OFFER TO SELL – VACANT POSSESSION

Our Ref:
Your Ref:

[Date]

[Name and Address]

Dear Sirs

[Seller's Name]
[Purchaser's Name]
[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:

"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 the date of conclusion of the Missives;

"Date of Entry" means [[ ] 20[ ]] [the first Working 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];

"Fixed Plant" means such plant and machinery (within the meaning of the Capital Allowances Act 2001) as constitutes a fixture or fixtures and which is included in the sale of the Property;

"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;

"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 shareholder in CHAPS Clearing Co. Limited, 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;

"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 Working 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;

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

"Working Day" means any day on which clearing banks in [Edinburgh, Glasgow and London] are open for normal business.

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;

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 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; and

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.

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.

2.2 **[Apportionment**

The Price will be apportioned as follows:

Property - £[ ]

Fixed Plant - £[ ]

Moveables - £[ ]].

2.3 **Interest**

If the Price (and any VAT chargeable on it) 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.

2.4 **Cancellation of Sale**

If the Purchaser fails to pay the Price (and any VAT chargeable on it) with Interest as set out in Clause 2.3 within [10] Working Days after the Date of Entry the Seller is entitled to rescind the Missives, to re-sell the Property to any third party and to claim damages from the Purchaser which may include:

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

2.4.2 any shortfall between:

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

(ii) the Price; and

2.4.3 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.

2.5 **Receipt of Money**

For the purposes of this Clause 2, 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.

2.6 **Suspension**

The provisions of Clauses 2.3 and 2.4 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.

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

3.1 The Seller confirms to the Purchaser that:

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

3.1.2 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

3.1.3 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.

3.2 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.

3.3 **[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

3.1 The Seller confirms to the Purchaser that:

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

3.1.2 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.

3.2 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.

3.3 **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.]

4 Entry and Apportionments

4.1 **Entry**

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

4.2 **Apportionments**

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

4.2.2 Within 5 Working 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.

5 Disclosed Documents

5.1 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.

5.2 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.

6 [Documents to be Disclosed

6.1 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:

6.1.1 [the Title Deeds;]

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

6.1.3 [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.]

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

6.3 If any such items 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] Working 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.]

7 Title

7.1 **Burdens**

7.1.1 So far as the Seller is aware there are no servitudes, rights of way or similar rights affecting the Property other than as referred to in the Disclosed Documents.

7.1.2 The Property is sold with and under the real burdens, reservations, restrictions, servitudes, rights of way or similar rights, overriding interests, and other conditions affecting the Property whether specified or referred to in the Title Deeds or not.

7.2 **Minerals**

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

7.3 **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.

7.4 [**Community Interests**

The Seller has not received any notices in terms of Section 37 of the Land Reform (Scotland) Act 2003 in respect of the Property.]

7.5 [**Occupancy Rights**

The Seller warrants 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.]

7.6 **Land Register Requisitions**

7.6.1 The Seller will deliver to the Purchaser, on demand from time to time and at its expense, such documents and evidence as the Keeper may require to enable the Keeper to:

(i) issue a Land Certificate in name of the Purchaser [(or its nominees)] and/or

(ii) update or create (as the case may be) the Title Sheet of the Property to disclose the Purchaser [(or its nominees)]

in each case as the registered proprietor of the whole of the Property and, provided that the Disposition is presented for registration within fourteen days after Completion, containing no exclusion of indemnity in terms of Section 12(2) of the Land Registration (Scotland) Act 1979. Such documents will include (unless the Property comprises part only of a building) a plan or bounding description sufficient to enable the Property to be identified on the Ordnance Survey Map and evidence (such as a Form P16 Report) that the description of the Property in the Title Deeds is habile to include the whole of the occupied extent.

7.6.2 Provided that the Disposition is presented for registration within fourteen days after Completion, the Seller warrants that the Land Certificate to be issued to the

Purchaser [or its nominees] and/or the updated or newly created Title Sheet will disclose no entry, deed or diligence (including 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 Completion

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

8.1 **Disposition**

the Disposition duly executed by the Seller.

8.2 **Title Deeds**

8.2.1 the Title Deeds; [and

8.2.2 all necessary links in title evidencing the Seller's exclusive ownership of the Property].

8.3 **Disclosed Documents**

the remaining Disclosed Documents

8.4 **Property Searches**

8.4.1 [Form 10/11 Reports brought down to a date as near as practicable to Completion and showing no entries adverse to the Seller's interest in the Property]

8.4.1 [Form 12/13 Reports brought down to a date as near as practicable to Completion and showing no entries adverse to the Seller's interest in the Property]

8.4.2 [Search in the Register of Community Interests in Land 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 Reports and Search being the responsibility of the Seller.

8.5 **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:

8.5.1 as near as practicable to Completion; and

8.5.2 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.

8.6 **Letter of Obligation**

a letter of obligation from the Seller's Solicitors in the appropriate form published by The Property Standardisation Group (www.psglegal.co.uk).

8.7 **[VAT Invoice**

a valid VAT invoice addressed to the Purchaser.]

8.8 **[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.]

8.9 **[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.]

8.10 **Other Documents**

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

9 Insurance

9.1 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.

9.2 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.

9.3 The Seller will within 5 Working Days following Completion cancel such insurances (under reservation of all prior claims).

10 Damage or Destruction

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

10.2 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.

10.3 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 Chairman 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 Chairman 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.

10.4 Subject to Clause 10.2, 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:

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

10.4.2 to assign its rights in respect of the insurance proceeds specified in Clause 10.4.1 to the Purchaser.

11 Statutory Matters

11.1 **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.

11.2 **Statutory Repairs Notices**

Any local authority statutory repairs notices (other than any notice or requirement of any Environmental Authority made pursuant to any Environmental Law (as such terms are defined in Clause [12])) 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.

11.3 **Energy Performance Certificate**

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.

11.4 **Green Deal**

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

12 Environmental

12.1 **Definitions**

In Clauses 11.2 and 12:

"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 Environmental Law and/or any court of law or tribunal or any other judicial or quasi-judicial body;

"Environmental Law" means all laws, regulations, directives, statutes, subordinate legislation, rules of common law and generally all international, EU, national and local laws and all judgments, orders, instructions, decisions, guidance awards, codes of practice and other lawful statements of any Environmental Authority applying from time to time in relation to the Property in respect of pollution of or protection of the Environment or the production, processing, treatment, storage, transport or disposal of Hazardous Substances, in each case insofar as having the force of law;

"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;

12.2 **Agreement as to Environmental Liabilities**

The Seller and the Purchaser agree that:

12.2.1 if any notice or requirement of any Environmental Authority made pursuant to Environmental Law is served on or made of either of them in respect of the Property or any Hazardous Substances attributable to the Property, then, as between the Seller and the Purchaser, the sole responsibility for complying with such notice or requirement is to rest with the Purchaser to the exclusion of the Seller; and

12.2.2 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 Environmental Law 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 is to rest with the Purchaser to the exclusion of the Seller.

The agreements outlined under Clauses 12.2.1 and 12.2.2 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 statutory guidance issued under Part IIA of the Environmental Protection Act 1990.

The Seller and the Purchaser agree that the appropriate Environmental Authority may be notified in writing of the provisions of Clause 12 if required to give effect to the agreements outlined under Clauses 12.2.1 and 12.2.2.

12.3 **Sold with Information**

12.3.1 The Purchaser acknowledges to the Seller that:

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

[ ];]

(i) [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;]

(ii) 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;

(iii) 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

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

1.1.2 Both parties agree that:

(i) [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];

(ii) 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;

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

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

1.1.3 The acknowledgements in this Clause 12.3 are made in order to exclude the Seller from liability under Part IIA of the Environmental Protection Act 1990 so that the Seller is not an appropriate person, as defined therein.

1.2 **Environmental Indemnity:** The Purchaser will indemnify the Seller in respect of all and any actions, losses, damages, liabilities, charges, claims, costs and expenses which may be paid, incurred, suffered or sustained by the Seller arising (directly or indirectly) out of or in connection with the presence of any Hazardous Substances in, on or under the Property or migrating to or from the Property.

2 [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.]

3 No Employees

3.1 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:

14.1.1 the sale of the Property and

14.1.2 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.

3.2 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 Working Days, where it has not already terminated, and if the Purchaser complies with its obligations under this Clause 14.2 (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).

3.3 [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 14 and agrees that in the event of a claim on any indemnity in terms of Clause 14 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 14.]

4 **Capital Allowances**

4.1 The Purchaser will make an election with the Seller under Section 198 of the Capital Allowances Act 2001 in terms of the draft contained in Part [6] of the Schedule, in which case:

4.1.1 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 Capital Allowances Act 2001 as having been paid by the Seller for the Fixed Plant;

4.1.2 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.

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

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

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

4.2.2 such cooperation and assistance as the Purchaser may reasonably require

to enable the Purchaser to make and substantiate claims under the Capital Allowances Act 2001 in respect of the Property.

4.3 The Purchaser agrees that it will:

4.3.1 use the information provided pursuant to Clause 15.2 only for the stated purpose; and

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

5 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:

5.1 comply with the Seller's reasonable requirements, and

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

6 [Confidentiality

6.1 **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:

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

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

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

6.1.4 where required by law; and

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

6.2 **[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).]

6.3 **Agents**

The Purchaser and the Seller will ensure that their respective agents and professional advisers comply with the undertakings in this Clause 17.

7 Formal Documentation

7.1 **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.

7.2 **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.

8 Supersession

The provisions of the Missives (other than Clauses 2.4, 7.6, 12, 14 and 15 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:

8.1 the date when such provisions have been implemented; and

8.2 [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.

9 Exclusion of Personal Liability

9.1 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.

9.2 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.

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

10 [Assignation

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

(i) assign, transfer, grant any security interest 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;

(ii) sub-contract any or all of its obligations under the Missives; nor

(iii) purport to do any of the foregoing.]

11 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.

12 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
- other searches or documents]

DISPOSITION

PART 3
PLAN

TITLE DEEDS

MOVEABLES

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 by the Purchaser 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 (i.e. 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)	£[ ]
plant and machinery fixtures which are not integral features	£[ ]

[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*.

[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:

[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).*

[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		
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……..
Name ……
For and on behalf of the Seller

Signed……..
Name ……
For and on behalf of the Purchaser