



Llywodraeth Cymru
Welsh Government

WEP Strategic Partnering Delivery Model

Template WEPCo Shareholders' Agreement

**ITPDSB Version
(Standard Form Version 1.3)**

TEMPLATE WEPCO SHAREHOLDERS' AGREEMENT

VERSION 1

IMPORTANT NOTICE

This is the first version of the Welsh Education Partnership ("**WEP**") Strategic Partnering Delivery Model standard form of WEPCo Shareholders' Agreement, the intention of which is to minimise the time and costs of dealing with legal issues relating to the WEP Strategic Partnering Delivery Model.

Users of this standard form should be aware of the following points:

1. This is the Template WEPCo Shareholders' Agreement (the "**Template WEPCo Shareholders' Agreement**") as referred to in and set out in Section 3 of Schedule 7 (*Template Project Agreement*) of the Strategic Partnering Agreement ("**SPA**"). Under the terms of the SPA, the parties are obliged to use this Template WEPCo Shareholders' Agreement in conjunction with the SPA, subject to the amendments described below.
2. All footnotes (and optional drafting) should be used/deleted as appropriate and in accordance with the guidance contained therein. It should be noted other derogations to the Template WEPCo Shareholders' Agreement are strongly discouraged and it is expected Welsh Government approval will be strictly limited to changes that represent value for money and are required for project specific reasons, or to reflect changing Welsh Government guidance or demonstrable changing market circumstances.
3. Clause and paragraph numbering should be preserved through the use of lettered additions and "not used" deletions. Automatic numbering and hyperlinked cross references should be maintained.
4. All parties are reminded that the WEP Strategic Partnering Delivery Model is a true partnering arrangement and the value of further debate over insubstantial issues should be considered in this light.
5. The Template WEPCo Shareholders' Agreement is not a replacement for independent, specialist advice and the Shareholders must ensure that they have taken appropriate legal, financial and technical advice before using it.
6. Should you have any questions on the draft you are asked to contact MIMEducation@gov.wales

DATED

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[PRIVATE SECTOR DELIVERY PARTNER] (1)

[WGCO LIMITED] (2)

[WEPCO/COMPANY] (3)

**WEPCO SHAREHOLDERS'
AGREEMENT RELATING TO
THE WEP STRATEGIC
PARTNERING DELIVERY
MODEL**

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WEP STRATEGIC PARTNERING DELIVERY MODEL TEMPLATE WEP CO SHAREHOLDERS' AGREEMENT

THIS AGREEMENT is made on

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Among:

- (1) [Private Sector Delivery Partner]¹ (Company No. ◆) whose registered office is at ◆ (PSDP);
- (2) [WGCo Limited]² (Company No. ◆) whose registered office is at ◆ (WGCo); and
- (3) [Name of WEP Co/Company]³ (Company No. ◆) whose registered office is at ◆ (Company).

Background:

- (A) Pursuant to this Agreement the PSDP and WGCo have agreed to subscribe for shares in the Company [and to advance monies to the Company (as debt)] and, on completion of the subscriptions referred to in clause 4.1 (*Initial subscriptions of Shares*), and completion of advances referred to in clause 4.2 (*Shareholder Debt*) the Shares held by each of those parties [and the amount of Shareholder Debt advanced to the Company by each of those parties] will be as set out in the Data Sheet.
- (B) The Company is a limited liability company registered in [England and Wales].
- (C) The Company has been established for the sole purpose of providing (or procuring) the Services described in the Strategic Partnering Agreement.
- (D) The parties have agreed that the respective rights and obligations of Shareholders in the Company shall be governed by the provisions of this Agreement and that the Company Business shall be conducted in accordance with the provisions of this Agreement.

IT IS AGREED:

1. Definitions and interpretation

This Agreement shall be interpreted according to the provisions of Schedule 1 (*Definitions and Interpretation*).

¹ **Parties - PSDP.** For ease of reference, this standard form anticipates the "PSDP" being a single company. It is recognised that the "PSDP" may comprise a number of parties. In this case this standard form will require amendment.

² **Parties - WGCo.** The identity of this entity is to be confirmed. Beyond the initial funding commitment pursuant to clause 4 of this Agreement, as with the PSDP, there will not be any recourse against the shareholders.

³ **Company** - This document has been drafted on the premise that the Company is registered in England and Wales.

2. Commencement and duration

Conditions precedent

2.1 The obligations set out in clause 13.7 (*Confidentiality*) shall commence:

- (a) in relation to the Founder Shareholders and the Company, on the execution of this Agreement; and
- (b) in relation to any person becoming a Shareholder after the date of this Agreement (a "**New Shareholder**"), on the execution of the Deed of Adherence.

2.2 Save as set out in clause 2.1 (*Conditions precedent*), this Agreement shall come into effect:

- (a) in relation to Founder Shareholders and the Company, on the completion of the matters set out in clause 4.1 (*Initial subscriptions of Shares*); and
- (b) in relation to a New Shareholder, on the registration of the New Shareholder as a Shareholder in the Company.

Termination in relation to a party ceasing to hold Shares in the Company

2.3 Immediately following the earlier of the termination of this Agreement and it ceasing to hold any Shares in the Company, a party shall cease to have any rights or obligations under this Agreement save for:

- (a) its obligations under clause 5.8 and 5.9 (*Composition of the Company Board and the right to appoint Directors*);
- (b) its rights and obligations under clause 8.16 (*Provision of information to Shareholders and designated third parties*), clause 11 (*Disputes*) and clause 13 (*Miscellaneous*);
- (c) its liability for any breaches prior to it ceasing to hold any Shares;
- (d) any rights or cause of action that arose prior to it ceasing to hold any Shares; and
- (e) its rights to receive any payment in connection with the transfer of its Shares.

Termination

2.4 Save as provided in clause 2.3 (*Termination in relation to a party ceasing to hold Shares in the Company*) this Agreement shall continue in full force and effect until the earliest of the following dates:

- (a) the date on which the Company is wound up; or
- (b) the date on which all the Shareholders agree in writing to terminate this Agreement.

2.5 [If termination occurs the Company shall (if not already in liquidation) be placed into voluntary liquidation in accordance with clause 12 (*Winding Up*) and, after payment of liabilities, its assets shall be distributed to the Shareholders in the same proportions as the Shareholders' holdings of shares at the time of the determination.]

3. The business of the Company and details of the Company

3.1 The business of the Company is to provide (or procure) the Services.

3.2 Details of the Company following the share subscriptions referred to in clause 4 (*Funding of the Company and financial matters*) and board appointments referred to in clause 5 (*The Board of the Company*) will be as detailed in Schedule 2 (*Details of the Company*).

4. Funding of the Company and financial matters

Initial subscriptions of Shares

4.1 Immediately upon the execution of this Agreement by each of the parties, the parties shall take or procure to be taken the following steps either by themselves or at meetings of the Company Board or of the members of the Company to the extent not already taken:

- (a) the parties shall procure that the necessary Company Board and/or shareholder resolutions in respect of the Company are passed to adopt the Company Articles with immediate effect;
- (b) the following subscriptions shall be made in the capital of the Company:
 - (i) the PSDP shall subscribe for the number of B Shares as set out opposite its name in the Data Sheet; and
 - (ii) WCo⁴ shall subscribe for the number of A Shares as set out opposite its name in the Data Sheet,

following which the Company shall deliver the relevant definitive share certificates in relation to the allotment of such Shares and shall insert the names of the allottees in the register of members of the Company.

4.2 *[Shareholder Debt]*

[In respect of Shareholder Debt:

- (a) the PSDP undertakes to advance to the Company the amount of Shareholder Debt as set out opposite its name in the Data Sheet; and
- (b) WCo undertakes to advance to the Company the amount of Shareholder Debt as set out opposite its name in the Data Sheet,

following which the Company shall deliver any relevant certificates in relation to such Shareholder Debt and shall insert the names of the Shareholders in the relevant registers.]⁵

Further capital required for the Company

4.3

- (a) No Shareholder shall be required to subscribe for any further Shares or to provide any additional funding for the Company (or guarantees or indemnities on behalf of the Company or any other WEP Company) which, for the avoidance of doubt, shall include any additional funding by way of shareholder loans and/or required to increase the working capital requirements of any WEP Company or advancing or

⁴ **Clause 4.1(b)(ii)– Level of WCo investment.** The intended level of the WCo investment will be 20% of the issued share capital/debt.

⁵ It is envisaged this will be in the form of loan notes.

making available any Indebtedness to any WEP Company. For the avoidance of doubt, neither approval of:

- (i) the Business Plan or any change from time to time;
- (ii) a Stage 2 Submission;
- (iii) any increase in the Indebtedness of any WEP Company; or
- (iv) any other matter pursuant to this Agreement,

shall bind or commit any Shareholder to subscribe for Shares or to provide any additional funding for the Company (or any guarantee or indemnity on behalf of the Company or any other WEP Company) which, for the avoidance of doubt, shall include any additional funding by way of shareholder loans and/or required to increase the working capital requirements of any WEP Company or advancing or making available any Indebtedness to any WEP Company unless that Shareholder has expressly agreed in writing to do so.

- (b) The Company shall not allot any Shares to any person (other than a Shareholder) unless that person has first executed a Deed of Adherence in the form set out in Schedule 4 (*Deed of Adherence*).
- (c) If, in the opinion of the Company Board, the Company requires further funding, the Company Board shall, having consulted with the Shareholders in accordance with clauses 6.8 to 6.11 (*Shareholders' Forum*), determine how the Company should obtain such additional funding, whether by way of the allotment of Shares, by obtaining additional debt finance, or such other means as the Company Board may determine.
- (d) If the Company Board determines to allot further Shares, such Shares shall (except to the extent that all the Shareholders otherwise agree in writing) be allotted in accordance with the provisions of sub-clauses (e) to (i) below.
- (e) On the allotment of Shares, the number of Shares in each class offered for allotment by the Company shall be pro rata the number of Shares in each class then in issue.
- (f) If the Company Board determines to allot Shares in the Company, the Company Board shall, of the Shares to be allotted, first offer each class of Shares pro rata to those persons' existing holdings of Shares in that class ("**first offer**").
- (g) To the extent that any first offer is not accepted by some of the persons in the relevant category, the Company Board shall offer the remaining Shares in that class to the persons in that category who have accepted that first offer pro rata to their existing holdings of Shares ("**second offer**"). To the extent that any second offer is not accepted by some of the persons in any category, but is accepted by other persons in that category, the Company Board shall make such subsequent offers mutatis mutandis to those persons who have accepted the second offer and (if one subsequent offer fails to achieve the allotment of all the Shares in that class) any subsequent offers (if any), until all the Shares belonging to that class have been accepted by persons in that category or (failing acceptance) until there are no persons in that category willing to take further Shares.
- (h) To the extent that any first, second offer and any subsequent offers made pursuant to sub-clause (g) above (as applicable) fail to achieve the allotment of all the Shares in any class the Company Board shall offer the remaining Shares to the holder of the other class of shares, pro rata to their holdings following the first, second and any

subsequent offers (as applicable) ("**third offer**"). To the extent that any third offer is not accepted by some of the persons in that category, but is accepted by other persons in that category, the Company Board shall make such subsequent offers mutatis mutandis to those persons who have accepted the third offer and (if one subsequent offer fails to achieve the allotment of all the Shares) any subsequent offers (if any), until all the Shares have been accepted or (failing acceptance) until there are no persons in that category willing to take further Shares.

- (i) To the extent that the third offer and any subsequent offers in relation to any class of Shares are not accepted, the Company Board may offer the remaining Shares to any Suitable Third Party.

Offers to Allot

4.4 Each offer shall be made by the Company Board by notice in writing (an "**Offer to Allot**") and in the case of Shareholders shall be served at their address for service set out in clause 13.18 (*Notices*) and on New Shareholders at the address for service notified to the Company by such New Shareholder.

- (a) Each Offer to Allot shall:
 - (i) specify the total number of Shares which are on offer;
 - (ii) specify the number of Shares for which the recipient of the Offer to Allot may subscribe;
 - (iii) specify the price per Share and the date when the price shall be payable (which may be expressed by reference to the expiry of a specified period after the receipt of notices of acceptance in respect of all the Shares offered for allotment or (if later) expiry of the last of the Offers to Allot required to be issued);
 - (iv) specify the period during which the Offer to Allot will remain open for acceptance, which for a first offer shall be seven (7) Business Days after the date of service of the Offer to Allot and for all other offers five (5) Business Days after the date of service of the Offer to Allot; and
 - (v) contain a statement to the effect that the Offer to Allot shall not be deemed to be accepted until the Company Board has either received notices of acceptance in respect of all the Shares offered for allotment or, having received notices of acceptance in respect of less than all the Shares offered for allotment, has elected to issue such Shares notwithstanding that notices of acceptance have not been received in respect of all the Shares offered for allotment.
- (b) After the expiry of each Offer to Allot the Company Board shall as soon as practicable make such additional offers as may be necessary in accordance with this clause 4 (*Funding of the Company and financial matters*). For the avoidance of doubt, the Company Board shall not be under any obligation to make an offer to a Suitable Third Party under clause 4.3.
- (c) Any Shares issued pursuant to the procedures set out in this clause 4 shall be designated as the same class of Shares as the Shares already held by the relevant allottee. If the relevant allottee is not already a Shareholder the Shares shall, unless agreed otherwise by the Shareholders together holding a majority of the A Shares and the Shareholders together holding a majority of the B Shares, be designated as A

Shares where the allottee is a public sector or third sector body or as B Shares where the allottee is a private sector body.

- (d) Each of the Shareholders agrees to approve any resolution put to a general meeting of the Company to renew the authority of the Directors to allot Shares in the Company.

Additional Shareholder Debt

4.5 The provisions of clause 4.3 (*Further capital required for the Company*) and clause 4.4 (*Offers to Allot*) relating to any additional issue of Shares shall apply with the necessary changes to any further issue of/borrowing of Shareholder Debt.

4.6 Without prejudice to clause 4.3, but subject to clause 4.8, each Shareholder shall advance the amount of Shareholder Debt set out against its name in each Stage 1 Submission approved and submitted by the Company under the Strategic Partnering Agreement in accordance with any timetable for such subscription or advance set out in the Stage 1 Submission.

4.7 Notwithstanding clause 4.5 (*Additional Shareholder Debt*), where:

- (a) the Project to be implemented pursuant to a Stage 2 Submission requires subordinated debt to be provided to any WEP Company; and/or
- (b) there is any other proposal for Shareholder Debt to be provided to any WEP Company;

the Company shall ensure that each of the Shareholders is given the option to agree to:

- (c) advance monies (in aggregate equal to the required amount) as Shareholder Debt on a pari passu basis pro rata to their respective holding of Shares; or
- (d) have one or more of its Associates (or in the case of the B Shareholder, one or more of the B Shareholder Members or its or their respective Associates) provide such advances wholly or partially in their place.

Where a Shareholder (or any related party listed in clause 4.7(d) in place of that Shareholder) does not exercise its option under this clause 4.7 in respect of the full amount referred to in clause 4.7, the balance shall be offered, as an option on like terms to this clause 4.7, to the remaining Shareholders holding Shares of the same class first (pro rata to their holdings) and thereafter to the other Shareholders, on a basis consistent with the table at clause 4.3 (and on the basis that the sequence of offers, and the terms and conditions of such offers, shall reflect (so far as reasonably appropriate) the provisions of clause 4.3(f) to 4.3(i) and clause 4.4).

4.8 Where clause 4.7 applies, no Stage 2 Submission shall be made in respect of any Project which requires the provision of funds which would constitute Shareholder Debt unless:

- (a) the provisions of clause 4.7 have been complied with (except to the extent that all the Shareholders have otherwise agreed in writing); and
- (b) there is attached to such Stage 2 Submission a written agreement from all relevant Shareholders who are to advance Shareholder Debt in terms of the Stage 2 Submission to the making of such Stage 2 Submission including the requirement for such Shareholder Debt to be so provided by them (or their respective Associates or, in the case of the B Shareholder, one or more of the B Shareholder Members or its or their respective Associates).

5. The Board of the Company

Composition of the Company Board and the right to appoint Directors

- 5.1 Without prejudice to any right of the Shareholders to appoint Alternates under clause 5.4 and a Chairman under clause 5.11, the Shareholders shall be entitled in accordance with the Company Articles to nominate and appoint (and the Company shall procure that such persons are appointed by Company Board resolution) persons as Directors of the Company and to require the removal of such persons from office as set out below:
- (a) the Shareholder[s] holding the majority of the A Shares shall be entitled to nominate and appoint one Director (the “**A Director**”) and to remove the A Director from office; and
 - (b) the Shareholder[s] holding a majority of the B Shares shall be entitled to nominate and appoint [three] Directors (each a “**B Director**”) and to remove B Directors from office.
- 5.2 The persons nominated and appointed by the parties to act as initial Directors are:
- (a) the A Director: [*Insert name*]; and
 - (b) the B Directors: [*Insert names*].
- 5.3 Any Director who is not an employee of the Company shall be appointed upon the terms and conditions set out in Schedule 9 (*Letters of appointment of Nominated Directors*) or such other terms as the Company Board may agree from time to time.
- 5.4 The Shareholders nominating and appointing each of the Directors pursuant to clause 5.1 shall in addition be entitled, in accordance with the Company Articles, to nominate and appoint one (1) person as an Alternate and to replace such person(s) as an Alternate from time to time (provided such Alternate shall be registered as a Director at Companies House).
- 5.5 Subject to:
- (a) clauses 5.6, 5.7 and the Articles, the quorum for Company Board meetings shall comprise one A Director and at least [two] B Directors (or their respective Alternates). At Company Board meetings each Director shall have one vote; and
 - (b) the Articles, if a Shareholder has more than one (1) Director appointee under clause 5.1 (*Composition of the Company Board and the right to appoint Directors*) but not all of such appointees (or their Alternates) are present at the Board meeting then the other Director(s) present appointed by that Shareholder shall be entitled to vote each relevant absent Director's vote.
- 5.6 If within thirty (30) minutes of the time for the relevant meeting there is not a quorum of Directors in attendance (in accordance with clause 5.5) at a Company Board meeting called in accordance with this clause 5 (*The Board of the Company*), then (unless the relevant Director(s) have given written waiver(s) in relation to his/her attendance) such meeting shall be adjourned in accordance with article [◆] of the Company Articles and when reconvened, such adjourned meeting called in accordance with this clause 5 to discuss substantially the same business shall, subject to the provisions of article [◆] of the Company Articles, be deemed to be quorate notwithstanding the fact that the relevant number of Director appointed by holders of Shares of that class may not be present.

- 5.7 If the holders of any class of Share fail to appoint the number of Directors it is required to appoint to satisfy the applicable quorum requirements under clause 5.5, then, if a Company Board meeting is called in accordance with this clause 5 and notice of the meeting is given to each of the holders of Shares of that class as if they were Directors, the meeting shall be deemed to be quorate notwithstanding the fact that the relevant number of Director(s) appointed by holders of Shares of that class may not be present.
- 5.8 If the holders of any class of Shares elect to remove any person nominated by them as a Director (the "**Outgoing Director**") then:
- (a) if the Outgoing Director is an employee and/or officer of any Shareholder, that Shareholder shall procure that the Outgoing Director vacates office without any claim against the Company for loss of office or otherwise and the Shareholder shall indemnify the Company against all losses, liabilities and costs which the Company may incur arising out of, or in connection with, any claim by the Outgoing Director for wrongful, unfair or constructive dismissal or redundancy or other loss arising out of the Outgoing Director's removal or loss of office; and
 - (b) if the Outgoing Director is not an employee and/or officer of any Shareholder, the holders of that class of Shares shall procure that the Outgoing Director vacates office without any claim against the Company for loss of office or otherwise and such holders of Shares shall indemnify the Company against all losses, liabilities and costs which the Company may incur arising out of, or in connection with, any claim by the Outgoing Director for wrongful, unfair or constructive dismissal or redundancy or other loss arising out of such Outgoing Director's removal or loss of office.
- 5.9 If any Shareholder (an "**Outgoing Shareholder**") ceases to hold Shares in the Company and:
- (a) the Outgoing Shareholder is the sole holder of the class of Shares which the Outgoing Shareholder holds and any Director appointed by virtue of the Outgoing Shareholder's holding of such Shares is an employee and/or officer of the Outgoing Shareholder or has been nominated as a Director by the Outgoing Shareholder pursuant to clause 5.1; or
 - (b) the Outgoing Shareholder is not the sole holder of the class of Shares which the Outgoing Shareholder holds but any Director appointed by the holders of such class of Shares is an employee and/or officer of the Outgoing Shareholder, or has been appointed as a Director pursuant to clause 5.1 by the Outgoing Shareholder as a holder of a majority of the relevant class of Shares,
- the Outgoing Shareholder shall procure that any such Director vacates office without any claim against the Company for loss of office or otherwise and the Outgoing Shareholder shall indemnify the Company against all losses, liabilities and costs which the Company may incur arising out of, or in connection with, any claim by such Director for wrongful, unfair or constructive dismissal or redundancy or other loss arising out of such Director's removal or loss of office.
- 5.10 Where a Director exercises or fails to exercise his voting rights in contravention of this Agreement, the Shareholders nominating that Director shall remove that Director from office and the Shareholders shall co-operate with each other as appropriate to revise and rectify the consequences of that Director's actions or omissions. In the event of such removal the provisions of clause 5.8 shall apply.

5.11

- (a) If the Shareholders unanimously agree to appoint an independent non-executive Chairman then the Chairman shall be appointed either on an annual basis or on such occasions as the Shareholders (acting in their absolute discretion) may unanimously agree, and the period of appointment shall be for such time as the Shareholders may unanimously agree (acting in their absolute discretion) from time to time. The Chairman appointed shall be a Director and his/her appointment shall be in addition to the appointments of Directors referred to in clause 5.2 (*Composition of the Company Board and the right to appoint Directors*). If a Chairman is unable to attend any meeting of the Company Board or of the Shareholders of the Company the Directors in attendance shall appoint one (1) of their number as the chair for that meeting to act in his/her place. An independent non-executive Chairman appointed under this sub-clause (a) shall not have a vote at either Company Board or Shareholder meetings.
- (b) If the Shareholders do not agree unanimously to appoint an independent non-executive Chairman under sub-clause (a) within one (1) month of the date of this Agreement then the Chairman shall be one (1) of the Directors appointed in accordance with clause 5.1 (*Composition of the Company Board and the right to appoint Directors*) who shall act as Chairman for six (6) months and thereafter the role of Chairman shall rotate every six (6) months between a Director appointee of each class of Shareholder by each class of Shareholder drawing lots, provided that such appointee shall not hold the role of Chairman for more than six (6) months in any twelve (12) month period. A Director appointed as Chairman under this sub-clause (b) shall not have a second vote by reason of his/her appointment as Chairman.

5.12 Resolutions of the Company Board shall be determined by a simple majority of votes cast for or against each resolution in accordance with this Agreement.

5.13 Unless otherwise agreed by all of the Directors, not less than ten (10) Business Days' notice (or such other period of notice as may be agreed from time to time by all of the Directors) of each meeting of the Company Board specifying the date, time and place of the meeting shall be given to all Directors at the relevant time. All meetings of the Shareholders and of the Company Board shall take place at such location as the Company Board shall agree and the Shareholders shall use all reasonable endeavours to procure that their respective Directors attend each such meeting and to procure that a quorum (in accordance with the provisions contained in this clause 5 and in the Company Articles) is present at each such meeting of which due notice has been given.

5.14 Unless otherwise agreed by the Company Board:

- (a) meetings of the Company Board shall be held not less than [quarterly] on such dates as they may agree (and failing such agreement on such day as the Chairman shall decide);
- (b) a telephone conference call or video conference or a combination of the same, at which all participants are able to speak to and hear each of the other participants and at which for all times at that meeting a quorum of the Directors is able to so participate, shall be valid as a meeting of the Company Board;
- (c) a resolution in writing signed by all the Directors entitled to receive notice of a Company Board meeting and vote at that meeting shall be as valid and effectual as if it had been passed at a meeting of the Company Board duly convened and held; and

- (d) any Director shall by notice to the Company and each other Director be entitled to convene a meeting of the Company Board on not less than ten (10) Business Days' notice.
- 5.15 Unless otherwise agreed by all of the Directors, all papers for meetings of the Company Board will be sent to all Directors not less than five (5) Business Days prior to the relevant meeting and, unless otherwise agreed by all of the Directors, draft minutes of meetings of the Company Board will be sent to each Director as soon as practicable after the holding of the relevant meeting.
- 5.16 [Notwithstanding any other provisions of this Agreement or of the Company Articles, if a Shareholder (the "**Relevant Shareholder**") is in material breach of its obligations under this Agreement or the Articles the Director(s) appointed by it shall be disenfranchised from voting at Company Board meetings unless and until that breach is remedied and no approval shall be required of the Relevant Shareholder's Directors for any Reserved Matter Board Approval matters. If there is a dispute as to whether a Relevant Shareholder is in material breach of its obligations under this Agreement then, pending determination, the Relevant Shareholder shall be deemed to be in material breach if each other class of Shareholders (excluding the Relevant Shareholder) each confirm in writing to the Relevant Shareholder that they consider the Relevant Shareholder to be in material breach setting out the basis of that breach, however the Relevant Shareholder may then refer the question of whether it is in material breach to the dispute resolution procedure in clause 11 (*Disputes*).]

Director remuneration

- 5.17 The Company shall pay Director remuneration as set out in clause 5.18 (*Director remuneration*). Any increase in any such remuneration other than in accordance with clause 5.18 (*Director remuneration*) is a Reserved Matter Board Approval.
- 5.18 The role of Director of the Company shall attract remuneration of £[◆]⁶ per annum (Index Linked). Such fee shall be due to the relevant Director, pro rata, monthly in arrears, from the date of his/her appointment and is payable within thirty (30) days of receipt of an invoice by the Company in respect of such fee.
- 5.19 In addition to the remuneration set out at clause 5.18 (*Director remuneration*), the Directors may be paid reasonable travelling and other expenses properly incurred by them in connection with their attendance at meetings of the Company Board, general meetings, meetings of committees of the Company Board or otherwise in connection with the carrying out of their duties.

Director's power to authorise conflict situations

- 5.20 Provided that a Director has disclosed any interest he/she may have in accordance with the Companies Act 2006, and any conflict or potential conflict has been authorised under the provisions of this clause 5 (*The Board of the Company*), then that Director may vote at a meeting of the Company Board or of a committee of Directors on a resolution or participate in any unanimous decision concerning any matter in which he/she is interested, and (whether or not he/she votes or participates) he/she may be counted in the quorum when that resolution or matter is considered.

⁶ **Clause 5.17 - Director remuneration.** Note that agreement is required on the initial level Director remuneration. It will be set at bid stage and this will be required to be in line with corporate good practice. In respect of travel expenses this is expected to be standard class for train travel etc.

- 5.21 A Director shall be entitled to abstain from voting or to absent himself/herself from all or any part of any meeting in relation to any matter where he/she considers that to vote for or against a matter may put him/her in breach of his/her duties to the Company (whether at Law or by reference to any code of conduct, good governance procedures or otherwise) and if he/she so abstains or absents himself/herself then he/she shall not be in breach of his/her duties as a Director under sections 172 to 174 of the Companies Act 2006 in relation to the matter in question.
- 5.22 Any Director shall be entitled from time to time to disclose to the Shareholder responsible for his/her appointment such information concerning the business and affairs of the Company as he/she shall at his/her discretion see fit.
- 5.23 A Director who to his/her knowledge is in any way, whether directly or indirectly, interested in a transaction or arrangement or proposed transaction or arrangement with the Company shall declare the nature of his/her interest at a meeting of the Directors in accordance with the Companies Act 2006.
- 5.24 Subject to clause 6.2(*Reserved Matters*), for the purposes of section 175 of the Companies Act 2006, the Directors shall have the power to authorise, on such terms (including as regards duration and revocation) and subject to such limits or conditions (if any) as they may determine (a "**Conflict Authorisation**"), any matter proposed to them which would, or might, if not so authorised, constitute or give rise to a situation in which a Director (a "**Relevant Director**") has, or can have, a direct or indirect interest which conflicts, or possibly may conflict, with the interests of the Company (a "**Conflict Situation**"). Any Conflict Authorisation shall extend to any actual or possible conflict of interest which may reasonably be expected to arise out of the Conflict Situation so authorised.
- 5.25 Unless otherwise agreed between the Shareholders in writing and notwithstanding clauses 5.5 to 5.7), the quorum for any meeting (or part of a meeting) of the Company Board whilst it is considering the grant, alteration or revocation of a Conflict Authorisation shall be at least one (1) Director for each class of Shareholder provided that a Relevant Director shall not be counted in the quorum for such meeting.
- 5.26 Where Directors give a Conflict Authorisation:
- (a) the terms of the Conflict Authorisation shall be recorded in writing (but the authorisation shall be effective whether or not the terms are so recorded);
 - (b) the Directors may revoke or vary such authorisation at any time but this will not affect anything done by the Relevant Director prior to such revocation or variation in accordance with the terms of such authorisation; and
 - (c) the Relevant Director shall be obliged to act in accordance with any terms, limits or conditions to which such Conflict Authorisation is made subject.
- 5.27 Any terms to which a Conflict Authorisation is made subject ("**Conflict Authorisation Terms**") may include (without limitation to clause 5.24 (*Director's power to authorise conflict situations*)) provision that:
- (a) where the Relevant Director obtains (other than in his/her capacity as a Director of the Company or as its employee or agent or, if the Directors so decide, in any other capacity that would otherwise oblige him/her to disclose it to the Company) information that is confidential to a third party, he/she will not be obliged to disclose it to the Company or to use it directly or indirectly for the benefit of the Company or in performing his/her duties as a Director of the Company in circumstances where to do so would amount to a breach of a duty of confidence owed to that third party;

- (b) the Relevant Director may (but shall be under no obligation to) absent himself/herself from the discussion of, and/or the making of decisions relating to, the relevant matter (whether at any meeting of the Company Board or otherwise) and be excused from reviewing documents and information prepared by or for the Company Board to the extent that they relate to that matter; and
- (c) the Relevant Director be excluded from the receipt of documents and information, the participation in discussion and/or the making of decisions (whether at Directors' meetings or otherwise) related to the relevant matter,

and anything done (or omitted to be done) by the Relevant Director in accordance with any such provision (or otherwise in accordance with any Conflict Authorisation Terms given under this clause 5.27 (*Director's power to authorise conflict situations*)) will not constitute a breach by him of his/her duties under sections 172 to 174 of the Companies Act 2006.

5.28 Subject to this clause 5.28 and clause 6.2 (*Reserved Matters*) but without prejudice to clause 5.24 and 5.25 (*Director's power to authorise conflict situations*) (inclusive), authorisation is given by the Shareholders for the time being on the terms of this Agreement to each Director in respect of any Conflict Situation that exists as at the date of this Agreement or that subsequently arises where (in either case):

- (a) the Director is an employee or director of, or shareholder or member with a [controlling/substantial] interest in, a counterparty to a Project Document with any [WEP Company or Project Service Provider] ("**Counterparty**"); or
- (b) the Director has been appointed as a director of the Company on the nomination of the Counterparty; or
- (c) the Director is an employee, director, appointee of, or member with a [controlling/substantial] interest in, a body (i) which holds a [controlling/substantial] interest in the Counterparty; or (ii) in which the Counterparty has a [controlling/substantial] interest; or (iii) which is an Associate of the Counterparty,

and on the basis that a "**substantial interest**" shall be taken to be an interest which confers an entitlement to [ten per cent (10%)]⁷ or more of the voting rights at general meetings of the relevant body or [ten per cent (10%)] or more of the distributable profits of the relevant body ("**Project Document Conflict Authorisation**").

5.29 The Conflict Authorisation Terms applicable to the Project Document Conflict Authorisation ("**Project Document Conflict Authorisation Terms**") are automatically set by this clause 5.29 (*Director's power to authorise conflict situations*) so that the Director concerned:

- (a) is not obliged to disclose to the Company information that is confidential to a third party obtained by him/her (other than in his/her capacity as a Director of the Company or as its employee or agent or, if the Directors so decide, in any other capacity that would otherwise oblige him/her to disclose it to the Company) in any situation to which the Project Document Conflict Authorisation applies, nor to use any such information directly or indirectly for the benefit of the Company or in performing his/her duties as a Director of the Company, in circumstances where to do so would amount to a breach of a duty of confidence owed to that third party; or
- (b) may (but shall be under no obligation to):

⁷ **Clause 5.28 - Conflicts.** To be considered on a project by project basis of the proposed investment structure.

- (i) absent himself/herself from the discussions of, and/or the making of decisions; and/or
 - (ii) make arrangements not to receive documents and information,
- relating to the Conflict Situation concerned,

and the Company will not treat anything done (or omitted to be done) by the Director concerned in accordance with the Project Document Conflict Authorisation Terms as a breach by him of his/her duties under sections 172 to 174 of the Companies Act 2006.

6. Management of Company affairs

Management of the Businesses

- 6.1 The parties shall exercise all rights and powers available to them in relation to the Company to procure that (in so far as they are able to do so) at all times during the term of this Agreement:
- (a) the business of the Company shall consist exclusively of the Company Business;
 - (b) with the exception of those matters requiring Shareholder or Board approval pursuant to clause 6.2 (*Reserved Matters*), all the business of the Company, other than routine day-to-day business, shall be undertaken and transacted by the Directors;
 - (c) no payment will be made by the Company and no cheque or payment instruction of the Company shall be signed other than in accordance with the mandates (general or specific) and procedures authorised by the Company Board from time to time;
 - (d) the Company will, if it requires any approval, consent or licence for the carrying on of its business in the places and in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect;
 - (e) the Company shall both put in place and maintain appropriate procedures and training to comply with the requirements of the Bribery Act 2010;
 - (f) the Company will conduct its Business and affairs in a proper and efficient manner and for its own benefit and in accordance with the Business Plan; and
 - (g) the Company shall not carry out any activity which would or could render the holding of Shares by any Founder Shareholder unlawful provided that where a proposed change of Law would render such shareholding unlawful such Founder Shareholder will use its reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares and, if it is unable to do so the relevant Founder Shareholder will notify the other Shareholders who shall convene a joint meeting of the Company Board and the SPB to take place as soon as is practicable after such notice. The purpose of such meeting is to discuss and, if possible, agree amendments to this Agreement which do not prejudice the interests of the Shareholders or the Company but which allow the relevant Founder Shareholder to continue to participate in the Company as a Shareholder following the proposed change of Law. If following the meeting of the Company Board and the SPB a solution has not been agreed which allows the relevant Founder Shareholder to continue lawfully to participate in the Company as a Shareholder following the proposed change of Law, the relevant Founder Shareholder shall be deemed to have served a Deemed Transfer Notice under the provisions of the Company Articles with

effect from the date no later than [six (6)] months before the coming into force of the relevant proposed change of Law.

Reserved Matters

- 6.2 Subject to clause 6.5 (*Shareholders' and Company undertakings*), each of the parties hereby undertakes to the other to procure that the Reserved Matters listed in Schedule 8 (*Reserved Matters*) shall not be carried out:
- (a) in the case of those matters ticked in the second column ("Shareholder") without the prior written approval of each Material Shareholder; or
 - (b) in the case of those Reserved Matter Board Approval matters ticked in the third column (entitled "Board") without the prior written approval of [a Director appointed by each of the Material Shareholders] [all of the Directors who have been appointed by the Material Shareholders],

and each of the Shareholders shall use their respective rights and powers to procure, so far as they are each able, that no such Reserved Matter is carried out unless the required approval has been given.

- 6.3 Not used

Manner of giving Shareholder approval⁸

- 6.4

- (a) Subject to sub-clause (b) and to sub-clause (c) of this clause 6.4 (*Manner of giving Shareholder approval*), the written approvals required from Shareholders referred to in clause 6.2(*Reserved Matters*) may be given and signed for and on behalf of a Material Shareholder by a Director nominated by it under clause 5.1 (*Composition of the Company Board and the right to appoint Directors*).
- (b) Notwithstanding the provisions of clause 5 (*The Board of the Company*), if at a Company Board meeting (the "**Original Meeting**"), a matter arises for resolution which a Director reasonably considers gives rise to a conflict of interest between his/her duty to his/her appointor/employer and his/her duty as a Director to promote the success of the Company he/she shall, upon declaring such conflict, be entitled to abstain from casting his/her vote and to refer the relevant matter back to the relevant class of Shareholder whose decision on the resolution shall be substituted for the decision of the abstaining Director PROVIDED THAT (except in the case of a matter which is Reserved Matter Board Approval matter) such decision is notified to the company secretary of the Company in writing and is received by him/her within five (5) Business Days of the date of the Original Meeting at which the Relevant Director notified his/her intention to make such referral. If no decision is received from the Shareholder within such period, the requisite Company Board approval shall be capable of being given by one (1) Director appointed by each of the other classes of

⁸ **Clause 6.4 – Reserved Matters approval/flexibility.** This clause has been drafted on the basis that, in the normal course, Reserved Matters would be dealt with by the relevant Company Board appointees giving approval or otherwise (as the case may be) under clause 6.4(a). However, in terms of director's duties, sub-clause (b) addresses conflict of interest situations where the Company Board appointee is conflicted and where the matter can then be referred to the relevant Shareholder for approval (or otherwise), thereby removing the relevant director from having any obligation to vote for or against the relevant matter. Finally sub-clause 6.4(c) allows a Shareholder to opt in and out of these arrangements should it wish to do so.

Shareholders (the "**Other Directors**") and shall be so given if at the Original Meeting the Other Directors resolved to pass the resolution in question.

- (c) The Shareholders of a majority of each class of Shares may opt out of the mechanism in sub-clause (a) and sub-clause (b) by giving notice under this sub-clause (c) to the other parties. The effect of the notice shall be that, for any matter requiring approval by that class of Shareholder, that approval will only then be deemed to have been given when that class of Shareholder has given its specific approval in writing to that matter. A class of Shareholder may opt back in to the mechanism in sub-clause (a) and sub-clause (b) by notice in writing to the other parties under this sub-clause (c).
- (d) Notwithstanding the provisions of clause 5 (*The Board of the Company*), if a Director considers he/she has a conflict of interest between his/her duty to his/her appointor/employer and his/her duty as a Director to promote the success of the Company in relation to any matter other than (i) Claims (where clause 6.7 (*[Step-aside provisions]*) applies); and (ii) the decision to issue a Provisional Transfer Notice (where clause 10.6 (*Tax compliance*) applies); then he/she may refer the matter to his/her appointor for approval or otherwise and, if given in writing, the Shareholder approval shall be valid in place of the Director approval.

Shareholders' and Company undertakings

- 6.5 Each Shareholder undertakes to each of the other Shareholders that, in its capacity as a Shareholder, it will:
 - (a) act in a manner that is consistent with and shall exercise all voting rights and other powers of control available to it in relation to the Company so as to procure (insofar as it is able by the exercise of such rights and powers) that the Company complies with the provisions of the Project Documents; and
 - (b) generally act in a manner that will promote the Business and the best interests of the Company and act at all times in good faith towards the other Shareholders.
- 6.6 Without prejudice to the provisions of clause 6.4 (*Manner of giving Shareholder approval*), the Company and the PSDP undertake to the other parties hereto to use their respective reasonable endeavours to enforce the terms of the Supply Chain Agreements.

[Step-aside provisions]⁹

- 6.7 Notwithstanding any provision to the contrary in this Agreement or the Company Articles:
 - (a) If the WCo Director(s) (the "**Independent Director(s)**") so decide it is reasonable to conclude that the PSDP or any Associate of the PSDP will issue Proceedings in respect of any Claim against the Company:
 - (i) the Independent Director(s) shall be entitled to defend such Claim in the name and at the expense of the Company;
 - (ii) each of the Directors appointed by the PSDP ("**PSDP Directors**") shall not be entitled to (and the PSDP shall procure that each of the PSDP Directors shall not) make (or participate in making) any decisions, attend or vote at

⁹ **Clause 6.7- Step aside provisions.** Drafting assumes a single PSDP and may be amended where there are two (2) distinct sponsor entities and conflict of one would not necessarily result in a conflict situation for the other.

- meetings of the Company Board or otherwise take any action on behalf of the Company in respect of the defence by the Company of such Claim nor shall they be entitled to any Company Board papers or other papers or information in relation to such Claim; and
- (iii) the quorum at any Company Board meeting convened to consider any such Claim shall be one (1) Independent Director.
- (b) If the A Shareholder or any Associate of the A Shareholder asserts that the Company has any Claim against the PSDP and/or an Associate of the PSDP:
- (i) the Independent Director shall be entitled to determine if and when to pursue such Claim in the name and at the expense of the Company by the issue of Proceedings by the Company against the PSDP and/or Associate of the PSDP;
 - (ii) each of the PSDP Directors shall not be entitled to any Company Board papers or other papers or information in relation to such Claim nor shall they be entitled to (and the PSDP shall procure that each of the PSDP Directors shall not) make (or participate in making) any decisions, attend or vote at meetings of the Company Board or otherwise take any action on behalf of the Company in respect of:
 - (A) any decision pursuant to sub-clause (b)(i) to issue Proceedings in respect of a Claim; and/or
 - (B) once Proceedings have been issued in respect of a Claim, the pursuance of that Claim by the Company; and
 - (iii) the quorum at any Company Board meeting convened in relation to any consideration of making a Claim (sub-clause (b)(i)) and after the issue of Proceedings in relation to the relevant Claim shall be the Independent Director appointed by the A Shareholders.
- (c) For the purposes of this clause 6.7 (*Step-aside provisions*), "**Claim**" shall mean a claim of any nature, whether for breach of contract, in tort, breach of statutory duty or otherwise.
- (d) ¹⁰The provisions of sub-clauses (a) to (c) shall apply, if a simple majority of Directors (other than the WCo Director(s)) so decide, with the necessary changes having been made:
- (i) in the case of sub-clause (a), if it is reasonable to conclude that WCo will issue Proceedings in respect of a Claim against the Company as if references to the PSDP are references to WCo and references to the PSDP Directors are references to the WCo Director(s); or
 - (ii) in the case of sub-clause (b), if a Claim against WCo is asserted by a B Shareholder or an Associate of a B Shareholder and/or if Proceedings are

¹⁰ **Clause 6.7 - Step-aside provisions.** Sub-clause (d) recognises the commercial context of there being proceedings between the Company and the relevant authority in allowing for the initiation and then conduct of any such proceedings to be with the Shareholders (excluding WCo) even though there is no legal reason/conflict which would otherwise preclude them from participating.

then issued by the Company against WCo as if references to the PSDP are references to WCo.^{11]}

Shareholders' Forum

- 6.8 In support of the Company's business objectives, the parties agree to establish a shareholders' forum ("**Shareholders' Forum**"). The Shareholders' Forum will be chaired by the Chairman and will consist of representatives from each of the Shareholders.
- 6.9 The Shareholders' Forum will meet [four (4)] times a year with the Company Board to review:
- (a) the effectiveness of the Company in fulfilling the objects;
 - (b) the past and future business activities of the Company;
 - (c) the performance by all parties of their respective obligations under this Agreement and the Strategic Partnering Agreement, having particular regard to the partnering principles contained in clause 2.3 of the Strategic Partnering Agreement; and
 - (d) the Directors' response to any queries previously raised by the Shareholders' Forum.
- 6.10 The Shareholders' Forum will send a report at least once per year to each of the parties to this Agreement and the Strategic Partnering Agreement. The first Shareholders' Forum meeting will be in the fourth quarter of calendar year 20[]¹². The Shareholders' Forum will have the option of meeting more frequently if required, subject to the consent of the Company Board. The Directors shall provide all information reasonably required for the Shareholders' Forum to conduct an effective review in accordance with clause 6.9.
- 6.11 The Shareholders' Forum will not have any executive authority over the Company, the purpose of the Shareholders' Forum being to allow the Shareholders to make representations to the Company Board and each other on the Company's and each other's performance in relation to this Agreement. However, the Shareholders shall each procure that the Directors shall carefully consider the conclusions of the Shareholders' Forum in formulating their plans for the Company.

7. Distributions

- 7.1 Subject to clause 6.2 (*Reserved Matters*) the parties shall procure (insofar as permitted by Law) that, subject to any restrictions imposed pursuant to the [Funding Agreements] and subject to the working capital and other financial requirements of the Company, the Company shall distribute all amounts which are lawfully available for distribution by the Company to the Shareholders by way of dividend on the Shares in the Company but only after payment of any interest and principal which is then due and payable, in order of priority, in relation to any Shareholder Debt by the Company.

¹¹ **Clause 6.7- Step-aside provisions.** If the Company is party to a contract with an Associate of another Shareholder, analogous provisions would be inserted with respect to Claims relating to that contract.

¹² Insert year.

8. Budgeting, Business Planning and financial matters

The Business Plan (including the Annual Budget)

8.1

- (a) The first Business Plan,¹³ relating to the Company Business in the first financial year following the date specified in the Data Sheet and each subsequent financial year through to the end of the fifth financial year of the Company, has been approved by the Shareholders and comprises Schedule 3 (*Agreed Form Business Plan*) to this Agreement ("**Business Plan**"). The Business Plan shall be reviewed by the Company Board at least every six (6) months and updated for each financial year in accordance with the provisions of sub-clause (b).
- (b) No earlier than three (3) months and no later than one (1) month before the end of each financial year of the Company, the Company will prepare and circulate to Shareholders a refreshed draft of the proposed Business Plan for the next five financial years, including capital expenditure and cash flow projections for the Company and its subsidiaries ("**Draft Business Plan**") for approval by the Shareholders. The Draft Business Plan (with such amendments as are agreed by the Shareholders to it) will become the Business Plan in place of the then current Business Plan upon the start of the financial year to which it relates or, if later, the date of its approval.

- 8.2 The Annual Budget for each financial year shall form part of the Business Plan. The Annual Budget shall be reviewed by the Company Board at least every three (3) months. From the end of the second financial year following the end of the Lock in Period the Annual Budget shall include relevant lifecycle costs and an implementation programme.

Working Capital

- 8.3 Each of the Working Capital Providers shall make the proportion of the Working Capital Facility to be provided by them in accordance with the terms of the Working Capital Agreement available to the Company in accordance with the provisions of the Working Capital Agreement and agree that (subject to the requirements of the Company Articles, this Agreement and the Working Capital Agreement) the Company shall be free to utilise the Working Capital Facility as the Directors see fit to fund the working capital requirements of the Company.
- 8.4 On or around the date falling six (6) months after the date of this Agreement and thereafter on or around each anniversary of the date of this Agreement, the Company Board shall meet to discuss the Working Capital Requirements of the Company and, on the basis of the discussions at that meeting, shall (within a reasonable period after the meeting) provide the Shareholders with recommendations on:
- (a) using any of the Working Capital Facility to the extent it has not been drawn down to meet the working capital requirements of the Company and/or has not been identified as being required to be drawn down to meet the working capital requirements of the Company in the current Business Plan;
 - (b) increasing or decreasing the Working Capital Limit; and/or

¹³ **Clause 8 – Business Plan.** The Business Plan will be a key part of the overall proposals to be put forward by the PSDP in terms of the financials, expected running costs and general details on the general operations of the Company and an agreed version appended to this Agreement.

- (c) repaying any or all sums drawn down under the Working Capital Facility.
- 8.5 Any decision to take any of the actions referred to in clauses 8.4(a) to 8.4(c) shall, subject to the Working Capital Agreement, require a recommendation of the Company Board and the prior written consent of:
 - (a) the Shareholders holding together a majority of the A Shares; and
 - (b) the Shareholders holding together a majority of the B Shares.
- 8.6 In the event and to the extent that any party or parties whose approval is required under clause 8.5 in respect of a decision under clauses 8.4(a) or 8.4(b) declines to give approval in relation to any particular use of the Working Capital Facility provided by it/them which is proposed under the relevant recommendation(s) issued by the Company Board in pursuance of clause 8.3, that party or parties may request the Company Board in writing to give consideration to some alternative use of that Working Capital Facility. Any such request shall be valid if issued by or on behalf of the holders of a majority of the Shares of the relevant class or classes.
- 8.7 Following receipt of a written request of the nature referred to in clause 8.6, the Company Board shall meet to discuss the request and the Shareholders shall procure that the Company Board use reasonable endeavours to accommodate the request, subject to the Company Board being satisfied that the implementation of that request would be in the interests of the Company.
- 8.8 Throughout the period prior to repayment in full of the Working Capital Facility, any payments by the Company during a given month (excluding for this purpose payments of a nature which would not be taken into account in determining Working Capital Requirements) which are funded to any extent by any part of the Working Capital Facility shall be deemed to be funded under the Working Capital Facility on a pro rata basis to sums drawn down from each of the Working Capital Providers.
- 8.9 Where sums are drawn down under the Working Capital Facility pursuant to the Working Capital Agreement the amounts received from the Working Capital Providers shall carry interest in accordance with paragraph 3.1 (*Interest*) of the Working Capital Agreement.
- 8.10 If a Working Capital Provider ceases to hold any Shares, then (subject to clause 8.11 and article [9.2(f)] of the Company Articles):
 - (a) the Company shall repay to that Working Capital Provider the amount of the Working Capital Facility advanced by that Working Capital Provider (to the extent not previously repaid);
 - (b) that Working Capital Provider shall cease to be a Working Capital Provider and the transferee of its shares shall be a Working Capital Provider in its place; and
 - (c) where the PSDP ceases to hold shares the Company shall release the relevant guarantor(s) from any future liability in relation to the guarantee referred to in clause 8.12, save in respect of antecedent breach.
- 8.11 The Company's obligation under clause 8.10 shall apply only where the transferee(s) of the relevant Shares undertake(s), in terms of the relevant Deed(s) of Adherence:
 - (a) to make available the same Working Capital Provider's Individual Commitment provided for in Schedule 10 (*Working Capital Agreement*) as those provided by the party which is ceasing to hold the Shares; and

- (b)
 - (i) (in the case of a transferee of A Shares only) to pay (on that date) to the Company an amount equal to all sums already advanced to the Company under the Working Capital Facility provided by the holders of A Shares (to the extent such sums are due to be repaid on the existing A Shareholder ceasing to hold Shares); or
 - (ii) (in the case of a transferee of B Shares only) to provide (on the date on which the transfer of the Shares is completed):
 - (A) a guarantee in accordance with the provisions of clause 8.12 (as read with clause 8.13); and
 - (B) payment (on that date) to the Company of an amount equal to all sums already advanced to the Company under the Working Capital Facility provided by the holders of B Shares (to the extent such sums are due to be repaid on the existing B Shareholder ceasing to hold Shares).

8.12 The PSDP shall, on or prior to the date of this Agreement procure a guarantee or guarantees in favour of the Company for an amount equal to their [Individual Commitment], in a form and from an entity or entities reasonably acceptable to the Company.

8.13 With reference to clause 8.12:

- (a) the guarantees shall be in favour of the Company to pay to the Company on demand the unpaid balance of every sum owing due or payable by the PSDP from time to time pursuant to clauses 8.3 to 8.11 (inclusive) of, and Schedule 10 (*Working Capital Agreement*) to, this Agreement (the "**Guaranteed Amount**") to the extent that the Guaranteed Amount remains unpaid and outstanding at any time after the last date of execution of this Agreement under and in accordance with the provisions of this Agreement, but on the basis that:
 - (i) the Company shall be required to notify the guarantors of the failure of the PSDP to make the payments due in accordance with clauses 8.3 to 8.11 (inclusive) and Schedule 10(*Working Capital Agreement*) to this Agreement;
 - (ii) a claim under the guarantee may only be made five Business Days from the issue of the notification referred to in clause 8.13(a)(i) above to pay the amount unpaid referred to in clause 8.13(a)(i) above;
 - (iii) the guarantors shall be jointly and severally liable for the amount unpaid referred to in clause 8.13(a)(i) above; and
- (b) none of the B Directors (or their Alternates) shall be entitled to (and the B Shareholders shall procure that each of the B Directors and their Alternates shall not) make (or participate in making) any decision relating to:
 - (i) the acceptability of:
 - (A) the form of guarantee referred to in that clause; or
 - (B) the entities issuing it; or
 - (ii) the enforcement of the guarantees by the Company,

and the quorum requirements at any meeting of the Company Board in respect of which any such decision is to be made shall, in respect of that decision, be taken to be satisfied if the A Director (or its respective Alternate) is present.

Financial records

8.14

- (a) The Shareholders shall use reasonable endeavours to procure that the Company shall keep proper books of account and make true and complete entries of all its dealings and transactions of and in relation to its Business.
- (b) The Company shall keep proper books of account and make true and complete entries of all its dealings and transactions of and in relation to its Business.

Provision of information to Shareholders and designated third parties

8.15

- (a) The Company shall supply each of the Shareholders with the Transparency Information as detailed in Part A of Schedule 7 (*Transparency Information and Commercially Sensitive Information*) relating to the Company with the relevant period set out therein.
- (b) Each Shareholder shall provide to each other Shareholder the information as detailed in Part B of Schedule 7 (*Transparency Information and Commercially Sensitive Information*) within the relevant period set out therein.
- (c) [Where WCo is a Shareholder, each of the Company and each other Shareholder will use its reasonable endeavours to assist WCo in its preparation of any report required by a government department from time to time, which relates in whole or in part to a Project.]
- (d) The Company shall, as soon as reasonably practicable, notify the Shareholders promptly of any litigation, arbitration or administration proceedings raised against it.

8.16 Notwithstanding the provisions of clause 13.7 (*Confidentiality*):

- (a) each Shareholder may (but only once the relevant Shareholder has made the intended Recipient aware of that Shareholder's obligations of confidentiality under this Agreement (and in the case of the intended Recipients in (v) and (vi)) below has obtained a written undertaking from that intended Recipient agreeing with that Shareholder and for the benefit of all other Shareholders and the Company, to comply with such obligations of confidentiality as though it were a party to this Agreement) disclose any information received from the Company or any Director, to:
 - (i) in the case of the PSDP, any holding company of the PSDP;
 - (ii) any Shareholder in it;
 - (iii) any director or other officer of, adviser to, trustee or manager of, or investor or prospective investor in its Shareholder's Group;
 - (iv) the Shareholder's investment adviser and any of its other professional advisers;

- (v) any member or prospective member of the Shareholder's Group;
 - (vi) potential purchasers of any of that Shareholder's interest in the Company; and
 - (vii) any person to whom it is required by Law or a regulatory authority or body or by the Project Documents to be disclosed.
- (b) where WGCo is a Shareholder, WGCo may disclose and use any Transparency Information in such manner and for such purposes as it may determine from time to time, including reports and reviews of the performance of MIM projects generally or specifically in respect of the Project and in relation to any audit, accounting or other review or scrutiny by any government or public body where WGCo considers it appropriate to make some or all of such information available; and
- (c) where WGCo is a Shareholder, the Company shall permit all records referred to in clause 8.14 (*Financial records*) and/or clause 8.15(a) to 8.15(d) (*Provision of information to Shareholders and designated third parties*) to be examined and copied from time to time by WGCo or by any person to whom WGCo notifies the Company that it wishes to have access to any such documents, records or information under sub-clause 8.16(b).

*Tax matters*¹⁴

8.17

- (a)
- (i) Each Shareholder shall use its reasonable endeavours to ensure that the Company is treated by all relevant authorities as being resident for taxation and other purposes in the United Kingdom¹⁵.
 - (ii) [other tax provisions to be agreed]
- (b) To the extent that any tax losses arise, the Shareholders shall agree (each acting reasonably) from time to time as the losses arise, how the losses shall be treated. The Shareholders agree, if so requested by a Shareholder, to discuss a mechanism for the obtaining of relief for a proportionate share of trading losses of each of the Shareholders and other amounts eligible for relief from corporation tax by virtue of group-relief provisions by the Company or a Shareholder and compensation in accordance with Law. Each Shareholder agrees that no such mechanism shall be approved by the Company without the approval of the other Shareholders (acting reasonably and having regard to ensuring that there is no adverse impact on the success of the Company).

¹⁴ **Clause 8.17 - tax matters.** The parties may wish to insert bespoke drafting in this clause, to regulate matters of importance to the Company and the Shareholders. The drafting may cover matters such as VAT grouping, transfer pricing, group payment arrangements, worldwide debt cap issues etc and, generally, organisational arrangements for the Company tax compliance and administration. Bidders are required to summarise the bespoke arrangements they propose when submitting bids.

¹⁵ **Clause 8.17–tax matters.** The taxation provisions have been drafted on the premise that the Company is tax resident in the United Kingdom.

9. Restrictions on share transfers

Restrictions on transfers of Shares in the Company

9.1

- (a) Except in relation to any transfer of Shares permitted by article [◆]¹⁶ [(*Transfer – Permitted Transfers*)], of the Company Articles, all transfers of Shares shall be subject to the rights of first refusal¹⁷ set out in the Company Articles.
- (b) Each party undertakes to transfer Shares only in accordance with this Agreement and the Company Articles and to procure that only transfers made in accordance with this Agreement and the Company Articles are registered.
- (c) Each Shareholder undertakes to comply with any restrictions on the transfer of Shares contained in the Project Documents.
- (d) [Other than a transfer which occurs as a result of clause 9.3, article [◆] or article [◆] (*Compulsory Transfers*) of the Company Articles, no Shares or any interest therein shall be transferred and the Directors shall not register any transfer of Shares unless a percentage of any Affected Shareholder Debt as is equal to the percentage of Shares which are being transferred (as compared with the total Shares held by the Transferor at the time) is also transferred by the transferor (or other holder of the Affected Shareholder Debt) to the transferee (or its Associate). Where the transferor holds tranches or forms of Affected Shareholder Debt to which differing terms apply, the transferor must transfer an equal percentage of the total amount of each tranche or form of Affected Shareholder Debt.]
- (e) No Shareholder shall sell or transfer any Shares to any person other than another Shareholder unless that person has first executed a Deed of Adherence in the form set out in Schedule 4 (*Deed of Adherence*). Each of the parties shall execute any such Deed of Adherence in respect of a transfer of Shares made in accordance with this Agreement and the Company Articles. The Company shall not register any transfer in accordance with this Agreement and the Company Articles unless the transferee (other than a Shareholder) has first executed a Deed of Adherence in the form set out in Schedule 4 (*Deed of Adherence*). No Shareholder (which, for the avoidance of doubt includes the WGCo) shall, except with the prior written consent of all the Shareholders:
 - (i) grant any option over any Shares (or any interest, whatsoever, legal or beneficial, in any Shares); or
 - (ii) enter into any agreement in respect of the votes attached to any Shares, provided that nothing in this sub-clause (e) shall restrict or prevent: the Company from granting a Security Interest over its Shares.
- (f) No Shareholder shall be entitled to give a Transfer Notice if it (or, if it is a company, any of its Associates) is at that time in material breach of this Agreement or in breach

¹⁶ **Clause (a)**

- **Restrictions on transfer of shares.** The Company Articles shall permit transfers within groups of companies, including specifically any member of the WGCo Group to another member of the WGCo Group. WGCo will carry out diligence on the Company Articles.

¹⁷ **Clause 9.1**

- **Permitted transfers.** The mechanism must be "first refusal" – i.e. a seller being able to sell to a third party at or above an "offer price" if the other shareholders have had the opportunity to buy at that price and have decided not to.

of any Project Document to which it is a party, save with the written consent of the Shareholders holding the majority in each class of A Shares and B Shares. Nothing in this sub-clause (f) shall prevent the service of a Transfer Notice which a Shareholder is required to give in accordance with the Company Articles or the giving of a Deemed Transfer Notice in accordance with the Company Articles.

- (g) The Company shall procure that each share certificate issued by it will carry the following statement:

"Any disposition, transfer, charge of or dealing in any other manner in the securities represented by this certificate is restricted by the Articles of Association of [Company] Limited and by a Shareholders' Agreement dated [♦] 20[♦] and made between [PSDP], [WGCo] and [Company] Limited".

- (h) A Shareholder may not transfer any Share to any person who is, at the time of transfer, a Restricted Person.
- (i) [No Shareholder shall restrict the transfer of Shares to the Finance Parties, or resist the registration of Shares on the enforcement by the Finance Parties of security, in either case validly undertaken in accordance with the Funding Agreements, and the Shareholders shall procure (as far as they are able) that the Company Board shall not decline the registration of such a transfer.]

9.2 Subject to the provisions of this clause 9 and the Company Articles:

- (a) a Shareholder other than the B Shareholder may transfer any Share to a Suitable Third Party; and
- (b) the B Shareholder may transfer all (but not some) of the B Shares to a Suitable Third Party.

Events of Default and deemed transfers

9.3 Subject to clause 9.8, notwithstanding the provisions of the Company Articles, the Shareholders agree that if any of the following events occur:

- (a) the occurrence of an Insolvency Event in respect of the B Shareholder or the B Shareholder commits a material breach of this Agreement which, if such breach is capable of remedy, the B Shareholder has failed to remedy within twenty (20) Business Days of written notice given to the B Shareholder by the Shareholders holding together a majority of the A Shares requiring the B Shareholder to remedy the same (or within such longer period as may be specified in such notice);
- (b) a Material Default is deemed to have occurred and no Default Termination Notice has been given pursuant to clause 23.12 of the Strategic Partnering Agreement within twenty (20) Business Days of the Material Default and such Material Default has not been remedied within twenty (20) Business Days of the expiry of such period;
- (c) there is a PSDP Change in Ownership during the Lock In Period without the consent of the Shareholders holding a majority of the A Shares which is not remedied within twenty (20) Business Days of the occurrence of such PSDP Change of Ownership;
- (d) the B Shareholder or a B Shareholder Member is a Restricted Person or an Associate of an Restricted Person and there has not been a transfer of the affected Shares to a Suitable Third Party in terms permitted by the Company Articles and this Agreement within twenty (20) Business Days of written notice given to the B Shareholder by the

Shareholders holding together a majority of the A Shares requiring the B Shareholder to remedy the same (or within such longer period as may be specified in such notice);

- (e) the occurrence of an Insolvency Event in respect of a B Shareholder Member which is not remedied (in accordance with the terms of clause 9.8) within twenty (20) Business Days of its occurrence;
- (f) a breach by the Company of clause 2.6.4(b) of the Working Capital Agreement which is not remedied within thirty (30) days of its occurrence; or
- (g) a failure by the PSDP to pay any amount required under the Working Capital Agreement, or procure payment pursuant to the guarantees referred to in clause 8.12 (*Working Capital*), within twenty (20) Business Days of the due date following the drawdown notice;

such event shall be a "**Transfer Event**" in respect of the B Shareholder for the purposes of article [◆] of the Company Articles.

- 9.4 Where a Deemed Transfer Notice is deemed given pursuant to article [◆] of the Company Articles (including pursuant to clause 9.3) in respect of B Shares, such Deemed Transfer Notice shall also be deemed to offer, by way of transfer, any outstanding B Shareholder Debt. Any person acquiring some or all of the B Shares pursuant to the provisions of this clause 9.4 and the Company Articles shall also have the right to (but shall not be required to) acquire a proportion of the B Shareholder Debt equal to the proportion that the B Shares being acquired represents to the total issued B Shares (and the B Shareholder shall transfer such B Shareholder Debt) in accordance with the terms of the relevant Shareholder Loan Agreement(s), this Agreement and the Company Articles. Where the outstanding B Shareholder Debt was advanced in tranches or forms to which differing terms apply, the right to acquire B Shareholder Debt shall be deemed to be a right to acquire an equal percentage of the total amount of each tranche or form of B Shareholder Debt.
- 9.5 This clause 9.5 is an additional arrangement as referred to in article [◆] of the Company Articles and applies where all or any of the Shares of the Defaulting Member are offered for sale pursuant to the provisions of clause 9.6 and clause 9.7 in which case the price to be paid for the Defaulting Member's Remaining Shares and any Defaulting Member's remaining B Shareholder Debt (which for the avoidance of doubt includes any remaining Affected Shareholder Debt) (together the "**Defaulting Member's Remaining B Shareholder Debt**") shall be as determined in accordance with clauses 9.6 and 9.7 and Schedule 5 (*Sale Agent*).
- 9.6 If on the expiry of the Offer Notice served in respect of a Deemed Transfer Notice relative to B Shares, the holders of the A Shares have not purchased all of the Defaulting Member's Shares then a notice (an "**Instruction to Sell Notice**") shall be deemed to have been served on the Defaulting Member requiring the Defaulting Member to sell all of its remaining Shares (the "**Defaulting Member's Remaining Shares**") and the Defaulting Member's Remaining B Shareholder Debt (if any) and the Defaulting Member and the other Shareholders shall jointly appoint a sale agent ("**Sale Agent**") who shall be instructed in accordance with Schedule 5 (*Sale Agent*) to find a purchaser for all (but not some only) of the Defaulting Member's Remaining Shares and/or the Defaulting Member's Remaining B Shareholder Debt (the Defaulting Member's Remaining Shares and the Defaulting Member's Remaining B Shareholder Debt together being the "**Investment**") at a price for such Shares and such Defaulting Member's Remaining B Shareholder Debt not less than the price at which such Shares and such Defaulting Member's Remaining B Shareholder Debt were offered to the holders of the A Shares pursuant to clauses 9.3 and 9.4 and article [◆] of the Company Articles.

- 9.7 If no Qualifying Bid is received from a Suitable Third Party in respect of all the Defaulting Member's Remaining Shares within the sixty (60) Business Day period referred to in Schedule 5 (*Sale Agent*) or the whole of the Defaulting Member's Remaining Shares have not been sold to a Suitable Third Party in accordance with and within the time periods set out in Schedule 5 (*Sale Agent*), then:
- (a) the holders of the A Shares shall be entitled by notice in writing to the Defaulting Member to elect to purchase the Defaulting Member's Remaining Shares whereupon the Defaulting Member shall forthwith transfer to the holders of the A Shares making the election pro rata to their holdings of Shares all (but not some only) of the Defaulting Member's Remaining Shares for an aggregate consideration (given that the market is deemed to have determined that the value of the Defaulting Member's Remaining Shares is nil) equal to the par value of the Defaulting Member's Remaining Shares; or
 - (b) the holders of the A Shares shall be entitled by notice in writing to the Defaulting Member to require that the Company be wound up in accordance with clause 12 (*Winding Up*) (in which case the Defaulting Member undertakes to the other Shareholders to vote in favour of any resolution(s) to wind up the Company).
- 9.8 The B Shareholder may propose, as part of any express rectification or remedy rights in relation to any potential Transfer Event in respect of the B Shareholder (a "**Potential Default**") and within the time period specified in relation to any such right to remedy the Potential Default, the replacement of a B Shareholder Member or the Associate of any B Shareholder Member (a "**Responsible Shareholder**") as a shareholder (direct or indirect) in the B Shareholder where the B Shareholder considers such Responsible Shareholder to be responsible for the Potential Default.
- 9.9 The A Shareholders shall consider any proposal made by the B Shareholder pursuant to clause 9.8 in good faith and, in the case of a Potential Default under clause 9.3(e) shall, and in all other cases may accept the proposal:
- (a) if they reasonably consider that the replacement would remedy the Potential Default; and/or
 - (b) if they consider (in their absolute discretion) that the effect of the replacement would be such as to allow the Company to operate in future in compliance with the requirements of this Agreement and the Strategic Partnering Agreement.
- 9.10 For the avoidance of doubt, where the Potential Default is a Material Default under the Strategic Partnering Agreement and the A Shareholders give written notice to the B Shareholder that they accept a proposal made by the B Shareholder under clause 9.8 in accordance with clause 9.9 and the replacement is effected then (unless otherwise agreed in writing between the A Shareholders and the B Shareholder) such replacement of the Responsible Shareholder shall have the effect (in relation to that Potential Default only or as may otherwise be agreed in writing between the A Shareholders and B Shareholder¹⁸) of deeming a reinstatement notice to have been given by the Participants pursuant to the Strategic Partnering Agreement.

¹⁸ The intention here in relation to "... or as may otherwise be agreed..." is that the removal of the Responsible Shareholder could be agreed as being a remedy on an absolute basis in relation to the Relevant Default or on a less absolute basis so that, for example, should the removal not effectively cure the default within an agreed time period, a Deemed Transfer Notice would still be deemed given.

Lock In Periods

9.11

- (a) **Shares in the Company.** Subject always to clause 9.1(h) (*Restrictions on transfers of Shares in the Company*), each Shareholder agrees that it shall not transfer or dispose of any interest in or over or right attaching to any of its Shares except by a transfer:
- (i) in the case of a B Shareholder, to a transferee at any time after the expiry of the Lock In Period (as defined in sub-clause (a)); and
 - (ii) in respect of all Shareholders, at any time to a transferee permitted in accordance with articles [◆] of the Company Articles,

9.12 but always subject to sub-clauses

(i) to (ii) above, otherwise in accordance with the provisions of the Company Articles and this clause 9 (*Restrictions on share transfers*).

- (a) For the purposes of this Agreement, **Lock In Period** means the period of [three (3)] years from and including the date of this Agreement.

9.13 Where, during the Lock In Period, the holder of any shares in the PSDP is an Associate of:

- (a) [*insert name of relevant company with respect to first Initial PSDP Shareholder and company number*¹⁹] and that holder ceases to be an Associate of [*insert name and company number*] it shall be a breach of clause 9.3(c) (*Events of Default and deemed transfers*) if the shares in the PSDP held by that holder are not within twenty (20) Business Days of that holder ceasing to be an Associate of [*insert relevant name and company number*], transferred to [*insert relevant name and company number*] or an Associate of [*insert relevant name and company number*];
- (b) [*repeat as necessary to capture consortium members within the PSDP*].

9.14 The PSDP shall inform the other parties as soon as reasonably practicable (and in any event within twenty (20) Business Days) of any PSDP Change in Ownership occurring.

9.15 The Company may, not more than twice in any calendar year, or at any time when a Material Default is outstanding, request that the PSDP inform it, as soon as reasonably practicable and in any event within twenty (20) Business Days of such request, of any PSDP Change in Ownership. The Company shall exercise the right referred to in this clause 9.15 where requested to do so by the holders of a majority of the A Shares.

9.16 For the purposes of:

- (a) clauses 9.3(c) and 9.3(d) (*Events of Default and deemed transfers*) and clauses 9.14 and 9.15, any change in the legal or beneficial ownership of any shares in any company that are listed on recognised investment exchanges (as defined in Section 285 of the Financial Services and Markets Act 2000);

¹⁹ For each consortium member, this clause should identify the appropriate company, LLP or partnership which was the subject of pre-qualification. The change of control provisions in clause 9.3 (*Events of Default and deemed transfers*) are designed to ensure that such company, LLP or partnership (or its subsidiary undertakings) retain their interest in the PSDP during the lock in period. By virtue of clause 9.16, transfers of ownership in the identified company, LLP or partnership would not however give rise to any breach of the provisions in clause 9.3.

- (b) clause 9.3(c) (*Events of Default and deemed transfers*), but subject always to clause 9.13, any transfer of shares in the PSDP by an Initial PSDP Shareholder to an Associate of such transferor or further transfers from such Associate to another Associate of such Initial PSDP Shareholder or to the Initial PSDP Shareholder; and
- (c) clause 9.3(c) (*Events of Default and deemed transfers*), any:
 - (i) transfer of shares or change in control over the exercise of voting rights conferred on those shares or the control over the right to appoint or remove directors in:
 - (A) [insert name of relevant company with respect to first Initial PSDP Shareholder and company number]; and/or
 - (B) [repeat as necessary to capture corporate consortium members within the PSDP]; and/or
 - (ii) [change in the members of or voting rights in [*identify name of any LLP with respect to second Initial PSDP Shareholder*]]²⁰,
 and/or their respective members,

shall be disregarded.

10. Warranties and undertakings

Warranties by WGCo

- 10.1 WGCo warrants and represents to each of the other parties at the date of this Agreement that:
- (a) it is duly incorporated under the laws of England and Wales;
 - (b) it has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Documents to which it is a party;
 - (c) each Project Document to which it is a party constitutes, or will when executed constitute, legal, binding and enforceable obligations on it;
 - (d) it has taken all necessary action to authorise the execution of and the performance of its obligations under the Project Documents to which it is a party (and in the case of a Project Document executed after the date of this Agreement it will take all necessary action to authorise the execution of such Project Document);
 - (e) no claim is being asserted and no Proceedings are presently in progress, or, to the best of its knowledge pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under those Project Documents to which it is a party;
 - (f) it is not subject to any contractual obligation, compliance with which will be likely to have a material adverse effect on its ability to perform its obligations under the Project Documents to which it is a party; and

²⁰ Delete where there is no relevant LLP within the Initial PSDP Shareholders. Where there is a partnership, appropriate drafting will require to be inserted.

- (g) no Proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge are threatened) for its winding-up or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, administrator or similar officer in relation to any of its assets or revenue.

Warranties by the PSDP and the Company

10.2 The PSDP and the Company each severally warrant and represent to each of the other parties at the date of this Agreement that:

- (a) it is duly incorporated under the laws of England and Wales²¹ and has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Documents to which it is a party;
- (b) each Project Document to which it is a party constitutes, or will when executed constitute legal, binding and enforceable obligations on it;
- (c) it has taken all necessary action to authorise the execution of and the performance of its obligations under the Project Documents to which it is a party (and in the case of a Project Document executed after the date of this Agreement it will take all necessary action to authorise the execution of such Project Document);
- (d) no claim is being asserted and no Proceedings are presently in progress or, to the best of its knowledge pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under those Project Documents to which it is a party;
- (e) it is not subject to any contractual obligation, compliance with which will be likely to have a material adverse effect on its ability to perform its obligations under the Project Documents to which it is a party;
- (f) no Proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for its winding-up or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, administrator or similar officer in relation to any of its assets or revenue; and
- (g) it has complied with and currently complies with all relevant anti-bribery and corruption laws applicable to its business and operations including (without limitation) the provisions of the Bribery Act 2010.

Warranties by the Company

10.3 The Company warrants and represents to each of the other Shareholders at the date of execution of this Agreement that the Company is a newly incorporated company and has not traded prior to the date of this Agreement.

Tax compliance

10.4 Each Shareholder (other than the A Shareholder) represents and warrants to each of the other parties that, as at the date of this Agreement, it has notified the Company in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

²¹ **Clause 10.2(a) - Warranties.** To be amended if any of the parties are not incorporated in England and Wales.

- 10.5 If at any time an Occasion of Tax Non-Compliance occurs in relation to a Shareholder, the Shareholder shall:
- (a) notify the Company in writing of such fact within five (5) Business Days of its occurrence; and
 - (b) promptly provide to the Company:
 - (i) details of the steps which the Shareholder is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Company may reasonably require.

- 10.6 If:
- (a) the representation and warranty given by a Shareholder pursuant to clause 10.4 (*Tax compliance*) is untrue; and/or
 - (b) the Shareholder commits a material breach of its obligation to notify the Company of any Occasion of Tax Non-Compliance as required by clause 10.5 (*Tax compliance*),

and, in either case, the Shareholder fails to provide details of proposed mitigating factors which, in the reasonable opinion of the Company Board, are acceptable, then the Company shall be entitled to give a notice to that Shareholder (a "**Provisional Transfer Notice**") and the provisions of clause 10.7 (*Provisional Transfer Notices*) shall then apply.

Provisional Transfer Notices

- 10.7 If a Shareholder receives a Provisional Transfer Notice:
- (a) it shall have ninety (90) days to effect the transfer of its Shares to a Suitable Third Party;
 - (b) in relation to any such transfer:
 - (i) the pre-emption and transfer provisions in this Agreement and the Company Articles shall apply;
 - (ii) if the Shares are transferred to a Suitable Third Party then the other Shareholders shall take (or procure) all steps reasonably requested of them by the transferring Shareholder to enable any such transfer to be effected and registered; and
 - (c) if the Shareholder has not effected the transfer of its Shares to a Suitable Third Party within the ninety (90) day period referred to (or such longer period as may be agreed by the Company) then the same shall constitute a material breach of this Shareholders' Agreement in respect of that Shareholder.

11. Disputes

- 11.1 If there is a disagreement or dispute arising between two (2) or more of the parties in connection with this Agreement (a "**Dispute**"), the parties shall use all reasonable endeavours to resolve the matter on an amicable basis. A matter or action requiring approval as a Reserved Matter not receiving the necessary approval shall not constitute a Dispute. If one (1) party serves formal written notice on one (1) or more of the others that a Dispute has

arisen and the parties are unable to resolve the Dispute within a period of twenty (20) Business Days from the service of such notice, then the Dispute shall be referred to the respective Chief Executives, Managing Directors or, in the case of WGCo, [◆] (as the case may be) of each of the parties who shall attempt to resolve the Dispute within the following twenty (20) Business Days (the "**Second Consideration Period**"). No recourse to arbitration or litigation by any party against any other under this Agreement shall take place unless and until such procedure has been followed.

- 11.2 If the Chief Executives or Managing Directors (as the case may be) of the parties are unable to resolve a Dispute within the Second Consideration Period, then a "**Deadlock**" shall be deemed to have arisen following the expiry of the Second Consideration Period or such earlier date on which the parties agree that Deadlock has arisen (the "**Deadlock Date**"). Any Deadlock shall be dealt with in accordance with clause 11.3 (*Disputes*).
- 11.3 If a Deadlock has arisen, then any party shall be entitled to refer the Dispute to a third party expert (the "**Expert**") who shall, unless otherwise agreed, be an independent expert with knowledge of and experience in matters relating to public private partnerships, [*project/sector relevant subject matter – defence, health, waste, education etc.*] and construction and development. The identity of the Expert shall be agreed between the parties within ten (10) Business Days of the Deadlock Date or, failing such agreement, shall be appointed by the President from time to time of the Institute of Chartered Accountants in England and Wales or any successor thereto and the fees and expenses of the Expert in making his/her determination shall be borne in such proportions as the Expert shall determine.
- 11.4 The parties shall co-operate with each other and with the Expert in an attempt to resolve the Dispute and Deadlock amicably. The decision of the Expert (appointed as set out above) shall not be binding unless the parties agree otherwise in advance of referring any Dispute to the Expert. Following the Expert's decision any party may, unless the parties have agreed that the Expert's decision shall be binding, issue legal proceedings in relation to the subject matter of the Dispute. Where the parties agree that the Expert's decision shall be binding, the decision of the Expert (appointed as set out above) as to the Dispute or Deadlock shall (except in the case of manifest error) be final and binding on all the parties for all purposes and (subject only to their fiduciary duties as Directors) the parties and their respective appointees on the Company Board shall execute all such documents and do and take all such action as may be necessary or reasonably desirable to give effect to and/or implement the said decision as promptly as reasonably practicable after the date of the same being so determined. For the purposes of this clause 11 (*Disputes*), any consent required from any party to implement the decision of the Expert made in accordance with the above provisions shall be deemed to have been given.

12. Winding Up

- 12.1 If the Shareholders pass a resolution pursuant to this Agreement or otherwise to wind up the Company by way of a members' voluntary winding-up they shall procure that the liquidator is a member of the Institute of Chartered Accountants in England and Wales acceptable to all the Shareholders and in default of agreement nominated at the request of any Shareholder by the President from time to time of the Institute of Chartered Accountants.
- 12.2 Except to the extent each party has contractual obligations to the contrary, the Shareholders shall prove in the winding-up of the Company to the maximum extent permitted by Law for all sums due or to fall due to them respectively from the Company and shall exercise all rights of set-off and generally do all such other acts and things as may be available to them in order to obtain the maximum receipts and recoveries.
- 12.3 To the extent that any or all of the Shareholders do not receive satisfaction in full in the winding-up of the Company of all sums due or to fall due to them the aggregate shortfall

between all sums due or to fall due to the Shareholders and all amounts actually recovered by the Shareholders from the Company or its liquidator (whether by direct payment or the exercise of any right of set-off or otherwise) shall be calculated and apportioned between the Shareholders in the same proportions as the Shareholders hold Shares at the time of the determination. The Shareholders shall make such contributions to each other as are necessary to procure that the Shareholders bear the aggregate amount of such shortfall in such proportions.

13. Miscellaneous

13.1 Unless the Shareholders together holding a majority of the A Shares and the Shareholders together holding a majority of the B Shares agree otherwise, on the establishment of any WEP Company other than the Company, the parties shall procure that the necessary Company Board and/or shareholder resolutions in respect of such WEP Company are passed to adopt the WEP Company Articles with immediate effect.

13.2 Unless the Shareholders together holding a majority of the A Shares and the Shareholders together holding a majority of the B Shares agree otherwise, the entering into of any contract or agreement by any WEP Company other than the Company shall require the approval of the board of directors of such WEP Company.

Announcements

13.3 No announcement, communication or circular concerning or relating to the subject matter of this Agreement shall be made or despatched by any of the parties without the prior written consent of the other parties to the form and text of such announcement.

13.4 Clause 13.3 does not apply to an announcement, communication or circular required by Law, the UK Listing Authority, the London Stock Exchange, the Panel on Takeovers & Mergers or by any governmental body or authority to which any of the party is subject **PROVIDED THAT** in that event the party required to make or send such announcement, communication or circular shall, where practicable first consult with the other parties as to the form or content of such announcement.

13.5 Not Used.

13.6 Not Used.

Confidentiality

13.7

(a) Subject to clause 8.16(b)(*Provision of information to Shareholders and designated third parties*), during the term of this Agreement and after termination or expiry of the Agreement for any reason whatsoever, a party receiving information from another party shall:

(i) keep Confidential Information (as defined in clause 13.9) confidential;

(ii) not disclose Confidential Information to any other person other than with the written consent of the party disclosing such information or in accordance with sub-clauses (b) to (d); and

(iii) not use Confidential Information for any purpose other than the performance of its obligations under this Agreement and the other Project Documents.

- (b) During the term of this Agreement, a party receiving information from another party may, subject to the provisions of clause 8.16(a) to 8.16(c) (*Provision of information to Shareholders and designated third parties*), disclose Confidential Information to its employees, contractors, sub-contractors, agents and advisers under conditions of confidentiality in each case to the extent that it is reasonably necessary for the purposes of this Agreement, or any other Project Document and may disclose Confidential Information to its funders, prospective funders, prospective shareholders of the Company or prospective purchasers of its assets under conditions of confidentiality. In each case the permitted recipient of such Confidential Information shall be known as a "**Recipient**".
- (c) The party receiving information from another party shall so far as practicable procure that each Recipient is made aware of and complies with all that receiving party's obligations of confidentiality under this Agreement as if the Recipient were a party to this Agreement.
- (d) Without prejudice to sub-clause (b), the obligations contained in sub-clauses (a) to (c) shall not apply to:
- (i) any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Agreement for the performance of those obligations;
 - (ii) 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 any of the provisions in sub-clauses (a) to (c);
 - (iii) any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) 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;
 - (iv) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - (v) any provision of information to the parties' own professional advisers or insurance advisers or to lenders in respect of the Project or such lender's 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 the Company to enable it to carry out its obligations under this Agreement or may wish to acquire shares in the Company 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;
 - (vi) any disclosure for the purposes of:
 - (A) the examination and certification of the Company's accounts;
 - (B) any examination pursuant to the Public Audit (Wales) Act 2004 of the economy, efficiency and effectiveness with which any Participant 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;
- (D) any disclosure required to be made to the Auditor General for Wales or the Wales Audit Office; or
- (E) (without prejudice to the generality of sub-clause (d)(iii) above) compliance with the FOIA and/or the Environmental Information Regulations,

provided that, for the avoidance of doubt, neither sub-clause (d)(vi)(E) nor sub-clause (d)(iii) above shall permit disclosure of Confidential Information otherwise prohibited by sub-clauses (a) to (c) above where that information is exempt from disclosure under Section 41 of the FOIA.

(e)

- (i) Where disclosure is permitted under sub-clause (d), other than sub-clauses (d)(ii), (iii), (iv) and (v), 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.
- (ii) For the purposes of the Public Audit (Wales) Act 2004, the Wales Audit Office may examine such documents as he/she may reasonably require which are owned, held or otherwise within the control of the Company and may require the Company to produce such oral or written explanations as he/she considers necessary.
- (iii) The parties acknowledge that the Wales Audit Office has the right to publish details of the Agreement (including Commercially Sensitive Information) in its relevant reports.

13.8 The provisions of clause 13.7 (*Confidentiality*) are without prejudice to the application of the Official Secrets Act 1911 to 1989.

13.9 For the purposes of clause 13.7 (*Confidentiality*), "**Confidential Information**" means:

- (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, commercially sensitive intellectual property rights and know-how of any party and all personal data and special categories of personal data within the meaning of the Data Protection Laws; and
- (b) Commercially Sensitive Information.²²

Freedom of Information

13.10

- (a) The parties acknowledge that WGCo is subject to the requirements of the FOIA and the Environmental Information Regulations and the Company shall facilitate WGCo's

²² **Clause 13.9(b) – Commercially Sensitive Information.** Any information or classes of information that the parties agree should be treated as Commercially Sensitive Information should be included in Schedule 7, Part C entitled Commercially Sensitive Information. The parties should be mindful of guidance on this issue when agreeing which information should be categorised as commercially sensitive. Broad blanket categorisations are not appropriate.

compliance with its Information disclosure requirements pursuant to the same in the manner provided for in sub-clauses (b) to (g) and to clause 13.11 (inclusive) below. For the purpose of sub-clauses (b) to (g) and clause 13.11 (inclusive) only **"Information"** has the meaning given to it under section 84 of the FOIA.

- (b) Where WGC0 receives a Request for Information in relation to Information that the Company is holding on behalf of WGC0, WGC0 shall transfer to the Company such Request for Information that it receives as soon as practicable and in any event within [five (5)] Business Days of receiving a Request for Information and the Company shall:
 - (i) provide WGC0 with a copy of all such Information in the form that WGC0 requires as soon as reasonably practicable and in any event within [ten (10)] Business Days (or such other period as WGC0 may acting reasonably specify) of WGC0's request; and
 - (ii) provide all necessary assistance as reasonably requested by WGC0 in connection with any such Information, to enable WGC0 to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- (c) Following notification under sub-clause (b) and up until such time as the Company and the Shareholders (other than WGC0) has provided WGC0 with all the Information specified in sub-clause (b)(i), the Company may make representations to WGC0 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 WGC0 shall be responsible for determining at its absolute discretion:
 - (i) whether the Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;
 - (ii) whether the Information is to be disclosed in response to a Request for Information,and in no event shall the Company respond directly or allow its subcontractors to reply directly to a Request for Information unless expressly authorised to do so by WGC0.
- (d) The Company shall ensure that all Information held on behalf of WGC0 is retained for disclosure for at least [six (6)] years from the date it is acquired and shall permit WGC0 (as appropriate) to inspect such Information as requested from time to time.
- (e) The Company shall transfer to WGC0 any Request for Information received by the Company as soon as practicable and in any event within two (2) Business Days of receiving it.
- (f) The Company acknowledges that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that WGC0 may nevertheless be obliged to disclose Confidential Information in accordance with sub-clause (d) above.
- (g) If WGC0 makes a request to the Company pursuant to sub-clause (b)(ii) the Company shall, as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform WGC0 of the Company's estimated costs of complying with the request to the extent these would be recoverable if incurred by WGC0 under section 12(1) of the FOIA and the Fees Regulations. Where such costs

(either on their own or in conjunction with WGCo's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in section 12(1) of the FOIA and as set out in the Fees Regulations WGCo shall inform the Company in writing whether or not it still requires the Company to comply with the request and where it does require the Company 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 WGCo is entitled to under section 10 of the FOIA. In such case, WGCo shall notify the Company of such additional days as soon as practicable after becoming aware of them and shall reimburse the Company for such costs as the Company incurs in complying with the request to the extent WGCo is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

13.11 The Company acknowledges that (notwithstanding the provisions of clause 13.7 (*Confidentiality*)) WGCo may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (or such equivalent as may from time to time be applicable in Wales) ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Company:

- (a) in certain circumstances without consulting with the Company; or
- (b) following consultation with the Company and having taken their views into account,

provided always that where this clause 13.11 applies, WGCo shall, in accordance with the recommendations of the Code, draw this to the attention of the Company prior to any disclosure.

Governing law and Jurisdiction

13.12

- (a) Subject to the provisions of clause 11 (*Disputes*), this Agreement and any non-contractual obligations arising out of or in connection with it shall be considered as a contract made in England and Wales and shall be subject to the laws of England and Wales.
- (b) The parties agree that the courts of England and Wales 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.

Further assurance

13.13 Each party will:

- (a) execute any document;
- (b) use all reasonable endeavours to procure that any third party (where necessary) executes any deed or document; and

do anything reasonably necessary to implement and give full effect to the terms of this Agreement.

Costs

13.14 Each party shall bear its own costs and expenses in relation to the drafting, negotiating, execution and implementation of this Agreement and the Project Documents.

Insurance

13.15

- (a) The Company shall take out and maintain with reputable insurers all insurances required to be maintained by Law and such other prudent insurances against such risks as are normally insured against by businesses carrying on activities similar to those of the Company Business and (without prejudice to the generality of the foregoing) shall insure its assets which are of an insurable nature for their full replacement or reinstatement value. The Company shall comply with its obligations under the Project Documents in respect of insurance.
- (b) Each Shareholder shall ensure that any directors and officers liability insurance taken out by such Shareholder extends to any Directors nominated and appointed by such Shareholder.

Assignment

13.16

- (a) Subject always to clause 9 (*Restrictions on share transfers*), this Agreement can be transferred by a Shareholder to a permitted transferee or successor. This Agreement, shall be binding on, and shall ensure to the benefit of, each of the parties and their respective permitted transferees and successors. In the case of WGCo its successors shall include any person to whom the Welsh Government transfers the property, rights and obligations of WGCo.
- (b) Save as permitted by sub-clause (a) and clause 9 (*Restrictions on share transfers*), no party shall assign, transfer, sub contract or otherwise dispose of any interest in this Agreement.

Entire agreement

13.17 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 of this Agreement.

Notices

13.18

- (a) 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, email or by hand, leaving the same at:

<i>If to the PSDP</i>	
For the attention of	

Address	
Email	
<i>If to WGCo</i>	
For the attention of	
Address	
Email	
<i>If to the Company</i>	
For the attention of	
Address	
Email	

- (b) Any party to this Agreement may change its nominated address or email address by prior notice to the other parties.
- (c) 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. Notices given by email shall be deemed to have been received (unless there is an error message returned to that email):
- (i) within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or
 - (ii) 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.

Contracts (Rights of Third Parties) Act 1999

- 13.19 It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement.

Waiver – no waiver unless in writing

- 13.20 Any relaxation, forbearance, indulgence or delay (together indulgence) of any party in exercising any right shall not unless made in writing, 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).

Severability

- 13.21 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 or legality of the remaining provisions of this Agreement.

No partnership or agency

- 13.22 (a) Nothing in this Agreement shall be construed as creating a partnership.
- (b) No party shall be deemed to be an agent of any other party and no party shall hold itself out as having authority or power to bind any other party in any way.

Amendments

- 13.23 This Agreement may not be varied except by an agreement in writing executed as a deed by duly authorised representatives of the parties.

Executed as a deed by the parties or their duly authorised representatives on the date of this Agreement.

Schedule 1 Definitions and Interpretation

1. Definitions

1.1 In this Agreement, unless the context otherwise requires:

A Director has the meaning given to it in clause 5.1(a);

A Shares means the [*insert number*] 'A' Ordinary Shares of £1 each in the capital of the Company, together with any further shares issued from time to time and classified as A Shares or which, on transfer, are reclassified as A Shares;

A Shareholder means the holder of A Shares from time to time;

Affected Shareholder Debt means:

- (a) where a transferor or potential transferor of Shares under this Agreement and the Company Articles is not the B Shareholder, Shareholder Debt the creditor of which is the Shareholder in question and/or an Associate of that Shareholder; and
- (b) where a transferor or potential transferor of Shares under this Agreement and the Company Articles is the B Shareholder, Shareholder Debt the creditor of which is the B Shareholder and/or an Associate of the B Shareholder and/or a B Shareholder Member and/or an Associate of a B Shareholder Member;

Agreement means this Shareholders' Agreement including the Schedules;

Alternate has the meaning given to it in Article 1.1 of the Company Articles;

Annual Budget means the annual budget forming part of the Business Plan;

Approved Project has the meaning given to it in the Strategic Partnering Agreement;

Associate²³ means:

- (a) in respect of any person which is a body corporate:
 - (i) any undertaking of which that body corporate is a Director or partner;
 - (ii) any undertaking in the same group as such body corporate; and
 - (iii) any employee or Director of that body corporate or of any undertaking in the same group;
- (b) in respect of any person which is a partnership that is a legal person under the law by which it is governed:
 - (i) any undertaking of which that partnership is a Director or partner;
 - (ii) any employee of or partner in that partnership; and

²³ **Schedule 1 Definitions – Associate.** The definition of Associate to be considered at bid stage in accordance with the relevant facts and in the context of the relevant PSDP group structure to ensure the definition is appropriate/wide enough.

- (iii) any person who is an Associate of a partner in that partnership;
- (c) in respect of any person which is a partnership which is not a legal person under the law by which it is governed, any person who is an Associate of any of the partners,

provided that, for the purposes of clauses [◆] only, any partnership which would otherwise qualify as an Associate of the B Shareholder or a B Shareholder Member shall not constitute an Associate unless the B Shareholder, the B Shareholder Member or one of their respective Associates is beneficially entitled to 50% or more of the profits and/or assets of such partnership. In this definition in relation to a limited liability partnership for "Director" read "member" and **Associated** shall be construed accordingly;

B Director has the meaning given to it in clause 5.1(b) (*Composition of the Company Board and the right to appoint Directors*);

B Shareholder means the holder of B Shares from time to time;

B Shareholder Debt means all outstanding Shareholder Debt, the creditor of which is the B Shareholder and/or an Associate of the B Shareholder and/or a B Shareholder Member and/or an Associate of a B Shareholder Member;

B Shareholder Member means the shareholders, members or partners from time to time of the B Shareholder, being as at the date of this Agreement, the Initial PSDP Shareholders;

B Shares means the [*insert number*] 'B' Ordinary Shares of £1 each in the capital of the Company, together with any further shares issued from time to time and classified as B Shares or which, on transfer, are reclassified as B Shares;

Business means the Company Business;

Business Day means a day other than a Saturday, Sunday or a bank holiday in England and Wales;

Business Plan has the meaning given to it in clause 8.1(a) (*The Business Plan (including the Annual Budget)*);

Chairman means such independent non-executive Director or other Director as may be appointed from time to time to act as Chairman of the Company Board pursuant to clause 5.11 (*Composition of the Company Board and the right to appoint Directors*);

Claim has the meaning given to it in clause 6.7(c) (*[Step-aside provisions]*);

Code has the meaning given to it in clause 13.11 (*Freedom of Information*);

Commercially Sensitive Information means any information detailed in Part C of Schedule 7 (*Transparency Information and Commercially Sensitive Information*);

Company Articles means the articles of association of the Company in the format set out in Schedule 6 (*The Articles of Association of the Company*) as amended from time to time;

Company Board means the board of Directors from time to time of the Company as constituted in accordance with this Agreement and the Company Articles;

Company Business means the business of the Company as described in clause 3.1 (*The business of the Company and details of the Company*) and such other business as the Shareholders may from time to time agree should be carried on by the Company;

Confidential Information has the meaning given to it in sub-clause 13.9 (*Confidentiality*);

Conflict Authorisation has the meaning given to it in clause 5.24 (*Director's power to authorise conflict situations*);

Conflict Authorisation Terms has the meaning given to it in clause 5.27 (*Director's power to authorise conflict situations*);

Conflict Situation has the meaning given to it in clause 5.24 (*Director's power to authorise conflict situations*);

Counterparty has the meaning given to it in clause 5.28(a) (*Director's power to authorise conflict situations*);

Data Protection Laws means Regulation (EU) 2016/679 (General Data Protection Regulation), as supplemented by the Data Protection Act 2018;

Data Sheet means the document in the Agreed Form containing details about the Company including, inter alia, subscriptions by the parties for Shares [and details of any Shareholder Debt advanced to the Company], Directors details and other administrative matters;

Deadlock has the meaning given to it in clause 11.2 (*Disputes*);

Deadlock Date has the meaning given to it in clause 11.2 (*Disputes*);

Deed of Adherence means a deed in substantially the same form as the draft set out at Schedule 4 (*Deed of Adherence*);

Deemed Transfer Notice has the meaning given to it in the Company Articles;

Defaulting Member means the B Shareholder following the occurrence of a Transfer Event in relation to the B Shareholder or a B Shareholder Member;

Defaulting Member's Remaining Shares has the meaning given to it in clause 9.6 (*Events of Default and deemed transfers*);

Defaulting Member's Remaining B Shareholder Debt has the meaning given to it in clause 9.5 (*Events of Default and deemed transfers*);

Directors means:

- (a) the directors of the Company as nominated by the relevant parties from time to time and appointed pursuant to clause 5.1 (*Composition of the Company Board and the right to appoint Directors*) and Article 36 (*Appointment of Directors*);
- (b) any Alternate (in that capacity):
 - (i) save where expressly stated otherwise in this Agreement or the Articles; and
 - (ii) save for the purpose of clauses 5.1 to 5.3 (*Composition of the Company Board and the right to appoint Directors*), 5.17 to 5.19 (*Director Remuneration*) and 6.5(b) (*Reserved Matters*); and
- (c) a Chairman (in that capacity):

- (i) save where expressly stated otherwise in this Agreement or the Articles;
- (ii) save for the purpose of clauses 5.1 to 5.3 (*Composition of the Company Board and the right to appoint Directors*); and
- (iii) subject always to Article 27.5 (*Voting at Board Meetings*).

and **Director** shall mean any of them;

Dispute has the meaning given to it in clause 11.1 (*Disputes*);

DOTAS means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs, and or any relevant tax authority with jurisdiction in Wales of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

Draft Business Plan has the meaning given to it in sub-clause 8.1(b) (*The Business Plan (including the Annual Budget)*);

Environmental Information Regulations means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;

Expert has the meaning given to it in clause 11.3 (*Disputes*);

Fees Regulations means The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

[**Finance Parties** means [◆];]

Founder Shareholders means the Shareholders who entered into this Agreement on the date on which it was signed;

FOIA means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such Act;

Funding Agreements has the meaning given to it in the Strategic Partnering Agreement;

General Anti-Abuse Rule means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

Guaranteed Amount has the meaning given in clause 8.13(a) (*Working Capital*);

Halifax Abuse Principle means the principle explained in the CJEU Case C-255/02 Halifax and others;

Indebtedness means any obligation for the payment or repayment of money, whether joint or several, actual or contingent, in respect of:

- (a) moneys borrowed or raised (including the capitalised value of obligations under financial leases and hire purchase agreements and deposits), debit balances at bank accounts and interest and other charges thereon or in respect thereof;
- (b) any liability under any debenture, bond, note, loan stock, commercial paper or other security or under acceptance or documentary credit, bill discounting or note purchase facilities;
- (c) any liability in respect of the deferred acquisition cost of property, assets or services to the extent payable after the time of acquisition or possession thereof by the party liable;
- (d) any guarantee or other assurance against financial loss in respect of any of the indebtedness specified in this definition;
- (e) any cost or liability under any interest rate or currency hedging agreement; and
- (f) any other transaction having the commercial effect of the borrowing or raising of money.

Independent Director has the meaning given to it in clause 6.7(a) (*Step-aside provisions*);

Index Linked means in relation to any amounts or sums, such amounts or sums as adjusted on each anniversary of the date of this Agreement in accordance with the following formula:

Amount or sum x (RPIXd / RPIX0)

Where RPIXd is the value of the Retail Prices Index (All Items Excl Mortgage Interest) published or determined with respect to the month most recently preceding the relevant anniversary of the date of this Agreement and RPIX0 is the value of the Retail Prices Index (All Items Excl Mortgage Interest) in respect of [◆];

Individual Commitment has the meaning given in Schedule 10 (*Working Capital Agreement*);

Insolvency Event has the meaning given to it in the Strategic Partnering Agreement;

Initial PSDP Shareholders means [◆];

Information has the meaning given to it in clause 13.10 (*Freedom of Information*);

Instruction to Sell Notice has the meaning given to it in clause 9.6 (*Events of Default and deemed transfers*);

Investment has the meaning given to it in clause 9.6 (*Events of Default and deemed transfers*);

Law has the meaning given to it in the Strategic Partnering Agreement;

Lock In Period has the meaning given to it in clause 9.12(a) (*Lock In Periods*);

Material Default means the occurrence of an SPA Material Default as referred to in clause 23.12 of the Strategic Partnering Agreement;

Material Shareholder means any Shareholder holding fifteen per cent (15%) or more of the issued Share capital;

MIM means the Welsh Government's Mutual Investment Model;

New Shareholder has the meaning given to it in sub-clause 2.1(b) (*Conditions precedent*);

Occasion of Tax Non-Compliance means:

- (a) any tax return of the Shareholder submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Shareholder under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Shareholder was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) the Shareholder's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date of this Agreement or to a penalty for civil fraud or evasion;

[**Offer Notice** has the meaning given in the Company Articles;]

Offer to Allot has the meaning given to it in sub-clause 4.4 (*Offers to Allot*);

Original Meeting has the meaning given to it in sub-clause 6.4(b) (*Manner of giving Shareholder approval*);

Other Directors has the meaning given to it in sub-clause 6.4(b) (*Manner of giving Shareholder approval*);

Outgoing Director has the meaning given to it in sub-clause 5.8 (*Composition of the Company Board and the right to appoint Directors*);

Outgoing Shareholder has the meaning given to it in sub-clause 5.9 (*Composition of the Company Board and the right to appoint Directors*);

Participants has the meaning given to it in the Strategic Partnering Agreement;

Personal Data has the meaning given to it in the Data Protection Laws, and refers to personal data processed by any party in connection with its respective rights and obligations under this Agreement;

Potential Default has the meaning given to it in clause 9.8 (*Events of Default and deemed transfers*);

Proceedings means any adjudication, litigation, arbitration or administrative proceedings;

Project has the meaning given to it in the Strategic Partnering Agreement;

Project Agreement has the meaning given to it in the Strategic Partnering Agreement;

Project Agreement Counterparty has the meaning given to it in the Strategic Partnering Agreement;

[Project Documents means this Agreement, the Strategic Partnering Agreement, the Project Agreements, the Supply Chain Agreements and the Funding Agreements;]

Project Document Conflict Authorisation has the meaning given to it in clause 5.28 (*Director's power to authorise conflict situations*);

Project Document Conflict Authorisation Terms has the meaning given to it in clause 5.29 (*Director's power to authorise conflict situations*);

Project Service Provider has the meaning given to it in the Strategic Partnering Agreement;

Provisional Transfer Notice has the meaning given to it in clause 10.6 (*Tax compliance*);

PSDP Change in Ownership means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the PSDP (while it is the B Shareholder) or any B Shareholder Member which is a company including the control over the exercise of voting rights conferred on those shares or the control over the right to appoint or remove directors;
- (b) any change in the members of any B Shareholder Member which is a limited liability partnership or any change the voting rights in relation to such limited liability partnership;
- (c) any change in the partners of any B Shareholder Member which is a partnership or a limited partnership or any change in the voting rights in relation to such partnership or limited partnership; and/or

any other arrangements that have or may have or which result in the same effect as paragraph (a), (b) or (c) above;

PSDP Directors has the meaning given to it in clause 6.7(a)(ii) (*Step-aside provisions*);

Qualifying Bid has the meaning given to it in Schedule 5 (Sale Agent);

Recipient has the meaning given to it in sub-clause 13.7(b) (*Confidentiality*);

Relevant Director has the meaning given to it in clause 5.24 (*Director's power to authorise conflict situations*);

[Relevant Shareholder has the meaning given to it in clause 5.16 (*Composition of the Company Board and the right to appoint Directors*);]

Relevant Tax Authority means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Shareholder and the Company is ordinarily based for the purpose of carrying out its business;

Request for Information shall have the meaning given to it in the FOIA or the Environmental Information Regulations as relevant;

"Reserve Account" means the account set up in the name of the Company for the purposes of holding payments under the Working Capital Agreement;

Reserved Matter Board Approval means those matters listed in Schedule 8 (*Reserved Matters*) and ticked in the third column (entitled "Board"), which shall not be carried out without prior approval in accordance with clause 6.2(b)(*Reserved Matters*);

Reserved Matters means those matters listed in Schedule 8 (*Reserved Matters*);

Responsible Shareholder has the meaning given to it in clause 9.8 (*Events of Default and deemed transfers*);

Restricted Person means either:

- (a) any person who has a material interest in the manufacture, production, sale or distribution of [pornography,] or [arms and weapons] or [the production of tobacco products and/or alcoholic beverages];
- (b) a person who poses, or could pose [(in the reasonable opinion of WGCo)] a threat to national security;
- (c) [any person whose tax returns submitted on or after 1 October 2012 have been found to be incorrect as a result of:
 - (i) HM Revenue and Customs successfully challenging it under the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the Relevant Tax Authority challenging it under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; and/or
 - (iii) the failure of an avoidance scheme which the person was involved in and which was, or should have been, notified under the DOTAS or any equivalent or similar regime in a jurisdiction in which the person is established;]

Sale Agent has the meaning given to it in clause 9.6;

Schedules means Schedules 1 (*Definitions and Interpretation*) to 10 (*Working Capital Agreement*) attached to this Agreement;

Security Interest means any mortgage, pledge, lien, charge, assignment, encumbrance, right of set-off, guarantee, title transfer or retention arrangement or security interest whatsoever, howsoever created or arising, including any "flawed asset" arrangement and "secured" will be construed accordingly;

Second Consideration Period has the meaning given to it in clause 11.1 (*Disputes*);

Services has the meaning given to it in the Strategic Partnering Agreement;

Shares means the issued Shares of any class referred to in Schedule 2 (*Details of the Company*) together with any further shares issued from time to time pursuant to clause 4 (*Funding of the Company and financial matters*);

[Shareholder Loan Agreement means, where Shareholder Debt has been advanced or otherwise made available to any WEP Company, the agreement between that WEP Company and the relevant Shareholder(s) setting out the terms on which that Shareholder Debt has

been advanced or otherwise made available to that WEP Company [and includes the Working Capital Agreement];]

Shareholder Debt means any Indebtedness (other than share capital) advanced or otherwise made available to any WEP Company by a Shareholder, a B Shareholder Member or an Associate of a Shareholder or of a B Shareholder Member;

Shareholders means the parties to this Agreement (except for the Company) and such other persons who may become shareholders in the Company from time to time as permitted by this Agreement and the Company Articles and Shareholder means any one (1) of them;

Shareholders' Forum has the meaning given in clause 6.8 (*Shareholders' Forum*);

Shareholder's Group means:

- (a) in relation to a Shareholder which is a company, the Shareholder and each of its Associates; and
- (b) in the case of WGCo each Associate of WGCo and each member of WGCo Group;

SPB means the Strategic Partnering Board, as defined in the Strategic Partnering Agreement;

Stage 2 Submission has the meaning given to it in the Strategic Partnering Agreement;

Strategic Partnering Agreement means the strategic partnering agreement between the Company and [◆] dated on or around [◆];

Suitable Third Party means any person who is not a Restricted Person;

Supply Chain Agreements means has the meaning given to it in the Strategic Partnering Agreement;

Transfer Event has the meaning given to it in clause 9.3 (*Events of Default and deemed transfers*);

Transfer Notice has the meaning given to it in the Company Articles;

Transparency Information means the information described in Part A and Part B of Schedule 7 (*Transparency Information and Commercially Sensitive Information*) and, for the avoidance of doubt, in no circumstances shall any Transparency Information constitute Commercially Sensitive Information whether or not listed in Part C of Schedule 7 (*Transparency Information and Commercially Sensitive Information*);

WEP Company means the Company, together with any of its subsidiaries from time to time, each individually referred to as a WEP Company;

[WEP Company Articles means the articles of association of any WEP Company (other than the Company) in the form set out in [◆] (*Articles of any WEP Company (other than the Company)*) as amended from time to time;]

[Working Capital Agreement means the working capital agreement set out in Schedule 10 (*Working Capital Agreement*);]

Working Capital Facility means the working capital facility set out in Schedule 10 (*Working Capital Agreement*);

"Working Capital Limit" has the meaning given in paragraph 2.1 of Schedule 10 (*Working Capital Agreement*);

Working Capital Providers means [◆];

Working Capital Requirement means, in respect of any period, the maximum working capital requirement of the Company during that period, disregarding for this purpose any sums paid or received by the Company which form part of the capital costs of a specific project or represent capital payments to fund a specific project or represent capital investment in an individual WEP Company (other than the Company);

WGCo means [◆];

WGCo Director means a Director appointed by WGCo or the WGCo Group; and

WGCo Group means:

- (a) any Associate of WGCo;
- (b) the Welsh Ministers or any agency, subsidiary or other body owned or controlled by the Welsh Ministers; and/or
- (c) any public sector body, third sector body or quasi autonomous non-governmental organisation who assumes and/or undertakes (whether as successor or otherwise) some or all of the functions exercised by WGCo or the Welsh Ministers.

1.2 Interpretation

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

- (a) 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.
- (b) Except where the context expressly requires otherwise, references to clauses, sub-clauses, paragraphs, sub-paragraphs, parts and Schedules are references to clauses, sub-clauses, paragraphs, sub-paragraphs and parts of and Schedules 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.
- (c) The Schedules to this Agreement (including any Attachments thereto) are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules. In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, the body of this Agreement shall take precedence.
- (d) 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.
- (e) 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.

- (f) The language of this Agreement is English. All correspondence, notices, and information shall be in English.
- (g) 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.
- (h) References to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation.
- (i) 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.
- (j) Reference to **parties** means the parties to this Agreement and references to a **party** mean one of the parties to this Agreement.
- (k) 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.
- (l) Reference to a document being in **Agreed Form** is a reference to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf.
- (m) Where this Agreement states that an obligation shall be performed **no later than** or **within** 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 midnight on the last Business Day for performance of the obligations concerned.
- (n) A reference to a **subsidiary** or **holding company** is to be construed in accordance with section 1159 of the Companies Act 2006.
- (o) If there is a conflict between the terms of this Agreement and the Company Articles, the terms of this Agreement shall prevail and, if there is such a conflict, the Shareholders shall procure at the request of any of the Shareholders any modification reasonably required to be made to the Company Articles as shall be necessary to remedy such conflict.
- (p) A person, being a company, shall be **controlled** by another person if that other person owns a majority of the voting equity of that person or controls the majority of the votes at meetings of the board of directors of that person.
- (q) 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.
- (r) References to a **month** [in clauses 8.3 to 8.13 (*Working Capital*)] shall mean a calendar month.
- (s) A reference in this Agreement to matters being agreed by the Directors shall only include Alternates (acting in that capacity) where he/ she is participating in a decision

in place of a Director appointed pursuant to clause 5.1 (*Composition of the Boards and the right to appoint Directors*).

**Schedule 2
Details of the Company**

The Company

Name:	◆ Limited	
Registered Office:	◆	
Registered Number:	◆	
Shareholders:	Shareholder	Shares
	PSDP	◆
	WGCo	◆
Initial Directors:	Shareholder Appointor	Initial Director appointee
	PSDP	◆
	PSDP	◆
	PSDP	◆
	WGCo	◆
Secretary:	◆	

Schedule 3
Agreed Form Business Plan

(Budgeting, Business Planning and financial matters)

The provisions of this paragraph shall apply in respect of each Draft Business Plan prepared from time to time and submitted to the Shareholders for approval. The minimum requirements for an acceptable Business Plan will include:

- (a) the income forecasts for the Company, based on projects expected to be developed in the forthcoming year;
- (b) the costs budget for the Company (including salaries, overheads and consultants fees);
- (c) capital requirements of the Company and how these will be met; and
- (d) business objectives and targets to be met by the Company in meeting its obligations under this Agreement and the Strategic Partnering Agreement.

The Business Plan should not be used as a means of sidestepping the consent matters in clause 6.2 (*Reserved Matters*). Any matters in the Business Plan which are in the nature of matters where Shareholders consent is being provided upfront by virtue of the Business Plan must:

- (a) be specific;
- (b) be such that it is not reasonably practicable to seek the consent required at the time in question; and
- (c) be specifically set out in a section at the start of the Business Plan so that, in the review of the Draft Business Plan, the nature and extent of any deemed consent matters can be easily identified and considered by the Shareholders in deciding whether or not to approve the Draft Business Plan.

[To be inserted]

**Schedule 4
Deed of Adherence**

THIS DEED OF ADHERENCE is made the day of 201[◆]

BY [◆] of [◆] ("**Covenantor**") in favour of the persons whose names are set out in the Schedule to this Deed and is supplemental to the shareholders' agreement dated [◆] 201[◆] made by (1) [PSDP], (2) [WGCo], and (3) [Company] ("**Shareholders' Agreement**").

Terms defined in the Shareholders' Agreement shall bear the same meanings herein.

It is agreed

1. In consideration of the Covenantor being accepted as a party for the purposes of the Shareholders' Agreement by the parties thereto, as from [insert date] ("**Adherence Date**") the Covenantor hereby confirms that it shall be a party to the Shareholders' Agreement as if they had originally been referred to in the Shareholders' Agreement as [◆] and agrees to be bound by all of the relevant provisions of the Shareholders' Agreement from the Adherence Date.
2. The Covenantor warrants and represents to each of the persons whose names are set out in the Schedule to this Deed, that the Covenantor is a Suitable Third Party.
3. The Covenantor makes all those warranties and representations, which are listed in full at clause 10.2 (*Warranties by the PSDP and the Company*) and clause 10.4 (*Tax compliance*) of the Shareholders' Agreement, to each of the persons whose names are set out in the Schedule to this Deed.
4. This Deed is governed by the law of England and Wales.

In witness whereof this Deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written.

SCHEDULE

[Parties to Shareholders' Agreement including those who have executed earlier deeds of adherence].

Schedule 5 Sale Agent

1. In this Schedule 5 (*Sale Agent*) (subject to paragraph 8):

Closing Date has the meaning given to it in paragraph 6;

Purchaser has the meaning given to it in paragraph 6;

Qualifying Bid means a bid for all of the Defaulting Member's Remaining Shares [(whether or not including a bid to purchase all or any of the Defaulting Member's Remaining B Shareholder Debt) or, in the case of paragraph 9, the Defaulting Member's Remaining B Shareholder Debt]:

(a) is accompanied by each of the following:

- (i) an acknowledgement addressed to all of the holders of the A Shares to the effect that the bidder has carried out its own due diligence and in offering to purchase the Investment has not relied on (and an undertaking that it will not rely on) any warranty, statement, undertaking or representation (whether negligent or innocent) made by or on behalf of any holder of the A Shares;
- (ii) a confirmation that if its bid is successful it will enter a Deed of Adherence and pay the Sale Agent's fees;
- (iii) a confirmation of funding for the purchase of such Defaulting Member's Remaining Shares [and any Defaulting Member's Remaining B Shareholder Debt] forming part of such bid and its ability to complete the payment for and the transfer of the Investment within the time period specified in paragraph 6; and

(b) is from a Suitable Third Party which is not Associated with the B Shareholder or any B Shareholder Member;

Reserve Bid has the meaning given to it in paragraph 9(a); and

Reserve Tenders has the meaning given to it in paragraph 9.

2. If the parties are unable to agree on the identity of the Sale Agent within twenty (20) Business Days of the issue of the Instruction to Sell Notice (as defined in clause 9.6 of this Agreement), the Sale Agent shall thereafter be appointed on the application of any party by the President of the Institute of Chartered Accountants in England and Wales with the party making the application requesting that the appointment be made within twenty (20) Business Days of the date the party makes the application referred to.
3. The Defaulting Member shall provide the Sale Agent with all such information as the Sale Agent may request in relation to the Investment and the Sale Agent shall invite tenders from Suitable Third Parties to purchase the Investment.
4. The Defaulting Member and the Sale Agent shall comply with the Financial Services and Markets Act 2000 and all other legislation which may apply from time to time in relation to the offer for sale of the Investment.
5. The Defaulting Member shall take all necessary action to ensure that the Investment has the widest possible market, and shall not do anything which might limit the number of potential bidders for the Investment and shall ensure that it has provided all necessary information to

the Sale Agent to enable the Sale Agent to offer the Investment for sale within fifteen (15) Business Days of the appointment of the Sale Agent.

6. The Defaulting Member shall accept the highest Qualifying Bid which is received by the Sale Agent (with the relevant Suitable Third Party being referred to as the "**Purchaser**") by the end of sixty (60) Business Days from the Instruction to Sell Notice (the "**Closing Date**") and shall take all steps necessary to complete the transfer of its Defaulting Member's Remaining Shares [and any Defaulting Member's Remaining B Shareholder Debt] to the Purchaser within ten (10) Business Days of the Closing Date.
7. Should the Purchaser fail to complete the transfer of the Shares [and any Defaulting Member's Remaining B Shareholder Debt] to the Purchaser within ten (10) Business Days of the Closing Date then the Sale Agent shall remarket the Investment and the procedure referred to in paragraphs 3 to this paragraph 7 shall be followed until either the Investment has been sold to a purchaser or no Qualifying Bid is received by the relevant Closing Date.
8. [Where more than one Qualifying Bid is received, the Sales Agent shall consider the extent to which such bid includes the Defaulting Member's Remaining B Shareholder Debt, and shall compare the price offered for the Defaulting Member's Remaining Shares only for the purposes of determining the highest bid.]
9. [Notwithstanding the provisions of paragraphs 1 to 8, the Sale Agent shall also invite tenders (**Reserve Tenders**) from Suitable Third Parties for the Defaulting Member's Remaining B Shareholder Debt only²⁴ and the provisions of paragraphs 1 to 8 shall apply with necessary changes having been made as if references to the "Investment" were in each case solely to the Defaulting Member's Remaining B Shareholder Debt and subject to the variations in this paragraph 9. In such event:
 - (a) where the aggregate consideration offered pursuant to a Qualifying Bid comprising a Reserve Tender (a "**Reserve Bid**") is greater than under the highest Qualifying Bid which is not a Reserve Bid, or the only Qualifying Bids are Reserve Bids, then the highest Reserve Bid shall be accepted by the Defaulting Member and the sale and transfer of the Defaulting Member's Remaining B Shareholder Debt shall be effected in accordance with the provisions of paragraphs 1 to 7.
 - (b) In all other cases the provisions of paragraphs 1 to 8 above shall apply as if this paragraph 9 had not applied.]
10. [Where a Reserve Bid is accepted pursuant to sub-paragraph 9(a), then the provisions of clause 9.7 shall apply in respect of the Defaulting Member's Remaining Shares.]

²⁴

Schedule 5 – Sale Agent. This mechanism in Schedule 5 (*Sale Agent*) allows for offers for the Loan Notes only on the basis that this flexibility may add some liquidity and enhance the value received in a default transfer scenario.

Schedule 6
The Articles of Association of the Company
[To be inserted]

**Schedule 7
Transparency Information²⁵ and Commercially Sensitive Information**

Part A Information to be provided by the Company

Ref	Information	Last date for provision of information

Part B Information to be provided by the Shareholders

Ref	Information	Last date for provision of information

Part C Commercially Sensitive Information

Ref	Information	Applicable Period
	[Note – to be added if/as required]	

²⁵ **Schedule 7 - Transparency Information.** To be developed.

Schedule 8 Reserved Matters²⁶

Reference	Shareholder	Board	Reserved Matter
A			Financial
A1	✓		The approval of any change to the dividend policy set out in clause 7 (<i>Distributions</i>) which would adversely affect any Material Shareholder.
A2	✓		The making of any political donation.
A3	✓		The Company giving any deed of guarantee or indemnity involving a potential liability of £[100,000] (Index Linked) or more which in the reasonable opinion of a Material Shareholder is not required for the proper operation of the Company.
B			Shares/Shareholder Debt and constitutional
B1	✓		Any amendment to the Memorandum or Articles of the Company, which would adversely affect any Material Shareholder.
B2	✓		A change in the status of the Company from a limited company to a public limited company or from a company limited by shares to any other form of legal entity which would adversely affect any Material Shareholder or the Company.
B3	✓		A listing of the Company's share capital which would adversely affect any Material Shareholder or the Company.
C			Management, control, Directors and employees
C1	✓		Moving the central management and control of the Company or the Company's tax residence outside the UK.
C2		✓	The approval of (and any change to) Company policies which affect the potential statutory liability of Directors (e.g. anti-bribery and corruption, health and safety, non-discrimination).
C3		✓	Any increase in the payment of fees or remuneration to Directors to the Company save as expressly provided under this Agreement.
C4		✓	Conflict Authorisation to a Conflict Situation pursuant to clause 5.24 (<i>Director's</i>

²⁶ **Schedule 8 – Reserved Matters.** Welsh Government reserves the right to add further Reserved Matters into Schedule 8 following further discussion with ONS. The approach will be confirmed during dialogue. Three other important general points: (1) the items in this table must be included as a bid compliance matter; (2) a bidder/PSDP may suggest additional items for consideration/evaluation during the bid process, including a category of matters that are reserved for approval by a further distinct category of Shareholder (provided these do not cut across the effect of the compliance matters listed above); and provided always (3) no separate Reserved Matter or Reserved Matter type issues Lists are to be included which operate to exclude a particular Shareholder from voting or which remove all Shareholder voting rights on specific matters.

Reference	Shareholder	Board	Reserved Matter
			<i>power to authorise conflict situations).</i>
D			Other WEP Company related Reserved Matters
D1	<i>Approval level as per the relevant item</i>		In relation to each WEP Company (other than the Company) each of the above Reserved Matters in this table shall also be a Reserved Matter in relation to that WEP Company (as if references to the Company were references to WEP Company).

Schedule 9
Letters of appointment of Nominated Directors

[Insert Name and Address of the Director]

[◆] 20[◆]

Dear [◆]

YOUR APPOINTMENT AS A DIRECTOR OF [INSERT NAME OF THE COMPANY] LIMITED (THE "COMPANY")

Thank you for accepting your appointment to become a director of the Company. We note that you have been appointed by [*insert name of appointing shareholder*].

Your appointment is made pursuant to and is subject to the terms and conditions set out in the Shareholders Agreement dated [◆] between, amongst others, [◆] (the "**Shareholders' Agreement**"). Your appointment (and the continuation of it) is also subject always to the Articles of Association from time to time of the Company ("**Articles**"), a copy of the current version of which accompanies this letter.

Terms defined in the Shareholders Agreement shall bear the same meanings in this letter of appointment.

1. Time Commitment

- 1.1 We anticipate that your normal commitment to the Company will include attendance at Company Board meetings (anticipated to be at intervals of [◆] months), [meetings of any committees of the Company Board of which you are a member] and any general meetings of the members of the Company. You will be required to consider all relevant papers prior to each Company Board meeting.
- 1.2 By accepting this appointment, you confirm that you are able to allocate sufficient time to meet the expectations of your role.

2. Roles and Duties

- 2.1 As a director you will be a member of the Company Board. The Company Board is responsible for overall supervision and control of the activities of the Company.
- 2.2 It is your duty as a director of the Company to take decisions (and exercise your other powers and responsibilities as a director) in good faith and in such a way as you consider is in the best interests of the Company.
- 2.3 The directors of the Company are required to use all reasonable endeavours to ensure that they are:
- (a) complying at all times with the Shareholders Agreement and in particular the needs for shareholder consents under clause 6.2(*Reserved Matters*) and any corporate governance protocol which the Company adopts;

- (b) exercising proper control over the Company's services, activities, assets, staff and consultants;
- (c) procuring that the Company acts in accordance with its articles of association;
- (d) conducting the Company's affairs with honesty and integrity;
- (e) managing prudently the Company's resources, including public and private money which is invested in the Company;
- (f) procuring that conditions attached to offers of grants/loans are adhered to;
- (g) ensuring adequate record keeping and adhering to all administrative requirements imposed by company legislation and other relevant legislation; and
- (h) complying with all applicable statutes, rules and regulations.

2.4 In your role as a director, you will also be required to:

- (a) participate constructively in decision making within the Company Board;
- (b) [act as a member of such committees of the Company Board (for example the audit or remuneration committees) as may reasonably be required]²⁷;
- (c) deal with any special responsibilities which may reasonably be assigned to you by the Company Board;
- (d) constructively challenge and contribute to the development of company policy and strategy;
- (e) scrutinise the performance of management and contractors in meeting agreed goals and objectives and monitor the reporting of performance;
- (f) maintain a sound system of internal control to safeguard the investment of members and other stakeholders in the Company and the Company's assets;
- (g) satisfy yourself that financial information is accurate and that financial controls and systems of risk management are robust and defensible;
- (h) comply with all reasonable directions and regulations of the Company;
- (i) fulfil the role of director of each WEP Company (other than the Company) and the terms of this letter apply to each such directorship on like terms; and
- (j) act at all times in accordance with the Articles, the Shareholders Agreement, any corporate governance protocol which the Company adopts and any obligations imposed on directors by law.

2.5 If you strongly disagree with a decision of the Company Board, you are entitled to have your dissent recorded in the minutes of the relevant meeting, however you must not actively undermine action which has been decided upon by majority vote at a Company Board meeting.

²⁷

Insert if appropriate

2.6 [In addition, you will have the responsibilities as set out in the Director – Specification of Role a copy of which is attached in the Schedule to this letter of appointment.]

3. Committee

3.1 You may be asked to serve on any committee of the Company Board as the Company Board may require from time to time. In the event that you are requested to serve on any such committee, you will be provided with details of the committee's terms of reference, any specific responsibilities this will entail and any fees that may be involved.]

4. Fees and Expenses

4.1 [The role of Director of the Company shall attract remuneration of £[◆]²⁸ per annum (Index Linked). Such fee payable to you shall be due, pro rata, monthly in arrears, from the date of your appointment and is payable within thirty (30) days of receipt of an invoice by the Company.]

5. Conflicts of Interest

5.1 As a Director of the Company you should ensure, so far as is reasonably possible, that other Directors of the Company act in the interests of the Company.

5.2 As a Director of the Company you must put the interests of the Company before your own interests or those of any other person or organisation. In particular, please note that:

- (a) you should attempt to avoid conflicts or possible conflicts between your personal interests and the interests of the Company. If a conflict or possible conflict arises you must put the interests of the Company first;
- (b) where there is a conflict between the interests of the Company and the interests of one or more of *[insert name of each shareholder appointing the Director]* (who are responsible for your appointment as a Director), you must put the Company's interests first; and
- (c) where there is a conflict or a possible conflict between the interests of the Company and another organisation with which you are affiliated or connected, you must declare this interest to the other Directors at the earliest opportunity in order that it can be authorised in advance either by the members of the Company or the Directors. In addition you must be aware of your obligations set out in the Shareholders' Agreement and in particular clauses 5.20 to 5.29 (*Director's power to authorise conflict situations*) of the Shareholders Agreement.

6. Ceasing to be a Director

6.1 Your appointment as a director will automatically cease in the event that:

- (a) you resign as director;
- (b) *[insert anything in addition set out in the Articles]*.

6.2 Shareholders holding a majority of [◆] Shares may give a notice to the Company in accordance with clause 5.8 (*Composition of the Company Board and the right to appoint Directors*) of the Shareholders Agreement removing you from office:

²⁸ **Clause 4.1- Directors remuneration.** Note that agreement is required on the initial level Director remuneration. It will be set at bid stage and this will be required to be in line with corporate good practice. In respect of travel expenses this is expected to be standard class for train travel etc.

- (a) in accordance with clause of the Shareholders Agreement there cease to be any holders of [◆] Shares in the Company; or
 - (b) Shareholders holding a majority of [◆] Shares remove you from office in accordance with clause 5.8 (*Composition of the Company Board and the right to appoint Directors*) of the Shareholders Agreement on the basis that you exercised your voting rights, or otherwise acted or omitted to act, in contravention of the Shareholders Agreement.
- 6.3 In the event that any matter specified in any of paragraphs 6.1 or 6.2 above occurs you will resign immediately from all offices held by you in the Company and any subsidiary of the Company.
- 6.4 In particular, in signing this letter, you acknowledge that your office is subject to the terms of the Shareholders Agreement and the Articles and may be terminated as permitted under their terms and that upon termination you will vacate office in relation to the Company forthwith without raising any claim whatsoever against the Company in relation to your vacation of office (otherwise than in respect of any properly incurred and unpaid expenses due to you up to the date you vacate your office).
- 6.5 In the event that you fail to resign from office you hereby authorise the Company Secretary to appoint some person in your name and on your behalf to execute all documents necessary to bring about such resignations.
- 6.6 On termination of your appointment, you agree that you will promptly return to the Company Secretary all papers and property of the Company which are in your possession.
- 7. Insurance**
- 7.1 The Company [proposes to obtain][has obtained] directors' and officers' liability insurance and intends to maintain such cover for the full term of your appointment. The indemnity limit is £[◆]. A copy of the policy document will be available in due course.
- 8. Indemnity**
- 8.1 Subject to the provisions of the Companies Act 2006 and the Articles, as a Director you shall be indemnified out of the assets of the Company against any liability incurred by you in defending any proceedings, whether civil or criminal, alleging liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company and in which judgment is given in your favour, or in which you are acquitted, or in connection with any application in which relief is granted to you by the court.
- 9. Confidentiality**
- 9.1 All information acquired during your appointment is confidential to the Company and should not be disclosed to any third parties or used for any reason other than in the interests of the Company, either during or after your appointment. You will not, whether during your appointment or after its termination, except in the proper performance of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of any trade or business secrets or any information concerning the business or finances of the Company or of any dealings, transactions or affairs of the Company or any client, customer or supplier of the Company which comes to your knowledge during the course of your appointment. You will also comply with the provisions of clause 13.7 (*Confidentiality*) of the Shareholders Agreement as if it applied to you.
- 9.2 For the avoidance of doubt, you shall be entitled to share information you obtain by virtue of your role with the holders of [*insert class*] Shares, so long as this does not run counter to the provisions regarding conflicts of interest outlined above.

We should be grateful if you would accept these terms by signing and returning to us the attached copy of this letter.

Yours sincerely

.....
For and on behalf of [**INSERT NAME OF THE COMPANY**] Limited

I agree to the above terms of appointment as a Director.

.....
[**DIRECTOR'S SIGNATURE**]

**Schedule 10
Working Capital Agreement²⁹**

1. Definitions & Interpretation

1.1 In this Working Capital Agreement, the following terms will have the following meanings:-

"Event of Default" means any of the following:

- (a) any of the events or circumstances in clause [2.4 (*Termination*)] of this Agreement;
- (b) a failure by the Company to make any repayment to a Working Capital Provider in accordance with paragraph 4 of this Working Capital Agreement where such failure has not been rectified within ten (10) Business Days of the date that such repayment was due to be made; or
- (c) the occurrence of an Insolvency Event in respect of the Company (but not, for the avoidance of doubt, any other WEP Company);

"Individual Commitment" means, in respect of a given Working Capital Provider, the commitment of that Working Capital Provider as set out in paragraph 2.2 of this Working Capital Agreement as may be adjusted from time to time in accordance with paragraph 2.3 of this Working Capital Agreement;

"Reserve Account" means the account set up in the name of the Company for the purposes of holding payments under this Working Capital Agreement; and

"Working Capital Limit" has the meaning given in paragraph 2.1 of this Working Capital Agreement.

2. Working Capital Facility

2.1 Without prejudice to [paragraph 2.3 and 4.1 of this Working Capital Agreement], the total limit applicable to the Working Capital Facility to be provided by the Working Capital Providers hereunder shall be [£◆]³⁰ (the "**Working Capital Limit**").

2.2 Each Working Capital Provider shall, on a several basis and not jointly, make available funds forming part of the Working Capital Limit in accordance with this Working Capital Agreement in the following amounts:

Working Capital Provider	Working Capital Provider's Individual Commitment
	[£◆] ³¹

2.3 Subject to Article [9.2(f)], a Working Capital Provider's Individual Commitment shall be:

²⁹ To be aligned with Bidder solution, including the working capital plan to be submitted pursuant to Section F1 (WEPCo working capital and resourcing plan of Annex 9 of Volume 1 of the ITPDSB)

³⁰ To be populated for Final Bid

³¹ To be populated for Final Bid

- 2.3.1 increased or decreased pro rata to the number of Shares held by that Working Capital Provider as compared with the aggregate number of Shares in issue; and
- 2.3.2 increased or decreased pro rata to the overall Working Capital Limit determined by the Company from time to time pursuant to this Agreement,

provided that the Individual Commitment of any Working Capital Provider shall only be increased where that Working Capital Provider has expressly so agreed in writing to such increase.

- 2.4 When drawing under or otherwise utilising the Working Capital Facility, the Company must comply with:
 - 2.4.1 the Working Capital Limit in aggregate;
 - 2.4.2 each Working Capital Provider's Individual Commitment; and
 - 2.4.3 the requirement for drawing under or other utilisation of Working Capital Providers' Individual Commitments to be done on a pro rata basis (proportionate to the percentage of the relevant Working Capital Provider's shareholding in the Company)

All other provisions of this Working Capital Agreement relating to the level of drawing or utilisation of the Working Capital Facility shall be subject to this paragraph 2.4.

- 2.5 Subject to the provisions of clauses 8.3 to 8.7 (*Working Capital*) of this Agreement ³², the Working Capital Facility shall be, and shall only be capable of being utilised for the purposes of providing working capital for the Company as the Directors see fit in accordance with the provisions of the Company Articles and this Agreement.

2.6 **Availability**

- 2.6.1 The Working Capital Facility shall be available for drawing by the Company from the [date of this Agreement] until [*insert date 5 years from date of Shareholders Agreement*]. Following [*insert date 5 years from date of Shareholders Agreement*] the Working Capital Facility will cease to be available unless the holders of a majority of the A Shares and the holders of a majority of the B Shares have agreed in writing to its renewal or extension.
- 2.6.2 Without prejudice to clause 8.4(c) of this Agreement, the Working Capital Facility shall be repaid in full:
 - (a) on or before [*insert date 5 years from date of Shareholders Agreement*] (subject always to paragraph 2.6.4 of this Working Capital Agreement); or
 - (b) on such later date as may be agreed in writing by the Company, the holders of a majority of the A Shares and the holders of a majority of the B Shares; or
 - (c) if earlier, on the occurrence of an Event of Default.

Save to the extent agreed in writing by the Company, the holders of a majority of the A Shares and the holders of a majority of the B Shares, if the Working Capital Facility is not repaid by [*insert date 5 years from date of Shareholders Agreement*],

³² Bidders should adjust drafting as appropriate to their solution in the event that the PSDP is not providing working capital.

then the full amount of the Working Capital Facility shall be due and payable on that date.

2.6.3 [Not Used]³³

2.6.4 Without prejudice to clause 8.4(c) (*Working Capital*) of this Agreement and paragraph 2.6.2 of this Working Capital Agreement, the Company may and shall, where the Directors so resolve in accordance with this Agreement and the Company Articles, repay all or any amounts drawn or deemed to be drawn (and not repaid) under the Working Capital Facility from the Working Capital Providers from time to time at any time without penalty prior to [insert date 5 years from date of Shareholders Agreement] or later date as referred to in paragraph 2.6.2(b) or the occurrence of any Event of Default, provided that:

- (a) [where repayments are made pursuant to this paragraph 2.6.4 , the Working Capital Limit and the Individual Commitments of any such Working Capital Provider shall remain unaffected and any amounts so repaid shall be available for redrawing as part of the Working Capital Facility in accordance with the terms of this Agreement; and]
- (b) repayments shall be made to each Working Capital Provider pro rata to sums drawn down from that Working Capital Provider pursuant to paragraph 2.4.3 of this Working Capital Agreement.

For the avoidance of doubt, the prior written consent of the Shareholders pursuant to clause 8.5 (*Working Capital*) of this Agreement shall not require to be sought in respect of any proposal to repay amounts pursuant to this paragraph 2.6.4 of this Working Capital Agreement.]³⁴

2.6.5 Nothing in this Working Capital Agreement shall prevent repayments to a Working Capital Provider in pursuance of clause 8.10 (*Working Capital*) (as read with clause 8.11 (*Working Capital*)) of this Agreement.

2.7 Drawdown Process

2.7.1 In order to require a drawdown under the Working Capital Facility, the Company shall deliver to a Working Capital Provider a drawdown notice in the form set out in Appendix 1 to this Schedule 10 (*Working Capital Agreement*) and complying with the requirements of Appendix 1 to this Schedule 10 (*Working Capital Agreement*). Unless an Event of Default has occurred, provided the requirements of the drawdown notice have been met, the Working Capital Provider shall make payment of the amount requested in the drawdown notice to the Reserve Account on a date falling not later than five (5) Business Days after the date of the drawdown notice.

2.7.2 [On the date of completion under clause 2.2 of this Agreement, the Company shall be deemed to have issued a drawdown notice for £[•] from the PSDP and £[•] from the WCo Working Capital Provider and the Working Capital Providers shall

³³ Where a revolving facility is not envisaged as provided for in para 2.6.4 (a) that provision should be deleted. Bidder specific drafting may be included here.

³⁴ PSDP may elect to delete this paragraph. In such circumstances the drafting will require to reflect a requirement for any repayment of Working Capital other than in accordance with paragraph 2.6.2 or Clause 8.4(c), to be a Reserved Matter.

transfer these amounts deemed to have been drawn down to the Reserve Account on or before completion of this Agreement under clause 2.2 of this Agreement.]³⁵

3. Interest

- 3.1 The rate of interest applicable to the Working Capital Facility for all amounts drawn and outstanding under the Working Capital Facility at any time shall be, subject always to clause 8.9 (Working Capital) of this Agreement, in respect of all other sums drawn under the Working Capital Facility and paid to the Company the rate of [◆]% per annum.

4. Payments

- 4.1 All payments by the Company to the Working Capital Provider under this Schedule 10 (*Working Capital Agreement*) shall be in cleared funds and made free and without deduction of Tax unless the Company is required by law to make a payment subject to deduction or withholding of Tax, in which case the amount payable by the Company will be sufficiently increased to ensure that Working Capital Provider receives and retains a net sum equal to that which it would have received and retained were no deduction or withholding made. If a Working Capital Provider subsequently receives a Tax credit which is referable to the increased payment and which enhances its position, then the relevant Working Capital Provider will reimburse the Company sufficient to redress the position up to the amount received so long as by so doing the relevant Working Capital Provider does not prejudice receipt or retention of the Tax credit.
- 4.2 All payments of interest due to a Working Capital Provider will be paid semi-annually (on 31 December and 30th June) to the relevant Working Capital Provider as directed by the relevant Working Capital Provider. Interest shall be calculated in respect of all amounts drawn down from the Working Capital Facility and provided by each individual Working Capital Provider under this Agreement and payable to the relevant Working Capital Provider in accordance with paragraph 3.1 of this Working Capital Agreement.
- 4.3 All payments to be made by the Company under this Working Capital Agreement shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- 4.4 All sums of interest will accrue on a daily basis on the amount paid into the Reserve Account and be calculated on the basis of a year of 365 days and, in any such case, for the actual number of days elapsed. Interest shall continue to accrue on sums due following a decree or judgement as well as before it, and at the same rate.
- 4.5 Any determination by a Working Capital Provider of any amount of principal, interest, commission or charges or an applicable interest rate owed to such Working Capital Provider shall, in the absence of manifest error, be conclusive and binding on the Company.
- 4.6 Where the due date for payment of any amount under this Working Capital Agreement is not a Business Day then (without affecting subsequent payment dates) actual payment will be required on the next Business Day.

5. Indemnity

- 5.1 The Company will at all times on demand indemnify the Working Capital Providers against all actions, suits, Proceedings, claims, demands, liabilities, costs, expenses, losses, damages and charges whatsoever (except those arising as a result of the gross negligence or wilful misconduct of the relevant Working Capital Provider) which may occur in relation to

³⁵ Noting these amounts should be proportionate and no greater than the Individual Commitments contained in paragraph 2.2. Bidders to complete in Final Bid.

or arising out of any utilisations of the Working Capital Facility made available under this Agreement.

- 5.2 The Company will pay the Working Capital Providers the amount of all payments made (whether directly or by way of set-off, counterclaim or otherwise) and all losses, costs or expenses suffered or incurred from time to time by the Working Capital Providers arising under any liability which the Working Capital Providers have incurred (directly or indirectly) in relation to any utilisations of the Working Capital Facility.
- 5.3 The liability of the Company under paragraphs 5.1 and 5.2 of this Working Capital Agreement shall not be affected by any time being given or by anything being done or not done by the Working Capital Providers.

Appendix 1

From: [WEPCo]
To: [Working Capital Provider]

Address:

Attention:

Date:

Dear Sirs

Working Capital Facility between [] and [WEPCo] dated [●] (the "Working Capital Facility")

1 We refer to the Working Capital Facility. This is a drawdown notice. Terms defined in the Shareholders Agreement between, amongst others, the Working Capital Providers and the Company dated [] have the same meaning in this drawdown notice.

2 We request an advance under the Working Capital Facility on the following terms:

Amount: [●]

3 Proposed drawdown date: [●] (or, if that is not a Business Day, the next Business Day).

4 The proceeds of this Advance should be credited to the Reserve Account [*details*].

5 This drawdown notice is irrevocable.

6 [We attach to this drawdown notice a schedule detailing the amount of working capital required by us and [the anticipated expenditure for which that working capital will be required/the expenditure which has been funded from sums standing to the credit of the Reserve Account.]

7 We confirm that this drawdown notice is for an amount that is equal to []% of the expenditure referred to in paragraph 6 above, such proportion being equal to the proportion of shares held by [the PSDP]/[WGCo]³⁶ in the Company.

Yours faithfully

Director
For and on behalf of
[WEPCo]

³⁶ To be selected as appropriate for a drawdown notice to the PSDP or the WGCo Working Capital Provider and relevant percentage of the aggregate advance .

Executed and delivered as a **DEED** by **[PSDP]**)
acting by its duly authorised signatories:)
)

Director

Director/Secretary*

OR

Executed and delivered as a **DEED** by **[PSDP]**)
acting by its duly authorised signatory:)
)

Director

In the presence of:

Witness Signature:

Name:

Address

Executed and delivered as a **DEED** by)
[WELSH GOVERNMENT COMPANY)
LIMITED] acting by its duly authorised)
signatories:)

Director

Director/Secretary*

OR

Executed and delivered as a **DEED** by)
[**WELSH GOVERNMENT COMPANY**)
LIMITED] acting by its duly authorised)
signatory:

.....
Director

In the presence of:

Witness Signature:

Name:

Address

Executed and delivered as a **DEED** by)
[**COMPANY**] **LIMITED** acting by its duly)
authorised signatories:)

.....
Director

.....
Director/Secretary*

OR

Executed and delivered as a **DEED** by)
[**COMPANY**] **LIMITED** acting by its duly)
authorised signatory:)

.....
Director

In the presence of:

Witness Signature:

Name:

Address