

SCHEDULE PART 23

This is the Schedule Part 23 comprising Compensation on Termination referred to in the Project Agreement relating to the design, financing, and construction of, and the provision of services at the Stobhill Local Forensic Psychiatric Unit

between

Greater Glasgow Health Board

and

Stobhill Healthcare Facilities Limited



Schedule 23

Compensation on Termination

Part A

1 Compensation on Termination for the Board Default and Voluntary Termination

1.1 If Project Co terminates the Project Agreement pursuant to Clause 45 (*Board Events of Default*) or the Board terminates the Project Agreement pursuant to Clause 46.2 (*Voluntary Termination*) or the Board exercises its right under Clause 36.22 (*Board election not to reinstate*) the Board shall pay to Project Co the "Board Default Termination Sum" as set out in paragraph 1.2.

1.2 Subject to paragraphs 1.4 to 1.6, the Board Default Termination Sum shall be an amount equal to the aggregate of:

1.2.1 the Base Senior Debt Amount;

1.2.2 Redundancy Payments and Sub-Contractor Losses; and

1.2.3 the amount for which the share capital of Project Co and the Junior Debt could have been sold on an open market basis based on the Relevant Assumptions;

LESS, to the extent it is a positive amount, the aggregate of (without double counting) in relation to the calculation of the Base Senior Debt Amount or the amounts below:

1.2.4 all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any right of Project Co to receive insurance proceeds (save where such insurance proceeds are held in the Insurance Proceeds Account and are to be applied in accordance with Clause 36.19 of the Project Agreement in reinstatement, restoration or replacement or in the case of any third party legal liability or employer's liability, in satisfaction of the claim, demand, proceeding or liability) or sums due and payable from third parties (but only when received from third parties) but excluding any claims under any Sub-Contracts or claims against other third parties which have not been determined or have been determined but not yet paid provided that in such case Project Co shall assign any such rights and claims under the Sub-Contracts or claims against other third parties to the Board and give the Board reasonable assistance in prosecuting such claims;

1.2.5 to the extent realised before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to the Board pursuant to this Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Agreement as at the Termination Date provided that no account should be taken of any liabilities and obligations of Project Co arising out of:

- 1.2.5.1 agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
- 1.2.5.2 agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms; and
- 1.2.6 amounts which the Board is entitled to set off pursuant to Clause 48.12 of this Agreement.
- 1.3 To the extent that such assets and rights referred to in paragraph 1.2.5 above, are not realised and applied by the Invoice Date. Project Co shall on payment of the Board Default Termination Sum, assign such rights to the Board.
- 1.4 If the aggregate of the amounts referred to in paragraphs 1.2.1 and 1.2.3 is less than the Revised Senior Debt Termination Amount, then the Board Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.2.2 provided always that:
- 1.4.1 the amount referred to in paragraph 1.2.2 shall only be paid to the extent that Project Co has demonstrated to the reasonable satisfaction of the Board that the amount will not be applied (in whole or in part) in payment of any Distribution; and
- 1.4.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Losses shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle Project Co to terminate such Sub-Contract.
- 1.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and Project Co has wilfully, or through gross negligence, failed to comply with its obligations under Clause 10.4.4.1 of the Funders' Direct Agreement then in addition to the deduction of the Distribution made pursuant to paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Board shall be entitled to set off the value of that Distribution a second time against the Board Default Termination Sum, provided that the amount of the Board Default Termination Sum shall never be less than the Revised Senior Debt Termination Amount.
- 1.6 If Project Co has wilfully or through gross negligence failed to comply with its obligations under Clause 10.4.4.2 of the Funders' Direct Agreement and there has been an overstatement of the cash balances by Project Co as at that date which has caused the Board to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Part A, then the Board Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Board Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 1.7 The Board Default Termination Sum shall be payable in accordance with Part E of this Schedule Part 23.

Part B

Compensation for Project Co Default

- 1 If the Board terminates the Project Agreement pursuant to Clause 44 (*Project Co Events of Default*) with the exception of termination pursuant of Clause 44.1.11 the Board shall pay to Project Co such sum as is calculated according to this Part B of this Schedule Part 23.

Retendering

2 Retendering Election

- 2.1 The Board shall be entitled to retender the provision of the Project Operations in accordance with paragraph 3 (*Retendering Procedure*) and the provisions of paragraph 3 (*Retendering Procedure*) shall apply if:

- 2.1.1 the Board notifies Project Co on or before the date falling twenty (20) Business Days after the Termination Date ; and

- 2.1.2 there is a Liquid Market and either;

- 2.1.2.1 the Senior Funders have not exercised their rights to step-in under Clause 4 (*Representative*) of the Funders' Direct Agreement; or

- 2.1.2.2 Project Co or the Senior Funders have not procured the transfer of Project Co's rights and liabilities under the Project Agreement to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so;

but otherwise the Board shall require a determination in accordance with paragraph 4 (*No Retendering Procedure*) and the provisions of that paragraph shall apply.

3 Retendering Procedure

- 3.1 The objective of the Tender Process shall be to enter into a New Agreement with a Compliant Tenderer.
- 3.2 The Board shall use all reasonable endeavours to complete the Tender Process as soon as practicable.
- 3.3 The Board shall as soon as reasonably practicable notify Project Co of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process and shall act reasonably in setting such requirements and terms.
- 3.4 Project Co authorises the release of any information by the Board under the Tender Process which would otherwise be prevented under Clause 52 (*Confidentiality*) that is reasonably required as part of the Tender Process.
- 3.5 For all or any part of a month, falling within the period from the Termination Date to the Compensation Date, the Board shall pay to Project Co:

- 3.5.1 the Post Termination Service Amount for each completed month, on or before the date falling ten (10) Business Days after the end of that month; and
- 3.5.2 the Post Termination Service Amount for the period from the end of the last completed month until the Compensation Date, on or before the date falling twenty (20) Business Days after the Compensation Date.
- 3.6 Project Co may, at its own cost, appoint a person to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Senior Funders on the Board's compliance with the Tender Process.
- 3.7 The Tender Process Monitor shall enter into a confidentiality agreement with the Board in a form acceptable to the Board and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to the Board as to compliance with the Tender Process. The Board shall not be bound to consider or act upon such representations but acknowledges that such representations may be put to the Expert in the event of a disagreement as to the Adjusted Highest Compliant Tender Price. The Tender Process Monitor will not disclose confidential information to Project Co or the Senior Funders but shall be entitled to advise Project Co and the Senior Funders on whether it considers that the Board has acted in accordance with the Tender Process and correctly determined the Adjusted Highest Compliant Tender Price.
- 3.8 If any Post Termination Service Amount is less than zero then it may be carried forward and may be set off against any future positive Post Termination Service Amounts.
- 3.9 As soon as practicable after tenders have been received, the Board shall (acting reasonably) review and assess the Compliant Tenders and shall notify Project Co of the Adjusted Highest Compliant Tender Price.
- 3.10 If Project Co refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with Clause 56 (*Dispute Resolution*), the Board shall irrespective of such dispute be entitled to enter into a New Agreement.
- 3.11 The Adjusted Highest Compliant Tender Price shall be paid in accordance with Part E of this Schedule Part 23.
- 3.12 Subject to paragraph 1.6 of Part E and paragraph 3.14 below, if the Board has not paid an amount equal to the Adjusted Highest Compliant Tender Price to Project Co on or before the date falling two years after the Termination Date then the following provisions of this paragraph 3 shall not apply to that termination and the provisions of paragraph 4 (No Retendering Process) shall apply instead.
- 3.13 The Board may elect, at any time prior to the receipt of a Compliant Tender, to follow the no retendering procedure under paragraph 4 (*No Retendering Procedure*) by notifying Project Co that this election has been made.
- 3.14 If the Board has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify Project Co of this decision and pay to Project Co an amount equal to the Adjusted Highest Compliant Tender Price within twenty (20) Business Days of such notification.

4 No Retendering Procedure

- 4.1 Subject to paragraph 4.2, if the provisions of this paragraph 4 (*No Retendering Procedure*) apply Project Co shall not be entitled to receive any Post Termination Service Amount.
- 4.2 If the Board elects to require a determination in accordance with this paragraph 4 (*No Retendering Procedure*) after it has elected to follow the procedure under paragraph 3 (*Retendering Procedure*), then the Board shall continue to pay to Project Co each Post Termination Service Amount until the Compensation Date, in accordance with paragraph 3 (*Retendering Procedure*).
- 4.3 In agreeing or determining the Estimated Fair Value of the Agreement the parties shall be obliged to follow the principles set out below:
- 4.3.1 all forecast amounts of revenues and costs should be calculated in nominated terms of current prices recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Agreement;
- 4.3.2 the total of all payments of the full Service Payments forecast to be made from the Termination Date to the Expiry Date shall be calculated and discounted at the Discount Rate;
- 4.3.3 the total of all costs reasonably forecast to be incurred by the Board as a result of termination shall be calculated and discounted at the Discount Rate and deducted from the payment calculated pursuant to paragraph 4.3.2 above, such costs to include (without double counting):
- 4.3.3.1 a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case as at the Termination Date;
- 4.3.3.2 the costs of providing the Services reasonably forecast to be incurred by the Board from the Termination Date to the Expiry Date to the standard required; and
- 4.3.3.3 any rectification costs required to deliver the Project Operations to the standard required (including any costs reasonably forecast to be incurred by the Board to complete the Works) and additional operating costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs for the purposes of this paragraph) the aggregate of;
- 4.3.3.3.1 any insurance proceeds received (or held in the Insurance Proceeds Account) or which will be received pursuant to insurance policies maintained in accordance with Clause 36 (Insurances); and
- 4.3.3.3.2 amounts payable by the Board in respect of Capital Expenditure under the Project Agreement which have not been paid;

in each case such costs to be forecast at a level that will deliver the Services to the standards required by the Project Agreement.

- 4.4 If the parties cannot agree on the Estimated Fair Value of the Agreement on or before the date falling twenty (20) Business Days after the date on which the Board elected or was obliged to require an expert determination in accordance with this paragraph 4 (*No Retendering Procedure*), then the Estimated Fair Value of the Agreement shall be determined in accordance with Clause 56 (*Dispute Resolution*).
- 4.5 The Adjusted Estimated Fair Value of the Agreement shall be paid in accordance with Part E of this Schedule Part 23.

Part C

1 Consequences of Termination for Force Majeure

- 1.1 If Project Co or the Board terminates the Project Agreement pursuant to Clauses 36.13 or 46.1 (*Non Default Termination or Force Majeure*) the Board shall pay to Project Co the "Force Majeure Termination Sum" as set out in paragraph 1.2.
- 1.2 Subject to paragraphs 1.4 to 1.6 of Part C, the Force Majeure Termination Sum shall be an amount equal to the aggregate of:
 - 1.2.1 the Base Senior Debt Amount;
 - 1.2.2 Redundancy Payments and Sub-Contractor Losses (but excluding therefrom any claims for loss of profit);
 - 1.2.3 an amount equal to the Junior Debt less an amount equal to the aggregate of payments of interest paid on the Junior Debt provided that when such figure is a negative number it shall instead be fixed at zero; and
 - 1.2.4 an amount equal to all amounts paid to Project Co by way of subscription for shares in the capital of Project Co less dividends and other distributions paid to the shareholders of Project Co provided that when such figure is a negative number it shall instead be fixed at zero;

LESS, to the extent it is a positive amount, the aggregate of (without double counting) in relation to the calculation of the Basic Senior Debt Amount or the amounts below:

- 1.2.5 all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any right of Project Co to receive insurance proceeds (save where such insurance proceeds are held in the Insurance Proceeds Account and are to be applied in accordance with Clause 36.19 of the Project Agreement in reinstatement, restoration or replacement or in the case of third party legal liability or employer's liability, in satisfaction of the claim, demand proceeding or liability), or sums due and payable from third parties (but only when received from third parties) but excluding any claims under any Sub-Contracts or claims against other third parties which have not been determined or have been determined but not yet paid provided that in such case Project Co shall assign any such rights and claims under the Sub-Contracts or claims against other third parties to the Board and give the Board reasonable assistance in prosecuting such claims or claims against other third parties; and
- 1.2.6 the market value of any other assets and rights of Project Co (other than those transferred to the Board pursuant to the Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the Project Agreement as at the Termination Date to extent realised before the Invoice Date provided that no account should be taken of any liabilities and obligations of Project Co arising out of:

- 1.2.6.1 agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; and
- 1.2.6.2 agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms; and
- 1.2.7 amounts which the Board is entitled to set off pursuant to Clause 48.12 of the Project Agreement.
- 1.3 To the extent that such assets and rights referred to in paragraph 1.2.5 above are not realised and applied pursuant to that paragraph Project Co shall on payment of the Force Majeure Termination Sum assign the rights and assets to the Board.
- 1.4 If the aggregate of the amounts referred to in paragraphs 1.2.1, 1.2.3 and 1.2.4 is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.2.2 provided always that:
- 1.4.1 the amount referred to in paragraph 1.2.2 shall only be paid to the extent that Project Co has demonstrated to the reasonable satisfaction of the Board that the amount will not be paid (in whole or in part) in payment of any Distribution; and
- 1.4.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Losses shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle Project Co to terminate such Sub-Contract.
- 1.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and Project Co has wilfully, or through gross negligence failed to comply with its obligations under Clause 10.4.4.1 of the Funders' Direct Agreement then in addition to the deduction of the Distribution made pursuant to paragraph (iv) of the definition of Revised Senior Debt Termination Amount, the Board shall be entitled to set off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum shall never be less than the Revised Senior Debt Termination Amount.
- 1.6 If Project Co has wilfully or through gross negligence failed to comply with its obligations under Clause 10.4.4.2 of the Funders' Direct Agreement and there has been an overstatement of the cash balances by Project Co as at that date which has caused the Board to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Part C, then the Force Majeure Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 1.7 The Force Majeure Termination Sum shall be paid in accordance with Part E of this Schedule Part 23.

Part D

Corrupt Gifts and Fraud

1 Consequences of Termination for Corrupt Gifts and Fraud

1.1 If the Board terminates the Project Agreement pursuant to Clause 54.3 (Corrupt Gifts) or Clause 44.1.11 (Refinancing) the Board shall pay to Project Co the "Corrupt Gifts Termination Sum" as set out in paragraph 1.2.

1.2 The Corrupt Gifts Termination Sum shall be:

1.2.1 an amount equal to the Revised Senior Debt Termination Amount;

LESS, to the extent it is a positive number, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):

1.2.2 all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any right to receive insurance proceeds (save where such insurance proceeds are held in the Insurance Proceeds Account and are to be applied in accordance with Clause 36.19 of the Project Agreement reinstatement, restoration or replacement or in the case of third party legal liability or employer's liability, in satisfaction of the claim, demand, proceeding or liability) or sums due and payable from third parties (but only when received from third parties) but excluding any claims under any Sub-Contracts or any claims against other third parties which have not been determined or which have been determined but not paid provided that in such case Project Co shall assign any such rights and claims under the Sub-Contracts or any claims against other third parties to the Board and give the Board reasonable assistance in prosecuting such claims; and

1.2.3 the market value of any other assets and rights of Project Co (other than those transferred to the Board pursuant to the Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the Project Agreement as at the Termination Date to the extent realised before the Invoice Date provided that no account should be taken of any liabilities and obligations of Project Co arising out of:

1.2.3.1 agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; and

1.2.3.2 agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms.

1.3 To the extent that such assets and rights referred to in paragraph 1.2.2 above are not realised and applied pursuant to that paragraph Project Co shall on payment of the Corrupt Gifts Termination Sum assign such assets and rights to the Board.

1.4 The Corrupt Gifts Termination Sum shall be paid in accordance with Part E of this Schedule Part 23.

Part E

General

1 Payment and Interest

Following termination for Board Default, Force Majeure or Corrupt Gifts or Fraud

- 1.1 In respect of the termination payments to be made pursuant to any of Parts A, C or D of this Schedule Part 23, as soon as practicable after, and in any event within twenty (20) Business Days of, the Termination Date Project Co shall give to the Board an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to the Board, justifying the amount of the relevant termination sum including a breakdown of each of the individual elements of such sum.
- 1.2 Subject to paragraph 1.3 below, the Board shall pay to Project Co:
 - 1.2.1 the relevant termination sum within forty (40) Business Days of the Invoice Date; and
 - 1.2.2 interest on the relevant termination sum (or any part of such sum that remains outstanding) from the Termination Date until the date of payment:
 - 1.2.2.1 at the No Default Interest Rate for the period from (but excluding) the Termination Date to (and including) the date which is forty (40) Business Days after the Invoice Date; and
 - 1.2.2.2 thereafter, at the Default Interest Rate.
- 1.3 The Board shall be entitled to pay the Force Majeure Termination Sum in four (4) equal instalments by serving notice on Project Co within thirty (30) Business Days of the Invoice Date, in which case the provisions of paragraph 1.4 shall apply.
- 1.4 In the event that the Board elects to pay the Force Majeure Termination Sum in instalments pursuant to paragraph 1.3 then:
 - 1.4.1 the first such instalment (together with interest therein calculated pursuant to (1.4.2) below) shall be due on the first Business Day occurring six (6) months after the date of the Board's notice served pursuant to 1.3 above and the remaining instalments (together with interest therein calculated pursuant to (1.4.2) below) shall be due, respectively, on the first Business Day occurring twelve (12), eighteen (18) and twenty-four (24) months after the date of such notice; and
 - 1.4.2 the Board shall pay interest on the Force Majeure Termination Sum (or any part of such sum that remains outstanding) from the Termination Date until the date of payment at the No Default Interest Rate.
 - 1.4.3 If the Board fails to make a payment under paragraph 1.4.1 or 1.4.2 above in full within ten (10) Business Days of the due date for payment, or an Adverse Law or a Proposal for an Adverse Law is made then the outstanding amount of the Force

Majeure Termination Sum shall be immediately due and payable and, thereafter, the Board shall pay interest on such sum at the Default Interest Rate.

Following Retendering

1.5 Subject to paragraph 1.6, following a retendering exercise under Part B of this Schedule Part 23 the Board shall pay to Project Co an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling twenty (20) Business Days after the later of:

1.5.1 the date of the New Agreement; and

1.5.2 if Project Co has referred a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution pursuant to paragraph 2.9 of Part B of this Schedule Part 23, the date on which the dispute is finally determined in accordance with Clause 56 (*Dispute Resolution*),

provided that, to avoid doubt, if the dispute referred by Project Co to dispute resolution (pursuant to 1.5.2 above) concerns only a proportion of the Adjusted Highest Compliant Tender Price then the Board shall pay the undisputed proportion of such sum no later than twenty (20) Business Days after the date referred to in 1.5.1 above (the "Undisputed Payment Date") and the Board shall pay interest to Project Co on any amount of the Adjusted Highest Compliant Tender Price which has been withheld from the Undisputed Payment Date until the date of which payment is made under paragraph 1.5.2 above of the No Default Interest Rate.

1.6 If the Adjusted Highest Compliant Tender Price is zero or a negative number then, on entering into the New Agreement with the New Project Co, the Board shall have no obligation to make any payment to Project Co and (if a negative number) an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by Project Co to the Board on the date of the New Agreement.

Following no retendering

1.7 If the Board follows the no retendering procedure set out in paragraph 3 of Part B of this Schedule Part 23 then, subject to paragraph 1.8, the Board shall pay to Project Co an amount equal to the Adjusted Estimated Fair Value of the Agreement no later than the date falling twenty (20) Business Days after the Compensation Date together with interest on such amount calculated in accordance with paragraph 1.2.2 above unless the Board has paid Post Termination Service Amounts pursuant to paragraph 3.2 of Part B above.

1.8 To the extent that the Adjusted Estimated Fair Value of the Agreement is less than zero, then an amount equal to the Adjusted Estimated Fair Value of the Agreement shall be due and payable by Project Co to the Board on the Compensation Date.

2 Full and Final Settlement

2.1 Any and all sums irrevocably paid by the Board to Project Co under this Schedule Part 23 will be in full and final settlement of each party's rights and claims against the other for breaches and/or termination of the Project Agreement and any other Project Document whether under contract, delict, restitution or otherwise but without prejudice to:

- 2.1.1 any antecedent liability of Project Co to the Board which the Board has been unable to set off pursuant to Clause 48.12 of the Project Agreement;
- 2.1.2 any antecedent liability of either party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the Board Default Termination Sum, Adjusted Highest Compliant Tender Price, or Adjusted Estimated Fair Value of the Agreement, the Force Majeure Termination Sum or the Corrupt Gifts Termination Sum as the case may be; and
- 2.1.3 any liabilities arising in respect of any breach by either party of their obligations under Clause 47.9 of the Project Agreement which arises or continues after the Termination Date.

2.2 If either the Adjusted Highest Compliant Tender Price or (as the case may be) the Adjusted Estimated Fair Value of the Agreement is zero or a negative number the Board shall be released from all liability to Project Co for breaches and/or termination of the Project Agreement and any other Project Document whether under contract, delict, restitution or otherwise save for:

- 2.2.1 any antecedent liability of the Board which arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining the Adjusted Highest Compliant Tender Price or the Adjusted Estimated Fair Value of the Agreement (as the case may be); and
- 2.2.2 any liabilities arising in respect of any breach by either party of their obligations under Clause 47.9 of the Agreement which continues after the Termination Date.

3 Costs

The costs and/or expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule Part 23 shall only be such costs and/or expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred and shall only be counted once.

4 Undisputed Amounts

If the calculation of any termination amount is disputed then any undisputed element of that amount shall be paid in accordance with this Part E of this Schedule Part 23 and the disputed element shall be dealt with in accordance with the Schedule Part 26 (*Dispute Resolution Procedure*).

5 Outstanding Senior Debt Amount

- 5.1 The Board shall be entitled to rely on the certificate of the Senior Funders' Agent as conclusive as to the amount of the Senior Debt Amount outstanding at any relevant time.
- 5.2 The receipt of the Senior Funders' Agent shall discharge the Board's obligation to pay any element of compensation due to Project Co that is equal to the Senior Debt Amount (and

where appropriate any accrued interest or breakage costs as certified in accordance with paragraph 5.1. above).