



Llywodraeth Cymru  
Welsh Government

# **WEP Strategic Partnering Delivery Model**

## **Template Project Co Shareholders' Agreement**

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

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## TEMPLATE PROJECT CO SHAREHOLDERS' AGREEMENT

### VERSION 1

#### IMPORTANT NOTICE

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

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

1. This is the Template Project Co Shareholders' Agreement (the "**Template Project Co Shareholders' Agreement**") as referred to in and set out in Section 4 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 Project Co Shareholders' Agreement on all Mutual Investment Model (MIM) projects, 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 derogations to the Template Project Co 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. Further, in the case of matters which may adversely affect an "off-balance sheet" statistical classification by ONS/EUROSTAT, project teams are advised to read EPEC/EUROSTAT's Guide before contacting Welsh Government for approval. Any derogations that, in the opinion of Welsh Government, may adversely affect an "off-balance sheet" statistical classification will not be permitted.
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 Project Co 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](mailto:MIMEducation@gov.wales)

DATED

20◆

[PRIVATE SECTOR DELIVERY PARTNER] (1)

[WGCO LIMITED] (2)

[HOLD CO] (3)

[PROJECT CO] (4)

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**PROJECT CO  
SHAREHOLDERS'  
AGREEMENT RELATING TO  
[NAME OF PROJECT] AND  
THE WEP STRATEGIC  
PARTNERING DELIVERY  
MODEL**

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**WEP STRATEGIC PARTNERING DELIVERY MODEL TEMPLATE PROJECT CO  
SHAREHOLDERS' AGREEMENT**

**THIS AGREEMENT** is made on

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**Among:**

- (1) **[Private Sector Delivery Partner]**<sup>1</sup> (Company No. ◆) whose registered office is at ◆  
(PSDP);
- (2) **[[WGCo Limited]**<sup>2</sup> (Company No. ◆) whose registered office is at ◆] (**WGCo**);
- (3) **[Name of Hold Co]**<sup>3</sup> (Company No. ◆) whose registered office is at ◆ (**Company** or **Hold Co**); and
- (4) **[Name of Project Co]** (Company No. ◆) whose registered office is at ◆ (**Project Co**).

**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 the parties and the amount of Shareholder Debt advanced to Project Co by each of the 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 Shareholders have agreed to establish the Company as a jointly owned company which is intended to carry on the business of a holding company in the manner set out in this Agreement.
- (D) Project Co is a limited liability company registered in [England and Wales]. Project Co is a wholly owned subsidiary of the Company established for the purposes of Project Co entering into the Project Documents to which it is to be a party and undertaking the Project.<sup>4</sup>
- (E) 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 and Project Co Businesses shall be conducted in accordance with the provisions of this Agreement.

**IT IS AGREED:**

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<sup>1</sup> **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.

<sup>2</sup> **Parties - WGCo.** Subject to due diligence on a project by project basis, Welsh Government shall invest. 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.

<sup>3</sup> **Parties – Company and Project Co.** This document has been drafted on the premise that the Company and Project Co are companies which are registered in England and Wales.

<sup>4</sup> **Recital D – Formation of Project Co and the Company.** The PSDP is expected to set up the Company and Project Co.

## 1. Definitions and interpretation

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

## 2. Commencement and duration

### *Conditions precedent*

2.1 The obligations set out in clause 12.1 (*Confidentiality*) shall commence:

- (a) in relation to the Founder Shareholders, the Company and Project Co, 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, the Company and Project Co, 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 5.3 (*Removal of/change to nominated Directors*);
- (b) its rights and obligations under clause 8.4(c) (*Provision of information to Shareholders and designated third parties*) and clause 12 (*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,

shall not be affected.

### *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 11 (*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 Project Co and details of the Company and Project Co**

#### 3.1

- (a) The business of the Company is to act as the holding company of Project Co.
- (b) The business of Project Co is to carry out or procure the carrying out of the Welsh Mutual Investment Model project relating to [details of the relevant MIM project] (**Project**).

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

### **4. Funding of the Company and the Project Co and financial matters<sup>5</sup>**

#### *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 Board or of the members of the Company/Project Co (as appropriate) to the extent not already taken:

- (a) the parties shall procure that the necessary board and/or shareholder resolutions in respect of the Company and Project Co are passed to adopt the Hold Co Articles and the Project Co 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 Shares as set out opposite its name in the Data Sheet; and
  - (ii) WGCo<sup>6</sup> shall subscribe for the number of Shares as set out opposite its name in the Data Sheet,
- (c) the Company shall subscribe for the number of shares in Project Co as set out opposite its name in the Data Sheet,<sup>7</sup>

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<sup>5</sup> **Clause 4 – Funding.** If an equity bridge is to be used or Shareholder Debt is to be invested by instalments, the mechanics will need to be set out in the Equity Subscription Agreement. If there is no equity bridge, an Equity Subscription Agreement may not be required and appropriate amendments may be required to this Agreement. It should be assumed that WGCo will invest on the same market terms and at the same times as other Shareholders and the detail included in an Equity Subscription Agreement.

<sup>6</sup> **Clause 4.1(b)(ii) – Level of WGCo investment.** The intended level of the WGCo investment will be stated in the procurement documentation at the outset of the procurement. The procurement documentation will provide further information regarding the manner in which WGCo shall undertake due diligence. Any holding will always be a minority interest and no higher than 20% of issued share capital/debt, so WGCo will not be entitled to appoint more than one (1) Director to each of Project Co and Hold Co.

<sup>7</sup> **Clause 4.1(c) - Wholly Owned Subsidiary.** Project Co shall be a wholly owned subsidiary of the Company.

following which the Company and Project Co shall deliver the relevant definitive share certificates in relation to the allotment of Shares pursuant to sub-clause (b) and sub-clause (c) and shall insert the names of the allottees in the register of members.

#### *Shareholder Debt*

#### 4.2 In respect of Shareholder Debt:

- (a) the PSDP undertakes to advance the amount of Shareholder Debt as set out opposite its name in the Data Sheet by way of subscribing for Hold Co Loan Notes in accordance with the terms of the Equity Subscription Agreement;
- (b) WCo undertakes to advance the amount of Shareholder Debt as set out opposite its name in the Data Sheet by way of subscribing for Hold Co Loan Notes in accordance with the terms of the Equity Subscription Agreement; and
- (c) Hold Co undertakes to on-loan the amount equivalent to the subscription monies of the Shareholder Debt received pursuant to clause 4.2(a) to 4.2(b) (*Shareholder Debt*) to Project Co in accordance with the terms of the Equity Subscription Agreement and the On-Loan Agreement<sup>8</sup>,

following which Hold Co and Project Co (as applicable) shall deliver any relevant certificates in relation to the Shareholder Debt advanced pursuant to sub-clauses (a) to (b) and shall insert the names of the Shareholders in the Register (as such term is defined in the Hold Co Loan Note Instrument).

#### *Further capital required for the Company and for Project Co*

#### 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) 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 the Project Co. The same provisions shall apply in respect of Hold Co, such that Hold Co shall not be required to subscribe for any further Shares or to provide any additional funding for Project Co.
- (b) The Company and Hold Co shall not allot any Shares contrary to any restrictions imposed pursuant to the Project Documents.
- (c) 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*).<sup>9</sup>
- (d) If, in the opinion of the Hold Co Board (or the Project Co Board as the case may be), the Company (or the Project Co) requires further funding, the Hold Co Board (or the Project Co Board) shall determine how the Company (or Project Co) should obtain such additional funding, whether by way of the allotment of shares, by obtaining

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<sup>8</sup> **Clause 4.2(a) - On-Loan Agreement.** The On-Loan Agreement will be the subject of WCo due diligence and must represent like for like terms injection of capital at Company and Project Co level.

<sup>9</sup> **Clause 4.3(c) - Deed of Adherence.** The Articles and Project Documents must provide that Project Co shall always be a wholly owned subsidiary of Hold Co.



additional debt finance, or such other means as the Hold Co Board (or Project Co Board) may determine.

- (e) If the Board determines to allot further Shares, such Shares shall be allotted in accordance with the provisions of sub-clauses (f) to (h) below.
- (f) Subject to the provisions of clause 4.4 (*Offers to Allot*), if the Directors determine to allot Shares in the Company, the Directors shall, of the Shares to be offered, first offer the Shares to the Shareholders pro rata to each Shareholder's existing holdings of Shares (**first offer**).
- (g) To the extent that any Shares are not accepted under the first offer the Directors shall offer the remaining Shares to the Shareholders who have accepted that first offer pro rata to their holdings of Shares following the first offer (**second offer**). To the extent that any second offer is not accepted by any such Shareholder but is accepted by other Shareholders, the Directors shall make such subsequent offers with the necessary changes having been made to those persons who have accepted the second offer until all of the Shares have been accepted or, failing acceptance, until there are no persons willing to take further Shares whereupon the Directors may offer the remaining Shares to any Suitable Third Party.
- (h) A Shareholder may accept a first offer, or any other offer made to it, in whole or in part.

*Offers to Allot*

4.4 Each offer shall be made by the Board by notice in writing (an **Offer to Allot**) and in the case of Shareholders shall be served on Founder Shareholders at their address for service set out in clause 12.8 (*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;
  - (iv) specify the period during which the offer will remain open for acceptance, which for a first offer shall be fifteen (15) 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 shall not be deemed to be accepted until the Board has either received notices of acceptance in respect of all the Shares available 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 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 the Project Co and financial matters*).

- (c) 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 for Project Co*) 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.

**5. The Boards of the Company and Project Co**

*Composition of the Boards and the right to appoint Directors*

5.1

- (a) Each of the Boards shall consist of not less than three (3) Directors, to be appointed in accordance with this Agreement and the Hold Co Articles and the Project Co Articles (as the case may be).
- (b) The Shareholders shall be entitled in accordance with the Hold Co Articles and this Agreement to nominate and appoint in writing persons as Directors of the Company and to remove such persons from office. Any Shareholder holding [fifteen per cent (15%)]<sup>10</sup> or more of the issued Share capital (a **Material Shareholder**) shall be entitled to nominate one (1) Director for every [fifteen per cent (15%)] of the issued Share capital of the Company held by it, PROVIDED THAT WGCo (and any member of the WGCo Group to whom WGCo transfers all but not part of its Shares in the Company) shall, for as long as it holds issued Share capital in the Company, be entitled to nominate and appoint in writing one (1) person as a Director of the Company and to remove such person from office, irrespective of whether it holds [fifteen per cent (15%)] of the issued Share capital of the Company.
- (c) The persons nominated and appointed by the parties to act as the initial Directors for the purposes of sub-clause (b) are as set out in Schedule 2 (*Details of the Company and the Project Co*).
- (d) In addition to its rights to nominate and appoint Directors under sub-clause (b), each RTAD Shareholder shall be entitled in accordance with the Articles, to nominate and appoint in writing one (1) person as an Alternate to each of its Director appointees and to replace any such person(s) as an Alternate from time to time (provided such Alternate shall be registered as a Director at Companies House).
- (e) The parties shall procure that the Directors of the Company (and any Alternate(s) ) appointed or removed in accordance with this clause 5 (*Composition of the Boards and the right to appoint Directors*) shall also be appointed and removed, as the case may be, as Directors/Alternate(s) of Project Co.

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<sup>10</sup> **Clause 5.1(b) – Percentage of Shareholding.** The percentage will need to be determined on a transaction by transaction basis but shall never be more than 20%. See footnote 7. WGCo will never have the right to appoint more than one (1) Director.

### *Quorum requirements for Board meetings*

#### 5.2

- (a) Subject to the Articles, sub-clauses (b) and (c), clause 6.5 (*Step-aside provisions*) and clause 5.14 (*Director's power to authorise conflict situations*), the quorum for Board meetings of the Company and Project Co respectively shall comprise [one (1) WG Co Director and [two (2)] PSDP Directors (or their respective Alternates) .
- (b) If within thirty (30) minutes of the time for the relevant meeting there is not a quorum of Directors in attendance (in accordance with sub-clause (a)) at a meeting of Directors called in accordance with this clause 5.2 (*Quorum requirements for Board meetings*), 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 [26.6] [*Quorum for Board Meetings*] of the Hold Co Articles and when reconvened such adjourned meeting shall, subject to the provisions of article [◆] [*Quorum for Board Meetings*] of the Hold Co Articles or article [◆] [*Quorum for Board Meetings*] of the Project Co Articles (as appropriate), be deemed to be quorate notwithstanding the fact that the relevant number of Director(s) appointed by that RTAD Shareholder may not be present.
- (c) If a RTAD Shareholder fails to appoint and maintain in office the relevant number of Directors it is required to appoint to satisfy the quorum requirements in sub-clause (a) then, if a meeting of the Directors is called in accordance with this clause 5.2 (*Quorum requirements for Board meetings*) and notice of the meeting is given to that RTAD Shareholder as if it were a Director, the meeting of Directors shall be deemed to be quorate notwithstanding the fact that the relevant number of Director(s) appointed by that RTAD Shareholder to form a quorum under sub-clause (a) may not be present.

### *Removal of/change to nominated Directors*

#### 5.3

- (a) If an RTAD Shareholder (the **Appointing Shareholder**) removes any person nominated by it as a Director (such a Director being an **Outgoing Director**) then the Appointing Shareholder shall procure that the Outgoing Director vacates office without any claim to the Company for loss of office or otherwise relating to the Outgoing Director's vacation of office and the Appointing 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 or unfair dismissal or redundancy or other loss arising out of the Outgoing Director's removal from or loss of office.
- (b) If any Material Shareholder ceases to be a Material Shareholder or WGCo ceases to hold any Shares (an **Outgoing Shareholder**) and any Director has been nominated as a Director by the Outgoing Shareholder pursuant to clause 5.1 (*Composition of the Boards and the right to appoint Directors*), the Outgoing Shareholder shall procure that any such Director vacates office without any claim to the Company for loss of office or otherwise relating to such Director's vacation of office 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 or unfair dismissal or redundancy or other loss arising out of such Director's removal from or loss of office.

- (c) The provisions of sub-clause (a) and sub-clause (b) above apply with the necessary changes in relation to Project Co Directors as if references to the Company were references to Project Co.

#### *Chairman of the Board*

### 5.4

- (a) There shall be a Chairman of the Hold Co Board and the Project Co Board appointed or nominated in accordance with either sub-clause (b) or sub-clause (c) as the case may be.
- (b) 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 5.1 (*Composition of the Boards and the right to appoint Directors*). If a Chairman is unable to attend any meeting of the Board or of the Shareholders of the Company/Project Co 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 (b) shall not have a vote at either Board or Shareholder meetings.
- (c) If the Shareholders do not agree to appoint an independent non-executive Chairman under sub-clause (b) 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 Boards 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 Material Shareholder (by agreement between the Material Shareholders) or, failing agreement, then by the Material Shareholders drawing lots (provided that a Material Shareholder appointee shall not hold the role of Chairman for more than six (6) months in any eighteen (18) month period). A Director appointed as Chairman under this sub-clause (c) shall not have a second vote by reason of his/her appointment as Chairman.

#### *Board meetings and Board voting<sup>11</sup>*

### 5.5

- (a)
  - (i) Resolutions of the Board shall be determined by a simple majority of votes cast for or against each resolution.
  - (ii) Subject to the Articles, sub-clause (a)(iii), clause 5.4(b) and (c) (*Chairman of the Board*) and clause 6.5 (*Step-aside provisions*), at Board meetings each Director (other than an independent non-executive Chairman appointed under clause 5.4(b) (*Chairman of the Board*)) shall have one (1) vote.

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<sup>11</sup> **Clause 5.5 - director voting.** The standard form documents are drafted on the basis of votes per director/Alternate. If other voting mechanics (e.g. director appointees having voting rights in the percentages of their appointees) then the PSDP/Bidder will need to put forward any such changes (rationale and detail) for consideration as part of the bid process.

- (iii) Subject to the Articles, if a Material Shareholder has more than one (1) Director appointee under clause 5.1 (a) (*Composition of the Boards 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 Material Shareholder shall be entitled to vote each relevant absent Director's vote.
- (b) 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 Board specifying the date, time and place of the meeting shall be given to all Directors. All meetings of the Board shall take place at such location as the Board shall agree and the RTAD 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 (*The Boards of the Company and Project Co*) and in the Articles) is present at each such meeting of which due notice has been given.
- (c) Unless otherwise agreed by the Board:
  - (i) meetings of the Directors 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);
  - (ii) 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 Directors;
  - (iii) a resolution (which may be in counterparts) in writing signed by all the Directors entitled to receive notice of a meeting and vote at the meeting shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held; and
  - (iv) any Director shall by notice to the Company and each other Director be entitled to convene a meeting of the Directors on not less than ten (10) Business Days' notice.
- (d) Unless otherwise agreed by all of the Directors, all papers for meetings of the 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 Board will be sent to each Director as soon as practicable after the holding of the relevant meeting.
- (e) The provisions of sub-clauses (a) to (d) shall apply with necessary changes as if references to the Company were references to Project Co.
- (f) Unless otherwise agreed by all of the Directors, a meeting of the Project Co Board shall follow immediately after a meeting of the Hold Co Board.
- (g) Notwithstanding any other provisions of this Agreement or of the Articles, if a Shareholder (the Relevant Shareholder) is in material breach of its obligations under this Agreement or the Articles the Directors appointed by it shall be disenfranchised from voting at 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 the Material 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.

*Director remuneration*

- 5.6 The Company and Project Co shall pay Director remuneration as set out in clause 5.7 (*Director remuneration*). Any increase in any such remuneration other than in accordance with clause 5.7 (*Director remuneration*) is a Reserved Matter.
- 5.7 The role of Director of the Company and Project Co shall attract remuneration of £[◆]<sup>12</sup> per annum (Index Linked). Such fee shall be due, pro rata, monthly in arrears, from the date of his/her or her appointment and is payable within thirty (30) days of receipt of an invoice by the Company and/or Project Co, as appropriate.
- 5.8 In addition to the remuneration set out at clause 5.7 (*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 Board, general meetings, meetings of committees of the Board or otherwise in connection with the carrying out of their duties.

*Director's power to authorise conflict situations*

- 5.9 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 Boards of the Company and Project Co*), then that Director may vote at a meeting of Directors 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.
- 5.10 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.
- 5.11 Any Director shall be entitled from time to time to disclose to the RTAD 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.
- 5.12 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.
- 5.13 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

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<sup>12</sup> **Clause 5.7 - Directors remuneration.** Note that agreement is required on the initial level Director remuneration. It will be set on a project specific basis 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.

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.

5.14 Unless otherwise agreed between the Shareholders in writing and notwithstanding clause 5.2 (*Quorum requirements for Board meetings*), the quorum for any meeting (or part of a meeting) of the Directors whilst it is considering the grant, alteration or revocation of a Conflict Authorisation shall be at least one (1) Director for each RTAD Shareholder provided that a Relevant Director shall not be counted in the quorum for such meeting.

5.15 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.

5.16 Any terms to which a Conflict Authorisation is made subject (**Conflict Authorisation Terms**) may include (without limitation to clause 5.13 (*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 Directors or otherwise) and be excused from reviewing documents and information prepared by or for the Directors 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 5.16 (*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.

5.17 Subject to this clause 5.17 and clause 6.2 (*Reserved Matters*) but without prejudice to clause 5.13 and 5.14 (*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 the Company or Project Co (**Counterparty**); or
- (b) the Director has been appointed as a director of the Company or Project Co 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%)]<sup>13</sup> 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**).

5.18 The Conflict Authorisation Terms applicable to the Project Document Conflict Authorisation (**Project Document Conflict Authorisation Terms**) are automatically set by this clause 5.18 (*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):
  - (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.

5.19 The provisions of clauses 5.9 to 5.19 (*Director's power to authorise conflict situations*) (inclusive) shall apply with all necessary changes as if references to the Company were references to Project Co.

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<sup>13</sup> **Clause 5.17 - Conflicts.** To be considered on a project by project basis of the proposed investment structure.



## 6. Management of Company and Project Co affairs

### *Management of the Businesses*

6.1 The parties shall exercise all rights and powers available to them in relation to the Company and Project Co 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 Hold Co Business;
- (b) the business of Project Co shall consist exclusively of the Project Co Business;
- (c) with the exception of:
  - (i) matters for which responsibility is expressly delegated by the Project Co Board to the officers of Project Co; and
  - (ii) those matters requiring Reserved Matter Board Approval or Shareholder approval pursuant to clause 6.2 (*Reserved Matters*),

all the business of the Company and Project Co, other than routine day-to-day business, shall be undertaken and transacted by the Directors;

- (d) no payment will be made by the Company or Project Co and no cheque or payment instruction of either the Company or Project Co shall be signed other than in accordance with the mandates (general or specific) and procedures authorised by the respective Boards from time to time;
- (e) the Company/Project Co 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; and
- (f) the Company and Project Co shall both put in place and maintain appropriate procedures and training to comply with the requirements of the Bribery Act 2010.

### *Reserved Matters*

6.2 Subject to clause 6.4 (*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]<sup>14</sup>,

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<sup>14</sup> **Clause 6.2(b) - Reserved Matters.** Option for the parties to decide on in terms of what is considered the most appropriate structure for the relevant project.

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.

*Manner of giving Shareholder approval*<sup>15</sup>

6.3

- (a) Subject to sub-clause (b) and to sub-clause (c) of this clause 6.3 (*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 on behalf of a Material Shareholder by a Director nominated by it under clause 5.1 (*Composition of the Boards and the right to appoint Directors*).
- (b) Notwithstanding the provisions of clause 5 (*The Boards of the Company and Project Co*), if at a 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/Project Co 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 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 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 Board approval shall be capable of being given by one (1) Director appointed by each of the other Material 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) A Material Shareholder 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 Shareholder approval, that approval will only then be deemed to have been given when that Material Shareholder has given its specific approval in writing to that matter. A Material Shareholder may opt back in to the mechanism in sub-clause (a) and sub-clause (b) by notice in writing under this sub-clause (c).
- (d) Notwithstanding the provisions of clause 5 (*The Boards of the Company and Project Co*), 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/Project Co in relation to any matter other than (i) Claims (where clause 6.5 (*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.

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**Clause 6.3 – 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 Board appointees giving approval or otherwise (as the case may be) under clause 6.3(a). However, in terms of director's duties, sub-clause (b) addresses conflict of interest situations where the 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 (c) allows a Shareholder to opt in and out of these arrangements should it wish to do so.

*Shareholders' and Company undertakings*

- 6.4 Each Shareholder undertakes to each of the other Shareholders that, in its capacity as a Shareholder, it will not act and shall not exercise its voting rights and other powers of control available to it in relation to the Company and Project Co so as to cause (insofar as it is able by the exercise of such rights and powers) Project Co to breach the provisions of the Project Documents to which it is a party.

*[Step-aside provisions]<sup>16</sup>*

- 6.5 Notwithstanding any provision to the contrary in this Agreement or the 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/Project Co:
    - (i) the Independent Directors shall be entitled to defend such Claim in the name and at the expense of the Company/Project Co;
    - (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 meetings of the Board or otherwise take any action on behalf of the Company/Project Co in respect of the defence by the Company/Project Co of such Claim nor shall they be entitled to any Board papers or other papers or information in relation to such Claim; and
    - (iii) the quorum at any Board meeting of the Company/Project Co convened to consider any such Claim shall be one (1) Independent Director nominated by each RTAD Shareholder other than the PSDP.
  - (b) If an RTAD Shareholder or Associate of an RTAD Shareholder (other than the PSDP) asserts that the Company or Project Co has any Claim against the PSDP and/or an Associate of the PSDP:
    - (i) the Independent Directors shall be entitled to determine if and when to pursue such Claim in the name and at the expense of the Company/Project Co by the issue of Proceedings by the Company/Project Co against the PSDP and/or Associate of the PSDP;
    - (ii) each of the PSDP Directors shall not be entitled to any 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 Board or otherwise take any action on behalf of the Company/Project Co in respect of:
      - (A) any decision pursuant to sub-clause **Error! Reference source not found.** 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/Project Co; and

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<sup>16</sup> **Clause 6.5 - 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.

- (iii) the quorum at any board meeting of the Company/Project Co convened in relation to any consideration of making a Claim (sub-clause **Error! Reference source not found.**) and after the issue of Proceedings in relation to the relevant Claim shall be one (1) Independent Director appointee of each RTAD Shareholder (other than the PSDP).
- (c) For the purposes of this clause 6.5 (*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) The provisions of sub-clauses **Error! Reference source not found.** to **Error! Reference source not found.** shall apply, if a simple majority of Directors (other than the WGCo Directors) so decide, with the necessary changes having been made:
  - (i) in the case of sub-clause **Error! Reference source not found.**, if it is reasonable to conclude that WGCo will issue Proceedings in respect of a Claim against the Company/Project Co as if references to the PSDP are references to WGCo and references to the PSDP Directors are references to the WGCo Director(s); or
  - (ii) in the case of sub-clause **Error! Reference source not found.**, if a Claim against WGCo is asserted by a Material Shareholder or an Associate of a Material Shareholder and/or if Proceedings are then issued by the Company/Project Co against WGCo as if references to the PSDP are references to WGCo]<sup>17</sup>

## 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 Project Documents and subject to the working capital and other financial requirements of Project Co (e.g. budgeted expenditure and maintenance reserves) as determined by the Project Co Directors:

- (a) Project Co shall distribute all amounts which are lawfully available for distribution by the Project Co to the Company by way of dividend on the Shares in Project Co 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 Project Co under the relevant On-Loan Agreement; and
- (b) 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 under the Hold Co Loan Note Instrument. The dividend payable per Share shall be calculated pro-rata to the total number of Shares.

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<sup>17</sup> **Clause 6.5 - Step-aside provisions.** If Project Co (or 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. Step-Aside approach remains subject to further review by Development Bank for Wales and policy consideration.

## 8. Budgeting, Business Planning and financial matters

### *The Business Plan (including the Annual Budget)*

#### 8.1

- (a) The first Business Plan<sup>18</sup> relating to the Hold Co Business and the Project Co Business covering the period from the date specified in the Data Sheet through to the end of the first financial year of the Company has been approved by the Shareholders and comprises Schedule 3 (*Agreed Form Business Plan*) to this Agreement. The Business Plan shall be reviewed by the 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 draft of the proposed Business Plan for the next financial year (**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 Board at least every three (3) months. From the end of the second financial year following the end of the Lock-in Period (as defined in clause 9.7(c)(*Lock In Periods*)) the Annual Budget shall include relevant lifecycle costs and an implementation programme.

### *Financial records*

#### 8.3

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

### *Provision of information to Shareholders and designated third parties*

#### 8.4

- (a)
  - (i) The Company shall supply in respect of the Company, and shall procure that Project Co shall supply in respect of the Project Co, 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/Project Co with the relevant period set out therein.

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<sup>18</sup> **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/Project Co and an agreed version appended to this Agreement. It is thereafter an operational matter and so the approval of subsequent versions and its approval from time to time is not a Reserved Matter.

- (ii) 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.
  - (iii) Where WCo is a Shareholder, each of the Company, Project Co 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 the Project.
- (b) The Company shall and shall procure that Project Co shall, as soon as reasonably practicable, notify the Shareholders promptly of any litigation, arbitration or administration proceedings raised against it.
- (c) Notwithstanding the provisions of clause 12.1 (*Confidentiality*):
- (i) 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 (D) and (E)) has obtained a written undertaking from that intended Recipient agreeing with that Shareholder and for the benefit of all other Shareholders and the Company and the Project Co, to comply with such obligations of confidentiality as though it were a party to this Agreement) disclose any information received from the Company, Project Co or any Director, to:
    - (A) any shareholder in it;
    - (B) any director or other officer of, adviser to, trustee or manager of, or investor or prospective investor in its Shareholder's Group;
    - (C) the Shareholder's investment adviser and any of its other professional advisers;
    - (D) any member or prospective member of the Shareholder's Group;
    - (E) potential purchasers of any of that Shareholder's interest in the Company and/or Project Co; and
    - (F) any person to whom it is required by Law or a regulatory authority or body or by the Project Documents to be disclosed.
  - (ii) where WCo is a Shareholder, WCo 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 WCo considers it appropriate to make some or all of such information available; and
  - (iii) where WCo is a Shareholder, the Company shall permit (and shall procure that Project Co shall permit) all records referred to in clause 8.3 (*Financial records*) and/or clause 8.4(a) (*Provision of information to Shareholders and designated third parties*) to be examined and copied from time to time by WCo or by any person to whom WCo notifies the Company that it wishes to have access to any such documents, records or information under sub-clause (b)(ii).

*Tax matters*<sup>19</sup>

8.5

- (a)
- (i) Each Shareholder shall use its reasonable endeavours to ensure that both the Company and Project Co are treated by all relevant authorities as being resident for taxation and other purposes in the United Kingdom<sup>20</sup>.
  - (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 Project Co or a Shareholder and compensation in accordance with Law. Each Shareholder agrees that no such mechanism shall be approved by the Company or Project Co 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 and Project Co).

**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 [◆]<sup>21</sup> [(*Transfer and Transmission of Shares*)], in the Hold Co Articles, all transfers of Shares shall be subject to the rights of first refusal<sup>22</sup> set out in the Hold Co Articles.
- (b) Each party undertakes to transfer Shares only in accordance with this Agreement and the Hold Co Articles and to procure that only transfers made in accordance with this Agreement and the Hold Co Articles are registered.
- (c) Each Shareholder undertakes to comply with any restrictions on the transfer of Shares contained in the Project Documents.
- (d) 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

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<sup>19</sup> **Clause 8.5 - 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 and Project Co tax compliance and administration. Bidders are required to summarise the bespoke arrangements they propose when submitting bids.

<sup>20</sup> **Clause 8.5 –tax matters.** The taxation provisions have been drafted on the premise that Hold Co and Project Co are tax resident in the United Kingdom.

<sup>21</sup> **Clause 9.1(a) - Restrictions on transfer of shares.** The 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 Articles.

<sup>22</sup> **Clause 9.1(a) – 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.

such Deed of Adherence in respect of a transfer of Shares made in accordance with this Agreement and the Hold Co Articles. The Company shall not register any transfer in accordance with this Agreement and the Hold Co 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*). However, the provisions of this clause 9.1(d) (*Restrictions on transfers of Shares in the Company*) shall not apply to any Finance Party enforcing its security in accordance with clause 9.1(j) (*Restrictions on transfers of Shares in the Company*).

- (e) 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 (other than in any shareholders' agreement entered into between the shareholders of any company which is a Material Shareholder which does not conflict with the terms of this Agreement),

provided that nothing in this sub-clause (e) shall restrict or prevent:

- (A) the Company from granting a security interest over its shares in Project Co to a funder of the Project Co in relation to a project; or
  - (B) arrangements between WGCo, Welsh Government and the Authority from time to time and the other Shareholders shall be entitled to assume that the actions of WGCo as Shareholder and of the Directors appointed by the WGCo as Shareholder are binding and made with the requisite authority. The other Shareholders and Directors shall not be required to make further enquiry as to any such authority or the nature of the arrangements (if any) between WGCo, Welsh Government and the Authority.
- (f) No Shareholder shall be entitled to give a Transfer Notice if it (or, if it is a company, any of its Associates excluding Project Co) is at that time in material breach of this Agreement. 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 Hold Co Articles or the giving of a Deemed Transfer Notice in accordance with the Articles.
- (g) Each of the Company and Project Co 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], [Company] Limited and [Project Co] 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 wishing to transfer Shares (**Transferring Shareholder**) may do so unless it transfers (or procures the transfer of) an equivalent proportion (relative to the number of Shares that the Transferring Shareholder holds) of any Shareholder Debt held by it or any member of the Shareholder's Group to the proposed transferee. The



Transferring Shareholder must elect to include reference to both Shares and Shareholder Debt (where relevant) in a Transfer Notice.]<sup>23</sup>

- (j) 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 Board shall not decline the registration of such a transfer.

*Events of Default and deemed transfers*

9.2 Notwithstanding the provisions of the Hold Co Articles, if an Event of Default occurs in relation to a Shareholder (**Defaulting Shareholder**) which:

- (a) if capable of remedy, has not been remedied within twenty (20) Business Days of the Shareholder in default becoming aware of the Event of Default (or such longer period as the other Shareholders may notify in writing to the Defaulting Shareholder) (the **Remedy Period**) then the Defaulting Shareholder shall be deemed, at the end of the Remedy Period; or
- (b) is incapable of remedy, then the Defaulting Shareholder shall be deemed immediately upon the Event of Default occurring,

to have given a Deemed Transfer Notice in respect of all the Shares held by it (**Default Shares**) in accordance with the provisions of the Hold Co Articles.

*Shareholder Debt*

9.3

- (a) Where a Deemed Transfer Notice is deemed given pursuant to clause 9.2 (*Events of Default and deemed transfers*), such Deemed Transfer Notice shall also be deemed to offer, by way of transfer, any Shareholder Debt outstanding to the Defaulting Shareholder in the Company (**Defaulting Shareholder Debt**). Any person acquiring some or all of the Default Shares pursuant to the provisions of this clause 9 (*Restrictions on share transfers*) and the Hold Co Articles shall be required to accept a transfer to it of an equal proportion of the Defaulting Shareholder Debt (and the Defaulting Shareholder shall transfer such Defaulting Shareholder Debt in accordance with the terms of the Hold Co Loan Note Instrument and this Agreement). Except where sub-clause (b) applies, the price for the Defaulting Shareholder Debt shall be the price agreed between the non-defaulting Shareholders and the Defaulting Shareholder or, if a market valuation of the Default Shares is requested in accordance with the Articles, then the parties shall require and procure that such market valuation shall also value the Defaulting Shareholder Debt and the transfer of the Defaulting Shareholder Debt shall be at the Market Value as so determined.
- (b) This sub-clause (b) applies where the Default Shares are offered for sale pursuant to the provisions of clause 9.4 (*Appointment of the Sale Agent in certain circumstances*) in which case the price to be paid for the Defaulting Shareholder Debt shall be as determined in accordance with clause 9.4 (*Appointment of the Sale Agent in certain circumstances*) and Schedule 5 (*Sale Agent*).

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<sup>23</sup> Welsh Government Education team are considering stapling provisions from a policy perspective and wish to discuss with bidders.

*Appointment of the Sale Agent in certain circumstances*

- 9.4 If on the expiry of the Deemed Transfer Notice, the non-defaulting Shareholders have not purchased all of the Default Shares and accompanying Defaulting Shareholder Debt then a notice (an **Instruction to Sell Notice**) shall be deemed to have been served on the Defaulting Shareholder requiring the Defaulting Shareholder to sell such Default Shares and any such Defaulting Shareholder Debt and the Defaulting Shareholder 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 such Default Shares and any Defaulting Shareholder Debt (the Default Shares and any such Defaulting Shareholder Debt together being the **Investment**).
- 9.5 If no Qualifying Bid (as defined in Schedule 5 (*Sale Agent*)) is received from a Suitable Third Party within the sixty (60) Business Day period referred to in paragraph 6 of Schedule 5 (*Sale Agent*) or the Investment has not been sold to a Suitable Third Party in accordance with and within the time periods set out in Schedule 5 (*Sale Agent*), then the non-defaulting Shareholders shall be entitled by notice in writing to the Defaulting Shareholder either:
- (a) subject to clause 9.6 (*Appointment of the Sale Agent in certain circumstances*), to elect to purchase the Investment whereupon the Defaulting Shareholder shall forthwith transfer to the non-defaulting Shareholders making the election pro rata to their holdings of Shares all (but not some only) of the Investment for an aggregate consideration (given that the market is deemed to have determined that the value of the Investment is nil) equal to the par value of the Default Shares only; or
  - (b) to require that the Company be wound up in accordance with clause 11 (*Winding Up*) (in which case the Defaulting Shareholder undertakes to the other Shareholders to vote in favour of any resolution(s) to wind up the Company).
- 9.6 Notwithstanding clause 9.5(a) (*Appointment of the Sale Agent in certain circumstances*), any non-defaulting Shareholder shall be entitled to purchase its entitlement to the Investment in its own name and/or by procuring that a Suitable Third Party purchases any part of that entitlement not purchased by that Shareholder provided that:
- (a) the identity of that Suitable Third Party is disclosed to the other non-defaulting Shareholders when it makes an election under clause 9.5(a) (*Appointment of the Sale Agent in certain circumstances*); and
  - (b) no non-defaulting Shareholder reasonably objects in writing within five (5) Business Days of being notified to the identity of the proposed Suitable Third Party on the grounds that the proposed Suitable Third Party is a direct competitor to the non-defaulting Shareholder making the objection.<sup>24</sup>

*Lock In Periods*

- 9.7
- (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:

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<sup>24</sup> **Clause 9.6 – WCo purchase of the Investment.** WCo needs the flexibility to purchase a proportion of the shares only, with WCo procuring a Suitable Third Party purchaser for any remainder. (WCo expects to remain in a minority position).

- (i) to a transferee at any time after the expiry of the Lock In Period (as defined in sub-clause (c));
- (ii) at any time to a transferee permitted in accordance with Articles [◆] of the Hold Co Articles; or
- (iii) in the case of WGCo, WGCo (and any member of the WGCo Group to whom WGCo transfers all but not part of its Shares in the Company) may transfer any interest (or part thereof) to a transferee at any time, including, for the avoidance of doubt during the Lock In Period (as defined in sub-clause (c)),

but always subject to sub-clauses (a)(i) to (ii) above, otherwise in accordance with the provisions of the Hold Co Articles and this clause 9 (*Restrictions on share transfers*).

- (b) **Shares in the PSDP.** No transfer of any legal or beneficial interest in any share capital of [*identify superior holdings in the PSDP*] (each an **Original PSDP Shareholder**) in the PSDP or change in the control over the exercise of voting rights conferred by shares held by the Original PSDP Shareholders in the PSDP shall be made or effected before the expiry of the Lock In Period.
- (c) For the purposes of this Agreement, **Lock In Period** means the period from and including the date of this Agreement up to and including the end of the Project Co Lock In Period.

## 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
- (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, the Company and the Project Co*

- 10.2 The PSDP, the Company and the Project Co each severally warrant and represent to each of the other parties at the date of execution of this Agreement that:
- (a) each of them is duly incorporated under the laws of England and Wales<sup>25</sup> 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 each of them;
  - (c) each of them has taken all necessary action to authorise the execution of and the performance of their obligations under the Project Documents to which they are respectively parties (and in the case of a Project Document executed after the date of this Agreement will take all necessary action to authorise the execution of that Project Document);
  - (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge pending or threatened against any of them or any of their assets which will or might have a material adverse effect on their ability to perform their obligations under the Project Documents;
  - (e) none of them is subject to any contractual obligation, compliance with which will be likely to have a material adverse effect on their ability to perform their obligations under the Project Documents;
  - (f) no proceedings or other steps have been taken and not discharged (nor, to the best of their knowledge, are threatened) for the winding-up of any of them or for their dissolution or for the appointment of a receiver, administrative receiver, liquidator, administrator or similar officer in relation to any of their assets or revenue; and
  - (g) each of them has complied with and currently complies with the 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 PSDP, the Company and the Project Co*

- 10.3 The PSDP, the Company and the Project Co each severally warrant and represent to each of the other Shareholders at the date of execution of this Agreement that each of the Company and Project Co are newly incorporated companies and have not traded prior to the date of this Agreement.

*Tax compliance*

- 10.4 Each Shareholder (other than WGCo) represents and warrants that, as at the date of this Agreement, it has notified the Company and Project Co 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.
- 10.5 If at any time an Occasion of Tax Non-Compliance occurs in relation to a Shareholder, the Shareholder shall:

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<sup>25</sup> **Clause 10.2(a) - Warranties.** To be amended if any of the parties are not incorporated in England and Wales.

- (a) notify each of the Company and Project Co in writing of such fact within five (5) Business Days of its occurrence; and
- (b) promptly provide to each of the Company and Project Co:
  - (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 and Project Co may reasonably require.

10.6 If:

- (a) the 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 and Project Co of any Occasion of Tax Non-Compliance as required by clause 10.5 (*Tax compliance*) or the Authority under the analogous provisions of the Authority Project Agreement,

and, in either case, the Shareholder fails to provide details of proposed mitigating factors which, in the reasonable opinion of the Project Co Board, are acceptable, then Project Co 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 and Shareholder Debt to a Suitable Third Party;
- (b) in relation to any such transfer:
  - (i) the pre-emption and transfer provisions in this Agreement and the Articles shall apply;
  - (ii) if the Shares and Shareholder Debt 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 and Shareholder Debt to a Suitable Third Party within the ninety (90) day period referred to (or such longer period as may be agreed by Project Co) then the same shall constitute an Event of Default in respect of that Shareholder.

## 11. Winding Up

- 11.1 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 such Institute.

11.2 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.

11.3 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.

## 12. Miscellaneous

### *Confidentiality*

#### 12.1

- (a) Subject to clause 8.4(c)(ii) (*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 sub-clause (e)) 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 8.4 (*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 and/or Project Co to enable it to carry out its obligations under this Agreement or may wish to acquire shares in the Company and/or Project Co in accordance with the provisions of this Agreement to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (vi) any disclosure for the purposes of:
  - (A) the examination and certification of the Company's or the Project Co's accounts;
  - (B) any examination pursuant to the Public Audit (Wales) Act 2004 of the economy, efficiency and effectiveness with which the Authority 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 it may reasonably require which are owned, held or otherwise within the control of the Company and/or Project Co and may require the Company and/or Project Co 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.
- (iv) The provisions of this clause 12.1 (*Confidentiality*) are without prejudice to the application of the Official Secrets Act 1911 to 1989.
- (v) For the purposes of this clause 12.1 (*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.<sup>26</sup>

#### *Freedom of Information*

- (f) References in sub-clauses (f) to (m) to the Company shall apply also to Project Co with the necessary changes. The parties acknowledge that WGC Co is subject to the requirements of the FOIA and the Environmental Information Regulations and the Company shall facilitate WGC Co's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in sub-clauses (f) to (m) (inclusive) below. For the purpose of sub-clauses (f) to (m) (inclusive) only **Information** has the meaning given to it under section 84 of the FOIA.
- (g) Where WGC Co receives a Request for Information in relation to Information that the Company is holding on behalf of WGC Co, WGC Co 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 WGC Co with a copy of all such Information in the form that WGC Co requires as soon as reasonably practicable and in any event within [ten (10)] Business Days (or such other period as WGC Co may acting reasonably specify) of WGC Co's request; and
  - (ii) provide all necessary assistance as reasonably requested by WGC Co in connection with any such Information, to enable WGC Co to respond to a

<sup>26</sup>

**Clause 12.1(e) – 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 Material. 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.



Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

(h) Following notification under sub-clause (g) and up until such time as the Company and the Shareholders has provided WGC0 with all the Information specified in sub-clause (g)(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.

(i) 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 to inspect such Information as requested from time to time.

(j) 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.

(k) 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 (i) above.

(l) If WGC0 makes a request to the Company pursuant to sub-clause (g)(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 WGC0'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 WGC0 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 WGC0 is entitled to under section 10 of the FOIA. In such case, WGC0 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 WGC0 is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

(m) The Company acknowledges that (notwithstanding the provisions of clause 12.1 (*Confidentiality*)) WGC0 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:

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

provided always that where sub-clause (m)(i) 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*

12.2

- (a) 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*

12.3 Each party will:

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

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

*Costs*

12.4 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*

12.5

- (a) The Company and the Project Co shall each 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/Project Co 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. Each of the Company and the Project Co 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*

12.6

- (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 enure 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*

12.7 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*

12.8

- (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:

<b><i>If to the PSDP</i></b>	
For the attention of	
Address	
Email	
<b><i>If to WGCo</i></b>	
For the attention of	
Address	
Email	
<b><i>If to the Company</i></b>	
For the attention of	
Address	
Email	
<b><i>If to the Project Co</i></b>	

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*

- 12.9 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*

- 12.10 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*

- 12.11 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*

12.12

- (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*

12.13 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:

**Agreement** means this Shareholders' Agreement and Schedules;

**Alternate** means an alternate director appointed by a RTAD Shareholder under clause 5.1(d) (*Composition of the Boards and the right to appoint Directors*) provided such alternate director has been registered as a director at Companies House;

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

**Annual Service Payment** has the meaning given to it in the Authority Project Agreement;

**Appointing Shareholder** has the meaning given to it in clause 5.3(a) (*Removal of/change to nominated Directors*);

**Articles** means the Hold Co Articles or the Project Co Articles as the context requires;

**Associate**<sup>27</sup> means in relation to any company:

- (a) any company of which such company is a subsidiary;
- (b) any subsidiary of such company; or
- (c) any other subsidiary of such company's holding company,

and **Associated** shall be construed accordingly;

**Authority** means [*insert relevant definition from the Authority Project Agreement*];

**Authority Project Agreement** means [*add relevant definition of the project agreement*];

**Boards** means the Hold Co Board and the Project Co Board (as the context may require) and Board means either of them;

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

**Business Plan** means the plan referred to in clause 8.1(a) (*The Business Plan (including the Annual Budget)*) as the same may be varied or updated or replaced from time to time in accordance with the provisions of clause 8 (*Budgeting, Business Planning and financial matters*);

**Businesses** means the Hold Co Business and the Project Co Business and Business means either of them as the context requires;

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**Schedule 1 Definitions – Associate.** The definition of Associate to be considered on a project specific basis in accordance with the relevant facts and in the context of the relevant PSDP group structure to ensure the definition is appropriate/wide enough.

**Chairman** means such independent non-executive Director or other Director as may be appointed from time to time pursuant to clause 5.4 (*Chairman of the Board*);

**Claim** has the meaning given to it in clause **Error! Reference source not found.** (*Step-aside provisions*);

**Code** has the meaning given to it in clause 12.1(m) (*Miscellaneous*);

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

**Confidential Information** has the meaning given to it in sub-clause 12.1(e)(v) (*Confidentiality*);

**Conflict Authorisation** has the meaning given to it at clause 5.13 (*Director's power to authorise conflict situations*);

**Conflict Authorisation Terms** has the meaning given to it at clause 5.16 (*Director's power to authorise conflict situations*);

**Conflict Situation** has the meaning given to it in clause 5.13 (*Director's power to authorise conflict situations*);

**Counterparty** has the meaning given to it in clause 5.17(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 and the Project Co 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;

**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 Hold Co Articles;

**Default Shares** has the meaning given to it in clause 9.2 (*Events of Default and deemed transfers*);

**Defaulting Shareholder** has the meaning given to it in clause 9.2 (*Events of Default and deemed transfers*);

**Defaulting Shareholder Debt** has the meaning given to it in clause 9.3(a) (*Shareholder Debt*);

**Directors** means, as the context may require:

- (a) the Hold Co Directors and/or the Project Co Directors as nominated by the relevant parties from time to time; and
- (b) a Chairman appointed pursuant to clause 5.4(b) (*Chairman of the Board*) and Article 37.1 (*Chairman of the Board*) (in respect of Project Co or Hold Co as applicable),

- (i) save as expressly stated otherwise in this Agreement;
- (ii) [save for the purpose of clause 5.1 (Composition of the Boards and the right to appoint Directors); and
- (iii) subject always to clause 5.5(a)(ii)(Board meetings and Board voting) and the Articles],

and Director shall mean any of them;

**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;

**Equity Subscription Agreement** means [◆];

**Event of Default** means:

- (a) a petition being presented or a proceeding commenced (and such petition or proceeding not being discharged or dismissed) or an order being made or an effective resolution passed for the winding-up, insolvency, administration, re-organisation, re-construction, dissolution or bankruptcy of a Shareholder or for the appointment of a liquidator, receiver, administrative receiver, administrator, trustee or similar officer of a Shareholder or of all or any part of its business or assets PROVIDED THAT this paragraph shall not apply to any bona fide re-organisation or re-construction of a Shareholder whilst solvent (the structure of which has been previously approved by the other Shareholders in writing, acting reasonably) in which a new company assumes (and is capable of assuming) all the obligations of the Shareholder;
- (b) a Shareholder stopping or suspending payments to its creditors generally or being unable to pay its debts as they fall due or seeking to enter into any composition or other arrangement with its creditors or being declared bankrupt or insolvent;
- (c) a creditor taking possession of all or any part of the business or assets of a Shareholder or any execution or other legal process being enforced against the business or any substantial asset of the Shareholder and not being discharged;
- (d) anything analogous or having an effect substantially similar to any of the events described in paragraphs (a) to (c);
- (e) a Shareholder changing the nature or scope of its business such that it becomes a Restricted Person;



- (f) a Shareholder being in material breach of any of the warranties given by it in clause 10.1 to clause 10.3 (*Warranties and undertakings*) or of its obligations under clause 4.1 (*Initial subscriptions of Shares*) [within [◆] Business Days of the due date for payment (whether by the defaulting Shareholder or pursuant to any guarantee or other security provided in support of such obligations)]<sup>28</sup>;
- (g) a Shareholder attempting to sell, transfer, charge or otherwise dispose of any of its Shares or Shareholder Debt or any interest in Shares or Shareholder Debt otherwise than in accordance with this Agreement and/or the Articles (which in all cases shall be deemed not to be capable of remedy) or any secured party taking any steps to enforce any charge created over any Shares held by the Shareholder in the Company;
- (h) the circumstances where an Event of Default occurs as set out in clause 10.7(c) (*Provisional Transfer Notices*);
- (i) a Shareholder failing to comply with its obligations under clause 8.4(a)(ii) (*Provision of information to Shareholders and designated third parties*); or
- (j) a Shareholder committing any material offence under any anti-bribery and corruption legislation in the UK from time to time or at common law in respect of fraudulent acts and provided always that if the offence is an offence under section 7(1) of the Bribery Act 2010;

**Expiry Date** has the meaning given to it in the Authority Project Agreement;

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

**Finance Parties** means [◆];

**Financing Default** means the occurrence of an event of default under the Principal Funding Agreement;

**Financial Model** has the meaning given to it in the Principal Funding Agreement;

**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** means [*define by reference to relevant MIM funding documents relating to Project Co*];

**General Anti-Abuse Rule** means:

- (a) the legislation in Part 5 of the Finance Act 2013; and

<sup>28</sup>

**Schedule 1 Definitions - Event of Default.** To cover any payment default and with the benefit of the same grace period (if any) as permitted by Senior Funders (as defined in the Authority Project Agreement).

- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

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

**Hold Co 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;

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

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

**Hold Co Director** means:

- (a) any director from time to time of Hold Co appointed pursuant to clause 5.1 (b) (*Composition of the Boards and the right to appoint Directors*) and article 36.1 (*Appointment of Directors*); and
- (b) any Alternate (in that capacity):
- (i) save where expressly stated otherwise in this Agreement or the Articles;
  - (ii) save for the purpose of clauses [5.1 (*Composition of the Boards and the right to appoint Directors*), 5.6 to 5.8 (*Director Remuneration*) and 6.2(b) (*Reserved Matters*) ]; and
  - (iii) subject always to Article 26.4 (*Quorum for Board Meetings*) and article 27.4 (*Voting at Board Meetings*).

**Hold Co Loan Note** means [◆];

**Hold Co Loan Note Instrument** means [◆];

**Independent Directors** has the meaning given to it in clause 6.5(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 [◆];

**Information** has the meaning given to it under section 84 of the Freedom of Information Act 2000;

**Instruction to Sell Notice** has the meaning given to it in clause 9.4 (*Appointment of the Sale Agent in certain circumstances*);

**Investment** has the meaning given to it in clause 9.4 (*Appointment of the Sale Agent in certain circumstances*);

**Law** has the meaning given to it in the Authority Project Agreement;

**Lock In Period** has the meaning given to it in clause 9.7(c) (*Lock In Periods*);

**Market Value** has the meaning given to it in the Hold Co Articles;

**Material Shareholder** has the meaning given to it in clause 5.1(b) (*Composition of the Boards and the right to appoint Directors*);

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

**On-Loan Agreement** means [◆];

**Original Meeting** has the meaning given to it in sub-clause 6.3(b) (*Manner of giving Shareholder approval*);

**Original PSDP Shareholder** has the meaning given to it in clause 9.7(b) (*Lock In Periods*);

**Other Directors** has the meaning given to it in sub-clause 6.3(b) (*Manner of giving Shareholder approval*);

**Outgoing Director** has the meaning given to it in sub-clause 5.3(a) (*Removal of/change to nominated Directors*);

**Outgoing Shareholder** has the meaning given to it in sub-clause 5.3(b) (*Removal of/change to nominated Directors*);

**Principal Funding Agreement** means the [insert definition of Common Terms Agreement/Credit Agreement];

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

**Project** has the meaning given to it in clause 3.1(b) (*The business of the Company and Project Co and details of the Company and Project Co*);

**Project Agreements** means [the Authority Project Agreement and those other documents defined as "**Project Document**" pursuant to the Principal Funding Agreement];

**Project Co Articles** means the articles of association of Project Co;

**Project Co Board** means the board of Directors for the time being of Project Co as constituted in accordance with this Agreement and the Project Co Articles;

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

**Project Co Director** means:

(a) any director for the time being of Project Co appointed pursuant to clause 5.1 (b) (*Composition of the Boards and the right to appoint Directors*) and article 36.1 (*Appointment of Directors*); and

(a) any Alternate (in that capacity):

(i) save where expressly stated otherwise in this Agreement or the Articles;

(ii) save for the purpose of clauses [5.1 (*Composition of the Boards and the right to appoint Directors*), 5.6 to 5.8 (*Director Remuneration*) and 6.2(b) (*Reserved Matters*)]; and

(iii) subject always to article 26.4 (*Quorum for Board Meetings*), article 27.7 (*Quorum for Board Meetings*) and article 27.4 (*Voting at Board Meetings*).

**Project Co Lock In Period** means the period during which Shareholders in Project Co and/or Hold Co are not entitled to transfer shares in the Project Co and/or Hold Co under clause [59.5] of the Authority Project Agreement;

**Project Default** means the occurrence of an event of default under a Project Agreement;

**Project Documents** means this Agreement, the Funding Agreements and the Project Agreements;

**Project Document Conflict Authorisation** has the meaning given in clause 5.17 (*Director's power to authorise conflict situations*);

**Project Document Conflict Authorisation Terms** has the meaning given to it in clause 5.18 (*Director's power to authorise conflict situations*);

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

**PSDP Directors** has the meaning given to it in clause 6.5 **Error! Reference source not found.** (*Step-aside provisions*);

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

**Recipient** has the meaning given to it in sub-clause 12.1(b) (*Confidentiality*);

**Register** has the meaning given to it in the Hold Co Loan Note Instrument;

**Relevant Director** has the meaning given to it in clause 5.13 (*Director's power to authorise conflict situations*);

**Relevant Shareholder** has the meaning given to it in clause 5.5(g) (*Board meetings and Board voting*);

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

**Remedy Period** has the meaning given to it in clause 9.2 (*Events of Default and deemed transfers*);

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

**Reserved Matters** means those matters listed in Schedule 8 (*Reserved Matters*) and ticked in the second column (entitled "Shareholder"), which shall not be carried out without prior written approval in accordance with clause 6.2(a) (*Reserved Matters*);

**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 written approval in accordance with clause 6.2(b) (*Reserved Matters*);

**Restricted Person** shall have the meaning given to it in the Authority Project Agreement;

**RTAD Shareholder** means each Material Shareholder and, where WGCo is not a Material Shareholder but holds issued Share capital in the Company, WGCo;

**Sale Agent** has the meaning given in clause 9.4 (*Appointment of the Sale Agent in certain circumstances*);

**Schedules** means Schedules 1 (*Definitions and Interpretation*) to [8 (*Reserved Matters*)] attached to this Agreement;

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

**Shareholder Debt** means monies advanced or otherwise made available to Project Co by way of subordinated debt or loan stock subscription by a Shareholder or an Associate of a Shareholder (or, in relation to the Project Co, by the Company);

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

**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;

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

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

**Transferring Shareholder** has the meaning given to it in clause 9.1(i) (*Restrictions on transfers of Shares in the Company*);

**Transparency Information** means the information described in Parts A and 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*);

**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 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 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) 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 (b) (*Composition of the Boards and the right to appoint Directors*).



**Schedule 2  
Details of the Company and the Project Co**

**The Company**

Name:	◆ Limited	
Registered Office:	◆	
Registered Number:	◆	
Shareholders:	<b>Shareholder</b>	<b>Shares</b>
	PSDP	◆
	WGCo	◆
Initial Directors:	<b>Material Shareholder Appointor</b>	<b>Initial Director appointee</b>
	PSDP	◆
	PSDP	◆
	PSDP	◆
	WGCo	◆
Secretary:	◆	

**The Project Co**

Name:	◆ Limited	
Registered Office:	◆	
Registered Number:	◆	
Shareholders:	<b>Shareholder</b>	<b>Shares</b>
	The Company	◆
Directors:	As for the Company (see above).	
Secretary:	◆	

**Schedule 3**  
**Agreed Form Business Plan**

**(see clause 8 (*Budgeting, Business Planning and financial matters*))**

**[*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], (3) [Company] and (4) [Project Co] (**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, the Company and the Project Co*) 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 the entire Investment which:

(a) is accompanied by each of the following:

- (i) an acknowledgement addressed to the Shareholders 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 Shareholder;
- (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 the Investment 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 Defaulting Shareholder or any shareholder in the Defaulting Shareholder.

**Reserve Bid** has the meaning given to it in paragraph 8; and

**Reserve Tenders** has the meaning given to it in paragraph 8.

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 9.4 (*Appointment of the Sale Agent in certain circumstances*) 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 Shareholder 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 Shareholder 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 Shareholder 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 Shareholder 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 Shares and any Defaulting 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 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. Notwithstanding the provisions of paragraphs 1 to 7, the Sale Agent shall also invite tenders (**Reserve Tenders**) from Suitable Third Parties for any Defaulting Shareholder Debt only<sup>29</sup> and the provisions of paragraphs 1 to 7 shall apply with necessary changes having been made as if references to the "Investment" were in each case solely to the Defaulting Shareholder Debt and subject to the variations in this paragraph 8. If:
  - (a) 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 no Qualifying Bid is received which is not a Reserve Bid), then the Reserve Bid shall be accepted by the Defaulting Shareholder and the sale and transfer of the Defaulting Shareholder Debt shall be effected in accordance with the provisions of paragraphs 1 to 7.
  - (b) Where a Reserve Bid is accepted pursuant to sub-paragraph (a) in relation to the Defaulting Shareholder Debt then, in relation to the Defaulting Shareholder's Shares, the provisions of clause 9.5 (*Appointment of the Sale Agent in certain circumstances*) shall apply in relation to the Default Shares and the Non- Defaulting Shareholders shall be entitled to give written notice under clause 9.5 (*Appointment of the Sale Agent in certain circumstances*).

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<sup>29</sup> **Schedule 5 – Sale Agent.** This mechanism in Schedule 5 (The 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<sup>30</sup>]**

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<sup>30</sup>

**Schedule 6 – Articles.**

**Schedule 7**  
**Transparency Information<sup>31</sup> and Commercially Sensitive Information**

**Part A: Information to be provided by the Company and Project Co**

Ref	Information	Last date for provision of information
A1	The audited accounts of the Company and Project Co for each financial year.	The earlier of: (a) the end of four (4) months after the end of that financial year; and (b) thirty (30) days after its publication.
A2	Quarterly cashflow statements and cashflow forecasts for the Company and Project Co including details of: (1) any payments received or made (a) by way liquidated damages and (b) in respect of change and variations; and (2) payments (excluding any reimbursement of expenses) to Directors.	The end of three (3) weeks after the end of each quarter during the construction period and 1/2 yearly thereafter.
A3	The equity internal rate of return (for both an actual cumulative return to the date of preparation and of the expected forecast return up to the Expiry Date) for each shareholder to be prepared using the Financial Model and calculated on a cash basis to include all distributions and any other payments made to Shareholders in respect of fees.	31 March and 30 September.
A4	Debt service cover ratio (for the twelve (12) month period to the date of preparation and for the next twelve (12) month period as from the date of preparation) and the loan life cover ratio (for the period as from the date of preparation to the Expiry Date).	31 March and 30 September.
A5	The occurrence of any Financing Default or Project Default.	Within seven (7) days of becoming aware of that event.
A6	Distributions paid to Shareholders and payments in respect of Shareholder Debt.	Within thirty (30) days of the date those payments are made.
A7	A copy of all information provided to the Authority under clause 24 of the Authority Project Agreement (Lifecycle Replacement).	Within seven (7) days of the date that information is delivered to the Authority.
A8	A copy of all information provided to the Authority under clause 35.2.3 ( <i>Invoicing and Payment Arrangement</i> ) of the Authority Project Agreement in respect of deductions from the Annual Service Payment and operating costs.	Within seven (7) days of the date that information is delivered to the Authority.

<sup>31</sup> **Schedule 7 - Transparency Information.** This schedule of the standard form is subject to amendment from time to time as other relevant consultation exercises are concluded, policy established and relevant legislation is enacted or amended.

**Part B: Information to be provided by the Shareholders**

<b>Ref</b>	<b>Information</b>	<b>Last date for provision of information</b>
B1	In respect of Shares and Shareholder Debt held by it, the identity of each person having a beneficial interest in those investments [insert carve out language for Shareholders that are publicly quoted companies or funds]. For the purposes of this item B1 the term "beneficial owner" shall have the meaning as set out in Regulation 6 of The Money Laundering Regulations 2007 (the 2007 Regulations) and the holder of the Shares and/or Shareholder Debt shall to the extent within its power to do so and to the extent reasonably practicable carry out due diligence measures regarding the beneficial ownership of the Shares and Shareholder Debt as set out in Part 2 of the 2007 Regulations and make available the findings of that due diligence as Transparency Information.	The date of this Agreement and within seven (7) days of any change of beneficial ownership.
B2	In respect of each person named pursuant to B1 above, the jurisdiction of incorporation and tax residence, or in the case of an individual, his/her nationality and tax domicile.	The date of this Agreement and within seven (7) days of any change of beneficial ownership.
B3	The terms on which it has or is to dispose of any Shares or Shareholder Debt or has acquired any Shares or Shareholder Debt (including the identity of the transferee and the price paid or to be paid).	Within two (2) Business Days of the date on which legally binding documentation to dispose of that interest is entered into.

**Part C: Commercially Sensitive Information**

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



**Schedule 8 <sup>32</sup>Reserved Matters**

<b>Reference</b>	<b>Shareholder</b>	<b>Board</b>	<b>Reserved Matter</b>
<b>A</b>			<b>Financial</b>
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>B</b>			<b>Shares/Shareholder Debt and constitutional</b>
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.
<b>C</b>			<b>Management, control, Directors and employees</b>
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 5.13

<sup>32</sup>

**Schedule 8 - Reserved matters.** Three important general points: (1) the items in this table will need to be included in every Shareholders' Agreement for a MIM Project 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>(Director's power to authorise conflict situations).</i>
<b>D</b>			<b>Project Co related Reserved Matters</b>
D1	<i>Approval level as per the relevant item</i>		In relation to Project Co each of the above Reserved Matters in this table shall also be a Reserved Matter in relation to Project Co (as if references to the Company were references to Project Co and to the Hold Co Business were references to the Project Co Business).

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

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Director

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Director/Secretary\*

OR

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

-----

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 )  
signatories:

.....

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 signatories: )

.....

Director

In the presence of:

Witness Signature:

Name:

Address

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

.....

Director

.....

Director/Secretary\*

OR

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

.....

Director

In the presence of:

Witness Signature:

Name:

Address