

OFFER TO SELL – INVESTMENT PROPERTY



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:-

"**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;

["**Back Letters**" means the back letter(s) in terms of the draft(s) set out in Part [5] of the Schedule;]

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

"**Completion Payment**" means the Price subject to all adjustments provided for in the Missives (including all rent and other apportionments);

"**Conclusion Date**" means the date of conclusion of the Missives;

["**Current Service Charge Year**" means the service charge year in which Completion falls;]

"**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 [8] of the Schedule];

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

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"**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;

"**Landlords**" means the landlords under the Leases;

"**Leases**" means the lease(s) and other documentation listed in Part 3[A] of the Schedule;

"**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 [12] of the Schedule;

"**Plan**" means the [demonstrative] plan contained in Part [9] 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 Landlords' fixtures and fittings in and on it, (iii) the whole rights, parts, privileges and pertinents, and (iv) the Landlords' interest in and under the Leases [and together also with []], being the property [more particularly described in [the Disposition] [and disposed 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;

"**Service Contracts**" means the service, maintenance and other contracts entered into by or on behalf of the Seller (or its predecessors in title) in connection with the maintenance and management of the Property, brief details of which are set out in Part [14] of the Schedule;]

"**Subleases**" means the sublease(s) and other documentation listed in Part [3B] of the Schedule;]

"**Tenants**" means the current tenants (both collectively and individually) under the Leases;

"**Title Deeds**" means the title deeds of the Property [listed in Part 2 of the Schedule];

"TOGC" means a transfer of [part of] a business as a going concern for the purposes of Section 49(1) of the VAT Act and Article 5 of the Value Added Tax (Special Provisions) Order 1995;

"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 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 Completion Payment 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 [10].

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 Completion Payment (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 consignment 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 Completion Payment (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 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:-

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

(b) 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 and the Seller will not be entitled to the rents under the Leases in terms of Clause 4.2 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

3.1 [OPTION 1 - VAT Exempt]

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

- (a) 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;
- (b) 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(a); and
- (c) 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.

3.1.2 [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.]

1.1 [OPTION 2 - TOGC relief applies and supply of Property would otherwise be exempt]

1.1.1 The Seller and the Purchaser agree:-

- (a) that the sale of the Property [and the Moveables] constitutes a TOGC and accordingly no VAT will be charged on the Price at Completion and no VAT will form part of the Completion Payment;
- (b) that the business of letting the Property for a consideration is capable of being operated separately as a business; and
- (c) to use all reasonable endeavours both before and after Completion to procure that the sale of the Property [and the Moveables] is treated by HMRC as a TOGC.

1.1.2 The Seller confirms to the Purchaser that:-

- (a) it (or the representative member of its VAT Group) is registered for the purpose of VAT;
- (b) 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;
- (c) 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 3.1.2(b);

- (d) 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;
- (e) the assets to be transferred to the Purchaser in terms of the Missives have been and will, in the period up to Completion, be used continuously for the Seller's business comprising [the letting of and the collection of rents from property] and such assets are the only assets in the [part of] the business to be transferred; and
- (f) at Completion the Seller and the Tenants will not be members of the same VAT Group.

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 Clause 3.1.2(a).

1.1.3 The Purchaser confirms to the Seller that:-

- (a) it (or the representative member of its VAT Group) will be registered or liable to be registered for the purpose of VAT at Completion;
- (b) it will use such assets in carrying on the same kind of business as the Seller, namely that detailed in Clause 3.1.2(e); and
- (c) it is not acting as a nominee.

The Purchaser will exhibit to the Seller, as soon as possible and in any event before Completion, evidence of the matters stated in Clause 3.1.3(a).

1.1.4 [If, notwithstanding the provisions above, HMRC direct in writing that VAT is chargeable on the sale of the Property [or the Moveables or both], the Seller will notify the Purchaser in writing within 5 Working Days of the Seller being so advised by HMRC.

1.1.5 The Purchaser will pay to the Seller within 10 Working Days of written demand a sum equal to the amount of VAT determined by HMRC, in exchange for a valid VAT invoice.

1.1.6 Subject to Clause 3.1.7, the Purchaser will pay, in addition, to the Seller within 10 Working Days of written demand an amount equal to the total of any interest, penalties, claims, losses, damages, costs and expenses arising as a consequence of, or in relation to the failure to charge and collect VAT on the Price at Completion and to account for such VAT to HMRC except to the extent that VAT is chargeable on the Price as a consequence of the Seller's failure to comply with its obligations and undertakings in terms of this Clause 3.

1.1.7 The Seller will use all reasonable endeavours to minimise the amount due under Clause 3.1.6.

1.1.8 If the Purchaser fails to pay any amount due under Clauses 3.1.6 and 3.1.7 within the relevant time limit, the Purchaser shall pay Interest on the outstanding amount. No Interest shall be payable under this Clause in respect of any amount and time period to the extent that the Seller has already been compensated under Clause 3.1.6 for interest in respect of the same amount and the same time period.]

1.1.9 The Purchaser and the Seller do not intend to make a joint application under regulation 6(1) of the VAT Regulations 1995 (SI 1995/2518) for the Purchaser to be registered for VAT under the Seller's VAT registration number and the Seller confirms that it will allow the Purchaser such access to VAT records relating to the Property [and the Moveables] as required by Section 49 of the VAT Act as amended by the Finance Act 2007.]

1.1 [OPTION 3 - TOGC - Non-exempt – option to tax made by the Seller and TOGC relief applies

1.1.1 The Seller and the Purchaser agree:-

- (a) that the sale of the Property [and the Moveables] constitutes a TOGC and accordingly no VAT will be charged on the Price at Completion and no VAT will form part of the Completion Payment;
- (b) that the business of letting the Property for a consideration is capable of being operated separately as a business; and
- (c) to use all reasonable endeavours both before and after Completion to procure that the sale of the Property [and the Moveables] is treated by HMRC as a TOGC.

1.1.2 The Seller confirms to the Purchaser that:-

- (a) it (or the representative member of its VAT Group) is registered for the purposes of VAT;
- (b) either it or a person of which it 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;
- (c) it (or such other person referred to in Clause 3.1.2(b)) 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;
- (d) the assets to be transferred to the Purchaser in terms of the Missives have been and will, in the period up to Completion, be used continuously for the Seller's business comprising [the letting of and the collection of rents from property] and such assets are the only assets in the [part of] the business to be transferred; and
- (e) at Completion the Seller and the Tenants will not be members of the same VAT Group.

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 3.1.2(a) and 3.1.2(b), which will include, if received by the Seller (or such other person referred to in Clause 3.1.2(b)) 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.

1.1.3 The Purchaser confirms to the Seller that:-

- (a) it (or the representative member of its VAT Group) will be registered or liable to be registered for the purposes of VAT at Completion;
- (b) before Completion it (or another person) will:-
 - (i) exercise an option to tax in respect of the Property under the VAT Act, Schedule 10, paragraph 2 or make a real estate election under the VAT Act, Schedule 10, paragraph 21; and

(ii) duly notify such option to tax or real estate election (as the case may be) to HMRC;

in either case, so as to ensure that the conditions in Article 5(2A) of the Value Added Tax (Special Provisions) Order 1995 will be satisfied in respect of the Purchaser's acquisition of the Property from the Seller;

(c) it (or such other person referred to in Clause 3.1.3(b)) will not revoke its option either before or after Completion and, where such option is treated as having been exercised as a result of a real estate election having been made, will not take any action, or omit to take any action, by virtue of which HMRC could revoke such real estate election;

(d) it will use such assets in carrying on the same kind of business as the Seller, namely that detailed in Clause 3.1.2(d);

(e) Article 5 (2B) of the Value Added Tax (Special Provisions) Order 1995 does not apply to the Purchaser in relation to the purchase of the Property; and

(f) it is not acting as a nominee.

The Purchaser will exhibit to the Seller, as soon as possible and in any event before Completion, evidence of the matters stated in Clauses 3.1.3(a) and 3.1.3(b), which will include an acknowledgement by HMRC of the notification of such option to tax or, as the case may be, such real estate election if received by the Purchaser (or such other person referred to in Clause 3.1.3(b)) prior to Completion.

1.1.4 If, notwithstanding the provisions above, HMRC direct in writing that VAT is chargeable on the sale of the Property [or the Moveables or both], the Seller will notify the Purchaser in writing within 5 Working Days of the Seller being so advised by HMRC.

1.1.5 The Purchaser will pay to the Seller within 10 Working Days of written demand a sum equal to the amount of VAT determined by HMRC, in exchange for a valid VAT invoice.

1.1.6 Subject to Clause 3.1.7, the Purchaser will pay, in addition, to the Seller within 10 Working Days of written demand an amount equal to the total of any interest, penalties, claims, losses, damages, costs and expenses arising as a consequence of, or in relation to the failure to charge and collect VAT on the Price at Completion and to account for such VAT to HMRC except to the extent that VAT is chargeable on the Price as a consequence of the Seller's failure to comply with its obligations and undertakings in terms of this Clause 3.

1.1.7 The Seller will use all reasonable endeavours to minimise the amount due under Clause 3.1.6.

1.1.8 If the Purchaser fails to pay any amount due under Clauses 3.1.5 and 3.1.6 within the relevant time limit, the Purchaser will pay Interest on the outstanding amount. No Interest will be payable under this Clause in respect of any amount and time period to the extent that the Seller has already been compensated under Clause 3.1.6 for interest in respect of the same amount and the same time period.

1.1.9 The Purchaser and the Seller do not intend to make a joint application under regulation 6(1) of the VAT Regulations 1995 (SI 1995/2518) for the Purchaser to be registered for VAT under the Seller's VAT registration number and the Seller confirms that it will allow the Purchaser such access to VAT records relating to the Property [and the Moveables] as required by Section 49 of the VAT Act as amended by the Finance Act 2007.]

1.1 **[OPTION 4 - Non-exempt – supply of Property standard-rated within paragraph (a) of the VAT Act Schedule 9, Group 1, Item 1 and TOGC relief applies**

1.1.1 The Seller and the Purchaser agree:-

- (a) that the sale of the Property [and the Moveables] constitutes a TOGC and accordingly no VAT will be charged on the Price at Completion and no VAT will form part of the Completion Payment;
- (b) that the business of letting the Property for a consideration is capable of being operated separately as a business; and
- (c) to use all reasonable endeavours to procure that the sale of the Property [and the Moveables] is treated by HMRC as a TOGC both before and after Completion.

1.1.2 The Seller confirms to the Purchaser that:-

- (a) it (or the representative member of its VAT Group) is registered for the purposes of VAT;
- (b) 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 (or would comprise such a supply if the sale of the Property did not constitute a TOGC);
- (c) the assets to be transferred to the Purchaser in terms of the Missives have been and will, in the period up to Completion, be used continuously for the Seller's business comprising [the letting of and the collection of rents from property] and such assets are the only assets in the [part of] the business to be transferred; and
- (d) at Completion the Seller and the Tenants will not be members of the same VAT Group.

The Seller [will exhibit evidence to the Purchaser, as soon as possible and in any event prior to Completion] [has exhibited evidence] of the matter stated in Clause 3.1.2(a).

1.1.3 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.

1.1.4 The Purchaser confirms to the Seller that:-

- (a) it (or the representative member of its VAT Group) will be registered or liable to be registered for the purposes of VAT at Completion;
- (b) before Completion it (or another person) will:-
 - (i) exercise an option to tax in respect of the Property under the VAT Act, Schedule 10, paragraph 2 or make a real estate election under the VAT Act, Schedule 10, paragraph 21; and
 - (ii) duly notify such option to tax or real estate election (as the case may be) to HMRC,

in either case, so as to ensure that the conditions in Article 5(2A) of the Value Added Tax (Special Provisions) Order 1995 will be satisfied in respect of the Purchaser's acquisition of the Property from the Seller;

- (c) it (or such other person referred to in Clause 3.1.4(b)) will not revoke such option either before or after Completion and, where such option is treated as

having been exercised as a result of a real estate election having been made, will not take any action, or omit to take any action, by virtue of which HMRC could revoke such real estate election;

- (d) it will use such assets in carrying on the same kind of business as the Seller, namely that detailed in Clause 3.1.2(c);
- (e) Article 5 (2B) of the Value Added Tax (Special Provisions) Order 1995 does not apply to the Purchaser in relation to the purchase of the Property; and
- (f) it is not acting as a nominee.

The Purchaser will exhibit to the Seller, as soon as possible and in any event before Completion, evidence of the matters stated in Clauses 3.1.4(a) and 3.1.4(b), which will include an acknowledgement by HMRC of notification of such option to tax or, as the case may be, such real estate election if received by the Purchaser (or such other person referred to in Clause 3.1.4(b)) prior to Completion.

- 1.1.5 If, notwithstanding the provisions above, HMRC direct in writing that VAT is chargeable on the sale of the Property [or the Moveables or both] the Seller will notify the Purchaser in writing within 5 Working Days of the Seller being so advised by HMRC that VAT is chargeable on the sale of the Property.
- 1.1.6 The Purchaser will pay to the Seller within 10 Working Days of written demand a sum equal to the amount of VAT determined by HMRC, in exchange for a valid VAT invoice.
- 1.1.7 Subject to Clause 3.1.8, the Purchaser will pay, in addition, to the Seller within 10 Working Days of written demand an amount equal to the total of any interest, penalties, claims, losses, damages, costs and expenses arising as a consequence of, or in relation to the failure to charge and collect VAT on the Price at Completion and to account for such VAT to HMRC except to the extent that VAT is chargeable on the Price as a consequence of the Seller's failure to comply with its obligations and undertakings in terms of this Clause 3.
- 1.1.8 The Seller will use all reasonable endeavours to minimise the amount due under Clause 3.1.7.
- 1.1.9 If the Purchaser fails to pay any amount due under Clauses 3.1.6 and 3.1.7 within the relevant time limit, the Purchaser will pay Interest on the outstanding amount. No Interest will be payable under this Clause in respect of any amount and time period to the extent that the Seller has already been compensated under Clause 3.1.7 for interest in respect of the same amount and the same time period.
- 1.1.10 The Purchaser and the Seller do not intend to make a joint application under regulation 6(1) of the VAT Regulations 1995 (SI 1995/2518) for the Purchaser to be registered for VAT under the Seller's VAT registration number and the Seller confirms that it will allow the Purchaser such access to VAT records relating to the Property [and the Moveables] as required by Section 49 of the VAT Act as amended by the Finance Act 2007.]

1.1 [OPTION 5 - TOGC relief does not apply and VAT is payable]

1.1.1 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.

1.1.2 [The Seller confirms to the Purchaser that:-

- (a) [it (or the representative member of its VAT Group) is registered for VAT for the purposes of the VAT Act;

(b) either it or a person of which it 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

(c) it (or such other person referred to in Clause 3.1.2(b)) 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 3.1.2(a) and 3.1.2(b), which will include, if received by the Seller (or such other person referred to in Clause 3.1.2(b) prior to Completion, an acknowledgement by HMRC of 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.]]

1.1.3 [The Seller confirms to the Purchaser that:-

(a) [it (or the representative member of its VAT Group) is registered for VAT for the purposes of the VAT Act; and

(b) the supply of the Property to the Purchaser will comprise a supply within paragraph (a) of the VAT Act Schedule 9, Group 1, Item 1.

The Seller [will exhibit evidence to the Purchaser as soon as possible and in any event prior to Completion] [has exhibited evidence] of the matter stated in Clause 3.1.2(a).]]

1.2 [Capital Goods Scheme

The Seller confirms to the Purchaser that none of the assets to be transferred to the Purchaser in terms of the Missives is a capital item to which the Capital Goods Scheme (per Regulation 112 to 116 of the Value Added Tax Regulations 1995 as amended) applies or will apply in the period up to Completion other than those assets specified in Part [11] of the Schedule.]

2. Entry and Apportionments

2.1 Entry

Entry to the Property subject only to and with the benefit of the Leases [and the Subleases] will be given on the Date of Entry.

2.2 Rent Apportionment

2.2.1 The rents payable under the Leases will, subject to Clause 2.6, be apportioned (net of VAT) at Completion on the basis that the Purchaser will receive a 1/365th part of the rent for each day from (and including) Completion to (but not including) the next rent payment date(s) under the Leases.

2.2.2 The rents will be apportioned on the assumption that the Seller has received payment of all sums due prior to Completion, whether or not that is in fact the case.

2.2.3 In the case of any rent review under a Lease where the date of such review occurs prior to Completion but the reviewed rent has not been determined by Completion the rent will be apportioned on the basis of the passing rent.

2.3 **Other Apportionments**

- 2.3.1 All other payments under the Leases and all other outgoings for the Property (other than rates [and], insurance [and service charge]) will be apportioned as at Completion on an equitable basis.
- 2.3.2 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.

3. **Other Payments**

3.1 **Arrears**

- 3.1.1 If any rents or other payments under the Leases are in arrears at Completion the Purchaser will use all reasonable endeavours to procure payment from the Tenants as soon as practicable after Completion provided that the Seller keeps the Purchaser free of expense.
- 3.1.2 The Purchaser will pay to the Seller all sums relating to such arrears (together with any interest paid by the Tenants in terms of the relevant Lease) within 5 Working Days of cleared funds being received from the relevant Tenant.
- 3.1.3 If the Seller or its agents receive any payments from the Tenants after Completion which do not relate to arrears due to the Seller it will pay them to the Purchaser within 5 Working Days of cleared funds being received from the relevant Tenant.
- 3.1.4 If requested by the other, the Seller and the Purchaser will each assign to the other such rights as are reasonably necessary to enable them to recover from the Tenants any sums due under the Leases to which they are entitled in terms of the Missives. [The Seller may not take any steps to sequestrate any Tenant or appoint a receiver or liquidator to any Tenant except with the reasonable consent of the Purchaser.]

3.2 **[Service Charge]**

- 3.2.1 The Seller will take, and will ensure that its managing agents take, such action as the Purchaser may reasonably request in writing from time to time in relation to the transfer to the Purchaser on Completion of all service charge funds for the Property in accordance with the Missives.
- 3.2.2 The Seller will be responsible for all service charge expenditure properly incurred and invoiced prior to Completion, and will be entitled to apply any advance service charge monies received from the Tenants prior to Completion in respect of such expenditure.
- 3.2.3 The Seller will as soon as practicable and in any event within [10] Working Days after the Conclusion Date deliver to the Purchaser the service charge budget for the Property for the Current Service Charge Year and an interim service charge reconciliation showing, for the Current Service Charge Year:-
- (a) the advance service charge payments invoiced to and paid by the Tenants and the sums attributable to unlet space;
 - (b) the Landlords' service charge expenditure which has been properly incurred under the Leases and paid by the Seller; and
 - (c) the service charge expenditure which it is anticipated will be incurred in the period up to the Date of Entry.
- 3.2.4 Except with the reasonable consent of the Purchaser the Seller will not after the Conclusion Date enter into any new contracts or commitments relative to the matters

covered by service charge under the Leases unless they have already been taken into account in either the budget or interim reconciliation.

- 3.2.5 At Completion the Seller will deliver to the Purchaser an update of the interim service charge reconciliation disclosing the position as at Completion and containing (with copy invoices) details of all further service charge expenditure which has been properly incurred and invoiced but not paid at that time.
- 3.2.6 If the advance service charge payments shown in the update (including the sums attributable to unlet space) exceed the aggregate of the Landlords' service charge expenditure shown as having been paid and the further service charge expenditure, the Seller will pay or make over the excess to the Purchaser at Completion. For the avoidance of doubt, the Seller will, as soon as practicable [but in any event within [] Working Days] after Completion, pay all further service charge expenditure not paid at that time, but the Purchaser will be responsible for settling any service charge invoices received following Completion.
- 3.2.7 If the aggregate shown in the update exceeds the advance service charge payments, the Purchaser, who will be entitled to all service charge arrears, will pay and make over the excess once it has received the necessary funds to do so from the Tenants under the Leases.
- 3.2.8 The Seller confirms to the Purchaser that:-
- (a) the Seller's expenditure on the Property for the Current Service Charge Year has been fully, properly and accurately kept and recorded in its accounts and records and will be reflected in the interim reconciliations which will not contain any material discrepancies or inaccuracies of any kind;
 - (b) no repayment or credit is outstanding to any Tenant in respect of any overpayment by the Tenant arising from an excess of contributions towards estimated service expenditure over service expenditure actually incurred, in relation to any prior service charge year;
 - (c) all sums received by the Seller from the Tenants by way of contribution towards insurance premiums have been duly applied to meet such premiums;
 - (d) there are no outstanding claims from any current or former Tenant for reimbursement in relation to service expenditure in relation to any prior service charge year;
 - (e) no part of any common parts to which the service charge relates is currently rated.
- 3.2.9 The Seller will pay to the Purchaser any sum recovered at any time from any third party (whether by way of insurance proceeds, compensation or otherwise) to the extent that such sum ought properly to be taken into account in the calculation of the level of actual service expenditure for any service charge year.
- 3.2.10 Within [3] months after the end of the Current Service Charge Year, the Purchaser will prepare service charge accounts and deliver a copy of them to the Seller. The Seller's contribution to the service charge for the Current Service Charge Year in relation to unlet space will be re-calculated at that stage and any over or under-payment repaid within [10] Working Days of such recalculation and any Interest. The Seller will also bear the cost of any item incurred prior to Completion and attributed to the service charge which is not recoverable under the Leases.
- 3.2.11 The Seller will be liable for the service charge attributable to unlet space for the period up to Completion. The Seller's liability to contribute to the service charge for the Current Service Charge Year in relation to unlet space will be assessed on an equitable basis consistent with the provisions of the Leases for the Current Service Charge Year by being

multiplied by the number of days between the expiry of the last service charge year and Completion and divided by 365 and, in the event of there being any dispute as to the amount of such contribution, the matter will be referred to the decision of an independent surveyor, who will act as an expert, appointed jointly or failing agreement, by the Chairman of the RICS in Scotland on the application of 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.

3.2.12 [There is no sinking or similar fund held by or to the order of the Seller (or its agents) as Landlords.]

[At Completion the Seller will:-

- (a) pay to the Purchaser all sinking and similar funds held by the Seller (or its agents) as Landlords together with all interest earned on them;
- (b) deliver to the Purchaser certified accounts detailing all intromissions with and all interest earned on such sinking funds.]

3.2.13 The Seller will, with effect from the Conclusion Date, allow the Purchaser and its authorised representatives to inspect, by prior arrangement, the Seller's accounts and other records relating to the service charge, rent collection and all matters relating to the management of the Property. Following Completion, the Seller and the Purchaser shall procure that their respective managing agents co-operate with each other in relation to the handover of all documentation and information in relation to service charge and management matters generally.

3.2.14 The Seller will provide details of any managing agents employed in respect of the Property together with a copy of their terms of appointment, immediately following the Conclusion Date. The Purchaser will have no obligations or liabilities in respect of the continuing employment of such agents except to the extent expressly undertaken by the Purchaser in the Missives.]

3.3 **Rent Deposits**

[There are no rent deposits paid by the Tenants and held by or to the order of the Seller (or their agents) as Landlords.]

3.3.1 [At Completion the Seller will:-

- (a) pay to the Purchaser all rent deposits paid by the Tenants and held by or to the order of the Seller (or its agents) as Landlords together with all interest earned on them;
- (b) deliver to the Purchaser certified accounts detailing all intromissions with and all interest earned on the rent deposits.

3.3.2 The Seller will indemnify the Purchaser against all liability to the Tenants in relation to the rent deposits in respect of the period up to Completion and the Purchaser will indemnify the Seller in respect of the period from (and including) Completion.

3.3.3 In so far as the Seller can validly do so, the rent deposits will be assigned to the Purchaser in terms of the draft assignation of rent deposits forming Part [16] of the Schedule.

3.3.4 The Purchaser will:-

- (a) within 15 Working Days after Completion duly execute the assignment of rent deposits delivered to the Purchaser at Completion; and
- (b) within 20 Working Days after Completion, intimate the assignment of rent deposits to the appropriate parties and deliver a copy of the intimation to the Seller.]

3.4 [Outstanding Rent Reviews

In the case of any rent review under a Lease where the date of such review occurs prior to Completion but the reviewed rent has not been agreed or determined by Completion:-

3.4.1 subject to Clause 2.6, the reviewed rent will be apportioned (net of VAT) on the basis that the Seller will receive a 1/365th part of any increase in the rent for each day from (and including) the rent review date to (but not including) Completion assuming:-

- (a) that any increase in rent which is agreed or determined is payable by the Tenants under the Leases from the rent review date in each case in equal instalments without any undue weighting being afforded to any one period of time over another period of time; and
- (b) that, if the Purchaser has traded off any proposed or actual extension, variation or relaxation of enforcement of any terms of the Leases against any reduction in any uplift in rent otherwise achievable, that the rent to be apportioned is the rent so achievable as if there had been no such reduction;

3.4.2 the Purchaser will use all reasonable endeavours, at its own expense, to procure that any balancing payments due following settlement of any outstanding review are paid by the relevant Tenants as soon as practicable; and

3.4.3 the Purchaser will pay to the Seller the sums properly referable to the period prior to Completion together with any interest paid by the Tenants in terms of the relevant Lease up to Completion within 5 Working Days of cleared funds being received from the relevant Tenant.]

4. Disclosed Documents

4.1 Subject to Clause[s 7 and [10]] 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.

4.2 Clause 6.1 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.

5. [Documents to be Disclosed

5.1 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:-

5.1.1 [the Title Deeds;]

5.1.2 [the Leases] [and the Subleases];

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

5.1.4 [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.]

5.2 The Purchaser will have [15] Working Days from receipt of each of the respective items referred to in Clause 7.1 to satisfy itself on their terms.

5.3 If any of the items referred to at Clauses 7.1.1, 7.1.3 or 7.1.4 disclose any matters materially prejudicial to the interest of the Purchaser or the Purchaser (at its sole discretion) is not satisfied with the terms of the Leases [or Subleases] 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 7.1 and each of such items will become a Disclosed Document for the purposes of the Missives.]

6. **Title**

6.1 **Encumbrances**

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

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

6.2 **Minerals**

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

6.3 **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.

6.4 **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.

6.5 **[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.]

6.6 **[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.]

6.7 **Advance Notices**

6.7.1 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] Working Days prior to the Date of Entry. The cost of the Advance Notice for the Disposition will be met by the Seller.

- 6.7.2 The Seller consents to the Purchaser applying to the Keeper for Advance Notices for any deeds which the Purchaser intends to grant in relation to the Property. The cost of any Advance Notices which the Purchaser applies for will be met by the Purchaser.
- 6.7.3 If the Seller rescinds the Missives in the circumstances set out in Clause 2.4 (Cancellation of Sale) 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 if requested to do so by the Seller.
- 6.7.4 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.
- 6.7.5 The Seller's Solicitors will not provide any letter of obligation which undertakes to clear the records of any deed, decree or diligence.

6.8 Land Register Requirements

- 6.8.1 Subject to Clause 8.8.2 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.
- 6.8.2 After Completion, the Seller will deliver such documents and evidence as are specified in Clause 8.8.1 only if the Disposition is presented for registration not later than 14 days after Completion.

7. Leases

7.1 Confirmations

The Seller confirms that, except as disclosed in Part [4] of the Schedule:-

- 7.1.1 the Leases accurately set out the whole terms of the letting or occupation of the Property [and the Subleases accurately set out the whole terms of the subletting or occupation of the Property];
- 7.1.2 the Leases [and the Subleases] have not been amended or varied in a manner which is binding on the Purchaser and they will not be so amended or varied, prior to Completion, except with the prior written consent of the Purchaser;
- 7.1.3 the information disclosed in the rent [and service charge] payment history (forming part of the Disclosed Documents) is complete and accurate in all respects;

- 7.1.4 the Seller is not aware of any material breach by the Tenants of any of their obligations under the Leases which would not be reasonably ascertainable from an inspection of the Property;
- 7.1.5 the Seller has not received written notification from any of the Tenants of claims or disputes under the Leases against the Landlords which are outstanding;
- 7.1.6 there are no notices issued by the Seller to any of the Tenants, or by any of the Tenants to the Seller, under the Leases which remain to be implemented;
- 7.1.7 no notices by or on behalf of any of the Tenants exercising any option to break or terminate any of the Leases have been served on the Seller or vice versa;
- 7.1.8 the Seller has not received written notification of the insolvency, liquidation, administration or receivership of any of the Tenants;
- 7.1.9 the Seller has not received written notification of the creation of any fixed or floating charges over the interest of any of the Tenants under the Leases.

7.2 **Period to Completion**

The Seller will take all necessary steps which a prudent landlord (acting reasonably) would take in the interests of good estate management to ensure that the confirmations given in Clause 9.1 apply at Completion.

7.3 **Interim Management**

- 7.3.1 In the period from the date of this offer until Completion, the Seller will:-
 - (a) implement its obligations under the Leases;
 - (b) continue to manage the Property and the Leases as a responsible landlord and in accordance with the principles of good estate management; and
 - (c) disclose in writing any changes to the confirmations given in Clause 9.1.
- 7.3.2 The Seller will not:-
 - (a) terminate or accept a renunciation of any Lease; or
 - (b) grant any new lease; or
 - (c) vary any Lease; or
 - (d) settle any rent review under the Leases, propose or agree any reference to a third party for determination of any rent review or make or agree any proposal for a reviewed rent; or
 - (e) serve any notice under the Leases; or
 - (f) carry out any alterations to the Property

except with the prior written consent of the Purchaser.
- 7.3.3 [The Seller may complete the current management transactions set out in Part [6] of the Schedule.]
- 7.3.4 If any application to the Seller for its consent under the Leases is still outstanding, or if any such application is made prior to Completion, the Seller will not grant consent without the prior written approval of the Purchaser. In relation to each such application, the Purchaser will timeously comply with the obligations of the Seller, as Landlords, failing

which the Purchaser will indemnify the Seller fully in respect of all liability incurred by the Seller to the Tenants in relation to the relevant applications.

7.4 **Rent Reviews**

[There are no outstanding rent reviews under any of the Leases.]

[In the case of any rent review under a Lease where the date of such review occurs prior to Completion but the reviewed rent has not been agreed or determined by Completion:-

7.4.1 the Seller confirms that:-

- (a) it has and will in the period up to Completion take all necessary action to preserve and safeguard the Landlords' rights to effect the outstanding reviews;
- (b) no agreement has been reached in relation to the reviewed rent in any of the outstanding reviews and none of the outstanding reviews has been either waived or referred to a third party for determination;

7.4.2 the Seller will, immediately after the Conclusion Date (in so far as not already done) provide the Purchaser with a copy of all written material in its possession relative to the outstanding reviews;

7.4.3 in the period from the date of this offer until Completion, the Seller will, immediately after receipt, advise the Purchaser in writing of all written communications from the relevant Tenants or their advisers in connection with the outstanding reviews and will not take any action except as instructed in writing by the Purchaser (who will act reasonably in the matter and timeously comply with the obligations of the Seller, as Landlords, failing which the Purchaser will indemnify the Seller in respect of all liability incurred by the Seller to the Tenants in relation to the outstanding reviews);

7.4.4 the Purchaser will take over the conduct of the outstanding reviews with effect from Completion and the Purchaser will have freedom at its discretion as to the manner in and level at which each of the outstanding reviews is settled;

7.4.5 for the avoidance of doubt, the Purchaser will have no liability or responsibility for the fees and costs of any agents or advisers appointed by the Seller in regard to the outstanding reviews.]

8. **Completion**

8.1 At Completion, the Purchaser will:-

8.1.1 pay the Completion Payment (and any VAT on the Price) to the Seller in terms of Clause 2.1[; and

8.1.2 [deliver to the Seller, duly executed by the Purchaser, the Back Letters].

8.2 In exchange for the items referred to in Clause 10.1, at Completion the Seller will deliver to the Purchaser:-

8.2.1 **Disposition**

the Disposition duly executed by the Seller;

8.2.2 **Title Deeds**

- (a) the Title Deeds[; and
- (b) all necessary links in title evidencing the Seller's exclusive ownership of the Property];

8.2.3 **Leases**

the Leases [and the Subleases];

8.2.4 **Disclosed Documents**

the remaining Disclosed Documents;

8.2.5 **Legal Reports**

(a) a legal report brought down to a date as near as practicable to Completion which report will show:-

- (i) no entries adverse to the Seller's interest in the Property;
- (ii) the Advance Notice for the Disposition; and
- (iii) no other Advance Notices other than those submitted by the Purchaser;

(b) [a 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 legal report [and search] being the responsibility of the Seller;

8.2.6 **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:-

- (a) as near as practicable to Completion; and
- (b) 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;

8.2.7 **[VAT Invoice**

a valid VAT invoice addressed to the Purchaser;]

8.2.8 **[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;]

8.2.9 **[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;]

8.2.10 **[Retrocession of Assignment of Rents]**

a retrocession of assignment of rents duly executed by the creditor in terms of the draft forming Part [17] of the Schedule;]

8.2.11 **Change of Landlord**

a notice of change of landlord in terms of the draft notice forming Part [7] of the Schedule addressed to each of the Tenants and signed by the Seller's Solicitors;

8.2.12 **[Assignment of Guarantees**

the assignment of guarantees in terms of the draft forming Part [13] of the Schedule duly executed by the Seller;]

8.2.13 **[Assignment of Service Contracts**

the assignment of service contracts in terms of the draft forming Part [15] of the Schedule duly executed by the Seller and, if required, by the Service Providers (as defined in it);]

8.2.14 **[Assignment of Rent Deposits**

the assignment of rent deposits in terms of the draft forming Part [16] of the Schedule duly executed by the Seller;]

8.2.15 **Other Documents**

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

9. **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 8.7, 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.

10. **Insurance**

10.1 From the Conclusion Date until Completion, the Seller will keep the Property insured in accordance with the Landlords' obligations under the Leases. 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.

10.2 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.

10.3 The Seller will:-

10.3.1 within 5 Working Days after Completion cancel such insurances (under reservation of all prior claims); and

10.3.2 provided that the insurance premiums have been paid in full by the Tenants in question, within 5 Working Days after receipt, refund to the relevant Tenants all repayments of premium due to them and exhibit evidence to the Purchaser of having done so.

11. **Damage or Destruction**

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

11.2 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.

11.3 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.

11.4 Subject to Clause 13.2 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:-

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

11.4.2 to assign its rights in respect of the insurance proceeds specified in Clause 13.4.1 to the Purchaser.

12. **Statutory Matters**

12.1 **Statute**

[Subject to Clause 7,] 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.

12.2 **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 [15])) 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 (i) they are instigated by or with the authority of the Purchaser or (ii) they are the responsibility of any of the Tenants in accordance with the Leases. Liability under this Clause will subsist until met and will not be avoided by the issue of a fresh notice.

12.3 **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.

12.4 **Green Deal**

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

13. **Environmental**

13.1 **Definitions**

In Clauses 14.2 and 15:-

"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.

13.2 **Agreement as to Environmental Liabilities**

The Seller and the Purchaser agree that:-

- 13.2.1 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
- 13.2.2 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 15.2.1 and 15.2.2 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 15 if required to give effect to the agreements outlined under Clauses 15.2.1 and 15.2.2.

13.3 **Sold with Information**

13.3.1 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.

13.3.2 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.

13.3.3 The acknowledgements in this Clause 15.3 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.

13.4 **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.

14. **[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.]

15. **No Employees**

15.1 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:-

15.1.1 the sale of the Property; and

15.1.2 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.

15.2 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 17 (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).

15.3 [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 17 and agrees that in the event of a claim on any indemnity in terms of Clause 17 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 17.]

16. **[Guarantees**

16.1 In so far as the Seller can validly do so, the guarantees will be assigned to the Purchaser in terms of the draft assignment of guarantees forming Part [13] of the Schedule.

16.2 The Purchaser will:-

16.2.1 within 15 Working Days after Completion duly execute the assignment of guarantees delivered to the Purchaser at Completion; and

16.2.2 within 20 Working Days after Completion, intimate the assignment of guarantees to the appropriate parties and deliver a copy of the intimation to the Seller.]

17. **[Service Contracts**

17.1 **Liability**

With effect from Completion, the Purchaser will accept and take over liability for the Service Contracts and accordingly the Purchaser will, in respect of the period following Completion, keep the Seller indemnified from all liability arising under the Service Contracts.

17.2 **Assignment**

17.2.1 In so far as the Seller can validly do so, the Service Contracts will be assigned to the Purchaser in terms of the draft assignment of service contracts forming Part [15] of the Schedule.

17.2.2 The Purchaser will:-

- (a) within 15 Working Days after Completion duly execute the assignment of service contracts delivered to the Purchaser at Completion; and
- (b) within 20 Working Days after Completion, intimate the assignment of service contracts to the appropriate parties and deliver a copy of the intimation to the Seller.

17.3 **Termination**

The Purchaser will have no responsibility for any [other] service, maintenance, management or similar contracts relating to the Property entered into by the Seller (or its predecessors in title) prior to Completion and [(subject to Clause 19.1)] the Seller will, in respect of the period following Completion, indemnify the Purchaser from all liability arising under such contracts. The cancellation costs of any such contracts will be met by the Seller out of its own funds and will not, as between the Seller and the Purchaser, qualify as allowable expenditure for the purposes of any service charge calculations.]

18. **Capital Allowances**

The provisions of Part 18 of the Schedule will apply.

19. **Access**

Subject to the terms of the Leases 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:-

- 19.1.1 comply with the Seller's reasonable requirements;
- 19.1.2 comply with the access restrictions imposed on the Landlords under the Leases; and
- 19.1.3 exercise reasonable restraint and make good all loss, injury and damage caused to the Property.

20. **[Confidentiality]**

20.1 **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:-

- 20.1.1 with the [prior written consent] [reasonable consent] of the other party;
- 20.1.2 to the Purchaser and the Seller's respective agents and professional advisers in connection with the acquisition/sale of the Property;
- 20.1.3 to the Purchaser's bankers or other providers of finance (and their professional advisers) in connection with the acquisition of the Property;
- 20.1.4 where required by law; and

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

20.2 **[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).]

20.3 **Agents**

The Purchaser and the Seller will ensure that their respective agents and professional advisers comply with the undertakings in this Clause 22.

21. **Formal Documentation**

21.1 **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.

21.2 **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.

22. **Supersession**

The provisions of the Missives (other than Clauses [2.4, 8.8, 11, 15, 17 and 20] 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:-

22.1 in the case of the lease confirmations given in Clause [9] [six] years after the Date of Entry; and

22.2 in the case of all other provisions the earlier of:-

22.2.1 the date when such provisions have been implemented; and

22.2.2 [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.

23. **Exclusion of Personal Liability**

23.1 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.

23.2 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.

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

24. **[Assignment**

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

- 24.1 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;
- 24.2 sub-contract any or all of its obligations under the Missives; nor
- 24.3 purport to do any of the foregoing.]

25. **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.

26. **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. Leases.
3. [Subleases.]
4. Property enquiry certificate(s) dated [].
5. [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);
 - if either of the last two rent reviews under any of the Leases have been referred to third party for determination, all submissions, counter submissions and determinations in connection with such reviews;
 - rent payment schedule;
 - service charge records for last [3] years (including payment history, estimates, reconciliations 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.]

Part 2
Title Deeds

Part 3[A]

Leases

[Note: specify for each document listed whether it is an original, an extract or a photocopy]

[Part 3B

Subleases

[Note: specify for each document listed whether it is an original, an extract or a photocopy]

Part 4

Disclosures against Lease Confirmations

[None]

[Insert details]

Part 5
Back Letters

Part 6

Current Management Transactions

Part 7

Notice of Change of Landlord

To: [Insert name of Tenants]

Dear Sirs

[]
[] (the "Property")

On behalf of our clients, [], [incorporated under the Companies Acts (Registered Number []) and having their registered office at []] we intimate to you (the "Tenants") that, as from [] 20[], our clients have sold their interest as your landlords in the Property to [], [incorporated under the Companies Acts (Registered Number []) and having their registered office at []] (the "Purchaser").

Future rent demands will be issued to you by or on behalf of the Purchaser and future communications concerning any matter arising from the letting should be addressed to the Purchaser or their managing agents, namely [].

[We also intimate that we have received a retrocession from [], [as agent and trustee], of their right, title and interest to the rent and other sums receivable in terms of the assignation of rents granted by [] in their favour dated [] and created on [] (a copy of which accompanies this letter).]

This letter is enclosed in duplicate. Kindly post the duplicate, with the docquet on it duly signed, [using the accompanying pre-paid addressed envelope] to [], the solicitors acting for the Purchaser.

Yours faithfully

Agents for [_____]

..... 20[]

We acknowledge receipt of the notice of which the above is a duplicate.

.....
For and on behalf of the Tenants

Part 8
Disposition

Part 9

Plan

Part 10

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

¹Table 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	£[]

[²A 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 11
Capital Goods Scheme

Part 12
Moveables

Part 13

Assignment of Guarantees

ASSIGNATION

between

[] **LIMITED** incorporated under the Companies Acts (Registered Number [] and having their Registered Office at []
["Assignors"]

and

[] **LIMITED** incorporated under the Companies Acts (Registered Number [] and having their Registered Office at []
["Assignees"]

WHEREAS:-

- (A) The Assignors are entitled to the benefit of the Guarantees;
- (B) The Assignors have sold or are about to sell their interest in the Property;
- (C) The Parties have agreed that the Assignors will assign, and the Assignees will accept an assignment of, the Assignors' interest under the Guarantees with effect from the Date of Entry.

IT IS AGREED by the Parties as follows:-

1. Definitions

In this Assignment:-

"Date of Entry" means [];

"Guarantees" means the guarantee(s) detailed in the Schedule;

"Parties" means the Assignors and the Assignees;

"Property" means **ALL** and **WHOLE** [];

"Schedule" means the schedule annexed to this Assignment.

2. Assignment

The Assignors in implementation of their obligations relating to the transfer of the Property assign to the Assignees the Assignors' whole right, title and interest under the Guarantees with effect from the Date of Entry.

3. Costs

- 3.1 Each of the Parties will bear their own costs and expenses in connection with this Assignment.
- 3.2 The Assignees will be responsible for any land and buildings transaction tax chargeable on the assignment of the Assignors' interest under the Guarantees.
- 3.3 The Assignees will pay the costs of registering this Assignment in the Books of Council and Session and obtaining [two] extracts (one for the Assignors and [one] for the Assignees).

4. **Warrandice**

The Assignors grant warrandice from their own facts and deeds.

5. **[Assignors' Title**

The Guarantees were granted in favour of [] incorporated under the Companies Acts (Registered Number []) and having their Registered Office at [] from whom the Assignors acquired right conform to Assignment by [] in their favour dated [] and [] [and registered in the Books of Council and Session on []].

6. **Consent to Registration**

The Parties consent to the registration of this Assignment for preservation and execution: **IN WITNESS WHEREOF**

This is the Schedule referred to in the foregoing Assignment between [] and []

Guarantees

1. []
2. []

Part 14
Service Contracts

Part 15

Assignment of Service Contracts

ASSIGNATION

between

[] **LIMITED** incorporated under the Companies Acts (Registered Number [] and having their Registered Office at []
["Assignors"]

and

[] **LIMITED** incorporated under the Companies Acts (Registered Number [] and having their Registered Office at []
["Assignees"]

[with the consent of the Service Providers]

WHEREAS:-

- (A) The Assignors are the customer entitled to the benefit of the services being provided under the Service Contracts;
- (B) The Assignors have sold or are about to sell their interest in the Property;
- (C) [The Service Providers are the providers of the services under the Service Contracts;]
- (D) The Parties have agreed that the Assignors will assign, and the Assignees will accept an assignment of, the customer's interest under the Service Contracts with effect from the Date of Entry.

IT IS AGREED by the Parties as follows:-

1. Definitions

In this Assignment:-

"Date of Entry" means [];

"Parties" means the Assignors [and] the Assignees [and the Service Providers];

"Property" means **ALL** and **WHOLE** [];

"Schedule" means the schedule annexed to this Assignment;

"Service Providers" means [] incorporated under the Companies Acts (Registered Number [] and having their Registered Office at [] and includes, where the context so requires and the Service Contracts so permit, their successors as provider of the services under the Service Contracts.

2. Assignment

The Assignors in implementation of their obligations relating to the transfer of the Property assign to the Assignees the Assignors' interest under the Service Contracts relating to the Property with effect from the Date of Entry.

3. **Assignees' Obligations**

3.1 The Assignees will pay to the Service Providers the whole sums stipulated in the Service Contracts to be paid by the customer and will perform, implement and observe the whole other terms, conditions and obligations contained in the Service Contracts so far as incumbent on the customer under the Service Contracts and whether arising prior to, on or after the Date of Entry until the expiry or other termination of the relevant Service Contracts.

3.2 The Assignees will indemnify the Assignors effectually against all actions and other proceedings, costs, claims, losses, demands howsoever arising under the Service Contracts from and after the Date of Entry whether or not the Service Contracts have been effectively assigned to the Assignees by this Assignment or otherwise.

4. **Assignors' Obligations**

The Assignors will free and relieve the Assignees of the whole sums stipulated in the Service Contracts to be paid by the Assignors prior to the Date of Entry in terms of the Service Contracts.

5. **Costs**

5.1 Each of the Parties will bear their own costs and expenses [save that the [Assignors] [Assignees] will pay the costs and expenses of the Service Providers] in connection with this Assignment.

5.2 [The Assignees will be responsible for any land and buildings transaction tax chargeable on the assignment of the customer's interest under the Service Contracts.]

5.3 The Assignees will pay the costs of registering this Assignment in the Books of Council and Session and obtaining [two] extracts (one for the Assignors and [one] for the Assignees).

6. **Warrandice**

The Assignors grant warrandice from their own facts and deeds.

7. **[Service Providers' Consent**

The Service Providers consent to this Assignment and discharge the Assignors of all obligations incumbent on the Assignors in respect of the Service Contracts from and after the Date of Entry.]

8. **[Assignors' Title**

The Service Contracts were granted in favour of [] incorporated under the Companies Acts (Registered Number []) and having their Registered Office at [] from whom the Assignors acquired right conform to Assignment by [] in their favour dated [] and [] [and registered in the Books of Council and Session on [].]

9. **Consent to Registration**

The Parties consent to the registration of this Assignment for preservation and execution: **IN WITNESS WHEREOF**

This is the Schedule referred to in the foregoing Assignment between [] and []
[with the consent of []]

Service Contracts

1. []

2. []

Part 16

Assignment of Rent Deposits

ASSIGNATION

between

[] **LIMITED** incorporated under the Companies Acts (Registered Number [] and having their Registered Office at []
["Assignors"]

and

[] **LIMITED** incorporated under the Companies Acts (Registered Number [] and having their Registered Office at []
["Assignees"]

WHEREAS:-

- (A) The Assignors are entitled to the benefit of the Rent Deposit;
- (B) The Assignors have sold or are about to sell their interest in the Property;
- (C) The Parties have agreed that the Assignors will assign, and the Assignees will accept an assignment of, the Assignors' interest under the Rent Deposit with effect from the Date of Entry.

IT IS AGREED by the Parties as follows:-

1. Definitions

In this Assignment:-

"Date of Entry" means [];

"Parties" means the Assignors and the Assignees;

"Property" means **ALL** and **WHOLE** [];

"Rent Deposit" means the rent deposit(s) detailed in the Schedule;

"Schedule" means the schedule annexed to this Assignment.

2. Assignment

The Assignors in implementation of their obligations relating to the transfer of the Property assign to the Assignees the Assignors' whole right, title and interest under the Rent Deposit with effect from the Date of Entry.

3. Costs

- 3.1 Each of the Parties will bear their own costs and expenses in connection with this Assignment.
- 3.2 The Assignees will be responsible for any land and buildings transaction tax chargeable on the assignment of the Assignors' interest under the Rent Deposit.
- 3.3 The Assignees will pay the costs of registering this Assignment in the Books of Council and Session and obtaining [two] extracts (one for the Assignors and [one] for the Assignees).

4. **Warrandice**

The Assignors grant warrandice from their own facts and deeds.

5. **[Assignors' Title**

The Rent Deposit was granted in favour of [] incorporated under the Companies Acts (Registered Number []) and having their Registered Office at [] from whom the Assignors acquired right conform to Assignation by [] in their favour dated [] and [] [and registered in the Books of Council and Session on []].

6. **Consent to Registration**

The Parties consent to the registration of this Assignation for preservation and execution: **IN WITNESS WHEREOF**

Part 17

Retrocession of Assignment of Rents

Part 18

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 [10] 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 requireto 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:-
 - 1.1.10 **["Available Fixtures"** means the Fixed Plant in respect of which the Seller has not claimed allowances under CAA]³;

³ Use where the Seller acquired the property before 1 April 2012.

- 1.1.11 "**CAA**" means Capital Allowances Act 2001; and
- 1.1.12 "**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 Seller confirms that:

1.2.1 [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;

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

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

OR

1.2.4 [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

1.2.5 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

1.3 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:

1.3.1 [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

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

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

1.3.4 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.

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

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

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.

2. **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**

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 CAA⁷;
- 2.1.2 "**CAA**" means Capital Allowances Act 2001;
- 2.1.3 "**CA Expert**" means [] of [];
- 2.1.4 "**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;
- 2.1.5 "**Election Notice**" means a notice of election under Section 198 of the CAA in the form contained in Part [10] of the Schedule;
- 2.1.6 "**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;
- 2.1.7 "**General Pool Available Fixtures**" means those Available Fixtures which are not Special Rate Available Fixtures; and
- 2.1.8 "**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).

2.2 The Seller confirms that:

- 2.2.1 it is the past owner (as defined in Section 187A(2) of the CAA) of each Available Fixture⁸;
- 2.2.2 there is no Fixed Plant other than Available Fixtures;
- 2.2.3 [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
- 2.2.4 it has not allocated any qualifying expenditure incurred on any Available Fixture to a pool pursuant to Section 53 of the CAA.

2.3 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.

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 Total 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.

- 2.4 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.
- 2.5 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.
- 2.6 The Seller will not claim any writing-down allowances in respect of the qualifying expenditure allocated to a pool pursuant to paragraph 3.5.
- 2.7 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.
- 2.8 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.
- 2.9 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.
- 2.10 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.
- 2.11 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 Working Days after written demand.