

Hub Projects – Update Paper 15/66

Recommendations

The Board is asked to:

Note the content of this report; the updated programme for the delivery of Hub Projects and that the amendments to the SHA and TPA documentation between the Board and Hubwest Scotland will require to be agreed and signed in January.

Purpose of Paper

The purpose of this paper is to provide Board members with an update on the funding issues for Hub and the updated Hub Programme

Funding Background

Since September 2014 all revenue funded NPD and hub DBFM projects have been delayed due to them being judged by the ONS (Office for National Statistics) as publicly classified under ESA10 accounting rules and existing guidance and thus on the public sector balance sheet. The principal concerns of ONS were the level of public sector influence and control of these projects.

Since then there have been a series of discussions between SFT (Scottish Futures Trust), Scottish Government and ONS on the changes that were required to the contract documentation to ensure that all such projects were privately classified and off balance sheet.

On 26th November 2015 the Board were informed by SFT that the revised policy proposals for hub DBFM projects put forward by SFT to the ONS have now been judged to be privately classified under ESA10. This means that the Boards hub current projects can now move forward to financial close as soon as they are ready to do so.

The Scottish Government has agreed to all the amendments required to deliver this vital classification judgement and reaffirmed its commitment to all DBFM projects in the current hub pipeline.

These amended DBFM arrangements are based on a new DBFMCo structure produced by SFT and will require changes to the SHA (Share Holder Agreement) and TPA (Territory Partnering Agreement) contractual documents between the public sector shareholders, participants and Hubwest Scotland.

In addition some essential amendments to the DBFM standard contract are required, including revisions to the profit sharing arrangements (to remove sharing and capping) and the refinancing provisions (to reduce the public sector share of any gains). Given the limited upside potential in the existing arrangements as procured, and the low probability of any substantial refinancing gains, these changes were not considered material by SFT and are to be implemented by way of an update process to the DBFM Standard Form Project Agreement. SFT also took the opportunity to include other minor updates reflecting changes in legislation, names of bodies and market precedent.

Essentially the Public Sector ownership of the proposed DBFMco will drop from 40% (30% Public Sector Participant and 10% SFT) to 20% (10% Public Sector Participant and 10% SFT). Subordinated debt will similarly be affected.

To address the need to reduce the level of Public ownership the proposal is to form a Charity (Hub Community Foundation or HCF) which will pick up the 20% ownership to be transferred from the Public Sector to the Private Sector. This will be independently established and governed and its activities will be linked to the

advancement of education, healthcare and other community services (including taking the equity and subordinated debt in DBFMco'd that have been formed to design, build, finance and maintain projects through the hub programme).

The Board and their advisors have continued to work with Hubwest to prepare the current projects for financial close as soon as was practicable once the ESA10 the uncertainty was removed.

Inverclyde Care Home is the principal project for the Board that has been delayed by ESA10.

A key element of this process is the settlement of the project costs which must be affordable and also represent value for money. It is accepted by SFT and the Scottish Government that the time taken to resolve the ESA10 issue has resulted in projects being delayed beyond the point in time that project costs were originally fixed.

The Scottish Government has agreed that project funding should be appropriately reflect these additional costs and it is expected that updated project costs will be deliverable within these revised funding parameters.

In order to speed the process of moving forward to Financial Close, SFT and Scottish Government have proposed a methodology to pre-agree a funding uplift for projects. This agreement will allow the Board to enter into discussions with Hubwest with a view to finalise costs quickly on a basis which recognises the cost of delay.

The Deputy Director of Health Finance at Scottish Government has agreed that the following cost amendments can be considered a pre-agreed amendment to the FBC for Inverclyde Care Home:-

1. An inflationary uplift using BCIS TPI to project funding between the quarter in which the Stage 2 price was held to and Q1 2016. This timescale reflects the expectation that projects will now proceed swiftly to Financial Close.
2. Additional transaction costs in the hub company and supply chain of £50K.
3. Additional revenue support to enable any Board capital contribution to be removed.

The actual additional funding will be capped at the level of additional costs which the Board deems to be necessary, legitimate and representing demonstrable value for money.

On that basis the Board are working with Hubwest to finalise the pricing update for the Inverclyde Care Home project by 18th December 2015 and to reach Financial Close on the 29th January 2016.

To enable this to be achieved both amended SHA and TPA documents will need to be agreed to and signed off by the Board prior to Financial Close. Draft copies of both documents together with SFT guidance are attached. Final copies (with minor amendments to the drafts) for signing will be available early in the New Year.

All other Hub projects will now follow in accordance with the revised programme outlined below.

Hub Programme Update.

Eastwood Health & Care Centre and Maryhill Health Centre are both progressing on-site and projected completion dates remain March 2016 and April 2016 respectively. Both projects are currently in delay by 3 weeks and 4 weeks respectively but hub maintain that current completion dates will be achieved.

Woodside Health & Care Centre and Gorbals Health & Care Centre OBCs were formally approved by Scottish Government on 24th April 2015. A Stage 2 submission was made on 18th November 2015. The submission has been reviewed and a series of workstreams are underway by hWS to address some technical issues, and to provide incomplete information. The target date to return a revised and complete Stage 2 is 18th December 2015. If this is achieved a FBC submission is targeted to come to the Board for 16th February meeting before going to Scottish Government for approval on 15th March 2016, and Financial Close during last week in April 2016.

Inverclyde Adult and Older People Continuing Care Beds project was delayed whilst a solution to the ESA 10 accounting issue was resolved. The project is now moving towards Financial Close. Hub are updating pricing which expired during the delay period and are targeting refreshed pricing, by 18th December 2015. Increased pricing related to the ESA 10 matter is being underwritten by Scottish Government, within specified inflationary indexes. The current target is to reach Financial Close by 29th January 2016, and commence work on site during March 2016.

Lennoxtown Community hub is being procured by East Dunbartonshire Council through the hub programme. The accommodation includes 506m2 of NHS accommodation re-providing services currently being delivered from Lennoxtown Clinic, including 2 GP practices. The project is due for completion 29th January 2016, but is currently 3 weeks behind programme.

Greenock Health & Care Centre and Clydebank Health & Care Centre have been the subject of a funding announcement by John Swinney on 24th June 2015. Both project boards have developed Initial Agreements which have been approved locally and are currently in circulation to Board officers. These documents will come to the Board for 16th February meeting before going to Scottish Government for approval on 15th March 2016. A preferred site has been identified for Clydebank at Queens Quay, as part of the regeneration plan. An options appraisal for sites has been carried out at Greenock, but the final preferred site selection has not yet been concluded. A New Project Request is targeted to be released to hub immediately following IA approval by Scottish Government.

	Initial Agreement	Outline Business Case	Full Business Case	Site Start	Completion
Maryhill Health Centre	Nov 2012	Aug 2013	Mar 2014	Dec 2014	April 2016
Eastwood Health & Care Centre	Nov 2012	Aug 2013	Mar 2014	Dec 2014	March 2016
Woodside Health Centre	Dec 2012	Feb 2015	March 2016	June 2016	Nov 2017
Gorbals Health & Care Centre	Dec 2012	Feb 2015	March 2016	June 2016	Dec 2017
Inverclyde Continuing Care Beds	Mar 2013	Mar 2014	Aug 2015	March 2016	July 2016
Lennoxtown Community hub				March 2015	Jan 2016
Greenock Health & Care Centre	March 2016	Nov 2016	Oct 2017	March 2018	July 2019
Clydebank Health & Care Centre	March 2016	Nov 2016	Oct 2017	March 2018	July 2019

Anthony Curran

Head of Capital Planning & Procurement 10/12/15

Commercial in Confidence

**Briefing for hub territories:
Revised structure for
Design Build Finance & Maintain Projects**

June 2015

**SCOTTISH
FUTURES
TRUST**

Briefing for hub territories:

Revised structure for Design Build Finance & Maintain Projects

CONTENTS

1. Introduction	3
2. Overview of the revised hub DBFM delivery structure	4
2.1. Establishing a DBFM Co.....	4
2.2. The charity	6
2.3. Capital contributions.....	7
3. Implementation	9
3.1. Consents and amendments to hub documentation.....	9
3.2. Way forward for immediate projects	9
3.3. Way forward for future projects.....	10
3.4. Procurement – VEAT Notices	10
4. Reasoning for Changes	11
Annex 1: Pinsent Masons Advice.....	12
Annex 2: Revised Standard Form DBFM Agreement.....	13
Annex 3: Standard Form DBFM Co Articles of Association	14

1. Introduction

Changes need to be made to the structure for delivering hub Design, Build, Finance and Maintain (“DBFM”) projects in order to reinforce the classification of those projects to the private sector for national accounts purposes under European System of Accounts 2010 (“ESA10”) rules and the accompanying Manual of Government Deficit and Debt 2014 (“MGDD”). A new hub DBFM delivery structure has been approved by Scottish Ministers and must be applied to all hub DBFM projects signed since the introduction of ESA10 (i.e. since 1 September 2014).

This briefing paper contains an overview of the new hub DBFM delivery structure (section 2) and the process for its implementation (section 3).

Until the new delivery structure is fully established, hub DBFM deals that are in a position to reach financial close will be able to do so under the existing hub DBFM delivery structure, on the understanding that they will transfer into the new structure once that is established. The transfer process is explained in section 3.

SFT has appointed Pinsent Masons LLP to advise on and prepare the legal documentation required to support the new DBFM delivery structure and to advise on the procurement law implications of making these structural changes. Pinsent Masons have produced advice on the changes, on which all public sector hub participants are entitled to rely (see annex 1).

It is important to note that the structural changes do not affect the joint venture arrangements at a hubco level. Each hubco will remain 60% private and 40% public (i.e. 30% public sector participants and 10% SFT) and the public sector will retain the board representation and involvement in the management and direction of hubco's affairs (including certain rights of veto) that have been at the heart of the hubco model from the outset. The changes will have no impact on the delivery of DBDA projects or other hubco partnering services (including hubco's development work in relation to DBFM projects) under the Territory Partnering Agreement.

2. Overview of the revised hub DBFM delivery structure

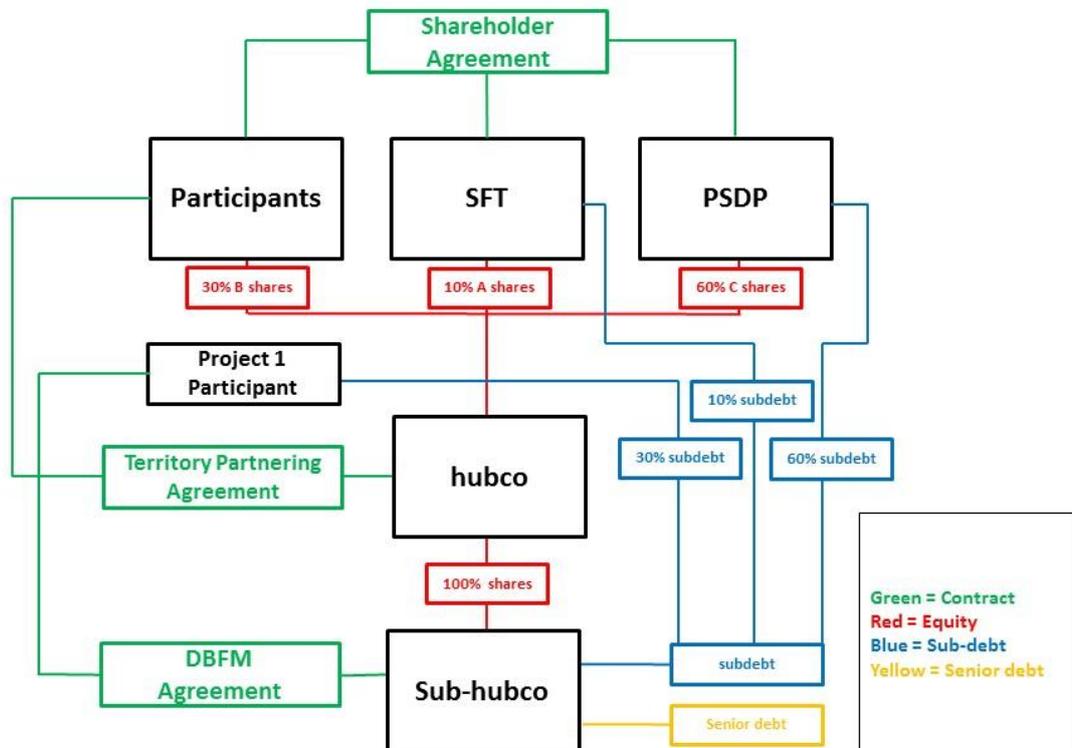
2.1. Establishing a DBFM Co

Maintaining the integrity of the hubco joint venture is important in light of the terms of the original hub procurements and the fact that the business of a hubco is wider than the delivery of DBFM projects. The changes are therefore limited to the structure for delivering hub DBFM projects.

At a high level, the revision changes the special purpose company established to deliver each DBFM project from being a 100% owned subsidiary of hubCo to being directly owned 60% by the private sector development partner, 10% by the procuring participant, 10% by SFT and 20% by a newly established hub charity. The reasoning behind the changes is set out in section 4 and the structure is described in more detail below.

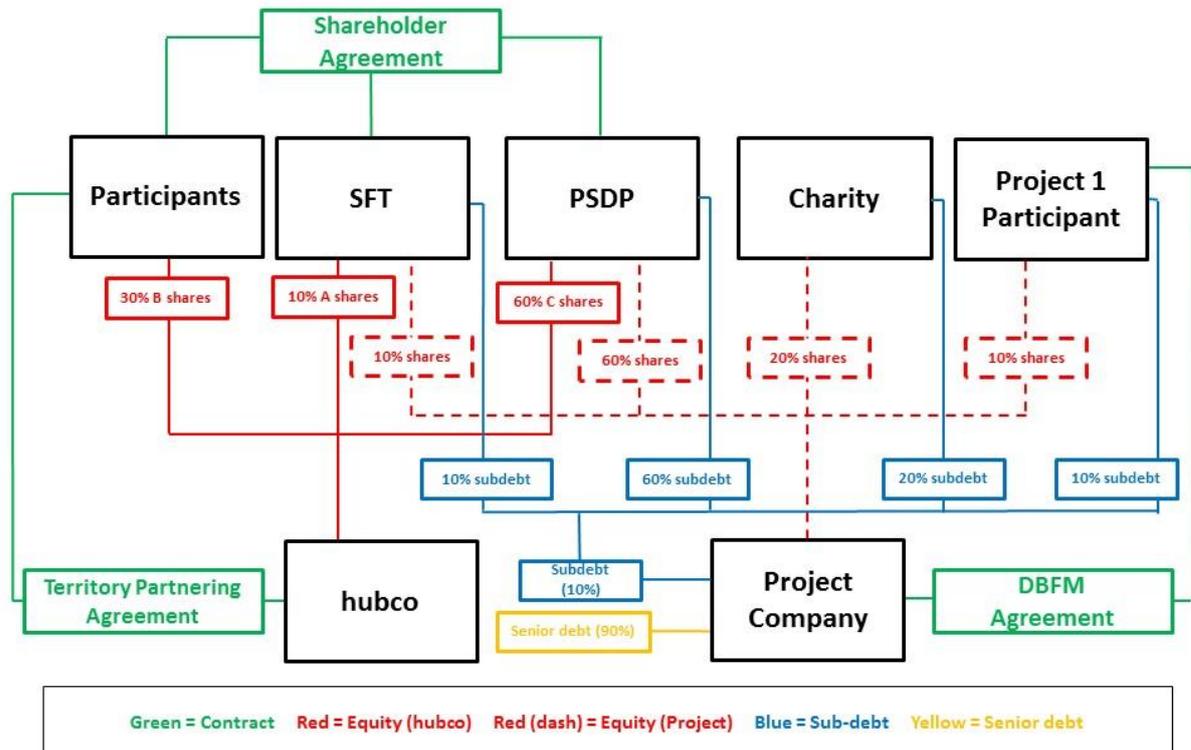
The existing hub DBFM delivery structure, in which a procuring participant will contract with a wholly-owned hubco subsidiary ("Sub-hubco") is set out in the following diagram:

hub structure - current



This will be replaced with a revised delivery structure as illustrated in the following diagram:

hub structure – ESA10 revision



Under the revised structure the procuring participant for a DBFM project will contract with a company that sits outside of the hubco corporate structure (a "DBFM Co") rather than with a Sub-hubco.

The DBFM Co will be owned 60% by the private sector development partner in the hub territory (PSDP), 20% by a newly-formed private sector charity (HCF - see section 2.2 below), 10% by SFT and 10% by the procuring participant.

Shares in the DBFM Co will be divided into the following classes - "A shares" held by SFT, "B shares" held by the procuring participant and the charity and "C shares" held by the PSDP.

A majority (most likely to be 3) of the DBFM Co directors will be appointed by the PSDP and so the board will be under private sector control.

The shareholders will have the right to invest subordinated debt in proportion to their % shareholdings (i.e. 60% PSDP, 20% charity, 10% procuring participant, 10% SFT).

The structure of the DBFM Co will be enshrined in its articles of association. Standard form DBFM Co articles of association have been produced and these will be mandatory across the hub programme (see annex 2).

2.2. The charity

A charity will be formed (referred to here as the “Hub Community Foundation” or “HCF”) to assist in and enhance the delivery of the wider community benefits that are connected with the activities of the hub programme. As set out below, the charity will be independently established and governed, what follows is a most likely description of it and its activities.

Charitable Purposes & Public Benefit

HCF’s purposes will be the advancement of education, the advancement of health, the provision of recreational facilities and the relief of those in need. It is anticipated that it will further these ends through:

- investing in projects that provide new facilities for delivering education, healthcare and other community services (including taking equity and subordinated debt in DBFM Cos formed to design, build, finance and maintain projects through the hub programme); and
- supporting other charitable organisations and initiatives (e.g. apprenticeship schemes or third sector community service providers) with income it receives from its DBFM Co investments and other sources (see below).

It will be for HCF’s board of trustees to determine the causes that HCF will support and therefore the public benefit that HCF will deliver.

Governance, Trustees and Membership

HCF will be established as a Scottish Charitable Incorporated Organisation (SCIO). Its board of trustees will comprise:

- 1 trustee appointed by SFT
- 1 trustee appointed by the 5 hub private sector development partners (“PSDPs”)
- a majority (3 to 5) of trustees who have an interest in the hub programme and its objectives but are independent of the public sector and the 5 PSDPs.

HCF’s members will be the SFT, the 5 PSDPs and the independent trustees.

Funding

In the short term, funding for HCF's initial set-up, operating costs¹ and initial share capital investments in DBFM projects² will come from a membership subscription of £10,000 (to be agreed) from each of the 5 PSDPs and SFT. HCF is unlikely to have sufficient funds in the short term to take up its entitlement to 20% of the subordinated debt on each hub DBFM project. The right to invest is a valuable asset in itself which HCF may be able to use to generate income from the outset, and in the future it may find a way of being able to invest itself.

In the medium to long-term, HCF's income is expected to include:

- Dividends paid on share capital that HCF holds in the DBFM Cos. These are expected to be irregular distributions and towards the end of the life of projects.
- Interest on subordinated debt investments that HCF makes in DBFM Cos. These are expected to be regular annual distributions from the point of construction completion onwards.
- Fees received in return for passing on subordinated debt investment opportunities.
- Income from any subordinated debt investments that HCF sells on the secondary investment market.
- Donations that PSDPs, SFT and Participants may choose to make as part of their community benefits or wider corporate social responsibility programmes.

Early modelling indicates that once in a "steady state" HCF could credibly be in a position to generate funds in the order of £50,000 annually to apply towards its charitable purposes.

SFT has taken early steps to consider the structure of the charity and further discussion with OSCR will now be pursued to allow its establishment.

2.3. Capital contributions

Under the revised hub DBFM structure there will be **no public sector capital contributions** (see Section 4).

Health Boards which had planned to make capital contributions to projects should discuss the revised arrangements with SFT and SGHSCD.

Local Authorities which had planned to make capital contributions to either projects undertaken with health partners or schools projects will not be able to do so. The project cost will be financed by hubco and the Local Authority will have to make an increased contribution to unitary charge payments in respect of the element of the capital cost it

¹ In the short-term, operating costs will be low (in the order of £10,000) if, as expected, HCF does not employ any staff and trustees are unpaid. Trustees are likely to meet twice a year.

² As equity in hub DBFMs is typically "pin-point" (e.g. in the order of £100 per project) HCF would only require funds in the tens or low hundreds of pounds for share subscriptions in early projects.

was intending to contribute. The “no-better-no-worse” principle of the overall funding of schools through DBFM arrangements will apply and Local Authorities will not be expected to contribute additional financing costs above those they would have incurred had the capital contributions been supported by PWLB borrowing. Advance payment of design / development fees prior to financial close is not affected by this change. Detailed funding arrangements supporting this principle can be discussed with the SFT schools team.

3. Implementation

3.1. Consents and amendments to hub documentation

Consents and amendments to the hub Shareholder Agreements and Territory Partnering Agreements are required to enable procuring Participants to enter into DBFM agreements with DBFM Cos rather than (as currently envisaged in the documentation) only with wholly-owned subsidiaries of the hubcos (Sub-hubcos).

Pinsent Masons have produced the documentation for these changes in each territory and the changes are explained in their advice note.

SFT and the hub Territory Programme Directors will work with individual participants and hubcos to ascertain the governance processes that each participant and private sector partners will need to follow in order to approve and sign the required documentation.

In parallel with this, the set-up of HCF will be progressed with OSCR.

3.2. Way forward for immediate projects

Projects that are ready to reach financial close before the TPA and SHA amendments have been formally documented and HCF established, will be able to proceed under the existing DBFM delivery structure, but on the understanding that they will transfer into the new structure once that is established.

For these projects, the procuring participant will enter into a DBFM agreement with a wholly-owned hubco subsidiary (a Sub-hubco), however the structure of the deal will otherwise be aligned as closely as possible to the revised structure so that the transfer into the revised structure can be made as easily as possible:

- projects will sign up to the new standard form DBFM agreement (with DBFM Co rather than Sub-hubco terminology)
- there will be no public sector capital contributions
- the DBFM Co will in the short term be a wholly-owned hubco subsidiary
- the public sector's subordinated debt will be taken up by SFT (10%) and the procuring participant (10%).
- the PSDP will take up its 60% share of subordinated debt and will have the right to take up the remaining 20%.

Once the charity is established, hubco will sell its equity in the DBFM Co to the PSDP (60%), charity (20%), procuring participant (10%) and SFT (10%). This transfer process is in fact provided for in the current hub documentation and will consents under the Shareholders and Territory Partnering Agreements.

Deals that have already signed since the introduction of ESA10 (i.e. since 1 September 2014) will also be transferred into the revised structure. For these projects, this will

involve a restructuring of both the equity and subordinated debt investments and details will be discussed with the individual projects.

3.3. Way forward for future projects

Once the Shareholder Agreement and Territory Partnering Agreement changes have been documented and HCF established, DBFM projects will proceed to financial close under the revised DBFM delivery structure.

3.4. Procurement – VEAT Notices

Pinsent Masons recommend that each territory publish a Voluntary Ex Ante Transparency Notice ("VEAT Notice") in the Official Journal of the European Union, advising the market of the intention to change the hub DBFM delivery structure and, in doing so, mitigating the risk of any procurement challenge. The VEAT Notices will not describe the changes in detail and of themselves will neither change the structure nor commit any party to agree to change the structure. The sooner the VEAT Notices are published, however, the sooner hub DBFM projects will be able to move forward. VEAT Notices have therefore been prepared and will be issued by SFT on behalf of each hub Territory Programme Board immediately.

Technically the immediate hub DBFM projects will be signed under the existing structure and later transferred (as is allowed for under the existing structure) and they are therefore not within the scope of the "change". Given that the VEAT notice adds market transparency and clarifies the position for the whole programme going forward, however, it is anticipated that these projects will wait until expiry of the 10-day VEAT period before signing.

4. Reasoning for Changes

Private classification of DBFM projects for national accounts purposes is required for Scottish Government to support projects from long-term revenue budgets rather than capital budgets as they are constructed.

The rules under which the national accounts are compiled are set in Europe by Eurostat. Under their revised ESA10 rules and supporting Manual for Government Deficit and Debt (MGDD), changes have been made to the rules applicable to the classification of projects delivered under public private partnership structures such as hub DBFM.

In order to reinforce the required private classification under the revised rules, SFT has identified that:

- a) any perception of public sector control over the delivery company (the Sub-hubco under the existing structure) must be avoided. This is achieved through the restructuring of that company as a stand-alone DBFM Co.
- b) public sector financing of projects whether through subordinated debt or capital contributions must be limited in order to maintain clarity of risk-transfer to the private sector delivery partner. To implement this:
 - i. the complete removal of any capital contribution to projects through the construction phase, or on construction completion is the cleanest approach and will be adopted across the programme;
 - ii. subordinated debt investment will align with the shareholding in the revised structure. SFT will hold 10% and the procuring Participant 10%. The PSDP will hold 60% and the charity will have rights to 20%. The PSDP will have the opportunity to take up any of the 20% allocated to the charity which it does not take up.

Annex 1: Pinsent Masons Advice

(Refer to separate document)

Annex 2: Revised Standard Form DBFM Agreement

(Refer to separate document – to follow)

Annex 3: Standard Form DBFM Co Articles of Association

(Refer to separate document)

(1) **SCOTTISH FUTURES TRUST INVESTMENTS LIMITED**

(2) **THE PARTICIPANTS**

(3) **WELLSPRING PARTNERSHIP LIMITED**

(4) **HUB WEST SCOTLAND LIMITED**

(5) **MORGAN SINDALL INVESTMENTS LIMITED**

**hub WEST TERRITORY – AMENDMENT TO SHAREHOLDERS
AGREEMENT**



CONTENTS

Clause		Page
1	DEFINITIONS, INTERPRETATION AND CONSTRUCTION	1
2	AMENDMENTS	1
3	CONSENT	2
4	GENERAL	2
5	GOVERNING LAW AND JURISDICTION	3

AGREEMENT AMONG:

- (1) **SCOTTISH FUTURES TRUST INVESTMENTS LIMITED** a company incorporated in Scotland (with registered number SC381388) and having its registered office at 1st Floor, 11-15 Thistle Street, Edinburgh EH2 1DF ("**SFT**");
- (2) **THOSE PARTIES** whose names and addresses are set out in Columns 1 and 2 of Schedule Part 1 (collectively the "**Participants**");
- (3) **WELLSPRING PARTNERSHIP LIMITED** a company incorporated in Scotland (with registered number SC422297) and having its registered office at c/o Anderson Strathern, 1 Rutland Court, Edinburgh, EH3 8EY (the "**PSDP**");
- (4) **HUB WEST SCOTLAND LIMITED**, a company incorporated in Scotland (with registered number SC381561), and having its registered office at Suite 7/3, Skypark 1, 8 Elliot Place, Glasgow, G3 8EP (the "**Company**"); and
- (5) **MORGAN SINDALL INVESTMENTS LIMITED**, a company incorporated in England (with registered number 02544711), and having its registered office at Kent House, 14-17 Market Place, London W1W 8AJ ("**MSIL**").

WHEREAS:

- (A) This Agreement is supplemental to the shareholders agreement dated [REDACTED] made between SFT, the PSDP, the Company, MSIL and certain of the Participants (the "**Shareholders Agreement**").
- (B) It has been further agreed between the Parties that certain consents are to be provided pursuant to the Shareholders Agreement and that certain changes are to be made to the Shareholders Agreement and accordingly the Parties have agreed to document such consent and to amend the provisions of the Shareholders Agreement as set out in this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

- 1.1 Capitalised words and phrases in this Agreement which are not defined herein shall, where the context permits or requires, bear the meaning given to such word or phrase under the Shareholders Agreement.
- 1.2 This Agreement shall be interpreted according to the provisions of clause 1.2 to 1.20 of the Shareholders Agreement, which shall apply mutatis mutandis, unless the context requires a different meaning.

2. AMENDMENTS

- 2.1 With effect on and from the date on which this Agreement has been executed by each of the Parties, the provisions of the Shareholders Agreement shall be amended by inserting a new Clause 12.6 as follows:

"12.6 *Without prejudice to Clause 6.2, the nomination by the Company of a Project Service Provider (as defined in the TPA) which is a subsidiary of the C Shareholder, in accordance with clause 9.2 of the TPA shall not be deemed to be a matter requiring approval pursuant to Clause 12.2 where such proposal is consistent with the Business Plan and the applicable approved Stage 2 Submission.*"

3. **CONSENT**

3.1 By their execution hereof, each of the A Shareholder, the B Shareholders and the C Shareholder irrevocably and unconditionally confirm their consent and agreement to the Company's entry into an amendment agreement to the territory partnering agreement to which it is party dated [REDACTED] (the "**Territory Partnering Agreement**") in the form set out in the Schedule Part 2 hereto (the "**TPA Amendment Agreement**").¹

4. **GENERAL**

4.1 The provisions of clause 19, 21, 22, 24 to 31 of the Shareholders Agreement shall apply mutatis mutandis to this Agreement.

¹ hubco may wish to clarify its Business Plan on or around the date of this agreement to provide for the nomination of PSDP subsidiaries (and this is advised given the wording of new clause 12.6 SHA). If this is to be done, the necessary Clause 12 consent can be included here.

5. **GOVERNING LAW AND JURISDICTION**

- 5.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Scotland.
- 5.2 The Parties hereby submit to the exclusive jurisdiction of the Scottish courts in relation to any dispute or claim arising out of or in connection with this Agreement or in relation to its existence or validity (including non-contractual disputes or claims).
- 5.3 Each Party irrevocably waives any objection which it might at any time have to the Scottish courts being nominated as the forum to hear and determine any proceedings raised in relation to any dispute or claim and to settle any disputes or claims and agrees not to claim that the Scottish courts are not a convenient or appropriate forum.

IN WITNESS WHEREOF these presents consisting of this and the preceding [3] pages together with the Schedule are executed as follows:

SUBSCRIBED for and on behalf of the said Scottish Futures Trust Investments Limited at

on the day of 2015 by:

Authorised Signatory Full Name

before this witness Witness
 Full Name
 Address

SUBSCRIBED for and on behalf of the said East Dunbartonshire Council at

on the day of 2015 by:

Director/Authorised Signatory Full Name

before this witness Witness
 Full Name
 Address

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING AGREEMENT AMONG SCOTTISH FUTURES TRUST INVESTMENTS LIMITED, EAST DUNBARTONSHIRE COUNCIL, EAST RENFREWSHIRE COUNCIL, WEST DUNBARTONSHIRE COUNCIL, GREATER GLASGOW HEALTH BOARD, CLYDEBANK PROPERTY COMPANY LIMITED, GLASGOW CITY COUNCIL, INVERCLYDE COUNCIL, THE SCOTTISH POLICE AUTHORITY, THE SCOTTISH FIRE AND RESCUE SERVICE, WELLSRING PARTNERSHIP LIMITED, HUB WEST SCOTLAND LIMITED AND MORGAN SINDALL INVESTMENTS LIMITED

SCHEDULE PART 1 - Details of the Participants

Name:	Address:
East Dunbartonshire Council	Tom Johnston House Civic Way Kirkintilloch G66 4TJ
East Renfrewshire Council	Rouken Glen Road Giffnock G46 6UG
West Dunbartonshire Council	Garshake Road Dumbarton G82 3PU
Greater Glasgow Health Board	J B Russell House Gartnavel Royal Hospital Campus 1055 Great Western Road Glasgow G12 0XH
Clydebank Property Company Limited	Titan Enterprise Centre 1 Aurora Avenue Clydebank G81 1BF
Glasgow City Council	City Chambers, George Square, Glasgow, G2 1DU
Inverclyde Council	Municipal Buildings, Greenock, PA15 1LY
The Scottish Police Authority	<i>Address tbc</i>
The Scottish Fire and Rescue Service	<i>Address tbc</i>

SCHEDULE PART 2 – TPA Amendment Agreement

- (1) HUB WEST SCOTLAND LIMITED
- (2) EAST DUNBARTONSHIRE COUNCIL
- (3) RENFREWSHIRE COUNCIL
- (4) WEST DUNBARTONSHIRE COUNCIL
- (5) EAST RENFREWSHIRE COUNCIL
- (6) GREATER GLASGOW HEALTH BOARD
- (7) GLASGOW SCHOOL OF ART
- (8) CITY OF GLASGOW COLLEGE
- (9) CLYDE GATEWAY URC
- (10) ELDERPARK HOUSING ASSOCIATION LIMITED
- (11) THE GLASGOW HOUSING ASSOCIATION LIMITED
- (12) SCOTTISH AMBULANCE SERVICE
- (13) CLYDEBANK PROPERTY COMPANY LIMITED
- (14) CLYDE GATEWAY DEVELOPMENTS LIMITED
- (15) GLASGOW CITY COUNCIL
- (16) INVERCLYDE COUNCIL
- (17) THE SCOTTISH POLICE AUTHORITY
- (18) THE SCOTTISH FIRE AND RESCUE SERVICE

**hub WEST TERRITORY – AMENDMENT TO TERRITORY PARTNERING
AGREEMENT**



CONTENTS

Clause		Page
1	DEFINITIONS, INTERPRETATION AND CONSTRUCTION	2
2	AMENDMENTS	2
3	GENERAL	6
4	GOVERNING LAW AND JURISDICTION	6

AGREEMENT AMONG:

- (1) **HUB WEST SCOTLAND LIMITED**, a company registered in Scotland (Company Registration Number **SC381561**) whose registered office is at Suite 7/3, Skypark 1, 8 Elliot Place, Glasgow, G3 8EP ("**hubco**");
- (2) **EAST DUNBARTONSHIRE COUNCIL**, constituted in terms of the Local Government etc. (Scotland) Act 1994 and having its headquarters at Tom Johnston House, Civic Way, Kirkintilloch, G66 4TJ;
- (3) **RENFREWSHIRE COUNCIL**, constituted under the Local Government etc. (Scotland) Act 1994 and having its headquarters at Renfrewshire House, Cotton Street, Paisley, PA1 1UJ;
- (4) **WEST DUNBARTONSHIRE COUNCIL**, constituted in terms of the Local Government etc. (Scotland) Act 1994 and having its headquarters at Garshake Road, Dumbarton, G82 3PU;
- (5) **EAST RENFREWSHIRE COUNCIL**, constituted in terms of the Local Government etc. (Scotland) Act 1994 and having its headquarters at Eastwood Park, Rouken Glen Road, Giffnock, G46 6UG;
- (6) **GREATER GLASGOW HEALTH BOARD**, constituted under the National Health Service (Constitution of Health Boards) (Scotland) Order 1974/267 and having its headquarters at JB Russell House, Gartnavel Royal Hospital, 1055 Great Western Road, Glasgow. G12 0XH;
- (7) **GLASGOW SCHOOL OF ART**, a company limited by guarantee and incorporated under the Companies Acts (Company Number SC002271) and having its registered office at 167 Renfrew Street, Glasgow, G3 6RQ;
- (8) **THE BOARD OF MANAGEMENT OF GLASGOW METROPOLITAN COLLEGE**, known as **CITY OF GLASGOW COLLEGE**, a body corporate established under the Further and Higher Education (Scotland) Act 1992 with registered charity number SC036198 whose principal office is at 60 North Hanover Street, Glasgow, G1 2BP;
- (9) **CLYDE GATEWAY URC**, a company limited by guarantee and registered under the Companies Acts (Company Number SC335599) and being a registered charity whose registered office is at 11 Bridgeton Cross, Glasgow G40 1BN;
- (10) **ELDERPARK HOUSING ASSOCIATION LIMITED**, registered under the Industrial and Provident Societies Acts (Registered Number SP1840R(S) and having its principal office at 31 Garmouth Street, Glasgow, G51 3PR;
- (11) **THE GLASGOW HOUSING ASSOCIATION LIMITED**, registered under the Industrial and Provident Societies Acts (Registered Number SP2572R(S) and having its principal office at Granite House, 177 Trongate, Glasgow, G1 5HF (who and whose permitted assignees, transferees and successors are hereunder and hereinafter referred to as "**GHA**");
- (12) **SCOTTISH AMBULANCE SERVICE**, constituted in terms of the Scottish Ambulance Service Board Order 1999/686 and having its headquarters at 1 South Gyle Crescent, Edinburgh, EH12 9EB;
- (13) **CLYDEBANK PROPERTY COMPANY LIMITED**, a company incorporated under the Companies Acts (Company Number SC276873) whose registered office is at Titan Enterprise Centre, 1 Aurora Avenue, Queen's Quay, Clydebank, G81 1BF;
- (14) **CLYDE GATEWAY DEVELOPMENTS LIMITED**, a company registered under the Companies Acts (Company Number SC335662) whose registered office is at 11 Bridgeton Cross, Glasgow G40 1BN;
- (15) **GLASGOW CITY COUNCIL**, constituted in terms of the Local Government etc. (Scotland) Act 1994 and having its headquarters at City Chambers, George Square, Glasgow, G2 1DU;
- (16) **INVERCLYDE COUNCIL**, constituted in terms of the Local Government etc. (Scotland) Act 1994 and having its headquarters at Municipal Buildings, Greenock, PA15 1LY;

(17) **THE SCOTTISH POLICE AUTHORITY**, constituted under the Police and Fire Reform (Scotland) Act 2012 of [tbc]; and

(18) **THE SCOTTISH FIRE AND RESCUE SERVICE**, constituted under the Police and Fire Reform (Scotland) Act 2012 of [tbc].

WHEREAS:

- (A) This Agreement is supplemental to the territory partnering agreement dated 26 April 2012, 27 April 2012 and 1 May 2012 made between hubco and the Participants (as defined therein) (such territory partnering agreement as supplemented by an Accession Agreement dated 26, 27 and 28 March 2013 between hubco, the Continuing Participants (as defined therein) and Strathclyde Joint Police Board, further supplemented by an Accession Agreement dated various dates in April and June 2013 between hubco, the Continuing Participants (as defined therein) and Glasgow City Council, and an Accession Agreement dated various dates in April and June 2013 between hubco, the Continuing Participants (as defined therein) and Inverclyde Council, and varied by a Minute of Variation dated 6 January 2015 between hubco and the Participants (as defined therein)) (the "**Territory Partnering Agreement**").
- (B) The Scottish Police Authority is a party to this agreement as statutory successor to Strathclyde Joint Police Board following its establishment under the Police and Fire Reform (Scotland) Act 2012, in accordance with clause 27.1 of the Territory Partnering Agreement.
- (C) The Scottish Fire and Rescue Service is a party to this agreement as statutory successor to Strathclyde Fire Board following its establishment under the Police and Fire Reform (Scotland) Act 2012, in accordance with clause 27.1 of the Territory Partnering Agreement. **[Note for SFT: assumes no need for deed of accession for SPA/SFRS]**
- (D) It has been further agreed between the Parties that certain changes are to be made to the Territory Partnering Agreement and accordingly the Parties have agreed to amend the provisions of the Territory Partnering Agreement as set out in this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

- 1.1 Capitalised words and phrases in this Agreement which are not defined herein shall, where the context permits or requires, bear the meaning given to such word or phrase under the Territory Partnering Agreement.
- 1.2 In this Agreement:
 - 1.2.1 "**New Participants**" means the Scottish Police Authority and the Scottish Fire and Rescue Service;
 - 1.2.2 "**Participants**" means the parties to this Agreement other than hubco;
 - 1.2.3 "**Succeeded Participants**" means each and any of Strathclyde Joint Police Board and Strathclyde Fire Board.
- 1.3 This Agreement shall be interpreted according to the provisions of clause 1 of the Territory Partnering Agreement, which shall apply mutatis mutandis, unless the context requires a different meaning.

2. AMENDMENTS

- 2.1 With effect on and from the date on which this Agreement has been executed by each of the Parties, the provisions of the Territory Partnering Agreement shall be amended as follows:
 - 2.1.1 delete clause 5.2 and replace with the following:

- "5.2 *hubco shall not take or permit to be taken any action which would result in a loss of control (direct or indirect) by hubco of any Subsidiary of hubco which is a Project Service Provider without the approval of the TPB. If, subject to Clause 5.5 hubco or any Subsidiary of hubco proposes to sell, transfer or otherwise dispose of any interest in share capital which would result in a loss of control by hubco of any Subsidiary of hubco which is a Project Service Provider, hubco shall notify the TPB in writing of its intention (or the intention of its Subsidiary) and such notification shall be accompanied by proposals setting out how, if the proposed transaction were to proceed, the relevant Project Agreement Counterparties' rights under the relevant Project Agreement(s), together with the wider protection afforded the Project Agreement Counterparties as a consequence of the inter-relation between that Project Agreement, the Shareholders Agreement and this Agreement, would or could be preserved or enhanced.*";
- 2.1.2 in clause 5.5 insert the words "*Subsidiary of hubco which is a*" before "*Project Service Provider*" where they first appear;
- 2.1.3 delete clause 7.3 and replace with the following:
- "7.3 *hubco and each Participant will work together to ensure that existing service providers to the Participant and the employees of those service providers are treated fairly as a consequence of the operation of this Agreement and, without prejudice to the operation of Law and the requirements of Clause 19 (Transfer of Employment), hubco shall endeavour, where it is practicable and consistent with achieving the Participant's requirements from time to time, to employ or procure employment by a Project Service Provider of those individuals engaged in carrying out activities for the benefit of that Participant for which hubco or any Project Service Provider under a Project Agreement subsequently becomes responsible under this Agreement or any Project Agreement.*";
- 2.1.4 clause 9.2 shall be deleted and replaced with the following:
- "9.2 *Subject to Clauses 9.3, 9.6, 9.7, 23.3 and 23.10 and the provisions of Schedule Part 5 (Approval Process for New Projects), hubco shall have the sole, exclusive right for a period of ten (10) years from the Commencement Date to provide itself or nominate its wholly owned Subsidiaries or Subsidiaries of the PSDP to provide Project Services to each of the Participants in relation to those Qualifying Projects that become Approved Projects within such ten (10) year period and each Participant shall ensure that, subject to the terms of this Agreement, they contract with hubco or its nominees as aforesaid under a Project Agreement for the provision of Project Services in relation to all such Qualifying Projects which become Approved Projects, in each case on the terms and subject to the conditions of this Agreement.*";
- 2.1.5 clause 23.1.1 shall be deleted and replaced with the following:
- "23.1.1 *the occurrence of any hubco Event of Default or, as the case may be, DBFM Co Event of Default or Sub-hubco Event of Default, in each case as defined in the relevant Project Agreement (other than one resulting from an Insolvency Event (or equivalent event under the relevant Project Agreement) in relation to the Project Service Provider, but including for this purpose any right of the Project Agreement Counterparty to terminate as a result of a "Prohibited Act" as defined in the relevant Project Agreement) in respect of one or more Project Agreements provided that, where the event in question is one which is capable of remedy in terms of the applicable Project Agreement, such event shall comprise a hubco Event of Default:*
- (a) *at the instance of any Participant who is a Project Agreement Counterparty or is otherwise directly affected by such event by virtue*

of an interest or involvement in the relevant Facilities, on its occurrence; and

(b) at the instance of any other Participant, on the expiry of any remedy period permitted under the applicable Project Agreement without it being remedied;"

2.1.6 clause 34.2 shall be deleted and replaced with the following:

"34.2 hubco confirms that it has not applied and, save in implementation of the TDP, has no intention (as at the date of execution of this Agreement) of applying for any Government or European Union grants or funding or any other public funds or guarantees for the purpose of performing its obligations (or those of its subsidiaries or other Project Service Providers) under this Agreement or any Project Agreement. If hubco (or any of its subsidiaries or any other Project Service Providers) is or becomes entitled to apply for any such grants or funding in relation to the carrying out of any of the Services it shall obtain consent from the relevant Participant(s) before submitting the relevant application. The consent of the relevant Participant(s) to hubco's (or the relevant subsidiaries' or other Project Service Providers') application may be given on conditions, including a condition that, should hubco (or the relevant subsidiaries or other Project Service Provider) receive any such grant or funding, the payments made by the relevant Participant(s) to hubco (or the relevant subsidiaries or other Project Service Provider, as the case may be) in accordance with this Agreement and/or any Project Agreement will be reduced by the amount of the grant or funding or such lesser amount as the relevant Participant(s) may determine.";

2.1.7 in clause 35.1 delete the words "controlled by hubco";

2.1.8 in schedule part 1, the definitions of the following terms shall be updated to read as follows:

" **"Project Agreement"** means the agreement entered into or to be entered into between a Project Service Provider and the relevant Project Agreement Counterparty or other third party for the provision by the Project Service Provider of Project Services, provided that, following its execution, each such agreement shall cease to be a Project Agreement for purposes of this Agreement in the event that the contracting party thereunder (not being a Project Agreement Counterparty) ceases to be a Project Service Provider in accordance with the terms of the Project Agreement

"Project Agreement Counterparty" means the Relevant Participant(s) who is/are party to a Project Agreement

"Project Service Provider" means any person that is obliged, pursuant to a Project Agreement, to provide the Project Services thereunder and, where not hubco, is a Subsidiary of hubco or of the PSDP ";

2.1.9 delete paragraph 4.2.5 of schedule part 5 and replace with the following:

"4.2.5 whether the New Project requires the transfer of properties by Participant(s) to hubco, to a Project Service Provider or to a wholly owned subsidiary of hubco and, if so, proposed terms for such transfer and details of the extent of any agreement reached with such Participant(s);";

2.1.10 delete "and" at the end of paragraph 4.2.15 of schedule part 5, insert "; and" in place of the comma at the end of paragraph 4.2.16 of schedule part 5 and insert a new paragraph 4.2.17 of schedule part 5 as follows:

"4.2.17 the proposed corporate structure of the Project Service Provider and, where not hubco, identifying the basis on which such Project Service Provider would be a Subsidiary of the PSDP or of hubco (as applicable) as at the date of execution of the relevant Project Agreement,"

2.1.11 delete "and" at the end of paragraph 5.3.12 of schedule part 5, insert "; and" in place of the full stop at the end of paragraph 5.3.13 of schedule part 5 and insert a new paragraph 5.3.14 of schedule part 5 as follows:

"5.3.14 the confirmed intended corporate structure of the Project Service Provider and where not hubco, confirming that:

(a) such Project Service Provider would be a Subsidiary of the PSDP or of hubco (as applicable) as at the date of execution of the relevant Project Agreement; and

(b) where the Project Service Provider is not to be a Subsidiary of hubco, that:

(i) the Relevant Participant(s) shall be entitled to subscribe (in aggregate) for up to ten (10) per cent of the issued share capital in the Project Service Provider;

(ii) SFT or its nominee shall be entitled to subscribe for up to ten (10) per cent of the issued share capital in the Project Service Provider;

(iii) [hub Community Foundation/an independent charity] has agreed to subscribe for twenty (20) per cent of the issued share capital in the Project Service Provider; and

(iv) the proposed shareholders in the Project Service Provider shall be given the opportunity to provide initial subordinated debt or other shareholder funding to the Project Service Provider on a basis pro-rata to their proposed shareholding and otherwise consistent with the principles set out in the standard form articles of association for Project Service Providers which are not subsidiaries of hubco as are published by the SFT from time to time;"

2.1.12 delete "and" at the end of paragraph 5.4.6 of schedule part 5, insert "; and" in place of the full stop at the end of paragraph 5.4.7 of schedule part 5 and insert a new paragraph 5.4.8 of schedule part 5 as follows:

"5.4.8 that the proposed Project Service Provider, if not hubco or a Subsidiary of hubco, would be a Subsidiary of the PSDP as at the date of execution of the Project Agreement and the confirmation required under paragraph 5.3.14(b) has been properly provided.";

2.1.13 delete paragraph 1.1 of schedule part 12 and replace with the following

"1.1 Subject to the terms of specific Project Agreements, hubco shall be responsible for:

1.1.1 obtaining all Consents which may be required for the performance of the Services;

Director/Authorised Signatory

Full Name

before this witness

Witness

Full Name

Address

SUBSCRIBED for and on behalf of the said Greater Glasgow Health Board at

on the day of 2015 by:

Director/Authorised Signatory

Full Name

before this witness

Witness

Full Name

Address

