OFFER TO SELL – VACANT POSSESSION

Our Ref: [ ]
Your Ref: [ ]

Date [ ]

[*Insert name and address of Purchaser's solicitors*]

Dear Sirs

[*Insert Seller's name*]
[*Insert Purchaser's name*]
[*Insert postal address of Property*]

On behalf of and as instructed by the Seller, we offer to sell the Property to the Purchaser on the following conditions:-

1. **Definitions and Interpretation**

1.1 In the Missives:-

"**2003 Act**" means the Land Reform (Scotland) Act 2003;

"**2003 Act Notice**" means any copy application, invitation to make representations or notice in terms of the 2003 Act in respect of the Property;

"**2012 Act**" means the Land Registration etc (Scotland) Act 2012;

"**Advance Notice**" means an advance notice as defined in Section 56 of the 2012 Act;

"**Business Day**" means a day on which clearing banks in [Edinburgh, Glasgow and London] are open for normal business;

"**Completion**" means the Date of Entry or, if later, the date when the Price is paid and the purchase of the Property is completed in terms of the Missives;

"**Conclusion Date**" means, unless otherwise specified, the first date on which the Missives create a concluded contract;

"**Date of Entry**" means [[ ] 20[ ]] [the first Business Day occurring [ ] [days] [weeks] after the Conclusion Date] or such other date as the Purchaser and the Seller may agree in writing with specific reference to the Missives;

"**Disclosed Documents**" means the documents listed in Part 1 of the Schedule;

"**Disposition**" means the disposition of the Property in favour of the Purchaser [(or its nominees)] [in terms of the draft set out in Part 2 of the Schedule];

"**Encumbrances**" are encumbrances as set out in Section 9 of the 2012 Act;

"**HMRC**" means HM Revenue & Customs;

"**Interest**" means interest on the sum in question at 4% per annum above the base rate from time to time of [ ] from the date that such sum is due for payment or, if there is no such date specified, the date of demand for such sum until such sum is paid;

"**Missives**" means the contract constituted by this offer and all duly executed letters following on it;

"**Moveables**" means the moveable items set out in Part [5] of the Schedule;

["**Part 3A Community Body**" means a community body constituted in terms of Section 97D of the 2003 Act;]

"**Plan**" means the [demonstrative] plan contained in Part [3] of the Schedule;

"**Price**" means [ ] POUNDS (£[ ]) Sterling exclusive of any VAT;

"**Property**" means ALL and WHOLE [ ] [shown edged red on the Plan]: Together with (i) the whole buildings and erections on it known as and forming [ ], (ii) the whole fixtures and fittings in and on it, and (iii) the whole rights, parts, privileges and pertinents [and together also with [ ]], being the property [more particularly described in [the Disposition] [and disponed by [ ]]] [registered in the Land Register of Scotland under Title Number [ ]];

"**Purchaser**" means [ ], incorporated under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ];

"**Purchaser's Bank**" means (a) the client account of the Purchaser's Solicitors and/or (b) the client account of the solicitors acting for the Purchaser's heritable creditor and/or (c) if it is a bank which is a direct Participant in the CHAPS system operated by the Bank of England and the funds in question are loan funds from that bank for the purpose of acquiring the Property, the Purchaser's heritable creditor;

"**Purchaser's Solicitors**" means [ ] (Ref: [ ]) or such other solicitors as the Purchaser may appoint in their place from time to time and who have been notified in writing to the Seller's Solicitors;

["**RACBBL**" means the register of applications by community bodies to buy land held by the Keeper of the Registers of Scotland;]

"**RCIL**" means the register of community interests in land held by the Keeper of the Registers of Scotland;

"**Schedule**" means the schedule annexed to this offer;

"**Seller**" means [ ], incorporated under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ];

"**Seller's Bank Account**" means [Bank: [ ], Sort Code: [ ], Account Number: [ ], Account Name: [ ] or] such [other] UK clearing bank account as the Seller's Solicitors nominate by written notice to that effect at least 3 Business Days prior to the Date of Entry;

"**Seller's Solicitors**" means [ ] (Ref: [ ]) or such other solicitors as the Seller may appoint in their place from time to time and who have been notified in writing to the Purchaser's Solicitors;

"**Title Deeds**" means the title deeds of the Property [listed in Part 4 of the Schedule];

"**VAT**" means value added tax as provided for in the VAT Act and any tax similar or equivalent to value added tax or performing a similar fiscal function;

"**VAT Act**" means the Value Added Tax Act 1994; and

"**VAT Group**" means two or more bodies corporate registered as a group for VAT purposes under Section 43 of the VAT Act.

1.2 In the Missives, unless otherwise specified or the context otherwise requires:-

1.2.1 any reference to one gender includes all other genders;

1.2.2 words in the singular only include the plural and vice versa;

1.2.3 any reference to the whole is to be treated as including reference to any part of the whole;

1.2.4 any reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and words importing individuals include corporations and vice versa;

1.2.5 any reference to a Clause, Schedule or Part of the Schedule is to the relevant Clause, Schedule or Part of the Schedule of or to this offer and reference, in any Part of the Schedule, to a numbered paragraph is a reference to the relevant numbered paragraph in that Part of the Schedule;

1.2.6 any reference to a statute or statutory provision includes any subordinate legislation which is in force from time to time under that statute or statutory provision;

1.2.7 any reference to any statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment;

1.2.8 any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words;

1.2.9 a document will be duly executed only if it is executed in such manner as meets the requirements of Section 3 or Sections 9B and 9C of the Requirements of Writing (Scotland) Act 1995;

1.2.10 where at any one time there are two or more persons included in the expression "Purchaser" or "Seller" obligations contained in the Missives which are expressed to be made by the Purchaser and/or the Seller are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;

1.2.11 any reference to funds being cleared means that the funds are immediately available for withdrawal from the holder's bank account;

1.2.12 any reference to “reasonable consent” means the prior written consent of the party in question, such consent not to be unreasonably withheld or delayed; and

1.2.13 where a Clause provides that Interest is payable and that the sum must be paid within a specified period, no Interest will accrue on the sum provided it is paid within that period.

1.3 The headings in the Missives are included for convenience only and are to be ignored in construing the Missives.

1.4 The Schedule forms part of the Missives.

2. **Price**

2.1 **Payment**

2.1.1 The Price will be paid by the Purchaser on the Date of Entry by instantaneous bank transfer of cleared funds from the Purchaser's Bank to the Seller's Bank Account in exchange for the Disposition and other items to be delivered by the Seller referred to in Clause 8.

2.1.2 A payment not made in accordance with Clause 2.1.1 may be refused.

2.1.3 For the purposes of this Clause 2.1, money will not be deemed paid to the Seller until such time as same day credit on it is available to the holder of the Seller's Bank Account in accordance with normal banking procedure.

2.2 [**Apportionment**

The Price will be apportioned as follows:-

Property £[ ];

Fixed Plant £[ ];

Moveables £[ ]].

2.3 **Failure by the Purchaser to Complete**

2.3.1 **Interest**

If the Price (and any VAT which the Purchaser has agreed in terms of Clause 3 to pay to the Seller on the Date of Entry) or any part of it is not paid to the Seller on the Date of Entry then, notwithstanding consignation or that the Purchaser has not taken entry, the Purchaser will pay to the Seller Interest on the outstanding money.

2.3.2 **Seller's Right to Rescind**

If the Purchaser fails to pay the Price (and any VAT which the Purchaser has agreed in terms of Clause 3 to pay to the Seller on the Date of Entry) with Interest as set out in Clause 2.3.1 within [10] Business Days after the Date of Entry the Seller is entitled to rescind the Missives by written notice to that effect to the Purchaser, to re-sell the Property to any third party and to claim damages from the Purchaser which may include:-

(a) all costs and expenses incurred in relation to the re-marketing of the Property and the re-sale of it;

(b) any shortfall between:-

(i) the sale price received by the Seller on any such re-sale; and

(ii) the Price; and

(c) financial losses including increased funding costs which the Seller would not have incurred had the Price been paid on the Date of Entry and interest which the Seller could have earned on the Price had it been paid on the Date of Entry.

If the Seller rescinds the Missives, no Interest will be due by the Purchaser in terms of Clause 2.3.1.

2.3.3 **Suspension**

The provisions of Clauses 2.3.1 and 2.3.2 will not apply for any period of time during which the delay in payment by the Purchaser is due to any failure or breach by or on behalf of the Seller to implement its obligations or duties under the Missives on time.

2.4 **Failure by the Seller to Complete**

2.4.1 **Purchaser's Right to Rescind**

If the Purchaser is ready, willing and able to complete the purchase of the Property and has otherwise complied in full with its obligations under the Missives and the Seller fails to give entry with vacant possession by the date [10] Business Days after the Date of Entry the Purchaser is entitled to rescind the Missives by written notice to that effect to the Seller without prejudice to the rights and remedies of the Purchaser and the Seller against the other.

2.4.2 **Suspension**

The provisions of Clause 2.4.1 will not apply for any period of time during which the Seller's failure to give entry with vacant possession is due to any failure or breach by or on behalf of the Purchaser to implement its obligations or duties under the Missives on time.

3. **VAT**

[**Exempt**

3.1 The Seller confirms that the sale of the Property to the Purchaser will comprise an exempt supply for VAT purposes and undertakes that:-

3.1.1 it has not exercised pursuant to the VAT Act, Schedule 10, paragraph 2 (or been treated pursuant to the VAT Act, Schedule 10, paragraph 21 as having exercised) an option to tax in respect of the Property and will not, prior to Completion, exercise (or be so treated as having exercised) such option to tax;

3.1.2 it is not, and will not at Completion be, a relevant associate (for the purposes of the VAT Act, Schedule 10, paragraph 2) of any person who has exercised, or been treated as having exercised, an option to tax in respect of the Property as mentioned in Clause 3.1.1; and

3.1.3 no part of the supply of the Property to the Purchaser will comprise a supply within any of sub-paragraphs (a) to (n) of the VAT Act Schedule 9, Group 1, Item 1.]

3.2 [**VAT Invoice**

VAT will be chargeable on that part of the Price apportioned to the Moveables and the Purchaser will pay VAT to the Seller on the Date of Entry in accordance with Clause 2.1 in exchange for a valid VAT invoice addressed to the Purchaser.]

[**Non-exempt – option to tax made by the Seller**

1.1 The Seller confirms to the Purchaser that:-

1.1.1 it (or the representative member of its VAT Group) is registered for VAT;

1.1.2 it (or a person of which the Seller is, and will at Completion be, a relevant associate for the purposes of the VAT Act, Schedule 10, paragraph 2) has exercised pursuant to the VAT Act, Schedule 10, paragraph 2 (or been treated pursuant to the VAT Act, Schedule 10, paragraph 21 as having exercised) an option to tax in respect of the Property and has duly notified that option to HMRC to the extent required in order to make it effective; and

1.1.3 it (or such other person referred to in Clause 3.1.2) has not revoked, and will not revoke before Completion, its option and, where such option is treated as having been exercised as a result of a real estate election having been made, will not prior to Completion take any action, or omit to take any action, by virtue of which HMRC could revoke such real estate election.

The Seller [will exhibit evidence to the Purchaser, as soon as possible and in any event prior to Completion] [has exhibited evidence] of the matters stated in Clauses 3.1.1 and 3.1.2, which will include, if received by the Seller prior to Completion, an acknowledgement by HMRC of the notification of such option to tax or, where the option to tax is treated as having been exercised in respect of the Property by virtue of the VAT Act, Schedule 10, paragraph 21, an acknowledgement by HMRC of the real estate election made.

1.2 The Purchaser confirms to the Seller that it does not intend to use the Property for any of the uses referred to in paragraphs 5, 6 and 7 of the VAT Act, Schedule 10.]

1.3 [**VAT Invoice**

VAT will be chargeable on the Price and the Purchaser will pay VAT to the Seller on the Date of Entry in accordance with Clause 2.1 in exchange for a valid VAT invoice addressed to the Purchaser.]

[**Non-exempt – supply of Property standard-rated**

1.1 The Seller confirms to the Purchaser that:-

1.1.1 it (or the representative member of its VAT Group) is registered for VAT; and

1.1.2 the supply of the Property to the Purchaser will comprise a supply within sub-paragraph [(a)] of the VAT Act Schedule 9, Group 1, Item 1.

1.2 The Purchaser confirms to the Seller that it does not intend to use the Property for any of the uses referred to in sub-paragraphs (a)(i) or (a)(ii) of the VAT Act Schedule 9, Group 1, Item 1.]

1.3 [**VAT Invoice**

VAT will be chargeable on the Price and the Purchaser will pay VAT to the Seller on the Date of Entry in accordance with Clause 2.1 in exchange for a valid VAT invoice addressed to the Purchaser.]

2. Entry and Apportionments

2.1 Entry

Entry to and vacant possession of the Property will be given on the Date of Entry.

2.2 Apportionments

2.2.1 All outgoings for the Property (other than rates) will be apportioned as at Completion on an equitable basis.

2.2.2 Within 5 Business Days after Completion, the Seller or the Seller's Solicitors will advise the local authority of the change of ownership of the Property so that any apportionment of rates can be carried out by the local authority.

3. Disclosed Documents

3.1 Subject to Clause[s 6 and] 8 the Purchaser is deemed to have examined the Disclosed Documents and accepts that it is purchasing the Property on the basis that it has satisfied itself on all matters disclosed in them and on the validity and marketability of the Seller's title to the Property.

3.2 Clause 5.1 will override any other provision of the Missives apparently to the contrary and any confirmation given by the Seller in the Missives is given subject to the Disclosed Documents whether or not that is expressly stated.

4. [**Documents to be Disclosed**

4.1 To the extent it has not already done so, the Seller will exhibit to the Purchaser as soon as reasonably practicable after the Conclusion Date:-

4.1.1 [the Title Deeds;]

4.1.2 [property enquiry certificate in respect of the Property which is dated not more than [sixty] days prior to the date of this offer;]

4.1.3 [coal mining search from the Coal Authority in respect of the Property which is dated not more than ninety days prior to the date of this offer;] and

4.1.4 [any notices received by the Seller affecting the Property.]

4.2 The Purchaser will have [15] Business Days from receipt of each of the respective items referred to in Clause 6.1 to satisfy itself on their terms.

4.3 If any of the items referred to at Clauses 6.1.1, 6.1.2, 6.1.3 or 6.1.4 disclose any matters materially prejudicial to the interest of the Purchaser the Purchaser will be entitled to resile from the Missives without penalty on delivery of written notice to that effect to the Seller's Solicitors within the [15] Business Days period, time being of the essence. Failing such notice, the Purchaser is deemed to be satisfied as to the terms of the items referred to in Clause 6.1 and each of such items will become a Disclosed Document for the purposes of the Missives.]

5. **Title**

5.1 **Encumbrances**

5.1.1 So far as the Seller is aware there are no Encumbrances affecting the Property other than as referred to in the Disclosed Documents.

5.1.2 The Property is sold with and under the Encumbrances affecting the Property whether specified or referred to in the Title Deeds or not.

5.2 **Minerals**

The minerals are included in the sale to the extent to which the Seller has any right to them.

5.3 **Outstanding Disputes**

During the period of the Seller's ownership of the Property, there have been no disputes which remain outstanding with neighbouring proprietors or third parties about items common to the Property and adjacent premises, access to or from the Property, the title to the Property or similar matters.

5.4 **Possession**

The Seller confirms that it is currently in possession of the Property and has been in possession of the Property openly, peaceably and without judicial interruption for a continuous period of at least one year.

5.5 **Community Interests**

5.5.1 The Seller has not received any 2003 Act Notice.

5.5.2 If the Seller receives any 2003 Act Notice prior to registration of the Disposition, then the Seller will immediately:

(a) notify the Purchaser; and

(b) exhibit a copy of it to the Purchaser.

5.5.3 If the Seller receives any 2003 Act Notice (whether before, on or after Completion) which relates to an application by a community body to register an interest in the Property received by the Scottish Ministers after the Conclusion Date, the Seller will immediately:

(a) exhibit a copy of the Missives and any other information in terms of Section 39A of the 2003 Act to the Scottish Ministers to ensure that the Scottish Ministers decline to consider the application in terms of Section 39(5) of the 2003 Act; and

(b) exhibit evidence to the Purchaser of compliance with Clause 7.5.3(a).

5.5.4 If the Seller receives any 2003 Act Notice (whether on or before Completion) which relates to any application by a community body to register an interest in the Property received by the Scottish Ministers on or before the Conclusion Date:

(a) either party will be entitled to resile from the Missives without penalty on delivery of a written notice to that effect to the other's solicitors, not later than [5] Business Days after the date on which the Purchaser has received the copy 2003 Act Notice in terms of Clause 7.5.2(b), time being of the essence; or

(b) if the original Date of Entry has passed because the Seller and the Purchaser have been prevented by the 2003 Act Notice from taking any further steps to transfer the Property, then:

(i) the Seller will notify the Purchaser in writing within 2 Business Days after receipt of notification from the Scottish Ministers or from the community body (as appropriate) of any of the matters referred to in Clause 7.5.4(b)(ii), and

(ii) subject to Clause 7.5.4(c), the Date of Entry will be [5] Business Days after receipt of the notice from the Seller confirming that:

(1) the Scottish Ministers have decided not to enter the community interest in land to which the 2003 Act Notice relates in the RCIL;

(2) the community body has withdrawn the application to which the 2003 Act Notice relates;

(3) the Scottish Ministers have received written notice from the community body that it will not exercise the right to buy the land; or

(4) the Scottish Ministers have decided not to consent to allow the right to buy to proceed.

(c) and if the Scottish Ministers decide to enter the community interest in land to which the 2003 Act Notice relates in the RCIL either party will be entitled to resile from the Missives without penalty on delivery of a written notice to that effect to the other's solicitors, prior to the date on which either:

(i) the community body withdraws the application to which the 2003 Act Notice relates; or

(ii) the Scottish Ministers receive written notice from the community body that it will not exercise the right to buy the Property; or

(iii) the Scottish Ministers decide not to consent to allow the right to buy to proceed.

(d) and if the community body completes the purchase of the Property then:

(i) the Missives will automatically terminate on completion of the sale of the Property to the community body; and

(ii) the Seller will notify the Purchaser that the Missives have terminated immediately.

5.5.5 If the Disposition is of no effect by virtue of the 2003 Act then within [5] Business Days of the date on which this is established:

(a) the Seller will pay to the Purchaser:

(i) the Price (and any VAT on the Price); and

(ii) all sums properly expended for rates, utilities, insurance, service charge expenditure and other outgoings for the Property in the period from (and including) Completion;

(b) and, in exchange, the Purchaser will:

(i) withdraw its application for registration of the Disposition and within [5] days of receipt deliver it to the Seller; and

(ii) pay to the Seller any sums received by the Purchaser for rent and any other sums received in its capacity as owner of the Property in the period from (and including) Completion.

The Seller and the Purchaser will co-operate with each other and do such acts and things, execute such deeds and documents and deliver such documents and evidence as may be required to return the parties to the position in which they were before Completion.

5.5.6 [**Community Asset Transfer Requests**

(a) If the Seller is a relevant authority in terms of section 78 and Schedule 3 of the Community Empowerment (Scotland) Act 2015, the Seller confirms that it has not received any asset transfer request from a community transfer body in relation to the Property.

(b) [If the Seller receives an asset transfer request from a community transfer body at any time before and including Completion, then the Purchaser will be entitled to resile from the Missives without penalty on delivery of a written notice to that effect to the Seller's solicitors.]]

5.6 **Abandoned, Neglected or Detrimental Land**

[[The Property is not] [No part of the Property is] abandoned, neglected or detrimental land within the meaning of Part 3A of the 2003 Act and the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018.]

5.6.1 [If the Property or any part of it is abandoned, neglected or detrimental land within the meaning of Part 3A of the 2003 Act and the Community Right to Buy (Abandoned,

Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018:

(a) the Seller has

(i) no knowledge of any proposals to form a Part 3A Community Body in respect of the Property or any part of it;

(ii) not been approached by any Part 3A Community Body to sell the Property or any part of it to the Part 3A Community Body; and

(iii) not received any 2003 Act Notice; and

(b) there is no pending application by a Part 3A Community Body appearing on the RACBBL.

5.6.2 If a pending application by a Part 3A Community Body appears on the RACBBL on or before the Conclusion Date, but it does not come to the attention of the Seller or the Purchaser until after the Conclusion Date:

(a) the Seller will notify the Purchaser in writing within 1 Business Day after receipt of the copy of the 2003 Act Notice from the Part 3A Community Body;

(b) if Completion has not taken place:

(i) either party will be entitled to resile from the Missives without penalty on delivery of a written notice to that effect to the other's solicitors, not later than [5] Business Days after the date on which the Purchaser has received the copy of the 2003 Act Notice, time being of the essence; or

(ii) if neither party resiles from the Missives in terms of Clause 7.6.2(b)(i):

(1) the Missives will be suspended with effect from the date on which the pending application by the Part 3A Community Body appears on the RACBBL; and

(2) the Seller will notify the Purchaser that the Missives have been suspended immediately; and

(3) if the original Date of Entry has passed because the Seller and the Purchaser have been prevented by the 2003 Act Notice from taking any further steps to transfer the Property, then the provisions of Clause 7.6.2(c) will apply.

(c) the Seller will notify the Purchaser in writing within 2 Business Days after receipt of notification from the Scottish Ministers or from the Part 3A Community Body (as appropriate) of any of the matters referred to in Clauses 7.6.2(c)(i) to 7.6.2(c)(iii) and the Date of Entry will be [5] Business Days after receipt by the Purchaser of the notice from the Seller confirming that:

(i) the Part 3A Community Body has withdrawn the application to which the 2003 Act Notice relates;

(ii) the Scottish Ministers have received written notice from the Part 3A Community Body that it will not exercise the right to buy the Property; or

(iii) the Scottish Ministers have decided not to consent to allow the right to buy to proceed.

(d) if Completion has taken place:

(i) the Seller will pay to the Purchaser:

(1) the Price (and any VAT on the Price); and

(2) all sums properly expended for rates, utilities, and other outgoings for the Property in the period from (and including) Completion;

(ii) and, in exchange, the Purchaser will withdraw its application for registration of the Disposition and within [5] days of receipt deliver it to the Seller.

The Seller and the Purchaser will co-operate with each other and do such acts and things, execute such deeds and documents and deliver such documents and evidence as may be required to return the parties to the position in which they were before Completion.

5.6.3 If a pending application by a Part 3A Community Body appears in the RACBBL after the Conclusion Date but before Completion:

(a) the Seller will notify the Purchaser in writing within 1 Business Day after receipt of a copy of the 2003 Act Notice from the Part 3A Community Body;

(b) [either party will be entitled to resile from the Missives without penalty on delivery of a written notice to that effect to the other's solicitors, not later than [5] Business Days after the date on which the Purchaser has received the 2003 Act Notice in terms of Clause 7.6.3(a), time being of the essence;] and

(c) [if neither party resiles from the Missives in terms of Clause 7.6.3(b):]

(i) the Disposition in favour of the Purchaser will contain a declaration in terms of Regulation 14 of the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018; and

(ii) the Seller will inform Scottish Ministers that the Property has been sold.

5.6.4 If a pending application by a Part 3A Community Body appears in the RACBBL after Completion, the Seller will, if requested to do so by the Purchaser, re-execute the Disposition containing a declaration in terms of Regulation 14 of the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018.]

5.7 [**Occupancy Rights**

The Seller confirms that no part of the Property is (or has within the prescriptive period been) used as a private residence and consequently that the provisions of none of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as amended, or the Family Law (Scotland) Act 1985, or the Civil Partnership Act 2004 apply to the Property or any part of it, or to the Seller's interest in the Property.]

5.8 **Advance Notices**

5.8.1 The Seller will apply to the Keeper for an Advance Notice for the Disposition, in the form adjusted with the Purchaser, to be either (i) entered on the application record for the Property or (ii) recorded in the Register of Sasines no earlier than [5] Business Days prior

to the Date of Entry. The cost of the Advance Notice for the Disposition will be met by the Seller.

5.8.2 The Seller consents to the Purchaser [or its nominees] applying to the Keeper for Advance Notices for any deeds which the Purchaser [or its nominees] intend[s] to grant in relation to the Property. The cost of any Advance Notices which the Purchaser [or its nominees] applies for will be met by the Purchaser.

5.8.3 If the Seller rescinds the Missives in the circumstances set out in Clause 2.3.2 (*Seller's Right to Rescind*) the Purchaser consents to the discharge of the Advance Notice for the Disposition and the Purchaser confirms that it will immediately discharge at its own cost any Advance Notice submitted by it [or its nominees] if requested to do so by the Seller.

5.8.4 If Completion is likely to occur after the Date of Entry, the Seller, if requested to do so by the Purchaser, will apply for a further Advance Notice for the Disposition, in the form adjusted with the Purchaser, and the cost of any additional Advance Notices will be met:-

(a) by the Seller, if the delay in settlement is due to any failure or breach by or on behalf of the Seller to implement its obligations under the Missives on time; or

(b) by the Purchaser, if the delay in settlement is due to any failure or breach by or on behalf of the Purchaser to implement its obligations under the Missives on time.

5.8.5 The Seller's Solicitors will not provide any letter of obligation which undertakes to clear the records of any deed, decree or diligence.

5.9 **Land Register Requirements**

5.9.1 Subject to Clause 7.9.2 the Seller will deliver to the Purchaser, on demand from time to time and at the Seller's expense, such documents and evidence as the Keeper may require to enable the Keeper to update or create (as the case may be) the Title Sheet of the Property to disclose the Purchaser [(or its nominees)] as the registered proprietor of the whole of the Property. Such documents will include (unless the Property comprises part only of a building):-

(a) a plan or bounding description sufficient to enable the Property to be identified on the cadastral map; and

(b) evidence (such as a plans report) that (i) the description of the Property in the Title Deeds is habile to include the whole of the occupied extent and (ii) there is no conflict between the extent of the Property and any registered cadastral units.

5.9.2 After Completion, the Seller will deliver such documents and evidence as are specified in Clause 7.9.1 only if the Disposition is presented for registration not later than 14 days after Completion.

5.9.3 If the application for registration of the Disposition is rejected by the Keeper, then the Seller will co-operate with the Purchaser and, at the Purchaser's expense, do such acts and things (including obtaining a further Advance Notice), execute such deeds and documents and deliver such documents and evidence as may be required to enable the Keeper to update or create (as the case may be) the Title Sheet of the Property to disclose the Purchaser [(or its nominees)] as the registered proprietor of the whole of the Property.

5.10 **Trust Clause**

If the Seller is a company and if requested in writing by the Purchaser at least 3 Business Days prior to the Date of Entry, the Disposition will incorporate a declaration that the Seller will hold the Property as trustee for the Purchaser and its successors, until the Keeper has created or updated (as the case

may be) the Title Sheet of the Property to disclose the Purchaser [(or its nominees)] as the registered proprietor of the whole of the Property.

6. **Completion**

At Completion the Purchaser will pay the Price (and any VAT on the Price) to the Seller in terms of Clause 2.1 and, in exchange, the Seller will deliver to the Purchaser:-

6.1 **Disposition**

the Disposition duly executed by the Seller;

6.2 **Title Deeds**

6.2.1 the Title Deeds; [and

6.2.2 all necessary links in title evidencing the Seller's exclusive ownership of the Property];

6.3 **Disclosed Documents**

the remaining Disclosed Documents;

6.4 **Legal Reports**

6.4.1 a legal report (including a search in the register of inhibitions against the Seller [and the Purchaser]) brought down to a date as near as practicable to Completion which report will show:-

(a) no entries adverse to the Seller's interest in the Property;

(b) the Advance Notice for the Disposition; and

(c) no other Advance Notices other than those submitted by the Purchaser;

6.4.2 a search in the RCIL [and the RACBBL] brought down as near as practicable to Completion showing nothing prejudicial to the ability of the Seller validly to transfer title to the Property to the Purchaser [or its nominees]

the cost of the legal report and searches being the responsibility of the Seller;

6.5 **Charges Searches**

searches in the register of charges and company file of the Seller [(including a search to identify the directors and the secretary of the Seller as at the date of signing the Disposition)] from the date of its incorporation or the date of inception of the register (whichever is the later) brought down:-

6.5.1 as near as practicable to Completion; and

6.5.2 within 3 months following Completion, to a date at least thirty six days after Completion

in both cases disclosing no entry prejudicial to the Purchaser's [or its nominees'] interest but the Seller's Solicitors will not provide a letter of obligation in respect of the updated search in the register of charges and company file;

6.6 [**VAT Invoice**

a valid VAT invoice addressed to the Purchaser;]

6.7 [**Discharge/Deed of Restriction**

[a discharge/deed of restriction duly executed by the heritable creditor in any standard security affecting the Property together with completed and signed application forms for recording/registration and payment for the correct amount of recording/registration dues;]

6.8 [**Letter of Consent and Non-crystallisation**

a letter of consent and non-crystallisation in the holder's usual form (releasing the Property from charge or otherwise in terms that confer a valid title on the Purchaser [or its nominees] subject to compliance with any time limit for registration of the Purchaser's title) in respect of the transaction envisaged by the Missives from each holder of a floating charge granted by the Seller;]

6.9 **Other Documents**

any other deeds and documents to be delivered to the Purchaser on or before Completion in terms of the Missives.

7. **Post Completion**

Provided that the Disposition is presented for registration prior to the earlier of 14 days after Completion and the date of expiry of the last Advance Notice registered in relation to the Disposition in terms of Clause 7.8, the updated or newly created Title Sheet of the Property will contain no exclusion or limitation of warranty in terms of Section 75 of the 2012 Act and disclose no entry, deed or diligence (including any charging order under the Buildings (Recovery of Expenses) (Scotland) Act 2014 or any notice of potential liability for costs registered under the Tenements (Scotland) Act 2004 or the Title Conditions (Scotland) Act 2003) prejudicial to the interest of the Purchaser [or its nominees] other than such as are created by or against the Purchaser [or its nominees] or have been disclosed to, and accepted in writing by, the Purchaser [or its nominees] prior to Completion.

8. **Insurance**

8.1 From the Conclusion Date until Completion, the Seller will keep the Property insured for its full reinstatement value. As soon as reasonably practicable after the Conclusion Date, the Seller will make available to the Purchaser written details of such insurances, if it has not already provided this information.

8.2 Immediately following the Conclusion Date, the Seller will use its reasonable endeavours to have the Purchaser's interest in the Property (as purchaser, price unpaid) endorsed or noted on or otherwise (either specifically or generically) covered by its policies of insurance and will exhibit evidence to the Purchaser that it has done so.

8.3 The Seller will within 5 Business Days after Completion cancel such insurances (under reservation of all prior claims).

9. **Damage or Destruction**

9.1 Risk of damage to or destruction of the Property will not pass to the Purchaser until Completion.

9.2 If prior to Completion the Property sustains damage (whether insured or otherwise) which at common law would entitle a hypothetical tenant under a hypothetical lease of the Property to an abatement of rent of an amount exceeding [20%] of the rent, either party will be entitled to resile from the Missives without penalty on delivery of written notice to that effect to the other's solicitors no later than midday on the date on which Completion is due to take place, time being of the essence.

9.3 If there is any dispute as to whether the Property has suffered such damage, the matter will be referred to the decision of an independent surveyor, who will act as an expert, appointed, failing agreement, by the Chair of the RICS in Scotland on application by either party. The independent surveyor's decision will be binding on the parties. If the independent surveyor dies, delays or

becomes unwilling or incapable of acting then either the Seller or the Purchaser may apply to the Chair to discharge that independent surveyor and appoint a replacement. The fees and expenses of the independent surveyor and the cost of appointment are payable by the Seller and the Purchaser in the proportions which the independent surveyor directs and if no direction is made equally.

9.4 Subject to Clause 11.2, if the Property is damaged or destroyed by an insured risk prior to Completion, the Seller's responsibility to the Purchaser, at Completion, will be:-

9.4.1 to pay to the Purchaser the insurance proceeds received by the Seller to the extent that they have not been spent on reinstatement; and

9.4.2 to assign its rights in respect of the insurance proceeds specified in Clause 11.4.1 to the Purchaser.

10. Statutory Matters

10.1 Statute

[Subject to Clause 6,] the Purchaser is deemed to have satisfied itself on the application of all statute and statutory regulations and rules in so far as affecting or relating to the Property and, except as expressly provided for in the Missives, the Seller gives no warranties or assurances on such matters.

10.2 Statutory Repairs Notices

Any local authority statutory repairs notices (other than any notice or requirement of any Environmental Authority made pursuant to the Contaminated Land Regime (as such terms are defined in Clause [13])) affecting the Property which are issued prior to Completion will as between the Purchaser and the Seller be the responsibility of the Seller except to the extent that they are instigated by or with the authority of the Purchaser. Liability under this Clause will subsist until met and will not be avoided by the issue of a fresh notice.

10.3 Energy Performance

10.3.1 The Seller confirms that a valid current energy performance certificate (in terms of the Energy Performance of Buildings (Scotland) Regulations 2008) has been obtained for, and affixed to, the Property.

10.3.2 The Property is not subject to The Assessment of Energy Performance of Non-Domestic Buildings (Scotland) Regulations 2016.

10.3.3 The Property is not subject to a green deal plan as defined in Section 1 of the Energy Act 2011.

11. Environmental

11.1 Definitions

In Clauses 12.2 and 13:

"**Contaminated Land Regime**" **m**eans the contaminated land regime under Part 2A of the Environmental Protection Act 1990 (as amended from time to time) and any statutory instrument, circular or guidance issued under it;

"**Environment**" means any and all organisms (including humans), ecosystems, natural or man-made buildings or structures, and the following media:-

(a) air (including air within buildings or structures, whether above or below ground);

(b) water (including surface and ground water and water in wells, boreholes, pipes, sewers and drains); and

(c) land (including surface land and sub-surface strata and any land under seabeds or rivers, wetlands or flood plains);

"**Environmental Authority**" means any person or legal entity (whether statutory or non-statutory or governmental or non-governmental) having regulatory authority under the Contaminated Land Regime; and

"**Hazardous Substances**" means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) capable of causing harm to the Environment and/or harm to the health of living organisms or other interference with the ecological systems of which they form part and/or harm to property and/or in the case of humans, offence caused to any sense.

11.2 **Agreement as to Environmental Liabilities**

The Seller and the Purchaser agree that from Completion:

11.2.1 as between the Seller and the Purchaser liability for any notice or requirement of any Environmental Authority made pursuant to the Contaminated Land Regime in respect of the Property or any Hazardous Substances attributable to the Property, will rest with the Purchaser to the exclusion of the Seller; and

11.2.2 if any Environmental Authority wishes to recover costs incurred by it in carrying out any investigation, assessment, monitoring, removal, remedial or risk mitigation works under the Contaminated Land Regime in respect of the Property or any Hazardous Substances attributable to the Property from either or both of the Seller and the Purchaser then, as between the Seller and the Purchaser, the sole responsibility for the payment of such costs will rest with the Purchaser to the exclusion of the Seller.

The agreements outlined under Clauses 13.2.1 and 13.2.2 are made with the intention that any Environmental Authority serving any notice or seeking to recover any costs should give effect to the agreements pursuant to the Contaminated Land Regime.

The Seller and the Purchaser agree that the appropriate Environmental Authority may be notified in writing of the provisions of Clause 13 if required to give effect to the agreements outlined under Clauses 13.2.1 and 13.2.2.

11.3 **Sold with Information**

11.3.1 The Purchaser acknowledges to the Seller that:-

(a) [it has been provided with the following reports, surveys and other environmental information prior to the date of this offer:-

[ ];]

(b) [it has carried out its own investigations of the Property for the purposes of ascertaining whether, and if so the extent to which, Hazardous Substances are present in, on, under or over the Property;]

(c) such information [gathered through those investigations] is sufficient to make the Purchaser aware of the presence in, on, under or over the Property of any Hazardous Substances referred to in the reports;

(d) it relies at its own risk on the contents of any report, plan and other written material and information either disclosed to it or orally communicated to it by or on behalf of the Seller both as to the condition of the Property and as to the nature and effect of any remedial works which may have been carried out

[(including but not limited to the Report by [ ] dated [ ])] and no warranty is given or representation made by or on behalf of the Seller in this respect; and

(e) it has satisfied itself as to the condition of the Property.

11.3.2 Both parties agree that:-

(a) [both the Purchaser and the Seller are [large commercial organisations] [public bodies]] [the Purchaser is a large commercial organisation and the Seller is a large public body] [the Seller is a large commercial organisation and the Purchaser is a large public body];

(b) the Purchaser has been given permission and adequate opportunity to carry out its own investigations of the Property for the purpose of ascertaining whether, and if so the extent to which, Hazardous Substances are present in, on, under or over the Property;

(c) the transfer of the Property pursuant to the Missives is an open market arm's length transaction; and

(d) the Seller will not retain any interest in the Property or any rights to occupy or use the Property following Completion.

11.3.3 The acknowledgements in this Clause 13.3 are made in order to exclude the Seller from liability under the Contaminated Land Regime so that the Seller is not an appropriate person, as defined in it.

12. [**Moveables**

The Moveables comprise all the moveable items owned by the Seller in connection with and located at the Property and will be included in the sale without further payment or other consideration. They will be handed over to the Purchaser at Completion in their then current condition free from any hire purchase, lease or credit agreements, licences, reservations, retention of title or other encumbrances whatsoever.]

13. **No Employees**

13.1 As at the Conclusion Date and Completion, the Seller confirms that there are no persons to whom the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**Employment Regulations**") will apply in relation to:-

13.1.1 the sale of the Property; and

13.1.2 the creation or cessation of any contractual relationship consequent to such sale

with the effect of such person's employment (or liability for it and its termination) being deemed to transfer to the Purchaser [or any contractor of the Purchaser] at Completion.

13.2 If it is asserted or found by a court or tribunal that the Employment Regulations apply in relation to any person ("**Employee**"), the Purchaser [or any of its contractors] may terminate the employment of the Employee within 10 Business Days, where it has not already terminated, and if the Purchaser complies with its obligations under this Clause 15.2 (where applicable), the Seller undertakes to keep the Purchaser [and/or its contractors] indemnified, on demand, against all costs, claims, liabilities and expenses (including reasonable legal expenses) of any nature arising out of the employment of the Employee prior to Completion or the termination of it (whether it is terminated by the Purchaser or any other person and whether before, on or after Completion).

13.3 [The Seller acknowledges and agrees that the Purchaser will grant an indemnity in favour of each and any of its contractors to the same extent that the Seller is undertaking to indemnify the Purchaser in terms of Clause 15 and agrees that in the event of a claim on any indemnity in terms

of Clause 15 for loss incurred by the Purchaser, that loss will include the amount, if any, which the Purchaser has paid or is required to pay to any of its contractors by virtue of any indemnity granted by the Purchaser in accordance with the provisions of Clause 15.]

14. **Capital Allowances**

The provisions of Part 7 of the Schedule will apply.

15. **Access**

Access to the Property prior to the Date of Entry will be given to the Purchaser, its surveyors and other professional advisers [with machinery, plant and equipment] for all reasonable purposes (including examining the Property), provided that the Purchaser will ensure that in doing so they:-

15.1 comply with the Seller's reasonable requirements; and

15.2 exercise reasonable restraint and make good all loss, injury and damage caused to the Property.

16. [**Confidentiality**

16.1 **Pre-Completion**

The Purchaser and the Seller will not disclose details of the Missives or the acquisition of the Property by the Purchaser to the press or otherwise prior to Completion except:-

16.1.1 with the [prior written consent] [reasonable consent] of the other party;

16.1.2 to the Purchaser and the Seller's respective agents and professional advisers in connection with the acquisition/sale of the Property;

16.1.3 to the Purchaser's bankers or other providers of finance (and their professional advisers) in connection with the acquisition of the Property;

16.1.4 where required by law; and

16.1.5 where required to comply with the requirements of the Stock Exchange or any other regulatory or government authority.

16.2 [**Post-Completion**

Any press release after Completion relating to the acquisition/sale of the Property is to be agreed in writing between the Purchaser and the Seller prior to its publication (both parties acting reasonably).]

16.3 **Agents**

The Purchaser and the Seller will ensure that their respective agents and professional advisers comply with the undertakings in this Clause 18.

17. **General**

17.1 **Formal Documentation Required**

Neither the Seller nor the Purchaser will be bound by any acceptance of this offer or any other letter purporting to form part of the Missives or any amendment or variation of the Missives unless it is duly executed.

17.2 **Complete Agreement**

The Missives (including the annexations) will represent and express the full and complete agreement between the Seller and the Purchaser relating to the sale of the Property at the

Conclusion Date and will supersede any previous agreements between the Seller and the Purchaser relating to it. Neither the Seller nor the Purchaser has been induced to enter into the Missives on account of any prior warranties or representations.

17.3 **Exclusion of Third Party Rights**

The Missives do not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of the Missives.

18. **Supersession**

The provisions of the Missives (other than Clauses 2.3.2, 7.5, 7.6, 7.9, 9, 13, 15 and 16 which will remain in full force and effect until implemented) in so far as not implemented by the granting and delivery of the Disposition and others, will remain in full force and effect until the earlier of:-

18.1 the date when such provisions have been implemented; and

18.2 [two years] after the Date of Entry except in so far as they are founded on in any court proceedings which have commenced within such [two year] period.

19. **Exclusion of Personal Liability**

19.1 No personal liability will attach to the Purchaser's Solicitors by virtue of their entering into the Missives in their capacity as agents for the Purchaser.

19.2 No personal liability will attach to the Seller's Solicitors by virtue of their entering into the Missives in their capacity as agents for the Seller.

19.3 The Seller and the Purchaser will be solely liable to each other for compliance with, and fulfilment of, their respective obligations under the Missives.

20. [**Assignation**

The Purchaser may not (whether at common law or otherwise):-

20.1 assign, transfer, grant any fixed security over, hold on trust or deal in any other manner with the benefit of the whole or any part of its interest in the Missives;

20.2 sub-contract any or all of its obligations under the Missives; nor

20.3 purport to do any of the foregoing.]

21. **Proper Law and Prorogation**

The Missives and the rights and obligations of the Seller and the Purchaser will be governed by and construed in accordance with the law of Scotland and the Seller and the Purchaser will be deemed to have agreed to submit to the non-exclusive jurisdiction of the Scottish courts.

22. **Time Limit**

This offer, if not previously withdrawn, will fall unless a binding written acceptance has been received by us by 5 pm on [ ] 20[ ].

Yours faithfully

..... **Witness Signature:** .....

Witness Name: .....

Witness Address: .....

.....

.....

This is the Schedule referred to in the foregoing offer by [ ] (on behalf of [ ]) to [ ] (on behalf of [ ]) in respect of [ ]

Part 1

Disclosed Documents

1. Title Deeds.

2. Property enquiry certificate(s) dated [ ].

3. [*Note: Complete to include:-*

   - *coal mining searches;*
   - *planning and building warrant documents;*
   - *VAT documents;*
   - *construction documents (appointments, building contract, collateral warranties, Health & Safety File etc);*
   - *details of any servitudes, rights of way or similar rights other than as disclosed in the Title Deeds;*
   - *Energy Performance Certificate;*
   - *Asbestos Report;*
   - *any notices received by the Seller affecting the Property;*
   - *other searches or documents.*]

Part 2

Disposition

Part 3

Plan

Part 4

Title Deeds

Part 5

Moveables

Part 6

Capital Allowances Election

1. **The parties to the Joint Election**

The Seller

whose registered office is situated at

Tax Reference

The Purchaser

whose registered office is situated at

Tax Reference

2. **The Property to be Acquired**

Address:

Registered under Title Number:

3. **The Interest Acquired**

The interest in land to which this election relates and which has been acquired for £[ ] by the Purchaser by an agreement dated [ ] 20[ ], is the heritable interest in the Property.

4. **The Joint Election**

The Seller and the Purchaser jointly elect, pursuant to the provisions of Section 198 of the Capital Allowances Act 2001, that the amount which, for all purposes of Part 2 of the Capital Allowances Act 2001, is to be taken as the portion of the sale price of the interest specified above which falls to be treated as expenditure incurred by the Purchaser on the provision of plant and machinery fixtures is £[ ], which amount shall be further apportioned as follows:-

Insert either Table A or Table B. Table C is optional and may be used with either Table A or Table B

[Table A

[1]*Table A should be used where the Seller's expenditure on fixtures which are integral features is allocated in full either to the special rate class pool (ie where the expenditure was incurred on or after 1 April 2008) or to the main plant and machinery pool, but not split between the two pools.*]

Plant and machinery fixtures which are integral features (within the meaning of Section 33A(5) of the Capital Allowances Act 2001)	£[ ]

[1] *Since 1 April 2008, there has been a differentiation between expenditure on fixtures which are not integral features (which forms part of the main rate pool and qualifies for a writing down allowance of 18% (from April 2012) and expenditure on fixtures which are integral features (which forms part of a special rate pool and qualifies for a writing down allowance of 8% (from April 2012)). However, any expenditure that (i) was incurred before 1 April 2008, (ii) was within the main pool and (iii) related to fixtures which are integral features, will stay in the main pool and attract the main rate of capital allowances. Either Table A or Table B should be completed depending on the type of plant and machinery fixtures being transferred and when they were acquired.*

Plant and machinery fixtures which are not integral features	£[ ]

[Table B

Table B should be used where part of the Seller's expenditure on fixtures which are integral features is allocated to the special rate pool and part is allocated to the main plant and machinery pool.]

Plant and machinery fixtures which are integral features (within the meaning of Section 33A(5) of the Capital Allowances Act 2001), the expenditure on which forms part of the Seller's main pool	£[ ]
Plant and machinery fixtures which are integral features, the expenditure on which forms part of the Seller's special rate class pool	£[ ]
Plant and machinery fixtures which are not integral features	£[ ]

[[2]A list of the fixtures and the amount to be apportioned to them is as follows:-

[Table C

Table C should be used where a list of fixtures is available.]

Item	**8% Special Rate Pool**	**18 % Main Pool**
Heating and Ventilation installation		
Hot water installation		
Electrical switchgear		
Emergency lighting		
Fire alarms		
Electrical and goods lift installation		
External lighting		
Passenger and goods lift installation		
Escalators		
Trade and information signs		

[2] *Note that a number of the following items describe systems or installations which may be comprised of more than one plant and machinery fixture. If in those cases some of the fixtures are integral features and others are not, it will be necessary to make a separate apportionment in the table between the expenditure allocated to fixtures which are integral features and the expenditure allocated to fixtures which are not. In such cases a further apportionment may need to be made of the expenditure allocated to integral features if the Seller's expenditure on integral features has been allocated in part to its main pool and in part to its special rate class pool (by way of example, see guidance in relation to Table A and Table B above).*

Mechanical door closers		
Carpets		
Door mats		
Furniture and fittings		
Sanitary equipment		
Total		

The operative date for capital allowances purposes in accordance with the Capital Allowances Act 2001 s.572(4) is **[*Insert date of Completion or, if earlier, time when possession of Property is given*]**.

Signed …… Signed ……

Name …… Name ……

For and on behalf of the Seller For and on behalf of the Purchaser

Part 7

Capital Allowances

1. **OPTION 1: Seller has claimed Capital Allowances and the Seller and the Purchaser have agreed to enter into a Section 198 election to determine the value of the capital allowances to be transferred to the Purchaser.**

1.1 In this Part of the Schedule:

1.1.1 "**CAA**" means Capital Allowances Act 2001; and

1.1.2 "**Fixed Plant**" means such plant and machinery (within the meaning of the CAA) as constitutes a fixture or fixtures and which is included in the sale of the Property.

1.2 The Purchaser will make an election with the Seller under Section 198 of the CAA in terms of the draft contained in Part [6] of the Schedule, in which case:-

1.2.1 on Completion, the Seller and the Purchaser will sign in duplicate the election agreeing the value of Fixed Plant in accordance with the apportionment set out in the election, being the disposal value for the Fixed Plant required to be brought into account by the Seller and falling to be treated as expenditure incurred by the Purchaser on the provision of the Fixed Plant and the Seller confirms that the amount attributed to the Fixed Plant in the election is not in excess of the aggregate amount treated for the purposes of the CAA as having been paid by the Seller for the Fixed Plant;

1.2.2 both the Seller and the Purchaser will submit the election to HMRC within the time limit prescribed by law and take all reasonable steps to procure that the value is accepted by HMRC;

1.2.3 the Seller and the Purchaser agree to reflect such value in their relevant tax computations and returns.

1.3 The Seller will use reasonable endeavours to provide, or procure that its agents provide:-

1.3.1 copies of all relevant information in its possession or that of its agents, and

1.3.2 such cooperation and assistance as the Purchaser may reasonably require

to enable the Purchaser to make and substantiate claims under the CAA in respect of the Property.

1.4 The Purchaser agrees that it will:-

1.4.1 use the information provided pursuant to paragraph 1.3 only for the stated purpose; and

1.4.2 not disclose, without the reasonable consent of the Seller, any such information which the Seller expressly provides on a confidential basis.

2. **OPTION 2: The Seller has not claimed Capital Allowances because it was not entitled to do so and the Seller and the Purchaser have agreed that any unclaimed Capital Allowances are to be transferred to the Purchaser**

2.1 In this Part of the Schedule:-

2.1.1 ["**Available Fixtures**" means the Fixed Plant in respect of which the Seller has not claimed allowances under CAA][3];

2.1.2 "**CAA**" means Capital Allowances Act 2001; and

2.1.3 "**Fixed Plant**" means such plant and machinery (within the meaning of the CAA) as constitutes a fixture or fixtures and which is included in the sale of the Property.

2.2 The Seller confirms that:

2.2.1 [it did not enter into an election under Section 198 of the CAA in respect of the Available Fixtures when it acquired the Property and, accordingly, no such election has been submitted by the Seller to an officer of HMRC in relation to its acquisition of the Property;

2.2.2 it has not made any claim under Part 2 of the CAA with respect to the Fixed Plant; and

2.2.3 it has not acquired any of the Fixed Plant since 1 April 2012.][4]

OR

2.2.4 [the requirement of Section 187A(6)(a) of the CAA was not met when the Seller acquired the Property and is no longer capable of being met; and

2.2.5 it was not entitled to claim an allowance under Part 2 of the CAA in respect of capital expenditure incurred on the Fixed Plant.][5]

2.3 The Seller will use its reasonable endeavours to assist the Purchaser with any claims which it makes under the CAA in respect of the Fixed Plant and, in doing so, will provide, or procure that its agents provide:

2.3.1 [a written statement in accordance with Section 187A(8)(b) of the CAA made by the person(s) from whom the Seller purchased the Property ("**Past Owner**") of the disposal value which the Past Owner has brought into account for capital allowance purposes in respect of the Fixed Plant;][6]

2.3.2 copies of all relevant information in its possession or that of its agents;

2.3.3 such cooperation and assistance as the Purchaser may reasonably require; and

2.3.4 if requested by the Purchaser within two years after Completion and if required by HMRC, a separate written statement containing the confirmations contained in paragraph 2.2.

2.4 The Seller will not make any claim with respect to the Fixed Plant under the CAA following Completion.

2.5 The Purchaser will reimburse the Seller for its reasonable costs in assisting the Purchaser in accordance with paragraph 2.3.

[3] Use where the Seller acquired the property before 1 April 2012.
[4] Use where the Seller acquired the property before 1 April 2012.
[5] Use where the Seller acquired the Property on or after 1 April 2012.
[6] Use where the Seller acquired the Property on or after 1 April 2012.

3. **OPTION 3: The Seller has not claimed Capital Allowances but could have done do so and the Seller and the Purchaser have agreed that any unclaimed Capital Allowances (where amount of qualifying expenditure is not known) are to be transferred to the Purchaser**

3.1 In this Part of the Schedule:-

3.1.1 "**Available Fixtures**" means the Fixed Plant in respect of which the Seller has not claimed allowances under CAA[7];

3.1.2 "**CAA**" means Capital Allowances Act 2001;

3.1.3 "**CA Expert**" means [ ] of [ ];

3.1.4 "**Earliest Claim Period**" means the earliest chargeable period of the Seller in which relevant qualifying expenditure can be allocated to a capital allowances pool and in respect of which the Seller is entitled to amend its income or corporation tax return as applicable pursuant to paragraph 3.5;

3.1.5 "**Election Notice**" means a notice of election under Section 198 of the CAA in the form contained in Part [6] of the Schedule;

3.1.6 "**Fixed Plant**" means such plant and machinery (within the meaning of the CAA) as constitutes a fixture or fixtures and which is included in the sale of the Property;

3.1.7 "**General Pool Available Fixtures**" means those Available Fixtures which are not Special Rate Available Fixtures; and

3.1.8 "**Special Rate Available Fixtures**" means those Available Fixtures on which the Seller has incurred special rate expenditure (as defined in Section 104A of the CAA).

3.2 The Seller confirms that:

3.2.1 it is the past owner (as defined in Section 187A(2) of the CAA) of each Available Fixture[8];

3.2.2 there is no Fixed Plant other than Available Fixtures;

3.2.3 [it did not enter into an election under Section 198 of the CAA in respect of the Available Fixtures when it acquired the Property][9]; and

3.2.4 it has not allocated any qualifying expenditure incurred on any Available Fixture to a pool pursuant to Section 53 of the CAA.

3.3 The Parties have agreed to instruct jointly at the Purchaser's cost the CA Expert as an expert in the field of capital allowances to determine a reasonable amount of qualifying expenditure incurred by the Seller on the General Pool Available Fixtures and the Special Rate Available Fixtures which are to be pooled pursuant to paragraph 3.5 no later than three months after Completion.

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[7] The Purchaser must verify whether or not there are other fixtures at the Property:

- in respect of which the Seller has claimed allowances (see confirmation at Clause 3.2.2), in which case the Seller's tax written down value of such fixtures should be included in the Section 198 election, and
- which are integral features acquired by the Seller prior to 1 April 2008, in which case the Purchaser may attribute a just and reasonable portion of the Price to such integral features.

[8] It is implicit in this confirmation that there are no fixtures at the Property which the Seller is treated as owning as a result of contributing to another's expenditure under the contribution allowances rules *eg* a contribution to a tenant's fit-out. This should be verified in the pre-sale diligence process.

[9] If the Seller cannot give this confirmation, changes to the drafting of this clause may be required, depending on the facts. If the Seller entered into an election at £1 when it acquired the Property and has not incurred any subsequent expenditure on fixtures, no allowances will be available to the Purchaser. If the Seller entered into an election at the tax written down value or at another figure and has not incurred subsequent expenditure on fixtures, the drafting of the clause can be simplified as it may not be necessary to instruct a capital allowances expert because the amount of qualifying expenditure will be as set out in the election.

3.4 The Seller will take all reasonable steps to facilitate the CA Expert's determination of the amounts to be allocated to the pools pursuant to paragraph 3.5, including providing promptly information to the CA Expert and permitting access to the Property.

3.5 For the purposes of meeting the pooling requirement (within the meaning of Section 187A(4) of the CAA) the Seller undertakes to allocate to a main pool the amount of qualifying expenditure on General Pool Available Fixtures determined by the CA Expert pursuant to paragraph 3.3 and to allocate to a special rate pool the amount of qualifying expenditure on Special Rate Available Fixtures determined by the CA Expert in each case by amending its relevant tax return for the Earliest Claim Period (and any subsequent tax return in which the pooling is required to be taken into account) no later than 30 days after determination of the qualifying expenditure in accordance with paragraph 3.3.

3.6 The Seller will not claim any writing-down allowances in respect of the qualifying expenditure allocated to a pool pursuant to paragraph 3.5.

3.7 Within 30 days after the CA Expert's determination of the amounts of the Seller's qualifying expenditure which are to be allocated to the pools pursuant to paragraph 3.5 each Party will sign in duplicate the Election Notice with such determined amounts included as the Seller's disposal values of the General Pool Available Fixtures and the Special Rate Available Fixtures and deliver the duplicate to the other Party.

3.8 Promptly following the allocation of the Seller's qualifying expenditure on the Available Fixtures to the pools pursuant to paragraph 3.5 the Seller will notify the Purchaser in writing of such pooling and each party will submit its copy of the completed Election Notice to HMRC in accordance with Section 201 of the CAA within two years after Completion.

3.9 If HMRC challenges the expenditure allocated to either pool pursuant to paragraph 3.5 the Seller will as soon as reasonably practicable and in any event within ten days, give written notice of it to the Purchaser and the Seller will, at the reasonable cost of the Purchaser, take such action as the Purchaser may reasonably request by notice in writing given to the Seller to avoid, dispute, defend, resist or appeal against such challenge from HMRC.

3.10 The Parties undertake to use reasonable endeavours to ensure that the conditions of Section 187A of the CAA are satisfied to the extent such provisions are applicable and such satisfaction is possible to enable the Purchaser to claim writing down allowances in respect of the Available Fixtures to the extent permitted by the CAA.

3.11 The Purchaser will pay the costs and expenses reasonably and properly incurred by the Seller in complying with its obligations under paragraphs 3.4 to 3.10 within five Business Days after written demand.