OFFER TO SELL – INVESTMENT PROPERTY

Our Ref: [ ]
Your Ref: [ ]

Date [ ]

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

Dear [Name of Addressee]

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

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

1. **Definitions and Interpretation**

1.1 In the Missives:

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

["**2022 Act**" means the Economic Crime (Transparency and Enforcement) Act 2022;][1]

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

"**Arrears**" means any arrears of rent, service charge or other sums due under the terms of the Leases but unpaid as at Completion;

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

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

[1] Only required if either the Seller or Purchaser is an overseas entity as defined in section 2 of the 2022 Act.

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

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

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

"**Disposition**" means the disposition of the Property in favour of the Purchaser[2] [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;

"**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 10 of the Schedule;]

["**Overseas Entity**" has the meaning given in Section 2 of the 2022 Act;][3]

["**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 disponed by [ ]]] [registered in the Land Register of Scotland under Title Number [ ]];

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

"**Purchaser's Bank**" means (a) the client account of the Purchaser's Solicitors and/or (b) the client account of the solicitors acting for the Purchaser's heritable creditor and/or (c) if it

[2] PSG offers to sell no longer include nominee terminology in view of the perceived knock-on considerations including VAT (and other tax clauses) and anti-money laundering; see archived versions of the draft offer for the text which previously featured.

[3] Delete if neither the Seller nor Purchaser is an overseas entity as defined in section 2 of the 2022 Act.

is a bank which is a direct Participant in the CHAPS system operated by the Bank of England and the funds in question are loan funds from that bank for the purpose of acquiring the Property, the Purchaser's heritable creditor;

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

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

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

["**Registered Overseas Entity**" means an Overseas Entity that is registered in the ROE that has fully complied with the duties referred to in paragraph 9 of Schedule 1A of the 2012 Act;][4]

"**RICS Chair**" means the chair (or other senior office holder) for the time being of The Royal Institution of Chartered Surveyors in Scotland;

["**ROE**" means the register of overseas entities established under section 3 of the 2022 Act][5]

"**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 (in either case being a clients' account of the Seller's Solicitors) as the Seller's Solicitors nominate by written notice to that effect at least three Business Days prior to the Date of Entry;

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

["**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 12 of the Schedule;]

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

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[4] See footnote 3.

[5] See footnote 3.

"**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; and

"**VAT Regulations**" means the Value Added Tax Regulations 1995.

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.

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

2.2 **[Apportionment**

The Price will be apportioned as follows:

Property £[ ];

Fixed Plant £[ ];

Moveables £[ ]].

2.3 **Failure by the Purchaser to Complete**

2.3.1 **Interest**

If the 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 consignation or that the Purchaser has not taken entry, the Purchaser will pay to the Seller Interest on the outstanding money.

2.3.2 **Seller's Right to Rescind**

If the Purchaser fails to pay the 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 2.3.1 within [10] Business Days after the Date of Entry the Seller is entitled to rescind the Missives by written notice to that effect to the Purchaser, to re-sell the Property to any third party and to claim damages from the Purchaser which may include:

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

(b) any shortfall between:

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

(ii) the Price; and

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

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

2.3.3 **Suspension**

The provisions of Clauses 2.3.1 and 2.3.2 will not apply 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.

2.4 **Failure by the Seller to Complete**

2.4.1 **Purchaser's Right to Rescind**

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

2.4.2 **Suspension**

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

3. **VAT**

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.]]

3.2 **[OPTION 2 - TOGC relief applies and supply of Property would otherwise be exempt**

3.2.1 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.

3.2.2 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 3.2.2(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 3.2.2(a).

3.2.3 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 3.2.2(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 3.2.3(a).

3.2.4 [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 five Business Days of the Seller being so advised by HMRC.

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

3.2.6 Subject to Clause 3.2.7, the Purchaser will pay, in addition, to the Seller within 10 Business 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.

3.2.7 The Seller will use all reasonable endeavours to minimise the amount due under Clause 3.2.6.

3.2.8 If the Purchaser fails to pay any amount due under Clauses 3.2.6 and 3.2.7 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 3.2.6 for interest in respect of the same amount and the same time period.]

3.2.9 The Purchaser and the Seller do not intend to make a joint application under regulation 6(1) of the VAT Regulations 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.]

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

3.3.1 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.

3.3.2 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 3.3.2(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 to the Purchaser] of the matters stated in Clauses 3.3.2(a) and 3.3.2(b) which will comprise, if received by the Seller (or such other person referred to in clause 3.3.2(b)) prior to Completion, [an acknowledgement by HMRC of the notification of such option to tax] [*If the option to tax was notified to HMRC after 31 January 2023, insert here details of the evidence available*[6]] or where the option to tax is treated as having been exercised in respect of the Property by virtue of the VAT Act, Schedule 10, paragraph 21, an acknowledgement by HMRC of the real estate election made.

3.3.3 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

[6] See the Guidance Notes for the Offer to Sell Investment Property for HMRC guidance on what would be suitable evidence.

(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 3.3.3(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 3.3.2(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 evidence to the Seller, as soon as possible and in any event before Completion] [has exhibited evidence to the Seller] of the matters stated in Clauses 3.3.3(a) and 3.3.3(b), which will comprise, if received by the Purchaser (or such other person referred to in Clause 3.3.3(b)) prior to Completion. [an acknowledgement by HMRC of the notification of such option to tax] [*If the option to tax was notified to HMRC after 31 January 2023, insert here details of the evidence available*[7]] or where the option to tax is treated as having been exercised in respect of the Property by virtue of the VAT Act, Schedule 10, paragraph 21, an acknowledgement by HMRC of the real estate election made.

3.3.4 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 Business Days of the Seller being so advised by HMRC.

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

3.3.6 Subject to Clause 3.3.7, the Purchaser will pay, in addition, to the Seller within 10 Business 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.

3.3.7 The Seller will use all reasonable endeavours to minimise the amount due under Clause 3.3.6.

3.3.8 If the Purchaser fails to pay any amount due under Clauses 3.3.5 and 3.3.6 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

[7] See the Guidance Notes for the Offer to Sell Investment Property for HMRC guidance on what would be suitable evidence.

period to the extent that the Seller has already been compensated under Clause 3.3.6 for interest in respect of the same amount and the same time period.

3.3.9 The Purchaser and the Seller do not intend to make a joint application under regulation 6(1) of the VAT Regulations 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.]

3.4 **[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**

3.4.1 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.

3.4.2 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 3.4.2(a).

3.4.3 The Purchaser confirms to the Seller that the Property does not fall within the scope of sub-paragraphs (a)(i) or (a)(ii) of the VAT Act Schedule 9, Group 1, Item 1.

3.4.4 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 3.4.4(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 3.4.2(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 evidence to the Seller, as soon as possible and in any event before Completion] [has exhibited evidence to the Seller], of the matters stated in Clauses 3.4.4(a) and 3.4.4(b) which will comprise, if received by the Purchaser (or such other person referred to in Clause 3.4.4(b)) [an acknowledgement by HMRC of the notification of such option to tax] [*If the option to tax was notified to HMRC after 31 January 2023, insert here details of the evidence available*[8]] or where the option to tax is treated as having been exercised in respect of the Property by virtue of the VAT Act, Schedule 10, paragraph 21, an acknowledgement by HMRC of the real estate election made.

3.4.5 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 Business Days of the Seller being so advised by HMRC that VAT is chargeable on the sale of the Property.

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

3.4.7 Subject to Clause 3.4.8, the Purchaser will pay, in addition, to the Seller within 10 Business 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.

[8] See the Guidance Notes for the Offer to Sell Investment Property for HMRC guidance on what would be suitable evidence.

3.4.8 The Seller will use all reasonable endeavours to minimise the amount due under Clause 3.4.7.

3.4.9 If the Purchaser fails to pay any amount due under Clauses 3.4.6 and 3.4.7 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 3.4.7 for interest in respect of the same amount and the same time period.

3.4.10 The Purchaser and the Seller do not intend to make a joint application under regulation 6(1) of the VAT Regulations 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.]

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

3.5.1 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.

3.5.2 [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 3.5.2(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 to the Purchaser] of the matters stated in Clauses 3.5.2(a) and 3.5.2(b) which will comprise, if received by the Seller (or such other person referred to in Clause 3.5.2(b)) prior to Completion, [an acknowledgement by HMRC of the notification of such option to tax] [*If the option to tax was notified to HMRC after 31 January 2023, insert here details of the evidence available*[9]] or where the option to tax is treated as having been exercised in respect of the Property by virtue of the VAT Act, Schedule 10, paragraph 21, an acknowledgement by HMRC of the real estate election made.

3.5.3 [The Seller confirms to the Purchaser that:

[9] See the Guidance Notes for the Offer to Sell Investment Property for HMRC guidance on what would be suitable evidence.

(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 3.5.2(a).]]

3.6 **[Capital Goods Scheme**

[Use where the Property or any part of it is a capital item still subject to adjustment:

The Seller confirms to the Purchaser that:

3.6.1 the Property is or consists of capital items to which there are outstanding periods of actual or potential adjustment under the Capital Goods Scheme (under Regulations 112 to 116 of the VAT Regulations);

3.6.2 it has not made or been required to make, and will not make or be required to make in the period up to Completion, any adjustments in respect of the Property pursuant to the Capital Goods Scheme; and

3.6.3 as soon as reasonably practicable after a request from the Purchaser, it will provide such information in its possession as the Purchaser requires to enable the Purchaser to make any VAT adjustments in respect of the Property under Part XV of the VAT Regulations.]

[*Use where the Property is not and does not consist of capital items that are subject to adjustment:*

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 there are or will, in the period up to Completion, be outstanding periods of actual or potential adjustment under Regulations 112 to 116 of the VAT Regulations.]]

4. **Entry and Apportionments**

4.1 **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.

4.2 **Rent Apportionment**

4.2.1 The rents payable under the Leases will, subject to Clause 2.3.3, be apportioned (net of VAT) at Completion on the basis that the Purchaser will receive a 1/365th part of the annual rent for each day from (and including) Completion to (but not including) the next rent payment date(s) under the Leases.

4.2.2 The rents will be apportioned **[Option 1]** 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. OR [**Option 2 –** on the basis of the actual payments received by the Seller as at Completion and, subject to Clause 5.1.1 neither the Seller nor the Purchaser will make any payment or allowance to the other on account of any arrears of rent due but unpaid, waived or suspended].

4.2.3 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.

4.3 **Other Apportionments**

4.3.1 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.

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

5. **Arrears and service charge**

5.1 **Arrears**

5.1.1 As between the Seller and the Purchaser, the Seller is entitled to:

(a) that part of any Arrears of the rents payable under the Leases which became due on the rent payment date immediately preceding Completion and which would have been apportioned to the Seller pursuant to Clause 4.2 had the relevant amount not been Arrears[10];[and reimbursement of that part of any Arrears of the rents payable under the Leases which the Purchaser received from the Seller at Completion in terms of clause 4.2.2][11] and

(b) the Arrears of Service Charge Expenditure (if any and as defined in Clause 5.2.1) to which the Seller is entitled in terms of Clause 5.2.6 or Clause 5.2.11.

and the Purchaser is entitled to all other Arrears.

5.1.2 If there are Arrears at Completion:

(a) in so far as these relate to the subject matter of Clause 5.1.1(a), the Purchaser will use reasonable endeavours to procure payment from the Tenants as soon as practicable after Completion provided that the Seller keeps the Purchaser free of expense; and

(b) insofar as these relate to the subject matter of Clause 5.1.1(b), the provisions contained in Clauses 5.2.6 and 5.2.11 apply.

5.1.3 The Purchaser will pay to the Seller all sums relating to such Arrears to which the Seller is entitled in terms of Clause 5.1.1 (together with any interest on them paid by the Tenants in terms of the relevant Lease) within 5 Business Days of cleared funds being received from the relevant Tenant.

5.1.4 If the Seller or its agents receive any payments from the Tenants after Completion which do not relate to Arrears to which the Seller is entitled in terms of Clause 5.1.1 it will pay them to the Purchaser within five Business Days of cleared funds being received from the relevant Tenant.

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[10] Use this wording when Option 2 of Clause 4.2.1 is selected. When Option 1 is selected use this wording **and** the additional wording – see F/n11,

[11] Use this additional wording where Option 1 in Clause 4.2.2 has been selected.

5.1.5 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 Clause 5.1.1. [The Seller may not take any steps to sequestrate any Tenant or appoint a receiver or liquidator to any Tenant except with the consent of the Purchaser (acting reasonably).]

5.2 **[Service Charge**

5.2.1 In this Clause 5.2:

"**Certificate**" means a certificate showing:

(a) the Service Charge Payments; and

(b) the Service Charge Expenditure,

for each lettable unit within the Property for the period from the start of the Current Service Charge Period up to Completion;

"**Current Service Charge Period**" means in relation to the Leases the Service Charge Period current at Completion;

"**Service Charge**" means charges to the Tenants for the provision of services to the Property under the terms of the Leases;

"**Service Charge Expenditure**" means all expenditure properly incurred by the Seller for the provision of services to the Property during the Current Service Charge Period, to the extent that it is recoverable by way of Service Charge;

"**Service Charge Payments**" means the payments made by the Tenants and held by or on behalf of the Seller on account of the Service Charge Expenditure;

"**Service Charge Period**" means the year or other period by reference to which the accounts of Service Charge Expenditure are prepared;

"**Sinking Fund**" means a fund established with contributions from the Tenants in respect of capital or non-recurring Service Charge Expenditure and which is held separately from the Service Charge Payments; and

"**Statement**" means a statement showing:

(a) the Service Charge Payments; and

(b) the Service Charge Expenditure,

for each lettable unit within the Property as at Completion.

1.1.2 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 of all Service Charge Payments in accordance with the Missives.

1.1.3 The Seller will be responsible for all Service Charge Expenditure invoiced prior to Completion, and will be entitled to apply any Service Charge Payments received prior to Completion from the Tenants in respect of such Service Charge Expenditure.

1.1.4 At Completion the Seller will deliver the Statement to the Purchaser.

1.1.5 If the Service Charge Payments shown in the Statement (including the sums attributable to unlet space) exceed the total of the Service Charge Expenditure shown as having been paid the Seller will pay or make over the excess to the Purchaser [at Completion]. The Seller will, as soon as practicable [but in any event within [ ] Business Days] after Completion, pay all further Service Charge Expenditure not paid at that time, but the Purchaser will be responsible for settling any invoices in respect of Service Charge Expenditure received following Completion.

1.1.6 If the total of the Service Charge Expenditure shown in the Statement exceeds the Service Charge Payments, the Purchaser, will pay and make over the deficit once it has received the necessary funds to do so from the Tenants under the Leases.

1.1.7 As soon as practicable, but in any event within [four] [weeks] of Completion, the Seller will deliver the Certificate to the Purchaser.

1.1.8 The Seller will allow the Purchaser reasonable access during normal business hours to inspect relevant invoices, receipts and other records in the Seller's possession from which the Certificate was prepared.

1.1.9 The Certificate will be final and binding as to the matters stated in it [except for manifest error] unless the Purchaser gives notice to the Seller, within four weeks after receiving the Certificate that it disputes the Service Charge Expenditure detailed in the Certificate and specifies which elements of the Service Charge Expenditure it disputes.

1.1.10 If the Service Charge Payments shown in the Certificate (including the sums attributable to unlet space) exceed the total of the Service Charge Expenditure shown as having been paid, the Seller will within [10] Business Days after issuing the Certificate, pay or make over the excess (under deduction of any sum previously paid pursuant to Clause 5.2.5) to the Purchaser.

1.1.11 If the total of the Service Charge Expenditure shown in the Certificate exceeds the Service Charge Payments, the Purchaser will pay or make over the deficit to the Seller within [10] Business Days after receiving the Certificate, once it has received the necessary funds to do so from the Tenants under the Leases (having regard to any sums previously paid or (as the case may be) received pursuant to Clauses 5.2.5 and 5.2.6) to the Seller.

1.1.12 The Seller confirms that, except as disclosed in Part 4[B]b) of the Schedule:

(a) the Service Charge Expenditure for the Current Service Charge Period has been fully, properly and accurately kept and recorded in its accounts and records and will be reflected in the Statement and (as the case may be) the Certificate 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 Charge Expenditure compared to Service Charge Expenditure actually incurred, in relation to any earlier Service Charge Period;

(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; and

(d) there are no outstanding claims from any current or former Tenant for reimbursement in relation to Service Charge Expenditure in relation to any earlier Service Charge Periods.

1.1.13 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 Service Charge Expenditure for any Service Charge Period.

1.1.14 The Seller will be liable for the Service Charge attributable to (a) unlet space and (b) any shortfall attributable to any of the Tenants only being liable to pay Service Charge subject to a maximum or capped amount or service charge concessions or exclusions, in each case for the period up to Completion. The Seller's liability to contribute to the Service Charge for the Current Service Charge Period in relation to unlet space will be assessed on an equitable basis consistent with the provisions of the Leases for the Current Service Charge Period by being multiplied by the number of days between the expiry of the last Service Charge Period and Completion and divided by 365.

1.1.15 In the event of there being any dispute as to the subject matter of this Clause 5.2, 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 RICS Chair on the application of either party. The provisions contained in Clause 13.3 will apply mutatis mutandis to this Clause.

1.1.16 [There is no Sinking 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 Funds held by the Seller (or its agents) as Landlords together with all interest earned on them; and

(b) deliver to the Purchaser certified accounts detailing all intromissions with and all interest earned on such Sinking Funds.]

1.1.17 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 will 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.

1.1.18 The Seller will provide details of any managing agents employed in respect of the Property [but 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.]

1.2 **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.]

1.2.1 [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.

1.2.2 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.

1.2.3 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 14 of the Schedule.

1.2.4 The Purchaser will:

(a) within 15 Business Days after Completion duly execute the assignation of rent deposits delivered to the Purchaser at Completion; and

(b) within 20 Business Days after Completion, intimate the assignation of rent deposits to the appropriate parties and deliver a copy of the intimation to the Seller.]

1.3 [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:

1.3.1 subject to Clause 2.3.3, 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;

1.3.2 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

1.3.3 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 Business Days of cleared funds being received from the relevant Tenant.]

2. **Disclosed Documents**

2.1 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.

2.2 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.

3. **[Documents to be Disclosed**

3.1 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:

3.1.1 [the Title Deeds;]

3.1.2 [the Leases] [and the Subleases];

3.1.3 [property enquiry certificate in respect of the Property which is dated not more than [60] days prior to the date of this offer;]

3.1.4 [coal mining search from the Coal Authority in respect of the Property which is dated not more than 90 days prior to the date of this offer;] and

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

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

3.3 If any of the items referred to at Clauses 7.1.1, 7.1.3, 7.1.4 or 7.1.5 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] Business Days period, time being of the essence. Failing such notice, the Purchaser is deemed to be satisfied as to the terms of the items referred to in Clause 7.1 and each of such items will become a Disclosed Document for the purposes of the Missives.]

4. **Title**

4.1 **Encumbrances**

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

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

4.2 **Minerals**

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

4.3 **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.

4.4 **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.

4.5 **Community Interests**

The provisions of Part 16 of the Schedule will apply.

4.6 **[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.]

4.7 **Advance Notices**

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

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

4.7.3 If the Seller rescinds the Missives in the circumstances set out in Clause 2.3.2 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.

4.7.4 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.

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

4.8 **Land Register Requirements**

4.8.1 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 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.

4.8.2 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.

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

4.9 **Trust Clause**

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

5. **Leases**

5.1 **Confirmations**

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

5.1.1 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];

5.1.2 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;

5.1.3 the information disclosed in the rent [and service charge] payment history (forming part of the Disclosed Documents) is complete and accurate in all respects;

5.1.4 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;

5.1.5 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;

5.1.6 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;

5.1.7 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;

5.1.8 the Seller has not received written notification of the insolvency, liquidation, administration or receivership of any of the Tenants;

5.1.9 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.

5.2 **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.

5.3 **Interim Management**

5.3.1 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.

5.3.2 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.

5.3.3 [The Seller may complete the current management transactions set out in Part 6 of the Schedule.]

5.3.4 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.

5.4 **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:

5.4.1 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;

5.4.2 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;

5.4.3 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);

5.4.4 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;

5.4.5 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.]

6. **Completion**

6.1 At Completion, the Purchaser will:

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

6.1.2 [if the Purchaser is an Overseas Entity deliver a search in the ROE as provided for in paragraph 2.3 of Part 20 of the Schedule; and][12]

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

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

[12] Only required if the Purchaser is an overseas entity

6.2.1 **Disposition**

the Disposition duly executed by the Seller;

6.2.2 **Title Deeds**

(a) the Title Deeds[; and

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

6.2.3 **Leases**

the Leases [and the Subleases];

6.2.4 **Disclosed Documents**

the remaining Disclosed Documents;

6.2.5 **Legal Reports**

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

(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 RCIL and the RACBBL brought down as near as practicable to Completion showing nothing prejudicial to the ability of the Seller validly to transfer title to the Property to the Purchaser

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

6.2.6 **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 36 days after Completion

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

6.2.7 **[Search in the ROE[13]**

a search in the ROE against the Seller as provided for in paragraph 1.3 of Part 20 of the Schedule;]

6.2.8 **[VAT Invoice**

a valid VAT invoice addressed to the Purchaser;]

6.2.9 **[Discharge/Deed of Restriction**

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

6.2.10 **[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 subject to compliance with any time limit for registration of the Purchaser's title) in respect of the transaction envisaged by the Missives from each holder of a floating charge granted by the Seller;]

6.2.11 **[Retrocession of Assignation of Rents]**

a retrocession of assignation of rents duly executed by the creditor in terms of the draft forming Part 15 of the Schedule;]

6.2.12 **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;

6.2.13 **[Assignation of Guarantees**

the assignation of guarantees in terms of the draft forming Part 11 of the Schedule duly executed by the Seller;]

6.2.14 **[Assignation of Service Contracts**

the assignation of service contracts in terms of the draft forming Part 13 of the Schedule duly executed by the Seller and, if required, by the Service Providers (as defined in it);]

6.2.15 **[Assignation of Rent Deposits**

the assignation of rent deposits in terms of the draft forming Part 14 of the Schedule duly executed by the Seller;]

6.2.16 **Other Documents**

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

[13] Only required if the Seller is an overseas entity

7. **Post Completion**

Provided that the Disposition is presented for registration prior to the earlier of 14 days after Completion and the date of expiry of the last Advance Notice registered in relation to the Disposition in terms of Clause 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 other than such as are created by or against the Purchaser or have been disclosed to, and accepted in writing by, the Purchaser prior to Completion.

8. **Insurance**

8.1 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.

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

8.3 The Seller will:

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

8.3.2 provided that the insurance premiums have been paid in full by the Tenants in question, within 5 Business 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.

9. **Damage or Destruction**

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

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

9.3 If there is any dispute as to whether the Property has suffered such damage, the matter will be referred to the decision of an independent surveyor, who will act as an expert, appointed, failing agreement, by the RICS Chair on application by either party. The independent surveyor's decision will be binding on the parties. If the independent surveyor dies, delays or becomes unwilling or incapable of acting then either the Seller or the Purchaser may apply to the Chair to discharge that independent surveyor and appoint a replacement. The fees and expenses of the independent surveyor and the cost of appointment are payable by the Seller and the Purchaser in the proportions which the independent surveyor directs and if no direction is made, equally.

9.4 Subject to Clause 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:

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

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

10. **Statutory Matters**

10.1 **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.

10.2 **Statutory Repairs Notices**

Any local authority statutory repairs notices (other than any notice or requirement of any Environmental Authority made pursuant to the Contaminated Land Regime (as such terms are defined in Clause 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.

10.3 **Energy Performance**

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

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

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

11. **Environmental**

11.1 **Definitions**

In Clauses 14.2 and 15:

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

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

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

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

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

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

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

11.2 **Agreement as to Environmental Liabilities**

The Seller and the Purchaser agree that from Completion:

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

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

The agreements outlined under Clauses 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 Contaminated Land Regime.

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.

11.3 **Sold with Information**

11.3.1 The Purchaser acknowledges to the Seller that:

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

[ ];]

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

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

(d) it relies at its own risk on the contents of any report, plan and other written material and information either disclosed to it or orally communicated to it by or on behalf of the Seller both as to the condition

of the Property and as to the nature and effect of any remedial works which may have been carried out [(including but not limited to the Report by [ ] dated [ ])] and no warranty is given or representation made by or on behalf of the Seller in this respect; and

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

11.3.2 Both parties agree that:

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

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

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

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

11.3.3 The acknowledgements in this Clause 15.3 are made in order to exclude the Seller from liability under the Contaminated Land Regime so that the Seller is not an appropriate person, as defined in it.

12. **[Moveables**

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

13. **No Employees**

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

13.1.1 the sale of the Property; and

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

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

13.2 If it is asserted or found by a court or tribunal that the Employment Regulations apply in relation to any person ("**Employee**"), the Purchaser [or any of its contractors] may terminate the employment of the Employee within 10 Business Days, where it has not already terminated, and if the Purchaser complies with its obligations under this Clause 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).

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

14. **[Guarantees**

14.1 In so far as the Seller can validly do so, the guarantees will be assigned to the Purchaser in terms of the draft assignation of guarantees forming Part 11 of the Schedule.

14.2 The Purchaser will:

14.2.1 within 15 Business Days after Completion duly execute the assignation of guarantees delivered to the Purchaser at Completion; and

14.2.2 within 20 Business Days after Completion, intimate the assignation of guarantees to the appropriate parties and deliver a copy of the intimation to the Seller.]

15. **[Service Contracts**

15.1 **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.

15.2 **Assignation**

15.2.1 In so far as the Seller can validly do so, the Service Contracts will be assigned to the Purchaser in terms of the draft assignation of service contracts forming Part 13 of the Schedule.

15.2.2 The Purchaser will:

(a) within 15 Business Days after Completion duly execute the assignation of service contracts delivered to the Purchaser at Completion; and

(b) within 20 Business Days after Completion, intimate the assignation of service contracts to the appropriate parties and deliver a copy of the intimation to the Seller.

15.3 **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.]

16. **Capital Allowances**

The provisions of Part 17 of the Schedule will apply.

17. **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:

17.1.1 comply with the Seller's reasonable requirements;

17.1.2 comply with the access restrictions imposed on the Landlords under the Leases; and

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

18. **[Confidentiality**

18.1 **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:

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

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

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

18.1.4 where required by law; and

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

18.2 **[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).]

18.3 **Agents**

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

19. **[Overseas Entities**

If either the Seller or the Purchaser is an Overseas Entity or both are Overseas Entities the provisions of Part 20 of the Schedule will apply.][14]

[14] Delete if neither the Seller nor the Purchaser is an overseas entity as defined in section 2 of the 2022 Act.

20. **General**

20.1 **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.

20.2 **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.

20.3 **Exclusion of Third Party Rights**

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

21. **Supersession**

The provisions of the Missives (other than Clauses [2.3.2, 8.5, 8.7, 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:

21.1 in the case of the provisions relating to TOGC in Clause 3, 6 years after the Date of Entry;

21.2 in the case of the lease confirmations given in Clause 9, [6] years after the Date of Entry; and

21.3 in the case of all other provisions the earlier of:

21.3.1 the date when such provisions have been implemented; and

21.3.2 [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.

22. **Exclusion of Personal Liability**

22.1 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.

22.2 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.

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

23. **[Assignation**

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

23.1 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;

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

23.3 purport to do any of the foregoing.]

24. **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 exclusive jurisdiction of the Scottish courts to decide any dispute arising out of or in connection with the Missives.

25. **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;*
- *any notices received by the Seller affecting the Property;*
- *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

A Against Lease confirmations

[None]

[*insert details*]

B Against Service Charge 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 [Name of Addressee]

[ ]
[ ] (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 (other than formal notices) should be addressed to the Purchaser or their managing agents, namely [ ].

Formal notices [including notices to quit] should still be served in accordance with the provisions of your lease.

[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
Moveables

Part 11
Assignation of Guarantees

ASSIGNATION

between

[ ] LIMITED incorporated under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ] ("**Assignor**")

and

[ ] LIMITED incorporated under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ] ("**Assignee**")

WHEREAS:

(A) The Assignor is entitled to the benefit of the Guarantees;

(B) The Assignor has sold or is about to sell its interest in the Property;

(C) The Parties have agreed that the Assignor will assign, and the Assignee will accept an assignation of, the Assignor's interest under the Guarantees with effect from the Date of Entry.

IT IS AGREED by the Parties as follows:

1. **Definitions**

In this Assignation:

"**Date of Entry**" means [ ];

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

"**Parties**" means the Assignor and the Assignee;

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

"**Schedule**" means the schedule annexed to this Assignation.

2. **Assignation**

The Assignor in implementation of its obligations relating to the transfer of the Property assigns to the Assignee the Assignor's 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 Assignation.

3.2 The Assignee will be responsible for any land and buildings transaction tax chargeable on the assignation of the Assignor's interest under the Guarantees.

3.3 The Assignee will pay the costs of registering this Assignation in the Books of Council and Session and obtaining [two] extracts (one for the Assignor and [one] for the Assignee).

4. **Warrandice**

The Assignor grants warrandice from its own facts and deeds.

5. **[Assignor's Title**

The Guarantees were granted in favour of [ ] incorporated under the Companies Acts (Registered Number [ ]) and having their Registered Office at [ ] from whom the Assignor acquired right conform to Assignation by [ ] in its 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**

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

Guarantees

1. [ ]

7. [ ]

Part 12
Service Contracts

Part 13
Assignation of Service Contracts

ASSIGNATION

between

[ ] LIMITED incorporated under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ] ("**Assignor**")

and

[ ] LIMITED incorporated under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ] ("**Assignee**")

[with the consent of the Service Providers]

WHEREAS:

(A) The Assignor is the customer entitled to the benefit of the services being provided under the Service Contracts;

(B) The Assignor has sold or is about to sell its 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 Assignor will assign, and the Assignee will accept an assignation 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 Assignation:

"**Date of Entry**" means [ ];

"**Parties**" means the Assignor [and] the Assignee [and the Service Providers];

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

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

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

"**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. **Assignation**

The Assignor in implementation of its obligations relating to the transfer of the Property assigns to the Assignee the Assignor's interest under the Service Contracts relating to the Property with effect from the Date of Entry.

3. **Assignee's Obligations**

3.1 The Assignee 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 Assignee will indemnify the Assignor 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 Assignee by this Assignation or otherwise.

4. **Assignor's Obligations**

The Assignor will free and relieve the Assignee of the whole sums stipulated in the Service Contracts to be paid by the Assignor 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 [Assignor] [Assignee] will pay the costs and expenses of the Service Providers] in connection with this Assignation.

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

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

6. **Warrandice**

The Assignor grants warrandice from their own facts and deeds.

7. **[Service Providers' Consent**

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

8. **[Assignor's 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 Assignation 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 Assignation for preservation and execution: **IN WITNESS WHEREOF**

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

Service Contracts

1. [ ]

10. [ ]

Part 14
Assignation of Rent Deposits

ASSIGNATION

between

[ ] LIMITED incorporated under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ] ("**Assignor**")

and

[ ] LIMITED incorporated under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ] ("**Assignee**")

WHEREAS:

(A) The Assignor is entitled to the benefit of the Rent Deposit;

(B) The Assignor has sold or is about to sell its interest in the Property;

(C) The Parties have agreed that the Assignor will assign, and the Assignee will accept an assignation of, the Assignor's interest under the Rent Deposit with effect from the Date of Entry.

IT IS AGREED by the Parties as follows:

1. **Definitions**

In this Assignation:

"**Date of Entry**" means [ ];

"**Parties**" means the Assignor and the Assignee;

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

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

"**Schedule**" means the schedule annexed to this Assignation.

2. **Assignation**

The Assignor in implementation of its obligations relating to the transfer of the Property assigns to the Assignee the Assignor's 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 Assignation.

3.2 The Assignee will be responsible for any land and buildings transaction tax chargeable on the assignation of the Assignor's interest under the Rent Deposit.

3.3 The Assignee will pay the costs of registering this Assignation in the Books of Council and Session and obtaining [two] extracts (one for the Assignor and [one] for the Assignee).

4. **Warrandice**

The Assignor grants warrandice from its own facts and deeds.

5. **[Assignor's Title**

The Rent Deposit was granted in favour of [ ] incorporated under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ] from whom the Assignor 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**

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

Rent Deposit(s)

1. [ ]

7. [ ]

Part 15
Retrocession of Assignation of Rents

Part 16
Community Interests

1. Definitions

In this Part of the Schedule:

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

"**2016 Act**" means the Land Reform (Scotland) Act 2016;

"**Part 5 Community Body**" means a community body constituted in terms of Section 49 of the 2016 Act;

"**Part 2 Notice**" means any copy application, invitation to make representations or notice in terms of Part 2 of the 2003 Act in respect of the Property; and

"**Part 5 Notice**" means any copy application, invitation to make representations, notice or written request in terms of Part 5 of the 2016 Act in respect of the Property.

2. **Community Right to Buy under Part 2 of the 2003 Act**

2.1 The Seller has not received any Part 2 Notice.

2.2 If the Seller receives any Part 2 Notice prior to registration of the Disposition, then the Seller will immediately:

2.2.1 notify the Purchaser; and

2.2.2 exhibit a copy of it to the Purchaser.

2.3 If the Seller receives any Part 2 Notice (whether before, on or after Completion) which relates to an application by a community body to register an interest in the Property received by the Scottish Ministers after the Conclusion Date, the Seller will immediately:

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

2.3.2 exhibit evidence to the Purchaser of compliance with paragraph 2.3.1.

2.4 If the Seller receives any Part 2 Notice (whether on or before Completion) which relates to any application by a community body to register an interest in the Property received by the Scottish Ministers on or before the Conclusion Date:

2.4.1 either party will be entitled to resile from the Missives without penalty on delivery of a written notice to that effect to the other's solicitors, not later than [5] Business Days after the date on which the Purchaser has received the copy Part 2 Notice in terms of paragraph 2.2.2, time being of the essence; or

2.4.2 if the original Date of Entry has passed because the Seller and the Purchaser have been prevented by the Part 2 Notice from taking any further steps to transfer the Property, then:

(a) the Seller will notify the Purchaser in writing within 2 Business Days after receipt of notification from the Scottish Ministers or from the community body (as appropriate) of any of the matters referred to in paragraph 2.4.2(b), and

(b) subject to paragraph 2.4.3, the Date of Entry will be [5] Business Days after receipt of the notice from the Seller confirming that:

(i) the Scottish Ministers have decided not to enter the community interest in land to which the Part 2 Notice relates in the RCIL;

(ii) the community body has withdrawn the application to which the Part 2 Notice relates;

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

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

2.4.3 and if the Scottish Ministers decide to enter the community interest in land to which the Part 2 Notice relates in the RCIL either party will be entitled to resile from the Missives without penalty on delivery of a written notice to that effect to the other's solicitors, prior to the date on which either:

(a) the community body withdraws the application to which the Part 2 Notice relates; or

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

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

2.4.4 and if the community body completes the purchase of the Property then:

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

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

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

2.5.1 the Seller will pay to the Purchaser:

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

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

2.5.2 in exchange, the Purchaser will:

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

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

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

3. **Community Right to Buy Abandoned, Neglected or Detrimental Land under Part 3A of the 2003 Act**

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

4. **Community Right to Buy to Further Sustainable Development under Part 5 of the 2016 Act**

4.1 The Seller has:

4.1.1 no knowledge of any proposals to form a Part 5 Community Body in respect of the Property or any part of it;

4.1.2 not been approached by any Part 5 Community Body to sell the Property or any part of it to the Part 5 Community Body; and

4.1.3 not received any Part 5 Notice; and

4.2 There is no pending application by a Part 5 Community Body appearing on the RACBBL.

4.3 If a pending application by a Part 5 Community Body appears on the RACBBL on or before the Conclusion Date, but it does not come to the attention of the Seller or the Purchaser until after the Conclusion Date:

4.3.1 the Seller will notify the Purchaser in writing within 1 Business Day after receipt of the copy of the Part 5 Notice from the Part 5 Community Body;

4.3.2 if Completion has not taken place:

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

(b) if neither party resiles from the Missives in terms of paragraph 4.3.2(a):

(i) the Missives will be suspended with effect from the date on which the pending application by the Part 5 Community Body appears on the RACBBL; and

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

(iii) if the original Date of Entry has passed because the Seller and the Purchaser have been prevented by the Part 5 Notice from taking any further steps to transfer the Property, then the provisions of paragraph 4.3.3 will apply.

4.3.3 the Seller will notify the Purchaser in writing within 2 Business Days after receipt of notification from the Scottish Ministers or from the Part 5 Community Body (as appropriate) of any of the matters referred to in paragraphs 4.3.3(a) to 4.3.3(c) and

the Date of Entry will be [5] Business Days after receipt by the Purchaser of the notice from the Seller confirming that:

(a) the Part 5 Community Body has withdrawn the application to which the Part 5 Notice relates;

(b) the Scottish Ministers have received written notice from the Part 5 Community Body (or from the third party purchaser if the Part 5 Community Body has nominated a third party to exercise the right to buy) that it will not exercise the right to buy the Property; or

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

4.3.4 if Completion has taken place:

(a) the Seller will pay to the Purchaser:

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

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

(b) in exchange, the Purchaser:

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

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

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

4.4 If a pending application by a Part 5 Community Body appears in the RACBBL after the Conclusion Date but before Completion:

4.4.1 the Seller will notify the Purchaser in writing within 1 Business Day after receipt of a copy of the Part 5 Notice from the Part 5 Community Body;

4.4.2 [either party will be entitled to resile from the Missives without penalty on delivery of a written notice to that effect to the other's solicitors, not later than [5] Business Days after the date on which the Purchaser has received the Part 5 Notice in terms of paragraph 4.4.1, time being of the essence;] and

4.4.3 [if neither party resiles from the Missives in terms of paragraph 4.4.2:]

(a) the Disposition in favour of the Purchaser will contain a declaration in terms of Regulation 10 of the Right to Buy Land to Further Sustainable Development (Eligible Land, Specified Types of Area and Restrictions on Transfers, Assignations and Dealing) (Scotland) Regulations 2020; and

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

4.5 If a pending application by a Part 5 Community Body appears in the RACBBL after Completion, the Seller will, if requested to do so by the Purchaser, re-execute the Disposition containing a declaration in terms of Regulation 10 of the Right to Buy Land to Further Sustainable Development (Eligible Land, Specified Types of Area and Restrictions on Transfers, Assignations and Dealing) (Scotland) Regulations 2020.]

5. [Community Asset Transfer Requests

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

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

Part 17
Capital Allowances

OPTION 1: Seller has claimed Capital Allowances in respect of plant and machinery fixtures and the Seller and the Purchaser have agreed to enter into a Section 198 election to determine the value of such Capital Allowances to be transferred to the Purchaser.

1. Definitions

In this Part of the Schedule:

["**Allowance Statement**" means a statement as required by Section 270IA of the CAA;][15]

"CAA" means Capital Allowances Act 2001; [and]

"**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[; and].

[**"SBAs**" means structures and buildings allowances available pursuant to Section 270AA of the CAA.][16]

2. **Fixed Plant**

2.1 The Purchaser will make an election with the Seller under Section 198 of the CAA in terms of the draft contained in Part 18 of the Schedule, in which case:

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

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

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

3. **[Structures and Buildings**

3.1 The Seller undertakes that on Completion the Seller will provide to the Purchaser:

3.1.1 in respect of all expenditure on the Property incurred by the Seller qualifying for SBAs, a complete and accurate Allowance Statement signed by the Seller, in the form set out in Part 19 of the Schedule; and

3.1.2 in respect of all expenditure on the Property qualifying for SBAs incurred by any previous owner of the Property, an Allowance Statement or copy of an Allowance Statement from that person.

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[15] Use where the Seller or a predecessor in title has incurred expenditure in respect of the Property which is eligible for SBAs.

[16] Use where the Seller or a predecessor in title has incurred expenditure in respect of the Property which is eligible for SBAs.

3.2 If any Allowance Statement provided pursuant to paragraph 3.1 is deficient or otherwise not accepted by HMRC for any reason, the Seller will take all reasonable steps necessary to correct or reissue or use reasonable endeavours to procure that a previous owner corrects or reissues that Allowance Statement as soon as reasonably practicable.][17]

4. **General**

4.1 Without prejudice to the provisions of this Part of the Schedule, the Seller will use reasonable endeavours to provide or procure that its agents provide:

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

4.1.2 such cooperation and assistance as the Purchaser may reasonably require

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

4.2 The Purchaser agrees that it will:

4.2.1 use the information provided pursuant to paragraph 4.1 only for the stated purpose; and

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

OPTION 2: The Seller has not claimed Capital Allowances in respect of plant and machinery fixtures because it was not entitled to do so and the Seller and the Purchaser have agreed that any such unclaimed Capital Allowances are to be transferred to the Purchaser

5. **Definitions**

5.1 In this Part of the Schedule:

5.1.1 ["**Allowance Statement**" means a statement as required by Section 270IA of the CAA;][18]

5.1.2 ["**Available Fixtures**" means the Fixed Plant in respect of which the Seller has not claimed allowances under CAA][19];

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

5.1.4 "**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; and

5.1.5 ["**SBAs**" means structures and buildings allowances available pursuant to Section 270AA of the CAA.][20]

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[17] Use where the Seller or a predecessor in title has incurred expenditure in respect of the Property which is eligible for SBAs.

[18] Use where the Seller or a predecessor in title has incurred expenditure in respect of the Property which is eligible for SBAs.

[19] Use where the Seller acquired the property before 1 April 2012.

[20] Use where the Seller or a predecessor in title has incurred expenditure in respect of the Property which is eligible for SBAs.

6. **Fixed Plant**

6.1 The Seller confirms that:

6.1.1 [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;

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

6.1.3 it has not acquired any of the Fixed Plant since 1 April 2012.][21]

OR

6.1.4 [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

6.1.5 it was not entitled to claim an allowance under Part 2 of the CAA in respect of capital expenditure incurred on the Fixed Plant.][22]

6.2 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:

6.2.1 [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;][23]

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

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

6.2.4 if requested by the Purchaser within 2 years after Completion and if required by HMRC, a separate written statement containing the confirmations contained in paragraph 6.1.

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

6.4 The Purchaser will reimburse the Seller for its reasonable costs in assisting the Purchaser in accordance with paragraph 6.2.

7. **Structures and Buildings**

7.1 The Seller undertakes that on Completion the Seller will provide to the Purchaser:

7.1.1 in respect of all expenditure on the Property incurred by the Seller qualifying for SBAs (whether the Seller itself or any other person in entitled to claim such SBAs), a complete and accurate Allowance Statement signed by the Seller in the form set out in Part 19 of the Schedule; and

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[21] Use where the Seller acquired the property before 1 April 2012.

[22] Use where the Seller acquired the Property on or after 1 April 2012.

[23] Use where the Seller acquired the Property on or after 1 April 2012.

7.1.2 in respect of all expenditure on the Property qualifying for SBAs incurred by any previous owner of the Property, an Allowance Statement or copy of an Allowance Statement from that person.

7.2 If any Allowance Statement provided pursuant to paragraph 7.1 is deficient or otherwise not accepted by HMRC for any reason, the Seller will take all reasonable steps necessary to correct or reissue or use reasonable endeavours to procure that a previous owner corrects or reissues that Allowance Statement as soon as reasonably practicable.

7.3 Without prejudice to the foregoing provisions of this paragraph 7, the Seller will use, reasonable endeavours to provide, or procure that its agents provide:

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

7.3.2 such cooperation and assistance as the Purchaser may reasonably require

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

7.4 The Purchaser agrees that it will:

7.4.1 use the information provided pursuant to paragraph 7.3 only for the stated purpose; and

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

7.5 The Purchaser will reimburse the Seller for its reasonable costs in assisting the Purchaser in accordance with paragraphs 7.1 to 7.3.][24]

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

8. **Definitions**

8.1 In this Part of the Schedule:

8.1.1 ["**Allowance Statement**" means a statement as required by Section 270IA of the CAA;][25]

8.1.2 "**Available Fixtures**" means the Fixed Plant in respect of which the Seller has not claimed allowances under CAA[26];

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

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

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[24] Use where the Seller or a predecessor in title has incurred expenditure in respect of the Property which is eligible for SBAs.

[25] Use where the Seller or a predecessor in title has incurred expenditure in respect of the Property which is eligible for SBAs.

[26] 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 paragraph 9.1.2) in which case the Seller's tax written down value of such fixtures should be included in the Section 198 election, and
- which are integral features acquired by the Seller prior to 1 April 2008, in which case the Purchaser may attribute a just and reasonable portion of the Price to such integral features.

8.1.5 "**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 9.4;

8.1.6 "**Election Notice**" means a notice of election under Section 198 of the CAA in the form contained in Part 18 of the Schedule;

8.1.7 "**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;

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

8.1.9 ["**SBAs**" means structures and buildings allowances available pursuant to Section 270AA of the CAA;][27] and

8.1.10 "**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).

9. **Fixed Plant**

9.1 The Seller confirms that:

9.1.1 it is the past owner (as defined in Section 187A(2) of the CAA) of each Available Fixture[28];

9.1.2 there is no Fixed Plant other than Available Fixtures;

9.1.3 [it did not enter into an election under Section 198 of the CAA in respect of the Available Fixtures when it acquired the Property][29]; and

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

9.2 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 9.4 no later than 3 months after Completion.

9.3 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 9.4 including providing promptly information to the CA Expert and permitting access to the Property.

9.4 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

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[27] Use where the Seller or a predecessor in title has incurred expenditure in respect of the Property which is eligible for SBAs.

[28] 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.

[29] 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.

expenditure on General Pool Available Fixtures determined by the CA Expert pursuant to paragraph 9.2 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 9.2.

9.5 The Seller will not claim any writing-down allowances in respect of the qualifying expenditure allocated to a pool pursuant to paragraph 9.4.

9.6 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 9.4 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.

9.7 Promptly following the allocation of the Seller's qualifying expenditure on the Available Fixtures to the pools pursuant to paragraph 9.4 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 2 years after Completion.

9.8 If HMRC challenges the expenditure allocated to either pool pursuant to paragraph 9.4 the Seller will as soon as reasonably practicable and in any event within 10 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.

9.9 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.

9.10 The Purchaser will pay the costs and expenses reasonably and properly incurred by the Seller in complying with its obligations under paragraphs 9.3 to 9.9 within 5 Business Days after written demand.

10. **[Structures and Buildings**

10.1 The Seller undertakes that on Completion the Seller will provide to the Purchaser:

10.1.1 in respect of all expenditure on the Property incurred by the Seller qualifying for SBAs, a complete and accurate Allowance Statement signed by the Seller in the form set out in Part 19 of the Schedule; and

10.1.2 in respect of all expenditure on the Property qualifying for SBAs incurred by any previous owner of the Property, an Allowance Statement or copy of an Allowance Statement from that person.

10.2 If any Allowance Statement provided pursuant to paragraph 10.1 is deficient or otherwise not accepted by HMRC for any reason, the Seller will take all reasonable steps necessary to correct or reissue or use reasonable endeavours to procure that a previous owner corrects or reissues that Allowance Statement as soon as reasonably practicable.

10.3 Without prejudice to the foregoing provisions of this paragraph 10, the Seller will use reasonable endeavours to provide, or procure that its agents provide:

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

10.3.2 such cooperation and assistance as the Purchaser may reasonably require

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

10.4 The Purchaser agrees that it will:

10.4.1 use the information provided pursuant to paragraph 10.3 only for the stated purpose; and

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

10.5 The Purchaser will reimburse the Seller for its reasonable costs in assisting the Purchaser in accordance with paragraphs 10.1 to 10.3.][30]

[30] Use where the Seller or a predecessor-in-title has incurred expenditure in respect of the Property which is eligible for SBAs.

Part 18
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 will 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

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

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[31] *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 6% (from April 2019)). 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 integral features (within the meaning of Section 33A(5) of the Capital Allowances Act 2001)	£[ ]
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	£[ ]

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

[Table C

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

Item	6% 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		

[32] 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).

Passenger and goods lift installation		
Escalators		
Trade and information signs		
Mechanical door closers		
Carpets		
Door mats		
Furniture and fittings		
Sanitary equipment		
Total		

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

Signed …… Signed ……

Name …… Name ……

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

Part 19
Allowance Statement

Evidence of qualifying expenditure in accordance with section 270IA of the Capital Allowances Act 2001[33]

Seller:	
Unique Taxpayer Reference:	
Property Address:	
Title Number:	
Building or structure to which this statement relates (if not clear from the Property Address):	
Date of the earliest written contract for the construction of the building or structure:	
Amount of qualifying expenditure incurred by the Seller on its construction or purchase (or treated as construction expenditure pursuant to Section 270BJ of the Capital Allowances Act 2001):	
Date on which the building or structure first brought into non-residential use:	
Date on which qualifying expenditure is treated as incurred (if the building or structure was first brought into non-residential use before this date):	

The Seller intends this document to be an "allowance statement" within the meaning of section 270IA of the Capital Allowances Act 2001. For the avoidance of doubt, the sums stated above are exclusive of VAT.

Signed (Seller)……

Date……....

[33] If any expenditure is "freeport qualifying expenditure", this should be specified separately in the allowance statement.

Part 20 [34]
Overseas Entities

In this Part of the Schedule "**relevant interest in land**" has the meaning given by Section 9(10)(b) of the 2022 Act.

1. **Seller Overseas Entity**

1.1 If the Seller is an Overseas Entity and is the proprietor of a relevant interest in land[35] it confirms that:

1.1.1 it is a Registered Overseas Entity;

1.1.2 it has complied with the duty to update the ROE in Section 7 of the 2022 Act;

1.1.3 it has not received any enquiries or communications from the Companies Registrar relating to information which the Registrar requires in connection with information or documentation in the ROE about the Overseas Entity;

1.1.4 it has not received any notice from the Companies Registrar under section 1092A of the Companies Act 2006 **or** if it has received such a notice, it has complied with the notice to the satisfaction of the Companies Registrar; and

1.1.5 the information held in the ROE for the Seller is correct, complete and up to date.

1.2 A search in the ROE[36] against the Seller confirming the statements in paragraph 1.1 (and not disclosing any failure to comply with a Section 1092A notice) will be delivered prior to the Conclusion Date.

1.3 An updated search in the ROE against the Seller confirming the statements in paragraph 1.1 (and not disclosing any failure to comply with a Section 1092A notice) will be brought down as near as practicable to Completion and delivered to the Purchaser at Completion.

1.4 The cost of the searches will be the responsibility of the Seller.

2. **Purchaser Overseas Entity**

2.1 If the Purchaser is an Overseas Entity, it confirms that:

2.1.1 it is a Registered Overseas Entity;

2.1.2 it has complied with the duty to update the ROE in Section 7 of the 2022 Act;

2.1.3 it has not received any enquiries or communications from the Companies Registrar relating to information which the Registrar requires in connection with information or documentation in the ROE about the Overseas Entity;

2.1.4 it has not received any notice from the Companies Registrar under section 1092A of the Companies Act 2006 **or** if it has received such a notice, it has complied with the notice to the satisfaction of the Companies Registrar; and

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[34] See footnote 3

[35] No reference is made to a qualifying registrable deed in the offer because if the Seller is an overseas entity with a relevant interest in land then the disposition will be a qualifying registrable deed in terms of the 2022 Act.

[36] It is up to the parties to agree whether this will be by way of formal search provided by a firm of professional searchers, or by way of a full printout from the relevant part of the Companies House website provided to the Purchaser's solicitors to the Seller's solicitors.

2.1.5 the information held in the ROE for the Purchaser is correct, complete and up to date.

2.2 A search in the ROE[37] against the Purchaser confirming the statements in paragraph 2.1 (and not disclosing any failure to comply with a Section 1092A notice) will be delivered prior to the Conclusion Date,

2.3 An updated search in the ROE confirming the statements in paragraph 2.1 (and not disclosing any failure to comply with a Section 1092A notice) will be brought down as near as practicable to Completion and delivered to the Seller at Completion.[38]

2.4 The cost of the searches will be the responsibility of the Purchaser.

[37] It is up to the parties to agree whether this will be by way of formal search provided by a firm of professional searchers, or by way of a full printout from the relevant part of the Companies House website provided to the Seller's solicitors to the Purchaser's solicitors.

[38] Under paragraph 1 of Schedule 1A of the 2012 Act the Purchaser only needs to be a Registered Overseas Entity at the date the application is submitted to the Land Register but the PSG considers that it is important for the Seller to ensure that the registration process has been completed before Completion to avoid any delays at completion and to provide comfort to the Seller that the application for registration of the disposition will not be rejected for failure to comply with the provisions of the 2022 Act.