

Additions to Appendix 13 to the FBC showing changes to the Scottish Executive Health Department Standard Form Project Agreement Version 1

Clause/Part	Amendment	Comment
13	<p>New clause 13 inserted as follows:</p> <p>13. DISASTER PLAN</p> <p>13.1 The parties: -</p> <p style="padding-left: 40px;">13.1.1 acknowledge and agree that the Disaster Plan shall be developed and agreed from the draft Disaster Plan included in Part 5 of the Schedule and that the functions of the Liaison Committee set out in Clause 12.2 shall include discussion of the terms of the Disaster Plan; and</p> <p style="padding-left: 40px;">13.1.2 undertake to act reasonably, having regard to Good Industry Practice, in seeking to agree the terms of the Disaster Plan.</p> <p>13.2 Subject to the terms of Clause 13.3, the parties shall comply with the provisions of the Disaster Plan following agreement of the same pursuant to Clause 13.1.2.</p> <p>13.3 Project Co shall comply with the Disaster Plan pursuant to Clause 13.2 insofar as doing so is consistent with the valid performance by Project Co of the Services or, where doing so is not a requirement of or goes beyond what would normally be required from Project Co in connection the valid performance by Project Co of the Services, insofar as it is reasonable to expect Project Co's on site representative to do so and where doing so will not result in Project Co or any Project Co Party incurring any cost.</p> <p>13.4 The parties shall liaise with each other in accordance with the Liaison Procedure in order periodically to review and update the Disaster Plan.</p> <p>SEHD indicative approval 29/09/04 to informal Board Submission</p>	<p>The Board and Project Co have not yet finalised its Disaster Plan and wishes to provide a clear mechanism for doing so.</p>
16.3	<p>New clause 16.3 inserted as follows:</p> <p>16.3 Relevant Judicial Review</p> <p>16.3.1 In this Clause 16.3:</p> <p>“Relevant Judicial Review” means any application for judicial review under Chapter 58 of the Rules of the Court of Session (or any statutory challenge or appeal which proceeds on principles similar to judicial review) of the Detailed Planning Consent or any statutory challenge to the Detailed Planning Consent under Section 239 of the Town and Country Planning (Scotland) Act 1997 made within 12 weeks from the date of granting of the same being 20 August 2004; and</p> <p>“Detailed Planning Consent” means the Planning Approval.</p> <p>16.3.2 Where any application for Relevant Judicial Review is made:</p> <p style="padding-left: 40px;">16.3.2.1 neither the Board nor Project Co shall seek to prevent or compromise the planning authority from defending or taking any other step in relation to the Relevant Judicial Review;</p> <p style="padding-left: 40px;">16.3.2.2 Project Co and the Board shall each:</p> <p style="padding-left: 80px;">(i) provide to the planning authority all such</p>	<p>Project Specific change due to the timing of the Detailed Planning Consent- Board to retain Judicial Review risk 12 weeks from the granting of the Detailed Planning Consent on 20 August 2004.</p>

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	<p>relevant evidence and information as is available to Project Co and the Board; and</p> <p>(ii) co-operate in the provision of witnesses.</p> <p>which is or are necessary and may be lawfully disclosed to the planning authority and employed by it for the effective defence of the Relevant Judicial Review proceedings. The Board shall reimburse Project Co's proper and reasonable costs, demonstrably incurred, of compliance with this Clause 16.3.2.2 within 28 days of receipt of a written request;</p> <p>16.3.2.3 Project Co shall suspend that part of the Works to which the application for the Relevant Judicial Review relates and the Relevant Judicial Review shall be treated as a Delay Event and a Compensation Event; and</p> <p>16.3.2.4 Where and to the extent that the Relevant Judicial Review has been made or relates to</p> <p>(i) how the detailed design in Project Co's Proposals meets the Board's Construction Requirements (other than in relation to Clinical Functionality);</p> <p>(ii) the Board's Construction Requirements or the Project in wider terms,</p> <p>then the Relevant Judicial Review shall be treated as a Delay Event but not as a Compensation Event.</p> <p>16.3.2.5 Project Co shall suspend the Works and shall be entitled to relief under Clause 16.3.2.3 and Clause 16.3.2.4 above until such time as either:</p> <p>(i) the Detailed Planning Consent is finally upheld after exhaustion of the Relevant Judicial Review, which shall occur either (i) on the withdrawal of the Relevant Judicial Review or (ii) when the time for appealing against the decision to uphold the Detailed Planning Consent has expired and no such appeal has been lodged or, (iii) if an appeal against the decision to uphold the Detailed Planning Consent has been made timeously, when such appeal is rejected or otherwise determined in such manner as results in the Detailed Planning Consent being upheld; or</p> <p>(ii) an appeal by the planning authority against the decision revoking, quashing or withdrawing the Detailed Planning Consent is successful; or</p> <p>(iii) a Board Works Variation has been instructed (or is deemed to have been instructed) under Clause 16.3.3.2 or 16.3.4.1 (i) below and a Variation Confirmation has been issued under the provisions of Part 22 of the Schedule.</p> <p>16.3.3 If a Relevant Judicial Review results in the revocation, quashing or withdrawal of the Detailed Planning Consent, the Board shall, within 20 Business Days, exercise one of the following options:</p> <p>16.3.3.1 notify Project Co of the planning authority's intention to</p>	

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	<p>exercise its rights of appeal against the decision revoking, quashing or withdrawing the Detailed Planning Consent; or</p> <p>16.3.3.2 if the cause of the decision revoking, quashing or withdrawing the Detailed Planning Consent may be overcome by making a change to the Works, serve a Variation Enquiry under Part 22 of the Schedule, requesting an appropriate Board Works Variation by the deletion or amendment of any part of the Works affected by the Relevant Judicial Review from the Project (which Variation Enquiry the Board shall not be entitled to withdraw); or</p> <p>16.3.3.3 if the cause of the decision revoking, quashing or withdrawing the Detailed Planning Consent may not be overcome by making a change to the Works, terminate this Agreement pursuant to Clause 46.2.</p> <p>16.3.4 If the Relevant Judicial Review results in the revocation, quashing or withdrawal of the Detailed Planning Consent and:</p> <p>16.3.4.1 the planning authority fails to take either the course of action referred to in Clause 16.3.3.1 or the Board fails to take the course of action referred to in Clause 16.3.3.2; or</p> <p>16.3.4.2 the planning authority exercises unsuccessfully its rights of appeal against the decision revoking, quashing or withdrawing the relevant Detailed Planning Consent,</p> <p>then:-</p> <p>(i) if the cause of the decision revoking, quashing or withdrawing the Detailed Planning Consent may be overcome by making a change to the Works, the Board shall be deemed to have served a Variation Enquiry on Project Co under Part 22 of the Schedule requesting an appropriate Board Works Variation in accordance with Clause 16.3.3.2; or</p> <p>(ii) if the cause of the decision revoking, quashing or withdrawing the Detailed Planning Consent may not be overcome by making a change to the Works, the Board shall be deemed to have terminated this Agreement pursuant to Clause 46.2.</p> <p>SEHD indicative approval 29/09/04 to informal Board Submission.</p>	
38.3	<p>The reference to “the Patients Charter” is replaced by “Patient’s Rights and Responsibilities”.</p> <p>SEHD indicative approval 29/09/04 to informal Board Submission</p>	This reflects a change to NHS guidance.
44.6	<p>The following changes have been made:</p> <p>44.6 The Board may, in its discretion, require Project Co by written notice to terminate any Service Contract or procure the termination of any Sub-Contract (as the case may be) and appoint a replacement Service Provider or procure the appointment of a replacement Sub-Contractor in accordance with Clause 50 (<i>Assignment Sub-Contracting and change in Control</i>) to provide all</p>	The Board wishes to make these changes to set out more clearly how termination would operate i.e. by reference to terminating the relevant sub-contract not the underlying services.

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	<p>those parts of the Services which were performed pursuant to the previous Service Contract or Sub-Contract within sixty (60) Business Days, as an alternative to termination of this Agreement pursuant to the provisions of Clause 44.5 in any circumstance in which the Board could exercise such power.</p> <p>SEHD indicative approval 01/10/04 to informal Board Submission</p>	
44.8	<p>The following changes have been made:</p> <p>44.8 If Project Co fails to terminate the relevant Service Contract (or procure the termination of the relevant Sub-Contract) and to appoint a replacement Service Provider or procure the appointment of a replacement Sub-Contractor in accordance with the provisions of Clause 44.6 the Board shall be entitled at its option to exercise its rights in accordance with the provisions of Clause 44.5 or 44.3.3 (as appropriate).</p> <p>SEHD indicative approval 01/10/04 to informal Board Submission</p>	<p>The Board wishes to make these changes to set out more clearly how termination would operate i.e. by reference to terminating the relevant sub-contract not the underlying services.</p>

Schedule	Amendment	Comment
Part 1	<p>The following definitions have been deleted:</p> <ul style="list-style-type: none"> • “Acquired Rights Directive” • “Board Employees” • “Employee Transfer” • “NHS Pension Scheme” • “Pensionable Board Employee” • “Recognition Agreement” • “Transfer Date” • “Transferring Board Employee” • “TUPE Information” • “Whitley Agreements” <p>The following definitions have been deleted:</p> <ul style="list-style-type: none"> • “Associated Entity” • “Completion Criteria” • “Compliant Tender” • “Draft Proposal” • “Excluded Person” • “Marketed Tested Services” • “Market Testing” • “Market Testing Date” • “Market Testing Meeting” • “Market Testing Proposal” • “Preferred Tender” • “Prospective Tenderers” • “Tenderers” • “Tender Requirements” • “Tender Validity Period” <p>The following definitions have been deleted:</p> <ul style="list-style-type: none"> • “Base Date” • “Buildings Lifecycle Reserve Account” • “Business Day” • “Default Interest” • “HoldCo” • “Loan Agreement” • “RPI” • “Security Boardee” 	<p>This reflects that there are no TUPE transfers.</p> <p>This reflects that there is no market testing procedure.</p> <p>This reflects terminology in the Financing Documents and consequential amendments to reflect absence of an Agent or HoldCo in AHL’s financing structure</p>

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	<ul style="list-style-type: none"> • “Senior Debt Facility” • “Senior Funders” <p>The following definitions have been deleted:</p> <ul style="list-style-type: none"> • “Performance Monitoring System”- instead included in the Payment Mechanism and the Board’s Construction Requirements <p>The following definitions have been added:</p> <ul style="list-style-type: none"> • “Amber Warning Notice” • “Amber Warning Period” • “Available” • “Calculation Schedule” • “Custodian” • “Deductions” • “Green Warning Notice” • “Green Warning Period” • “Rectification Period” • “Red Warning Notice” • “Red Warning Period” <p>The following definitions have been deleted:</p> <ul style="list-style-type: none"> • “Completion Process” • “Decanting and Decommissioning” • “Interim Service Failure” • “Interim Service Statements” or “Service Statements” • “Interim Services” • “Payment Commencement Date 1” • “Payment Commencement Date 2” • “Phase/Phase 1/Phase2” • “Phase Actual Completion Date/Phase Completion Date/Phase 1 Actual Completion Date/Phase 1 Completion Date/Phase 2 Actual Completion Date/Phase 2 Completion Date” • “Post Completion Commissioning” • “Retained Services” <p>The following definitions have been deleted:</p> <ul style="list-style-type: none"> • “Expert”- Part 22 instead refers to Adjudication • “Fast Track Dispute Resolution Procedure”- not used • “Ground Lease”- not needed given composite tax trader accounting treatment • “Independent Tester’s Collateral Agreement”- not required as all parties executed the Independent Tester Contract • “Hospital Manager”- replaced by “Maternity Unit Manager” • “Sub Lease”- not needed given composite tax trader accounting treatment • “Variation Order”- not used <p>The following definitions have been added:</p> <ul style="list-style-type: none"> • “Draft JWA” • “Employee” • “Maternity Unit” • “Quality Manager” • “Self Proving Manner” <p>The following definitions have been added/amended:</p> <ul style="list-style-type: none"> • “Health Board” • “Proposal” 	<p>This reflects terminology in Part 18 (Payment mechanism).</p> <p>These new definitions are used in the Payment Mechanism developed for this Project.</p> <p>This reflects that there is no decanting and decommissioning, nor any phasing of Works or provision of Interim Services.</p> <p>Project Specific changes.</p> <p>Joint Working Arrangements (JWA) are being developed for project-specific reasons given this project is for “Hard FM” services only.</p> <p>This reflects changes made to reflect the Scottish legislative position.</p>
Part 6 – Funder’s Direct Agreement	<p>The following definitions have been inserted:</p> <ul style="list-style-type: none"> • “Affiliates” • “Board Counterparty” 	<p>This reflects terms of and terminology in financing documents and consequential</p>

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	<ul style="list-style-type: none"> • “Board Third Party Rights” • “Facility Agreement” • “Finance Documents” • “Loan Life Cover Ratio” • “Proceeds Account” • “Project Documents” • “Termination Date” <p>The following definitions have been amended:</p> <ul style="list-style-type: none"> • “Enforcement Event” • “Security Documents” <p>The following definitions have been deleted:</p> <ul style="list-style-type: none"> • “Event of Insolvency” • “Senior Funders” • “Board Project Documents” <p>All references to “Agent” and “Senior Funder” changed to “Financier”</p> <p>“account” changed to “Proceeds Account”</p> <p>“Collateral Agreements” changed to “Board Third Party Rights”</p> <p>New clause 2.1.2:</p> <p><u>2.1 The Board acknowledges notice of, and consents to the security interest granted over:</u></p> <p>2.1.1 The Board acknowledges notice of, and consents to, the security interest granted over</p> <p>2.1.1 Project Co’s rights under the Board Project Documents effected by Project Co in favour of the Senior Funders <u>Financier</u> under the Security Documents; <u>and</u></p> <p><u>2.1.2 the shares in Project Co effected by the shareholders in Project Co in favour of the Financier.</u></p> <p>Clause 2.4 deleted:</p> <p>2.4 The Board acknowledges notice of and consents to the security interest granted by HoldCo in favour of the Agent over the entire issued share capital of Project Co.</p> <p>Clause 2.6 amended:</p> <p>2.5 2.6 The Board shall not be obliged to make any enquiry as to the authority of the Agent <u>Financier</u> in doing any act or entering into any document or making any agreement under or in connection with this Agreement and the Board shall be entitled to assume that the Agent is duly authorised by each of the Senior Funders to assume the obligations expressed to be assumed by it under this Agreement and to undertake on behalf of each Senior Funder in the terms of this Agreement so as to bind each Senior Funder as if it were a party hereto.</p> <p>Clause 4.2 amended:</p> <p>4.2 On or before the date falling fourteen (14) Business Days after the date on which a No Liquid Market Notice is received by the Board, the Board shall notify the Agent <u>Financier</u> of its opinion as to whether or not a Liquid Market exists. Where the Board believes that a Liquid Market does exist, such notice shall set out the reasons for the Board’s belief. If the parties do not agree whether or not a Liquid Market exists, then either party may refer the dispute to be determined in accordance with Clause 56 (<u>Dispute Resolution Procedure</u>) <u>of the Project</u></p>	<p>amendments to reflect absence of Agent and HoldCo.</p> <p>These changes state more clearly the security interests acknowledged by the Board, and reflect the absence of a HoldCo.</p> <p>This reflects the absence of an Agent in AHL’s financing structure.</p> <p>This corresponds to the position under the Financing Documents.</p>

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	<p>Agreement but as if references therein to the Project Co were to the Financier.</p> <p>Clause 5.1 amended:</p> <p>5.1 If all or a material part of the Facilities are destroyed or substantially destroyed in a single event and the insurance proceeds (when taken together with any other funds available to Project Co) are equal to or greater than the amount required to repair or reinstate the Facilities, then Project Co shall calculate the Senior Debt Amount loan life cover ratio (on the assumption that the Facilities are repaired or reinstated in accordance with Clause 36.19 (<i>Application of Proceeds</i>)).</p> <p>Clause 5.4 amended:</p> <p>5.4 The Agent on behalf of the Senior Funders confirms that it Board, the Financier and Project Co confirm that they will permit release monies from the Insurance Proceeds Account, to allow Clause 36.19A (Applications of Proceeds) of the Project Agreement this paragraph 5 to be complied with.</p> <p>Clause 10.3 amended:</p> <p>10.3 This Agreement shall remain in effect until the earlier of:</p> <p>10.3.1 the date on which all amounts which may be or become owing by Project Co to the Senior Funders under the Financing Agreements have been irrevocably paid in full; the Final Payment Date;</p> <p>10.3.2 the date of termination of the Project Agreement; or the Termination Date; or</p> <p>10.3.3 the date of transfer of Project Co's rights and liabilities under the Board Project Documents to a Suitable Substitute Contractor pursuant to paragraph 9.1 (<i>Novation</i>) above.</p> <p>New clause 10.5 inserted:</p> <p>10.5 Project Co joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not knowingly to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.</p>	<p>This corresponds to the position under the Financing Documents.</p> <p>This change reflects terminology used in the Financing Documents.</p> <p>This addition clarifies the purpose of Project Co executing the Funder's Direct Agreement.</p>
Part 15 – Independent Tester's Contract	<p>Clause 2 - Appointment</p> <p>The following changes have been made:</p> <p>2.2 The Independent Tester shall provide the services under Clause 2.1 above (the "Services") independently, fairly and impartially to and as between Project Co and the Board in relation to the Project Agreement and in having regard to the interest of the Funders in relation to the Project Agreement Facilities at such times and at such locations as the parties shall agree from time to time. Whilst the Independent Tester may take account of shall consider any representations made by Project Co and, the Board and, the Contractor as</p>	<p>Changes made to conform terminology.</p> <p>Changes made to clarify that the Independent Tester will take such representations into account.</p>

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	<p>appropriate) [and the Funder's Technical Adviser (as defined in the Construction Contract); <u>Funding Agreements</u>) the Independent Tester shall not be bound to comply with any representations made by any of them in connection with any matter on which the Independent Tester is required to exercise his professional judgement.</p> <p>2.4 The Independent Tester shall provide the Services and the Varied Services:</p> <p>2.4.1 with the reasonable care, skill and diligence to be expected of a properly qualified and competent professional adviser who has held itself out as competent and experienced in rendering such services for projects of a similar size, nature, scope and complexity to the Project; and</p> <p>2.4.2 in accordance with Good Industry Practice, all applicable Law and NHS Requirements.</p> <p>For the purposes of this Clause 2.4 "Good Industry Practice" shall mean the exercise of that degree of skill, diligence, prudence, foresight and operating practice that would reasonably and ordinarily be expected from skilled and experienced operators with appropriately qualified personnel engaged in the same type of undertaking as the Independent Tester in compliance with Law. <u>Without prejudice to the foregoing generality, the Independent Tester acknowledges that it owes a duty of care in favour of the Board, the Contractor, the Funders and Project Co in relation to the performance of the Services.</u></p> <p>2.8 The Independent Tester shall be deemed to have full knowledge of the provisions of the Project Agreement, the Construction Contract, the Service Contracts and the Sub-Contractor Co-operation Agreement (as defined in the Construction Contract) <u>the Service Contract and the Funding Agreements</u> and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of Project Co and the Board which are set out in the Project Agreement <u>and of the rights, interest, undertakings and warranties on the part of Project Co and the Funders which are set out in the Funding Agreements.</u></p> <p>2.9 The Independent Tester shall promptly and efficiently perform the Services as soon as reasonably practicable but consistent with the standards specified in Clauses 2.2 and 2.4 above.</p> <p>Clause 3 – Duration</p> <p>The following changes have been made:</p> <p>3.4 The Services shall commence on <u>Notwithstanding the last date(s) of execution hereof, this Agreement shall be deemed to have come into effect on the date when the Independent Tester commenced performance of the Services.</u></p> <p>Clause 4 – Fee</p> <p>The following changes have been made:</p> <p>4.1 Project Co shall pay to the Independent Tester a fee of £ <u>£45,800</u> for the Services provided in relation to the Project Agreement. The fee is exclusive of value added tax and</p>	<p>Changes made to clarify that the Independent Tester owes a duty of care to each of the identified parties.</p> <p>Changes made to clarify when the Independent Tester Contract is to come into</p>

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	<p>inclusive of disbursements. The Independent Tester shall issue an invoice to Project Co on a monthly basis in accordance with Appendix 2 Part 1 a Schedule of Drawdown of Fees to be agreed between Project Co and the Independent Tester (both parties acting reasonably). The date on which the invoice is received by Project Co shall constitute the due date. The final date for payment by Project Co shall be thirty (30) days after receipt of the Independent Tester's invoice. If Varied Services are provided then they shall be paid for equally by (1) the Board and (2) Project Co or as otherwise agreed.</p> <p>4.8 The obligations of Project Co and the Board to pay Any sums due to the Independent Tester for in respect of the performance of any Varied Services shall be several and not joint payable by the party instructing the same and such liability to pay the Independent Tester shall be several and not joint, save where the relevant Varied Service is instructed jointly, in which event (unless agreed to the contrary) the parties shall pay the Independent Tester jointly and in equal portions in respect of the relevant Varied Service and the parties liability for such payment shall be joint and several.</p> <p>Clause 7 – Confidential Information and Copyright</p> <p>The following changes have been made:</p> <p>7.2 The copyright in all reports, calculations and other similar documents provided by the Independent Tester in connection with the Project shall remain vested in the Independent Tester but the Independent Tester grants to Project Co and, the Board and the Funders and their respective nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties. The Independent Tester shall have no liability for any use of such drawings and other documents other than the purposes for which the same were provided or prepared.</p> <p>Clause 8 – Professional Indemnity Insurance</p> <p>The following changes have been made:</p> <p>8.1 Without prejudice to its obligations under this Agreement, or otherwise at law, the Independent Tester shall maintain professional indemnity insurance with a limit of indemnity of not less than ten five million pounds (£10,000,000 5,000,000) for any one claim in respect of any neglect, error or omission on the Independent Tester's part in the performance of its obligations under this Agreement for the period commencing on the date of this Agreement and expiring 12 years after:</p> <p>8.1.1 the date of final certification of the Works; or</p> <p>8.1.2 the termination of this Agreement,</p> <p>whichever is the earlier, provided that such insurance is available in the market place at commercially reasonable rates.</p>	<p>effect.</p> <p>Changes made to ensure parties act reasonably in relation to such invoicing.</p> <p>Changes made to clarify the several liability of parties for payments to the Independent Tester in relation to Varied Service.</p> <p>Changes made to clarify the extent of IT Liability for the use of such drawings for different purposes to those for which they were prepared.</p>

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	<p>8.2 The Independent Tester shall maintain such insurance with reputable insurers carrying on business in the United Kingdom who are acceptable to Project Co, the Board and the Board Funders, such acceptance not to be unreasonably withheld or delayed.</p> <p>8.3 Any increased or additional premium required by insurers by reason of the Independent Tester's own claims record or other acts, omissions, matters or things particular to the Independent Tester shall be deemed to be within commercially reasonable rates. [Not Used]</p> <p>8.4 The Independent Tester shall immediately inform Project Co, the Board and the Board Funders if such insurance ceases to be available at commercially reasonable rates in order that the Independent Tester and Project Co and the Board and the Funders can discuss means of best protecting the respective positions of Project Co, the Board and the Board Funders and the Independent Tester in respect of the Project in the absence of such insurance.</p> <p>8.5 The Independent Tester shall fully co-operate with any measures reasonably required by Project Co, the Board and the Board Funders including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if Project Co, the Board and the Board Funders undertake in writing to reimburse the Independent Tester in respect of the net cost of such insurance to the Independent Tester above commercially reasonable rates or, if Project Co, the Board and the Board Funders effect such insurance at rates at or above commercially reasonable rates, reimbursing Project Co, the Board and the Board Funders in respect of what the net cost of such insurance to Project Co and the Board would have been at commercially reasonable rates.</p> <p>8.6 The Independent Tester shall, prior to commencing the provision of the Services and no less than thirty (30) days prior to renewal dates, produce for inspection by Project Co, the Board and the Board Funders documentary evidence that such insurance is being properly maintained.</p> <p>8.7 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Agreement for any reason whatsoever, including (without limitation) breach by Project Co and the Board.</p> <p>Clause 11 – Cumulative Rights and Enforcement</p> <p>The following clause has been inserted:</p> <p>11.4 The provisions of sub-clauses 11.2 and 11.3 shall not prevent or restrict the Funders from proceeding against the Independent Tester in respect of any breach or alleged breach of the provisions of this Agreement on the part of the Independent Tester.</p>	
Part 21 – Insurance Policies-Design & Construction Phase/Operational Term	<p>Section 4 Appendix 1 – Broker's Letter of Undertaking</p> <p>The following was deleted from the third paragraph:</p> <p>Pursuant to instructions received from Project Co and in consideration of your approving our appointment or continuing appointment as brokers in connection with the Insurances, we hereby undertake the</p>	<p>These changes reflect discussions involving Marsh as AHL's insurance broker.</p> <p>Please see separate</p>

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	<p>following in respect of the interests of the Trust and the other insured parties in the Insurances, as referred to in the attached cover notes:</p> <p>The following was inserted at clause 2:</p> <p>2. <u>subject to our lien (if any) on the Insurances in respect of unpaid premiums,</u> to pay all proceeds from the Insurances received by us in accordance with the relevant loss payable clauses set out in paragraph [] of the appendix of this letter;</p> <p>The following was inserted before the third last paragraph:</p> <p><u>Without prejudice to the preceding exclusion of liability, our aggregate liability to any persons companies or organisation who acts in reliance on this letter for any and all matters arising from it and the contents thereof shall in any and all events be limited to the sum of £1,000,000, even if we are negligent. We do not limit liability for our fraud.</u></p> <p>SEHD indicative approval 5/10/04.</p>	<p>correspondence from the Board dated 11 October 2004.</p>
<p>Part 23 – Compensation on Termination</p>	<p>Section C</p> <p>1.2</p> <p>(e) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any right of Project Co to receive insurance proceeds (save where such insurance proceeds are held in the Insurance Proceeds Account and are to be applied in accordance with Clause 36.19 (<i>Insurance</i>) of this Agreement in reinstatement, restoration or replacement, or in the case of third party legal liability <u>or employer's liability</u>, in satisfaction of the claim, demand, proceeding or liability) or sums due and payable from third parties (but only when received from third parties) but excluding any claims under any Sub-Contracts or claims against other third parties which have not been determined or have been determined but not yet paid provided that in such case Project Co shall assign any such rights and claims under the Sub-Contracts or claims against other third parties to the Board and give the Board reasonable assistance in prosecuting such claims;</p> <p>Section F</p> <p>“Base Default Termination Sum”</p> <p><u>less</u></p> <p>(i) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;</p> <p>The following definition was deleted:</p> <p>Contingent Funding Liabilities [insert any contingent liabilities of the shareholders in respect of financial obligations owed to the Contractor and/or Funders under the Funding Agreements which are triggered as a result of or in relation to the termination of the Agreement, e.g. guarantees or letters of credit in respect of deferred equity];</p>	<p>Changes made to clarify the application of the employer's liability insurance proceeds.</p> <p>Changes made to reflect absence of Contingent Liabilities in the financing documentation</p>

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	<p>“No Interest Default Rate”</p> <p>means [incorporate the non-default interest rate definition the Term Facilities Interest Rate defined in the Senior Funders Agreement]; <u>Agreements</u></p> <p>“Revised Senior Debt Termination Amount”</p> <p><u>less</u></p> <p>(i) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;</p> <p>“Sub-Contractor Losses”</p> <p>means:</p> <p>(a) the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Construction Contract as a direct result of the termination of this Agreement provided that such amount shall be reduced to the extent that Project Co fails to use all reasonable endeavours to mitigate such amount; and</p> <p>(b) the amount reasonably and properly payable by Project Co to the Service Provider[s] under their respective contracts <u>Provider under its contract</u> with Project Co (as the case may be) as a direct result of the termination of this Agreement provided that such amount shall be reduced to the extent that Project Co fails to use all reasonable endeavours to mitigate such amount;</p>	<p>This change reflects the fact that there is only one Service Provider.</p>
<p>Part 24 – Handback Procedure</p>	<p>Clause 4.2.1</p> <p>The following change was made:</p> <p>issue to Project Co a Handback Certificate and return the Handback Bond <u>or pay the withheld amount</u> to Project Co; or</p>	<p>Changes made to ensure payment of withheld amounts as and when obligations, for which withholding was made, are satisfied.</p>
<p>Part 30 – Insurance Proceeds Account Agreement</p>	<p>Clause 15.3.1</p> <p>The following clause 15.3.1 was deleted:</p> <p>15.3 The parties hereto each acknowledge that the Security Trustee when acting hereunder shall be acting in accordance with and subject to the terms of the Security Trust and Intercreditor Deed.</p>	<p>This clause is not applicable as there are no Intercreditor arrangements in the financing documents.</p>