tender Price, or Adjusted Estimated Fair Value of the Agreement, the Force Majeure Termination Sum or the Corrupt Gifts Termination Sum as the case may be; and
 - 2.1.3 any liabilities arising in respect of any breach by either party of their obligations under Clause 47.6 of this Agreement which arises or continues after the Termination Date.
- 2.2 if either the Adjusted Highest Compliant Tender Price or (as the case may be) the Adjusted Estimated Fair Value of the Agreement is zero or a negative number the College shall be released from all liability to Project Co for breaches and/or termination of this Agreement and any other Project Document whether under contract, delict, restitution or otherwise save for:
- 2.1.4 any antecedent liability of the College which arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining the Adjusted Highest Compliant Tender Price or the Adjusted Estimated Fair Value of the Agreement (as the case may be); and
 - 2.1.5 any liabilities arising in respect of any breach by either party of their obligations under Clause 47.6 of the Agreement which continues after the Termination Date.

3. COSTS

The costs and/or expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule Part 17 (*Compensation on Termination*) shall only be such costs and/or expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred and shall only be counted once.

4. UNDISPUTED AMOUNTS

If the calculation of any termination amount is disputed then any undisputed element of that amount shall be paid in accordance with this Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*) and the disputed element shall be dealt with in accordance with Schedule Part 20 (*Dispute Resolution Procedure*).

5. OUTSTANDING SENIOR DEBT AMOUNT

- 5.1 The College shall be entitled to rely on the certificate of the Global Agent as conclusive as to the amount of the Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount (as the case may be) outstanding at any relevant time.
- 5.2 The receipt by the Global Agent of the Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount or elements thereof (as appropriate) (as the case may be) (and where appropriate any accrued interest or breakage costs as certified in accordance with paragraph 5.1 above) shall discharge the Authority's obligations to pay such sums to Project Co.

SECTION 6

DEFINITIONS

"Adjusted Estimated Fair Value of the Agreement"

means, subject to paragraph 4.6 of Section 2 (*Compensation for Project Co Default*) of this Schedule Part 17 (*Compensation on Termination*), the Estimated Fair Value of the Agreement adjusted as follows:

- (a) where in respect of any month or part of a month from the Termination Date to the Compensation Date the Post Termination Service Amount is a negative number, the aggregate of all such negative Post Termination Service Amounts shall be set against and shall reduce the Estimated Fair Value of the Agreement (whether or not such amounts have been set-off by the College pursuant to paragraph 3.8 of Section 2 (*Compensation for Project Co Default*) of this Schedule Part 17 (*Compensation on Termination*));

and the aggregate of the following amounts shall be deducted from the Estimated Fair Value of the Agreement:

- (b) the Post Termination Service Amounts actually paid by the College to Project Co prior to the Compensation Date;]
- (c) the Tender Costs; and
- (d) amounts that the College is entitled to set off or deduct

and the aggregate of the following amounts shall be added to the Estimated Fair Value of the Agreement:

- (e) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value of the Agreement is calculated; and
- (f) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in (e);

to the extent that:

(e) and (f) have not been directly taken into account in calculating the Estimated Fair Value of the Agreement; and

the College has received such amounts in accordance with this Agreement or such amounts are standing to the credit of the Insurance Proceeds Account

"Adjusted Highest Compliant Tender

means, subject to paragraph 3.15 of Section 2 (*Compensation for Project Co Default*) of this Schedule

Price"

Part 17 (*Compensation on Termination*), the Highest Compliant Tender Price adjusted as follows:

- (a) where in respect of any month or part of a month from the Termination Date to the Compensation Date the Post Termination Service Amount is a negative number, the aggregate of all such negative Post Termination Service Amounts shall be set against and shall reduce such highest tender price (whether or not such amounts have been set-off by the College pursuant to paragraph 3.8 of Section 2 (*Compensation for Project Co Default*) of this Schedule Part 17 (*Compensation on Termination*));

and the aggregate of the following amounts shall be deducted from the Highest Compliant Tender Price:

- (b) the Post Termination Service Amounts actually paid by the College to Project Co prior to the Compensation Date;
- (c) the Tender Costs; and
- (d) amounts that the College is entitled to set off or deduct under this Agreement

and the aggregate of the following amounts shall be added to such highest tender price:

- (e) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the highest priced Compliant Tender is received; and
- (f) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in (e);

to the extent that:

- (e) and (f) have not been directly taken into account in that Compliant Tender; and

the College has received such amounts in accordance with this Agreement

"APB Distribution"

means, for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period

"Base Senior Debt Termination Amount" means, subject to Clause 4.3:

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from Project Co to the

Senior Funders in respect of Permitted Borrowings (other than in respect of Additional Permitted Borrowing); and

- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by Project Co to the Senior Funders as a result of a prepayment in respect of Permitted Borrowings (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement, subject to Project Co and the Senior Funders mitigating all such costs to the extent reasonably possible;

less, to the extent it is a positive amount the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below)

- i. not used;
- ii. all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Funders to Project Co as a result of prepayment of amounts outstanding in respect of Permitted Borrowings (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement;
- iii. all other amounts received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the College to Project Co as a result of enforcing any other rights they may have; and
- iv. all credit balances on any bank accounts (but excluding the Insurance Proceeds Account) held by or on behalf of Project Co on the Termination Date

"Compensation Date"

means either:

- (a) if paragraph 3 (*Retendering Procedure*) of Section 2 (*Compensation for Project Co Default*) of this Schedule Part 17 (*Compensation on Termination*) applies, the earlier of:
- i. the date that the New Agreement is entered into; and
 - ii. the date on which the College pays the Adjusted Highest Compliant Tender Price

to Project Co, or

- (b) if paragraph 4 (*No Retendering Procedure*) of Section 2 (*Compensation for Project Co Default*) of this Schedule Part 17 (*Compensation on Termination*) applies, the date that the Adjusted Estimated Fair Value of the Agreement has been agreed or determined

"Compliant Tender"

means a tender that meets all of the Qualification Criteria

"Compliant Tenderer"

means a Suitable Substitute Contractor who submits a Compliant Tender

"Deemed New Agreement"

means an agreement on the same terms and conditions as this Agreement, as at the Termination Date, but with the following amendments:

- (a) if this Agreement is terminated prior to the a Phase Actual Completion Date, then the relevant Longstop Date(s) shall be extended by a period to allow a New Project Co (had one been appointed) to achieve the relevant Phase Actual Completion Date(s) prior to the relevant Longstop Date(s);
- (b) any accrued Deductions and/or Warning Notices and/or Ratchets shall, for the purposes of termination only, and without prejudice to the rights of the College to make financial deductions, be cancelled; and
- (c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date

"Discount Rate"

means a discount rate expressed as $(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A}) * (1 + i)^{-1}$

where:

"real base case project IRR" is the real pre-tax project IRR as set out in the Financial Model at Financial Close;

"i" is the agreed assumed forecast rate of increase in RPI set out in the Agreement, for the remaining term of the Agreement;

"Gilt A" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Financial Model at Financial Close;

and

"Gilt B" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in

the Financial Model as on the Termination Date

- "Distribution"** has the meaning given in Schedule Part 23 (*Refinancing*)
- "Estimated Fair Value of the Agreement"** means the amount determined in accordance with paragraph 4 (*No Retendering Procedure*) of Section 2 (*Compensation for Project Co Default*) of this Schedule Part 17 (*Compensation on Termination*) that a third party would pay to the College as the market value of the Deemed New Agreement
- "Fair Value"** means the amount at which an asset or liability could be exchanged in an arms length transaction between informed and willing parties, other than in a forced or liquidated sale
- "Highest Compliant Tender Price"** means the price offered by the Compliant Tenderer (if any) with the highest tender price and, if no Compliant Tenders are received, means zero
- "Invoice Date"** means, in respect of the College Default Termination Sum, the Force Majeure Termination Sum or the Corrupt Gifts Termination Sum (as appropriate), the date that is the later of:
- (a) the date on which the College receives an invoice from Project Co for the relevant termination sum; and
 - (b) the date on which the College receives the supporting evidence required pursuant to paragraph 1.1 of Section 5 (*General*) of this Schedule Part 17 (*Compensation on Termination*)
- "Liquid Market"** means that there are sufficient willing parties (being at least two parties, each of whom is capable of being a Suitable Substitute Contractor) in the market for design, build, finance and maintain contracts or similar contracts for the provision of services (in each case the same as or similar to this Agreement) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Senior Funders specifically for the purposes of the Project and to which this Agreement may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes
- "Market Value Availability Deduction Amount"** means for any month or part of a month, an amount equal to the availability deduction that was made to the Monthly Service Payment under paragraph 4 of Section 3 of Schedule Part 14 (*Payment Mechanism*) in the month immediately preceding the Termination Date, less an amount equal to any availability deduction that was made for a Functional Area which was unavailable at the Termination Date but which has subsequently become available whether as a result of the College incurring Rectification Costs or otherwise

- "Maximum Service Payment"** means one twelfth of the Annual Service Payment payable at any time before any deductions under Section 3 of Schedule Part 14 (*Payment Mechanism*) but allowing for indexation under paragraph 2 of Section 2 of Schedule Part 14
- "Maximum Termination Amount"** means either an amount equal to the aggregate of:
- (a) the Base Senior Debt Termination Amount; and
 - (b) the principal amount of the Subordinated Debt outstanding; and
 - (c) Redundancy Payments and Sub-Contractor Losses
- OR, if the aggregate of the amounts referred to in (a) and (b) above is less than the Revised Senior Debt Termination Amount then an amount equal to the aggregate of:
- (d) the Revised Senior Debt Termination Amount; and
 - (e) Redundancy Payments
- "New Agreement"** means an agreement on the same terms and conditions as this Agreement at the Termination Date, but with the following amendments:
- (a) if this Agreement is terminated prior a Phase Actual Completion Date, then the relevant Longstop Date shall be extended by a period to allow a New Project Co to achieve the relevant Phase Actual Completion Date prior to the relevant Longstop Date;
 - (b) any accrued Deductions and/or Warning Notices and/or Ratchets shall, for the purposes of termination only, and without prejudice to the rights of the College to make financial deductions, be cancelled;
 - (c) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
 - (d) any other amendments which do not adversely affect the Project Co
- "New Project Co"** means the person who has entered or who will enter into the New Agreement with the College
- "No Default Interest Rate"** means the rates of interest payable pursuant to Clause 8.1.1 (*Interest*) of the Commercial Loan Facility Agreement (as defined in the Common Terms Agreement in the Agreed Form) and Clause 4.1 (*Interest*) of the EIB Finance Contract
- "Notice Date"** means the later of the Termination Date and (if

paragraph 4 (No Retendering Procedure) of Section 2 (Compensation for Project Co Default) of this Schedule Part 17 (Compensation on Termination) applies) the date that the Adjusted Estimated Fair Value of the Agreement has been agreed or determined;

"Outstanding Principal"

means the principal amount outstanding at the Termination Date of each borrowing (other than any borrowing under any equity bridge facility) under the Senior Funding Agreements

"Post Termination Service Amount"

means for the purposes of paragraph 3 (*Retendering Process*) of Section 2 (*Compensation for Project Co Default*) of this Schedule Part 17 (*Compensation on Termination*), for the whole or any part of a month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Service Payment (pro rata for part of a month) which would have been payable under this Agreement had this Agreement not been terminated, less an amount equal to the aggregate of (without double counting):

- (a) (where relevant) the amount by which the Post Termination Service Amounts for the previous month was less than zero;
- (b) the Market Value Availability Deduction Amount for that month; and
- (c) the Rectification Costs incurred by the College in that month

"Qualification Criteria"

means the criteria that the College requires tenderers to meet as part of the Tender Process, which (subject to compliance with procurement regulations) shall be:

- (a) the New Agreement terms;
- (b) tenderers should have the financial ability to pay the capital sum tendered for the New Agreement and the financial ability to deliver the Works and/or the Services (as appropriate) for the price tendered;
- (c) the tenderers may only bid on the basis of a single capital payment to be made on the date of the New Agreement; and
- (d) the tenderer is experienced in providing the Services or similar services
- (e) the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Services; and
- (f) any other tender criteria agreed by the College and the Project Co

"Rectification Costs"

means, for the purposes of any Termination Date that occurs after a Phase Actual Completion Date, an amount equal to the reasonable and proper costs incurred by the College in a particular month or part of a month in ensuring that the Services are available

"Redundancy Payments"

means redundancy payments and other termination payments which are required under Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of terminating this Agreement (provided that Project Co shall use all reasonable endeavours to mitigate its loss) and provided that in calculating such amount no account should be taken of any liabilities and obligations of Project Co arising out of:

- (a) contracts of employment or other agreements or arrangements entered into by Project Co to the extent that such contracts of employment agreements or arrangements were not entered into in connection with the Project; and/or
- (b) contracts of employment or other agreements or arrangements entered into by Project Co to the extent that such contracts of employment agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms

"Relevant Assumptions"

means the assumptions that the sale of Project Co is on the basis that there is no default by the College, that the sale is on a going concern basis, that no restrictions exist on the transfer of share capital, that no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded but that otherwise the actual state of affairs of Project Co and the Project is taken into account

"Revised Senior Debt Termination Amount"

means, subject to Clause 4.3 and Refinancing:

- (a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing) Default Interest accrued as at that date, from Project Co to the Senior Funders in respect of Permitted Borrowing; and
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by Project Co to the Senior Funders as a result of a prepayment in respect of Permitted Borrowing, or, in the case of early termination or interest rate hedging arrangements only, as a result of termination of this Agreement subject to Project Co and the Senior Funders mitigating all such costs to the extent reasonably possible

less, to the extent it is a positive amount, the

aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below);

- i. all credit balances on any bank accounts (but excluding the Insurance Proceeds Account) held by or on behalf of Project Co on the Termination Date;
- ii. not used;
- iii. all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Funders to Project Co as a result of prepayment of amounts outstanding in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement;
- iv. all other amounts received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the College to Project Co as a result of enforcing any other rights they may have; and
- v. all APB Distributions

"Senior Debt"

means the financing provided by the Senior Funders under the Senior Funding Agreements

"Senior Funding Agreements"

has the meaning given in Schedule Part 1 (*Definitions and Interpretation*)

"Sub-Contractor Losses"

means:

- (a) the amount reasonably and properly payable by Project Co to the Contractor under the terms of the Construction Contract as a direct result of the termination of this Agreement provided that such amount shall be reduced to the extent that Project Co fails to use all reasonable endeavours to mitigate such amount; and
- (b) the amount reasonably and properly payable by Project Co to the Service Providers under their respective contracts with Project Co (as the case may be) as a direct result of the termination of this Agreement provided that such amount shall be reduced to the extent that Project Co fails to use all reasonable endeavours to mitigate such amount;

provided that in both cases no account should be taken of any liabilities and obligation of Project Co to the Sub-Contractors arising out of:

- i. agreements or arrangements entered into by Project Co and/or the Sub-Contractors to the extent that such agreements or arrangements were not entered into in connection with those parties obligations in relation to the Project; and/or
- ii. agreements or arrangements entered into by Project Co and/or the Sub-Contractors to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms

"Suitable Substitute Contractor"	has the meaning given in the Funders' Direct Agreement
"Subordinated Debt"	means all of the debt incurred by Project Co to the Subordinated Funders pursuant to the Subordinated Funding Agreements
"Tender Costs"	means the reasonable and proper costs of the College incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Agreement;
"Tender Process"	means the process by which the College requests tenders from any parties interested in entering into a New Agreement, evaluates the responses from those interested parties and enters into a New Agreement with a new service provider, in accordance with paragraph 3 (<i>Retendering Process</i>) of Section 2 (<i>Compensation for Project Co Default</i>) of this Schedule Part 17 (<i>Compensation on Termination</i>)
"Tender Process Monitor"	means the person appointed under paragraph 3.6 of Section 2 (<i>Compensation for Project Co Default</i>) of this Schedule Part 17 (<i>Compensation on Termination</i>)
"Termination Sum"	means any compensation payable by the College to Project Co pursuant to this Schedule Part 17 (<i>Compensation on Termination</i>) (excluding the Adjusted Highest Compliant Tender Price)

SCHEDULE - Part 18
HANDBACK PROCEDURE

1. DEFINITIONS

- 1.1 In this Schedule Part 18 (*Handback Procedure*) and elsewhere in this Agreement (save where Schedule Part 1 (*Definitions and Interpretations*) provides to the contrary) the following words shall have the following meanings:

"Handback Works" means the maintenance works (if any) required to be carried out in respect of the NPD Facilities in order to procure that they will on the Expiry Date, satisfy the Handback Requirements

"Handback Programme" means the programme for carrying out the Handback Works over the remainder of the Project Term describing the total works to be carried out and the method of carrying out such works during the overall period in which the Handback Works are to be executed

"Handback Amount" means the estimated cost of carrying out the Handback Works

2. On the Expiry Date, each element of the NPD Facilities shall be in a condition which is:
- 2.1 consistent with due performance by Project Co of the Service Level Specification and Method Statements for the NPD Facilities; and
- 2.2 consistent with the NPD Facilities and each of the elements of them having been designed and constructed in accordance with the applicable design life requirements set out in the College's Construction Requirements

together referred to as (the "**Handback Requirements**").

3. The parties agree that two (2) years prior to the Expiry Date, Project Co and the College's Representative shall conduct a joint inspection of the NPD Facilities.

4. Within fifteen (15) Business Days after the completion of the inspection, if it is found that any element of the NPD Facilities is not in a condition consistent with the Handback Requirements, Project Co shall forthwith provide to the College Representative's in accordance with Schedule Part 8 (*Review Procedure*):

- 4.1 Project Co's proposal as to the Handback Works;
- 4.2 Project Co's proposal as to the Handback Programme; and
- 4.3 Project Co's estimate of the cost of the Handback Amount.

5. The College's Representative may, within fifteen (15) Business Days after receipt of the details set out in paragraph 4 from Project Co, raise comments in accordance with paragraph 3 of Schedule Part 8 (*Review Procedure*) on Project Co's proposals and estimate referred to in paragraph 1 above.

6. On agreement, or determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*), of the Handback Works, the Handback Programme and/or the Handback Amount (as the case may be), Project Co shall procure that the Handback Works are carried out in accordance with the Handback Programme so as to meet the Handback Requirements. Project Co shall carry

out the Handback Works at its own cost notwithstanding that the actual cost of the Handback Works may be higher than the Handback Amount.

7. From the date of the agreement (or determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*)) of the matters identified in paragraph 6, the College shall be entitled to withhold 20% of each subsequent Monthly Service Payment up to the amount of the Handback Amount (the "**Withheld Amount**") and the provisions of paragraph 11 shall apply. The College shall pay such amounts into an interest bearing account in its own name (the "**Retention Fund**").
8. Project Co may elect by notice in writing to the College within 10 Business Days of the agreement (or determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*)) of the matters identified in paragraph 6 to procure the provision of a bond (the "**Handback Bond**") in favour of the College (and in a form acceptable to the College (acting in its sole discretion)) for an amount equal to the Handback Amount and from a bank or insurance company authorised to carry out business in the United Kingdom, and upon delivery of the same to the College, the provisions of paragraph 7 shall not apply.
9. Project Co shall carry out the Handback Works to the satisfaction of the College's Representative in accordance with Good Industry Practice in accordance with the Handback Programme so as to meet the Handback Requirements.
10. Notwithstanding:
 - 10.1 the agreement of the College's Representative to any Handback Works, the Handback Programme or the Handback Amount;
 - 10.2 the participation of the College's Representative in any inspection under this Schedule; and/or
 - 10.3 the complete or partial carrying out of the Handback Works

Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works in accordance with the Service Level Specification and Method Statement for the services described therein.
11. Where this paragraph 11 applies, if and to the extent that Project Co carries out any material part of the Handback Works in accordance with paragraph 6, Project Co may make a claim for payment for the work carried out. Any such claim shall be accompanied by a certificate by Project Co setting out the works performed and the value of such works. The College shall be entitled to require any reasonable further evidence in respect of the valuation of the works. The College shall make payment of the amount of a valid claim within twenty (20) Business Days of the date of the claim and shall be entitled to withdraw that amount from the Retention Fund. If at any time the amount in the Retention Fund is insufficient to cover the costs claimed by Project Co, the College shall pay the unpaid portion of such valid claim from any amounts which subsequently stand to the credit of the Retention Fund. In the event that the amount remaining in the Retention Fund on the Expiry Date is insufficient to cover Project Co's costs which have not been paid, Project Co shall bear the balance of such costs itself.
12. Not later than sixty (60) Business Days before the Expiry Date, Project Co and the College's Representative shall conduct a joint inspection of the NPD Facilities. Such inspection shall confirm whether or not the condition of the NPD Facilities is in accordance with paragraph 1 above.
13. On, or within ten (10) Business Days after, the Expiry Date, the College's Representative shall either:
 - 13.1 issue to Project Co a Handback Certificate and return the Handback Bond or pay any balance standing to the credit of the Retention Fund (as appropriate), to Project Co; or
 - 13.2 notify Project Co of its decision not to issue the Handback Certificate stating the reasons for such decision.

14. Any notice given by the College's Representative in accordance with paragraph 13.2 shall set out each respect in which the Handback Works have not been completed or the NPD Facilities do not comply with the Handback Requirements and shall state the College Representative's estimate of the cost of procuring that the NPD Facilities comply in all respects with the Handback Requirements.
15. Project Co may, within fifteen (15) Business Days after receipt of the notice given in accordance with paragraph 13.2 by notice to the College's Representative, object to any matter set out in the College Representative's notice. The notice from Project Co shall give details of the grounds of such objection and shall set out Project Co's proposals in respect of such matters.
16. If no agreement is reached between Project Co and the College's Representative as to any matter referred to in Project Co's notice given in accordance with paragraph 15 within fifteen (15) Business Days of receipt of that notice by the College's Representative, then either Project Co or the College's Representative may refer the matter for determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*) as to:
 - 16.1 whether the NPD Facilities comply in all respects with the Handback Requirements; and
 - 16.2 the estimated cost of procuring that the NPD Facilities comply in all respects with the Handback Requirements, where the NPD Facilities do not comply in all respects with the Handback Requirements.
17. If it is agreed or determined in accordance with Schedule Part 20 (*Dispute Resolution Procedure*) that the NPD Facilities did not, at the Expiry Date, comply in all respects with the Handback Requirements, Project Co shall pay to the College an amount equal to the estimated cost of completing such Handback Works (less, where applicable, any amounts standing to the credit of the Retention Fund at that time) or procuring that the NPD Facilities comply in all respects with the Handback Requirements. Such payment shall be made not later than twenty (20) Business Days after the estimated cost has been agreed or determined and, upon such payment being received by the College, the College's Representative shall issue the Handback Certificate and return (where applicable) the Handback Bond to Project Co.

SCHEDULE - Part 19

RECORD PROVISIONS

SECTION 1

GENERAL REQUIREMENTS

1. Project Co shall retain and maintain all the records (including superseded records) referred to in Section 2 (*Records to be Kept*) of this Schedule Part 19 (*Record Provisions*) in accordance with this Section 1 (*General Requirements*) of this Schedule Part 19 (*Record Provisions*), the requirements of Good Industry Practice, in chronological order, in a form that is capable of audit and at its own expense. Project Co shall make such records available for inspection to the College where it has reasonable cause for requiring such records, on giving reasonable notice shall provide such facilities as the College may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Schedule Part 19 (*Record Provisions*).
2. Wherever practical, original records shall be retained and maintained in hard copy form. True copies of the original records may be kept by Project Co where it is not practicable to retain original records.
3. Those records relating to the Project Operations (including the design, construction, development, enhancement and maintenance of the Facilities) shall be retained for the duration of the Agreement.
4. Financial and other records (including without limitation all information provided in support of any Change) shall be retained and maintained by Project Co for a period of at least six (6) years after the end of the Project Term in sufficient detail, in appropriate categories and generally in such a manner to enable Project Co to comply with its obligations under Clause 63.1 and where appropriate to enable the data in such records to be entered into the Financial Model so that the output from the Financial Model (on the basis of such data) can be directly compared with the actual financial cashflow and performance of Project Co.
5. Where Project Co wishes to dispose of any records maintained as provided in this Schedule Part 19 (*Record Provisions*) which are more than fifteen (15) years old, or in respect of which the required period for their retention has expired, then Project Co shall notify the College and if, within forty (40) Business Days of such notice, the College elects to receive certain of those records, then Project Co shall deliver up such records to the College in the manner and at the location as the College shall reasonably specify, and the costs of retaining those records in safe storage and delivering up the same shall be borne by Project Co.
6. Subject to paragraph 5, for a period of not more than six (6) years following the termination for whatever reason of this Agreement, Project Co shall retain in safe storage all such records as are referred to in Section 2 (*Records to be Kept*) of this Schedule Part 19 (*Record Provisions*) which were in existence at the date of termination of this Agreement. On the expiry of such period or at the earlier request of the College (and the Parties acknowledge that such a request shall be deemed to have been issued by the College upon the occurrence of any of the events set out in Clause 40.1.1 whether prior to or following termination of this Agreement), Project Co shall deliver up all those records (or where those records are required by statute to remain with Project Co or a Contracting Associate of Project Co, copies thereof) to the College in the manner and at the location as the College shall reasonably specify. The College shall make available to Project Co all the records Project Co delivers up pursuant to this paragraph subject to reasonable notice. The costs of retaining those records in safe storage and delivering up the same shall be borne:
 - 6.1 by Project Co where the termination arises as a result of a Project Co Event of Default; and
 - 6.2 by the College where the termination arises for any other cause.
7. Without prejudice to the foregoing, Project Co shall provide the College:

- 7.1 as soon as they may be available and in any event within sixty (60) Business Days after the end of the first six (6) months of each financial year of Project Co which falls during the Project Term, a copy, certified as a true copy by an officer of Project Co, of its unaudited interim accounts and, if appropriate, of consolidated unaudited interim accounts of Project Co, its Subsidiaries and Holding Company (if any) which would (if Project Co were listed on the London Stock Exchange whether or not it is) be required to be sent to shareholders as at the end of and for each such six (6) month period; and
- 7.2 as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of Project Co but not later than one hundred and thirty (130) Business Days after the end of each accounting reference period of Project Co part or all of which falls in a Contract Year, a copy of Project Co's audited accounts and if appropriate, of the consolidated audited accounts of Project Co and, its Associated Companies (if any), in respect of that period, prepared in accordance with the Companies Act 1985 and generally accepted accounting principles and bases in Scotland, consistently applied together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.
8. Project Co shall provide to the College on 31 March, 30 June, 30 September and 31 December each year a document listing all information provided by it to the Senior Funders during the preceding three month period and, at the request of the College, provide to the College any information provided to it by the Senior Funders during the Project Term and any other information relating to the Project that the College may reasonably require.
9. Any drawings required to be made or supplied pursuant to this Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids and shall conform to British Standards 1192 or 308 or equivalent as appropriate. Where by prior agreement the College has agreed to accept microfilm, microfiche or other storage media (which must include secure back up facilities), drawings and other documents shall be made or supplied in such form as has been agreed.
10. Upon termination or expiry of this Agreement, and in the event that the College wishes to enter into another contract for the operation and management of the Project, Project Co shall (and shall ensure that the sub-contractors will) comply with all reasonable requests of the College to provide information relating to Project Co's costs of operating and maintaining the Project.
11. Project Co shall use all reasonable endeavours to assist the College in its preparation of any report and/or return required pursuant to regulations, directions or guidance applicable to the College (in each case as amended, replaced or consolidated from time to time) or as required by external agencies including without limitation, reports and returns regarding the physical condition of the Facilities, health and safety, under the Fire (Scotland) Regulations 2005 and the Fire Safety (Scotland) Regulations 2006, relating to environmental health, the Scottish Government or the Scottish Futures Trust from time to time.

SECTION 2

RECORDS TO BE KEPT

1. This Agreement, its Schedule and the Project Documents including all amendments to such agreements.
2. Project Co shall at all times maintain a full record of particulars of the costs of performing the Project Operations, including those relating to the design, construction, maintenance, operation and finance of the Facilities. This shall require Project Co to keep (and where appropriate to procure that the sub-contractors shall keep) books of account in accordance with best accountancy practice with respect to the Agreement showing in detail:
 - 2.1 administrative overheads;
 - 2.2 payments to Sub-Contractors and to sub-contractors;
 - 2.3 capital and revenue expenditure;
 - 2.4 such other items as the College may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of Clause 29.11, Schedule Part 16 (*Change Protocol*) and Clause 32 (*Changes in Law*)and Project Co shall have (and procure that the sub-contractors shall have) the books of account evidencing the items listed in paragraphs 2.1 to 2.4 available for inspection by the College (and any expert) upon reasonable notice, and shall present a report of these to the College as and when requested.
3. All other documents, software or other information expressly referred to in this Agreement.
4. Records relating to the appointment and supersession of the College's Representative and Project Co's Representative.
5. Project Data.
6. Documents, drawings, design data or submissions raised in accordance with Schedule Part 8 (*Review Procedure*).
7. Documents relating to planning applications, consents, refusals and appeals.
8. Records relating to any specialist or statutory inspections of the Facilities, including any roadways.
9. Notices, reports, results and certificates relating to completion of the Works and completion of the commissioning activities.
10. All operation and maintenance manuals and a full record of all maintenance procedures carried out during the Project Term.
11. Documents relating to events of Force Majeure, Delay Events and Relief Events and the consequences of the same.
12. All formal notices, reports or submissions made to or received from the College's Representative in connection with the provision of Services, the Monitoring of Performance or the availability of the Facilities.
13. All certificates, licences, registrations or warranties related to the provision of Services.
14. Documents in support of claims for Monthly Service Payments including the RAFM Monthly Service Payment and ICT Charges.

15. Documents submitted in accordance with Schedule Part 16 (*Change Protocol*) and all documents provided in support.
16. Documents related to referrals to the Dispute Resolution Procedure.
17. Documents related to change in ownership or any interest in any or all of the shares in Project Co and/or Hold Co.
18. Documents relating to the rescheduling of the indebtedness of Project Co or refinancing of the Project.
19. Tax invoices and records related to Value Added Tax.
20. Financial records, including audited and unaudited accounts of Hold Co and Project Co and related reports
21. Records required by Law (including in relation to Health and Safety matters and health and safety files prepared pursuant to CDM Regulations) and all Consents.
22. Documents relating to insurance and insurance claims.
23. All other records, notices or certificates required to be produced and/or maintained by Project Co pursuant to this Agreement or any Project Document.
24. Records of all persons employed by Project Co or its sub-contractors and who are wholly or mainly engaged in the delivery of Services.

SCHEDULE - Part 20

DISPUTE RESOLUTION PROCEDURE

1. The procedure set out in this Schedule Part 20 (*Dispute Resolution Procedure*) shall apply to any dispute, claim or difference arising out of or relating to this Agreement ("**Dispute**") except where it has been excluded from this procedure by an express term of this Agreement.
2. This Dispute Resolution Procedure shall not impose any pre-condition on either party or otherwise prevent or delay either party from commencing proceedings in any court of competent jurisdiction in relation to any Dispute in which that party requires either:
 - 2.1 an order (whether interlocutory or final) restraining the other party from doing any act or compelling the other party to do any act; or
 - 2.2 a decree for a liquidated sum to which there is no stateable defence.
3. **MEDIATION**
 - 3.1 If the parties have been unable to resolve the Dispute within twenty (20) Business Days of the Dispute arising, they may (if both parties so agree) refer the Dispute to mediation on such conditions as may be agreed between the parties. Any mediation shall be completed within thirty (30) Business Days of such referral and any agreement arising therefrom shall be recorded in writing and signed by the parties and shall be binding and final to the extent set out in such agreement unless otherwise agreed.
 - 3.2 For the avoidance of doubt, mediation shall not be a precondition to the commencement of Adjudication or court proceedings.
4. **ADJUDICATION**
 - 4.1 Either party may at any time (notwithstanding that other dispute resolution procedures are running concurrently) give the other party to the Dispute notice of its intention to refer the Dispute to adjudication (the "**Notice of Adjudication**"). The party giving the Notice of Adjudication (the "**Referring Party**") shall by the same means of communication send a copy of the Notice of Adjudication to an adjudicator selected in accordance with paragraph 4.2 below or paragraph 4.11 (*Related Adjudicator*) below (the "**Adjudicator**").
 - 4.2 The Adjudicator nominated to consider a Dispute referred to him shall, subject to 4.11, be selected on a strictly rotational basis from the relevant panel of adjudicators appointed in accordance with the following:
 - 4.2.1 there shall be two (2) panels of adjudicators, one in respect of construction matters (the "**Construction Panel**") and one in respect of operational and maintenance matters (the "**Operational Panel**"). All the adjudicators on each panel shall be wholly independent of Project Co, the College, the relevant Sub-Contractor and any of the major competitors of Project Co or the relevant Sub-Contractor;
 - 4.2.2 the Construction Panel shall be comprised of three (3) adjudicators as identified in paragraph 7 (*Panel Members*) who shall be selected jointly by Project Co and the College. Such selections shall take place within twenty-eight (28) days of the date of this Agreement;
 - 4.2.3 the Operational Panel shall be comprised of three (3) adjudicators as identified in paragraph 7 (*Panel Members*) who shall be selected jointly by Project Co and the College. Such selections shall take place on or before the Actual Completion Date;

- 4.2.4 if any member of either panel resigns during the term of the Agreement, a replacement adjudicator shall be appointed by Project Co and the College as soon as practicable;
- 4.2.5 if Project Co and the College are unable to agree on the identity of the adjudicators to be selected for the panels or any replacement adjudicator, the Chairman (or Vice Chairman) for the time being of the Chartered Institute of Arbitrators Scottish Branch shall appoint such adjudicator(s) within seven (7) days of any application for such appointment by either party;
- 4.2.6 in the event that the first panel member is unable or unwilling to confirm acceptance of his appointment as Adjudicator or where he fails to respond within two (2) days of the date of the Notice of Adjudication, then the Referring Party shall invite the person next in line to act as Adjudicator. In the event that the second panel member is unwilling or unable to confirm acceptance of his appointment as Adjudicator within four (4) days of the date of the Notice of Adjudication or if the parties disagree as to the relevant panel of adjudicators to be used, then the Referring Party may apply to the Chairman (or Vice Chairman) for the time being of the Chartered Institute of Arbitrators Scottish Branch who shall within seven (7) days of the date of the Notice of Adjudication, nominate an Adjudicator (who shall also within the same period, confirm acceptance of his appointment as Adjudicator) to determine the Dispute described in the Notice of Adjudication;
- 4.2.7 no member of either panel shall be entitled to accept an appointment to act as Adjudicator unless he is willing also to be appointed as the adjudicator to adjudicate any dispute which:
- (a) may arise between Project Co and the Contractor and raises issues which, in the opinion of Project Co, are substantially the same as or connected with the Dispute in relation to which he has been appointed; and/or
 - (b) may arise between Project Co and the Service Provider and raises issues which, in the opinion of Project Co, are substantially the same as or connected with the Dispute in relation to which he has been appointed; and/or
 - (c) may arise between Project Co and the Independent Tester and raises issues which, in the opinion of Project Co, are substantially the same as or connected with the Dispute in relation to which he has been appointed.
- 4.3 The Referring Party shall, within 7 days of the date of the Notice of Adjudication, serve its statement of case (the "**Referral Notice**") on the Adjudicator (appointed pursuant to paragraph 4.2) and the other party to the Dispute (the "**Responding Party**"). The Referral Notice shall set out each element of the Referring Party's claim and the relief or remedy sought in sufficient detail so as to enable the Responding Party to understand and, where appropriate, respond to the claim and the Referral Notice shall be accompanied by copies of, or relevant extracts from, this Agreement and such other documents as the Referring Party intends to rely upon. The date of the referral of the Dispute (the "**Referral**") shall be the date of the Referral Notice.
- 4.4 Within seven (7) days of appointment in relation to a particular Dispute, the Adjudicator shall establish the procedure and timetable for the adjudication. The Adjudicator shall have absolute discretion as to how to conduct the adjudication, including whether a meeting is necessary. He shall establish the procedure and timetable subject to any limitation within this Agreement. The parties shall comply with any request or direction of the Adjudicator in relation to the adjudication.
- 4.5 The Adjudicator shall reach a decision on the Dispute within twenty-eight (28) days of the date of the Referral (or such other period as the parties may agree). The Adjudicator may extend the period of 28 days by up to 14 days with the consent of the Referring Party. Unless the parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until the Dispute is finally determined by Court proceedings or by an agreement in writing between the parties, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.

- 4.6 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the adjudication, including legal costs and the costs and expenses of any witnesses.
- 4.7 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an adjudicator and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.
- 4.8 The Adjudicator shall act fairly and impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.
- 4.9 All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by Clause 61 (*Confidentiality*), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.
- 4.10 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.
- 4.10A.1 The Adjudicator may on his own initiative or on the request of the Referring Party or Responding Party correct his decision so as to remove a clerical or typographical error arising by accident or omission.
- 4.10A.2 Any correction of a decision shall be made within 5 days of the date upon which the Adjudicator's decision was delivered to the parties.
- 4.10A.3 Any correction of a decision shall form part of the decision.
- 4.11 If any Dispute raises issues which, in the opinion of Project Co, are substantially the same as or connected with issues raised in a dispute or difference arising out of or relating to any other agreement (all such agreements being referred to as the "**Related Agreements**") between:
- 4.11.1 Project Co and the Contractor;
- 4.11.2 Project Co and the Service Provider; and/or
- 4.11.3 Project Co and the Independent Tester;
- which was or has been referred to adjudication (the "**Related Adjudication**") and an adjudicator has already been appointed (the "**Related Adjudicator**") then Project Co may request that the Dispute be referred to the Related Adjudicator and paragraphs 4.12 to 4.14 shall apply.
- 4.12 Subject to paragraphs 4.13 and 4.14 below, in the event that a Related Adjudicator orders that a Dispute under this Agreement be consolidated with a Related Adjudication with which he is dealing under the Related Agreement, then:
- 4.12.1 with effect from the time of such order, the Dispute shall be determined by the Related Adjudicator, who shall become the Adjudicator; and
- 4.12.2 such order shall be binding on Project Co and the College and both of them shall acknowledge the appointment of the Related Adjudicator as the adjudicator of the Dispute, with Project Co or the College (as the case may be) using its best endeavours to procure that the third party who is a party to the Related Agreement shall with effect from the time of such order comply with the requirements of the Related Agreement (including

if applicable any requirement or direction of the Related Adjudicator appointed under such Related Agreement) as to the future conduct of the determination of the Dispute and the Related Adjudication; and

4.12.3 notwithstanding paragraph 4.6, Project Co and the College shall be jointly responsible with the third party who is a party to the Related Agreement for the Related Adjudicator's fees and expenses including those of any specialist consultant appointed under the adjudication procedure in the Related Agreement, in respect of the period in which the Dispute is consolidated with the Related Adjudication pursuant to an order of the Related Adjudicator ("**Consolidated Adjudication Costs**"). Project Co and the College agree that the Related Adjudicator shall have the discretion to make directions to require Project Co, the College and the third party who is a party to the Related Agreement to pay or make contribution to the Consolidated Adjudication Costs in different proportions. If no such directions are made, Project Co, the College and the third party who is a party to the Related Agreement shall bear the Consolidated Adjudication Costs in equal shares, and if Project Co, the College or the third party has paid more than such equal share, that party or third party shall be entitled to a contribution from the other party, parties or third party, as the case may be.

4.13 Notwithstanding anything to the contrary a Dispute under this Agreement may only be consolidated with a Related Adjudication, if the Related Adjudicator receives particulars of the Dispute within ten (10) days of the referral of the Related Adjudication to the Related Adjudicator under the Related Agreement.

4.14 Where Project Co requests that a Dispute under this Agreement be consolidated (in terms of paragraph 4.11) with a Related Adjudication and heard by the Related Adjudicator, the Dispute may only be consolidated where the College has previously consented in writing to the identity of the Related Adjudicator appointed in respect of the Related Adjudication. The College's consent to such request shall not be unreasonably withheld and if the College refuses to consent, it must give reasons in writing for its refusal. Should the College fail to respond within two (2) days of receipt of such a request it shall be deemed to have consented to the appointment of the Related Adjudicator. Where the Related Adjudicator is on the Construction Panel or Operational Panel at the time of the Referral then the College shall be deemed to have consented to the appointment of the Related Adjudicator.

5. COURT PROCEEDINGS

5.1 Subject to paragraph 4 (*Adjudication*) all Disputes, to the extent not finally resolved pursuant to the procedures set out in the foregoing provisions of this Schedule Part 20 (*Dispute Resolution Procedure*), shall be referred to the Court of Session in Edinburgh.

6. SUBMISSIONS IN RELATION TO ADJUDICATION

6.1 If any Dispute raises issues which relate to:

6.1.1 any dispute between Project Co and the Contractor arising under the Construction Contract or otherwise affects the relationship or rights of Project Co and/or the Contractor under the Construction Contract (the "**Construction Contract Dispute**"); or

6.1.2 any dispute between Project Co and the Service Provider arising under the Service Contract or otherwise affects the relationship or rights of Project Co and/or the Service Provider under the Service Contract (the "**Service Contract Dispute**"); or

6.1.3 any dispute between Project Co and the Independent Tester arising under the Independent Tester Contract or otherwise affects the relationship or rights of Project Co and/or the Independent Tester under the Independent Tester Contract (the "**Independent Tester Contract Dispute**")

then Project Co may include as part of its submissions made to the Adjudicator submissions made by the Contractor or by the Service Provider or the Independent Tester as appropriate.

- 6.2 Any submissions made by the Contractor or the Service Provider or the Independent Tester shall:
- 6.2.1 be made within the time limits applicable to the delivery of submissions by Project Co to the Adjudicator; and
 - 6.2.2 concern only those matters which relate to the Dispute between the College and Project Co arising out of this Agreement or in connection therewith.
- 6.3 Where the Contractor or the Service Provider or the Independent Tester makes submissions in any reference before the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third by the College and two-thirds by Project Co.
- 6.4 The College shall have no liability to the Contractor or the Service Provider or the Independent Tester arising out of or in connection with any decision of the Adjudicator or in respect of the costs of the Contractor or the Service Provider or the Independent Tester in participating in the resolution of any Dispute under this Agreement.
- 6.5 Project Co shall not allow the Contractor or the Service Provider or the Independent Tester access to any Confidential Information relevant to the issues in dispute between the College and Project Co save where:
- 6.5.1 the Confidential Information is relevant also to the issues relating to the Construction Contract Dispute or the Service Contract Dispute or the Independent Tester Contract Dispute as the case may be; and
 - 6.5.2 Project Co has first delivered to the College a written undertaking from the Contractor and/or the Service Provider and/or the Independent Tester (as appropriate) addressed to the College that they shall not use any such Confidential Information otherwise than for the purpose of the dispute resolution proceedings under this Agreement and that they shall not disclose such Confidential Information to any third party other than the Adjudicator or the courts or any professional adviser engaged by the Contractor or the Service Provider or Independent Tester (as appropriate) to advise in connection with the Dispute.

7. **PANEL MEMBERS**

The panel members referred to in paragraph 4 are as follows:

Construction Panel	Alex Warrender, FTI Consulting Stephen Furst, QC, Keating Chambers Heriot Currie, QC, Axiom
Operational Panel	Alex Warrender, FTI Consulting Stephen Furst, QC, Keating Chambers Heriot Currie, QC, Axiom

8. **NO LOSS**

Where the College would otherwise be expressly liable to make payment to Project Co of sums which include amounts payable in turn by Project Co to any Sub-Contractor, the College shall not be entitled to withhold, reduce or avoid any such payment to Project Co in reliance only on the fact that the amount which is due from Project Co to the Sub-Contractor or the entitlement of the Sub-Contractor to payment of such amount as a result of the circumstances giving rise to the College's

obligation to pay, is conditional on the entitlement of, or receipt of payment by Project Co from the College.

9. **CONTINUING OBLIGATIONS**

Unless this Agreement has already been repudiated or terminated, the parties shall, (notwithstanding that any Dispute is subject to the Dispute Resolution Procedure set out in this Schedule Part 20 (*Dispute Resolution Procedure*)), continue to carry out their obligations in accordance with this Agreement.

SCHEDULE - Part 21

PROJECT CO INFORMATION

SECTION 1

PROJECT CO INFORMATION

1.	Name:	Glasgow Learning Quarter Limited		
2.	Date of Incorporation:	21 February 2013		
3.	Registered number:	08413842		
4.	Registered office:	Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR		
5.	Directors:			
		Name	Address	
		Robert Wotherspoon	Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR	
		David Honeyman	Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR	
		Dylan Fletcher	Forth House, Pirnhall Business Park, Stirling, FK7 8HW	
		Ronald Gilfillan Jack	Forth House, Pirnhall Business Park, Stirling, FK7 8HW	
6.	Secretary:	Kevin Pearson		
7.	Subsidiary undertakings at the date of this Agreement:	None		
8.	Authorised and issued share capital at the date of this Agreement:			
		Name and address of registered holder	Number and class held	Amount paid up
		Glasgow Learning Quarter (Holdings) Limited, Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR	1,000 A Shares	
		The City of Glasgow College, 60 North Hanover Street, Glasgow, G1 2PB	1 B Share	


9.	Loan Stock at the date of this Agreement issued as follows:		
	Name and address of registered holder	Nominal value of Loan stock	
	Glasgow Learning Quarter (Holdings) Limited, Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR	[REDACTED]	
10.	Loan Stock Provisions:		

DA.
 Text

SECTION 2

HOLD CO INFORMATION

1.	Name:	Glasgow Learning Quarter Limited	
2.	Date of Incorporation:	21 February 2013	
3.	Registered number:	08413842	
4.	Registered office:	Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR	
5.	Directors:		
	Name	Address	
	Robert Wotherspoon	Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR	
	David Honeyman	Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR	
	Dylan Fletcher	Forth House, Pirnhall Business Park, Stirling, FK7 8HW	
	Ronald Gilfillan Jack	Forth House, Pirnhall Business Park, Stirling, FK7 8HW	
6.	Secretary:	Kevin Pearson	
7.	Subsidiary undertakings at the date of this Agreement:	Glasgow Learning Quarter Limited	
8.	Authorised and issued share capital at the date of this Agreement:		
	Name and address of registered holder	Number and class held	Amount paid up
	Sir Robert McAlpine Capital Ventures Limited, Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR	900 Shares	
	Forth Holdings Limited, Forth House, Pirnhall Business Park, Stirling, FK7 8HW.	100 Shares	

9.	Loan Stock at the date of this Agreement issued as follows:		
	Name and address of registered holder	Nominal value of Loan stock	
	Sir Robert McAlpine Capital Ventures Limited, Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR		
	Forth Holdings Limited, Forth House, Pirnhall Business Park, Stirling, FK7 8HW.		
10.	Loan Stock Provisions:		

DA.
 7/1/12
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SCHEDULE - Part 22

CERTIFICATES

Commencement Certificate

Issued by:	[COLLEGE]
Address:	[]
Project Co:	[PROJECT CO]
Address:	[]
Issue date:	[]
Works:	[]
Situated at:	[]
Project Agreement dated:	[]

I/we certify that this is the Commencement Certificate issued pursuant to Clauses 2 (*Execution and Delivery of Documents*) and 9 (*Nature of Land Interests*) and Section 2 (*Documents to be delivered by the College*) of Schedule Part 2 (*Completion Documents*) of the above mentioned Project Agreement.

To be signed by or for the issuer named above.

Signed:

[COLLEGE]

HANDBACK CERTIFICATE

Issued by:	College's Representative
Address:	[]
College:	[COLLEGE]
Address:	[]
Project Co:	[PROJECT CO]
Issued by:	[]
Address:	[]
Issue date:	
Works:	
Situated at:	
Project Agreement dated:	

I/we certify that the condition of the NPD Facilities is in accordance with paragraph 1 of Schedule Part 18 (*Handback Procedure*) of above mentioned Project Agreement.

To be signed by or for the issuer named above.

Signed:

[COLLEGE]

***Certificate of Phase/Stage Practical Completion**

Issued by:	Independent Tester - []
Address:	[]
Project Co:	[PROJECT CO]
Address:	[]
College:	[COLLEGE]
Address:	[].
Contractor:	[CONTRACTOR]
Address:	[]
Issue date:	[]
[Phase:]	
Works:	
Situated at:	
Project Agreement dated:	[]

Under the terms of the above-mentioned Project Agreement

I/we certify that the [insert Phase] was achieved on [].

To be signed by or for the issuer named above.

Signed:

[INDEPENDENT TESTER]

***Commissioning Completion Certificate**

Issued by:	Independent Tester - []
Address:	[]
Hold Co:	[PROJECT CO]
Address:	[]
College:	[COLLEGE]
Address:	[]
Contractor:	[CONTRACTOR]
Address:	[]
Issue date:	[]
Works:	[]
Situated at:	[]
Project Agreement dated:	[]

Under the terms of the above-mentioned Project Agreement

I/we certify that the Actual Commissioning End Date was achieved on [].

To be signed by or for the issuer named above.

Signed:

[INDEPENDENT TESTER]

SCHEDULE - Part 23

REFINANCING

Requirement for College Consent

1. Project Co shall obtain the College's prior written consent to any Qualifying Refinancing and both the College and Project Co shall at all times act in good faith with respect to (a) any Refinancing or (b) any potential or proposed Refinancing under Article 3 of the Articles of Association.
2. The College shall be entitled to receive:
 - 2.1 a 90% share of the Margin Gain arising from any Qualifying Refinancing which gives rise to a reduction in the Margin from the Margin as shown in the Senior Funding Agreements as at Financial Close (or, in the case of a second or subsequent Qualifying Refinancing, from the Margin as shown in the Senior Funding Agreements as updated at the immediately preceding Qualifying Refinancing);
 - 2.2 a share of any Refinancing Gain (arising otherwise than from a reduction in Margin) from a Qualifying Refinancing, in respect of any Refinancing Gain (when considered in aggregate with all previous Qualifying Refinancings) as follows:
 - 2.2.1 for a Refinancing Gain from £1 up to £1 million, a 50% share;
 - 2.2.2 for a Refinancing Gain from £1 million up to £3 million, a 60% share;
 - 2.2.3 for a Refinancing Gain in excess of £3 million, a 70% share.
3. The College shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater share of the Refinancing Gain than that specified in paragraph 2 above.

Project Co Details

4. Project Co shall promptly provide the College with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. The College shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with the Refinancing whether that Refinancing is a Qualifying Refinancing or not.

Receipt of Gain

5. The College shall have the right to elect to receive its share of any Refinancing Gain (including any Margin Gain) as:
 - 5.1 a single payment being the proportion (corresponding to the proportion of the Refinancing Gain to which the College is entitled pursuant to paragraph 2 above) of the amount which, but for the provisions of this Schedule Part 23 (*Refinancing*), would otherwise be capable of being released as a Distribution and/or a Surplus Payment on or about the date of the Refinancing;
 - 5.2 a reduction in the Annual Service Payments over the remaining term of this Agreement; or
 - 5.3 a combination of the above.

Method of Calculation

6. The College and Project Co will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain (including any Margin Gain) and payment of the College's share of the Refinancing Gain (taking into account how the College has elected to receive its share of the Refinancing Gain under paragraph 5 (*Receipt of Gain*) above). If the parties fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the College's share, the dispute shall be determined in accordance with Schedule Part 20 (*Dispute Resolution Procedure*).

Costs

7. The Refinancing Gain (including any Margin Gain) shall be calculated after taking into account any breakage costs necessary to facilitate the Qualifying Refinancing together with the reasonable and proper professional costs that each party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the College will be paid to the College by Project Co within twenty eight (28) days of any Qualifying Refinancing. Such costs shall be allocated pro rata between the Margin Gain (if any) and the remaining Refinancing Gain.
8. Without prejudice to the other provisions of this Schedule Part 23 (*Refinancing*), Project Co shall:
- 8.1 notify the College of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same; and
- 8.2 include a provision in the Funding Agreements (other than the Subordinated Funding Agreements) whereby it is entitled to be informed of any proposals which the Senior Funders may have to refinance the Funding Agreements (other than the Subordinated Funding Agreements).

Definitions

In this Schedule Part 23 (*Refinancing*) and elsewhere in this Agreement (save where Schedule Part 1 (*Definitions and Interpretation*) provides to the contrary) the following words and expressions shall have the following meanings:

"Distribution"

means:

- (a) whether in cash or in kind, any:
- i. dividend or other distribution in respect of share capital (whether made validly in accordance with the Articles of Association or otherwise);
 - ii. reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
 - iii. payments under the Subordinated Funding Agreements (whether of principal, interest, breakage costs or otherwise);
 - iv. payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms;

- v. the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms, or

(b) not used

"EEA"

means from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area

"Exempt Refinancing"

means:

- (a) any Refinancing that was fully taken into account in the calculation of the Annual Service Payments;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of
 - i. breach of representations and warranties or undertakings;
 - ii. movement of monies between the Project Accounts in accordance with the terms of the Senior Funding Agreements as at Financial Close;
 - iii. late or non-provision of information, consents or licences;
 - iv. amendments to Sub-Contracts;
 - v. approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Funding Agreements);
 - vi. restrictions imposed by Senior Funders on the dates at which the Senior Debt can be advanced to Project Co under the Senior Funding Agreements and/or amounts released from the Loan Proceeds Account during the Availability Period or the Escrow Account after the end of the Availability Period and which are given as a result of any failure by Project Co to ensure that the construction work is performed in accordance with the agreed construction programme and which is notified in writing by Project Co or the Senior Funders to the College prior

to being given;

- vii. changes to milestones for drawdown and/or amounts released from the Loan Proceeds Account during the Availability Period or the Escrow Account after the end of the Availability Period and which are given as a result of any failure by Project Co to ensure that construction work is performed in accordance with the agreed construction programme and which is notified in writing by Project Co or the Senior Funders to the College prior to being given;
 - viii. failure by Project Co to obtain any consent by statutory bodies required by the Senior Funding Agreements; or
 - ix. voting by Senior Funders and the voting arrangements between the Senior Funders in respect of the levels of approval required by them under the Senior Funding Agreements;
- (d) any amendment, variation or supplement of any agreement approved by the College as part of any Qualifying Change under this Agreement.
- (e) any sale of shares in Project Co or HoldCo by the shareholders or securitisation of the existing rights and/or interests attaching to shares in Project Co or HoldCo provided that this paragraph (e) shall, in respect of shares in HoldCo, only apply for so long as HoldCo holds 100% of the issued share capital of Project Co;
- (f) any sale or transfer of the Subordinated Funders' existing rights and/or interests under the Subordinated Funding Agreements or securitisation of the Subordinated Funders' existing rights and/or interests under the Subordinated Funding Agreements; or
- (g) any Qualifying Bank Transaction

"Insurance Undertaking" has the meaning given in the rules from time to time of the Financial Services Authority

"Margin" has the meaning given to (A) Credit Margin in the EIB Finance Contract in the Agreed Form and (B) Margin in the Commercial Loan Facility Agreement (in the Agreed Form and as defined in the Common Terms Agreement)

"Margin Gain" means an amount equal to the lower of:

- (a) the Refinancing Gain; and

(b) the higher of:

zero; and

D – E;

where:

D = the Net Present Value of the Surplus Payments projected immediately prior to the Refinancing (taking into account the effect of the change in Margin only in relation to the Refinancing and the senior debt repayment profile immediately prior to the Qualifying Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing but disregarding any Distribution (including any payment under the Subordinated Loan Note Instruments) that, but for the Refinancing, would not be made) to be made over the remaining term of this Agreement following the Refinancing; and

E = the Net Present Value of the Surplus Payments projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this Agreement following the Refinancing;

"Net Present Value"

means the aggregate of the discounted values, calculated as at the relevant date, of each of the relevant projected cashflows, in each case discounted at 7%

"Notifiable Financings"

means any Refinancing described in paragraphs (a) or (c) of the definition of Refinancing and any other arrangement which has or would have a similar effect or which has or would have the effect of limiting Project Co's or any Associated Company's ability to carry out any such refinancing or other arrangements that would have a similar effect

"Project Accounts"

means accounts referred to in and required to be established under the Common Terms Agreement in the Agreed Form

"Qualifying Bank Transaction"

means:

- (a) the syndication by a Senior Funder, in the ordinary course of its business, of any of its rights or interests in the Senior Funding Agreements;
- (b) the grant by a Senior Funder of any rights of participation, or the disposition by Senior Funder of any of its rights or interests (other than as specified in paragraph 0 above in respect of the Senior Funding Agreements in

favour of:

- i. any other Senior Funder
 - ii. any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2006/48/EC relating to the taking up and pursuit of business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state
 - iii. a local authority or public authority
 - iv. a trustee of a charitable trust which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time)
 - v. a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two years) at least 50 members and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time)
 - vi. an EEA or Swiss Insurance Undertaking
 - vii. a Regulated Collective Investment Scheme
 - viii. not used
 - ix. any other institution in respect of which the prior written consent of the College has been given; and/or
- (c) the grant by a Senior Funder of any other form of benefit or interest in either the Senior Funding Agreements or the revenues or assets of Project Co or HoldCo, whether by way of security or otherwise, in favour of:
- i. any other Senior Funder
 - ii. any institution specified in paragraphs (b)(ii) to (b)(vii) above
 - iii. not used
 - iv. any other institution in respect of which the prior written consent of the College has been given

"Qualifying Refinancing" means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing

"Refinancing" means:

- (a) any amendment, variation, novation, supplement or replacement of any Funding Agreement (other than any Subordinated Funding Agreement);
- (b) the exercise of any right, or the grant of any waiver or consent, under any Funding Agreement (other than any Subordinated Funding Agreement);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Funding Agreements (other than the Subordinated Funding Agreements) or the creation or granting of any other form of benefit or interest in either the Funders' Agreements (other than the Subordinated Funding Agreements) or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
- (d) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of (a)-(c) above or which has the effect of limiting Project Co's or any Associated Company's ability to carry out any of (a)-(c) above

"Refinancing Gain" means an amount equal to the greater of zero and (A – B), where:

A = the Net Present Value of the Surplus Payments projected immediately prior to the Refinancing (taking into account the effect of the Refinancing using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing but disregarding any Distribution (including any payment under conditions 2 and 5 of each of Schedule 2 to the Subordinated Funding Agreements) that, but for the Refinancing, would not be made) to be made over the remaining term of this Agreement following the Refinancing; and

B = the Net Present Value of the Surplus Payments projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this

Agreement following the Refinancing

"Regulated Collective Investment Scheme"

has the meaning given in the rules from time to time of the Financial Services Authority

"Shareholder"

means any person from time to time holding share capital in Project Co or HoldCo

SCHEDULE - Part 24

NOT USED

SCHEDULE - Part 25

INSURANCE PROCEEDS ACCOUNT AGREEMENT

This is the Insurance Proceeds Account in the Agreed Form.

SCHEDULE - Part 26

COMMERCIALLY SENSITIVE INFORMATION

Where information or material falls within more than one category identified in column 1 of the table below, it shall be deemed to fall within the category whose corresponding period of confidentiality identified in column 2 of the table below will expire the soonest.

Category of Information/Material	Period for which information is to be kept confidential
Financial Model (as at Financial Close)	From the Effective Date until the date falling 2 years after the first Phase Actual Completion Date
Financial Model (amended from time to time in accordance with this Agreement)	From the date of the relevant Financial Model until the date falling 2 years after the later of: (a) the first Phase Actual Completion Date; and (b) the date on which the amendments to Financial Model are agreed in accordance with this Agreement
Prices within the Catalogue of Small Works and Services	Period during which the relevant prices are applicable
Small Works and Services Rates	Period during which the relevant Small Works and Services Rates are applicable
Project Co bank account information	Project Term
IRR	In the case of the IRR contained in the Financial Model as at Financial Close from the Effective Date until the date falling 2 years after the first Phase Actual Completion Date In the case of the IRR contained in the Financial Model as amended from time to time in accordance with this Agreement, from the date of the relevant Financial Model until the date falling 2 years after the later of: (a) the first Phase Actual Completion Date; and (b) the date of the Financial Model containing the relevant information
Ancillary Documents	Project Term
Funding Agreements	Project Term
Information about Project Co's processes, methodologies, working methods and information relating to the development of new processes and methodologies which amounts to a trade secret or which, if disclosed, could reasonably be considered to provide a commercial advantage to Project Co's competitors	Trade secrets – Project Term All other cases – 5 years from the date on which the information is produced to the College

Breakdown of prices within the overall contract price (to the extent not disclosed within the Financial Model)	Project Term
Information on Project Co's costing mechanisms including information obtained from Project Co relating to project risks and pricing of the same and cost information relating to third party contractors and the Sub-Contractors	Project Term
Financial term sheets and related funding information including any funder pricing	2 years from the date on which the information is produced to the College
Information relating to the appointment of Project Co as the preferred bidder to the Project (including the preferred bidder letter and correspondence and minutes relating to the same)	Until the date falling 2 years after the first Phase Actual Completion Date
Information contained within or relating to Project Co's bid for the Project except as otherwise listed in this Schedule Part 26 (<i>Commercially Sensitive Information</i>) or otherwise provided in the Agreement	Until the date falling 2 years after the first Phase Actual Completion Date

SCHEDULE - Part 27

ICT SUPPORT AND MAINTENANCE

This is Schedule Part 27 (ICT Support and Maintenance) in the Agreed Form.

SCHEDULE - Part 28

RAFM ASSETS

SECTION 1

HANDOVER OF RAFM EXISTING ASSETS

1. In this Schedule Part 28 (RAFM Handover Procedure) and elsewhere in this Agreement (save where Schedule Part 1 (Definitions and Interpretations) provides to the contrary) the following words shall have the following meanings:

"RAFM Handover Date" means the Halls of Residence Phase Actual Completion Date;

"RAFM Handover Programme" means the programme for carrying out the RAFM Handover Works during the period in which the RAFM Handover Works are to be executed;

"RAFM Handover Requirements" shall have the meaning given in paragraph 2 of this Schedule Part 28;

"RAFM Handover Works" means the maintenance works (if any) required to be carried out in respect of the RAFM Existing Assets in order to procure that they will on the RAFM Handover Date, satisfy the RAFM Handover Requirements which scope of works may be amended pursuant to paragraph 4;

2. On the RAFM Handover Date, each element of the RAFM Existing Assets shall be in a condition which is compliant with Legislation, is capable of meeting the requirements that a competent person inspecting to comply with routine health and safety requirements would expect to see, and all building fabric, hard standings, plant and equipment should be in an operational condition and, where applicable, should be capable of delivering and achieving the requirements of the Services (the **"RAFM Handover Requirements"**).

3. Not less than six (6) months prior to the RAFM Handover Date the College's Representative shall:

3.1 handover all records and documentation which it holds relating to the maintenance, inspection, insurance, operation and maintenance of the RAFM Existing Assets; and

3.2 together with Project Co conduct a joint inspection of the RAFM Existing Assets.

4. Within five (5) Business Days after the completion of the joint inspection referred to in paragraph 3.2 above, if it is found that any element of the RAFM Existing Assets are not in a condition consistent with the RAFM Handover Requirements, the Parties shall agree the RAFM Handover Works and a RAFM Handover Programme. The Parties may seek to agree an amendment to the scope of the RAFM Handover Works and in the event that the Parties fail to agree such an amendment within five (5) Business Days of the completion of the joint inspection then the RAFM Handover Works will be those maintenance works required to be carried out in respect of the RAFM Existing Assets in order to procure that they will on the RAFM Handover Date satisfy the RAFM Handover Requirements.

5. The College shall within 10 Business Days of the agreement pursuant to paragraph 4;

5.1 confirm that the College will carry out the RAFM Handover Works, in which case the provisions of paragraphs 6 to 11 below shall apply; or

- 5.2 confirm that the College does not wish to carry out the RAFM Handover Works, in which case paragraph 11 shall apply.
6. Where the College confirms pursuant to paragraph 5.1 that it will carry out the RAFM Handover Works the Parties agree that not later than sixty (60) Business Days before the RAFM Handover Date, Project Co and the College's Representative shall conduct a joint inspection of the RAFM Existing Assets. Such inspection shall confirm whether or not the RAFM Existing Assets meet the RAFM Handover Requirements.
7. The Parties agree that if the RAFM Existing Assets meets the RAFM Handover Requirements Project Co will confirm to the College that it shall commence provision of the RAFM at the RAFM Existing Assets on the RAFM Handover Date.
8. The Parties agree that where the joint inspection to be carried out pursuant to paragraph 6 identifies that the RAFM Existing Assets do not comply in whole or in part with the RAFM Handover Requirements Project Co shall notify the College of each respect in which the RAFM Handover Works have not been completed or where the RAFM Existing Assets do not comply with the RAFM Handover Requirements and shall state Project Co's estimate of the cost of procuring that the RAFM Existing Assets comply in all respects with the RAFM Handover Requirements.
9. The College may, within fifteen (15) Business Days after receipt of the notice given in accordance with paragraph 8 by notice to Project Co's Representative, object to any matter set out in Project Co's notice. The notice from the College shall give details of the grounds of such objection and shall set out the College's proposals in respect of such matters.
10. If no agreement is reached between Project Co and the College's Representative as to any matter referred to in Project Co's notice given in accordance with paragraph 8 within fifteen (15) Business Days of receipt of that notice by the College's Representative, then either Project Co or the College's Representative may refer the matter for determination in accordance with Schedule Part 20 (*Dispute Resolution Procedure*) as to:
- 10.1 whether the RAFM Existing Assets comply in all respects with the RAFM Handover Requirements; and/or
- 10.2 the estimated cost of procuring that the RAFM Existing Assets comply in all respects with the RAFM Handover Requirements, where the RAFM Existing Assets do not comply in all respects with the RAFM Handover Requirements.
11. If it is agreed or determined in accordance with Schedule Part 20 (*Dispute Resolution Procedure*) that the RAFM Existing Assets did not, at the RAFM Handover Date, comply in all respects with the RAFM Handover Requirements, or where the College elect pursuant to paragraph 5.2 above not to carry out the RAFM Handover Works, then the College shall notify Project Co that either :
- 11.1 Project Co shall be relieved of all obligations to carry out RAFM in respect of the RAFM Existing Assets and Section G of the Service Level Specification shall not apply to the extent it relates to the RAFM Existing Assets; or
- 11.2 Project Co shall be entitled to carry out the RAFM Handover Works or procure that the RAFM Existing Assets comply in all respects with the RAFM Handover Requirements and the College shall pay to Project Co an amount equal to the actual cost of completing such RAFM Handover Works. Such payment shall be made not later than ten (10) Business Days after receipt of a valid VAT invoice from Project Co and, following such payment being received by Project Co, Project Co shall commence provision of the RAFM at the RAFM Existing Assets on the RAFM Handover Date; or
- 11.3 it elects to instruct a Change pursuant to Schedule Part 16 (*Change Protocol*) in respect of the RAFM Existing Assets and the Parties agree that the relevant provisions of Schedule Part 16 (*Change Protocol*) will apply where appropriate for the purposes of agreeing a change to the RAFM Existing Assets; or

- 11.4 Project Co shall not be responsible for, or obliged to carry out the provision of the RAFM in respect of the RAFM Assets that do not meet the RAFM Handover Requirements at the RAFM Handover Date where the parties agree within a period of 6 months from the RAFM Handover Date that the RAFM Existing Assets meet the RAFM Handover Requirements following remediation by the College the Parties shall be entitled to agree that they will thereafter be included as RAFM Assets for the purposes of RAFM.
- 11.5 For the purposes of RAFM if the College fails to pay the RAFM Monthly Service Payment due to Project Co pursuant to Schedule Part 14A (*Payment Mechanism*) and Schedule Part 28 (*RAFM Assets*) and such failure continues for thirty (30) Business Days from receipt by the College of a notice of non payment from Project Co this will be a College RAFM Event of Default.
- 11.6 On the occurrence of a College RAFM Event of Default or within a reasonable time after Project Co becomes aware of the same, and while the same is still subsisting Project Co may serve notice on the College (or such other party as may be notified in advance by the College to Project Co) of the occurrence (and specifying details) of such College RAFM Event of Default. If the relevant matter or circumstance has not been rectified or remedied by the College (or otherwise) within thirty (30) Business Days of such notice Project Co may serve a further notice on the College (or its substitute notified in accordance with this Clause 11.6) terminating the RAFM Services with immediate effect.

12. In the event that Project Co and the College:

- 12.1 have not reached agreement, or are in dispute as to whether any RAFM Existing Asset meets the RAFM Handover Requirements on the RAFM Handover Date; and/or
- 12.2 having failed to reach agreement or having been in dispute as to the estimated cost of procuring that any RAFM Existing Asset complies in all respects with the RAFM Handover Requirements, and such agreement has been reached or dispute has been resolved or determined pursuant to Schedule Part 20 (Dispute Resolution Procedure) and where such agreement has been reached or dispute has been resolved or determined within a timescale which means that Project Co does not have adequate time to complete the RAFM Handover Requirements prior to the Halls of Residence Phase Actual Completion Date.

Then the College agrees that Project Co shall not be breach of Clause 22.3A.1 whilst such disagreement or dispute subsists, and/or where paragraph 12.2 applies during such period of time following agreement or determination of the dispute referred to above as may be reasonable having regard to the nature and extent of the RAFM Handover Works (but excepting that such RAFM Handover Works will not be completed on the RAFM Handover Date), where Project Co is carrying out the RAFM Handover Works as aforesaid.

13. Where required for the purposes of enabling Project Co and the College to perform their respective obligations in relation to RAFM and subject always to Clause 42A, the Parties agree that references to Facilities through this Agreement shall include reference to the RAFM Existing Assets

SECTION 2

RAFM LIFECYCLE AND DEFECTS

1. In this Section 2 of Schedule Part 28 unless the context otherwise requires:

"RAFM Lifecycle Replacement"	means any works for the major repair, renewal or replacement (or refurbishment in lieu of) of any plant, equipment (or major component thereof), or any other asset or part of the RAFM Assets that are necessary to ensure that RAFM Existing Assets are maintained in accordance with Good Industry Practice and that the RAFM New Assets comply with the College's Construction Requirements and the RAFM Handover Requirements from the RAFM Handover Date up to and including the College Break Point Date and/or the termination date specified in a College Break Point Notice issued pursuant to Clause 42A.2 of this Agreement.
"RAFM Lifecycle Schedule"	means the element of the Schedule of Lifecycle which contains Project Co's assessment of RAFM Lifecycle Replacement prepared in accordance with paragraph 3 of this Section 2 of Schedule Part 28.

2. Notwithstanding any other provision of this Agreement, Project Co shall not be responsible for:
- 2.1 Lifecycle in respect of the RAFM Assets; or
 - 2.2 Any defects (including latent defects) arising out of or in relation to the design and construction of the RAFM Existing Assets; or
 - 2.3 Any defects (including latent defects) arising out of or in relation to the carrying out by the College of RAFM Lifecycle Replacement at the RAFM Assets; or
 - 2.4 Any defects (including latent defects) arising out of or in connection with the carrying out by the College of the RAFM Handover Works.
3. Each Schedule of Lifecycle submitted to the College by Project Co pursuant to Clause 23A of this Agreement shall, for the duration of the RAFM, include Project Co's assessment of RAFM Lifecycle Replacement which it considers is required for the next succeeding Contract Year and the College shall either;
- 3.1 confirm to Project Co that the College will carry out the RAFM Lifecycle Replacement, in which case the provisions of paragraphs 4.1 below of this Section 2 of Schedule Part 28 shall apply; or
 - 3.2 advise Project Co that the College does not wish to carry out the RAFM Lifecycle Replacement, in which case paragraph 4.2 of this Section 2 of Schedule Part 28 shall apply.
- 4.1 Where pursuant to paragraph 3.1 the College elects to carry out the RAFM Lifecycle Replacement it shall carry out such RAFM Lifecycle Replacement or procure that the RAFM Lifecycle Replacement is carried out in accordance with Good Industry Practice.
- 4.2 In the event the College does not carry out and/or procure the RAFM Lifecycle Replacement it has elected to carry out pursuant to paragraph 4.1 and or where the College elects not to carry out the

RAFM Lifecycle Replacement pursuant to paragraph 3.2 the provisions of Clause 51.2.9 shall apply.

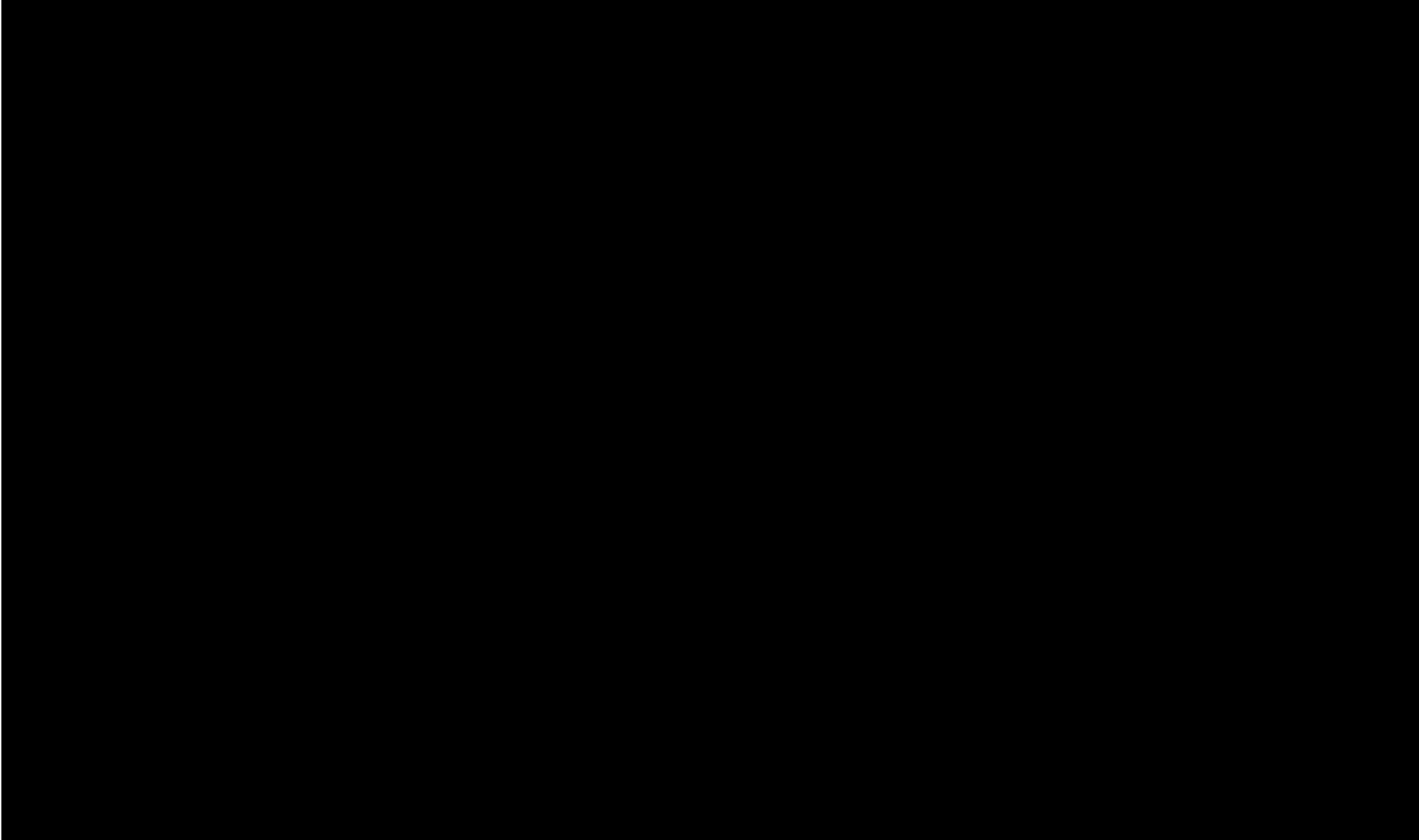
SECTION 3 – RAFM ASSET HANDBACK

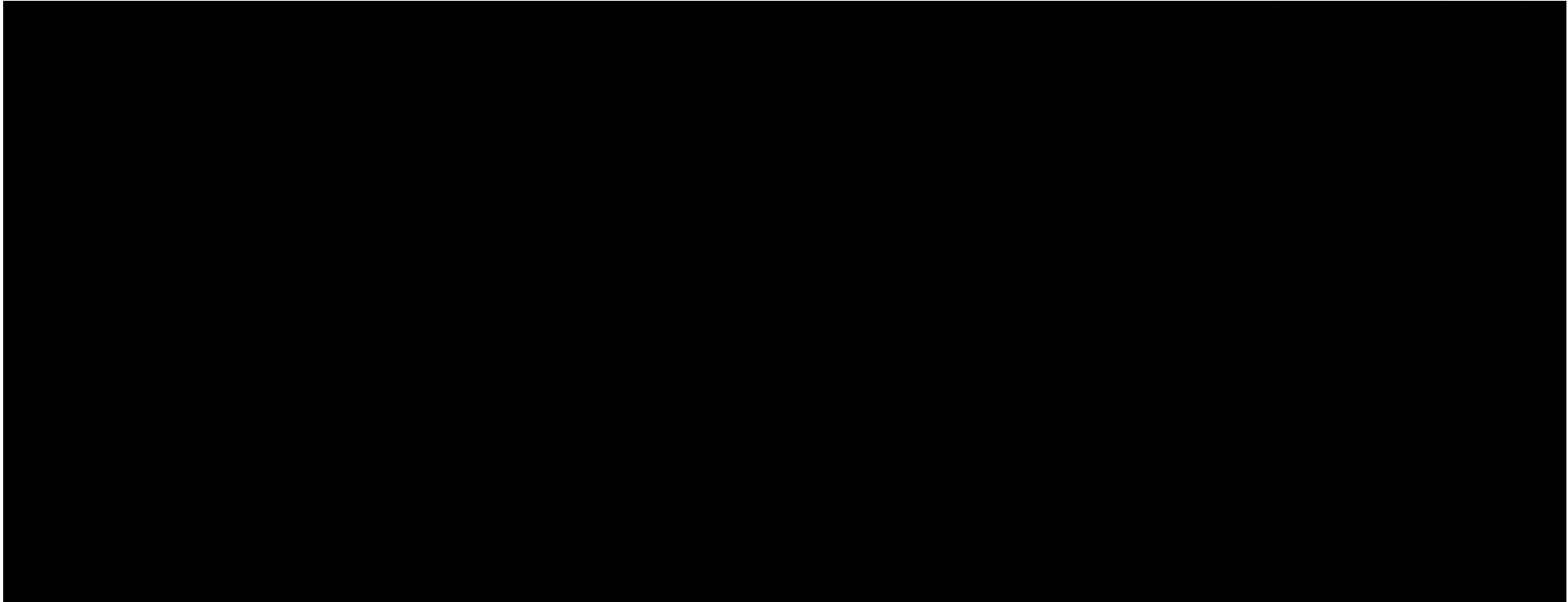
1. Subject always to paragraph 2 below, as at the Expiry Date, or where the College elects to terminate the RAFM on the College Break Point Date and/or the termination date specified in a College Break Point Notice issued pursuant to Clause 42A of this Agreement each element of the RAFM Assets shall be in a condition which is compliant with performance of the RAFM by Project Co in accordance with the requirements of this Agreement (the "RAFM Handback Requirements") and the terms of paragraphs 2 to 6 of this Section 3 of Schedule Part 28 below shall apply.
2. This Section 3 of Schedule Part 28 and the RAFM Handback Requirements shall not apply to:
 - 2.1 any element of the RAFM Assets where the College has elected pursuant to paragraph 3.2 of Section 2 of Schedule Part 28 not to carry out RAFM Lifecycle Replacement; and
 - 2.2 any element of the RAFM Assets which Project Co has highlighted to the College pursuant to paragraph 3 of Section 2 of this Schedule Part 28 as requiring RAFM Lifecycle Replacement in the year immediately preceding the Expiry Date; and
 - 2.3 any element of the RAFM Assets where the College has elected not to carry out the RAFM Handover Works; and
 - 2.4 where the College elects to terminate the RAFM on the College Break Point Date and/or the termination date specified in a College Break Point Notice issued pursuant to Clause 42A of this Agreement; any element of the RAFM Assets which Project Co has highlighted as requiring RAFM Lifecycle Replacement pursuant to paragraph 3 of Section 2 of this Schedule Part 28 in the Contract Year in which the College Break Point Date occurs.
3. As soon as reasonably practicable following receipt by Project Co of a notice pursuant to Clause 42A of this Agreement Project Co and the College's Representative shall conduct a joint inspection of the RAFM Assets.
4. Within fifteen (15) Business Days after the completion of the inspection, if it is found that any element of the RAFM Assets is not in a condition consistent with the RAFM Handback Requirements, Project Co shall forthwith provide to the College Representative's Project Co's proposal to bring the RAFM Assets up to a condition which meets the RAFM Handback Requirements (the "RAFM Handback Proposal").
5. The College's Representative (acting reasonably) may, within fifteen (15) Business Days after receipt of the details set out in paragraph 3 from Project Co, raise comments on the RAFM Handback Proposal and Project Co shall use all reasonable endeavours to take such comments into account.
6. On agreement, or determination in accordance with Schedule Part 20 (Dispute Resolution Procedure), of the RAFM Handback Proposal, Project Co shall implement the same in accordance with Good Industry Practice and at its own cost so as to ensure that the RAFM Assets meet the RAFM Handback Requirements.
7. On the College Break Point Date, and/or the termination date specified in a College Break Point Notice issued pursuant to Clause 42A of this Agreement Project Co and the College's Representative shall conduct a joint inspection of the RAFM Assets. Such inspection shall confirm whether or not the condition of the RAFM Assets is in accordance with paragraph 1 above. Where it is agreed, or determined in accordance with Schedule Part 20 (*Dispute Resolution Procedure*), that the condition of the RAFM Assets is not in accordance with paragraph 1 above then Project Co shall pay to the College an amount equal to the estimated cost of completing the RAFM Handback Requirements. Such payment shall be made not later than fifteen (15) Business Days after the estimated cost has been agreed or determined and, upon such payment being received by the College, all of Project Co's obligations in relation to the RAFM Handback Proposal shall terminate.
8. Where the RAFM Services continue until the Expiry Date then as at the Expiry Date, then the RAFM Handback Requirements and the provisions of this Section 3 of Schedule Part 28 shall

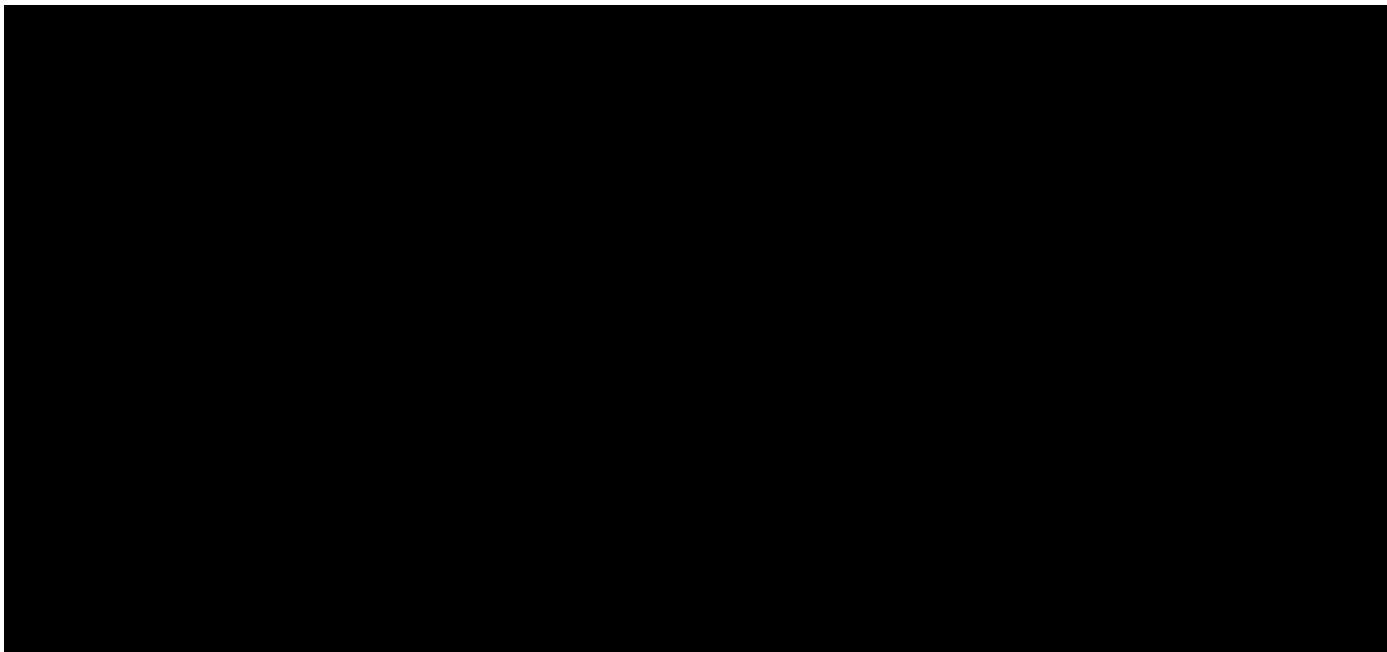
apply, save that the inspections referred to in paragraphs 3 and 7 above shall be conducted at the same time as the inspections referred to at paragraphs 3 and 12 respectively of Schedule Part 18 (*Handback Procedure*).

SCHEDULE - Part 29

CAPITAL PAYMENTS







SCHEDULE - Part 30

COLLEGE POLICIES

These are the College Policies in the Agreed Form.

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